

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI B.R. BASKARAN (ACCOUNTANT MEMBER) AND
SHRI ANIKESH BANERJEE (JUDICIAL MEMBER)**

ITA No.	A.Y.	Appellant	Respondent
4057/M/2019	2014-15	Deputy Commissioner of Income Tax, CC 7(3), Mumbai, Room No.655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai, 400020	M/s Lotus Logistics & Developers Pvt Ltd, 419, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri, Mumbai-400 053 PAN: AABCL1198G
4058/M/2019	2008-09	-do-	-do-
4039/M/2019	2015-16	-do-	-do-
6920/M/2024	2016-17	ACIT-CC 7(3), Mumbai Room No.655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai, 400020	-do-
6921/M/2024	2017-18	-do-	-do-
3697/M/2019	2008-09	M/s Lotus Logistics & Developers Pvt Ltd, 419, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri, Mumbai-400 053 PAN :AABCL1198G	Deputy Commissioner of Income Tax, CC 7(3), Mumbai, Room No.655, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai, 400020
3698/M/2019	2015-16	-do-	-do-
3041/M/2019	2012-13	Deputy Commissioner of Income Tax, CC 7(3) Mumbai, Room No.655,	M/s A.M. Developers and Realtors, 8/A, Kismat Nagar, CST Road, Kurla (W), Mumbai-

		6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai, 400020	400 070 PAN : AAUFA4101C
3040/M/2019	2012-13	-do-	M/s A.M. Construction Lotus Pride, 6 th Floor, Vallah Road, Vile Parle (W), Mumbai, 400069 PAN: AANFA2827N
3115/M/2019	2011-12	-do-	-do-
1485/M/2019	2014-15	-do-	M/s Lotus Buildspace LLP 419, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri, Mumbai-400 053 PAN :AAEFL2464P
1593/M/2019	2015-16	-do-	-do-

Assessee by : Shri Rishabh Mehta
Respondent by : Dr. K.R. Subhash (CIT-DR.)

Date of hearing : 04/02/2025
Date of pronouncement : 04/04/2025

ORDER

PER ANIKESH BANERJEE, J.M:

All these appeals have been filed by the revenue and by the respective assesseees challenging the orders passed by the Learned Commissioner of Income Tax (Appeals)-49, Mumbai [hereinafter referred to as "Ld. CIT(A)"], under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"] in the respective hands of these assesseees, on different dates for the assessment years mentioned against their respective names. The impugned orders arise from the assessments made by the Learned Deputy Commissioner of Income Tax/Assistant

Commissioner of Income Tax, Central Circle-7(3), Mumbai [hereinafter referred to as "Ld. AO"]. The dates of the appellate orders, assessment orders and the section under which the assessments were framed are tabled below:

	ASSESSEE & APPEAL NO	FILED BY	ASSESSMENT YEAR	DATE OF APPEAL ORDER	ASSESSMENT U/s	DATE OF ASSESSMENT ORDER
1	Lotus Logistic & Developers Pvt Ltd. ITA No. 3697/Mum/2019	Assessee	AY 2008-09	28-03-2019	143(3)/147	29-03-2016
2		Revenue				
3	ITA No. 6920/Mum/2019	Revenue	2016-17	29-10-2024	143(3)	28-12-2018
4	ITA No. 6921/Mum/2019	Revenue	2017-18	29-10-2024	143(3)	29-12-2019
5	ITA No.4057/Mum/2019	Revenue	AY 2014-15	28-03-2019	153A/143(3)	30-12-2016
6	ITA No.3698/Mum/2010	Assessee	AY 2015-16	28-03-2019	143(3)	30-12-2016
7	ITA No.4039/Mum/2010	Revenue				
8	A.M.Developers and Realtors. ITA No. 3041/Mum/2010	Revenue	AY 2012-13	12-02-2019	147/143(3)	22-12-2017
	Lotus Buildspace LLP					
9	ITA No. 1485/Mum/2010	Revenue	AY 2014-15	31-12-2018	153A r.w.s. 143(3)	19-12-2016
10	ITA No. 1593/Mum/2010	Revenue	AY 2015-16	31-12-2018	143(3)	19-12-2016
	A.M.Construction					
11	ITA No. 3115/Mum/2010	Revenue	AY 2011-12	15-02-2019	147/143(3)	22-12-2017
12	ITA No. 3040/Mum/2010	Revenue	AY 2012-13	15-02-2019	147/143(3)	22-12-2017

1.1 The AO had made additions either u/s 68 or u/s 69C of the Act in the hands of the above said assessees in the years mentioned above. The Ld CIT(A) granted relief either fully or in part. Hence, the revenue has filed these appeals

challenging the relief granted by Ld CIT(A) and the assesseees have filed appeals in ITA No.3697/Mum/2019 relating to AY 2008-09 and ITA No.3698/Mum/2019 relating to AY 2015-16 challenging the additions sustained by Ld CIT(A).

2. The facts of the case are set out in brief. All the above said entities belong to "Lotus Group". A search was conducted under section 132 of the Act by the revenue in Lotus, Kamdhenu, Green Valley group on dated 09/10/2014. The revenue had carried out investigation in certain companies and noticed those companies were providing only accommodation entries in the form of, inter alia, share application money, unsecured loans etc. It was noticed that the assesseees herein have received money from the companies alleged to be providing accommodation entries. The money was received by the assesseees either in the form of share application money or as unsecured loans. On the basis of this information, the revenue carried out search operations in the hands of assesseees herein. It is pertinent to note that the search team did not unearth any incriminating material to support its case that the share application money/unsecured loans received by these assesseees are only accommodation entries. Consequent to the search operations, the assessments of the assesseees herein for various years were reopened u/s 153A of the Act. The AO also reopened the assessment of M/s Lotus logistics and Developers P Ltd relating to AY 2008-09 by issuing notice u/s 148 of the Act.

2.1 In the reopened assessments, the unsecured loans or share capital received by these assesseees were added by the AO to the total income u/s 68 of the Act treating them as unexplained cash credits on the reasoning that they are not real, but represent accommodation entries received by these assesseees. The relevant

interest expenditure claimed on the above said loans was assessed as unexplained expenditure u/s 69C of the Act. All these assessees had received loans or share capital from one or more of the following entities: -

- (1) Bhavana Computers Pvt Ltd (BCPL);
- (2) Rowland Trexim Pvt Ltd (RTPL);
- (3) Divine Tradecom Pvt Ltd (DTPL);
- (4) Satyam Projects Pvt Ltd (SPPL)
- (5) Anandomayee Merchandise Pvt Ltd,
- (6) M/s Santosh Gems Pvt Ltd,
- (7) M/s RatnagarFinlease Pvt Ltd,
- (8) M/s Anglo CommotradePvt Ltd and
- (9) M/s Valaka Engineering Pvt Ltd

The AO fully relied upon the report of the investigation wing and also the statements recorded by the investigation wing from different persons, who were alleged to be providing accommodation entries through the above said concerns. Aggrieved by the additions made by the AO, all the assesses herein filed appeals before the Ld. CIT(A). The Ld.CIT(A) partly allowed the appeal of the assessee named M/s Lotus Logistics and Developers P Ltd in AY 2008-09 and 2015-16. Appeals of other assessment years of above said assessee and also the appeals filed by other assessees herein were allowed fully. Aggrieved by the orders passed by Ld CIT(A), the assessee M/s Lotus Logistics and Developers P Ltd as well as the revenue have filed these appeals before us for the years mentioned in the above said table on the issues decided against them.

2.2 Since these appeals belong to same group and the since the most of the issues contested by both the parties are identical in nature, they were heard together and are being disposed of by this common order, for the sake of convenience.

3. The Ld. DR argued vehemently and fully relied on the impugned assessment orders. The Id. DR has also filed common written submissions related to all the assesseees under consideration. The same is reproduced as below: -

"2. Search assessments in the case of Lotus group of entities were concluded u/s. 153A the IT Act (hereinafter referred as "Act") consequent to search action u/s. 132 of the Act in Lotus/Kamdhenu/Green Valley Group conducted on 09.10.2014. The additions made in the assessments of the group entities were on account of accommodation entries received from companies based in Kolkata in the guise of unsecured loans/advances and share capital/premium. The entities were assessed based on incriminating evidences seized during the course of search, statements recorded u/s. 132(4)/131 of the Act of the relevant persons which have been taken reference in the assessment orders. The assessments concluded inter-alia include M/s. Lotus Logistics & Developers Pvt.Ltd., M/s. Lotus Build space LLP, M/s. A. M. Developers & Realtors and M/s. A. M. Constructions referred above for which department has filed appeals referred above. The assessment's in the case of M/s. Lotus Logistics & Developers Pvt. Ltd. and M/s. Lotus Build space LLP was concluded u/s. 153A of the Act for A.Y'rs. 2014-15 and 2015-16. The assessments in the case of M/s. A. M. Developers & Realtors and Mis. A.M. Constructions were concluded u/s. 147 r.w.s143(3) of the Act.

3. In all the assessments referred above, there are common issues on the basis of which assessed income is determined. The variation to the returned income is on account of addition u/s. 68 of the Act on account of advances/loans, share capital/share premium received from paper companies based in Kolkata. There are 4 entities based in 2. Search assessments in the case of Lotus group of entities were concluded u/s. 153A the IT Act (hereinafter referred as "Act") consequent to search action u/s. 132 of the Act in Lotus/Kamdhenu/Green Valley Group conducted on 09.10.2014. The additions made in the assessments of the group entities were on account of accommodation entries received from companies

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are 4 entities based in Kolkata from which accommodation entries have been arranged through entry operators based in Mumbai and Kolkata. These entities are:

- i. Bhavana Computers Pvt. Ltd. (hereafter referred as BCPL).
- ii. Rowland Trexim Pvt. Ltd.(hereafter referred as RTPL).
- iii.DivineTradecom Pvt. Ltd. (hereafter referred as DTPL).
- iv. Satyam Projects Ltd. (hereafter referred as SPPL).

4. The evidences gathered during the course of search with respect to accommodation entries availed by the entities of Lotus Group from the above-mentioned paper companies discussed in the Assessment order are elaborated here below for kind consideration in the context of appeals filed by the Department, listed in the reference.

4.1 In the course of search action in Lotus Group of cases, registered offices of BCPL in Kolkata were covered. There were two premises which were located at:

- i. 932/A/74, Jessor Road, Meghdoot Apartment, Ground Floor, Sarada Pally, Kolkata,
- ii.52/2, Ram Lochan Shire Street, Belurmath, Howrah.

The premises at (i) was occupied by Shri Ankit Poddar and his family as his residence. The statement of Shri Ankit Poddar was recorded u/s. 133A of the Act on 9.10.2014 wherein he deposed that the premises occupied by him was a registered office of BCPL, DCPL and RTPL. He also deposed that he had no knowledge about business activities of the three companies and he only received letters of the three companies to hand it over to Shri Pradeep Poddar who is the Director in those companies. At the premises at (ii), statement of Shri Birendra Kumar Tiwari was recorded. He was found to be a tenant at this premises for more than 30 years and he has deposed that neither the office of BCPL exist at the said premise nor any correspondence in the name of BCPL has been noticed by him. Therefore, it is reasonable to hold that the said addresses were merely mailing addresses in respect of the paper concerns in question and the entity never conducted any business from the said premises.

4.2 Statement of Shri Pradeep Poddar: Shri Pradeep Poddar was found to be the employee of Shri Mahesh Singhania of M/s. M K Singhania & Associates based in

Kolkata. Shri Mahesh Singhania was in control of a company by name Swadha Properties Pvt. Ltd. and Shri Pradeep Poddar was a salaried employee of Swadha Properties Pvt. Ltd. Shri Pradeep Poddar is found to be one of the common Directors in BCPL, DCPL and RTPL. Statement of Shri Pradeep Poddar was recorded u/s. 131 of the Act on 2.12.2014. In his statement, Shri Pradeep Poddar has deposed that he is a dummy director in BCPL, DTPL and RTPL. Further, he has also given the list of other entities which were used for providing accommodation entries to various beneficiaries including Lotus Group. It is therefore clear from the statement of Shri Pradeep Poddar that he is only a namesake Director in all the three paper entities and these entities were used for providing accommodation entries.

4.3 Fund trail in the post search investigation: In the post search investigation, the DDIT has analyzed financials and bank statements of the paper entities and also analyzed the fund trail to these entities. The DDIT has reported that 126 companies, all of them based in Kolkata have contributed funds to BCPL, DCPL and RTPL by way of share capital/share premium. It is further found that out of 126 companies, 29 companies were such that either the Directors of these companies or the entry operator associated with these companies have accepted before the department that they are providing accommodation entries. The DDIT(Inv) has further analyzed the income profile of all the 126 entities for FY. 2007-08 and 2008-09 and found that 11 companies have not filed their Return of Income for FY. 2008-09 and 6 companies were non-filers. Further, only 4 companies out of 126 have income more than 5 lakhs in either FY. 2007-08 or 2008-09. Based on such analysis, it was clear that the advances/share capital provided to BCPL, DCPL and RTPL were not out of genuine business operations or accumulated profits but again the funds were routed by way of share capital or unsecured loans from other paper companies. This establishes the fact that money which has flown as share capital/premium or advances from BCPL, DCPL and RTPL to Lotus group of entities are not genuine funds but accommodation entries routed through a web of shell companies. It was also noted that the majority of the source companies have common Directors and common communication address. The facts such as dummy Directors, common directors across multiple companies, poor operational revenues, available funds in the form of share capital and unsecured loans, investments by way of advances and investments in closely held companies by subscribing share premium etc. point towards shell companies created for routing illicit funds.

4.4 Acquisition of BCPL, DCPL and RTPL by Lotus group: Post search investigations also revealed that the Lotus group had acquired 100% shareholding of BCPL, DCPL and RTPL at an acquisition cost of Rs.5.09 crores as against cumulative net worth of these paper companies of Rs.118.08 crores, on paper as on the date of acquisition. It is apparent that the companies whose net worth was claimed at Rs. 118 crores acquired at a huge discount of Rs.112.99 crores from the erstwhile shareholders. Such transaction defies all commercial logic wherein immediately prior to acquisition the companies had huge net worth but were transferred at a throwaway price on the pretext of huge losses projected for these companies. Contextually, BCPL, DCPL and RTPL have raised share premium from various paper entities without the backing of genuine business operations. BCPL, DCPL and RTPL have received huge share premium from other paper entities which got translated to the claim of huge net worth of Rs.118.08 crores without the backing of genuine business operations. Further, the shareholding of BCPL, DCPL and RTPL were transferred at a throw away price to Lotus group without there being claim of accumulated losses as on the date of acquisition. The conduct of parties on the basis of the transaction under question clearly and abundantly proves that the three entities were used as tool to launder unaccounted money which has not suffered tax. Firstly, the fictitious assets were created merely on paper in the hands of these three entities only to subsequently transfer the same to Lotus group at throw away price. It is further stated that there is a substantial contribution of funds by way of advances/share premium to Lotus group of companies itself. Further, there is nothing brought on record to prove that BCPL, DCPL and RTPL have initiated legal measures for recovery of outstanding loans/advances. Therefore, it cannot be believed that the assets of BCPL, DCPL and RTPL have suddenly turned as non-performing assets prior to transfer of share holding to Lotus group. It is also a fact that none of the 3 entities BCPL, DCPL and RTPL have declared their business activities as NBFC's and it is not understood as to why their activities are limited only to investment and no other business operations.

4.5 A careful analysis of the entire transactions as elaborated in the previous paragraphs reveal that the initial shareholders of BCPL, DCPL and RTPL have brought in huge capital at unjustified share premium, transferred the substantial portion of such capital as loan/advances/share premium to Lotus group and finally transferred 100% shareholding of these entities to the members of Lotus group itself at a huge discounted price. This very fact clearly establishes that the apparent is not real and hence the AO was justified in lifting the corporate veil

and unearth the truth while making addition u/s. 68 of the Act in the hands of the end recipients of funds through banking channel routed through these three paper concerns in the garb of loans/advances and share premium.

4.6 The AO has also analyzed the financials of BCPL, DCPL and RTPL for the years in which advances/share capital/share premium has been received by Lotus group of entities to bring on record that the alleged entities do not have funds in the form of accumulated profits to subscribe for huge premium or provide advances. The AO has also brought on record, fact that earning per share of all the three entities is 0.01 to 0.1. Further, the AO has also highlighted the fact that despite the alleged entities not having strong financials and the backing of genuine business transactions, the entities have raised share premium of Rs.90 per share before issuing accommodation entries by way of advances/share premium.

4.7 it is also discussed in the relevant assessment orders that high net worth claimed by the alleged investor companies (BPCL,DCPL& RTPL) is an artificial net worth existing only on paper created by issuing shares at premium to paper entities. The AO has also discussed the fact that despite the alleged entities subscribing to shares of Lotus group of entities at a premium, no dividend has been paid by Lotus group till the date of their final acquisition by the group. Further, it also a fact that interest is not regularly paid against loans and advances claimed to have been borrowed from these entities.

4.8 In the course of search proceedings, statement of Shri Amal Mondal has been recorded u/s. 131 of the Act on 9.10.2014. Shri Amal Mondal was found to be one of the employees of Shri Mahesh Singhania and employed with the company by name Sosha Credit Pvt. Ltd. This entity was controlled by Shri Mahesh Singhania who was found to be an entry operator based in Kolkata. Shri Amal Mondal has disposed his statement in the capacity of Director of M/s. Bhavana Computers and clarified that BCPL is a paper entity and provides accommodation entries.

4.9 The statement of Shri Parbhat Gothi of Kamadhenu Group was also recorded us 131 of the Act on 10.12.2014 who conceded to the fact that the entities of Kamadhenu Group have taken accommodation entries from RTPL

4.10 The AO has also brought on record, fact that shares of Lotus group of entities have been issued at a premium to the three entities when the group had not even completed any substantial project and their financial track record could not justify issue of shares at a huge premium.

4.11 All the enquiries done during the course of search proceedings were confronted to Shin Ashok Aggarwal and he has deposed ignorance regarding basic details of the above entities. Shri Ashok Aggarwal could not comment on the nature of business activities, their address, key persons involved in the group etc. during the course of search it is surprising that the Lotus group of companies have received huge unsecured loans/share capital/share premium but its promoter is totally unaware of the whereabouts and basic details regarding the Directors of such closely held entities subscribing share premium of the entities of Lotus group.

4.12 Investigation specific to M/s. Satyam Projects Ltd: Statements of Shri Hitesh Thakkar, Mr. Jignesh Mavadiya and Shri Uday Shankar Mahavar; in the course of search proceedings, statement of Shri Hitesh Thakkar was recorded u/s. 131 of the Act, on 10.10.2014. His statement was recorded in the capacity of Managing Director of M/s. Satyam Projects Ltd. an entity based on Kolkata. Shri Hitesh Thakkar admitted to be a name sake director in M/s. Satyam Projects Ltd. and said company is a shell company used for providing accommodation entries. He also revealed the fact that the company was acquired by Shri Bhagvanji Patel (one of the key individuals of Lotus Group) in May 2014. He has admitted fact that he is ignorant about the basic details of the company such as nature of business activity, date of formation of the company etc. The statement of Shri Jignesh Mavadia, in the capacity of Director of M/s. Satyam Projects Ltd. was also recorded on 09.10.2014 u/s. 131 of the I.T. Act. He admitted to be employed as clerk in M/s. Princely Ply Agency Pvt. Ltd. (one of the entities of Kamdhenu Group). Shri Jignesh Mavadia accepted that he is only the name sake director in M/s. Satyam Projects Ltd. In the course of search action, statement of an entry operator Shri Uday Shankar Mahavar was recorded u/s. 131 of the Act on 25.08.2014. Shri Uday Shankar Mahavar deposed that he has opened around 200 bogus companies in order to provide accommodation entries to various beneficiaries. Further Shri Uday Shankar Mahavar also stated that he has used M/s. Satyam Projects Ltd. to provide accommodation entries and the company does not have any genuine business activity, except for routing unaccounted funds to other beneficiaries.

4.13 The A.O. has also analyzed the financials of M/s. Satyam Projects Ltd and recorded his finding that the company has poor accumulated profits and so-called net assets worth 98.26 crores is funded by raising share premium and merger of other Jama Karch companies based in Kolkata. The A.O. has given a finding that there were 2 rounds of merger activities during F.Y. 2007-08 and 2010-11

merging 8 kolkata based paper entities with alleged net worth of 100.59 crores. It is consequent to this merger, the net worth of M/s. Satyam Projects Ltd. has been projected at Rs. 103.65 crores as on 31.03.2015. Therefore, it is clear that net worth claimed in M/s. Satyam Projects Ltd. is not self-generated by genuine business activity but by using the route of merger of Kolkata based shell entities having large premium in their reserves. Out of the reserves claimed in M/s. Satyam Projects Ltd. of Rs. 103.65 crores, Rs. 100.59 crores consist share premium of merged entities. On further investigations of the bank accounts held by M/s. Satyam Projects Ltd. it was evident that there were huge transactions with entities controlled by entry operators such as Shri Pravin Agarwal, Shri Amit Kedia etc. Therefore, the fund trail of funds in the case of M/s Satyam Projects Ltd

4.14 The A.O. has further brought on record that in the search operations conducted by the department in the case M/s. Shah Coal Pvt. Ltd., Mr. Vinay Shah has accepted to have taken accommodation entries from M/s. Satyam Projects Ltd. This corroborates the fact that not only Lotus group but there are other beneficiaries who have benefitted from accommodation entries provided by M/s Satyam Projects Ltd and not only the persons who were at the helm of affairs of M/s Satyam Projects Ltd, but independent beneficiaries have also admitted to the fact of indulgence in illegitimate paper transactions and being in hand in glove with entry operators. The facts looked in entirety leaves no scope for any scope for assesses to claim relief by taking shelter of retraction statements of the entry operators which would be clearly an after thought aimed at misleading and misguiding the appellate authorities.

4.15 The Ld.CIT(A) has deleted the addition made u/s.68 of the Act with respect to loans and advances/share capital/share premium broadly on two grounds:

i. The Ld.CIT(A) has relied on apparent documents filed by the assessee such as PAN card, copies of ITR, bank statements, share application form, offer letter etc. of the investor entities.

ii. The Ld.CIT(A) has relied on the retraction statements of various entry operators filed by the assessee during the course of appellate proceedings.

4.16 It is submitted that the reliance placed by the Ld.CIT(A) on the apparent documents without considering the evidences gathered during the course of Search and post such investigations is not justified. The Ld.CIT(A) ought to have appreciated that the onus lies on the assessee to prove the genuineness of transactions particularly while the department has raised issues regarding the

identity, credit worthiness and genuineness of transactions of Lotus group of entities regarding their claim of unsecured loans and share premium received from BCPL, DCPL and RTPL. The Ld.CIT(A) is not justified in holding that the onus cast on the assessee is concluded by filing documents apparent to the transaction. It is the duty of the assessee to prove the genuineness of transactions in the light of observations made by the department to avoid invoking provisions of section 68 of the Act. The Hon'ble High Court of Calcutta in the case of PCIT vs Swati Bajaj [139 taxmann.com 352] have held that the tax authorities are justified in considering circumstantial evidence and the principles of human probabilities to assess the authenticity of transactions particularly when issues of price volatility and potential manipulation with respect to penny stocks are pointed out by the Revenue. Further, the Hon'ble Apex Court in the case of PCIT(Central)-1 vs. NRA Iron & Steel Pvt. Ltd. [103 taxmann.com 48] have held that mere filing of formal documents was insufficient in the context of proving triple criteria provided in section 68 of the Act. The Hon'ble Court has further held that it would be the onus of the assessee to prove the genuineness of transactions in the light of AO's findings such as non-existence of investor companies and their lack of financial capacity. In the same decision the Hon'ble Court has referred to previous judgments of the Hon'ble Apex Court including CIT vs. Durgaprasad More and Sumati Dayal vs. CIT, underscoring the tax authorities were entitled to look beyond superficial documentation to assess the actual substance of transactions. Both the citations quoted above reinforce the principal that in cases of significant financial inflows especially involving share capital and premiums, the taxpayer must present compelling evidence to establish the legitimacy of such transactions.

4.17 The Ld.CIT(A) was not justified in allowing relief to the assessee relying on statements of retraction of entry providers provided by the assessee. Merely because the statement is retracted, it cannot become as involuntary or unlawfully obtained. For any retraction it is necessary to establish in the eyes of law that earlier recorded statements do not state the true facts or that there was coercion, inducement or threat while recording earlier statements. It is well settled law that in case of retraction, assessee needs to provide legally acceptable evidence that permission or confession in the statement during search or survey was involuntary or was tendered under coercion or duress. In this regard reliance is placed on the following decisions:

1. A self serving retraction, without anything more cannot dispel statement made under oath under section 132(4). (CIT vs. O. Abdul Razak 20 Taxmann, com 48(Kerala))

2. Whether assessee retracted from his earlier statement without demonstrating any evidence to establish that statement recorded earlier was incorrect; an allegation of compulsion or coercion must not be accepted merely on a statement if remained unsubstantiated -(Kantilal C. Shah vs. ACIT) 15 ITR (T) 62 (AHD)

3. A belated retraction of admissions and that also without any fact to support the allegation of coercion or pressure cannot ensure to the benefit of the assessee. An admission is substantial evidence of a fact, within the special knowledge of an assessee, and if not retracted immediately or without reasonable time is substantive evidence of a fact and may be read against an assessee (Navdeep Dhingra vs.CIT) (56 Taxmann.com 75)(P&H).

4. The burden lay on the assessee to show that the admission made by him in the statement earlier at the time of survey was wrong. Such retraction, however, should be supported by strong evidence stating that the earlier statement was recorded under duress and coercion, and this has to have certain definitive evidence to come to the conclusion indicating that there was an element of compulsion for assessee to make such statement. A bald assertion to this effect at much later stage cannot be accepted. The statement recorded during the course of search action which was in presence of independent witnesses has overriding effect over the subsequent retraction. (M/s, Bannalal Jat Constructions P. Ltd. vs.ACIT) (106 Taxmann.com 127(Rajasthan).

5. Whether if there is any pressure or coercion on basis of which assessee made admission under sections 132(4) and 131(1A), assessee is at liberty to report to higher authorities in investigation wing or even to CBDT. Whether since assessee had no report to higher authorities in respect of coercion and pressure of eleven months, theory of coercion and pressure was only an afterthought just to support retraction-Held yes(ManmohansinghVig vs DCIT 6 SOT 18(MUM)

4.18 Based on the detailed discussion regarding incriminating evidence gathered by the department in connection with share application/share premium/advances/loans claimed by various entities of Lotus Group in the name of 4 entities namely BCPL, DCPL, RTPL and SPL as brought out by the assessing officer in the assessments of relevant entities, the addition u/s. 68 of the Act may be upheld.”

He submitted that the above said written submissions would apply to all the appeals herein. Accordingly, he submitted that the additions made by the AO should be sustained.

We shall now proceed to dispose of the appeals assessee wise:-

LOTUS BUILDSPACE LLP.

ITA No.1485/Mum/2010 (AY 2014-15) & ITA No. 1593/Mum/2010 (AY 2015-16)

4. Both these appeals have been filed by the revenue, wherein the relief granted by Ld CIT(A) in respect of addition made u/s 68 of the Act is being challenged in both the years.

4.1 The addition made in the hands of this assessee by the AO in both the years is related to the 'capital introduced' by the partner, M/s Satyam Projects Pvt Ltd (SPPL). The Ld.AO fully relied on the report of the Investigation Department and the statement recorded from Shri Uday Shankar Mahawar, Shri Hitesh Thakkar, Shri Jignesh Mavadia and Shri Parbat Gothi to arrive at the conclusion that the capital introduced by the said partner SPPL was out of accommodation entry received by it from different companies. Accordingly, the AO made addition of capital introduction of Rs.2,22,25,000/- in AY 2014-15 and Rs.20.87 crores in AY 2015-16. The Ld CIT(A) has deleted the above said additions made in both the above said years. Hence the revenue has filed these appeals.

5. The Ld.DR, in his argument, stated that the addition was made by the AO on the basis of the statements given by the above said persons. Even though the assessee has submitted all the relevant evidences to prove the capital of Rs.2,22,25,000/- and Rs.20.87 crores received from SPPL in both the years cited

above, Yet it is noticed by the AO that the SPPL has accumulated funds through the accommodation entries. The various apparent evidences furnished by the assessee should be ignored, since the unaccounted money has been routed as capital introduction by the above said company. He relied on para 6.3 of the impugned assessment order, which is reproduced below:-

“6.3 Statement of Shri Uday Shankar Mahawar

A statement of Shri Uday Shankar Mahawar was recorded u/s 131 of the Act, at the office of DDIT, Unit-II(3), Kolkata, on 25-08-2014 wherein he stated that he has opened around 200 bogus companies [Jamakharchi companies) which was used to provide bogus accommodation entries like unsecured loans, share application etc. to various business concerns. The said Jamakharchi companies of Shri Uday Shankar Mahawar have no business transactions except rotation of funds. One of the several bogus companies of Shri Uday Shankar Mahawar as stated in his statement is M/s Satyam Projects Ltd. It has also been stated by Shri. Uday Shankar Mahawar that M/s Satyam Projects Ltd., have no credit worthiness to invest or provide loans to other companies. Further, Shri Uday Shankar Mahawar has also stated that this company does not have any activities which can generate any profit to accumulate reserves. These companies have been created merely as a tool to redirect the unaccounted funds into other companies. (Copy of Statement of Shri Uday Shankar Mahawar is attached as “Annexure “A” forming part of this order).”

5.1 The Ld.AR, on the contrary, submitted that the SPPL is a partner of the assessee company and the above said amount was received as capital contribution. He submitted that the AO has relied only upon the statements given by the above said parties for making addition and did not consider various documents produced by the assessee to prove the capital amount received from SPPL. He contended that the AO could not have relied upon the statements given by the above said parties, since all of them have retracted their statements. In this regard, the Ld A.R summarised the details of the date of recording of statements and the date of retraction as under:-

<u>S.No.</u>	<u>Name of Party</u>	<u>Dt of statement taken</u>	<u>Dt. of retraction</u>
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1.	Uday Shankar Mahawar	25/08/2014	27/02/2015
2.	Hitesh Thakkar	10/10/2014	16/10/2014
3.	Shri Jignesh Mavadia	09/10/2014	16/10/2014
4.	Shri Parbat Gothi	12/10/2014	18/10/2014

The Ld A.R submitted that the Ld CIT(A) has duly considered all the evidences and documents furnished by the assessee and accordingly deleted the addition.

6. We heard the rival submissions and considered the documents. We notice that the Ld CIT(A) has passed a detailed order on this issue by duly examining the various documents furnished by the assessee to discharge the burden placed upon the assessee u/s 68 of the Act. We notice that the Ld CIT(A) has rendered his decision by applying applicable case law on this issue. Accordingly, we feel it convenient to extract the same below:-

“7.3. I have carefully considered the assessment order and the submissions of the Learned Counsel. The assessee was covered under search of Lotus group conducted on 09.10.2014. During the course of search, statement of Mr. Jignesh Mavadia was recorded on 09.10.2014 wherein he stated that he was a mere namesake director and that Bhagwanji M Patel told him to become a director in M/s. Satyam Projects Ltd. Simultaneously, during the course of search, a survey was conducted on M/s Prince Ply Agency Pvt Ltd wherein statement of Mr. Hitesh Thakkar was recorded u/s. 133A on 10.10.2014 who admitted that the company was a paper company. During the year under consideration, the appellant has received partner's contribution of Rs.5,57,25,000/- from Satyam Projects Ltd. The main issue involved in the present appeal is in relation to addition u/s, 68 of Rs.2,22,25,000/- in respect of partner's capital received by the appellant from M/s. Satyam Projects Ltd during the year under

consideration. The balance amount of the loan is considered by the AO in the hands of other group concerns for the purpose of making the addition u/s. 68 of the Act. The assessee claims that no addition of Rs.2,22,25,000/- is called for as it has completely established the three ingredients viz. identity, genuineness and creditworthiness as envisaged u/s. 68 of the Act whereas the AO has treated the same to be bogus and added the same u/s. 68 of the Act. Thus, the essential dispute is with regard to the partner's contribution received by the appellant from M/s. Satyam Projects Ltd and whether the assessee has discharged its onus cast upon by the provisions of section 68 of the Act.

7.4. The assessee has submitted documents as under in the course of assessment as well as before me:

(a) Copy of Memorandum of Association and Articles of Association of the investor company along with the certificate of incorporation revealing that the company was formed on 16.05.1981.

(b) Copy of registration certificate issued by the RBI dated 08.06.1998 bearing Reg No. 05.02644

(c) ITR Acknowledgement alongwith computation of income of the investor

(d) Financial statement of the investor company

(e) Ledger confirmation of the investor company

(f) Bank Statement of the appellant and the investor

(g) Order of Hon'ble Calcutta High Court evidencing merger of 2 companies viz. Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd alongwith the assessee on 26.06.2008 A.Y.2014-15

(h) Order of Hon'ble Calcutta High Court evidencing merger of 6 companies viz. Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd on 15.12.2010

(i) Assessment order of the aforesaid 6 companies

(j) Form 2 filed by investor company with ROC for increase in authorised capital in Feb, 2011

(k) Copy of Due diligence Report carried out prior to merger

(l) Copy of scrutinizer report dtd. 26.09.2015 on e-voting process

(m) Copy of Internal audit report for FY 15-16

(n) Copy of secretarial report

(o) Copy of quarterly compliance report

(p) Copy of prospectus issued by investor company

7.5. I have perused the aforesaid documents. It is observed that the assessee company is a registered NBFC since 1998 which has been later merged with 8 companies through a scheme of amalgamation duly sanctioned by the Hon'ble Calcutta High Court. By providing the aforesaid documents, the assessee submits that the investor M/s. Satyam Projects Ltd is a genuine company which has carried out so many compliances regularly with RBI/ Auditors and has also been sanctioned merger with the approval of the Hon'ble Calcutta High Court.

From the records, it is noticed that the alleged investor was served a notice u/s. 133(6) of the Act by the AO which was duly complied. The assessee therefore submits that there is no adverse finding in this regard by the AO in his assessment order.

Apropos creditworthiness of the investor company, it is seen that initially two companies Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd having aggregate net worth of

Rs. 9.53 crores merged with Satyam Projects Ltd on 26.06.2008. Later, other six companies namely Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd having aggregate net worth of Rs. 91.06 crores merged with Satyam Projects Ltd on 15.12.2010. The aforesaid companies had huge capital and reserves appearing in the balance sheet prior to the merger. Consequent to the merger, the AR submits that total net worth of the investor company was increased by Rs.100.59 cores which was then utilised by it for the purpose of its business. The AR has further pointed out that the assessment in the case of these aforesaid six merged companies was carried out wherein the share capital issued by these companies have been verified by the concerned AO. Accordingly, the net worth of the investor company stood at Rs. 1,02,90,96,564/- which was in fact substantially examined by the revenue. Further, the turnover of the investor for the year under consideration was Rs. 2.15 crores and its returned income was Rs. 1,61,13,093/-.

The AO has relied on the statements of Shri. Hitesh Thakkar, Shri, Jignesh Mavadiya & Shri. Uday Shankar Mahawar. In this regard, the appellant contends that the statements were not provided to it and hence the same cannot be used against it. The appellant also contends that no opportunity of cross examination of the aforesaid parties has been accorded to the assessee. The assessee further stated that the aforesaid parties have given the statement under coercion and influence of the search party and have subsequently retracted the statements which were made by them.

In his statement u/s. 133A of the Act on 10.10.2014, Shri. Hitesh Thakkar, managing director of the investor company has stated that Bhagwanji Patel has acquired M/s. Satyam Projects Ltd in May 2014 and that he was a director for name sake only and detailed explanation in relation to Satyam Projects Ltd could be given by Bhagwanji Patel. He has further stated that the overall affairs of the company are being looked after by Shri. Bhagwanji M Patel. He ultimately agreed that the said company is a paper company.

Similarly, Shri. Jignesh Thakkar in the course of statement u/s. 131 of the Act on 09.10.2014 has stated that he was a clerk in Prince Ply Agency Pvt Ltd and he was a namesake director in Satyam Projects Ltd. He was unaware about the other directors of the investor company.

In his statement, Shri Uday Shankar Mahawar u/s. 131 on 25.08.2014 has also stated that he opened around 200 bogus jamkharchi companies which were used to provide bogus accommodation entries One of Such companies as stated in his statement was Satyam Projects Ltd.

However, the AR states that all the aforesaid statements relied upon by the AO are retracted by the said parties on the ground that they were based on influence and coercion of search party. The retraction affidavits of these parties have been placed in the course of assessment as well as before me. In the course of assessment proceedings, Shri. Uday Shankar Mahawar was produced before the Id. Assessing Officer wherein he has affirmed his retraction and clarified that the earlier statement given by him was recorded under coercion. The AR also stated that Shri. Bhagwanji M Patel is the shareholder of M/s. Satyam Projects Ltd.

7.6. In light of above, it is now important to examine the validity of addition based on the aforesaid statement which have been retracted by the respective parties. I find that the assessee group was covered under search action and no document or other assets were found in the course of search which could indicate that the assessee had obtained accommodation entry. It is stated by the AR that a search is a strict measure under the Act which invades the privacy of the assessee and even in these proceedings no concrete evidence was found except for mere oral confirmation of certain parties which also stand retracted later. My attention in this regard was invited to the CBDT Instruction F.No.286/98/2013-IT (INV.II) dated 18/12/2014 and letter dated 10/03/2003 issued by the Ministry of Finance & Company Affairs wherein it is stated that the search party must focus on collection of evidences and not merely admission/ confession of additional income. The Hon'ble Gujarat High Court has relying on the aforesaid instructions upheld

the view that addition should not be made based on oral confession in the case of CIT v. Ramanbhai Patel (TA no. 207 of 2008) and Chetnaben J Shah v. ITO [TA no. 1437 of 2007]. Thus, respectfully following the CBDT circular as well as the decision cited by the assessee (supra), I find that the addition cannot be sustained merely on the basis of the statements taken during the search devoid of any evidence/material to incriminate the assessee.

Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus u/s. 68 of the Act on the assessee to prove identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AO to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as to whether the evidences brought by the assessee or AO weigh more and accordingly in whose favour the equilibrium bends. In the present case, on one hand, the assessee has placed evidence in the form of voluminous documents in relation to RBI compliances, ROC compliances, audit compliances and merger sanctioned by the Hon'ble Calcutta High Court Further, the assessee has also placed on record the assessment orders of 6 merged companies for the A.Y 2010-11 and also that of the alleged investor- M/s. Satyam Projects Ltd for A.Y. 2010-11. I have also gone through the confirmation, ITR Acknowledgement financial statements of the investor company and bank statements relating to the alleged transaction of partner's contribution received of Rs.2,25,25,000/- by the assessee during the year under consideration. It is observed that the investor company is formed in 1981 and is registered NBFC since 1998 engaged into the business of finance and investment in the year under consideration. The investor company has shown substantial turnover of Rs.2.15 crores with an income of Rs. 1,61,13,093/- offered in its return of income. The

transactions are also carried out through account payee cheques. Even, in the subsequent year ie AY 2015-16, it is seen that the investor company has earned substantial income of Rs. 1,16,80,862/-. Accordingly, the assessee has discharged its onus u/s 68 of the Act by substantiating even the source of source of alleged investor company.

On the contrary, the Assessing Officer has solely placed reliance on the statement of Hitesh Thakkar, Jignesh Mavadia and Uday Shankar Mahawar which has been retracted by all of them. Further, the AO has made allegation that Mis. Satyam Projects Ltd is a company run by various entry operators but have failed to bring anything concrete on record. In fact, during the course of assessment proceedings, enquiries were made by the AO in form of issue of notice u/s. 133(6) which was duly complied by the investor. Even the evidences referred above were not disputed by the Assessing Officer. It is informed that Uday Shankar Mahawar was appointed as a director in M/s. Satyam Projects Ltd on 30.10.2010 and Hitesh Thakkar and Jignesh Mavadia had been appointed as a director on 04.03.2014. Also, Shri. Uday Shankar Mahawar was produced before the Assessing Officer who had affirmed his retraction thereby confirming that the transaction of Satyam Projects Ltd were genuine and that it is not a paper company.

7.7. The decision of the Hon'ble Jurisdictional ITAT in the case of ITO v. Sringeri Technologies Pvt Ltd [ITA No. 3924/Mum/2014] is also relevant wherein similar facts were involved before the Hon'ble ITAT and it was observed as under:

11. Having considered arguments of both the sides and materials available on record, we do not find any merit in the reasons given by the AO to come to the conclusion that the assessee has failed to prove the genuineness of transaction and creditworthiness of the parties on the ground that the assessee has filed enormous details in respect of 9 companies including their PAN details, CIN master data, affidavits sworn before Executive Magistrate, reply to the notices issued u/s 133(6). The assessee also filed copies of assessment order passed u/s 143(3) by the department in respect of 4 companies. The assessee also filed a certificate from a Chartered Accountant certifying the active status of the company in the website of Ministry of Corporate Affairs. On going through various detailed filed by the assessee, we find that there is no reason for the AO to doubt the genuineness of transactions of creditworthiness of the parties. We further notice that all 9 companies are active in the website of ROC and also they have filed their balance-sheet upto 31-

03-2016 and in some cases upto 31-03-2017. We further notice that the AO has furnished a report accepting the fact that all these companies are active in the website of MCA and none of the companies' name is struck off from the list published by the MCA as shell company. We further notice that the assessee has filed balance-sheet of all 9 subscribers wherein they have huge share capital and reserves and surplus to establish creditworthiness of the parties. On perusal of the balance-sheet filed by the assessee, we find that the aggregate of share capital and reserves of 9 companies is at Rs. 333.67 crores, whereas investment in assessee company is only Rs. 12 crores. We further notice that all companies are having regular business ranging from 2 to 3 crores. The assessee also furnished copies of sales-tax returns filed with Commercial Tax Department to prove the business activity of the assessee. All these evidences go to prove an undoubted fact that these companies are not paper companies and recognized with business activity. We further observe that the assessee also filed affidavit from the directors of subscriber companies, wherein they have explained the reasons for not receiving communication sent by the AO u/s 133(6) of the Act. They further stated in the affidavit that they have subscribed to the share capital of the company and also furnished supporting evidences to justify investment in share capital of the company. We further notice that the assessee has furnished bank statement of subscribers wherein we do not find any instance of cash deposits or transfer from other companies prior to the date of transfer to the assessee company. Therefore, we are of the view that the AO was incorrect in treating share capital alongwith share application money as unexplained cash credit u/s 68 of the Income-tax Act, 1961."

8.8. Having discussed the overall facts and circumstance of the present case, now I examine the case laws relied upon by the AO and the assessee in this context.

A) Case laws relied upon by the AO

(i) CIT v. Nova Promoters and Finlease (P) Ltd. [2012] 18 taxmann.com 217 (Del HC)

(a) In the case before Hon'ble Delhi High Court, statement of the third party entry provider was provided to the assessee which is not provided in the present case

(b) Two letters were filed with the investigation wing by the entry provider confirming the accommodation entries in the case before Hon'ble Delhi High Court. No such thing present in this case.

(c) In the case of Nova Promoters, Retraction was filed after a period of three years whereas in the present case, it is filed immediately or the delay is explained satisfactorily

(d) The Entry providers failed to appear before the AO after filing retraction statement even though summoned by the AO in that case whereas in the present case, the AO has not summoned the parties and despite Shri. Uday Shankar Mahawar was produced before AO who has confirmed his retraction.

(e) In the case before Hon'ble Delhi High Court, the name of the assessee specifically appeared in the statement provided by the entry provider whereas in the present case, no such finding is brought on record.

(f) In that case, summons was either not served or served but not complied with whereas notice u/s. 133(6) of the Act has been duly complied by the investor company in the present case.

(g) Whereas in the present case, the amalgamating companies which merged with the investor company have been assessed and copy of assessment orders provided alongwith order of amalgamation of the High Court thereby establishing the genuineness of the transaction and the creditworthiness of the lender which was absent in the case before the Hon'ble Delhi High Court.

(ii) Major Metals Ltd v. UOI [2012] 19 taxmann.com 176 (Bom HC)

The said decision was in relation to proceedings before the Hon'ble Settlement Commission. The decision is rendered in relation to huge share premium received from the companies with no credentials and creditworthiness nor even any past performance that could justify such payment. Further, this decision was also in relation to the order passed by the ITSC which had decided its view based on the peculiar facts and material with them. Further, the said decision has been impliedly overruled by the decision of the Hon'ble Bombay HC in the case of Vodafone India Services (P.) Ltd. v. CIT [2014] 368 ITR 1 (Bom.). The said view of the decision being overruled was again accepted by the Hon'ble Bombay HC in the case of Khubchandani Healthparks (P.) Ltd v. ITO [2016] 68 taxmann.com 91 (Bom.). Accordingly, the decision relied upon by the AO in impugned order does not support the case of the AO.

B) Case laws relied upon by the assessee

On the contrary, the assessee has relied upon plethora of judgements, I find that the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Paradise Inland Shipping Pvt Ltd (TA No. 66 of 2016) (Bom HC) squarely applies to this case wherein it was observed as under:

5. We have given our thoughtful considerations to the rival contentions of the learned Counsel and we have also gone through the records. The basic contention of the learned Counsel appearing for the Appellants revolves upon the stand taken by the Appellants whether the shareholders who have invested in the shares of the Respondents are fictitious or not in this connection, the Respondents in support of their stand about the genuineness of the transaction entered into with such Companies has produced voluminous documents which, inter alia, have been noted at Para 3 of the Judgment of the CIT Appeals which reads thus:

"The assessment is completed without rebutting the 550 page documents which are unflinching records of the companies. The list of documents submitted on 09.03.2015 are as follows:

1. Sony Financial Services Ltd. - CIN U74899DL1995PLC068362-

Date of Registration 09/05/1995

Memorandum of Association and Article of Association

Certificate of Incorporation

Certificate of Commencement of Business

Acknowledgment of the Return of Income AY 08-09

Affidavit of the Director confirming the investment

Application for allotment of shares

Photocopy of the share certificate

Audited account and Directors report thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2009.

Audited account and Directors report thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2010.

The Bank Statement highlighting receipt of the amount by way of RTGS.

Banks certificate certifying the receipt of the amount through Banking channels."

6. On going through the documents which have been produced which are basically from the public offices, which maintain the records of the Companies. The documents also include assessment Orders for last three preceding years of such Companies

7. The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies. Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein. In such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on record cannot be said to be perverse. Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration.

8. The Apex Court in the case of Orissa Corpn. (P.) Ltd. (supra), has observed at Para 13 thus:

"13. In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were income-tax assessees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under S. 131 at the instance of the assessee, did not pursue the matter further. The revenue did not 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. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises"

9. This Court in the Judgments relied upon by the learned Counsel appearing for the Respondents, have come to the conclusion that once the Assessee has produced documentary evidence to establish the existence of such Companies, the burden would shift on the Revenue-Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subjected to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons, would not at all be justified. The Assessing Officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents

cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents.

10. We find no infirmity in the findings arrived at by the ITAT as well as CIT Appeals on the contentions raised by the Appellants-Revenue in the present case and, as such, the question of interference by this Court in the present proceedings under Section 260A of the Income Tax Act would not at all be justified. Apart from that, as rightly pointed out by the learned Counsel appearing for the Respondents, the CIT Appeals had also noted that proceedings under Section 147 of the Income Tax Act cannot lead to re- verification of the records. These findings of the CIT Appeals have not been assailed before the Income Tax Appellate Court

11. In such circumstances, we find that there is no case made out by the Appellants-Revenue for any interference in the impugned Orders passed by the Courts below.

12. Hence, the Appeal stands rejected.

The SLP filed against the said order of the High Court is also dismissed by the Hon'ble Apex Court in [2018] 93 taxmann.com 84 (SC).

8.9. I find that the addition u/s. 68 of the Act is uncalled for in the present facts and circumstances of the case in view of the discussion made above. Accordingly, the addition of Rs.2,22,25,000/- made by the AO deserves to be deleted. This ground of appeal is accordingly Allowed.”

6.1 We notice that the Ld CIT(A) has given a categorical finding that the assessee has submitted all the relevant evidences to prove identity of the creditor, creditworthiness of the creditor and genuineness of transactions. Further, it is stated that the SPPL is itself is an NBFC and the 8 companies are merged with it by the order of the Hon’ble Calcutta High Court. Further, it was submitted that the introduction of capital by a partner cannot be added in the hands of the assessee u/s 68 of the Act and for this proposition, the Ld A.R relied upon the decision rendered by Hon’ble Gujarat High Court in the case of **PCIT-4 vs Vaishnodevi Refoil & Solvex, [2018] 89 taxmann.com 80 (Guj)**. It was stated that the SLP filed by the revenue against the above said decision was dismissed by the Hon’ble Supreme Court, which is reported in **[2018] 96 taxmann.com 469 (SC)**.

6.2 It is the case of the revenue that the Ld CIT(A) has granted relief on the basis of apparent documents furnished by the assessee and the retraction statements without considering the detailed investigation carried out by the revenue to prove that those companies were providing only accommodation entries. But the moot point is that the provisions of sec.68 creates a fiction to treat the cash credits as deemed income of the assessee, provided that the assessee did not discharge the initial burden placed upon it u/s 68 of the Act, viz., the identity of the creditors, credit worthiness of the creditor and the genuineness of transactions. There should not be any doubt that the taxing statutes should be interpreted strictly and the deeming fiction made therein should be interpreted very strictly. Admittedly, the assessee has furnished all those documents and discharged the burden. On the contrary, the AO has relied upon the statements given by the third parties and did not disprove the documents furnished by the assessee. With regard to the alleged bad financial position of lenders/investors, we notice that the AO has referred to the profit position of those companies. However, what is required to be seen is whether the lender/investor was possessing enough cash (credit worthiness) when the loan was given or investment was made. It is the finding of the Ld CIT(A) that they were having sufficient balance in their bank accounts, which in turn, would prove the credit worthiness. Hence, we are of the view that the AO was not justified in relying upon the statements given by the third parties disregarding the documents, which show the position otherwise.

7. In view of the above, we are of the view that there is no infirmity in the orders of the Ld.CIT(A) in deleting the above said additions in both the years. Accordingly, both the appeals of the revenue in **ITA No.1485/Mum/2019 relating**

to AY 2014-15 and in ITA No.1593/Mum/2019 relating to AY 2015-16 are dismissed.

M/s A.M. CONSTRUCTIONS

ITA No.3040/Mum/2019 (AY 2012-13) & 3115/Mum/2019 (AY 2011-12)

(Revenue's Appeal)

8. The revenue has filed these appeals, wherein it is contending the relief granted by Ld CIT(A) in respect of addition made by the AO u/s 68 of the Act in both the years.

8.1 The addition made in both these years by the AO are related to investment of Rs.2.76 crores and Rs.12.96 crores made by M/s Divine Telecom P Ltd (DTPL) respectively in the years relevant to AY 2011-12 and 2012-13 with the assessee for a Joint Venture project. M/s Divine Telecom P Ltd is stated to be controlled by Shri Pradeep Poddar, who was identified as a person providing accommodation entries by the revenue. Hence the AO reopened the assessments of both the years U/s 148 of the Act and assessed above said amounts as unexplained income of the assessee in the respective years u/s 68 of the Act. The Ld CIT(A) deleted the above said additions in both the years and hence the revenue has filed these appeals.

9. The Ld.DR submitted that the AO had taken support of the statement taken from Shri Pradeep Poddar on 02/12/2014, wherein, he had accepted the fact that these companies have provided only accommodation entries to the Lotus group. In this regard, the Ld. DR drew our attention to the paragraph 6.15 of the assessment order and the same is reproduced as below:-

“6.15 If sources of funds infused by Divine Rowland and Bhawna for providing unsecured loans and share application money to Lotus Group are examined then it becomes crystal clear that the above transactions made by the Lotus Group are mere accommodation entries. Some of companies identified during the course of search and survey belongs to identified entry operators. In the past these entry operators [Shri Anand Sharma, Shri Pankaj Agarwal, Shri Vikas Choudhary, Shri Jivendra Mishra, Shri Janardan Chokhani, Shri Narendra Kumar Jain, Shri Prakash Jajodia, Shri Subhash Kumar Agarwal, Shri Amit Kedia, Shri Abhishek Chokani, Shri Uday Shankar Mahawar, Shri Subhash Agarwal, Shri Praveen Agarwal] have accepted before the Department that they are in the business of providing accommodation entries and only for that purpose they have created shell companies for carrying out these activities. They provide accommodation entries in lieu of cash, by rotating these cash in numerous self controlled shell entities, which is also the fact in the case of above three entities which were acquired by the Lotus Group.”

The Ld D.R also relied upon his written submissions extracted below. Accordingly, he prayed that the order passed by Ld CIT(A) should be reversed.

10. The Ld.AR, in his argument, stated that the entire addition was made on the basis of the third-party statement and further the statement of Shri Pradeep Poddar was retracted by an affidavit dated 09/12/2014. Further, the AO issued a notice under section 131 of the Act to Shri Pradeep Poddar and he appeared in response to the same on 22/12/2014. In response thereto, he appeared before the AO and the AO also recorded a statement on oath on 22/12/2014, wherein Mr. Poddar affirmed the retraction affidavit dated 09/12/2014. The Ld A.R submitted that the assessee has furnished all the documents to discharge the burden placed upon it u/s 68 of the Act. He further submitted that the assessment of above said investor M/s Divine Tradecom P Ltd was completed after conclusion of search in the hands of the assessee, wherein its books of

accounts have been accepted. Accordingly, he submitted that the AO could not have relied upon the statement alone disregarding the evidences furnished by the assessee to discharge the burden u/s 68 of the Act and also disregarding the assessment order passed in the hands of M/s Divine Tradecom P Ltd.

11. We have heard rival contentions and perused the record. We notice that the Ld CIT(A) has passed a detailed order on this issue. The relevant discussions made by Ld CIT(A) in paragraphs 8.12. to 8.14 of his order are extracted below:-

“8.12 In the light of the above, it is now important to examine the validity of addition based on the various statements relied upon by the AO.

Statement of Shri Pradeep Poddar

The AO has referred to the statement of Shri Pradeep Poddar dated 02.12.2014 in the reasons recorded wherein it is alleged that loan taken from M/s Divine Tradecom Pvt Ltd is in the nature of accommodation entry. The assessee submits that the statement of Shri Pradeep Poddar was recorded under duress and coercion and he was subjected to tremendous mental torture and trauma by the Investigation Officer which is quite evident from the fact that Shri Pradeep Poddar had also filed a police complaint against the Investigation Officer immediately on the very next day of the statement on oath i.e on 03.12.2014. Moreover, it is observed that Shri Pradeep Poddar has also retracted his statement so recorded vide his affidavit dated 09.12.2014 sworn before the learned Metropolitan Magistrate at Kolkata which is within a week from which the statement was recorded. Thus, the statement which has been retracted cannot be held as evidence in isolation without any corroborative evidence against the assessee. Reference in this regard can also be made to the CBDT Instruction F.No.286/98/2013-IT (INV.II) dated 18/12/2014 and letter dated 10/03/2003 issued by the Ministry of Finance & Company Affairs wherein it is stated that the search party must focus on collection of evidences and not merely admission/ confession of additional income. The Hon'ble Gujarat High

Court has relying on the aforesaid instructions upheld the view that addition should not be made based on oral confession in the case of CIT v. Ramanbhai Patel (TA no. 207 of 2008) and Chetnaben J Shah v. ITO [TA no. 1437 of 2007]. Thus, respectfully following the CBDT circular as well as the decision cited by the assessee (supra), I find that the addition cannot be sustained merely on the basis of the statements taken devoid of any evidence/material to incriminate the assessee.

Statement of Shri Anand Sharma

In this regard, the assessee argued that the copy of the statement of Shri Anand Sharma had not been provided and hence, cannot be utilised against the assessee as at the very outset it vitiates the principles of natural justice. I have gone through the statement of Shri Anand Sharma referred to by the AO in the impugned order. It is found that the statement of Shri Anand Sharma is relevant only to the lender company as alleged by the AO that accommodation entries from various companies of Shri Anand Sharma were obtained by M/s Divine Tradecom Pvt. Ltd. Thus, what is relevant is the fact that M/s Divine Tradecom Pvt. Ltd might have obtained accommodation entries, which in fact gets overruled, in view of the re-assessment order passed for AY 2008-09 wherein no addition in this regard have been made in hands of M/s Divine Tradecom Pvt. Ltd. Further, the AO has not made any further enquiry in the assessment proceedings to establish such allegations. Merely on the basis of statement of Shri Anand Sharma without any corroborative evidences brought on record, the AO has failed to discharge his onus in alleging the genuineness of transaction with M/s Divine Tradecom Pvt. Ltd.

Statement of Shri Ashok Agarwal

The AO has referred to the statement of Shri Ashok Agarwal who is the chairman of the Lotus group. He has stated that the source of the lender company to make investments in group is its old reserves and surplus; however, he doesn't know how these reserves have been created in the books of accounts. I find that the statement given by Shri Ashok Agarwal regarding the source of the lender company cannot be relied upon as M/s.

Divine Tradecom Pvt. Ltd. as it has already been reassessed after the search was conducted on the assessee group and hence the source of source stands explained and accordingly statement has no relevance. Also, he has denied all the statements of the alleged entry providers which he has confronted with and has maintained that the transactions are genuine.

Statement of Shri Ankit Poddar

The AO has placed reliance on the statement of Shri Ankit Poddar who has no connection with the appellant firm. He has mentioned that he was not aware about the business activities of M/s. Bhawna Computers P.Ltd., M/s Divine Computers P. Ltd. & M/s. Rowland TreximP.Ltd. Infact he only receives letters of the said companies and hands over the same to Shri Pradeep Poddar, who is the Director in those companies and accordingly the statement of Shri Ankit Poddar has no relevance with the case of the appellant firm.

Statement of Shri Amal Mondal

The statement of Shri Amal Mondal is in relation to M/s. Bhawna Computers P. Ltd. and not M/s. Divine Tradecom Pvt. Ltd. and therefore his statement has no relevance in the case of the appellant firm.

Statement of Shri Parbat Gothi

Shri Parbat Gothi is neither a shareholder or a director in the appellant firm and his statement has no evidentiary value, in fact he has also retracted his statement. Further, he has mentioned that certain entities of his group have obtained accommodation entries by way of unsecured loans from M/s. Rowland Trexim P. Ltd. and has nowhere mentioned about M/s. Divine Tradecom Pvt. Ltd. and therefore his statement cannot be relied upon.

8.13 Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus u/s. 68 of the Act on the assessee to prove

identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AO to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as to whether the evidences brought by the assessee or AO weigh more and accordingly in whose favour the equilibrium bends. In the present case, on one hand, the assessee has placed evidence in the form of ledger confirmation, bank statement, ITR acknowledgement, Computation of Income, signed financials of the investor company, reassessment order of the investor company and copy of the MOU entered into between the investor company and the appellant firm.

8.14 It is the contention of the Assessing Officer that the on-money generated by the assessee group has been brought back as loans and share capital through Kolkata companies but inspite of the search undertaken in the appellant's group nothing incriminating was found during the search and no evidence of either receipt of on-money or generation of any other kind of unaccounted income was found. No evidence of any cash transaction has been brought out either by the Investigation wing or by the Assessing Officer. As the assessee proved the trail of money which is through banking transactions, the onus shifts to the Assessing Officer to prove the assessee wrong but the Assessing Officer has not brought anything contrary to what has been submitted by the assessee."

11.1 We notice that the entire addition was made by the AO in both the years on the basis of statement recorded from a third party, but all the parties have retracted their statement. Further, Mr. Pradeep Poddar was again examined after retraction and he has confirmed the retraction in the said statement taken

on oath on 22/12/2014. We notice that the assessee has furnished all the documents to discharge the burden placed upon it u/s 68 of the Act. We notice that the AO has not disproved those documents, i.e., he has not discharged the burden shifted to his shoulders.

11.2 It is the case of the revenue that the Ld CIT(A) has granted relief on the basis of apparent documents furnished by the assessee and the retraction statements without considering the detailed investigation carried out by the revenue to prove that those companies were providing only accommodation entries. But the moot point is that the provisions of sec.68 creates a fiction to treat the cash credits as deemed income of the assessee, provided that the assessee did not discharge the initial burden placed upon it u/s 68 of the Act, viz., the identity of the creditors, credit worthiness of the creditor and the genuineness of transactions. Admittedly, the assessee has furnished all those documents and discharged the burden. There should not be any doubt that the taxing statutes should be interpreted strictly and the deeming fiction made therein should be interpreted very strictly. On the contrary, the AO has relied upon the statements given by the third parties and did not disprove the documents furnished by the assessee. With regard to the alleged bad financial position of lenders/investors, we notice that the AO has referred to the profit position of those companies. However, what is required to be seen is whether the lender/investor was possessing cash when the loan was given or investment was made. It is the finding of the Ld CIT(A) that they were having sufficient balance in their bank accounts, which in turn, would prove the credit worthiness. Hence, we are of the view that the AO was not justified in relying upon the statements given by the third parties disregarding the documents, which show

the position otherwise. It is also stated that the assessment of M/s Divine Tradecom P Ltd was completed subsequently and its books of accounts have been accepted.

11.4 Accordingly, we do not find any infirmity in the decision of the Ld.CIT(A) in deleting the addition in both the years. Accordingly, no interference is required on this issue in both the years.

12 Accordingly, both the appeals of the revenue bearing **ITANo.3115/Mum/2019 relating to AY 2011-12 and ITA No.3040/Mum/2010** relating to AY 2012-13 are dismissed.

M/s LOTUS LOGISTICS & DEVELOPERS PVT LTD

13 This assessee has filed appeals for AY 2008-09 and 2015-16. The revenue has filed appeals for AY 2008-09, 2014-15, 2015-16, 2016-17 and 2017-18 in respect of this assessee.

14. We shall first take up the appeals filed by both the parties for **AY 2008-09 in ITA No.3697/Mum/2019 (Assessee) & ITA No. 4058/Mum/2019 (Revenue)**.

14.1 The assessment of this year was reopened by the AO. The Ld A.R raised a legal contention with regard to the validity of reopening of assessment. Since this legal issue goes to the root of the matter, we prefer to adjudicate this legal ground first.

14.2 The Ld A.R submitted that the assessee filed its return of income for this year on 28-09-2008 and the same was processed u/s 143(1) of the Act. Subsequently, the assessing officer reopened the assessment by issuing notice u/s

148 of the Act and completed the assessment on 31.12.2011 by passing order u/s 143(3) of the Act. The assessing officer has again reopened the assessment by issuing notice u/s 148 of the Act on 25-03-2015. The impugned assessment order is the order passed in the second reopening proceedings. During this year, the assessee had received share application money from certain companies, which were stated as accommodation entries by the investigation wing. On the basis of the report of the investigation wing, the AO has held that the share application money received by the assessee is bogus and equal amount was required to be assessed in the hands of the assessee company. The contention of the Ld A.R is that the AO has reopened the assessment after four years from the end of the assessment year without showing that there was failure on the part of the assessee to disclose all material facts fully and truly. It was also contended that the AO has formed belief that there was escapement of income on the basis of borrowed satisfaction, since he simply relied upon the report of the investigation wing and did not carry out any preliminary enquiry to examine the applicability of the said report in the facts of the assessee. Hence, there was no application of mind by the AO. Accordingly, he contended that the impugned reopening of assessment is not valid in the eyes of law. The Ld A.R placed his reliance on the following case law:-

- (a) Hindustan Lever Ltd vs. R B Wadkar, Mumbai (2004)(137 Taxman 479)
- (b) Crompton Greaves Ltd vs. ACIT (55 taxmann.com 59)(HC)
- (c) Feng Shui Realtors (P) Ltd vs. ITO (2024)(160 taxmann.com 401)(HC)

14.3 The Ld D.R, on the contrary, submitted that the assessing officer has recorded proper reasons for reopening of assessment. He further submitted that the failure on the part of the assessee to disclose fully and truly need not be written in the reasons, but it may be inferred from the reasons so recorded by the AO. He submitted that the report given by the Investigation wing clearly mentioned that the share application money received by the assessee are only accommodation entries, meaning thereby, the share applicants have not really given money to the assessee, i.e., the assessee has introduced its own money through the accommodation entries. He also said that the AO has duly applied his mind and accordingly reopened the assessment.

14.4 We heard rival contentions and perused the record. Since all contentions revolve around the reasons recorded by the AO for reopening of assessment, we extract below the same:-

“Reason for re-opening the case u/s, 148:

A letter received from the Office of the Dy. Director of Income-tax (Inv.)- Unit-3(1) & 3(2), Mumbai bearing No, DDIT(Inv.) Unit 3(1) & 2/T,B, matter/2014-15 dated 05.03.2015 wherein it has been stated that a Search / Survey action was conducted on Lotus/Kamdhenu/ Green Valley group by his charge on 09.10.2014. During the Search/Survey it has been noticed that M/s. Lotus Logistics & Developers Pvt. Ltd. had received Share Application Money of Rs. 14,76,10,000/- from various Kolkata based Company during the F.Y-2007-08. Out of this Rs.1,00,00,000/- had been received from the Divine Tradecom Pvt. Ltd. Rs.1,16,50,000/- was received from Rowland Trexim Pvt. Ltd. Statement of Sri Pradeep Poddar, Director of M/s. Divine Tradecom, and M/s Rowland Trexim Pvt. Ltd. and many other Kolkata based companies was recorded u/s. 131 on 02.12.2014, wherein he stated that he had used these above companies to

provide accommodation entries to the Lotus Group. The Lotus Logistics and Developers Pvt. Ltd. is a company of Lotus Group.

Thus, it is clear that the Share Application Money received by M/s. Lotus Logistics and Developers Pvt. Ltd. was bogus and equal amount was required to be assessed in the hand the assessee company as "Undisclosed Cash Credit".

Since, income has been escaped assessment to the extent of claim of 'Share Application Money' received by M/s. Lotus Logistics and Developers Pvt. Ltd., the assessment for the A.Y-2008-09 is required to be re-opened as per provisions of section 148 of the I.T. Act.

Considering involvement of huge un-assessed income and the time limit for re- assessment of income is more than 4 years, kind approval of Ld. CIT is required for reopening of assessment u/s. 148."

14.5 A careful perusal of the reasons recorded by the AO would show that the assessing officer first refers to the information received from the investigation wing with regard to the accommodation entries, the statement given by certain persons and the name of two share applicants. Based on the said information, the AO immediately forms the belief that there was escapement of income by observing as under:-

Thus, it is clear that the Share Application Money received by M/s. Lotus Logistics and Developers Pvt. Ltd. was bogus and equal amount was required to be assessed in the hand the assessee company as "Undisclosed Cash Credit".

There should not be any dispute that the assessing officer, upon receipt of certain information, is required to examine the same and take a view that the said information shall apply to the facts of the case. In this case, the assessee has received share application money from various persons, but the AO did not make

preliminary enquiries to find out that the generalized statements so given by certain persons that they were providing accommodation entries, would apply to the share capital money received by the assessee, i.e., no independent enquiry was done by the AO. Thus, we are of the view that there is merit in the contentions of the assessee that the AO has entertained belief about escapement of income on the basis of borrowed satisfaction without independent application of mind. Hence, we are of the view that the reopening of assessment of Asst. Year 2008-09 is bad in law. We take support of the decision rendered by Hon'ble Delhi High Court in the case of PCIT vs. Meenakshi Overseas (P) Ltd (2017)(82 taxmann.com 300)(Delhi). In this case also, the AO reopened the assessment on the basis of information received from the investigation wing that the above said assessee has received accommodation entries in the form of loans. The AO reopened the assessment on the basis of said information. The Hon'ble Delhi High Court held as under:-

“19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.

20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (*sic* giver)". The AO adds that the said accommodation was "a

known entry operator" the source being "the report of the Investigation Wing".

21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the *bonafide* one. Therefore, I have reason to believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "

22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.

23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.

Thereafter, the Hon'ble Delhi High Court referred to various decisions and finally held as under:-

"34. Recently in *Agya Ram (supra)*, it was emphasized that the reasons to believe "should have a link with an objective fact in the form of information or materials on record..." It was further emphasized that "mere allegation in reasons cannot be treated equivalent to material in eyes of law. Mere

receipt of information from any source would not by itself tantamount to reason to believe that income chargeable to tax has escaped assessments."

35. In the decision of this Court dated 16th March 2016 in W.P. (C) No. 9659 of 2015 (*Rajiv Agarwal*) it was emphasized that "even in cases where the AO comes across certain unverified information, it is necessary for him to take further steps, make inquiries and garner further material and if such material indicates that income of an Assessee has escaped assessment, form a belief that income of the Assessee has escaped assessment."

36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment."

Accordingly, we hold that the reopening of assessment of AY 2008-09 is liable to be quashed on this reason alone.

14.6 We earlier noticed that the assessing officer had completed the assessment earlier u/s 143(3) r.w.s 147 of the Act. The present reopening is after expiry of four years after the end of the relevant assessment year, i.e., AY 2008-09. In that case, it is necessary for the AO to show that there was failure on the part of the assessee to disclose truly and fully all material facts necessary for completion of assessment, as mandated by the first proviso to sec.147 of the Act. The said proviso reads as under:-

“Provided that where an assessment under sub-section (3) of [section 143](#) or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to

tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under [section 139](#) or in response to a notice issued under sub-section (1) of [section 142](#) or [section 148](#) or to disclose fully and truly all material facts necessary for his assessment, for that assessment year”

The Hon'ble Bombay High Court has held in the case of Feng Shui Realtors P Ltd (2024)(160 taxmann.com 401)(Bom) that, if there was no allegation in reasons recorded that there was any failure on the part of assessee to truly and fully disclose all material facts necessary for its assessment for relevant assessment year, then impugned notice should be quashed and set aside. However, in the case of Crompton Greaves Ltd vs. ACIT (2015)(55 taxmann.com 59)(Bom), it was held that there is no requirement that there must be cogent and clear indication in the reasons supplied that in fact there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment and if not so mentioned, the same would not be fatal. However, the Hon'ble jurisdictional held that, if from the reasons, no case of failure to disclose is made out, then certainly assumption of jurisdiction u/s 147 and 148 would be ultra vires. In the instant case, we noticed earlier that the AO has simply repeated the information received by him from the investigation wing, which would only lead to suspicion and not belief. It could not also be culled out from the reasons recorded by the AO that there was failure on the part of the assessee to disclose all material facts truly and fully.

14.7 Hence, the reopening of assessment of AY 2008-09 is liable to be quashed for more than one reason as discussed above. We order accordingly. In view of the above, we set aside the order passed by Ld CIT(A) in AY 2008-09 and quash the assessment order.

14.8 Since we have quashed the assessment order itself, there is no necessity to adjudicate the other grounds urged by both parties in their respective parties.

16. In the result, appeal of the assessee bearing **ITA No.3697/Mum/2019** is allowed & appeal of the revenue bearing **ITA No. 4058/Mum/2019** is dismissed.

M/s LOTUS LOGISTICS & DEVELOPERS PVT LTD

ITA No.3698/Mum/2019 (Assessee) & ITA No. 4039/Mum/2019 (Revenue)

17. Both these cross appeals are related to AY 2015-16. Following additions were made by the AO in this year:-

(a) Advance taken from M/s Satyam Projects Ltd - Rs.2.81 crores

(b) Loans taken from M/s RatangarFinlease Pvt Ltd Rs.20.00 lakhs and from M/s Anglo Commotrade Pvt Ltd Rs.30.00 lakhs, both aggregating to Rs.50.00 lakhs.

(c) Disallowance of interest expenditure on loans u/s 69C amounting to Rs.47,37,500/-.

The Ld CIT(A) confirmed the addition of loan of Rs.30.00 lakhs taken from M/s Anglo Comtrade P Ltd and also the disallowance of relevant interest expenditure. The Ld CIT(A) deleted the remaining additions. Hence, both the parties are in appeal before us on the issue on the issues decided against each of them.

18. The first issue relates to the addition of advance amount of Rs.2.81 crores received by the assessee from M/s Satyam projects Ltd assessed by the AO u/s 68

of the Act as unexplained cash credit. The assessee promoted a building known as "Lotus Trade Centre". The assessee received a sum of Rs.11.81 crores from M/s Satyam Projects Ltd as advance towards purchase of three units in the above said building. It was noticed that M/s Satyam Projects had received Rs.9.00 crores from two other group concerns named M/s Lotus Buildspace LLP (Rs.7.50 crores) and M/s Pruthvi Builders & Developers (Rs.1.50 crores). The AO accepted the advance to the extent of Rs.9.00 crores as explained. Accordingly, he assessed the balance amount of Rs.2.81 crores as unexplained cash credit u/s 68 of the Act.

18.1 The Ld CIT(A) deleted this addition and hence the revenue is in appeal. The Ld.CIT(A) noticed that the assessee was able to prove the identity, creditworthiness and the genuineness of transactions in respect of the above said loan. The observations of the Ld.CIT(A) in paras 8.4 to 8.5 are as under: -

"8.4. The assessee has submitted documents as under in the course of assessment as well as before me:

(j) Copy of Memorandum of Association and Articles of Association of the investor company along with the certificate of incorporation revealing that the company was formed on 16.05.1981.

(k) Copy of registration certificate issued by the RBI dated 08.06.1998 bearing Reg No. 05.02644

(l) ITR Acknowledgement alongwith computation of income of the investor

(m) Financial statement of the investor company.

(n) Confirmations of the investor company and the assessee of the three properties

(o) Copy of Cancellation Deed of LTC Building of all three properties i.e 1006, 1301 and 1005A along-with allotment letters,

(p) Bank Statement of the investor for AY 2015-16

(q) Order of Hon'ble Calcutta High Court evidencing merger of 2 companies viz. Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd alongwith the assessee on 26.06.2008

(r) Order of Hon'ble Calcutta High Court evidencing merger of 6 companies viz. Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd on 15.12.2010

(s) Assessment order of the aforesaid 6 companies

(t) Form 2 filed by investor company with ROC for increase in authorised capital in Feb, 2011

(u) Copy of Due diligence Report carried out prior to merger

(v) Copy of scrutinizer report dtd. 26.09.2015 on e-voting process

(w) Copy of Internal audit report for FY 15-16

(x) Copy of secretarial report

(y) Copy of quarterly compliance report

(z) Copy of prospectus issued by investor company

(aa) Copy of assessment order u/s 143(3) r.w.s 147 of the Act dated 21.12.2017 of M/s Satyam Projects Limited

8.5. I have perused the aforesaid documents it is observed that the assessee company is a registered NBFC since 1998 which has later merged with 8 companies through a scheme of amalgamation duly sanctioned by the Hon'ble Calcutta High Court. By providing the aforesaid documents, the assessee submits that the investor - M/s. Satyam Projects Ltd is a genuine company which has carried out so many compliances regularly with RBI/Auditors and has also been sanctioned merger with the approval of the Hon'ble Calcutta High Court.

From the records, it is noticed that the alleged investor was served a notice u/s. 133(6) of the Act by the AO which was duly complied. The assessee therefore submits that there is no adverse finding in this regard by the AO in his assessment order.

Apropos creditworthiness of the investor company, it is seen that initially two companies - Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd having aggregate net worth of Rs. 9.53 crores merged with Satyam Projects Ltd on 26.06.2008. Later, other six companies namely Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd having aggregate net worth of Rs. 91.06 crores merged with Satyam Projects Ltd on 15.12.2010. The aforesaid companies had huge capital and reserves appearing in the balance sheet prior to the merger. Consequent to the merger, the AR submits that total net worth of the investor company was increased by Rs. 100.59 crores which was then utilised by it for the purpose of its business. The AR has further pointed out that the assessment in the case of these aforesaid six merged companies was carried out wherein the share capital issued by these

companies have been verified by the concerned AO. Accordingly, the net worth of the investor company stood at Rs.1,03,65,04,772/- which was infact substantially examined by the revenue. Further, the turnover of the investor for the year under consideration was Rs. 1.82 crores and its returned income was Rs. 1,16,80,862/-

The AO has relied on the statements of Shri. Hitesh Thakkar, Shri. Jignesh Mavadiya, Shri. Uday Shankar Mahawar and Shri Parbat Gothi. In this regard, the appellant contends that the statements were not provided to it and hence the same cannot be used against it. The appellant also contends that no opportunity of cross examination of the aforesaid parties has been accorded to the assessee. The assessee further stated that the aforesaid parties have given the statement under coercion and influence of the search party and have subsequently retracted the statements which were made by them.

In his statement u/s. 133A of the Act on 10.10.2014, Shri. Hitesh Thakkar, managing director of the investor company has stated that Bhagwanji Patel has acquired M/s. Satyam Projects Ltd in May 2014 and that he was a director for name sake only and detailed explanation in relation to Satyam Projects Ltd could be given by Bhagwanji Patel. He has further stated that the overall affairs of the company are being looked after by Shri. Bhagwanji M Patel. He ultimately agreed that the said company is a paper company. Similarly, Shri. Jignesh Thakkar in the course of statement u/s. 131 of the Act on 09.10.2014 has stated that he was a clerk in Prince Ply Agency Pvt Ltd and he was a namesake director in Satyam Projects Ltd. He was unaware about the other directors of the investor company.

In his statement, Shri Uday Shankar Mahawar u/s. 131 on 25.08.2014 has also stated that he opened around 200 bogus jamkharchi companies which were used to provide bogus accommodation entries One of Such companies as stated in his statement was Satyam Projects Ltd.

In the statement recorded on oath of Shri Parbat Gothi u/s 131 on 12.10.2014, he had admitted that M/s Hawa Realty Pvt Ltd had also indulged in obtaining bogus accommodation entry of unsecured loans from M/s Satyam Projects Limited in lieu of cash. There is no mention of the name of the assessee with whom transaction has been carried out. Also, he is not a director or a shareholder in the assessee company. Hence, his statement has no value and cannot be relied upon.

However, the AR states that all the aforesaid statements relied upon by the AO are retracted by the said parties on the ground that they were based on influence and coercion of search party. The retraction affidavit of these parties have been placed in the course of assessment as well as before me. In the course of assessment proceedings, Shri. Uday Shankar Mahawar was produced before the Id. Assessing Officer wherein he has affirmed his retraction and clarified that the earlier statement given by him was recorded

under coercion. The AR also stated that Shri. Bhagwanji M Patel is the shareholder of M/s. Satyam Projects Ltd.”

The Ld CIT(A) noticed that the AO had issued notice u/s 133(6) of the Act to M/s Satyam Projects Ltd and the same was duly complied with by the investor. Further, Shri Uday Shankar Mahawar was produced before the AO and he has confirmed his retraction. The Ld CIT(A) also given a finding that the various case laws relied upon by the AO are not applicable to the facts of the present case. Accordingly, the Ld CIT(A) took the view that the addition could not have been made by the AO u/s 68 of the Act. In this regard, he placed his reliance on the decision rendered by the co-ordinate bench in the case of ITO vs. Sringeri Technologies P Ltd (ITA No.3924/Mum/2014) and also the decision rendered by the Hon'ble Bombay High Court in the case of Paradise Inland Shipping P Ltd (ITA No.66 of 2016).

18.2 We heard the parties on this issue and perused the record. The Ld. DR argued that the additions were made by the AO on the basis of statements recorded from Shri. Jagdish Purohit, Shri Hitesh Thakkar, Mr. Jignesh Mavadiya, and Shri Uday Shankar Mahavar. He submitted that the Ld CIT(A) should not have recognized the retraction of these statements. He reiterated his contentions that the apparent documentary evidences should be ignored and the addition made by the AO should be confirmed. On the contrary, the Ld A.R submitted that the Ld CIT(A) has passed a detailed order with proper reasoning and hence the same does not call for any interference.

18.3 Having heard rival submissions, we are of the view that the order passed by Ld CIT(A) on this issue does not call for any interference. We notice that the Ld

CIT(A) has given a clear finding that the assessee has discharged the initial burden placed upon it by proving the identity of the investor, the credit worthiness of investor and the genuineness of the transactions. Further, the above said investor is one of the partners in a group concern of the assessee. We notice that the AO has placed reliance on the statements given by certain persons, which has later been retracted. One of the persons has confirmed the retraction before the AO also. Hence, we are of the view that the AO could not have placed sole reliance on the statement given by certain persons by totally disregarding the evidences available in that regard. Further those statements are contrary to the financial statements and bank statements of the investor. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the addition of Rs.2.81 crores made by the AO.

19. The next issue relates to addition of loans aggregating to Rs.50.00 lakhs. The AO had made the addition of loans taken from M/s Ratangar Finlease P Ltd and M/s Anglo Commotrade P Ltd (referred above) u/s 68 of the Act on the basis of statements given by Shri Jagdish Purohit and Shri Dhruva Narayan Jha.

19.1 The Ld CIT(A) noticed that the statement given by Shri Jagdish Purohit was not confronted with the assessee. Even otherwise, it is seen that the above said person was not a director in both the above said companies. Accordingly, he held that the AO could not have relied upon his statement. With regard to the statement taken from Shri Dhruva Narayan Jha, the AO noticed that he was a director in M/s Anglo Comtrade P Ltd only and he is not connected with M/s Ratangar Finlease P Ltd. Hence Ld CIT(A) deleted the addition of loan of Rs.20.00 lakhs taken from above said company. However, he confirmed the addition of

loan of Rs.30.00 lakhs taken from M/s Anglo Commotrade P Ltd, since Shri Druva Narayan Jha was a director of that company and he himself had admitted that his company is providing accommodation entries. Both the parties are in appeal on this issue.

19.2 We heard the parties on this issue and perused the record. Following observations made by Ld CIT(A) in respect of the above said two loans are relevant here:-

“7.5 The assessee has submitted following documents in support of the alleged unsecured loan transaction:

- (a) ITR Acknowledgement along-with computation of income of the lenders*
- (b) Financial statements of the lender companies*
- (c) Loan confirmation of the lender company for AY 2015-16*
- (d) Bank Statement of the lender companies highlighting the loans given to the assessee*
- (e) Copy of name of companies in which Shri Dhruva Jha was/is director on MCA since 1986 till date*
- (f) Copy of names of the directors in M/s RatangarFinlease Pvt Ltd since 1994 till date*
- (g) Retraction Statement of Shri Jagdish Purohit dated 30.01.2015*
- (h) CBDT Letter F.No.286/98/2013-IT (Inv II) dt. 18.12.2014*
- (i) Judgement of Hon'ble Gujrat High Court (Ramanbhai B Patel and Chetnabhen J Shah)*

7.6 I have perused the aforesaid documents and found that the appellant company has furnished all the relevant documents in support of the transaction entered with M/s. RatangarFinlease Pvt. Ltd and M/s Anglo Commotrade Pvt Ltd to establish the identity, genuineness and creditworthiness. During the course of appellate proceedings, it was argued by the Id. counsel of the appellant that the unsecured loan taken from the alleged lender companies was interest bearing and the loan of Rs.20,00,000/- taken from M/s RatangarFinlease Pvt Ltd was repaid back on 20.01.2017 and Rs.30,00,000/- taken from M/s Anglo Commotrade Pvt Ltd was repaid back on 23.06.2016. On the « contrary, it is seen that the AO has not pointed out any discrepancies or deficiencies in the evidences so filed, though he has analyzed the financials of the lender companies and stated that the accumulated profits of the lender company are just a meagre

amount and has also relied on statements of certain parties to allege that the loan transaction entered with the alleged companies were in the form of accommodation entries.”

A perusal of the documents furnished by the assessee would show that the assessee has discharged his initial onus, but the AO has not discharged the onus shifted to his burden. We noticed that the Ld CIT(A) had held that the statement given by Shri Jagdish Purohit has to be ignored, since that statement was not confronted with the assessee and further, he was not a director in both the above said companies. Similarly the statement given by Shri Dhruva Narayan Jha was ignored by Ld CIT(A) in respect of M/s Ratangar Finlease P Ltd, since he was not a director in that company. But Ld CIT(A) has confirmed the loan of Rs.30.00 lakhs taken from M/s Anglo Commotrade P Ltd, since Shri Dhruva Narayan Jha was a director in that company. However, it is not shown that the statement so given by Shri Dhruva Narayan Jha was confronted with the assessee. In that scenario, we are of the view that the Ld CIT(A) was not justified in confirming the addition of Rs.30.00 lakhs solely on the basis of statement of Shri Dhruva Narayan Jha by totally disregarding the documents furnished by the assessee.

19.3 Accordingly, we confirm the decision rendered by Ld CIT(A) in respect of addition of Rs.20.00 lakhs relating to M/s Ratangar Finlease P Ltd. For the reasons discussed above, we reverse the order passed by Ld CIT(A) in respect of loan of Rs.30.00 lakhs taken from M/s Anglo Commotrade P Ltd and direct the AO to delete the addition of Rs.30.00 lakhs.

20. The next issue relates to the disallowance of interest expenditure made by the AO u/s 69C of the Act. During the year under consideration, the assessee has paid interest aggregating to Rs.47,37,500/- on four loans. The AO noticed that

two loans taken from M/s Anglo Commotrade P Ltd and M/s Ratangar Finlease P Ltd were treated by him as unexplained cash credit and accordingly added u/s 68 of the Act. He noticed that the loans taken from M/s Aarohi Commodities P Ltd and M/s Anandomayee Mercandise P Ltd were treated as unexplained cash credits in the earlier years. Accordingly, the AO disallowed interest expenditure claimed on these loans u/s 69C of the Act. The details of loans and interest expenditure are tabulated as under by the AO.

S.No.	Name of concern	Unsecured loan	Interest paid	Operator name
1	Aarohi Commodities P Ltd	-	7,83,333/-	Shri Pravin Jain
2	AnandomayeeMerchandise P Ltd	-	15,06,833/-	Shri Jagdish Purohit
3	Anglo Commotrade P Ltd	30,00,000/-	12,16,667/-	Shri Jagdish Purohit
4	RatangarFinlease P Ltd	20,00,000/-	12,30,667/-	Shri Jagdish Purohit
Total		50,00,000/-	47,37,500/-	

20.1 The Ld CIT(A) noticed that the addition made by the AO in the earlier years in respect of loans taken from M/s Aarohi Commodities P Ltd (in AY 2014-15) and M/s Anandomayee Merchandise P Ltd (in AY 2010-11 and 2012-13) had been deleted by him. In the instant year, the Ld CIT(A) has deleted the addition relating to loan taken from M/s Ratangar Finlease P Ltd. Accordingly, the Ld CIT(A) deleted the interest disallowance relating to the above said three loans. In the instant year, the Ld CIT(A) had confirmed the loan taken from M/s Anglo Commotrade P Ltd. Accordingly, he confirmed the interest disallowance of Rs.12,16,667/- relating to that loan. Hence both the parties are aggrieved.

20.2 In the earlier paragraphs, we have deleted the addition of loans taken from M/s Ratangar Finlease P Ltd and M/s Anglo Commotrade P Ltd. Hence the interest relating to both these loans should not be disallowed and should be

allowed as deduction. Accordingly, the order passed by Ld CIT(A) in respect of interest relating to M/s Ratangar Finlease P Ltd is confirmed and the order passed by him in respect of loan taken from M/s Anglo Commotrade is reversed. The AO is directed to allow interest expenditure relating to both the above said loans. In the succeeding paragraphs, we are confirming the relief granted by Ld CIT(A) in respect of addition of loan of Rs.1.60 crores taken from M/s Arohi Commodities P Ltd in AY 2014-15. Hence, we confirm the order of Ld CIT(A) in deleting the interest disallowance relating to the above said loan.

20.3 In respect of loan taken from M/s Anandomayee Merchandise P Ltd, the Ld CIT(A) has noted that the loans have been taken during the financial years relevant to AY 2010-11 and 2012-13. We notice that the addition made in AY 2010-11, being unabated assessment year, has been deleted by us in a separate order passed for that year, following the decision rendered by Hon'ble Supreme Court in the case of Abhisar buildwell Ltd (civil appeal no.6580 of 2021)(459 ITR 212)(SC), since no incriminating material was found by the search team relating to that year. The Ld A.R submitted that the addition made by the AO in AY 2012-13 has been deleted by Ld CIT(A) and the revenue did not challenge the same before ITAT. Thus, we notice that the additions made in respect of loans taken from M/s Anandomayee Merchandise P Ltd in the years relevant to Aast.Year 2010-11 and 2012-13 have been deleted and in that case, the disallowance of relevant interest expenditure is not justified.

21. In the result, appeal of the assessee bearing **ITA No.3698/Mum/2019** is allowed & appeal of the revenue bearing **ITA No. 4039/Mum/2019** is dismissed.

M/s LOTUS LOGISTICS & DEVELOPERS PVT LTD

22. The revenue has filed appeal in ITA No. 4057/Mum/2019 for AY 2014-15.

The additions made by the AO in this year are:-

(a) Share application money of Rs.26.59 crores assessed u/s 68 of the Act.

(b) Unsecured loan of Rs.3.60 crores assessed u/s 68 of the Act

(c) Disallowance of interest on loans u/s 69C of the Act.

The Ld CIT(A) deleted all these three additions and hence the revenue has filed this appeal.

23. The first and second issue relates to the addition made u/s 68 of the Act.

During the year relevant to AY 2014-15, the assessee had received share application money of Rs.26,59,63,357/- from M/s Divine Tradecom Pvt Ltd (DTPL).

It had also received loan of Rs.1.60 crores from M/s Arohi Commodities P Ltd and Rs.2.00 crores from M/s Valaka Engineering P Ltd, both aggregating to Rs.3.60

crores. The AO noticed that the report given by the investigation wing contained the statements given Shri Ashok Agarwal, Shri Amal Mondal & Shri C Parbat Gothi,

wherein they had admitted to have given accommodation entries in the form of Share application money and unsecured loans. Accordingly, the AO held that the

share application money and unsecured loans (referred above) received by the assessee are liable to be assessed as unexplained cash credit under section 68 of

the Act.

23.1 The third issue relates to the disallowance of interest expenses. Since the above said loans were assessed as unexplained income, the AO disallowed related

interest expenses of Rs.21,26,400/- as unexplained expenditure u/s 69C of the Act.

23.2 Aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld.CIT(A) deleted the additions made by the Ld.AO. Being aggrieved, the revenue filed this appeal before us raising the following grounds of appeal:-

"1. *In the circumstances and fact of the case and in law, The Ld. CIT(A) erred in deleting the addition of Rs. 26,59,63,357/-made by AO as unexplained cash credit received from M/s Divine tradecom Pvt Ltd in the form of share application u/s 68 of the Act without considering the fact that the statement of Shri Anand Sharma and Shri Pradeep Poddar and other related concerns were recorded u/s 131 of the Act wherein they had stated that the above mentioned companies were engaged in the business of providing accommodation entries"*

2. *"In the circumstances and fact of the case and in law, The Ld. CIT(A) erred in deleting the addition of Rs. 3,60,00,000/-made by AO as unexplained cash credit received from M/s Divine tradecom Pvt Ltd in the form of share application u/s 68 of the Act without considering the fact that the statement of Shri Praveen Agarwal and other related concerns were recorded u/s 131 of the Act wherein they had stated that the above-mentioned companies were engaged in the business of providing accommodation entries"*

3. *"Whether on facts and in law the Ld. CIT(A) was correct in allowing the appeal of assessee, ignoring the facts of the case and placing reliance on the superficial documentation supporting the claim of the assessee."*

4. *"On facts and the circumstances of the case and in law the Ld. CIT(A) was correct in allowing the appeal of assessee, despite the documentation supporting the claim of the assessee superficially."*

5. *"Whether on facts and in law the Ld. CIT(A) was correct in allowing the interest payment of Rs.21,26,400/- on the unsecured as the said loans were nothing but bogus accommodation entries."*

24. The Ld. DR contended that the additions have been made by the AO on the basis of statements taken from various parties, who had admitted that the transactions in question were bogus accommodation entries. He submitted that the assessee has taken only accommodation entries in form of share application

money and unsecured loans from shell companies. Accordingly, he submitted that the additions made by the AO should be sustained. He reiterated the arguments advanced in other cases, which were dealt by us in the preceding paragraphs.

25. The Ld.AR submitted that the assessee has submitted all the relevant documents to discharge the burden placed upon it u/s 68 of the Act by proving the identity of the creditor, credit worthiness of the creditor and the genuineness of transactions. But the Ld.AO without disproving those documents, have proceeded to assess the share application money and unsecured loans as unexplained income under section 68 of the Act.

26. We heard rival contentions and perused the record. We notice that the Ld.CIT(A) deleted the addition relating to Share application money with the following observations:-

“7.3 I have carefully considered the assessment order and the submissions of the learned counsel. As per the Appraisal Report, specific information was received by the AO revealing that Shri Pradeep Poddar has admitted in his statement that unsecured loan taken from M/s. Divine Tradecom Pvt. Ltd. is nothing but an accommodation entry. In the impugned assessment order, the AO has also referred to the statement of Shri Anand Sharma who has admitted that he has created 500 companies to provide accommodation entries and these companies do not have creditworthiness of its own; few of which in turn have invested / lent money to M/s. Divine Tradecom Pvt. Ltd. The Id. AO has also relied upon the statements of Shri Ashok Agarwal, Shri Anikt Poddar, Shri Amal Mondal and Shri Parbat Gothi.

The appellant claims that no addition of Rs.26,59,63,357/- is called for as it has completely established the three ingredients viz. identity, genuineness and creditworthiness as envisaged u/s. 68 of the Act, whereas the AO has treated the same to

be unexplained and added the same u/s. 68 of the Act solely on his surmises. Thus, M/s. Lotus Logistics and Developers Pvt. Ltd.

The only issue is with regard to the share application money received by the appellant from M/s. Divine Tradecom Pvt. Ltd. and whether the appellant has discharged its onus cast upon by the provisions of section 68 of the Act.

7.4 *The assessee has submitted following documents in support of the alleged share application transaction:*

(a) PAN Card of investor

(b) ITR Acknowledgement along-with computation of income of the investor company

(c) Financial statements of the investor company

(d) Bank Statement of the investor company highlighting the share application money invested

(e) Copy of duly signed Share Application forms of the investor

(f) Copy of the Return of Allotment (Form 2) filed with the Registrar of Companies

(g) Copy of boards' resolution of the appellant company for issuing shares at premium and allotment of shares to the investor company

(h) Copy of Offer letter given by the assessee to the investor dated 02.08.2013

(i) Copy of letter showing acceptance to the offer of shares filed by the investor dated 06.08.2013

(1) Copy of Affidavit of Mr. Bhagwanji Patel

(k) Copy of letter given by the assessee to the investor for intimation of allotment dated 02.11.2013

(1) Retraction Statement of Shri Pradeep Poddar dated 09.12.2014

(m) CBDT Letter F.No.286/98/2013-IT(Inv II) dt. 09.01.2014

(n) Judgement of Hon'ble Gujrat High Court (Ramanbhai B Patel and Chetnabhen J Shah)

7.5 *I have perused the aforesaid documents and found that the appellant company has furnished all the relevant documents in support of the transaction entered with M/s. Divine Tradecom Pvt. Ltd. to establish the identity, genuineness and creditworthiness. On the contrary, it is seen that the AO has not pointed out any discrepancies or deficiencies in the evidences so filed, though he has analysed the financials of the investor company and stated that the accumulated profits of the investor company are just a meagre amount and has also relied on statements of certain parties to allege that the transactions entered with the alleged company was in the form of accommodation entry.*

7.6 *In its rebuttal, the AR of the appellant submitted that mere low income cannot be the criteria to dislodge the creditworthiness of the so-called investor and that due consideration should be given to the net worth of the investor company viz. M/s. Divine Tradecom Pvt. Ltd which is Rs.48,96,35,742/- for the year under consideration. The gross receipt of the alleged company for the year under consideration was Rs.38,13,202/-, and the returned income was Rs. 11,58,940/-, TDS had also been paid of Rs.3,81,320/- respectively. I find merit in this contention of the appellant, since the net worth of the alleged investor company is much greater than the amount invested. In this very perspective, the allegation of the AO that the income of the investor company in the year under consideration is very low without giving due consideration to the overall net worth of the company is totally misplaced and unwarranted. Attention was also invited to the decision of the Hon'ble Delhi High Court in the case of CIT vs Vrindavan Farms Pvt Ltd (ITA No. 71/2015) in which the sole basis for the revenue to doubt the creditworthiness was the low income as reflected in the return of income. It affirmed the view of the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted to him by the assessee and wrongly completed the assessment only on the presumption of the low return of income.*

7.7 *The expression "nature and source" has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise could be inferred. The Hon'ble Supreme Court, in Kale Khan Mohd. Hanif vs.CIT [1963] 50 ITR 1, pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. If the prima facie inference on the fact is that the assessee's explanation is probable, the onus will shift to the Revenue. As far as the creditworthiness or financial strength of the creditor/subscribers is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscriber to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. CIT(A)-49/IT-328/2016-17*

Thereafter, it is for the Assessing Officer to scrutinize the same and in case he nurtures any doubt about the veracity of these documents, to prove the matter further.

7.8 *Element of credit worthiness and satisfaction of AO thereafter is subjective and requires more efforts/inquiry on the part of the AO to give a finding in the order that investor is not credit worthy. The AO must make proper enquiry before making any addition. In Khandelwal Constructions v. CIT 227 ITR 900 (Gau.), it has been held that section 68 empowers the Assessing officer to make enquiry. If he is satisfied that these entries are not genuine he has every right to add these as income from other sources. But before rejecting the assessee's explanation, A.O. must make proper enquiries and in the absence of proper enquiries, addition cannot be sustained.*

7.9 *Further, in the case of Nemichand Kothari vs. CIT [264 ITR 254] [Gau], the Hon'ble High Court had held that:*

".....Hence, the harmonious construction of section 106 of the Evidence Act and section 68 of the Income-tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be judged, vis-a-vis, the transactions, which have taken place between the assessee and the creditor, and it is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transaction, which took place between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the assessee..."

7.10 *The assessee must satisfy three important conditions, namely, (i) the identity of the creditor, (ii) the genuineness of the transaction; and (iii) the financial capacity of the person, i.e. the credit worthiness of the creditor. However, the onus of the assessee is limited to the extent of proving the source from which he received the cash credit. The*

credit worthiness of the creditor has to be judged vis-à-vis the transaction which had taken place between the assessee and the creditor, and it is not the burden of the assessee to find out the source of creditworthiness of the investor to prove the genuineness of the transaction. This issue is dealt by the Gauhati High Court in the case of CIT v. Smt. Sanghamitra Bharali (2014) 361 ITR 481 (Gau). The aforesaid points were also affirmed in the past by the Apex Court in the case of CIT v. Orissa Corporation P. Ltd reported in (1986) 159 ITR 78 (SC). In the case of CIT v. Varinder Rawley (2014) 366 ITR 232 (P & H) the court held that "where the assessee shows that the entries regarding credit in a third party's account were in fact received from the third party and are genuine, he discharges the onus. In that case, the sum cannot be charged as the assessee's income in the absence of any material to indicate that it belongs to assessee.

7.11 *It is clear from the submission of appellant that the transactions were through account payee cheques and appellant has submitted sufficient details before the AO during the assessment proceedings. The source of receipt through banking channel clearly establishes the genuineness of the credit which is reflected in the books of accounts. In the present case, due compliance of notice issued u/s. 133(6) of the Act was also made by the alleged investor. Hence, the AO has not brought on record any cogent evidence in the course of inquiry conducted during the course of assessment proceedings as well.*

7.12 *In light of above, it is now important to examine the validity of addition based on the various statements relied upon by the AO.*

- **Statement of Shri Pradeep Poddar**

The AO has referred to the statement of Shri Pradeep Poddar dated 02.12.2014 wherein it is alleged that share application received from M/s Divine Tradecom Pvt Ltd is in the nature of accommodation entry. The assessee submits that the statement of Shri Pradeep Poddar was recorded under duress and coercion and he was subjected to tremendous mental torture and trauma by the Investigation Officer which is quite evident from the fact that Shri Pradeep Poddar had also filed a police complaint against the Investigation Officer immediately on the very next day of the statement on oath i.e on 03.12.2014. Moreover, it is observed that Shri Pradeep Poddar has also retracted his statement so recorded vide his affidavit dated 09.12.2014 sworn before the learned Metropolitan Magistrate at Kolkata which is within a week from which the statement was recorded. Thus, the statement which has been retracted cannot be held as evidence in isolation without any corroborative evidence against the assessee.

Reference in this regard can also be made to the CBDT Instruction F.No.286/98/2013IT (INV.II) dated 18/12/2014 and letter dated 10/03/2003 issued by the Ministry of Finance & Company Affairs wherein it is stated that the search party must focus on collection of evidences and not merely admission/ confession of additional income. The Hon'ble Gujarat High Court has relying on the aforesaid instructions upheld the view that addition should not be made based on oral confession in the case of CIT v. Ramanbhai Patel (TA no. 207 of 2008) and Chetnaben J Shah v. ITO [TA no. 1437 of 2007]. Thus, respectfully following the CBDT circular as well as the decision cited by the assessee (supra), I find that the addition cannot be sustained merely on the basis of the statements taken devoid of any evidence/material to incriminate the assessee.

- **Statement of Shri Anand Sharma**

In this regard, the assessee argued that the copy of the statement of Shri Anand Sharma had not been provided and hence, cannot be utilised against the assessee as at the very outset it vitiates the principles of natural justice. I have gone through the statement of Shri Anand Sharma referred to by the AO in the impugned order. It is found that the statement of Shri Anand Sharma is relevant only to the lender company as alleged by the AO that accommodation entries from various companies of Shri Anand Sharma were obtained by M/s Divine Tradecom Pvt. Ltd. Thus, what is relevant is the fact that M/s Divine Tradecom Pvt. Ltd might have obtained accommodation entries, which in fact gets overruled, in view of the re-assessment order passed for AY 2008-09 wherein no addition in this regard have been made in hands of Mis Divine Tradecom Pvt. Ltd. Further, the AO has not made any further enquiry in the assessment proceedings to establish such allegations. Merely on the basis of statement of Shri Anand Sharma without any corroborative evidences brought on record, the AO has failed to discharge his onus in alleging the genuineness of transaction with M/s Divine Tradecom Pvt. Ltd.

- **Statement of Shri Ashok Agarwal**

The AO has referred to the statement of Shri Ashok Agarwal who is the chairman of the Lotus group. He has stated that the source of the lender company to make investments in group is its old reserves and surplus; however, he doesn't know how these reserves have been created in the books of accounts. I find that the statement given by Shri Ashok Agarwal regarding the source of the lender company cannot be relied upon as M/s. Divine Tradecom Pvt. Ltd as it has already been reassessed after the search was conducted on the assessee group and hence the source of source stands explained and accordingly statement has no

relevance. Also, he has denied all the statements of the alleged entry providers which he was confronted with and affirmed that the transactions are genuine.

- **Statement of Shri Ankit Poddar**

The AO has placed reliance on the statement of Shri Ankit Poddar who has no connection with the appellant firm. He has mentioned that he was not aware about the business activities of of M/s. Bhawna Computers P.Ltd., M/s Divine Computers P. Ltd. & M/s. Rowland TreximP.LtdInfact he only receives letters of the said companies and hands over the same to Shri Pradeep Poddar, who is the Director in those companies and accordingly the statement of Shri Ankit Poddar has no relevance with the case of the appellant firm.

- **Statement of Shri Amal Mondal**

The statement of Shri Amal Mondal is in relation to M/s. Bhawna Computers P. Ltd. and not M/s. Divine Tradecom Pvt. Ltd. and therefore his statement has no relevance in the case of the appellant firm.

- **Statement of Shri Parbat Gothi**

Shri Parbat Gothi is neither a shareholder nor a director in the appellant firm and his statement has no evidentiary value, in fact, he has also retracted his statement. Further, he has mentioned that certain entities of his group have obtained accommodation entries by way of unsecured loans from Mis. Rowland Trexim P. Ltd. and has nowhere mentioned about Mis. Divine Tradecom Pvt. Ltd. and therefore his statement cannot be relied upon.

7.13 Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus u/s. 68 of the Act on the assessee to prove identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AO to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as to whether the evidences brought by the assessee or AO weigh more and accordingly in whose favour the equilibrium bends. In the present case, on one hand, the assessee has placed evidence in the form of duly signed share application forms, pan card,

return of allotment, board's resolution passed for issuing shares at a premium, letter showing acceptance to the offer of shares filed by the investor dated 06.08.2013, affidavit of Shri Bhagwanji Patel, bank statement, retraction statement of Shri Pradeep Poddar, ITR acknowledgement, Computation of Income, signed financials of the investor company. Even due compliance was made under 133(6) of the Act by the investor company."

27. With regard to the loan amounts of Rs.1.60 crores received from M/s Arohi Commodities P Ltd and Rs.2.00 crores received from M/s Valaka Engineering Pvt Ltd, the Ld.CIT(A) has deleted the additions with the following observations:-

"8.3 I have carefully considered the assessment order and the submissions of the learned counsel. The assessee was covered under search of Lotus group conducted on 09.10.2014. During the course of assessment proceedings, statement of Shri Pravin Kumar Jain and Shri Praveen Agarwal were relied upon wherein they had confessed of being accommodation entry providers and is involved in the work of giving bogus accommodation entries. The appellant also submits that firstly, there is no relevance of the statement of Shri Pravin Kumar Jain and Shri Praveen Agarwal as they are no way connected to these two entities either as director or shareholder or partner. Also, Shri Pravin Kumar Jain has already retracted his statement.

8.4 The appellant company claims that no addition of Rs.3,60,00,000/- is called for as it has completely established the three ingredients viz. identity, genuineness and creditworthiness as envisaged u/s. 68 of the Act, whereas the AO has treated the same to be unexplained and added the same u/s. 68 of the Act solely on his surmises. Thus, the only issue is with regard to the unsecured loan received by the appellant company from M/s. Valaka Engineering Pvt Ltd and M/s Aarohi Commodities Pvt Ltd and whether the appellant company has discharged its onus cast upon by the provisions of section 68 of the Act.

8.5 The assessee has submitted following documents in support of the alleged unsecured loan transaction:

- (a) PAN Card of the lender*
- (b) ITR Acknowledgement along-with computation of income of the lenders*
- (c) Financial statements of the lender companies*
- (d) Loan confirmation of the lender companies for AY 2014-15*
- (e) Bank Statement of the lender companies highlighting the loans given to the assessee*

- (f) Copy of submission filed by M/s Aarohi Commodities Pvt Ltd in response to notice u/s 133(6) of Act in case of the assessee company
- (g) Copy of submission filed by M/s Valaka Engineering Pvt Ltd in response to notice u/s 133(6) of Act in case of the assessee company
- (h) Copy of assessment order u/s 143(3) of the Act of M/s Aarohi Commodities Pvt Ltd for AY 2014-15

8.6 I have perused the aforesaid documents and found that the appellant company has furnished all the relevant documents in support of the transaction entered with M/s. Valaka Engineering Pvt Ltd and M/s Aarohi Commodities Pvt Ltd to establish the identity, genuineness and creditworthiness. During the course of appellate proceedings, it was argued by the Id. counsel of the appellant that the unsecured loan taken from the alleged lender companies were interest bearing. Further, the unsecured loan taken of Rs. 1,60,00,000/- from M/s Aarohi Commodities Pvt Ltd was repaid back on 23.12.2013 (Rs.60,00,000/-) and 21.11.2014 (Rs.1,00,00,000/-). Also, the unsecured loan taken of Rs.2,00,00,000/- from M/s Valaka Engineering Pvt Ltd was repaid back on 10.07.2014 (Rs.1,00,00,000/-) and 23.12.2015 (Rs.1,00,00,000/-) On the contrary, it is seen that the AO has not pointed out any discrepancies or deficiencies in the evidences so filed, though he has analyzed the financials of the lender companies and stated that the accumulated profits of the lender companies are just a meagre amount and has also relied on statements of certain parties to allege that the loan transaction entered with the alleged companies was in the form of accommodation entries

8.7 In its rebuttal, the Id. counsel of the appellant submitted that mere low income cannot be the criteria to dislodge the creditworthiness of the so-called lenders and that due consideration should be given to the net worth of the lender companies viz. M/s.Aarohi Commodities Pvt Ltd which is Rs.1,40,50,173/- and M/s Valaka Engineering Pvt Ltd which is Rs.50,32,81,820/- for the year under consideration. The turnover of the M/s Aarohi Commodities was Rs.7,84,24,392/- and M/s Valaka Engineering Pvt Ltd was Rs.9,41,36,630/- for the year under consideration, profit of M/s Aarohi Commodities was Rs.8,09,644/- and M/s Valaka Engineering Pvt Ltd was Rs.41,29,003/- and the returned income of M/s Aarohi Commodities was Rs.8,54,700/- and M/s Valaka Engineering Pvt Ltd was Rs.39,87,830/-. TDS had also been paid of M/s Aarohi Commodities amounting to Rs.2,77,742/- and M/s Valaka Engineering Pvt Ltd amounting to Rs.11,90,996/- respectively. I find merit in this contention of the appellant, since the appellant company had sufficient own funds for advancing the funds. In this very perspective, the allegation of the AO that the income of the lender companies in the year under consideration is very low without giving due consideration to the overall net worth of the company is

totally misplaced and unwarranted. Attention was also invited to the decision of the Hon'ble Delhi High Court in the case of CIT vs Vrindavan Farms Pvt Ltd (ITA No. 71/2015) in which the sole basis for the revenue to doubt the creditworthiness was the low income as reflected in the return of income. It affirmed the view of the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted to him by the assessee and wrongly completed the assessment only on the presumption of the low return of income.

8.8 *The expression "nature and source" has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise could be inferred. The Hon'ble Supreme Court, in Kale Khan Mohd. Hanif vs. CIT [1963] 50 ITR 1, pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. If the prima facie inference on the fact is that the assessee's explanation is probable, the onus will shift to the Revenue. As far as the creditworthiness or financial strength of the creditor/subscribers is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscriber to the share capital. Once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinize the same and in case he nurtures any doubt about the veracity of these documents, to prove the matter further.*

8.9 *Element of credit worthiness and satisfaction of AO thereafter is subjective and requires more efforts/inquiry on the part of the AO to give a finding in the order that lender is not credit worthy. The AO must make proper enquiry before making any addition. In Khandelwal Constructions v. CIT 227 ITR 900 (Gau.), it has been held that section 68 empowers the Assessing officer to make enquiry. If he is satisfied that these entries are not genuine he has every right to add these as income from other sources. But before rejecting the assessee's explanation, A.O. must make proper enquiries and in the absence of proper enquiries, addition cannot be sustained.*

8.10 *Further, in the case of Nemichand Kothari vs. CIT [264 ITR 254] [Gau], the Hon'ble High Court had held that:*

".....Hence, the harmonious construction of section 106 of the Evidence Act and section 68 of the Income-tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the

transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be judged, vis-a-vis, the transactions, which have taken place between the assessee and the creditor, and it is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transaction, which took place between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the assessee..."

8.11 *The assessee must satisfy three important conditions, namely, (i) the identity of the creditor, (ii) the genuineness of the transaction; and (ii) the financial capacity of the person, i.e. the credit worthiness of the creditor. However, the onus of the assessee is limited to the extent of proving the source from which he received the cash credit. The credit worthiness of the creditor has to be judged vis-à-vis the transaction which had taken place between the assessee and the creditor, and it is not the burden of the assessee to find out the source of creditworthiness of the lender to prove the genuineness of the transaction. This issue is dealt by the Gauhati High Court in the case of CIT v. Smt. Sanghamitra Bharali (2014) 361 ITR 481 (Gau). The aforesaid points were also affirmed in the past by the Apex Court in the case of CIT v. Orissa Corporation P. Ltd reported in (1986) 159 ITR 78 (SC). In the case of CIT v. Varinder Rawley (2014) 366 ITR 232 (P & H) the court held that "where the assessee shows that the entries regarding credit in a third party's account were in fact received from the third party and are genuine, he discharges the onus. In that case, the sum cannot be charged as the assessee's income in the absence of any material to indicate that it belongs to assessee.*

8.12 *It is clear from the submission of appellant that the transactions were through account payee cheques and appellant has submitted sufficient details before the AO during the assessment proceedings. The source of receipt through banking channel clearly establish the genuineness of the credit which is reflected in the books of accounts. Further, the alleged loans are also interest bearing and repayment of the said loans have also been made by the appellant. In the present case, due compliance of notice issued u/s. 133(6) of the Act was also made by the alleged lender companies. Hence, the AO has not brought on record any cogent evidence in the course of inquiry conducted during the course of assessment proceedings as well.*

8.13 In light of above, it is now important to examine the validity of addition based on the various statements relied upon by the AO.

- **Shri Pravin Kumar Jain**

The AO has referred to the statement of Shri Pravin Kumar Jain wherein he had allegedly confessed of being an accommodation entry provider and is involved in the work of giving bogus accommodation entries. However, it was nowhere mentioned in the assessment order regarding the relevant extracts of the Statement on oath recorded of Shri Pravin Kumar Jain on which the AO has placed reliance for treating unsecured loan as alleged and a sham transaction. Also, the copy of the statement of Shri Pravin Kumar Jain on which the AO has relied has also not been provided to the appellant company and there is no statement in relation to transaction of unsecured loans between the aforesaid party and the assessee and hence; the statement of Shri Pravin Kumar Jain is not relevant. Further, Shri Pravin Kumar Jain was also not a director or a shareholder in the alleged company, had no role to play in the affairs of the business of the alleged company and thus had no locus standi to give a statement in relation to the alleged company, therefore, his statement cannot be considered to make any relevant conclusions/ implications in the present case. Subsequently, Shri Pravin Kumar Jain had also retracted his statement given during the search proceedings. Thus, the statement which has been retracted cannot be held as evidence in isolation without any corroborative evidence against the assessee. Reference in this regard can also be made to the CBDT Instruction F.No.286/98/2013-IT (INV.II) dated 18/12/2014 and letter dated 10/03/2003 issued by the Ministry of Finance & Company Affairs wherein it is stated that the search party must focus on collection of evidences and not merely admission/ confession of additional income. The Hon'ble Gujarat High Court has relying on the aforesaid instructions upheld the view that addition should not be made based on oral confession in the case of CIT v. Ramanbhai Patel (TA no. 207 of 2008) and Chetnaben J Shah v. ITO (TA no. 1437 of 2007]. Thus, respectfully following the CBDT circular as well as the decision cited by the assessee (supra), I find that the addition cannot be sustained merely on the basis of the statements taken devoid of any evidence/material to incriminate the assessee.

- **Shri Praveen Agarwal**

The AO has referred to the statement of Shri Praveen Agarwal wherein he had allegedly confessed of being an accommodation entry provider and is involved in the work of giving bogus accommodation entries. Shri Praveen Agarwal has no role to play in the affairs of the company and also his statement has not been confronted to the appellant. Also, the directors of M/s Valaka Engineering Pvt Ltd have already confirmed the transactions in response to their reply to notice us 133(6) of the Act in the course of

assessment proceedings and hence, no adverse inference can be drawn merely based on some third party without any corroborative evidence who even does not have any locus standi to comment upon.

8.14 *Further, the AO stated that Mr Nilesh Parmar, director of M/s Aarohi Commodities Pvt Ltd has in past accepted before the department of being an entry operator. This statement was never confronted to the appellant which itself makes the said statement as vague. Also, the directors of M/s Aarohi Commodities Pvt Ltd have already confirmed the transactions in response to their reply to notice u/s 133(6) of the Act in the course of assessment proceedings and hence, no adverse inference can be drawn merely based on some third party without any corroborative evidence who even does not have any locus standi to comment upon. The assessment order of M/s Aarohi Commodities Pvt Ltd for AY 2014-15 clearly states that the said concern is in the business of supply of uniform to Poddar Group of School and have also examined the unsecured loans taken by them.*

8.15 *Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus u/s. 68 of the Act on the assessee to prove identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AO to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as to whether the evidences brought by the assessee or AO weigh more and accordingly in whose favour the equilibrium bends. In the present case, on one hand, the assessee has placed evidence in the form of loan confirmations, bank statements, ITR acknowledgement, Computation of Income, signed financials of the lender companies. Further, interest is also paid with tax being duly deducted at source and also the repayment has been made by the appellant to the alleged lender company. Also, nothing incriminating was found in the search conducted on the appellant company. Even due compliance was made under 133(6) of the Act by the lender companies.*

7.15 *In view of the overall discussion made above, it is clear that nature and source of the loans obtained by the assessee stands explained. Whereas, the AO has not pointed out any defect in the above-mentioned documentary evidences submitted during the assessment proceedings. Without pointing out any lacuna in the evidences submitted by*

the appellant, the sources and the genuineness of transactions cannot be doubted. It is a trite law that once evidences related to a transaction is submitted before the AO, the onus shifts on him to prove these as non-genuine. The AO has not discharged the onus cast upon him. Further, merely based on the statement of third person without any corroborative evidence will not make the loan transactions, in question, as accommodation entries just on surmises. As such, in the absence of any contrary evidence or findings placed on record, the transactions cannot be treated as accommodation entries.

8.16 *Further, I find that the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Paradise Inland Shipping Pvt Ltd (TA No. 66 of 2016) (Bom HC) squarely applies to this case wherein it was observed as under.*

5. We have given our thoughtful considerations to the rival contentions of the learned Counsel and we have also gone through the records. The basic contention of the learned Counsel appearing for the Appellants revolves upon the stand taken by the Appellants whether the shareholders who have invested in the shares of the Respondents are fictitious or not. In this connection, the Respondents in support of their stand about the genuineness of the transaction entered into with such Companies has produced voluminous documents which, inter alia, have been noted at Para 3 of the Judgment of the CIT Appeals which reads thus:

"The assessment is completed without rebutting the 550 page documents which are unflinching records of the companies. The list of documents submitted on 09.03.2015 are as follows:

1. Sony Financial Services Ltd. - CIN U74899DL1995PLC068362-

Date of Registration 09/05/1995

Memorandum of Association and Article of Association

Certificate of Incorporation

Certificate of Commencement of Business

Acknowledgment of the Return of Income AY 08-09

Affidavit of the Director confirming the investment

Application for allotment of shares

Photocopy of the share certificate

Audited account and Directors report thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2009.

Audited account and Directors report thereon including balance sheet, Profit and Loss Account and schedules for the year ended 31.03.2010

The Bank Statement highlighting receipt of the amount by way of RTGS.

Banks certificate certifying the receipt of the amount through Banking channels."

6. *On going through the documents which have been produced which are basically from the public offices, which maintain the records of the Companies. The documents also include assessment Orders for last three preceding years of such Companies.*

7. *The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies. Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein. In such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on record cannot be said to be perverse. Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration.*

8. *The Apex Court in the case of Orissa Corpn. (P.) Ltd. (supra), has observed at Para 13 thus:*

"13. in this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under S. 131 at the instance of the assessee, did not pursue the matter further. The revenue did not 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. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

9. *This Court in the Judgments relied upon by the learned Counsel appearing for the Respondents, have come to the conclusion that once the Assessee has produced documentary evidence to establish the existence of such Companies, the burden would shift on the Revenue Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subjected to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons, would not at all be justified. The Assessing Officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents.*

10. *We find no infirmity in the findings arrived at by the ITAT as well as CIT Appeals on the contentions raised by the Appellants-Revenue in the present case and, as such, the question of interference by this Court in the present proceedings under Section 260A of the Income Tax Act would not at all be justified. Apart from that, as rightly pointed out by the learned Counsel appearing for the Respondents, the CIT Appeals had also noted that proceedings under Section 147 of the Income Tax Act cannot lead to re- verification of the records. These findings of the CIT Appeals have not been assailed before the Income Tax Appellate Court.*

11. *In such circumstances, we find that there is no case made out by the Appellants-Revenue for any interference in the impugned Orders passed by the Courts below.*

12. *Hence, the Appeal stands rejected.*

The SLP filed against the said order of the High Court is also dismissed by the Hon'ble Apex Court in [2018] 93 taxmann.com 84 (SC).

8.17 *I find that the addition u/s. 68 of the Act is uncalled for in the present facts and circumstances of the case in view of the discussion made above. Accordingly, the addition of Rs.3,60,00,000/- made by the AO deserves to be deleted. This ground of appeal is accordingly ALLOWED."*

28. We have heard the rival submissions and examined the documents available on record. It is noticed that the assessee has discharged the burden placed upon it to prove the share application money and the loans received from various parties in terms of sec. 68 of the Act. The AO has not disproved those documents. On the contrary, the AO has relied on the statements given by certain individuals, namely Shri Pradip Poddar, Shri Anand Sharma, Shri Ashok

Agarwal, Shri Amol Mondal, and Shri Parbat Gothi. First of all, those statements were given by third parties and further, it is stated that all of them have subsequently retracted their statements. Further, those statements were not confronted with the assessee. Hence, in our view, the AO could not have made these additions solely on the basis of the statements given by the above said persons. Accordingly, we find no justification to interfere with the order passed by the Ld. CIT(A) in respect of above said additions. Our observations made in earlier years on identical additions would apply for this year also.

28.1 Since the unsecured loans received by the assessee have been accepted as genuine, the disallowance of corresponding interest payment of Rs. 21,26,400/- to the above said loan creditors made by the AO will not survive. Accordingly, we uphold the decision of Ld CIT(A) in deleting the disallowance of interest expenditure.

29. In the result, appeal of the revenue bearing **ITA No.4057/Mum/2019** relating to AY 2014-15 is dismissed.

M/s LOTUS LOGISTICS & DEVELOPERS PVT LTD

ITA No.6921/Mum/2024 (AY 2017-18)

30. We shall take up the appeal filed for AY 2017-18 in **ITA No.6921/Mum/2024**.

The revenue has raised the following grounds of appeal:-

"1."On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 20,00,000/- made u/s. 68 of the Act on account of unsecured loan received from M/s Santosh Gems Pvt Ltd and addition of Rs. 77,02,6897-made u/s. 69C of the Act, on account of disallowing the interest

expenses paid on unsecured loan to Mis. Anandomayee Merchandise Pvt Ltd, M's Santosh Gems Pvt Ltd, M/s RatangarFinicase Pvt Ltd, Mis Anglo Coomotrade Pvt Ltd and Mis 1 Valaka Engineering Pvt. Ltd without considering the fact that the accumulated profits of these entities was just meager amount and the funds flowing into these entities were sourced from a complex network of other entities through share premiums or unsecured loans, which were subsequently transferred to other parties, including the assessee, in similar forms and merely submitting documents such as confirmation letters, income tax returns, bank statements, or financial statements did not prove the creditworthiness or au

2. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,77,31,730/-made on account of suppression of revenue from operation without 2 considering the fact that It was only after the suppression of revenue had been detected, the assessee introduced the theory of sundry balances written off, which is a tactic to justify or conceal the underreported revenue.

3. "The appellant craves leave to add to alter, amend, modify and/or delete any or all of the above said grounds of appeal. The appellant reserves its right to file further submission in the appeal."

Three issues are involved in this appeal, viz., the addition of Rs.20.00 lakhs made u/s 68 of the Act, the disallowance of interest expenditure of Rs.77,02,687/- u/s 69C of the Act and addition of Rs.1,77,31,730/- relating to alleged suppression of revenue.

31. The first issue relates to the addition of Rs.20.00 lakhs relating to loan taken from M/s Santosh Gems P Ltd made u/s 68 of the Act. The second issue relates to the disallowance of interest expenditure of Rs.77,02,687/-, which is related to the loans assessed by the AO u/s 68 of the Act. During the assessment proceedings, the Ld.AO, on the basis of the report from Investigation Wing, assessed the loan amount of Rs.20 lakh received from M/s Santosh Gems Pvt Ltd as unexplained cash credit u/s 68 of the Act. The details of interest expenditure disallowed by the AO are given below:-

Santosh Gems P Ltd	-	8,29,973
RatangaFinlease P Ltd	-	24,45,623
Valaka Engineering P Ltd	-	24,00,000
Anglo Commodities	-	2,76,667

		77,02,687
		=====

The Ld.CIT(A), however, deleted both the above said additions. Hence the revenue is aggrieved.

31.1 The Ld.DR reiterated his arguments that the above said loan is an accommodation entry, which has been confirmed by the statement recorded from the concerned entry operators, who had facilitated those transactions of providing accommodation entries to the assessee. The Ld.DR prayed for upholding the order of the Ld.AO on these two issues.

31.2 The Ld.AR submitted that the addition was made by the Ld.AO on the basis of statement recorded from different parties. However, the assessee has furnished all the documents to discharge the initial onus placed upon it u/s 68 of the Act. Further, this loan has been repaid in the month of May, 2018. The assessee has also paid interest expenses after deducting TDS there from. Accordingly, he submitted that both the additions made by the AO was rightly deleted by Ld.CIT(A).

31.3 We heard the parties on this issue and perused the record. We notice that the Ld CIT(A) has deleted this addition with the following observations:-

"8. DECISION:

I have considered the facts of the case discussion made in the Assessment Order and submissions of the appellant.

8.1. *The first ground of appeal is that the assessment order passed u/s. 143(3) by the Ld. AO is without jurisdiction, invalid, bad in law and in violation of the principals of natural justice. This ground of appeal is not pressed by the appellant and accordingly dismissed.*

8.2. *Ground No.2 relates to the addition of unsecured loans u/s. 68 and the interest expenses of Rs. 77,02,687/- u/s. 69C of the Act. During the year, the appellant had taken unsecured loans or Rs. 20 lakh from M/s. Santosh Gems Pvt. Ltd. The Assessing Officer has held that the said entity is a 'bogus jamakharchi company' controlled by the entry operator Shri Praveen Jain. The said amount was added as deemed income u/s. 68 of the Act. The appellant has contested the addition claiming that it has discharge the onus of satisfying of all the three ingredients of section 68 of the Act. I have considered the submission of the appellant. It is mentioned that similar additions of unsecured loans from M/s. Santosh Gem Pvt. Ltd. was made in the case of the appellant for A.Y. 2016-17. The first appeal was decided by me in the favour of the appellant. The extract of the decision is as under:*

"Considering the overall facts and circumstances of the case, I find that the appellant has discharged its onus of discharged its onus u/s. 68 of the Act. I do not agree with the findings of the AO that the said unsecured loan and the interest paid on the same is unexplained. The fact that the entire loan has been repaid back in later years, goes in favour of the appellant. Therefore, the action of the AO to invoke the provisions of section 68 and 57(iii) cannot be upheld. The addition of Rs 50,00,000/- made u/s 68 of the Act an Rs. 1,58,384/- made u/s 57(iii) stands deleted"

8.2.1. *The facts for the current year are identical to the facts for AY 2016-17. I therefore follow my own order for the AY 2016-17 and hold that the addition u/s 68 cannot be sustained.*

8.2.2. *For the year under consideration the appellant has paid interest of Rs. 77,02,687/- on unsecured loans taken from five parties namely M/s Anandomayee Merchandise Pvt. Ltd., M/s Santosh Gems Pvt. Ltd., M/s Ratangar Finlease Pvt. Ltd., M/s Valaka Engineering Pvt. Ltd. and M/s Anglo Comotrade Pvt. Ltd. Ltd. The AO has observed that the unsecured loans from these parties were treated as bogus loans in the assessment orders passed for the earlier assessment years and, therefore, the interest paid to them cannot be allowed as deduction. The said amount has been added u/s 69C of the Act. Appellant has contested the disallowance and has argued that the interest has been actually paid after deducting the TDS amount. The appellant brought to my notice that the additions made in its case on account of unsecured loans from these parties have*

been deleted in the first appeal. It is also mentioned that similar additions were made in the case of the appellant for AY 2016 17 with respect to loans taken from M/s Anandomayee Merchandise Pvt. Ltd., M/s Santosh Gems Pvt. Ltd., M/s Ratangar Finlease Pvt. Ltd. and M/s Valaka Engineering Pvt Ltd. First Appeal has been decided by me in favour of the appellant on merits. Considering that the addition u/s 68 on account of bogus loans stands deleted, the interest paid on such loans cannot be disallowed. Accordingly, the addition of Rs 77,02,687/- is deleted. Ground No.2 is decided of the favour of the appellant.”

31.4 We notice that the assessee has discharged its onus placed upon it u/s 68 of the Act in respect of loan of Rs.20.00 lakhs taken from M/s Santosh Gems P Ltd. The assessing officer has not discharged the burden shifted upon his shoulders, but simply relied upon the third party statements. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the addition of Rs.20.00 lakhs made u/s 68 of the Act. Our observations made on identical additions in the earlier paragraphs will apply here also.

31.5 With regard to disallowance of interest expenditure, we notice that the AO had disallowed interest expenses only for the reason that the relevant loans have been assessed by him u/s 68 of the Act holding that they are only accommodation entries and he has arrived at such a conclusion on the basis of statements given by alleged operators. The Ld CIT(A), however, had deleted the additions on noticing that the assessee has discharged the burden placed upon it u/s 68 of the Act and the AO did not discharge the burden shifted upon his shoulders. In the preceding paragraphs and in the succeeding paragraphs, we have upheld the decision of Ld CIT(A) in deleting the assessment of loans made u/s 68 of the Act. Once, the addition relating to loans gets deleted, then there is no ground to sustain the disallowance of interest expenses u/s 69C of the Act. Accordingly, we

are of the view that the Ld CIT(A) was justified in deleting the interest disallowance.

32. The next issue relates to the addition relating to suppression of revenue to the tune of Rs.1,77,31,730/-. During the course of assessment proceedings, the Ld. AO noticed that the assessee has collected gross revenue of Rs.15,49,20,711/- from two of its projects named M/s Lotus Heights and M/s Lotus Link Square Malad. The AO noticed that the assessee has, however, disclosed gross revenue of only Rs.13,71,88,943/- in the P&L Account, which resulted in a difference of Rs.1,77,31,768/-. The AO assessed the same as income of the assessee.

32.1 Before the AO, the assessee explained that it incurred bad debts due to non-realisation of revenue in certain earlier projects named M/s Lotus Pride, M/s Lotus Link Square and M/s Lotus Trade Centre. The aggregate amount of bad debts was shown at Rs.1,77,31,770/- and it was reduced from the gross revenue instead of debiting the Profit and Loss account as "bad debts". Accordingly, the assessee submitted that it was one of the methods of accounting. Hence there was no suppression of any income as presumed by the AO. The Ld.CIT(A) deleted the addition with the following observations:-

"8.3. Ground No. 3 & 4 relates to addition of Rs. 1,77,31,770/- on account of suppression of revenue from operations. Appellant has realized revenue of Rs. 15,49,20,711/- against which it has shown the revenue of Rs. 13,71,88,943/- in the year under consideration. During the assessment proceedings, the appellant explained that the it had written off the sundry balances of Rs. 1,77,31,770/- and therefore, the revenue recognized was reduced to that extent. The explanation of the appellant was not found convincing and the said amount was added to its income as 'suppression of revenue receipts'.

8.3.1. During the appellate proceedings, appellant has submitted following documents in support of the bad debts of Rs 177,31,770/ Copy of details of revenue from operations Copy of details of sundry balance w/off Rs.1,71,31,770/- along-with the copy of ledger accounts of the customers duly reflecting the sales, advance received, and balances written off.

- Copy of P&L account of respective years duly reflecting the sale of flats
- Copy of details of revenue from operations
- Copy of details of sundry balance w/off of Rs.1,71,31,770/- along-with the copy of ledger accounts of the customers duly reflecting the sales, advance received, and balances written off
- Copy of P&L account of respective years duly reflecting the sale of flats

Summary of the same is tabulated as under: -

Sr.No.	Name of the project	Revenue offered	Bad debts	Bad debts (in % terms)
1	Lotus Pride	3,90,33,650	27,38,799	7.0
2	Lotus Link Square	10,72,56,448	80,63,688	7.5
3	Lotus Trade Centre	16,69,66,175	69,29,243	4.2
	Total	31,32,56,273	1,77,31,730	5.7

In this regard, the appellant submitted that the balances written off pertain to the sales offered in earlier years but as the same were not recoverable, it has been debited to the Profit & Loss A/c. Further, the assessee has also provided the reasons for the bad debts along with the supporting by the documentary evidence. It is observed that overall revenue of Rs. 31,32,56,273/- is already offered in earlier years for which balances to the extent of Rs. 1,77,31,730/- which constitute 5.7% is claimed in this year under consideration being not recoverable. Further, major revenue Le more than 90% had been booked in the F.Y. 2014-15 which is supported by the ledgers. The percentage of the bad debts is roughly in the range of 1 to 12.5%. In one case the percentage is 51% which is abnormally high. The appellant has explained that in the said case, the agreement value was Rs. 35,20,000/-against which it had offered a revenue of 54,36,000/-, Since, it had received only Rs. 30 Lakhs out of the sale value of Rs.35,20,000/-, it has treated the balance amount of Rs. 24,39,070/- as bad debts.

8.3.2. The appellant company has further submitted that there were certain issues like obtaining of Occupancy Certificate, etc. for which disputes prevailed in respect of the projects namely Lotus Link Square and Lotus Trade Centre. The assessee company had been unable to fulfill the commitment of timely completion of the

project and also not been able to give the valid legal possession to the members as the occupancy certificate could not be received till the relevant year under consideration and accordingly members of the society of Lotus Trade Centre and Lotus Link Square had filed an arbitration petition which is pending in the case of Lotus Trade: Centre whereas in case of Lotus Link Square, it is settled vide consent award dated 27.10.2023 placed on record.

8.3.4. After considering the overall facts and circumstances of the case and verifying the documents as submitted, I am of the view that the said claim of Rs. 1,77,31,730/- is 5.7% of overall sales offered appears to be in order. As per section 36(2)(i) of the Act, no deductions of bad debts shall be allowed unless such debts or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debts or part thereof is written off or of any, previous year. Two conditions for claiming bad debts are that the said amount should have been offered as income in earlier years and the said amount should be written off as bad debts in the books of accounts. In the present case, the appellant has offered these amounts as income in earlier years and has written them as bad debts in the year under consideration. Thus, it can be said that the appellant has fulfilled the twin conditions for claiming bad debts. In view of the same, the addition of Rs. 1,77,31,730/- as suppression of revenue cannot be sustained. Grounds no. 3 & 4 are allowed.”

The revenue is aggrieved.

32.2 We have heard the parties on this issue and examined the documents available on record. We agree with the assessee that it was not a case of suppression of revenue receipts by the assessee, as presumed by the AO. “Suppression” would mean “non-accounting’ or ‘non-disclosure’ of money received. In this case, the assessee has followed one of the methods of accounting for accounting for bad debts. The assessee has disclosed entire gross revenue. The unrealized amount out of the gross revenue accounted in the earlier years was treated as “bad debts” by the assessee. The said bad debts was reduced from the gross revenue of this year. Any unrealized amount out of the

gross revenue accounted in earlier years may be accounted in any one of the following methods:-

(a) It may be shown as bad debts and debited the profit and loss account.

In this case, the gross revenue of the current year would be shown fully.

(b) It may be reduced from the gross revenue of the current year. In this case, the net amount after reduction of bad debts would be declared in the current year.

We notice that the assessee has followed the second method in this year.

32.3 We notice that the AO has not properly appreciated this issue and he also did not have occasion to examine the claim of bad debts. Accordingly, we are of the view that this claim of the assessee and the details of bad debts claimed require examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining the claim of the assessee in accordance with law.

33. In the result, the appeal of revenue in ITA No.6920/Mum/2024 is treated as partly allowed.

M/s LOTUS LOGISTICS & DEVELOPERS PVT LTD

ITA No.6920/Mum/2024 (AY 2016-17)

34. We shall now take up appeal of the revenue in ITA No.6920/Mum/2024 relating to AY 2016-17. In this year, the revenue is aggrieved by the decision of

Ld CIT(A) in deleting the additions of loans received from four creditors and the disallowance of interest expenditure relating to those loans as detailed below:-

Sl.No.	Name of lenders	Principal	Interest	Total
1.	Anandomayee Merhandise P Ltd	65,00,000	18,92,000	83,92,000
2	Santosh Gems P Ltd	50,00,000	1,58,384	51,58,384
3	Ratangar Finlease P Ltd	1,25,00,000	29,14,000	1,54,14,000
4	Vataka Engineering P Ltd	2,00,00,000	10,52,055	2,10,52,055
	TOTAL	4,40,00,000	60,16,439	5,00,16,439

34.1 The AO assessed the above said loans aggregating to Rs.4.40 crores as unexplained income of the assessee u/s 68 of the Act. Accordingly, he disallowed the relevant interest expenditure totaling to Rs.60,16,439/- u/s 69C of the Act. The Id CIT(A) deleted both the additions and hence the revenue is aggrieved.

35 We shall first take up the addition of loan of Rs.4.40 crores taken from four persons mentioned above. The assessing officer had assessed the above said loans u/s 68 of the Act on the basis of report given by the investigation wing. The Ld CIT(A), however, deleted the loans on noticing that the assessee has furnished all the relevant documents to prove the cash credits, viz., the identity of the creditor, the credit worthiness of the creditor and the genuineness of transactions as observed by us in the appeals of other years. Accordingly, the Ld CIT(A) deleted the addition made by the AO in this year also u/s 68 of the Act.

35.1 We have upheld the decision rendered by Ld CIT(A) on identical issues in the earlier years, since it is noticed that the assessee had discharged the burden

placed upon it u/s 68 of the Act by proving the three main ingredients, viz., the identity of the creditor, the credit worthiness of the creditor and genuineness of transactions. It was also noticed that the AO did not discharge the burden shifted to his shoulders by disproving the documents furnished by the assessee, i.e., the AO solely relied upon the report given by the investigation wing. As noticed earlier, the said information may trigger further probe, but the same cannot be the sole reason to make the addition. Hence the AO was not justified in making the assessment of loans proved by the assessee as unexplained cash credit u/s 68 of the Act. Accordingly, we uphold the decision rendered by Ld CIT(A) in deleting the addition made u/s 68 of the Act.

36. We noticed that the AO has disallowed relevant interest expenditure of Rs.60,16,439/- u/s 69C of the Act. Since the addition relating to the loans have been deleted by us in this year and also in other years, the question of disallowing interest expenses does not arise. Accordingly, we uphold the decision of Ld CIT(A) in deleting the disallowance of interest expenses.

37. Accordingly, the appeal filed by the revenue in ITA No.6920/Mum/2024 relating to AY 2016-17 is dismissed.

A.M. DEVELOPERS & REALTORS

ITA No.3041/Mum/2019 – AY 2012-13

38. This appeal is filed by the revenue for AY 2012-13 challenging the order of the Ld.CIT(A). The addition made by the Assessing Officer is related to the loan of

Rs.2.60 crores taken by this assessee from M/s Satyam Projects Ltd. The AO has treated the said loan as an accommodation entry and assessed the same as unexplained income of the assessee u/s 68 of the Act. For this purpose, the AO has fully relied on statements recorded under section 131 of the Act from Shri Hitesh Thakkar, Shri Jignesh Mavadia and Shri Uday Shankar Mahawar, who had admitted in their statements that M/s Satyam Projects Ltd is a paper company or shell company and is providing accommodation entry. Accordingly, he assessed the loan of Rs.2.60 crores taken from M/s Satyam Projects Ltd as unexplained income u/s 68 of the Act and also disallowed the corresponding interest expense of Rs.5,93,394/- u/s 69C of the Act. The Ld CIT(A), however, deleted both the additions.

38.1 The Ld.AR submitted that the assessee has taken loan of Rs.2.60 crores from M/s Satyam Projects Ltd and also incurred interest expense of Rs.5,39,384/- thereon. He submitted that the TDS was deducted from above said interest amount. He submitted that the assessee has furnished relevant documents to prove the cash credit in terms of sec.68 of the Act. Accordingly, he submitted that the Ld CIT(A) was justified in deleting both the additions. The Id DR, on the contrary, reiterated the submissions made by him in the earlier years and said that all those arguments would equally apply to this year also.

38.2 We heard rival contentions and perused the record. We notice that the Ld CIT(A) has dealt with this issue in paragraphs 7.3 to 8 of his order and the same are extracted below:-

“7.3. I have carefully considered the assessment order and the submissions of the learned counsel. As per the appraisal report of the search/survey action conducted on Lotus/Kamdhenu/Patni group on 09.10.2014 by the DDIT(Inv) Unit III, Mumbai, information was received by the AO revealing that Shri Hitesh Thakker, Shri Jignesh Mavadia and Shri Uday Shankar Mahawar have admitted in their statements that M/s Satyam Projects Limited is a paper/shell company used for providing accommodation entries. Also, Shri Jignesh Mavadia had admitted that he was a mere namesake director only in M/s Satyam Projects Limited. In the impugned assessment order, the AO has also referred to the statement of Shri Parbat Gothi who has admitted that M/s Hawa Realty Pvt Ltd had also indulged in obtaining bogus accommodation entry of unsecured loans from M/s Satyam Projects Limited. The said entry of unsecured loans had been arranged through a broker. During the year under consideration, the appellant had taken a loan of Rs.2,60,00,000/- from Satyam Projects Ltd. The main issue involved in the present appeal is in relation to addition u/s. 68 of Rs.2,60,00,000/- in respect of unsecured loan received by the appellant from M/s. Satyam Projects Ltd during the year under consideration.

The assessee claims that no addition of Rs.2,60,00,000/- is called for as it has completely established the three ingredients viz. identity, genuineness and creditworthiness as envisaged u/s. 68 of the Act whereas the AO has treated the same to be bogus and added the same u/s. 68 of the Act. Thus, the essential dispute is with regard to the loan received by the appellant from M/s. Satyam Projects Ltd. and whether the assessee has discharged its onus cast upon by the provisions of section 68 of the Act.

7.4. The assessee has submitted documents as under in the course of assessment as well as before me:

- (a) Copy of Memorandum of Association and Articles of Association of the lender company along with the certificate of incorporation revealing that the company was formed on 16.05.1981.*
- (b) Copy of registration certificate issued by the RBI dated 08.06.1998 bearing Reg No. 05.02644*
- (c) ITR Acknowledgement alongwith computation of income of the lender*
- (d) Financial statement of the lender company.*
- (e) Ledger confirmation of the lender company*
- (f) Bank Statement of the appellant and the lender*
- (g) Order of Hon'ble Calcutta High Court evidencing merger of 2 companies viz. Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd alongwith the assessee on 26.06.2008*

(h) Order of Hon'ble Calcutta High Court evidencing merger of 6 companies viz. Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd on 15.12.2010

(i) Assessment order of the aforesaid 6 companies

(j) Form 2 filed by lender company with ROC for increase in authorised capital in Feb, 2011

(k) Copy of Due diligence Report carried out prior to merger

(l) Copy of scrutinizer report dtd. 26.09.2015 on e-voting process

(m) Copy of Internal audit report for FY 15-16

(n) Copy of secretarial report

(o) Copy of quarterly compliance report

(p) Copy of prospectus issued by lender company

7.5. I have perused the aforesaid documents. It is observed that the assessee company is a registered NBFC since 1998 which has later merged with 8 companies through a scheme of amalgamation duly sanctioned by the Hon'ble Calcutta High Court. By providing the aforesaid documents, the assessee submits that the lender -M/s. Satyam Projects Ltd is a genuine company which has carried out so many compliances regularly with RBI/ Auditors and has also been sanctioned merger with the approval of the Hon'ble Calcutta High Court.

From the records, it is noticed that the alleged lender was served a notice u/s. 133(6) of the Act by the AO which was duly complied. The assessee therefore submits that there is no adverse finding in this regard by the AO in his assessment order.

Apropos creditworthiness of the lender company, it is seen that initially two companies Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd having aggregate net worth of Rs. 9.53 crores merged with Satyam Projects Ltd on 26.06.2008. Later, other six companies namely Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd having aggregate net worth of Rs. 91.06 crores merged with Satyam Projects Ltd on 15.12.2010. The aforesaid companies had huge capital and reserves appearing in the balance sheet prior to the merger. Consequent to the merger, the AR submits that total net worth of the lender company was increased by Rs. 100.59 cores which was then utilised by it for the purpose of its business. The AR has further pointed out that the assessment in the case of these aforesaid six merged companies was carried out wherein the share capital issued by these companies have been verified by the concerned AO. Accordingly, the net worth of the lender company stood at Rs.1.01,30,88,008/- which

was in fact substantially examined by the revenue. Further, the turnover of the lender for the year under consideration was Rs. 8.27 crores and its returned income was Rs 21,32,680/- The AO has relied on the statements of Shri. Hitesh Thakkar, Shri. Jignesh Mavadiya, Shri. Uday Shankar Mahawar & Shri Parbat Gothi. In this regard, the appellant contends that the statements were not provided to it and hence the same cannot be used against it. The appellant also contends that no opportunity of cross examination of the aforesaid parties has been accorded to the assessee. The assessee further stated that the aforesaid parties have given the statement under coercion and influence of the search party and have subsequently retracted the statements which were made by them.

In his statement u/s. 133A of the Act on 10.10.2014, Shri. Hitesh Thakkar, managing director of the lender company has stated that Bhagwanji Patel has acquired M/s Satyam Projects Ltd in May 2014 and that he was a director for name sake only and detailed explanation in relation to Satyam Projects Ltd could be given by Bhagwanji Patel. He has further stated that the overall affairs of the company are being looked after by Shri. Bhagwanji M Patel. He ultimately agreed that the said company is a paper company.

Similarly, Shri. Jignesh Thakkar in the course of statement u/s. 131 of the Act on 09.10.2014 has stated that he was a clerk in Prince Ply Agency Pvt Ltd and he was a namesake director in Satyam Projects Ltd. He was unaware about the other directors of the lender company.

In his statement, Shri Uday Shankar Mahawar u/s. 131 on 25.08.2014 has also stated that he opened around 200 bogus jamkharchi companies which were used to provide bogus accommodation entries One of Such companies as stated in his statement was Satyam Projects Ltd.

In this statement, Shri Parbat Gothi u/s 131 on 12.10.2014 has admitted that M/s Hawa Realty Pvt Ltd had also indulged in obtaining bogus accommodation entry of unsecured loans from M/s Satyam Projects Limited.

However, the AR states that all the aforesaid statements relied upon by the AO are retracted by the said parties on the ground that they were based on influence and coercion of search party. The retraction affidavit of these parties have been placed in the course of assessment as well as before me. In the course of assessment proceedings, Shri Uday Shankar Mahawar was produced before the Id. Assessing Officer wherein he has affirmed his retraction and clarified that the earlier statement given by him was

recorded under coercion. The AR also stated that Shri. Bhagwanji M Patel is the shareholder of M/s. Satyam Projects Ltd.

7.6. In light of above, it is now important to examine the validity of addition based on the aforesaid statements which have been retracted by the respective parties.

a. Statement of Uday Shankar Mahawar

The statement of Shri Uday Shankar Mahawar is allegedly recorded u/s. 131 of the Income Tax Act. In the said statement dated 25-08-2014, Shri. Uday Shankar Mahawar has allegedly stated of having opened 200 Jamakharchi companies amongst which one is Satyam Projects Ltd. In this regard, it may be noted that he was made to sign a typewritten statement without giving him a chance to understand the contents thereof. A declaration of the aforesaid fact is made by him in his affidavit dated 27-02-2015. Copy of his statement though referred to have annexed is also not available along-with the impugned order. It is further also learnt that the said party has also appeared before the Id. Assessing Officer in the course of assessment proceeding affirming his retraction.

b. Statement of Shri. Hitesh Thakkar

The statement of Shri. Hitesh Thakkar has been recorded in the course of survey action on 10-10-2014 conducted at the premises of M/s. Prince Ply Agencies P. Ltd. u/s. 133A of the Act wherein he has allegedly accepted that M/s. Satyam Project Ltd is a paper company. At the outset, it may be noted that his statement being recorded in the course of survey u/s. 133A of the Act cannot be relied upon as has been held in the case of CIT v. S. Khader Khan Son [2008] 300 ITR 157 (Mad HC) as approved by the Hon'ble Apex Court in [2012] 25 taxmann.com 413 (SC) as follows:

"Section 133A does not empower any ITO to examine any person on oath. In contradistinction to the power under section 133A, section 132(4) enables the authorized officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand, whatever statement is recorded under section 133A is not given an evidentiary value. The statement obtained under section 133A would not automatically bind upon the assessee."

Attention is also invited to the fact that due to extreme mental pressure, Shri. Hitesh Thakkar had signed the statement without even understanding what was written by the tax authorities. He has accordingly immediately after the search vide his affidavit dated 16-10-2014 clarified that the statement is incorrect and has accordingly retracted his statement.

c. Statement of Shri. Jignesh Mavadia

The statement of Shri. Jignesh Mavadia has been recorded on 09-10-2014 wherein allegedly he has accepted that he was a namesake director in M/s. Satyam Projects Ltd. Your Honour may note that Shri. Jignesh Mavadia in his affidavit dated 16-10-2014 while retracting the said statement has sworn on oath that his statement was recorded under extreme mental pressure and it was signed by him without understanding the contents thereof.

d. Statement of Shri. Parbat Gothi

The statement of Shri. Parbat Gothi was recorded u/s. 131 on 12-10-2014 wherein he has accepted that M/s. Hawa Realty Pvt Ltd had indulged in obtaining accommodation entry of unsecured loans from M/s. Satyam Projects Ltd. Your Honour may appreciate that Shri. Parbat Gothi vide his affidavit 18-10-2014 has stated on oath that his statement was not correct and was given under pressure and undue influence. He has accordingly withdrawn his said statement. Also, that the statement of Parbat Gothi does not apply to the assessee in any manner as what had been stated by him was in relation to Hawa Realty Pvt Ltd and not the assessee company

It is the contention of the Assessing Officer that the on-money generated by the assessee group has been brought back as loans and share capital through Kolkata companies but inspite of the search undertaken in the appellant's group nothing incriminating was found during the search and no evidence of either receipt of on-money or generation of any other kind of unaccounted income was found. No evidence of any cash transaction has been brought out either by the Investigation wing or by the Assessing Officer. As the assessee proved the trail of money which is through banking transactions, the onus shifts to the Assessing Officer to prove the assessee wrong but the Assessing Officer has not brought anything contrary to what has been submitted by the assessee.

7.7 Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus u/s. 68 of the Act on the assessee to prove identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AO to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as to whether the evidences brought by the assessee or AO weigh more and accordingly in whose favour the equilibrium bends. In the present case, on one hand, the assessee has placed evidence in the form of voluminous documents in relation to RBI compliances, ROC compliances, audit compliances and merger sanctioned by the Hon'ble Calcutta High Court. Further, the assessee has also placed on record the assessment orders of 6 merged companies for the A.Y. 2010-11 and also that of the alleged lender - M/s. Satyam Projects Ltd for A.Y. 2010-11. I have also gone through the confirmation, ITR Acknowledgement, financial statements of the lender company and bank statements relating to the alleged transaction of unsecured loan of Rs.2,60,00,000/- taken by the assessee during the year under consideration. It is observed that the lender company is formed in 1981 and is registered NBFC since 1998 engaged into the business of finance and investment and has also engaged into trading in cloth in the year under consideration. The lender company has shown substantial turnover of Rs. 8.27 crores with an income of Rs. 21,32,680/- offered in its return of income. The transaction are also carried out through account payee cheques. Even, in the subsequent years, it is seen that the lender company has earned substantial income as under:

A.Y.	Returned Income
2013-14	51,81,018/-
2014-15	1,81,13,093/-
21015-16	1,16,80,862-

Accordingly, the assessee has discharged its onus u/s 68 of the Act by substantiating even the source of source of alleged lender company.

On the contrary, the Assessing Officer has solely placed reliance on the statement of Hitesh Thakkar, Jignesh Mavadia, Uday Shankar Mahawar and Parbat Gothi which has been retracted by all of them. Further, the AO has made allegation that M/s. Satyam

Projects Ltd is a company run by various entry operators but have failed to bring anything concrete on record. In fact, during the course of assessment proceedings, enquiries were made by the AO in form of issue of notice u/s 133(6) which was duly complied by the lender. Even the evidences referred above were not disputed by the Assessing Officer. It is informed that Uday Shankar Mahawar was appointed as a director in M/s. Satyam Projects Ltd on 30.10.2010 and Hitesh Thakkar and Jignesh Mavadia had been appointed as a director on 04.03.2014. Also, Shri. Uday Shankar Mahawar was produced before the Assessing Officer who had affirmed his retraction thereby confirming that the transaction of Satyam Projects Ltd were genuine and that it is not a paper company.

7.7. The decision of the Hon'ble Jurisdictional ITAT in the case of *ITO v. Sringeri Technologies Pvt Ltd [ITA No. 3924/Mum/2014]* is also relevant wherein similar facts were involved before the Hon'ble ITAT and it was observed as under:

11. Having considered arguments of both the sides and materials available on record, we do not find any merit in the reasons given by the AD to come to the conclusion that the assessee has failed to prove the genuineness of transaction and creditworthiness of the parties on the ground that the assessee has filed enormous details in respect of 9 companies including their PAN details, CIN master data, affidavits sworn before Executive Magistrate, reply to the notices issued u/s 133(6) The assessee also filed copies of assessment order passed u/s 143(3) by the department in respect of 4 companies. The assessee also filed a certificate from a Chartered Accountant certifying the active status of the company in the website of Ministry of Corporate Affairs. On going through various detailed field by the assessee, we find that there is no reason for the AO to doubt the genuineness of transactions of creditworthiness of the parties We further notice that at 9 companies are active in the website of ROC and also they have Red their balance sheet upto 31-03-2016 and in some cases upto 31-03-2017 We further notice that the AO has furnished a report accepting the fact that all these companies are active at the website of MCA and none of the companies name is struck off from the lid published try the MCA s shell company. We further notice that the assesses has fied balance-sheet of t bscribers wherein they have huge share capital and reserves and surplus to extatist creditworthiness of the parties. On perusal of the balance-sheet fled by the assesses, we fed that the aggregate of share capital and reserves of a companies is at Rs. 333.67 crores, whereas investment in assessee company is only PRs. 12 crores. We further notice that all companies are having regular business ranging from 2 to 3 crores. The assessee also furnished copies of sales-tax returns filed with Commercial Tax Department to prove the business activity of the assessee. All these evidences go to prove an unduttet fort that these companies are not paper companies and recognized with business activity We further observe that the assessee also filed affidavit form the

directors of subscriber companies, wherein they have explained the reasons for not receiving communication sent by the AD u/s 133(6) of the Act. They further stated in the affidavit that they have subscribed to the share capital of the company and also furnished supporting evidences to justify investment in share capital of the company. We further notice that the assessee has furnished bank statement of subscribers wherein we do not find any instance of cash deposits or transfer from other companies prior to the date of transfer to the assessee company. Therefore, we are of the view that the AD was incorrect in treating share capital along with share application money as unexplained cash credit u/s 68 of the Income-tax Act, 1961.

7.8. Having discussed the overall facts and circumstance of the present case, now I examine the case laws relied upon by the AO and the assessee in this context

Case laws relied upon by the AO

(i) CIT v. Nova Promoters and Finlease (P) Ltd. [2012] 18 taxmann.com 217(Del HC)

(a) In the case before Hon'ble Delhi High Court, statement of the third party entry provider was provided to the assessee which is not provided in the present case

(b) Two letters were filed with the investigation wing by the entry provider confirming the accommodation entries in the case before Hon'ble Delhi High Court. No such thing present in this case

(c) In the case of Nova Promoters, Retraction was filed after a period of three years whereas in the present case, it is filed immediately or the delay is explained satisfactorily

(d) The Entry providers failed to appear before the AD after filing retraction statement even though summoned by the AO in that case whereas in the present case, the AO has not summoned the parties and despite Shri Uday Shankar Mahawar was produced before AD who has confirmed his retraction.

(e) in the case before Hon'ble Delhi High Court the name of the assto specifically appeared in the statement provided by the entry provider whereas in the present case, no such finding is brought on record

(f) in that case, summons were either not served or served but not complied with whereas notice u/s 133(6) of the Act has been duly complied by the lender company in the present case.

(g) Whereas in the present case, the amalgamating companies which merged with the lender company have been assessed and copy of assessment order are provided alongwith order of amalgamation of the High Court thereby establishing the genuineness of the transaction and the creditworthiness of the lender which was absent in the case before the Hon'ble Delhi High Court

(ii) Major Metals Ltd v. UOI [2012] 19 taxmann.com 176 (Bom HC)

The said decision was in relation to proceedings before the Hon'ble Settlement Commission. The decision is rendered in relation to huge share premium received from the companies with no credentials and creditworthiness nor even any past performance that could justify such payment. Further, this decision was also in relation to the order passed by the ITSC which had decided its view based on the peculiar facts and material with them. Further, the said decision has been impliedly overruled by the decision of the Hon'ble Bombay HC in the case of Vodafone India Services (P.) Ltd. v. CIT [2014] 388 ITR 1 (Bom.). The said view of the decision being overruled was again accepted by the Hon'ble Bombay HC in the case of Khubchandani Healthparks (P.) Ltd v. ITO [2016] 68 taxmann.com 91 (Bom). Accordingly, the decision relied upon by the AO in impugned order does not support the case of the AO.

On the contrary, the assessee has relied upon plethora of judgements, I find that the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Paradise Inland Shipping Pvt Ltd (TA No. 66 of 2016) (Bom HC) squarely applies to this case wherein it was observed as under:-

5. We have given our thoughtful considerations to the rival contentions of the teamed Counsel and we have also gone through the records. The basic contention of the learned Counsel appearing for the Appellants revolves upon the stand taken by the Appellants whether the shareholders who have invested in the shares of the Respondents are fictitious or not in this connection, the Respondents in support of their stand about the genuineness of the transaction entered into with such Companies has produced voluminous documents which, inter alia, have been noted at Para 3 of the Judgment of the CIT Appeals which reads thus:

"The assessment is completed without rebutting the 550 page documents which are unflinching records of the companies. The list of documents submitted on 09.03.2015 are as follows:

- 1. Sony Financial Services Ltd. CIN U74899DL1995PLC068362-
Date of Registration 09/05/1995*

Memorandum of Association and Article of Association

Certificate of Incorporation

Certificate of Commencement of Business

Acknowledgment of the Return of Income AY 08-09

Affidavit of the Director confirming the investment

Application for allotment of shares

Photocopy of the share certificate

Audited account and Directors report thereon including balance sheet, Profit and Loss schedules for the year ended 31.03.2009.

Audited account and Directors report thereon including balance sheet. Profit and Loss schedules for the year ended 31.03.2010

The Bank Statement highlighting receipt of the amount by way of RTGS.

Banks certificate certifying the receipt of the amount through Banking channels."

6. On going through the documents which have been produced which are basically from the public offices, which maintain the records of the Companies. The documents also include assessment Orders for last three preceding years of such Companies.

7. The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein. In such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on record cannot be said to be perverse. Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration

8. The Apex Court in the case of Orissa Corpn. (P.) Ltd. (supra), has observed at Para 13 thus

"13 In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under § 131 at the instance of the assessee, did not pursue the matter further. The revenue did not 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. There was no effort made to pursue the so called alleged creditors in those circumstances, the assessee could not do anything further in the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence by which a conclusion could be arrived at, no question of law as such arises."

9. This Court in the Judgments relied upon by the learned Counsel appearing for the Respondents have come to the conclusion that once the Assessee has produced documentary evidence to establish the existence of such Companies, the burden would shift on the Revenue-Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subjected to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons, would not at all be justified. The Assessing Officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents.

10. We find no infirmity in the findings arrived at by the ITAT as well as GIT Appeals on the contentions raised by the Appellants-Revenue in the present case and, as such, the question of interference by this Court in the present proceedings under Section 2604 of the Income Tax Act would not at all be justified. Apart from that, as rightly pointed out by the learned Counsel appearing for the Respondents, the CIT Appeals had also noted that proceedings under Section 147 of the Income Tax Act cannot lead to re-verification of the records. These findings of the CIT Appeals have not been assailed before the Income Tax Appellate Court.

11. In such circumstances, we find that there is no case made out by the Appellants-Revenue for any interference in the impugned Orders passed by the Courts below

12. Hence, the Appeal stands rejected

The SLP filed against the said order of the High Court is also dismissed by the Hon'ble Apex Court in [2018] 93 taxmann.com 84 (SC).

7.9. I find that the addition u/s. 68 of the Act is uncalled for in the present facts and circumstances of the case in view of the discussion made above. Accordingly, the addition

*of Rs.2.60,00,000/- made by the AO deserves to be deleted. This ground of appeal is accordingly **allowed**.*

*8.0. The Ground of appeal no.3 relates to the disallowance of interest of Rs.5,39,384/ Since, I have allowed the ground on unsecured loan from Satyam Projects Ltd in favour of the appellant and considered the loan as genuine, the interest paid thereon of Rs. 5,39,384/- is also allowed for the reasons and discussion specified as above. Hence, the ground no. 3 is **allowed**."*

39. We notice that the Ld CIT(A) has given a categorical finding that the assessee has fully discharged the onus placed upon it u/s 68 of the Act by proving the identity of the creditor, creditworthiness of the creditor and genuineness of transactions. We noticed that the AO has solely relied on statements recorded under Section 131 of the Act, which were subsequently retracted before the completion of the assessment proceedings. The AO did not discharge the burden shifted to his shoulders u/s 68 of the Act.

39.1 In view of the above, we find no infirmity in the impugned appellate order. Accordingly, the deletion of the addition of Rs.2.60 crores by the Ld. CIT(A) is upheld. Since the assessment of loan amount is deleted, the interest disallowance made by the AO would not be justified. Accordingly, the Ld CIT(A) was justified in deleting the disallowance of interest expenses amounting to Rs.5,39,384/-.

40. In the result, the appeal of the revenue bearing **ITA No.3041/Mum/2019** is dismissed.

41. In the result,

(a) both the appeals of the assessee, viz., ITA No.3697/Mum/2019 and ITA 3698/Mum/2010 are allowed.

(b) the appeal of the revenue in ITA No.6921/Mum/2024 is treated as partly allowed.

(c) all other appeals of the revenue are dismissed.

Order pronounced in the open court on 04th day of April, 2025.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Mumbai,दिनांक/Dated: 04/04/2025
Pavanan

Copy of the Order forwarded to:

- अपीलार्थी/The Appellant ,
- 1.
 2. प्रतिवादी/ The Respondent.
 3. आयकरआयुक्त CIT
 4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
 5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai