

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'F' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.4464/Mum/2024
(Assessment Year :2019-20)**

&

**ITA No.4465/Mum/2024
(Assessment Year: 2015-16)**

ACIT Central Circle 1(4), Mumbai	Vs.	Vinay Ramanlal Shah, 5 th Floor, Center Point Junction of S.V. Road and Juhu Road Santacruz (W) Mumbai – 400 054
PAN/GIR No.AACPS4765J		
(Appellant)	..	(Respondent)

**ITA No.4382/Mum/2024
(Assessment Year: 2015-16)**

ITA No.4380/Mum/2024

(Assessment Year :2018-19)

ITA No. No.4381/Mum/2024

(Assessment Year: 2017-18)

&

**ITA No.4379/Mum/2024
(Assessment Year: 2019-20)**

Vinay Ramanlal Shah, 5 th Floor, Center Point Junction of S.V. Road and Juhu Road Santacruz (W) Mumbai – 400 054	Vs.	ACIT Central Circle 1(4), Mumbai
PAN/GIR No.AACPS4765J		
(Appellant)	..	(Respondent)

**ITA No.4462/Mum/2024
(Assessment Year :2015-16)**

ACIT Central Circle 1(4), Mumbai	Vs.	Vinay Ramanlal Shah HUF, 201, Dev Pooja Building North Avenue Road Santacruz East Mumbai – 400 054
PAN/GIR No.AABHV9007P		
(Appellant)	..	(Respondent)

**ITA No.4136/Mum/2024
(Assessment Year :2015-16)**

Vinay Ramanlal Shah HUF, 201, Dev Pooja Building North Avenue Road Santacruz East Mumbai – 400 054	Vs.	ACIT Central Circle 14, Mumbai
PAN/GIR No.AABHV9007P		
(Appellant)	..	(Respondent)

**ITA No.4463/Mum/2024
(Assessment Year :2018-19)**

ACIT Central Circle 1(4), Mumbai	Vs.	Ketan Ramanlal Shah 5 th Floor, Center Point Junction of S.V. Road and Juhu Road Santacruz (W) Mumbai – 400 054
PAN/GIR No.AACPS4763Q		
(Appellant)	..	(Respondent)

**ITA No.4376/Mum/2024
(Assessment Year :2017-18)
ITA No.4377/Mum/2024
(Assessment Year :2016-17)
ITA No.4372/Mum/2024
(Assessment Year :2019-20)
ITA No.4137/Mum/2024
(Assessment Year :2020-21)**

ITA No.4375/Mum/2024
(Assessment Year :2018-19)

ITA No.5077/Mum/2024
(Assessment Year :2016-17)

&

ITA No.4378/Mum/2024
(Assessment Year :2015-16)

Ketan Ramanlal Shah 5 th Floor, Center Point Junction of S.V. Road and Juhu Road Santacruz (W) Mumbai – 400 054	Vs.	ACIT Central Circle 1(4), Mumbai
PAN/GIR No.AACPS4763Q		
(Appellant)	..	(Respondent)

ITA No.4466/Mum/2024
(Assessment Year :2015-16)

ACIT Central Circle 1(4), Mumbai	Vs.	Ketan Ramanlal Shah HUF Mumbai Maharashtra – 400 081
PAN/GIR No.AACHK9724K		
(Appellant)	..	(Respondent)

CO No.204/Mum/2024
(Arising out of ITA No.4466/Mum/2024)
(Assessment Year :2015-16)

Ketan Ramanlal Shah HUF Mumbai Maharashtra – 400 081	Vs.	ACIT Central Circle 1(4), Mumbai
PAN/GIR No. AACHK9724K		
(Appellant)	..	(Respondent)

ITA No.4469/Mum/2024
(Assessment Year :2016-17)

ITA No.4467/Mum/2024
(Assessment Year :2019-20)

&

ITA No.4468/Mum/2024
(Assessment Year :2017-18)

ACIT Central Circle 1(4), Mumbai	Vs.	Jatin Rajnikant Shah Ground Floor Jai Gujarat 7 th Road, Golibar Santacruz (E) Mumbai – 400 055
PAN/GIR No.AAGPS5130B		
(Appellant)	..	(Respondent)

ITA No.4334/Mum/2024
(Assessment Year :2019-20)**ITA No.4335/Mum/2024**
(Assessment Year :2018-19)**ITA No.4336/Mum/2024**
(Assessment Year :2017-18)**ITA No.4338/Mum/2024**
(Assessment Year :2016-17)

&

ITA No.4340/Mum/2024
(Assessment Year :2015-16)

Jatin Rajnikant Shah Ground Floor Jai Gujarat 7 th Road, Golibar Santacruz (E) Mumbai – 400 055	Vs.	ACIT Central Circle 1(4), Mumbai
PAN/GIR No. AAGPS5130B		
(Appellant)	..	(Respondent)

Assessee by	Shri Prateek Jain
Revenue by	Shri Vivek Perampurna (CIT DR)

Date of Hearing	07/05/2025
Date of Pronouncement	29/05/2025

आदेश / O R D E R

PER BENCH:

These bench of appeals have been filed by the assessee against separate impugned orders passed by Id. CIT(A) dated 27/06/2024 and 28/06/2024 for the A.Yrs. 2015-16,2016-17,2017-18,2018-19 and 2019-20.

2. In all the appeals, issues involved are common arising out of identical set of facts, therefore, same were heard together and have been disposed of by way of this consolidated order. We will first take up the appeals of **Vinay Ramanlal Shah** for various caption assessment years.

3. The brief background and facts of the case are that the assessee is an individual and is the owner/promoter of Shah Coal Group. A survey action was conducted at the premises of M/s. Shah Coal Pvt. Ltd. and its related entities on 03.12.2019. Pursuant to the survey, assessment orders were passed in the assessee case. The AO has made addition in respect of three issues in all the years:-

- (i) Addition on account of certain ledgers recorded in the two diaries found in the survey action;
- (ii) Disallowance of loss in derivative option alleged to be non-genuine; and

(iii) Disallowance made u/s 14A.

4. In the first appeal before the Id. CIT(A) addition / disallowance as referred in (i) & (ii) were deleted while the issue related to u/s.14A, disallowance has been confirmed. Both the assessee and the Revenue have come in appeal. Issues which have been raised are tabulated in the following manner:-

Addition or Disallowances	2015-16		2017-18	2018-19	2019-20	
	Assessee Appeal	Department Appeal	Assessee Appeal	Assessee Appeal	Assessee Appeal	Department Appeal
	ITA 4382/MUM/2024	4465/MUM/2024 4301 /MUM/2024		ITA 4380/MUM/2024	ITA 4379/MUM/2024	ITA No. 4464/MUM/2024
Disallowance u/s 14A	58, 88,713		11,54,618	4, 77, 048	1,24,471	
Undisclosed Income - Substantive -Peak		1,08,05,500		-	-	3,60 58,930
Disallowance of non-genuine Losses		3,73,59,620	-	-	-	-
Addition u/s 69C - Substantive Basis		-		-	-	98,97,322
Addition u/s. 69C - Commission Expenses		7,47,192	-		-	
Total Addition/Disallowance	58,88,713	4,89,12,312	11,54,618	4,77,048	1,24,471	4,59,56,252

5. We will first take up the first issue raised in the Revenue's appeal, i.e., the addition of undisclosed income based on diaries on substantive basis which is **ground No.1 in department's appeal for A.Y.2015-16 in ITA No. No.4465/Mum/2024; and ground No.1 & 2 of department's appeal for A.Y.2019-20 in ITA No. 4464/Mum/2024.** As noted above, a survey action was

conducted on 03/12/2019. During the course of survey action two diaries, one red coloured which has index and various loose papers in between and one Green coloured which also contains index and various loose papers in between, which were found from the personal possession of Shri Jatin Shah, who was an employee of the Shah Coal group. In his statement recorded on 03/12/2019, Shri Jatin Shah stated that the particulars as mentioned in the diaries were recorded by him as per the instruction of Shri Vinay Shah. Immediately thereafter, statement of the assessee, i.e., Shri Vinay Shah was also recorded on 04/12/2019 at the same premises, wherein he was specifically asked about the replies given by the Shri Jatin Shah regarding the diaries. In response to the same, the assessee unequivocally denied of having any knowledge regarding the diaries or its contents.

6. Later on, when Shri Jatin Shah received the copy of the statement on 18/01/2020, he retracted the statement given by him by filing a retraction letter on 04/02/2020 which was submitted before the Ld. Dy. Director of Income Tax (Investigation) In this letter he has completely owned up the diaries and the transactions recorded in the said diaries. He has also stated that these transactions had nothing to do with the Shri Vinay Shah or his family members or any of entities. After such retraction given by Shri Jatin Shah, the assessee has also submitted a clarification letter on 08/02/2020 before DDIT(Inv) In this letter, the assessee has mentioned the same facts which

were earlier submitted during the survey action that those two diaries do not belong to him.

7. In addition to the above, another statement of Shri Jatin Shah was recorded on 30/09/2020 by the Ld. DDIT (Inv.) wherein Shri Jatin Shah was again asked regarding the contents of the diary, In the said statement, Shri Jatin Shah explicitly stated that the diary belonged to him and had no relation with the assessee (Shri Vinay Shah) and his entities. He further explained the contents of the diary wherein he stated that he was engaged in the financing activity of arranging loans & advances to other parties. These transactions are carried out by him in cash and on which brokerage are charged on certain percentage basis and same is also derived in cash. It is important to note here that statement of Jatin Shah that diary belongs to him and all the transaction recorded therein pertains to him was accepted by the Investigation Wing.

8. The case of the assessee before the ld. AO as well as before the First Appellate Authority was that, *firstly*, Shri Jatin Shah has owned up the transaction recorded in the diary and Vinay Shah or any of his family members has nothing to do with nor they were aware of any such activity of Jatin Shah; and *secondly*, in his statement, Jatin Shah has duly explained that he was in the practice of facilitating loans in cash. On arrangement of such transactions, he was receiving a certain percentage of brokerage/commission in cash However, in order to buy peace of mind before the investigation wing, Shri Jatin Shah has offered income on account of the said diaries on peak credit basis of Rs.

49.35 Crores. The year wise segregation of the same was tabulated in the following manner:-

A.Y.	Total Receipt	Total Payments	Peak Positive	Peak Negative	Peak
2015-16	350,936,552	344,289,850	25,219,005	54,977,047	80,196,050
2016-17	445,977,342	451,276,920	44,374,626	13,194,402	19,155,623
2017-18	697,483,086	695,654,822	54,130,197	50,496,137	18,469,063
2018-19	853,759,469	433,730,739	-	426,044,385	362,353,846
2019-20	740,712,805	723,761,384	-	439,437,536	13,393,451
2020-21	386,422,335	573,533,739	-	433,155,539	
	3,473,291,589	3,222,247,454			49,35,67,733

9. Thus, Shri Jatin Shah accepted the transactions in the said diaries and offered income based on the entries made in the said diary in his own hand. **The Investigation Wing has accepted the contention of Shri Jatin Shah that the diaries belong to him and the transactions recorded in the diaries are pertaining to Shri Jatin Shah.** However, the investigation wing has re-worked the peak working by segregating the ledger accounts in the diaries in following three parts:-

- Those ledgers which was both debit and credit entries are considered for peak working.
- Those ledgers which only have the debit entries considered as unexplained expenditure u/s 69C of the Act.
- Those ledgers which have only credit entries considered as unexplained income u/s 69A of the Act.

The Investigation Wing has re-worked the peak income in the hands of Shri Jatin Shah at Rs. 79.13 Crores in different assessment years.

10. During the course of the assessment proceedings, ld. AO again recorded the statement of Shri. Jatin Shah on 17/02/2022 and 18/02/2022, wherein he has reconfirmed his position as taken in his earlier letter dated 04/02/2020 and statement recorded on 30/09/2020. Further, the statement of assessee, i.e., Shri Vinay Shah was also recorded on 04/02/2022 by the ld. AO, wherein, he has also reaffirmed his position and has denied any knowledge with respect to the impugned diaries. Thus, right from the stage of Investigation wing to the ld. AO, both Shri Jatin Shah and Shri Vinay Shah admitted that the ownership of the diaries and contents noted therein belongs to Shri Jatin Shah who has consistently accepted the diaries and contents therein whereas assessee has consistently denied any relation with the contents of the diaries.

11. The ld. AO in the assessment order has partly accepted the explanation of the assessee that the diaries belonged to Shri Jatin Shah and therefore, the income arising out of the same would be assessable in his hands. However, on the same breath, he held that certain ledgers containing abbreviation such as 'VRS', 'KRS', 'Kunal', etc. were related to the assessee, i.e., Shri Vinay Shah as it contained some personal expenses of Shri Vinay Shah and his family members. He relied upon the statement of Shri. Jatin Shah dated 03/12/2019 to hold that few ledgers allegedly containing notings related to Shri Vinay Shah and Shri Ketan Shah. He held that such ledgers will be taxed

substantively in their hands whereas all other notings will be taxed substantively in the hands of the Shri Jatin Shah.

12. Taking into those ledgers which allegedly belong to the assessee, AO has bifurcated notings into three parts, i.e., entries which are considered for peak working, income entries and expenses entries. While doing so, all the ledgers which contained notings of both receipts and payments were considered for peak working. However, wherever, the ledger contains only receipts, the same has been considered as unexplained money u/s 69A and wherever, the ledger contain only payments, the same has been considered as unexplained expenditure u/s 69C. In the this way, the year wise addition made in the hands of the assessee is tabulated as under:-

A.Y.	Receipts u/s 69A	Payment u/s 69C	Peak Income	Total addition
2015-16	-	-	1,08,05,500	1,08,05,500
2016-17	-		1,06,49,350	1,06,49,350
2017-18			1,50,67,160	1,50,67,160
2018-19	-	1,00,000	1,62,49,100	1,63,49,100
2019-20	-	98,97,322 1	3,60,58,930	4,59,56,252
2020-21	-	1,84,11,370	18,83,400	2,02,94,770
Total	-	2,84,08,692	9,07,13,440	11,91,22,132

13. Apart from that, ld. AO further made 'protective addition' holding that the diaries are inextricably linked with the assessee and therefore, addition made in the case of Shri. Jatin Shah should also be made in the hands of the assessee on protective basis since Shri Jatin Shah has not offered the income in his return of income. The details of the 'protective addition' are as under:-

A.Y.	Receipts u/s 69A	Payment u/s 69C	Peak Income	Total addition
2015-16	84,20,450	74,10,102	8,24,76,300	9,83,06,852
2016-17	2,55,78,795	1,37,71,102	2,81,25,512	6,74,75,409
2017-18	1,37,34,550	1,76,02,060	29,70,936	3,43,07,546
2018-19	15,30,500	5,22,63,415	18,64,45,488	24,02,39,403
2019-20	5,08,37,100	5,93,62,500	19,25,250	11,21,24,850
2020-21	4,79,83,000	2,54,90,000	36,96,200	7,71,69,200
Total	14,80,84,395	17,58,99,179	30,56,39,686	62,96,23,260

14. Thus, ld. AO has made both protective and substantive addition on various grounds based on the same notings contained in the diaries found from the possession of Shri Jatin Shah in the hands of the assessee.

15. The ld. CIT (A) in his detailed judgment after incorporating all the details from the notings of diary, statement of Shri Jatin Shah and assessee, observation and the findings of the ld. AO

held that once the ld. AO has accepted that the ledgers in the diary have been maintained by Shri Jatin Shah in his personal capacity, then the funds utilised for making the transactions belongs to him and that all the transactions noted within the diary related to his financial business, therefore, it was not open for AO to split the transactions and attribute part of such transaction to another third party unless there were compelling reasons for the same. The ld. CIT (A) further observed that no corroborating evidence has been found in the possession of assessee, Shri Vinay Shah and other family members with respect to these transactions. He noted that ld. AO has not bought on record any other evidence which could provide live link between the diaries and family members of Shri Vinay Shah. He noted that ld. AO has relied only on the first statement of Shri Jatin Shah which was modified and retracted later and accepted by the Investigation Wing. On the other hand, assessee, right from the date of survey, when his own statement has been recorded, denied any knowledge about the diaries. This fact has nowhere been disputed by the ld. AO.

16. The ld. CIT (A) while passing the appellate order in the case of assessee has referred to appellate order passed in the case of Shri Jatin Shah wherein he held that, all the contents of the diaries, including income and expenditure shown in the diaries have been owned by Shri Jatin Shah, and as such, there is no material evidence or logical reason to attribute part of any transactions in the diary to Vinay Shah or his family members. No incriminating evidence whatsoever has been found in the

hands of the other members of the family concerning these transactions. Accordingly, he held that AO was in error in unilaterally treating part of the transactions as having been carried out by other members of the family. The Ld. CIT (A) in case of Jatin Shah held that ledger accounts which have both debit and credit entries but appear to bear the names of family members viz. 'VRS', 'KRS', 'Kunal', etc. are required to be substantially taxed in the hands of the Shri Jatin Shah. Accordingly, the peak balance taxed earlier in the hands of Shri Vinay Shah and Shri Ketan Shah should be subsumed in the peak calculated for the Shri Jatin Shah. Accordingly, the addition made by the AO in the hands of the assessee was deleted.

17. Ld. CIT (A) has given his impugned finding in the appeals of Shri Jatin Shah for the A.Yrs.2016-17 to A.Y.2019-20 and following the same has deleted the addition. The relevant observation and the finding read as under:-

6.7 The issue of taxability of peak credit and how the peak should be arrived has been decided by the undersigned in the appeals of Sh. Jatin R Shah for the years AY 2015-16 to AY 19-20 wherein I have held as under.

8.25 With respect to the action of the AO in treating the ledger accounts with the abbreviation 'VRS', 'KRS', 'Kunal', etc. as being related to Mr. Vinay Shah and his family members and accordingly treating the transactions as being owned and transacted by the Shah family members and therefore, proceeding to add the income arising out of such ledgers (peak credit) substantially in the hands of these persons, the appellant's submission is found tenable. Once the AO has accepted the appellant's submission that the ledgers in the diary have been

maintained by him in his personal capacity, the funds utilised for making the transactions belong to the appellant and that all the transactions noted within the diary related to his financial business, it was not open to him to split the transactions and attribute part of such transaction to another third party unless there were compelling reasons for the same. It is noted that no corroborating evidence has been found in the possession of Vinay Shah and other family members with respect to these transactions. AO has not mentioned any other evidence which could provide live link between the diaries and family members of Sh. Vinay Shah. AO has relied only on the first statement of appellant which was modified later. On the other hand, Shri Vinay Shah, right from the date of survey, when his own statement has been recorded, denied any knowledge about the diaries. He states

"Q. 30. I am showing you statement of Shri Jatin Rajnikant Shah, who looks after the accounts at Shah Coal Shah Cool Pvt. Ltd and related entities as also your personal accounts and your family members personal accounts along with the HUF accounts recorded on 03.12.2019 u/s. 133A of the I.T. Act, 1961 during the course of survey proceedings at office of M/s Shah Coal Pvt. Ltd. at 5th floor, Center Point. Santacruz (W). Mumbai - 54 (one hour time given to read the statement). Please go through his statement, specifically the responses to question numbers 11, 12 13, 16, 17 to 24. Please confirm that you have read and understood the contents of the above statement and offer your comments on the same. AR

Ans: Sir, I have gone through the statement and I confirm that I have read and understood the contents of the above statement.

Sir, Yes Shri Jatin Shah is accountant and maintains books of account for Shah Coal Pvt. Ltd. and all other group entities including the personal accounts and HUF accounts of my family.

Sir, my responses to the specific question as sought is as below:-

11>Sir, Shri Jatin Shah is an old employee and he handles various responsibilities in our business. He also handles the

affairs of Manglagori Commodeal Pvt. Ltd. and Urja Inspecto Analyser Pvt. Ltd. I have entrusted responsibilities to him. I have nothing more to add to what he has said.

12> Sir, Manglagori is an independent company and all the transactions have been duly accounted for in the books of account of all the transacting parties involved. There are regular interest receipts and payments and also TDS deductions as applicable. I do not understand why Jatin Shah is using the word "Conduit" and also routing of funds that's not correct representation of our transactions.

13 Yes Sir, that is true I agree fully with Jatin Shah

16 Yes Sir, There is need to reconcile. Please provide us one week time to reconcile I agree with what is stated by Shri Jatin Shah

17-24> Sir, I have absolutely no idea what Jatin Shah has stated. All our transactions are entered into tally and are duly accounted for in the books of account. I do not have any idea how the diaries impounded as Annexure-A1 and Annexure-A2 have been maintained. There are references to me, my companies, my family members, my friends and my business associates and I do not transact with these persons in the way shown in the diaries."

Again, in his statement dtd. 04.02 2022 he answers as

"Q 25 During the course of Survey Proceeding uis 133A of the Income Tax Act 1961 on 03.12.2019 in the case of M/S Shah Coal Pvt. Ltd. and others at 5th Ficor, Centre Point, Junction off SV Road and Juhu Road, Santacruz (West)) Mumbai 400054, two diaries -one Red colored of make Maruti Account Book (with Index and various loose papers in between) and one Green colored of make Sunfife Account Book (with index and various loose papers in between) have been found. The same were impounded as Annexure-A1 (written pages 1 to 161) & Annexure A-2 (written Pages 1 to 139) respectively. Please explain the contents of the same.

Ans: Sir. I would like to state that during the course of Survey Proceedings while giving my statement dated 05.12.2019 before survey team, I had expressively denied of having any nexus with transactions recorded in the said diaries.

In my reply dated 08.02 2020 (submitted to investigation wing, Mumbai on 11 02 2020), I had again clearly denied and disowned the two diaries and had requested to keep these diaries apart from other impound materials. I am submitting my letter dated 08.02.2020 as per Annexure 2

I have also filed my letter dated 06.05.2021 for summon received under section 131 of the Act (filed on 07.05.2021 on ITBA portal having acknowledgement number 07052114752001) wherein I have clearly mentioned the facts related to the said diaries. I am submitting my letter dated 07.05.2021 as per Annexure 3.

I once again want to state that since the day of survey I have repeatedly given my explanation/clarification as above that these two diaries neither belong to me nor have any connection with me. Therefore, I have no knowledge about the said diaries and entries made therein."

All the contents of the diaries, including income and expenditure shown in the diaries have been owned by the appellant. As such, there is no material evidence or logical reason to attribute part of the transactions in the diary to Vinay Shah or his family members. It is noted that income, if any, has been credited in the diary and an expenditure has been debited, the source of both having been owned by the appellant himself As far as the expenses mentioned in the diary are concerned, irrespective of the person to whom the expenditure relates the actual funds for such expenditure have been contributed by the appellant and hence, any addition concerning such expenditure will have to be made in the hands of the appellant only

8.26 In absence of any evidence to the contrary, the AO's action in treating part of the transactions in the diary as attributable to other third parties is not found tenable The entries have been maintained by the appellant and knowledge about these

transactions are solely with the appellant. The AO has not controverted this averment made by the appellant both in form of his statement as well as in written submissions. No Incriminating evidence whatsoever has been found in the hands of the other members of the family concerning these transactions. As such, the AO was in error in unilaterally treating part of the transactions as having having been carried out by other members of the family

8.27 In light of the above discussion, it is required to be held that the ledger accounts which have both debit and credit entries but appear to bear the names of family members viz. 'VRS, 'KRS, Kunal', etc are required to be substantially taxed in the hands of the appellant. Accordingly, the peak balance taxed earlier in the hands of Vinay Shah and Ketan Shah should be subsumed in the peak calculated for the appellant. This peak balance income will be in addition to what has already been taxed by AO in the hands of the appellant on substantive basis. In a way, the calculation of peak undertaken by the DDIT is restored subject to the findings of subsequent paragraph. The year wise addition on account of peak balance in the hands of the appellant is as under-

TABLE-I: Year-wise addition on account of Peak Balance

A. Y.	Taxed by AO in the hands of the appellant	Taxed by AO in the hands of Mr. Vinay Shah	Taxed by AO in the hands of Mr. Ketan Shah	Total peak credit to be taxed in appellant
2015-16	8,09,54,300	1,08,05,500	15,22,000	9,32,81,800
2016-17	2,56,20,762	1,06,49,350	25,04,750	3,87,74,862
2017-18	15,19,136	1,50,67,760	14,51,800	1,80,38,096
2018-19	18,35,09,413	1,62,49,100	29,36,075	20,26,94,588
2019-20	-	3,60,58,930	19,25,250	3,79,84,180

Total	29,16,03,611	8,88,30,040	1,03,39,875	39,07,73,526
-------	--------------	-------------	-------------	--------------

8.28 Since, the substantive "addition, arising out of separating the ledgers, in the hands of Vinay Shah and Ketan Shah have been included in the peak calculation of income in the hands of appellant, therefore the reverse protective addition of such amount has no leg to stand and deleted herewith. As a result, **ground no. 5 and ground no 9 are decided accordingly. Ground no. 5 is decided against the appellant and is dismissed while ground no. 9 is decided in favour of the assessee and is allowed to the extent that these ledgers are to be included in the hands of the appellant while computing peak credit in his hands on a substantive basis.**

6.8 Therefore, the separate substantive addition of peak credit made in case of appellant is subsumed in the peak calculated for Mr. Jatin R Shah. Hence, no such addition can be sustained again in the hands of appellant. Further, the amounts treated as undisclosed income u/s 69A and undisclosed expenditure u/s 69C have been subsumed in the additions done in the case of Mr. Jatin R Shah on these accounts to the extent such amounts are not included in the calculation of peak and treated separately in the hands of Sh. Jatin Shah himself. Moreover, since the substantive additions made in the case of Mr. Jatin R Shah have been confirmed as per order in his case, therefore, no protective addition is required elsewhere. In nutshell, no separate additions are warranted in case of appellant on both the accounts- peak credit or u/s 69A and u/s 69C. **The ground no. 3 to 11 of appeal is treated as partly allowed.**

18. We have heard both the parties and also perused the relevant finding given in the impugned orders as well as material referred to before us. As noted above, in this case the entire premise of the AO for making the addition is based on certain entries notings in the diaries found from the possession of Shri Jatin Shah. It is an admitted fact that at all the stages from the

Investigation Wing to the stage of the First Appellate Authority, Shri Jatin Shah has owned up the diary and the contents contained therein and the assessee, i.e. Shri Vinay Shah has denied any recording of any transaction appearing in the said diary. Shri Jatin Shah had offered peak credit as his income which in principle has been accepted by the Investigation Wing, except that Shri Jatin Shah has worked out the peak credit at Rs.49.35 Crores whereas the Investigation Wing has re-worked the peak at Rs.79.13 Crores in the hands of Shri Jatin Shah. The Id. AO though has accepted that the diaries belong to Shri Jain Shah and the income arising out of the said entry shall be assessable in the hands of Shri Jatin Shah, however, at the same time he held that certain ledgers containing abbreviation such as VRS', 'KRS', 'Kunal', etc. were related to the assessee and contained certain personal expenses of Shri Vinay Shah and his family members, therefore, addition based on such ledgers should be made in the hands of the assessee. AO has also relied upon the statement of Shri. Jatin Shah dated 03/12/2019, ignoring the other statements recorded by the Investigation Wing and the Id. AO himself. Accordingly, Id. AO held that notings in the name of Shri Vinay Shah and Shri Ketan Shah will be taxed substantively in their hands whereas all other notings will be taxed substantively in the hands of the Shri Jatin Shah and accordingly, he has bifurcated the notings of both receipts and payments and has proceeded to make the addition of aggregate amount of Rs.11,91,22,132/- on substantive basis for different

assessment years and addition of Rs.62,96,23,260/- on protective basis.

19. First of all, one very important fact to be noted here is that there is no corroborative evidence found from the possession of the assessee or any of his family members with respect to the transactions recorded in the diary found from the possession of Shri Jatin Shah and there was nothing to provide any live link nexus between the entries in the diary which can relate to the family members of Shri Vinay Shah. The only issue was with regard to quantification of peak credit to be taxed in the hands of Shri Jain Shah. Year wise addition on account of peak balance in the hands of Shri Jatin Shah is as under:-

A.Y.	Taxed by AO in the hands of Shri Jatin Shah	Taxed by AO in the hands of Mr. Vinay Shah	Taxed by AO in the hands of Mr. Ketan Shah	Total peak credit to be taxed in Shri Jatin Shah
2015-16	8,09,54,300	1,08,05,500	15,22,000	9,32,81,800
2016-17	2,56,20,762	1,06,49,350	25,04,750	3,87,74,862
2017-18	15,19,136	1,50,67,160	14,51,800	1,80,38,096
2018-19	18,35,09,413	1,62,49,100	29,36,075	20,26,94,588
2019-20	-	3,60,58,930	19,25,250	3,79,84,180
Total	29,16,03,611	8,88,30,040	1,03,39,875	39,07,73,526

20. Thus, when the substantive addition arising out of separate ledgers made in the hands of Shri Vinay Shah and Shri Ketan Shah have been included in the peak calculation of income in the hands of the Shri Jatin Shah, then the reverse protective addition of such amount in the hands of the assessee has no legs to stand because ledger account which have both debit and credit entries but appeared to bear the names of family members viz., 'VRS', 'KRS', 'Kunal', etc. now cannot be substantially taxed in the hands of Shri Vinay Shah or Shri Ketan Shah. Because, when on entire entries, peak has been worked out and taxed in the hands of Jatin Shah then everything gets subsumed in the peak calculated in the case of Shri Jatin Shah. It is a matter of fact that peak balance of income has already been taxed by the ld. AO in the hands of Shri Jatin Shah on substantive basis.

21. In so far as the quantum of peak credit which is liable to be taxed in the hands of Jatin Shah, we will discuss this issue while dealing in the appeal of Shri Jatin Shah. Accordingly, we uphold the order of the ld. CIT (A) holding that the entire entries made in the diary both with regard to debit and credit even which bear the names of family members of Shri Vinay Shah, cannot be taxed in the hand of the assessee as they have been substantively taxed in the hands of Shri Jatin Shah. Accordingly, the order of the CIT (A) is upheld and this issue raised by the department, i.e., ground No.1 in A.Y.2015-16 and ground No. 1 & 2 in A.Y.2019-20 are dismissed.

22. Now coming to the issue No.2 i.e., disallowance of non-genuine losses which has been raised in ground No.2 & 3 of Revenue's appeal for A.Y.2015-16 i.e. in ITA No. 4382/Mum/2024, it had been stated that the assessee is actively engaged in trading equity market through delivery trading and derivative trading. Also, the assessee has earned dividend income. The break-up of the income earned by the assessee out of the various share trading activity is as under:-

Sr. No.	Nature of income	Amount (in Rs.)
1.	Dividend	17,53,460/-
2.	Profit & Loss on Futures & Options	6,30,61,602/-
3.	Long term capital gains	2,81,07,439/-
4.	Short term capital gains	2,86,72,873/-
5.	Profit & Loss on share trading	2,71,057/-

23. Further, with respect to the transaction carried out in the F & O market, the same has been done through various brokers and breakup of profit & loss for each broker is as under:-

Sr. No	Broker Name	Profit/-Loss
1.	Angel Broking F&O	14,12,50,609.97

2.	Angel Broking Pvt. Ltd. (US Dollar Trading)	1,40,72,009.88
3.	Angel Commodities Broking (Gold Copper Silver 8s Zinc)	-2,26,79,006.38
4.	Affluence Shares and Stock Pvt Ltd	-95,97,542.39
5.	Globalworth Securities	-5,40,93,335.00
6.	Kotak Securities Limited	2,59,22,920.44
7.	Trinay Securities Trading Pvt. Ltd.	-3,73,59,620.23
8.	Vijan Shares & Securities Pvt Ltd.	55,45,566.68
	Net total	6,30,61,602.97

Thus, assessee has incurred net profit from all the transaction in F & O market amounting to Rs.6,30,61,602/-.

24. Ld. AO in the assessment order has doubted that transaction entered into with M/s. Trinay Securities Trading Pvt. Ltd. wherein a loss of Rs.3,73,59,620/- has been incurred. The ld. AO observed that in pursuance of part of Falcon Project, a survey action was carried in the case of the assessee to investigate Tax Evasion through trading in Illiquid Derivatives, Options Segment, through Trade Reversal on BSE/NSE/USE. It was alleged that the assessee has purchased and sold illiquid stock options on USE (United Stock Exchange) resulting into non genuine loss of Rs.3.73 Crs. for AY 2015-16.

25. During the course of survey action, statement of Shri Vinay Shah was recorded on 04.12.2019 wherein he was asked details

regarding the trading in the option segment, SEBI order and statement of the broker which was recorded by the department. During his statement, assessee has clearly stated that he was not involved in predetermined trade to adjust books and if any irregularities as per SEBI, were done by the broker for which he has no knowledge. Further, the statement of assessee was again recorded on 27/12/2019 during the post survey proceedings wherein the statement of M/s. Goodluck Securities was shown to the assessee. In response to the same, the assessee incorrectly assumed that due to the said statement as well as SEBI order, the trades done by the broker were not genuine and accordingly, offered to withdraw the losses incurred in case of Vinay Shah HUF in its return of income. However, it is very relevant to note here that no disclosure was made with respect to the loss incurred by the assessee.

26. Before the ld. AO, the assessee had filed all the details pertaining to the transactions carried out with Trinay Securities Trading Pvt. Ltd. and further, the statement of the assessee was also recorded on 04/02/2022 wherein he clarified that the details relating to the transaction has already been submitted to prove the genuineness. The assessee had also explained in response to the show-cause notice dated 24/03/2022 that trades were done through proper exchange mode and the genuineness cannot be doubted based on some report or any order of SEBI which is not at all relevant in the case of the assessee.

27. However, the ld. AO has heavily relied upon the ad interim order of the SEBI and rejected the various explanation of the assessee holding that the loss incurred on trading in options are not genuine and disallowed the same. The AO in the assessment order passed as made various observation which summarized as under:-

- It was alleged that assessee has done artificial and synchronized trading in the BSE by engaging in reversal trades in illiquid stock options resulting in non-genuine business losses based on the interim order of SEBI.
- The AO contended that assessee has undertaken identical buy & sale trades for contracts and consistently recorded losses. Further, it was also alleged that identical quantities of contracts are traded with the same counterparty for both the buy trade and sell trade.
- Further it was alleged that each of the trades have been squared within the same day and also there is large difference between buy rates and sell rates.
- It was further observed that assessee was consistently making loss by trading in options on individual stocks/currency. Trading of these transactions appeared abnormal because they were consistently making significant loss by trades which were reversed with same counter parties either on the same day or the next day.

- The losses and profits on reversal trades are a kind of tax evasion where the share broker facilitates either himself or by conniving with another broker to generate profit and loss for clients as per their requirement which may arise for varied reasons. In this regard, AO has relied upon the statement of various third parties recorded u/s 131.
- AO has also relied upon the statement of the assessee during the survey action to conclude that the losses are not genuine.

28. Accordingly, ld. AO has disallowed the loss.

29. The ld. CIT(A) has allowed the claim of the loss amounting to Rs.3,73,59,620/- on the transaction entered into with M/s. Trinay Securities Trading Pvt. Ltd., The findings and the observation of the ld. CIT(A) are summarized hereunder:-

- The Id. CIT(A) observed that assessee, is a regular trader in option / currency derivatives and the said fact has not been disputed by AO Further, it was also observed that assessee been working through various brokers in past as well as during the year. Such brokers include Angel Broking F&O, Angel Broking Commodities, Kotak Securities Limited, Affluence Shares and StockPvt. Ltd., Edelweiss Broking and Trinay Securities Trading Pvt. Ltd.
- The ld. CIT(A) noted that assessee has shown profit from transactions from some brokers while losses in other transactions and the consolidated income / loss has been shown in the return of income and AO has not raised doubts about authenticity of trades done through any other broker. Hence, it is

inferred that assessee has not entered into an isolated transaction with a pre-meditated intention but has been regularly trading in the same.

- No incriminating documents have been found at any premises, either brokers, counter parties or the assessee themselves to support the stand of AO.
- The ld. CIT(A) noted that there is no evidence that the assessee is connected with the counter-parties in the trade and there is no grievance of any of the investor or USE. Either during the course of investigations carried out under Falcon Project, during the survey u/s 133A conducted at the office premises of the assessee or during the assessment proceedings, no such evidence has been gathered.
- The ld. CIT(A) noted that assessee in support of the transaction, has filed copies of the contract notes in respect of the transactions in question of derivative trading, copies of the bank statements reflecting payment of requisite margin money to brokers, copies of the statements of accounts of Brokers in the books of the assessee company etc.
- The ld. CIT (A) noted that there are 17 counterparties to the assessee's transaction as reproduced by ld.AO in its order. However, a perusal of the SEBI's ad interim order reveals that none of these parties are mentioned in the said order as having indulged in synchronised trading. In absence of any such

evidence about the parties, the Id. AO could not have treated the entire volume of transactions as being bogus in nature.

- With regards to the acceptance of Shri Vinay R Shah in his statement, the Id. CIT (A) observed that Shri Vinay Shah has offered to withdraw the loss claimed in respect of the derivative transactions in light of the statement of the proprietor of Goodluck Securities and ad interim SEBI order. Such statement was on the presumption that the statement of the proprietor of Goodluck Securities was correct and that the ad interim SEBI order was in force.
- Ld. CIT(A) further observed that Id.AO has also relied on the statement of certain third parties viz Arun Shah and Sunil Kayan and Ms Mousmi Dev Roy, proprietor of M/s Goodluck Securities who have admitted before the Investigation Unit that they have engaged in premeditative transactions to generate desired loss /gain in exchange of commission of 2%. However, neither the complete statements of these persons have been provided to the assessee nor they have been allowed to be cross examined. No incriminating documents have been located at these premises concerning the assessee.
- With regards to the SEBI order, ld. CIT (A) observed that on 20th August, 2015, SEBI passed an "Ex-parte Ad Interim Order" pointing out synchronised reversal trades in illiquid option /currency derivatives carried out by certain traders through specific brokers and barring such identified traders from trading as an interim measure. This order forms the basis of the AO's

presumption that the trades conducted by the assessee are pre-meditated synchronised reversal trades conducted manipulated prices to generate artificial loss / gain.

- Ld. CIT (A) observed that such order by the SEBI was only an 'exparte ad interim order' without providing any opportunity to the parties and comprising of 'prima facie' observations is found to be relevant. It is also noted that vide a vide subsequent order dated 22.08.2016, SEBI has provided interim relief to the assessee like permission to buy/sell in commodities for taking hedging position, liquidating shares, mutual funds, etc.
- **Further, the ad interim order was vacated by subsequent order dated 05.04.2018. Therefore, once the order (which has been heavily relied by the AO) had been vacated, the observations/findings of SEBI in the said order did not survive and hence could not be the sole factor in deciding the genuineness of the trade conducted by the assessee.**
- **Ld.CIT(A) also noted that the final order of SEBI vacating the earlier order was available even at the time of framing the assessment but the same has not been commented upon by AO.**
- Ld.CIT(A) has also placed reliance on the decision of Hon'ble Delhi ITAT in the case of ACIT vs. M/s Kundan Rice Mills Ltd. in ITA No. 853/Del/2010 dated 09.07.2020 involving the same sets of fact which is elaborately discussed in the CIT(A)
- Ld. CIT(A) also noted one of the reasons cited by the ld.AO in his order for treating the transactions as manipulative is that the

price at which the options have been traded within a very short period of time show a wide variation and have no relation with the price of underlying asset indicating a collusive transaction. In this regard Id.CIT(A) noted that there is no way of ascertaining the counter party bidding for the offer in an automated screen based environment and that the price of derivatives comprise of various elements, the price of underlying script being one of the many factors. Further, of this issue Id.CIT(A) has also referred to decision of the Hon'ble Delhi Tribunal in the case of ACIT vs M/s Kundan Rice Mills Ltd. (supra).

- Further, with regards to reliance placed by Id. AO on decision of the Supreme Court in the case of Rakhi Trading Pvt Ltd., the CIT Id. AO noted that the facts of the said case are different from the present assessee.

30. We have heard both the parties and also perused the relevant finding given in the impugned orders. The entire premise of the Id. AO for treating the transaction with M/s. Trinay Securities Trading Pvt. Ltd., is based on ad interim order of SEBI holding that assessee has done artificial and synchronized trading in the BSE by engaging in reversal trades in illiquid stock option which has resulted into a non-genuine business loss. Since assessee has also undertaken identical buy and sale of trades which has recorded the loss and therefore, the transaction is not genuine. The Id. CIT (A) from the basis of facts and material on record and after considering the reasoning given by the Id. AO has noted that assessee has been a regular trader in

option / currency derivatives and has worked through various brokers in the past as well as during the year and assessee had shown profits from transaction with some brokers while losses in other transactions. The consolidated income / loss declared in the return of income have not been doubted nor AO has carried out any enquiry to dislodge the authenticity of the trades done through any broker. In such facts, it cannot be stated that only one isolated transaction was pre-meditated only to incur loss.

31. Further, during the course of survey not an iota of evidence or incriminating documents have been found from any premises either from the brokers, counter parties or the assessee nor there is any information that assessee is connected with counter parties in the trade. The investigations carried out under the Falcon project and during the survey u/s.133A at the office premises of the assessee, no evidence has been gathered or found which can even remotely suggest that one particular transaction with M/s. Trinay Securities Trading Ltd., is sham or non-genuine. Once the assessee has filed copies of contract notes in respect of the transactions of the derivative trading, copy of bank statements, reflecting payment of requisite margin money to the brokers, copy of statement of accounts of the broker in the books of the assessee company etc., then to its belief such documentary evidence, ld. AO should have brought some material carried out enquiry to bring any adverse material on record.

32. One very important fact which has been noted by the Id. CIT (A) are that there are 17 counter parties to the assessee's transaction which has been reproduced by the Id. AO in his order however, in the ad-interim of SEBI, none of these parties have even been mentioned or there is any whisper that they were indulged in synchronized trading. As regards to the statement of the assessee, during the survey wherein assessee has offered to withdraw the loss in light of the statement of the property of Goodluck Securities and ad-interim SEBI order, the same was given on the presumption that Ad-interim SEBI order was in force and the statement of Goodluck Securities was correct. However, nowhere assessee had finally offered any such loss or offered to disallow such loss.

33. In so far as SEBI ad-interim order, the same was passed *exparte* and it is also a matter of fact vide subsequent order dated 22/08/2016, SEBI has provided interim relief to the assessee giving permission to buy and sale commodities for taking position, liquidity shares, mutual funds etc. Later, even Ad-interim was vacated by the subsequent order of SEBI vide order dated 05/04/2018. Thus, the very basis on which Id. AO has disallowed the loss i.e. Ad-interim order of the SEBI itself stands vacated. Thus, his entire premise of the AO falters. Accordingly, the finding of the Id. CIT (A) is upheld, which in sum and substance is synthesized in the following manner:-

i. Assessee is a regular and bonafide trader in derivative segment over many years has not been doubted by the AO.

ii. Assessee has been taking services of many brokers to trade in this segment and has, during this year, traded through Trinay Securities. None of the other transactions have been doubted by the AO.

iii. With regards to the transactions done through Trinay Securities, the assessee has provided all the necessary documents which have not been rebutted by the AO

iv. It has not been demonstrated by AO that assessee has colluded with the counter parties to generate fake loss.

v. The transactions have been done on the screen based trading system of Stock Exchange by payment of STT

vi. The statement of Shri Vinay Shah has been recorded at the time of assessment proceedings and he has reiterated the genuine nature of transactions claiming that all necessary documents have been submitted before the AO.

vii. The SEBI ad interim order dated 20.8.2015 which has been heavily relied by AO stands negated.

34. Thus, in light of these facts the addition made by the AO cannot be sustained and accordingly, the finding of the Id. CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

35. Now coming to the issue of disallowance u/s.14A which is there in assessee's appeal being ground No.17 for A.Y.2015-16,

ground No.12 in A.Y.2017-18, ground No.13 in A.Y.2018-19 and ground No.12-13 in A.Y.2019-20.

36. The facts in brief are that assessee is a regular trader and investor in shares and securities. As a result of his investments, the assessee has also earned certain exempt income. The ld. AO observed that no disallowance u/s 14A of the Act has been made by the assessee as against the exempt income earned by it. Accordingly, applying the provision of section 14A r.w.r 8D the Ld. AO has computed the disallowance for each year. The said findings of the AO has been confirmed by the Ld, CIT(A).The year-wise disallowance and exempt income earned by the assessee is tabulated as under :-

Assessment Year	Exempt income earned	14 r.w.r 8D disallowance
2015-16	3,08,11,729	58,88,713
2017-18	6,57,08,86	1154618
2018-19	1,45,52,070	4,77,048
2019-20	1,24,471	1,24,471

37. Before us, the contention of the ld. Counsel for the assessee is that the assessee has not incurred any expenditure for earning of any exempt income and ld. AO has failed to establish as to how assessee has incurred expenditure in respect of the exempt income. He further submitted that ld. AO has not recorded his satisfaction to establish that there was some direct nexus of the

expenses incurred in respect of exempt income which is mandatory requirement u/s.14A r.w.r. 8D. However, as an alternative plea, the ld. Counsel submitted that ld. AO while computing the average value of the investments as referred in Rule 8D, has considered all the investments made by the assessee. In this regard it is submitted that this is a settled issue by the decision of various courts that for the purpose of 14A disallowance, only those investment which have yielded exempt income should only be considered. In this regard, he placed reliance on the decision of **Hon'ble Delhi High in the case of Cargo Motors (P.) Ltd. vs. DCIT reported in 145 taxmann.com 641**, wherein it was held that; for purpose of making disallowance of expenses under section 14A as per rule 8D, only those investments were to be considered for computing average value of investments which yielded exempt income during relevant year. Before us, he has also given the working of disallowance after considering only those investments which has yielded exempt income during the year.

38. After considering the aforesaid submissions and on perusal of the relevant finding given in the impugned order, we find that assessee has earned exempt income on investments made and once there is exempt income, then the first onus is on the assessee to show whether assessee has incurred any expenditure for earning of the exempt income then it needs to be quantified; or if no such expenditure is attributable out of expenditure debited to the profit and loss account, then having regard to the nature of expenses debited and accounts assessee has to show

that no expenditure can be attributed. Onus then shifts to the Ld. AO to record his satisfaction having regard to the nature of account once the claim of the assessee has been made and after recording his satisfaction he can proceed to disallow u/s.14A r.w.r. 8D. Accordingly, we do not agree with the contention of the ld. Counsel that no disallowance can be made, because no where assessee has given any working as to why no expenditure can be attributed. However, we agree with the alternate contention of the assessee that disallowance u/s.14A should be confined only after considering those investments which have yielded exempt income during the year under consideration. The year wise disallowance after considering those investments which have yielded exempt income during the year is as under:-

AY	14A Working as per AO	Exempt Income	14A Working as per Assessee
2015-16	58,88,713	3,08,11,729	29,63,038
2016-17	11,54,618	6,57,08,865,	6,73,886
2018-19	4,77,048	1,45,52,070	26,364
2019-20	1,24,471	1,24,471	1,236

39. Accordingly, AO is directed to verify the working and the disallowance u/s.14A should be restricted only after considering those investments which have yielded exempt income during the year as per the working given above in the above mentioned

assessment years. Accordingly, the grounds raised by the assessee are partly allowed.

Jatin Rajnikant Shah

40. The additions and the issues which has been raised by the department as well as by the assessee in various issues are summarized as under:-

Addition	2015-16	2016-17		2017-18		2018-19	2019-20	
	Assessee Appeal	Assessee Appeal	Department Appeal	Assessee Appeal	Department Appeal	Assessee Appeal	Assessee Appeal	Department Appeal
	ITA 4340/MUM/2024	ITA 4338/MUM/2024	ITA 4469/MUM/2024	ITA 4336/MUM/2024	ITA 4468/MUM/2024	ITA 4335/MUM/2024	ITA 4334/V1UM/2024	ITA 4467/MUM/2024
Undisclosed Income - Substantive - Peak	9,22,71,452	2,69,67,169	-	1,80,38,096	-	20,26,94,588	3,79,84,180	-
Addition u/s. 69A - Unexplained Money			2,55,78,795	-	1,37,34,550	-	-	5,08,37,100
Addition u/s. 69C - Unexplained Expenditure		-	1,37,71,102	-	1,76,02,060	-	-	5,93,62,500
Total Addition	9,22,71,452	2,69,67,169	3,93,49,897	1,80,38,096	3,13,36,610	20,26,94,588	3,79,84,180	11,01,99,600

44. The first issue which is addition on account of undisclosed income based on diaries which has been raised by the assessee in various grounds in the following years:-

- Ground no. 3,4,5 of assessee appeal for AY 2015-16.(ITA No. 4340/MUM/2024)
- Ground no.2,3,4 of assessee appeal for AY 2016-17 (ITA No 4338/MUM/2024)

- Ground no.2,3,4 of assessee appeal for AY 2017-18 (ITA No. 4336/MUM/2024)
- Ground no.2,3,4 of assessee appeal for AY 2018-19 (ITA No. 4335/MUM/2024)
- Ground no.2,3,4 of assessee appeal for AY 2019-20 (ITA No. 4334/MUM/2024)

41. As noted above in the case of Vinay Ramanlal Shah, during the course of survey action on 03/12/2019 two diaries were found from personal possession of Shri Jatin Shah who is an employee of assessee group. In his initial statement on 03/12/2019, he has stated that particulars as mentioned in the diaries were recorded by him as per the instruction of Shri Vinay Shah. Immediately, next date i.e. 04/12/2019, Shri Vinay Shah whose statement was also recorded on 04/12/2019 at the same premises, wherein he was specifically asked about the replies given by Shri Jatin Shah regarding entries in the diaries. He denied having any knowledge regarding the diaries or its contents. Thereafter, once the assessee received the copy of the statement on 18/01/2020, he retracted from the said statement given by filing a retraction letter on 04/02/2020 submitted before the Dy. Director of Income Tax (Investigation). In this letter assessee has completely owned up the diaries and the transactions recorded therein and have also categorically stated that these transactions had nothing to do with the Mr. Vinay Shah or his family members. After such retraction given by

assessee, Shri Vinay Shah has also submitted that a clarification letter on 08/02/2020 before DDIT(Inv).

42. Later on another statement of Shri Jatin Shah was recorded on 30/09/2020 before DDIT (Inv) wherein he was specifically asked regarding the contents of the diary and in the said statement, he categorically admitted that the diary belonged to him and there was no relation with the any of his entities with Shri Vinay Shah or his family members. He also explained the contents of the diary wherein he had stated that these entries pertain to his financing activity deriving of any individual capacity for arranging loans & advances to other parties for which he used to charge brokerage of certain percentage basis which is also derived in cash. In order to buy peace before the Investigation Wing, Shri Jatin Shah offered income on account of said diaries of peak credit basis of Rs.49.35 Crores. The detail of which has already been incorporated in the appeal of Shri Vinay Shah. The Investigation Wing accepted the contention of Shri Jatin Shah that diary belongs to him and all the transactions noted therein pertain to Shri Jatin Shah. However, the Investigation Wing has re-worked the peak credit by segregating the ledger accounts in the diaries in the following three parts. the same is tabulated as under :-

- Those ledger which was both debit and credit entries are considered for peak working.
- Those ledger which only have the debit entries considered as unexplained expenditure u/s 69C of the Act.

- Those ledger which have only credit entries considered as unexplained income u/s 69A of the Act.

43. The investigation wing has treated the entire transaction in the hands of the Jatin Shah and thus re-worked the peak income in the hands of Shri Jatin Shah at Rs. 79.13 cores.

44. During the course of the assessment proceeding before the ld. AO, again the statement of Shri Jatin Shah as well as Shri Vinay Shah was recorded on 17/02/2022 and 18/02/2022 wherein he has reconfirmed his position and stated that diary belongs to him and there is no co-relation with Shri Vinay Shah and Shri Vinay Shah also in his statement recorded on 04/02/2022 has also reaffirmed his position.

45. The ld. AO although relied upon the working done by the investigation wing and even held that the diaries belongs to the assessee and not Shri Vinay Shah, but he has taken drastic different position from the working done by the investigation wing. He has segregated ledgers containing abbreviations having reference to Shri Vinay Shah and Shri Ketan Shah and held that transaction in their ledger names were liable to be taxed in their hands. Such ledgers were excluded from the overall working in the hands of the assessee. He also noted that there were certain more ledgers contained in the diaries which had only receipts or payments. Accordingly, the ld. AO has reworked the peak credit in the hands of the assessee and other assessees, i.e. Shri Vinay Shah and Shri Ketan Shah in the following manner:-

A.Y.	Total Payments	Total Receipt	Peak	Only receipts ledger	Only Payments ledger	Total addition
2015-16	29,42,15,078	33,58,69,400	9,32,81,800	84,20,450	74,10,102	10,91,12,352
2016-17	43,02,06,240	42,56,98,125	3,87,74,862	2,55,78,795	1,37,71,102	7,81,24,759
2017-18	71,49,27,026	68,79,20,272	1,80,38,096	1,37,34,550	1,76,02,060	4,93,74,706
2018-19	68,88,46,054	43,13,46,439	20,26,94,588	15,30,500	5,23,63,415	25,65,88,503
2019-20	67,54,56,720	66,02,23,392	3,79,84,180	5,08,37,100	6,92,59,822	15,80,81,102
2020-21	33,44,52,228	45,01,16,739	55,79,600	4,79,83,000	4,39,01,370	9,74,63,970
Total	3,13,81,03,346	2,99,11,74,367	39,63,53,126	14,80,84,395	20,43,07,871	74,87,45,392

46. The ld. AO then excluded ledgers containing abbreviation such as 'VRS', 'KRS', 'Kunal', etc., holding that they were related to Shri. Vinay Shah and family members which contained personal expenses and the same were taxed in the hands of Shri Vinay Shah and Shri Ketan Shah which we have already dealt in the appeal for various issues in the case of Shri Vinay Shah. The working of the same has been calculated by the ld. AO in the following manner:-

In the case of Mr. Vinay Shah						
A.Y.	Total Payments	Total Receipt	Peak	Only receipts ledger	Only Payments ledger	Total addition
2015-16	1,99,46,250	1,25,42,750	1,08,05,500	-	-	1,08,05,500
2016-17	1,83,79,350	44,67,000	1,06,49,350	-	-	1,06,49,350
2017-18	2,13,90,060	61,83,900	1,50,67,160	-	-	1,50,67,160
2018-19	2,39,91,100	77,42,000	1,62,49,100	-	1,00,000	1,63,49,100

2019-20	4,08,83,930	48,25,000	3,60,58,930	-	98,97,322	4,59,56,252
2020-21	1,92,63,900	2,02,10,000	18,83,400	-	1,84,11,370	2,02,94,770
Total	14,38,54,590	5,59,70,650	9,07,13,440	-	2,84,08,692	11,91,22,132

In the case of Mr. Ketan Shah						
A.Y.	Total Payments	Total Receipt	Peak	Only receipts ledger	Only Payments ledger	Total addition
2015-16	15,22,000	-	15,22,000			15,22,000
2016-17	27,76,000	2,71,250	25,04,750		-	25,04,750
2017-18	33,51,600	19,48,500	14,51,800		-	14,51,800
2018-19	29,84,775	-	29,36,075		1,06,69,500	1,36,05,575
2019-20	19,25,250	-	19,25,250		0	19,25,250
2020-21	48,46,200	11,50,000	36,96,200		0	36,96,200
Total	1,74,05,825	33,69,750	1,40,36,075		1,06,69,500	2,47,05,575

47. After excluding the above ledger, the addition confirmed by the AO in the hands of the assessee is as under :-

In the case of Mr. Jatin Shah						
A.Y.	Total Payments	Total Receipt	Peak	Only receipts ledger	Only Payments ledger	Total addition
2015-16	27,27,46,828	32,33,26,650	8,09,54,300	84,20,450	74,10,102	9,67,84,852
2016-17	40,90,50,890	42,09,59,875	2,56,20,762	2,55,78,795	1,37,71,102	6,49,70,659

2017-18	69,01,85,366	67,97,87,872	15,19,136	1,37,34,550	1,76,02,060	3,28,55,746
2018-19	66,18,70,179	42,36,04,439	18,35,09,413	15,30,500	4,15,93,915	22,66,33,828
2019-20	63,26,47,540	65,53,98,392	-	5,08,37,100	5,93,62,500	11,01,99,600
2020-21	31,03,42,128	42,87,56,739	-	4,79,83,000	2,54,90,000	7,34,73,000
Total	2,97,68,42,931	2,93,18,33,967	29,16,03,611	14,80,84,395	16,52,29,679	60,49,17,685

48. Further, AO also held that the diaries are inextricably linked with the assessee and therefore, addition made in the case of Shri Vinay Shah and Shri Ketan Shah were made in the hands of the assessee on protective basis since assessee has not offered the income in his return of income. In view of the above, ld. AO has made addition on various counts based on the notings contained in the diaries in the hands of the assessee.

49. The ld. CIT (A) by and large accepted the contention of the assessee and his findings can be summarized in following part-

i. The Ld CIT (A) in its order stated that once the AO has accepted that the ledgers in the diary have been maintained by assessee in his personal capacity, the funds utilised for making the transactions belong to the him and that all the transactions noted within the diary related to his financial business, it was not open for AO to split the transactions and attribute part of such transaction to another third party unless there were compelling-reasons for the same.

ii. The Ld. CIT(A) observed that no corroborating evidence has been found in the possession of Shri Vinay Shah and other family members with respect to these transactions. AO has not

bought on record any other evidence which could provide live link between the diaries and family members of Sh. Vinay Shah. The Ld. CIT (A) noted that AO has relied only on the first statement of assessee which was modified later. On the other hand, Shri Vinay Shah, right from the date of survey, when his own statement has been recorded, denied any knowledge about the diaries. This fact has nowhere been disputed by the AO.

Re: Entries recorded in the diary are rough jotting/dumb documents

i. The assessee has also submitted before the AO as well as before the CIT(A) that many entries in the diary are not actual but are mere rough jottings made for personal purpose. However, the said contention of the assessee was rejected by the Ld. CIT(A) by stating that entries in the diaries are preciously recorded and the same cannot be said to be rough jottings.

Re: Addition of commission income on the transactions recorded in the diaries;

i. On a without prejudice basis, assessee during the course of assessment as well as during the course of appellate proceeding before the Ld CIT (A) submitted that assessee was engaged in the financing activity by arranging loans and advances between the parties and the said notings are recorded in the said diaries out of which the derives only commission/brokerage income. He was also engaged as an agent to transfer funds from one place to another for which he also charged commission.

ii. The assessee also explained that there was no need of own cash being used since the cash was merely arranged between the parties as per their needs for which he charged brokerage @ 0.1% of transaction value in cash.

However all these contentions has been rejected by the Ld. CIT (A).

50. Assessee had also submitted before us and before the ld. AO and ld. CIT (A) that nature of the financing activity can be gauged from the pattern of transactions recorded in the diaries. Thus, assessee was merely acting as a facilitator between the two parties who wanted to give and take loans. It was also pointed out that the very fact that fact assessee was earning commission income for arranging the transaction has been stated by him at various instances in his statement recorded before the investigation wing as well as before the AO. The relevant part of the statement is reproduced as under-

Statement of Jatin Shah recorded on 30.09.2020

Q.23 Kindly state as to whether interest or brokerage income was received to you in the course of financing activities?

Ans: Yes sir interest and brokerage income in cash was received to me which is also a part of the cash transactions found in the two diaries.

Statement of Jatin Shah recorded on 18/02/2022 by the AO

Q.38 It is seen from your return of income for various assessment years that you don't have capacity to be involved in the business of giving and taking of cash of the magnitude mentioned in the diary. Tetal of debit entries mentioned in the diary in 6 years is Rs. 3,47,27,91,589/- and total of credits entries mentioned in

diaries in 6 F.Y.s is Rs. 322,22,47,454/-. Please explain the same. In this context, also explain why your post survey contentions should not be treated as an afterthought to protect Mr. Vinay R. Shah, director of M/s. Shah Coal Pvt. Ltd.?

Ans. Sir, I would like to state that I was doing this business of arranging finance for various persons totally in cash in my own capacity to earn commission. For earning the commission income, nobody has to invest any big amount in the business. Rather person who is engaged in the business of arranging finance needs to have good relations with the people. I am in employment since last 25 years and for last 13 years I am with M/s. Shah Coal Pvt. Ltd. In this period, I have developed my own relations with various persons of means. Using those relations, I have done this business which has been recorded in diaries. To avoid further questioning during survey proceedings on the contents of diaries, I had stated that contents of these diaries belonged to Shri Vinay R. Shah.

Q.41 You are claiming that you were running a parallel business of financing activity in cash. Please explain the modus operandi of this business.

Ans. Sir, this is a business where I am earning the commission for arranging funds for the person who needs funds for small time period and person who want to give his funds for small time period and in addition to the same sometime, I have also given services for collecting payment from one place and delivering the same at another place. This business does not require capital to be employed rather this business always needs good connections. Under this I have generally earned commission income for rendering services to various people. In this type of business, commission earned is 10 paisa for Rs 100 of transaction value.

Q.61 If you have earned only commission than how you have owned up all unaccounted cash transactions in your statement dated 27.09.2020 before Investigation Wing, Mumbai.

Ans. Sir, it is true that I am earning only commission income from the said transactions as recorded into these diaries. Further, the transactions recorded in diaries are of old period i.e. from FY 2014-15 to FY 2019-20. However, at that time I did not remember

complete details for the ledger accounts maintained by me in diaries. I received cash from one person and deliver the same to other and the details of transaction done by me in this manner were recorded therein. However, I do not have any document to prove the statement that I have earned only commission income from the said transactions. Accordingly, to avoid litigations and to buy peace of mind I was ready to accept the amount recorded into diaries and offered the unaccounted income before investigation wing.

51. Thus, the contention of the assessee has been that it has earned commission/brokerage income to arrange such transactions. However, the same has been rejected by Id. AO on the ground that assessee has not provided the identity of the parties and has himself offered income on peak credit basis.

52. In this regard, it has been submitted that the identity of the parties has already mentioned in the impounded diaries and therefore, the question of proving identification doesn't arise. It has been clarified that in case of facilitation of transfer of cash, the assessee was not required to maintain the details of the parties once the commission of the assessee is received. Accordingly, it has been submitted that such peak was accepted by the assessee solely for the purpose of buying peace of mind and avoid litigation and on a presumption that there is no evidence to show the financing activity, he accepted the transaction as his own in order to avoid duplication of addition out of the same cash amount and he had offered income on peak credit basis. However, the fact and truth remains that the transaction pertains to facilitation of financing activity and the

income which has been earned by the assessee is only brokerage/commission income.

53. Further, it was also submitted that that the assessee is a man of small means. He doesn't possess huge wealth which would justify the addition on peak credit which would mean that the source of loan funds belongs to the assessee. It is also submitted that even in course of survey proceedings, the department has not found any kind of cash, investment or assets which corroborates the amount of peak addition added by the AO in the assessment order.

54. However, the above contention of the assessee (for considering only commission as its income) was rejected by Ld. CIT(A) by stating that there is no evidence in the diary indicating that on each cash amount given, any commission of 0.01% has been charged by the assessee.

55. We have heard both the parties and also perused the relevant finding given in the impugned order. In so far as assessee's plea that only commission of 0.01% which has been charged by the assessee alone should be taxed and not the peak credit, because there was no cash investment or assets were found which can corroborate the peak addition added by the ld. AO, we are not able to accept his arguments. We agree with the reasoning and finding of the ld. CIT (A), because once the entry and the transactions entered in the diary has been accepted by the assessee that he was involved in the giving cash loans, then onus was on the assessee to show that there was no initial

investment made by the assessee. The peak takes into account not only investment but the income element embedded in such kind of undisclosed transactions. Accordingly, we confirm the concept of the addition made on account of peak credit and reject the assessee's contention that only commission income should have been taxed.

56. Now coming to the addition of the transactions recorded in the diaries based on peak, the Id. CIT (A) has noted that in the present case, the income arising out of the diaries has to be added based on peak working. With regards to the ledger alleged to be belonging to Shri Vinay Shah and family, the Id. CIT(A) noted that once AO has accepted the assessee's submission that ledgers in the diary have been maintained by him in his personal capacity, the funds utilised for making the transactions belong to the assessee and that all the transactions noted within the diary related to his financial business, it was not open to him to split the transactions and attribute part of such transaction to another third party unless there were compelling reasons for the same. The Id. CIT(A) noted that no corroborating evidence has been found in the possession of Shri Vinay Shah and other family members with respect to these transactions during the course of survey. Moreover, Vinay Shah has never accepted the transactions recorded in the said diaries. Accordingly, the Id. CIT (A) held that the transaction which alleged to be belong to Shri Vinay Shah and family should not be considered separately. The Id. CIT(A) has then re-worked the peak working after including the ledgers which were allegedly belong to Shri Vinay Shah and

family. The re-worked peak as computed by the Id. CIT(A) is reproduced as under :-

A.Y.	Taxed by AO in the hands of the assessee	Taxed by AO in the hands of Mr. Vinay Shah	Taxed by AO in the hands of Mr. Ketan Shah	Total peak credit to be taxed in assessee
2015-16	8,09,54,300	1,08,05,500	15,22,000	9,32,81,800
2016-17	2,56,20,762	1,06,49,350	25,04,750	3,87,74,862
2017-18	15,19,136	1,50,67,160	14,51,800	1,80,38,096
2018-19	18,35,09,413	1,62,49,100	29,36,075	20,26,94,588
2019-20	-	3,60,58,930	19,25,250	3,79,84,180
Total	29,16,03,611	8,88,30,040	1,03,39,875	39,07,73,526

57. At this point it will be relevant to deal the issue No. 2 & 3 which is a separate taxation of unaccounted income and expenditure added u/s.69A and 69C to know what could be the net addition on account of peak credit and unexplained income and expenditure. This issue has been raised vide separate grounds in various issues which is summarized as under:-

Issue no.2 Addition on account of undisclosed money u/s 69 A-

- Ground no.6 of assessee appeal for AY 2015-16 (ITA No.4340/MUM/2024)
- Ground no.5 of assessee appeal for AY 2016-17 (ITA No.4338/MUM/2024)
- Ground no. 1 of department appeal for AY 2016-17 (ITA No.4469/MUM/2024)

- Ground no. 1 of department appeal for AY 2017-18 (ITA No.4468/MUM/2024)
- Ground no. 1 of department appeal for AY 2019-20 (ITA No.4467/MUM/2024)

Issue no.2 Addition on account of unexplained expenditure u/s

69C-

- Ground no.5 of assessee appeal for AY 2017-18 (ITA No.4336/MUM/2024)
- Ground no.5 of assessee appeal for AY 2018-19 (ITA No.4335/MUM/2024)
- Ground no.5 of assessee appeal for AY 2019-20 (ITA No.4334/MUM/2024)
- Ground no. 2 of department appeal for AY 2016-17 (ITA No.4469/MUM/2024)
- Ground no. 2 of department appeal for AY 2017-18 (ITA No.4468/MUM/2024)
- Ground no. 2 of department appeal for AY 2019-20 (ITA No.4467/MUM/2024)

58. The Id. CIT(A) in its order has accepted stand of AO and DDIT that the ledger which contains only debit or credit entries are required to be taxed separately either under section 69 A or section 69C of the Act. The Ld. CIT (A) while doing so, has also considered all those ledger which were taxed in the hands of Shri Vinay Shah and Shri Ketan Shah u/s 69A or 69C of the Act. The total of such unaccounted receipt and expenditure as computed by the Id. CIT (A) is reproduced as under:-

A.Y.	Total receipts to be taxed in appellant	Total payments to be taxed in appellant

2015-16	84,20,450	74,10,102
2016-17	2,55,78,795	1,37,71,102
2017-18	1,37,34,550	1,76,02,060
2018-19	15,30,500	5,23,63,415
2019-20	5,08,37,100	6,92,59,822
	10,01,01,395	16,04,06,501

59. The Ld. CIT (A) has however allowed the telescoping benefit to the assessee. He observed that the funds arising out of the transactions contained in the diaries represent a common pool of funds and hence, income which has come into the system should be deemed to have been utilised for either making fresh loans or for incurring expenditure. Since both, the income as well as the expenditure have been noted in the same books and are a part of the same business activity benefit of telescoping while determining quantum of unaccounted expenditure should be allowed. Hence, he held that only the net income year wise after reducing corresponding expenditure will be taxed in the respective years. In case the expenditure is more than the income, the excess expenditure will be taxed in such year. Accordingly, the Ld. CIT (A) has re-computed the net addition to be made u/s 69A or 69C of the Act which is tabulated as under:-

A.Y.	Unexplained income u/s 69A	Unexplained expenses u/s 69C

2015-16	10,10,348	-
2016-17	1,18,07,693	-
2017-18	-	38,67,510
2018-19	-	5,08,32,915
2019-20	-	1.84,22,722
Total	1,28,18,041	7,31,23,147

60. Further, the Ld. CIT (A) has allowed that telescoping of the above addition against the peak additions. The net peak addition confirmed the Id. CIT (A) is thus tabulated as under :-

AY	Total Addition	Net Addition u/s 69C	Net Peak
2015-16	9,32,81,800	10,10,348	9,22,71,452
2016-17	3,87,74,862	1,18,07,693	2,69,67,169
2017-18	1,80,38,096		1,80,38,096
2018-19	20,26,94,588		20,26,94,588
2019-20	3,79,84,180		3,79,84,180
Total	39,07,73,526	1,28,18,041	37,79,55,485

61. Thus, the Id. CIT(A) in way has accepted the stand of the Id. AO and Id. DDIT that the ledger which contains only debit or

credit entries are required to be taxed separately either under section 69A or section 69C of the Act. The Ld. CIT(A) has considered all those ledger which were taxed in the hands of Shri Vinay Shah and Shri Ketan Shah after computing the unaccounted receipt and expenditure. The ld. CIT(A) has given a telescopic benefit of the assessee and has separately worked out the net peak addition and the addition u/s.69A and 69C, which for the sake of ready reference is summarized in the following manner:-

AY	Net Peak	Addition u/s 69A	Addition u/s 69C	Total Addition after CIT(A) order
2015-16	9,22,71,452	10,10,348	.	9,32,81,800
2016-17	2,69,67,169	1,18,07,693		3,87,74,862
2017-18	1,80,38,096	,	38,67,510	2,19,05,606
2018-19	20,26,94,588	_	5,08,32,915	25,35,27,503
2019-20	3,79,84,180	.	1,84,22,722	5,64,06,902
Total	37,79,55,485	1,28,18,041	7,31,23,147	46,38,96,673

62. Before us it has been contended by the ld. Counsel for the assessee that once the peak has been worked out then there was no requirement for making separate addition on account of unexplained income and expenditure appearing in the ledger account because the entire premise of the assessee right from

the inception is that all the entries in the diary belongs to the assessee and peak credit was worked out based on the entire entries.

63. On the other hand, ld. DR strongly relying upon the order of the ld. AO submitted that ld. AO has correctly taxed not only the peak credit as worked out by the Investigation Wing but also once it has been found from the diary that there were separate ledgers representing the name of Shri Vinay Shah and Shri Ketan Shah and others that means these entries belong to these persons and other family members and therefore, the addition has to be made separately and substantive basis in the hands of Shri Vinay Shah and Shri Ketan Shah, accordingly, on the issue of separate addition u/s.69A and 69C, he submitted that whatever is appearing in the diary should be taxed and no telescopic benefit should have been given.

64. After considering the submissions made by the parties and also on the perusal of the finding given by the ld. AO and ld. CIT (A), we hold that at this stage, the addition on account of peak credit is justified on the facts of the case, because, ostensibly there are clear cut entries and cash transaction of loan which assessee could not explain the nature and source of party wise entries. Thus, the admission of the assessee before the Investigation Wing and before the ld. AO that addition should be confined to peak credit cannot be rescinded. Accordingly, in principle, we uphold the addition made on account of peak credit. **The total peak credit in various years was worked out**

to Rs. 39,07,73,526/-, which working is not in dispute by both the parties as same has been meticulously worked out by the CIT(A) and no defect has been pointed out in such working of peak credit. We also agree with the Ld. CIT (A) that thereafter, net addition made u/s.69C of Rs. 1,28,18,041/- has to be telescoped against the peak addition. The reason being that income as well as expenditure have been noted in the same books and as part of the same activity carried out by the assessee and therefore, benefit of telescoping while determining the quantum of unaccounted expenditure should be allowed and only the net income after reducing the corresponding expenditure shall be taxed in the respective years. The ld. CIT (A) has tabulated unexplained income and expenditure and thereafter, the net addition u/s.69A and 69C has been telescoped against the peak addition of Rs. 39,07,73,526/-. **Accordingly, the net peak of Rs.37,79,55,485/- is confirmed.**

65. Further, separate addition u/s.69A aggregating to Rs. 1,28,18,041/- and aggregate addition u/s.69C of Rs.7,31,23,147/-, the same is also confirmed, because we agree with the reasoning given by the ld. CIT(A) that these are the separate ledgers on which income and expenditure has been accounted for and after benefit of telescoping the net income as well as expenditure has arrived in various years needs to be confirmed. Accordingly, the order of the ld. CIT (A) is upheld.

66. In the result, appeal of the assessee as well as appeal of the department is dismissed.

Shri Ketan Ramanlal Shah

67. The issues in this appeal before us are tabulated in the following manner:-

Addition or Disallowances	2015-16	2016-17	2017-18	2018-19		2019-20
	Assessee Appeal	Assessee Appeal	Assessee Appeal	Assessee Appeal	Department Appeal	Assessee Appeal
	ITA 4378/MUM/2024	ITA 4378/MUM/2024	ITA 4376/MUM/2024	ITA 4375/MUM/2024	ITA 4463/MUM/2024	ITA 4372/MUM/2024
Disallowance u/s 14A	9,13,965	49,85,158	5,03,240	2,21,026		3,33,859
Undisclosed Income - Substantive -Peak	-		-	-	29,36,075	-
Addition u/s. 69C - Substantive Basis		-	-		1,06,69,500	
Total Addition/Disallowance	9,13,965	49,85,158	5,03,240	4,77,048	1,36,05,575	3,33,859

68. The issues involved in this appeal are exactly similar to the issue in the appeals in the case of Shri Vinay Ramanlal Shah.

69. The ground No. 1 & 2 of the Revenue's appeal for A.Y.2018-19 is with regard to undisclosed income based on diaries made on substantive basis, we have already dealt this issue in detail and we have confirmed the finding of the ld. CIT (A) in the case of Shri Vinay Shah. Here in this case, ld. AO has made the addition on account of ledger found in the diary which has been owned up by Shri Jatin Shah in the year-wise addition made in the

hands of the assessee made by the ld. AO which is tabulated hereunder:-

A.Y.	Receipts u/s 69A	Payment u/s 69C	Peak Income	Total addition
2015-16	.-	"	15,22,000	15,22,000
2016-17	-		25,04,750	25,04,750
2017-18	-		14,15,800	14,15,800
2018-19	-"	1,06,69,500	29,36,075	1,36,05,575
2019-20				
2020-21	-	-	36,96,200	36,96,200
Total	-	1,06,69,500	1,20,74,825	2,27,44,325

70. The ld. CI T(A) has given a similar finding in this case also which was given in the case of Shri Jatin Shah and Shri Vinay Ramanlal Shah. Accordingly, the addition made by the ld. AO in the hands of the assessee is deleted.

71. In so far as next issue i.e. disallowance u/s.14A, the year wise disallowance and exempt income earned by the assessee are as under:-

Assessment Year	Exempt income earned	14 r.w.r 8D disallowance

2015-16	22,52,335	9,13,965
2016-17	1,88,00,990	49,85,158
2017-18	1,00,29,476	19,55,220
2018-19	2,21,026	2,21,026
2019-20	3,33,859	3,33,859

72. Like in the case of Shri Vinay Ramanlal Shah, the contention of the assessee has been that he has not incurred any expenditure for earning exempt income because assessee is a regular trader and investor in shares and some of the investments has yielded exempt income.

73. We have already given our finding in the case of Shri Vinay Ramanlal Shah that disallowance u/s.14A should be confined to the investments which have yielded exempt income during the year. Based on this following working has been given by the assessee.

AY	14A Working as per AO	Exempt income	14A Working as per Assessee
2015-16	9,13,965	22,52,335	3,76,352
2016-17	49,85,158	1,88,00,990	8,25,397

2017-18	5,03,420	1,00,29,476	12,255
2018-19	2,21,026	2,21,026	9,161
2019-20	3,33,859	3,33,859	9,355

74. Although in principle, we agree with the contention of the assessee that disallowance should be confined only on those investments which has yielded exempt income, however, the working given by the assessee is subject to verification by the Id. AO who is directed to examine the working and confine the disallowance based on investments which have yielded exempt income.

71. In the result, appeals of the Revenue are dismissed and appeals of the assessee and cross objection of the assessee are partly allowed.

Vinay Ramanlal Shah HUF

72. Now we will take up the appeal in the case of Vinay Ramanlal Shah HUF. The aforesaid appeal has been filed for the A.Y.2015-16 with respect to addition / disallowance made u/s/14A and addition u/s.68 and 69C which are tabulated in the following manner:-

Addition or Disallowances	2015-16	
	Assessee Appeal	Department Appeal
	ITA 4136/MUM/2024	ITA 4462/MUM/2024

Disallowance u/s 14A	9,90,612	
Addition u/s 68 - Disallowance of non-genuine Losses		8,71,87,326
Addition u/s. 69C - Commission Expenses		17,43,566
Total Addition /Disallowance	9,90,612	8,89,30,892

73. We will take up the issue of disallowance of non-genuine losses which has been raised by the department in the following grounds:-

- Ground no.1, 2 of department appeal for AY 2015-16 (ITA No.4462/MUM/2024)
- Ground no.3 of department appeal for AY 2015-16 (ITA No. 4462/MUM/2024)

74. The brief facts are that assessee is a regular trader in equity market and derivative market. It has indulged into various trading instruments such as equity trading, derivative Futures and Options trading, currency trading, etc. during the year under consideration. Such trades are made on daily basis by the assessee which is apparent from the quantum of the trade entered into during the year under consideration. The break-up of income earned out of various trade activities were as under:-

Sr. No.	Nature of income	Amount(in Rs.)
1.	Dividend	9,40,861
2.	Profit & Loss on Futures & Options	-6,22,754
3.	Long term capital gains	-1,41,540
4.	Short term capital gains	-9,24,270
5.	Profit & Loss on share trading	2,41,776
6.	Interest on bonds	49,750

75. Further, with respect to the transaction carried out in the F & O market, the same has been done through various brokers and break-up of profit & loss for each broker is as under:-

Sr. No	Broker Name	Profit-Loss
1.	Angel Broking F&O	6,51,63,907
2.	Angel Broking Commodities	48,18,318
3.	Dharamshi Securities	0
4.	Edelweiss Broking	1,65,73,346
5.	Goodluck Securities	-8,71,78,327
	Total	-6,22,756

76. Thus, assessee has incurred net loss from transaction in F & O market amounting to Rs 6,22,756/-. The Id. AO has doubted the transaction entered into with M/s. Goodluck Securities.

77. At the outset, Id. Counsel submitted that this issue is similar to the issue raised in the case of Vinay Ramanlal Shah. Here in this case also based on Falcon Project, a survey action was carried in the case of the assessee group to investigate Tax Evasion through trading in Illiquid Derivatives, Options Segment, through Trade Reversal on BSE/NSE/USE. It was alleged that assessee, Vinay Ramanlal Shah HUF has purchased and sold illiquid stock options on BSE resulting into non genuine loss of Rs.8.71 Crs. for AY 2015-16.

78. During the course of survey action, statement of Mr. Vinay Shah, Karta of the assessee was recorded on 04/12/2019 wherein he was asked details regarding the trading in the option segment, SEBI order and statement of the broker which was recorded by the department. During his statement, Vinay Shah has clearly stated that he was not involved in predetermined trade to adjust books and if any irregularities as per SEBI, were done by the broker for which he has no knowledge.

79. Further, the statement of assessee was again recorded on 27/12/2019 during the post survey proceedings wherein the statement of M/s. Goodluck Securities was shown to the assessee. In response to the same, the assessee incorrectly

assumed that due to the said statement as well as SEBI order, the trades done by the broker were not genuine and accordingly, offered to withdraw the losses incurred in case of Vinay Shah HUF in its return of income.

80. Before the Id. AO assessee had submitted all the requisite details for the transaction carried out in F & O with all the brokers including Goodluck Securities. Further, in the statement recorded by the Id. AO of Vinay Shah on 04/02/2022 he has clarified that the details and submitted that this transaction was purely genuine. However, the Id. AO in his assessment order has purely relied upon Ad-interim order of SEBI and rejected the explanation of the assessee holding that loss incurred by the assessee are non-genuine. The observations of the Id.AO are summarized as under:-

- It was alleged that assessee has done artificial and synchronized trading in the BSE by engaging in reversal trades in illiquid stock options resulting in non-genuine business losses based on the interim order of SEBI
- The AO contended that assessee has undertaken identical buy & sale trades for contracts and consistently recorded losses. Further, it was also alleged that identical quantities of contracts are traded with the same counterparty for both the buy trade and sell trade
- Further it was alleged that each of the trades have been squared within the same day and also there is large difference between buy rates and sell rates.
- It was further observed that assessee was consistently making loss by trading in options on individual stocks/ currency Trading of these transactions appeared abnormal because they

were consistently making significant loss by trades which were reversed with same counter parties either on the same day or the next day.

- The losses and profits on reversal trades are a kind of tax evasion where the share broker facilitates either himself or by conniving with another broker to generate profit and loss for clients as per their requirement which may arise for varied reasons. In this regard, AO has relied upon the statement of various third parties recorded u/s 131.
- AO has also relied upon the statement of the Shri Vinay Shah (karta of HUF) during the survey action to conclude that the losses are not genuine

81. The Id. CIT(A) has allowed the losses and set aside the finding of the Id. AO after detailed reasoning which was summarized as under:-

- The Id. CIT(A) observed that assessee, is a regular trader in option / currency derivatives and the said fact has not been disputed by AO. Further, it was also observed that assessee been working through various brokers in past as well as during the year. Such brokers include Angel Broking F&O, Angel Broking Commodities,, Edelweiss Broking and Goodluck Securities.
- The CIT(A) noted that assessee has shown profit from transactions from some brokers while losses in other transactions and the consolidated income / loss has been shown in the return of income and AO has not raised doubts about authenticity of trades done through any other broker. Hence, it is inferred that assessee has not entered into an isolated transaction with a pre-meditated intention but has been regularly trading in the same

- No incriminating documents have been found at any premises, either brokers, counter parties or the assessee themselves to support the stand of AO.

- CIT(A) noted that there is no evidence that the assessee is connected with the counter-parties in the trade and there is no grievance of any of the investor or USE. Either during the course of investigations carried out under Falcon Project, during the survey u/s 133A conducted at the office premises of the assessee or during the assessment proceedings, no such evidence has been gathered

- CIT(A) noted that assessee in support of the transaction, has filed copies of the contract notes in respect of the transactions in question of derivative trading, copies of the bank statements reflecting payment of requisite margin money to brokers, copies of the statements of accounts of Brokers in the books of the assessee company etc

- The CIT(A) noted that there are 17 counterparties to the assessee's transaction as reproduced by AO in its order. However, a perusal of the SEBI's ad interim order reveals that none of these parties are mentioned in the said order as having indulged in synchronised trading. In absence of any such evidence about the parties, the AO could not have treated the entire volume of transactions as being bogus in nature

- With regards to the acceptance of Shri Vinay R Shah in his statement, the Id.

- CIT(A) observed that Shri Vinay Shah has offered to withdraw the loss claimed in respect of the derivative transactions in light of the statement of the proprietor of Goodluck Securities and ad interim SEBI order. Such statement was on the presumption that the statement of the proprietor of

Goodluck Securities was correct and that the ad interim SEBI order was in force

- CIT(A) further observed that AO has also relied on the statement of certain third parties viz Arun Shah and Sunil Kayan and Ms Mousmi Dev Roy, proprietor of M/s Goodluck Securities who have admitted before the Investigation Unit that they have engaged in premeditative transactions to generate desired loss / gain in exchange of commission of 2%. However, neither the complete statement of these persons have been provided to the assessee nor they have been allowed to be cross examined. No incriminating documents have been located at these premises concerning the assessee.

- With regards to the SEBI order, CIT(A) observed that on 20th August, 2015, SEBI passed an "Ex-parte Ad Interim Order" pointing out synchronised reversal trades in illiquid option / currency derivatives carried out by certain traders through specific brokers and barring such identified traders from trading as an interim measure. This order forms the basis of the AO's presumption that the trades conducted by the appellant are pre-meditated synchronised reversal trades conducted at manipulated prices to generate artificial loss/gain.

- CIT(A) observed that such order by the SEBI was only an 'exparte ad interim order without providing any opportunity to the parties and comprising of 'prima facie observations is found to be relevant. It is also noted that vide a vide subsequent order dated 22.08.2016, SEBI has provided interim relief to the assessee like permission to buy/sell in commodities for taking hedging position, liquidating shares, mutual funds, etc.

- Further, the ad interim order was vacated by subsequent order dated 05.04.2018. Therefore, once the order (which has been heavily relied by the AO) had been vacated, the

observations/findings of SEBI in the said order did not survive and hence could not be the sole factor in deciding the genuineness of the trade conducted by the assessee.

- CIT(A) also noted that the final order of SEBI vacating the earlier order was available even at the time of framing the assessment but the same has not been commented upon by AO

- CIT(A) has also placed reliance on the decision of Hon'ble Delhi ITAT in the case of ACIT vs M/s Kundan Rice Mills Ltd. in ITA No. 853/Del/2010 dated 09.07.2020 involving the same sets of fact which is elaborately discussed in the CIT(A)

- CIT(A) also noted one of the reasons cited by the AO in his order for treating the transactions as manipulative is that the price at which the options have been traded within a very short period of time show a wide variation and have no relation with the price of underlying asset indicating a collusive transaction. In this regard CIT(A) noted that there is no way of ascertaining the counter party bidding for the offer in an automated screen based environment and that the price of derivatives comprise of various elements, the price of underlying script being one of the many factors. Further, of this issue CIT(A) has also referred to decision of the Hon'ble Delhi Tribunal in the case of ACTT vs M/s Kundan Rice Mills Ltd. (supra).

- Further, with regards to reliance placed by AO on decision of the Supreme Court in the case of Rakhi Trading Pvt Ltd., the CIT(A) noted that the facts of the said case are different from the present assessee.

82. Thus, the conclusions of the ld. CIT (A) are that-

- i. Assessee is a regular and bonafide trader in derivative segment over many years has not been doubted by the AO.

ii. Assessee has been taking services of many brokers to trade in this segment and has, during this year, traded through Trinay Securities. None of the other transactions have been doubted by the AO.

iii. With regards to the transactions done through Trinay Securities, the assessee has provided all the necessary documents which have not been rebutted by the AO

iv. It has not been demonstrated by AO that assessee has colluded with the counter parties to generate fake loss

v. The transactions have been done on the screen based trading system of Stock Exchange by payment of STT.

vi. The statement of Shri Vinay Shah has been recorded at the time of assessment proceedings and he has reiterated the genuine nature of transactions claiming that all necessary documents have been submitted before the AO.

vii The SEBI ad interim order dated 20.8.2015 which has been heavily relied by AO stands negated.

83. We have already dealt this issue in detail in the case of Vinay Ramanlal Shah wherein we have given finding that-

Firstly, the sole reliance placed by the ld. AO at ad-interim order of SEBI has been vacated;

Secondly, there is no adverse inference or material against the assessee; and

Lastly, there is no reference or mention in the said ad-interim order of SEBI with regard to Goodluck Securities.

84. Thus, when SEBI for which reliance has been placed itself has been vacated, the stand of the ld. AO itself gets diminished. Accordingly, in view of the finding given in the case of Vinay Ramanlal Shah, the order of the ld. CIT(A) is confirmed and the grounds raised by the Revenue are dismissed.

85. In so far as the disallowance u/s.14A is concerned, the brief facts are that assessee is a regular trader and investors in shares and Securities and has earned exempt income from investments held. The ld. AO himself has made disallowance u/s.14A r.w.s. 8D on the ground that no disallowance has been offered by the assessee or any expenditure has been earmarked for the purpose of earning exempt income. The assessee has earned disallowance of Rs.9,90,612/-. However, the case of the assessee is that disallowance should be computed only on those investments which has yielded exempt income and as per the working given, the disallowance comes to Rs.3,20,215/-, accordingly, we direct the ld. AO to verify the working and restrict the disallowance u/s.14A to the extent of those investment which has yielded exempt income. In the result, this issue is partly allowed.

86. In the result, appeal of the Revenue is dismissed and appeal of the assessee is partly allowed.

Ketan Ramanlal Shah HUF

87. Lastly, in the appeals of Ketan Ramanlal Shah HUF, the following issues have been raised in the cross appeals of the assessee and Revenue.

Addition or Disallowances	2015-16		2016-17	2020-21
	Assessee Appeal	Department Appeal	Assessee Appeal	Assessee Appeal
	CO 204/MUM /2 024	ITA 4466/MUM/ 2 024	ITA 4077/MUM/ 2 024	ITA 4137/MUM/ 2 024
Disallowance u/s 14A	3,78,408	-	11,55,074	3,12,386
Assessing F & O profit as unexplained u/s 68.	-	12,70,34,547	-	-
Addition U/S.69C- Commission Expenses	-	25,40,691	-	
Total Addition/Disallowance	3,78,408	12,95,75,238	11,55,074	3,12,386

88. In so far as addition of profit earned on derivative trading which has been raised by the Revenue in the appeal for A.Y.2015-16, the brief facts are that assessee is engaged in trading in equity market through delivery trading and derivative trading. The break-up of income earned by the assessee after various share trading activity is as under:-

Sr. No.	Nature of income	Amount(in Rs.)
1.	Dividend	8,43,712

2.	Profit & Loss on Futures & Options	-17,99,11,298
3.	Long term capital gains	1,58,182
4.	Short term capital gains	-5,45,781
5.	Profit & Loss on share trading	-52,16,300

89. Further, with respect to the transaction carried out in the F & O market, the same has been done through various brokers and break-up of profit & loss for each broker is as under:-

Sr. No	Broker Name	Profii/-Loss
1.	Angel Broking F&O	-28,25,47,477
2.	Angel Broking (Commodities)	-3,09,49,324
3.	Edelweiss Broking Limited	70,06,127
4.	Globalworth Securities Limited (FNO)	-4,55,172
5.	Goodluck Securities(FNO)	12,70,34,547
	Net total	-17,99,11,299

90. Here in this case the ld. AO has doubted the transaction entered into with Goodluck Securities on which assessee has earned profit of Rs.12,70,34,547/-. The reasons given by the ld. AO are exactly same which was given in the case of Vinay Ramanlal Shah HUF and Vinay Shah and finding of the ld. CIT(A) is *pari materia*. We have already decided this issue in detail and accordingly, we hold that the derivative trading and

the transaction entered with M/s. Goodluck Securities are genuine and accordingly, no adverse inference can be drawn. Moreover here in this case, it is not a case of the derivative loss which was the case in the earlier appeals albeit, here in this case there was a derivative profit of Rs.2,70,34,547/- which has been offered to tax. The ld. AO has simply adopted the reasoning given in the other appeals and has made addition u/s.68. Once the assessee has duly disclosed the transaction in the books which has been offered as income from F & O, there is no question of any addition on account of unexplained cash credit. In any case, we have already held that the transaction with Goodluck Securities are genuine therefore, addition made by the ld. AO is deleted. Consequently, the addition u/s.69C assessee might have given commission for earning derivative income of Rs.12,70,34,547/- is also deleted.

91. Now, coming to the issue of disallowance u/s.14A which has been raised in the appeal for 2015-16, 2016-17 and 2020-21, the year-wise disallowance and exempt income earned by the assessee are as under:-

Assessment Year	14 r.w.r 8D disallowance Amount (in Rs.)
2015-16	3,78,408/-
2016-17	11,55,0747-
2020-21	3,12,386/-
Total	18,45,868/-

92. Here in this case also, the only issue is whether the disallowance u/s.14A should be disallowed to those investments which had yielded exempt income like in other appeals.

93. Before us, the ld. Counsel has given the working based on investment which had yielded exempt income.

AY	14A Working as per AO	Exempt income	14A Working as per Assessee
2015-16	3,78,408	10,01,929	93,047
2016-17	11,55,074	15,60,874	8,18,385
2020-21	3,12,386	8,42,918	23,647

94. Accordingly, the ld. AO is directed to verify the working and should restrict the disallowance only on those investments which had yielded exempt income. Accordingly, this ground is partly allowed.

95. In the result, appeal of the Revenue is dismissed and appeal of the assessee is partly allowed.

96. In the result, all the appeals of the Revenue are dismissed and all the appeals of the assessees are partly allowed.

Order pronounced on 29th May, 2025.

Sd/-
(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 29/05/2025
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai