

IN THE INCOME-TAX APPELLATE TRIBUNAL "E" BENCH,  
MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.1595/MUM/2019  
(A.Y. 2012-13)

&

ITA No.1596/MUM/2019  
(A.Y. 2013-14)

<b>Deputy Commissioner of Income Tax, Central Circle -7(3), Room No. 655, 6<sup>th</sup> Floor, Aaykar Bhawan, M.K. Road, Mumbai - 400 020, Maharashtra</b>	v/s. बनाम	<b>Smt. Sakhiben Patel, 601, 6<sup>th</sup> Floor, Petit Towers, August Kranti Marg, Kemp's corner, Mumbai - 400 036, Maharashtra</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AALPP1508R</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

**प्रत्याक्षेपसं/C.O. No.71/MUM/2020**  
(Arising out of ITA No. 1595/MUM/2019)  
(A.Y. 2012-13)

<b>Smt. Sakhiben Patel, 601, 6<sup>th</sup> Floor, Petit Towers, August Kranti Marg, Kemp's corner, Mumbai - 400 036, Maharashtra</b>	v/s. बनाम	<b>Deputy Commissioner of Income Tax, Central Circle -7(3), Room No. 655, 6<sup>th</sup> Floor, Aaykar Bhawan, M.K. Road, Mumbai - 400 020, Maharashtra</b>
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AALPP1508R</b>		
<b>Appellant/अपीलार्थी</b>	..	<b>Respondent/प्रतिवादी</b>

Appellant by :	Shri Rushabh Mehta, AR
Respondent by :	Shri Ritesh Misra, (CIT-DR)

Date of Hearing	28.07.2025
Date of Pronouncement	19.09.2025



## आदेश / ORDER

### PER PRABHASH SHANKAR [A.M.] :-

The instant appeals preferred by the Revenue and Cross Objection of the assessee emanate from the appellate orders passed by the Learned Commissioner of Income-tax (Appeals), CIT(A) - 49, Mumbai [hereinafter referred to as "CIT(A)"] pertaining to assessment orders u/s. 143(3) r.w.s. 153A of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Years [A.Y.] 2012-13 and 2013-14. Both grounds are identical and facts are also the same. Accordingly, decision in Revenue's appeal in ITA No. 1595/MUM/2019 which is being taken up first, will apply *mutatis mutandis* in ITA No.1596/Mum/20219 also.

#### 2. The grounds of appeal are as under:-

1. *"On the fact and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of Rs. 4,30,00,000/-with-respect to the unsecured loans received by it, without appreciating that the retraction of statement is only an afterthought and the AO was correct in the treatment of the unsecured loans considering the preponderance of probability."*

#### Additional Grounds of Appeal:-

1. *On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 2,29,942/- made on account of disallowance of interest paid on unsecured loan to Satyam Projects Limited without considering the fact that the accumulated profits of these entities was just meager amount and the funds flowing into these entities were sourced from a complex network of other entities through share premiums or unsecured loans, which were subsequently transferred to other parties, including the assessee in similar forms.*
2. *On facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs. 2,29,942/-made on account on account of disallowance of*



*interest paid on unsecured loan to Satyam Projects Limited without considering the fact that all the companies which got merged into M/s. Satyam Projects Ltd. are part of the bogus Jamakharchi companies controlled by Shri Uday Shankar Mahawar used for providing accommodation entries as admitted by him in his statement recorded u/s. 131(1) of the Income Tax Act, 1961 at the office of DDIT, Unit-11(3). Kolkatta on 25.08.2014.*

3. Facts of the case are that the assessee had filed return of income on 16.07.2012 admitting total income at Rs.2,37,960/-. She is part of Patel/Patni Group. A search action was carried out u/s 132 of the Act on 09.10.2014 at the offices of Patni Group, their associates and at the residences of their Director. Notice u/s. 153A was issued and in compliance the assessee filed its return of income declaring total income of Rs. 2,37,960/-. Assessment order u/s. 143(3) r.w.s. 153A of the Act was passed wherein the AO assessed the total income at Rs. 4,35,37,900/- which consisted of Rs 4,30,00,000/-, being Unsecured loan taken from one M/s Satyam Projects Ltd.('SPL') added u/s 68 of the Act and Rs 2,29,942/-, being disallowance of interest paid in respect of the above loan.

4. In the subsequent appeal before the Id.CIT(A), the assessee contested the addition both on jurisdiction and merits of the case. It was claimed that the assessment order passed u/s. 153A rws 143(3) by the Ld. AO was without jurisdiction, invalid, bad in law and in violation of the principles of natural justice. It was submitted that the assessee was covered under the search conducted in case of Lotus group. The main submission



was is that no incriminating material was found in the course of search and mere statements recorded in the course of search u/s. 132(4) and the entries found in the books of accounts cannot become any incriminating material to trigger additions in the assessments done u/s. 153A of the Act. However, the Id.CIT(A) dismissed this ground.

5. The other ground of appeal was against the addition of loan obtained from SPL u/s.68 of the Act. The assessee had obtained unsecured loan from SPL and had incurred interest expenditure. The said lender company was alleged by the AO to have been engaged in providing accommodation entry. This conclusion was arrived by the AO based on statement of Shri. Hitesh Thakkar, Shri. Jignesh Mavadia and Shri Uday Shankar Mahawar. The AO added Rs.4,30,00,000/- u/s. 68 of the Act in respect of the said loan received from SPL and Rs. 2,99,942/- in respect of interest paid to it.

5.1 The Id.CIT(A) observed that the assessee was covered under search of Lotus group. During the course of search, statement of Mr. Jignesh Mavadia was recorded on 09.10.2014 wherein he stated that he was a mere namesake director and that Bhagwanji M Patel told him to become a director in SPL. Simultaneously, during the course of search, a survey was conducted on M/s. Prince Ply Agency Pvt Ltd wherein



statement of Mr. Hitesh Thakkar was recorded u/s. 133A on 10.10.2014 who admitted that the company was a paper company. The main issue involved in the present appeal is in relation to addition u/s. 68 of Rs.4,30,00,000/- in respect of unsecured loan received by the appellant from SPL during the year under consideration. The assessee claimed that no addition was called for as it had completely established the three ingredients viz. identity, genuineness and creditworthiness as envisaged u/s. 68 of the Act whereas the AO treated the same to be bogus. He further noted that the assessee had submitted documents as under in the course of assessment as well as before him:

- a) Copy of Memorandum of Association and Articles of Association of the lender company along with the certificate of incorporation revealing that the company was formed on 16.05.1981.*
- (b) Copy of registration certificate issued by the RBI dated 08.06.1998 bearing Reg No. 05.02644*
- (c) ITR Acknowledgement alongwith computation of income of the lender*
- (d) Financial statement of the lender company*
- (e) Ledger confirmation of the lender company*
- (f) Bank Statement of the appellant and the lender*
- (g) Order of Hon'ble Calcutta High Court evidencing merger of 2 companies viz. Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd alongwith the assessee on 26.06.2008*
- (h) Order of Hon'ble Calcutta High Court evidencing merger of 6 companies viz. Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd on 15.12.2010*



- (i) Assessment order of the aforesaid 6 companies
- (j) Form 2 filed by lender company with ROC for increase in authorised capital in Feb, 2011
- (k) Copy of Due diligence Report carried out prior to merger
- (l) Copy of scrutinizer report dtd. 26.09.2015 on e-voting process
- (m) Copy of Internal audit report for FY 15-16
- (n) Copy of secretarial report
- (o) Copy of quarterly compliance report
- (p) Copy of prospectus issued by lender company

5.2 The Id.CIT(A) further observed that by providing the aforesaid documents, the assessee submitted that the lender SPL was a genuine company which had carried out so many compliances regularly with RBI/Auditors and had also been sanctioned merger with the approval of the hon'ble Calcutta High Court. From the records, it was noticed that the alleged lender was served a notice u/s. 133(6) of the Act by the AO which was duly complied. Therefore, there was no adverse finding in this regard by the AO in his assessment order.

5.3 Apropos creditworthiness of the lender company, it was noticed by the appellate authority that initially two companies - Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd having aggregate net worth of Rs. 9.53 cr. merged with SPL on 26.06.2008. Later, other six companies namely Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt



Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd having aggregate net worth of Rs. 91.06 cr. merged with it on 15.12.2010. The aforesaid companies had huge capital and reserves appearing in the balance sheet prior to the merger. Consequent to the merger, the total net worth of the lender company had increased by Rs.100.59 cr. which was then utilised by it for the purpose of its business. Before him, it was further pointed out that the assessment in the case of these aforesaid six merged companies were carried out wherein the share capital issued by these companies had been verified by the concerned AO. Accordingly, the net worth of the lender company stood at Rs.1,01,30,88,008/- which was, in fact, substantially examined by the Revenue. Further, the turnover of the lender for the year under consideration was Rs. 8.27 cr. and its returned income was Rs.21,32,680/-.

5.4 The Id.CIT(A) noted that the AO had relied on the statements of Shri. Hitesh Thakkar, Shri. Jignesh Mavadiya & Shri. Uday Shankar Mahawar. In this regard, the appellant contended that the statements were not provided to it and hence the same could not be used against it. Besides, no opportunity of cross examination of the aforesaid parties had been accorded to her. The assessee further stated that the aforesaid parties had given the statement under coercion and influence of the search party and



had subsequently retracted the statements which were made by them. In his statement u/s. 133A of the Act on 10.10.2014, Shri. Hitesh Thakkar, Managing Director of the lender company had stated that Bhagwanji Patel had acquired SPL in May 2014 and that he was a director for namesake only and detailed explanation in relation to SPL could be given by Bhagwanji Patel. He further stated that the overall affairs of the company were being looked after by Shri. Bhagwanji M Patel. He ultimately agreed that the said company was a paper company. Similarly, Shri. Jignesh Thakkar in the course of statement u/s. 131 of the Act on 09.10.2014 had stated that he was a clerk in Prince Ply Agency Pvt Ltd and he was a namesake director in SPL. He was unaware about the other directors of the lender company. In his statement, Shri Uday Shankar Mahawar u/s. 131 on 25.08.2014 also stated that he opened around 200 bogus jamkharchi companies which were used to provide bogus accommodation entries. One of Such companies as stated in his statement was SPL .

5.5 In this regard, before the Id.CIT(A), the AR stated that all the aforesaid statements relied upon by the AO were retracted by the said parties on the ground that they were based on influence and coercion of search party. The retraction affidavit of these parties had been placed in the course of assessment as well as before him. In the course of assessment



proceedings, Shri. Uday Shankar Mahawar was produced before the AO wherein he had affirmed his retraction and clarified that the earlier statement given by him was recorded under coercion. The AR also stated that Shri Bhagwanji M. Patel was the shareholder of SPL.

6. In light of above, it was observed by the Id.CIT(A) that the assessee group was covered under search action and no document or other assets were found in the course of search which could indicate that the assessee had obtained accommodation entry. It was stated by the AR that a search is a strict measure under the Act which invades the privacy of the assessee and even in these proceedings, no concrete evidence was found except for mere oral confirmation of certain parties which also stand retracted later. Attention in this regard was invited to the CBDT Instruction F.No.286/98/2013-IT (INV.II) dated 18/12/2014 and letter dated 10/03/2003 issued by the Ministry of Finance & Company Affairs wherein it is stated that the search party must focus on collection of evidences and not merely admission/confession of additional income. The Hon'ble Gujarat High Court has relying on the aforesaid instructions upheld the view that addition should not be made based on oral confession in the case of CIT v. Ramanbhai Patel (TA no. 207 of 2008) and Chetnaben J Shah v.ITO [TA no. 1437 of 2007]. Thus, following the CBDT circular as well as



the decision cited by the assessee (supra), he concluded that the addition could not be sustained merely on the basis of the statements taken during the search devoid of any evidence/material to incriminate the assessee. The additions were accordingly deleted.

7. Before us, the ld.DR has placed reliance on the assessment order claiming that on the facts and the circumstances of the case, the additions were justified.

8. On the other hand, the ld.AR has placed reliance on the findings of the ld.CIT(A) and the submissions made before him and which have been elaborately discussed by him in the impugned order. It is further contented that the assessee has duly discharged the onus in respect of above loan proving identity, creditworthiness of the lender and the genuineness of the transaction. It is claimed that the lender is regularly assessed under the Income tax for last several years and is an 'Active company' on ROC data. The lender duly appeared before the AO and admitted the transactions and there is no adverse finding by the AO. Net worth of the company is Rs. 101 cr. as against impugned loan of Rs. 4.30 cr. The turnover is stated to be Rs 8.27 cr. and the disclosed income was Rs 21,32,680/- during the year and even in subsequent years, they were Rs



51,81,018/- Rs 1.61 cr and Rs 1.16 cr in AYs 2013-14,2014-15 and 2015-16 respectively.

8.1 In respect of statements, it is claimed that all the persons concerned retracted their statements immediately after search by way of affidavits as the original statements were taken under mental pressure and also got signed by some without understanding the contents therein. One of the persons also attended before the AO and confirmed retraction though wrongly stated by the AO that none of them attended. The Id.AR has placed reliance on various case laws in support of the contention that no addition is justified merely on the basis of statement and that too on a retracted one. It is also claimed that there is no proof of any cash being exchanged in lieu of cheques in respect of loan received by the assessee. Therefore, no addition was justified. Strong reliance placed on Paradise Inland Shipping TA NO.66 Oof 2016(Bom), Sreedham Construction ITA No.3754/Mum/2017 etc.

8.2 It is also contented that in cited decisions the coordinate bench of ITAT Mumbai have considered genuineness of similar loans from SPL in Lotus group cases and upheld deletion of addition u/s 68 of the Act as also the interest i.e A.M. Developers and Realtors ITA No.3041/Mum/2019, Tirupati Developers ITA No.2165/Mum/2019 and CO 110/Mum/2021. It is



further contented that since the assessee did not do any business during the year and did not maintain any books of account, no addition could be made u/s 68 of the Act, even otherwise. Reliance is placed on Bhaichand Gandhi 11 Taxman 59(Bom) etc. In respect of addition of interest, it is contented that since the loan has been proved to be genuine, no disallowance of interest thereon is justified.

9. We have carefully considered all the relevant facts of the case, rival submissions and have also perused the records and the cited decisions. It is noticed that the ld.CIT(A) in an exhaustive order has dealt with all the issues involved at length before concluding that the additions made were not sustainable. From the detailed reply submitted before us as well, we find that the lender company cannot be said to be a paper company with no capacity to lend such a sum to the assessee. All the ingredients for the purposes of section 68 of the Act are duly satisfied in the present case as there is no doubt about the identity and creditworthiness of the lender. As such, genuineness can also not be doubted either. In so far as the statements of certain persons which forms the main basis of the additions made by the AO are concerned, we find that apart from the fact that the same were retracted subsequently, not much importance could be given them alone when despite the search conducted



the Revenue could not substantiate the statements with any incriminating evidence. Proceeding further, we find that the sole basis of making impugned addition is the statement of one of the directors as recorded during the course of survey proceedings u/s 133A. However, this statement has been retracted within a short time. It is settled law that statements recorded during the course of survey proceedings would not have much evidentiary value unless the same are backed by credible evidences. This position has been settled by hon'ble Supreme Court in the case of **CIT V/s S. Khader Khan & Sons (25 Taxmann.com 413)**. The **CBDT instructions No. F.No.286/98/2013-IT (Inv. II) dated 18/12/2014** also discourages confessional statements without any credible evidences. Thus, in our considered view not much reliance could be placed on above stated statements.

9.1 We also notice that the lending capacity of the lender SPL has been duly examined by the coordinate bench of ITAT, Mumbai in several cases and it is concluded that the same could not be doubted in view of the plethora of evidences furnished by the assesses in respective cases as well. In **ITA No.1485/Mum/2019, ITA No.3697/Mum/2019 & Others Lotus Logistic & Developers Pvt Ltd to AY 2014-15** and in **ITA No.1593/Mum/2019 relating to AY 2015-16** identical issue has been



considered which related to loans taken by various parties from several entities including SPL. Relevant paras are extracted as under:

*“3. In all the assessments referred above, there are common issues on the basis of which assessed income is determined. The variation to the returned income is on account of addition u/s. 68 of the Act on account of advances/loans, share capital/share premium received from paper companies based in Kolkata. There are 4 entities based in 2. Search assessments in the case of Lotus group of entities were concluded us. 153A the IT Act (hereinafter referred as "Act") consequent to search action u/s. 132 of the Act in Lotus/Kamdhenu/Green Valley Group conducted on 09.10.2014. The additions made in the assessments of the group entities were on account of accommodation entries received from companies based in Kolkata in the guise of unsecured loans/advances and share capital/premium. The entities were assessed based on incriminating evidences seized during the course of search, statements recorded us. 132(4)/131 of the Act of the relevant persons which have been taken reference in the assessment orders. The assessments concluded inter-alia include M/s. Lotus Logistics & Developers Pvt.Ltd., M/s. Lotus Build space LLP, M/s. A. M. Developers & Realtors and M/s. A. M. Constructions referred above for which department has filed appeals referred above. The assessment's in the case of M/s. Lotus Logistics & Developers Pvt. Ltd. and M/s. Lotus Build space LLP was concluded u/s. 153A of the Act for A.Yrs. 2014-15 and 2015-16. The assessments in the case of M/s. A. M. Developers & Realtors and M/s. A.M. Constructions were concluded u/s. 147 r.w.s143(3) of the Act.*

*3. In all the assessments referred above, there are common issues on the basis of which assessed income is determined. The variation to the returned income is on account of addition u/s. 68 of the Act on account of advances/loans, share capital/share premium received from paper companies based in Kolkata. There are 4 entities based in Kolkata from which accommodation entries have been arranged through entry operators based in Mumbai and Kolkata. These entities are:*

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

**4.12 Investigation specific to M/s. Satyam Projects Ltd: Statements of Shri Hitesh Thakkar, Mr. Jignesh Mavadiya and Shri Uday Shankar Mahavar;** in the course of search proceedings, statement of Shri Hitesh Thakkar was recorded u/s. 131 of the Act, on 10.10.2014. His statement was recorded in the capacity of Managing Director of M/s. Satyam Projects Ltd. an entity based on Kolkata. Shri Hitesh Thakkar admitted to be a name sake director in M/s. Satyam Projects Ltd. and said company is a shell company used for providing accommodation entries. He also revealed the fact that the company was acquired by Shri Bhagvanji Patel (one of the key individuals of Lotus Group) in May 2014. He has admitted fact that he is ignorant about the



basic details of the company such as nature of business activity, date of formation of the company etc. The statement of Shri Jignesh Mavadia, in the capacity of Director of M/s. Satyam Projects Ltd. was also recorded on 09.10.2014 u/s. 131 of the I.T. Act. He admitted to be employed as clerk in M/s. Princely Ply Agency Pvt. Ltd. (one of the entities of Kamdhenu Group). Shri Jignesh Mavadia accepted that he is only the name sake director in M/s. Satyam Projects Ltd. In the course of search action, statement of an entry operator Shri Uday Shankar Mahavar was recorded u/s. 131 of the Act on 25.08.2014. Shri Uday Shankar Mahavar deposed that he has opened around 200 bogus companies in order to provide accommodation entries to various beneficiaries. Further Shri Uday Shankar Mahavar also stated that he has used M/s. Satyam Projects Ltd. to provide accommodation entries and the company does not have any genuine business activity, except for routing unaccounted funds to other beneficiaries.

4.13 The A.O. has also analyzed the financials of M/s. Satyam Projects Ltd and recorded his finding that the company has poor accumulated profits and so-called net assets worth 98.26 crores is funded by raising share premium and merger of other Jama Karch companies based in Kolkata. The A.O. has given a finding that there were 2 rounds of merger activities during F.Y. 2007-08 and 2010-11 merging 8 kolkata based paper entities with alleged net worth of 100.59 crores. It is consequent to this merger, the net worth of M/s. Satyam Projects Ltd. has been projected at Rs. 103.65 crores as on 31.03.2015. Therefore, it is clear that net worth claimed in M/s. Satyam Projects Ltd. is not self-generated by genuine business activity but by using the route of merger of Kolkata based shell entities having large premium in their reserves. Out of the reserves claimed in M/s. Satyam Projects Ltd. of Rs. 103.65 crores, Rs. 100.59 crores consist share premium of merged entities. On further investigations of the bank accounts held by M/s. Satyam Projects Ltd. it was evident that there were huge transactions with entities controlled by entry operators such as Shri Pravin Agarwal, Shri Amit Kedia etc. Therefore, the fund trail of funds in the case of M/s Satyam Projects Ltd

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

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



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

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

4.16 It is submitted that the reliance placed by the Ld.CIT(A) on the apparent documents without considering the evidences gathered during the course of Search and post such investigations is not justified. The Ld.CIT(A) ought to have appreciated that the onus lies on the assessee to prove the genuineness of transactions particularly while the department has raised issues regarding the Ltd identity, credit worthiness and genuineness of transactions of Lotus group of entities regarding their claim of unsecured loans and share premium received from BCPL, DCPL and RTPL. The Ld.CIT(A) is not justified in holding that the onus cast on the assessee is concluded by filing documents apparent to the transaction. It is the duty of the assessee to prove the genuineness of transactions in the light of observations made by the department to avoid invoking provisions of [section 68](#) of the Act. The Hon'ble High Court of Calcutta in the case of *PCIT vs Swati Bajaj* [139 taxmann.com 352] have held that the tax authorities are justified in considering circumstantial evidence and the principles of human probabilities to assess the authenticity of transactions particularly when issues of price volatility and potential manipulation with respect to penny stocks are pointed out by the Revenue. Further, the Hon'ble Apex Court in the case of *PCIT(Central)-1 vs. NRA Iron & Steel Pvt. Ltd.* [103 taxmann.com 48] have held that mere filing of formal documents was insufficient in the context of proving triple criteria provided in [section 68](#) of the Act. The Hon'ble Court has further held that it would be the onus of the assessee to prove the genuineness of transactions in the light of AO's findings such as non-existence of investor companies and their lack of financial capacity. In the same decision the Hon'ble Court has referred to previous judgments of the Hon'ble Apex Court including *CIT vs. Durgaprasad More* and *Sumati Dayal vs. CIT*, underscoring the tax authorities were entitled to look beyond superficial documentation to assess the actual substance of transactions. Both the citations quoted above reinforce the principal that in cases of significant financial inflows especially involving share capital and premiums, the taxpayer must present compelling evidence to establish the legitimacy of such transactions.

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

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



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

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

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

5. Whether if there is any pressure or coercion on basis of which assessee made admission under [sections 132\(4\)](#) and [131\(1A\)](#), assessee is at liberty to report to higher authorities in investigation wing or even to CBDT. Whether since assessee had no report to higher authorities in respect of coercion and pressure of eleven months, theory of coercion and pressure was only an afterthought just to support retraction-Held yes([ManmohansinghVig vs DCIT 6 SOT 18\(MUM\)](#)) 4.18 Based on the detailed discussion regarding incriminating evidence gathered by the department in connection with share application/share premium/advances/loans claimed by various entities of Lotus Group in the name of 4 entities namely BCPL, DCPL, RTPL and SPL as brought out by the assessing officer in the assessments of relevant entities, the addition [u/s. 68](#) of the Act may be upheld."He submitted that the above said written submissions would apply to all the appeals herein. Accordingly, he submitted that the additions made by the AO should be sustained.

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



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

7. In view of the above, we are of the view that there is no infirmity in the orders of the Ld.CIT(A) in deleting the above said additions in both the years. Accordingly, both the appeals of the revenue in ITA No.1485/Mum/2019 relating 31 3697/Mum/2019 & Others Lotus Logistic & Developers Pvt Ltd to AY 2014-15 and in ITA No.1593/Mum/2019 relating to AY 2015-16 are dismissed.”

9.2 Similarly, in the case of **M/S Tirupati Developers, Mumbai in ITA No. 2165/MUM/2019 on 21 July, 2025**, same issue was decided in favour of the assessee with following observations and findings:

“6. The sole substantive issue involved in this appeal is the addition of Rs.6,93,00,000/- received as a loan from **M/s. Satyam Projects Ltd.**, which has been treated as unexplained [u/s 68](#) of the Act. It has been submitted by Ld. DR that the entire group was found to be engaged in providing/receiving accommodation entries. On the basis of various documents found, as well as statements recorded during the course of the search, it was held that the group entities have introduced their unaccounted money through paper companies based in Kolkata and Mumbai. The loan received from M/s. Satyam Projects Ltd., during the year by the assessee, was regarded as an accommodation entry



and added u/s 68 of the Act by the Ld. AO. He has argued that the Ld. CIT(A) was not justified in deleting the addition on merits, and the same deserves to be upheld.

8. We have heard the rival submissions and perused the material placed before us. Ld. AR has placed on record a copy of the assessment order u/s.143(3) for AY. 2012-13 in the case of the lender M/s. Satyam Projects Ltd. wherein no adverse inference has been drawn qua the impugned transaction. Documentary evidences of repayment of the loan in subsequent years and the financials of the lender company have also been filed.

8.1. After careful consideration of the facts and circumstances, we are of the view that the Ld. CIT(A) has examined the impugned loan transaction in detail and has allowed relief to the assessee on sound reasoning as reproduced in Para 7 hereinabove. Moreover, under similar facts and circumstances, the coordinate bench has allowed relief on account of similar loan transactions with **M/s. Satyam Projects Ltd.** in the case of M/s. Lotus Logistics & Developers Pvt. Ltd.(supra). Under these facts and circumstances, we are of the view that the decision of the Ld. CIT(A) is based on merits and does not call for any interference. Accordingly, revenue's appeal on this issue is dismissed.”

10. In view of the above discussion and respectfully following the above decisions(supra), we find no infirmity in the impugned appellate order. Accordingly, the deletion of the addition of Rs.4.30 cr. by the ld. CIT(A) is upheld. Since the assessment of loan amount is deleted, the interest disallowance made by the AO would not be justified. Accordingly, the ld. CIT(A) was justified in deleting the disallowance of interest expenses amounting to Rs.2,29,942/-. Therefore, the grounds of appeal and the additional grounds of the Revenue are dismissed. In the result, appeal of the Revenue stands **dismissed**.

#### 11. Grounds of ITA No.1596/MUM/2019



12. Since the facts are exactly identical as also the issue involved in our decision rendered in para 10(supra)applies *mutatis mutandis* in appeal for AY 2013-14 as well which is also **dismissed**.

**13. Grounds of Cross Objection - C.O. No.71/MUM/2020**

- 1.(a) *The Ld. CIT(A) erred in facts and law in dismissing the jurisdictional validity of assessment u/s. 143(3) r.w.s. 153A of the Act.*
- (b) *The Ld. CIT(A) erred in facts and law in not appreciating that no addition ought to have been made in the assessment order passed u/s. 143(3) r.w.s. 153A of the Act, in absence of any incriminating material found during the course of search; as the assessment had already attained finality prior to the date of search.*
- (c) *The Ld. CIT(A) failed to appreciate that statements recorded during the course of search and transactions duly recorded in the regular books of accounts do not constitute incriminating material.*

14. Since Revenue's appeals have been dismissed on merits, legal grounds raised in the cross objection by the assessee are not being adjudicated upon.

15. In the result, **both the appeals of the Revenue and CO of the assessee are dismissed.**

Order pronounced in the open court on 19.09.2025.

**NARENDER KUMAR CHOUDHRY**

(न्यायिक सदस्य / JUDICIAL MEMBER)

**PRABHASH SHANKAR**

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai



दिनांक /Date 19.09.2025  
Lubhna Shaikh / Steno

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
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उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

