

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.5328/MUM/2025
(Assessment Year:2010-2011)**

Ashish Girish Jain

9, Surendra Apartment, Damodar Mahatre Road,
Dahisar East, Mumbai - 400068.Maharashtra.

[PAN:AGUPJ8962G]

..... **Appellant**

Income Tax Officer – 42(1)(1), Mumbai

703, 7TH Floor, Kautilya Bhavan,
C-41 to C-43, G Block, Bandra Kurla

Complex, Bandra (East), Mumbai - 400051

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee

: Shri Rajesh Shah

For the Respondent/Department

: Shri Pradipsinh Saktavat

Date

Conclusion of hearing

: 16.12.2025

Pronouncement of order

: 07.01.2026

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 24/03/2025, passed by the Learned CIT(A) whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 19/02/2016, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the Assessment Year 2010-2011.
2. The Assessee has raised following grounds of appeal :
 - "1. The Ld. AO has erred in reopening the case u/s 147 of the Act by issuing notice u/s 148 of the Act, without any material on record.
 2. The Learned Assessing Officer erred in adding a loan of Rs.15,00,000/- (with interest) taken from Mani Prabha Impex

Pvt. Ltd. [incorrectly stated as M/s. Kangan Jewels Private Limited] without considering the details provided by the assessee during the assessment proceedings and the Ld. CIT(A) erred in confirming the same again without considering the details provided by the assessee in the appellat proceedings.

3. *The Ld. Assessing Officer and Ld. CIT(A) erred in not providing the requested cross-examination during the assessment as well as during appellate proceedings before making/confirming the addition.*

4. *The Ld. AO erred in relying on the retracted statement of a third party without bringing any cogent or incriminating material on record. The Ld. CIT(A) erred in confirming the same."*

3. The relevant facts in brief are that the Assessee has filed return of income for the Assessment Year 2010-2011 on 29/07/2010 declaring total income at INR.2,92,150/-. The said return of income was processed under Section 143(1) of the Act. A search and seizure action under Section 132 of the Act was carried out by the Director General of Income Tax (Investigation) (in short 'DGIT (Inv.)), Mumbai Rajendra Jain Group of cases and Dharmichand Jain Group of cases and statement of Mr. Rajendra Jain, Mr. Dharmichand Jain and various other persons recorded as well as detailed enquiries made by the Investigation Wing. It was revealed that Rajendra Jain Group and Dharmichand Jain Group were providing accommodation entries like bogus purchase, sales, unsecured loans, share capital etc. Further, from the details received from the DGIT (Inv.), Mumbai it is seen that the Assessee, was one of the beneficiary who obtained accommodation entries of INR.15,00,000/- under the garb of 'Unsecured Loan', during the Financial Year 2009-2010 relevant to the Assessment Year 2010-2011 from Mani Prabha Impex Pvt. Ltd., one of the group concerns of Dharmichand Jain Group. Accordingly, the Assessing Officer had reasons to believe that an amount of INR.15,00,000/- is simply an accommodation entry and income chargeable to tax amounting to INR.15,00,000/- had escaped assessment for Assessment Year 2010-2011. As a consequence, notice u/s 148 of the Act, dated

20/03/2015, was issued to the Assessee after recording the following reasons for reopening the assessment under Section 147 of the Act:

"The assessee filed its Return of Income on 29.07.2010 declaring total income of Rs.2,95,150/-, The return was processed us. 143(1) of the Act. The office of the DGIT (Inv.). Mumbai conducted a search and seizure action u/s. 132 of the I.T. Act, 1961 in the case of Shri Rajendra Jain Group on 03.10.2013 who indulged in providing accommodation entries in the nature of bogus sales and unsecured loans. During the search action, statement of Shri Rajendra Jain and various other persons, who assist Shri Rajendra Jain in providing bogus Loans & Advances, was recorded in which they admitted and revealed the modus operandi of accommodation entries.

The assessee is one of the beneficiary who obtained accommodation entries of bogus sales of Rs. 15,00,000/- during F.Y. 2009-10 from Mani Prabha Impex Pvt. Ltd., the group concern of Shri Rajendra Jain. It is also established that no actual transaction is carried out by these parties with their customers and they provide only accommodation entries of sales/loans after charging small commission.

Hence, I have reasons to believe that income chargeable to tax to the extent of Rs. 15,00,000/-has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year i.e. for A.Y. 2010-11 within the meaning of section 147 of the Income-tax Act, 1961."

4. The notice under Section 148 was duly served upon the Assessee. In response, vide letter dated 18/04/2015, the Assessee requested that income tax return filed on 29/07/2010 declaring total income at INR.2,95,150/-, be treated as return filed in response to the notice issued under Section 148 of the Act. No objections were filed by the Assessee challenging the reasons recorded for reopening the assessment. The Assessing Officer proceeded with reassessment proceedings. It was noticed by the Assessing Officer that in the Balance Sheet as at 31/03/2010, the Assessee has shown an amount of INR.15,00,000/- due to 'Mani Prabha Impex'. In response

to the show cause notice issued by the Assessing Officer, the Assessee vide Reply Letter, dated 05/01/2016, and placed before the Assessing Officer the following documents and details during the reassessment proceedings:

- i. loan confirmation for the period from 01/04/2013 to 30/11/2014
 - ii. date(s) on which it has received back the loan of INR.15,33,452/- i.e. closing balance as on 31/03/2013, as per loan confirmation submitted for the period 01/04/2009 to 31/03/2010.
 - iii. bank statement highlighting the entries.
 - iv. audited copy of balance sheet as on 31 March 2010, alongwith relevant enclosures, of M/s. Mani Prabha Impex P. Ltd., to verify the details of 'Loans & advances' party.
5. However, the Assessing Officer rejected the documents and details furnished by the Assessee observing that the Assessee has been not able to file any details to substantiate that the transaction is genuine, except loan confirmation and affidavit. Thus, the Assessee had failed to prove the three elements viz., identify, genuineness and creditworthiness, for proving the transaction was not an accommodation entry. The Assessing Officer relied upon the statement of Mr. Dharmichand Jain recorded by the Investigation Wing observing that the statement given on oath by Mr. Dharmichand Jain during the course of search and seizure action under Section 132 of the Act made it clear that the said statement as well as the confirmation submitted by the Assessee were signed by Mr. Dharmichand Jain. It was the duty of the Assessee to produce him before the Assessing Officer he was now Assessee's witness which was evident from the fact that the Assessee had obtained affidavit from Mr. Dharmichand Jain. However, the Assessee had failed to produce him. Before the Investigation Wing, in statement recorded on oath Mr. Dharmichand Jain had, in answer to Question No. 32 (recorded on 04/10/2013) and in answer to

Question No.6 (recorded on 13/01/2014), confirmed that cheques were issued by the group concerns to beneficiaries in return for cash received from such beneficiaries. The interest received on such bogus loans was returned in cash after deducting commission of 0.5% per annum on loan amount. The Assessing Officer concluded that in view of the aforesaid, the affidavit given by Mr. Dharmichand Jain on 14/07/2015 did not hold any water since the Assessee had failed to produce Mr. Dharmichand Jain before the Assessing Officer for examination. Thus, the Assessing Officer concluded that in view of the specific facts and the evidences available in the shape of copies of statements recorded under oath of the above persons, the details /documents produced by the Assessee in the form of loan confirmation and bank statement did not adequately rebut and controvert the specific statements recorded on oath by the parties during the course of search action. Hence, it can be concluded that the loan transaction under consideration was not genuine transaction and was entered to avoid the payment of legitimate taxes. Therefore, Unsecured Loan of INR.15,00,000/- stated to be received by the Assessee from M/s. Mani Prabha Impex P. Ltd. was treated as unexplained credits by the Assessing Officer and addition was made in the hands of the Assessee under Section 68 of the Act.

6. Being aggrieved, the Assessee preferred appeal before the Learned CIT(A). The Learned CIT(A) rejected the challenge of the validity of reassessment proceedings and confirmed the addition made by the Assessing Officer on merits. Thus, vide order dated 24/03/2025, learned CIT(A) dismissed the appeal preferred by the Assessee.
7. The Assessee has now preferred the present appeal before the Tribunal on the grounds reproduced in Paragraph 2 above.
8. During the course of hearing Learned Authorized Representative for the Assessee reiterated the submissions made before the authorities

below and placed reliance upon synopsis [placed at Page 1 to 11 of the Paper Book].

9. Per contra, Learned Departmental Representative placed heavy reliance on the order passed by the Assessing Officer and the Learned CIT(A).
10. We have considered the rival submissions and have perused the material on record. As regards challenge to the validity of reassessment proceedings under Section 147 of the Act are concerned, we are in agreement that the Learned CIT(A). We do not find any infirmity in the order passed by the Learned CIT(A) in this regard which reads as under:

"6.1. I have considered the submission made by the appellant and have also gone through the material on record. In the first part of his submission, the appellant has submitted that the initiation of reassessment proceedings was not legally valid and should be quashed. However, the appellant has neither raised such ground challenging the reassessment proceedings in original appeal nor has taken any additional ground. Therefore, the above submissions are not relevant in the context of present appeal. Even other also, the case was reopened under section 147 of the Act on the basis of tangible information that the assessee had taken accommodation entry of unsecured loan through from Rajendra and Dharamchand Group of cases. The reasons were recorded and prior approval from the concerned authority was taken before issuing notice under section 148 of the Act. As the case was reopened within a period of four years from the end of the relevant assessment year, as per law, the only condition to make reason to believe that the income has escaped assessment is that the AO should have tangible information which the AO was having being received from Investigation wing. Admittedly, the reasons recorded were given to the appellant during assessment proceedings. It is also admitted that the appellant had not raised a any objections against such reasons or notice under section 148 during the reassessment proceedings. This means he had accepted such proceedings as valid which is also evident from the fact that no ground has been raised against such proceedings."

11. From the material on record it is clear that the information was received by the Assessing Officer from the Investigation Wing. The aforesaid information contained fresh factual information regarding the activities of the Rajendra Jain Group and Dharmichand Jain Group which constituted tangible material to initiate reassessment proceedings. It is not disputed that statements recorded disclosed that the Rajendra Jain Group and Dharmichand Jain Group concerns were involved in providing bogus accommodation entries. The contention advanced on behalf of the Assessee was restricted to the transaction undertaken by the Assessee with M/s. Mani Prabha Impex Private Limited. It is settled legal position that in Income Tax Officer Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [291 ITR 500], the Hon'ble Supreme Court had explained that the reasons to believe is different from conclusive proof. In the case of Raymond Woollen Mills Ltd. Vs. ITO [236 ITR 34 (SC)], the Hon'ble Supreme Court has held that the adequacy or correctness of the material is not to be investigate at the notice stage; what is required is some material that forms the basis of Assessing Officer's belief that income chargeable to tax had escaped assessment. In the present case the Assessing Officer had formed the belief that income chargeable to tax had escaped assessment on the basis of fresh tangible material being information/material received from the Investigation Wing. Since the reassessment proceedings were initiated within a period of 4 years from the end of the relevant assessment year and no regular assessment was framed on the Assessee for the Assessment Year 2010-2011, all the requirements of Section 147 of the Act stood fulfilled. It is admitted position that the Assessee had not filed any objections to reasons recorded for reopening assessment. Thus, taking into consideration the aforesaid, we hold that the contentions raised by the Assessee challenging the validity of reassessment proceedings under Section 147 of the Act do not hold merit and are hereby rejected.

12. As regards challenge to the addition made under Section 68 of the Act on merits is concerned, we find that during the course of assessment proceedings, the Assessing Officer had directed the Assessee to provide explanation regarding unsecured loan amounting to INR.15,00,000/- taken from M/s. Mani Prabha Impex Pvt. Ltd. a group concerned of Shri Dharmichand Jain. The Assessee had filed relevant documents and details which of which have been recorded in Paragraph 7.1 of the Assessment Order in the following manner:

"7.1. In the Balance Sheet as at 31/03/2010, the Assessee has shown an amount of INR.15,00,000/- from 'Mani Prabha Impex'. In response to the request for loan confirmation, the Assessee vide letter dated 05/01/2016 has submitted the loan confirmation alongwith Affidavit signed by Deponent, D.C. Jain, director for M/s. Mani Prabha Impex P. Ltd., duly notarized by Rajkumar P. Mohite, Advocate, Reg. No.10542. In the affidavit, Shri Dharmichand Jain, Son of Shri Sohanlal Jain has affirmed and declared that during the Financial Year 2009-2010 loan amounting to INR.15,00,000/- was advanced to Shri Ashish G. Jain, in tabular form mentioning the date of transaction, and received interest of INR.33,452/- on 25/03/2010. In the Affidavit notarized on 14/07/2015, even though Shri Dharmichand Jain affirmed and declared that as on 30/11/2014 there is no closing balance in the name of Shri Ashish G. Jain in his books of accounts, it has failed to furnish

- i. loan confirmation for the period from 01/04/2013 to 30/11/2014*
- ii. date(s) on which it has received back the loan of INR.15,33,452/- i.e. closing balance as on 31/03/2013, as per loan confirmation submitted for the period 01/04/2009 to 31/03/2010.*
- iii. bank statement highlighting the entries.*
- iv. audited copy of balance sheet as on 31 March 2010, alongwith relevant enclosures, of M/s. Mani Prabha Impex P. Ltd., to verify the details of 'Loans & advances' party.*

13. The contention advanced on behalf of the Assessee is that the

aforesaid documents furnished by the Assessee were brushed aside by the Assessing Officer by merely placing reliance upon the statement of Mr. Dharmichand Jain recorded on 04/10/2013 and 13/01/2014 during the course of search and seizure action under Section 132 of the Act carried out by the DGIT (Inv.), Mumbai in the case of Rajendra Jain Group and Dharmichand Jain group of cases. We find that the Learned CIT(A) had rejected the aforesaid contention of the Assessee observing that the documents furnished by the Assessee were considered by the Assessing Officer in Paragraph 7.1 of the impugned order. It was noted by the Learned CIT(A) that the Assessee had failed to produce Mr. Dharmichand Jain before the Assessing Officer during the assessment proceedings. The Learned CIT(A) has also recorded a finding that the Assessee had not placed on record copy of bank statement of the lenders and complete copy of Income Tax Returns and financial statements to prove the creditworthiness of the lenders and genuineness of the transaction. Thus, the Assessee had failed to discharge the initial onus cast upon him to prove creditworthiness of the lender as well as genuineness of the loan transaction. The Assessee has placed before us copy of documents filed before the Assessing Officer which include Income Tax Return acknowledgement of Mani Prabha Impex Pvt. Ltd for the Assessment Year 2010-2011. The Assessee had also filed before the Assessing Officer confirmation of balance and the bank statement of Mani Prabha Impex Pvt. Ltd for the period 01/10/2012 to 13/03/2013. Therefore, the finding recorded by the Learned CIT(A) is incorrect to and contrary to the material on record this extent. The Learned CIT(A) has concluded that the Assessee had failed to discharge the initial onus cast upon the Assessee to prove the creditworthiness of the lender and genuineness of the transactions. We are not in agreement that the aforesaid conclusion drawn by the Learned CIT(A) for the reason that the Assessee had placed before the

Assessing Officer following documents as recorded in Paragraph 7.1 of the Assessment Order:

- i. A copy of the notarized retraction statement of Sr. Dharmichand Jain
- ii. Confirmation of the account of the alleged Maniprabha Impex Pvt. Ltd.
- iii. A copy of the ledger account and the relevant portion of the bank statement of Maniprabha Impex Pvt. Ltd., in which the entries of the unsecured loan are reflected.
- iv. A copy of the cross-confirmation of repayment of the loan and the relevant portion of the bank statement of Maniprabha Impex Pvt. Ltd., in which the entries of the repayments are reflected.

14. The aforesaid documents show that the Assessee had taken a loan from the lender which was also repaid. In support the Assessee had filed ledger account, confirmation, Income Tax Returns acknowledgment and bank statements of the lenders. Therefore, the primary onus cast upon the Assessee was stood discharged. The issue that arise for consideration is whether the aforesaid documents could be rejected by the Assessing Officer by merely placing reliance upon the statements of Mr. Dharmichand Jain during the search proceedings conducted by the Investigation Wing. In this regard, we find that Assessment Order does not refer to any independent inquiry or investigation having been carried out by the Assessing Officer. After referring to the documents furnished by the Assessee in Paragraph 7.1 of the Assessment Order, the Assessing Officer had observed that it is necessary to peruse statement given on oath by Mr. Dharmichand Jain during the course of search and seizure action under Section 132 of the Act. After considering the statement of Shri Dharmichand Jain, the Assessing Officer rejected the documents furnished by the Assessee observing that Mr. Dharmichand Jain had admitted to entered into the bogus

transactions with the Assessee and the Assessee had failed to produce the Mr. Dharmichand Jain before the Assessing Officer. Thus, perusal of the Assessment Order shows that no independent inquiry was carried out by the Assessing Officer. There is nothing on record that any notice (show cause notice or notice under Section 133(6) of the Act) was issued by the Assessing Officer during the course of assessment proceedings. Therefore, we find merit in the contention advanced on behalf of the Assessee that the Assessing Officer had rejected the documents furnished by the Assessee for merely relying upon the statement of Mr. Dharmichand Jain recorded by the Investigation Wing. We note that the Learned CIT(A) had recorded that Mr. Dharmichand Jain had supported the stand taken by the Assessee that the loan transaction under consideration was a genuine transaction in Paragraph 7.4 and 7.5 in the following manner:

"7.4. From the above, it is clear from the confirmation submitted by the Assessee as well as information received from the DGIT (Inv.), it is crystal clear that both the person is same as both the documents are signed by Shri Dharmichand Jain (D.C. Jain). At this juncture, under these circumstances, it is necessary to pinpoint that it is the duty of the Assessee to produce the party as they are Assessee's witness, which is evident from the fact that the Assessee has now obtained Affidavit M/s, Dharmichand Jain, who have given statement recorded on oath, supra, before the Investigation Wing Considering the statement given on Oath that especially in answer to question 32 recorded on 04.10.2013 and in answer to question no.6 recorded on 13.01.2014 wherein he has confirmed that "In this way, we generate cheques for giving loans to various parties. We received cash from loan parties against the cheque given to them. The cash is used to settle the amounts to whom we have sold goods through angadia. We receive interest on such loan, which we return it back in cash after deducting our commission @0.5% per annum on loan amount, the Affidavit given on 14.07.2015 does not hold any water unless he, Shri Dharmichand Jain, appeared before this Office and explained the situation, which leads him to change his statement, subject to verification.

7.5 *Considering all the factual aspects discussed in earlier paragraphs coupled with the statement recorded on oath, and modus operandi of this transaction, it is clear that the assessee had entered into bogus transaction with the party M/s. Mani Prabha Impex P. Ltd. as Unsecured Loan' stated to be received which is nothing but just an accommodation entry."(emphasis supplied)*

15. While rejecting the affidavit of Mr. Dharmichand Jain furnished by the Assessee, the Assessing Officer relief upon the statement of Mr. Dharmichand Jain without making any inquiry or investigation and without making any efforts to secure presence of Mr. Dharmichand Jain. Clearly the aforesaid approach adopted by the Assessing Officer cannot be countenanced and is hereby rejected. We reject the contention of the Revenue that the Assessee had failed to discharge the initial onus cast upon the Assessee under Section 68 of the Act. To the contrary, based upon the material on record, we are of the view that the Assessee had placed sufficient material on record to discharge the initial onus cast upon the Assessee to prove creditworthiness of the lender and genuine of the transactions. We have already concluded that the finding returned by the Learned CIT(A) that the Assessee had failed to produce bank statement of the Lender was also factually incorrect. On the other hand the Revenue has failed to take any steps to shift the onus back on to the Assessee by bringing on record any material to challenge the veracity of the documents filed by the Assessee. The fact that unsecured loan of INR.15,00,000/- was repaid by the Assessee has also not been challenged by the Revenue. Therefore, given the aforesaid we hold that the addition of INR.15,00,000/- made by the Assessing Officer under Section 68 of the Act cannot be sustained facts and circumstances of the present case and is, therefore, deleted.
16. In view of the above Ground No 2 & 4 raised by the Assessee are allowed while Ground No.1 and 3 raised by the Assessee are

dismissed.

17. In result, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 07.01.2026.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 07.01.2026
Milan,LDC

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

