

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**  
**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1049/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2007-08)

Shri Parmanand K. Hinduja, 402, Banswani Tower, Near Corporation Bank, Municipal Road, Ulhasnagar, Dist. Thane - 401003.	<b>बनाम/</b> v.	Asst. Comm. Of Income Tax - Circle - 2, Mohan Plaza, Ist floor, Khadakpada, Kalyan (West).
स्थायी लेखा सं./PAN : AACPH9702N		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by	Shri Deepak Tralshawala & Shri M.P. Makhija
Revenue by :	Shri Kailash Gaikwad (Sr.DR)

सुनवाई की तारीख / **Date of Hearing** : 01-02-2016

घोषणा की तारीख / **Date of Pronouncement** : 27.04.2016

आदेश / ORDER

**Per Ramit Kochar, Accountant Member**

This appeal, filed by the assessee, being ITA No. 1049/Mum/2014, is directed against the order dated 30-12-2013 passed by learned Commissioner of Income Tax (Appeals)- II, Thane (hereinafter called "the CIT(A)"), for the assessment year 2007-08, the appellate proceedings before the CIT(A) arising from the assessment order dated 28-9-2012 passed by the Assessing Officer (hereinafter called "the AO") u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (Hereinafter called "the Act").

2. The grounds raised by the assessee in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (Hereinafter called "the Tribunal") read as under:-

"On the Facts and Circumstances of the Case and in Law

1. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the action of learned assessing officer in re-opening validly completed assessment of the assessee.
2. The Learned Commissioner of Income Tax (Appeals) has erred in confirming the addition of Rs. 15,65,000/- made by the assessing officer inspite of the fact that assessee had conclusively proved the source of investment made in the flat.
3. The Learned Commissioner of Income Tax (Appeals) has erred" in confirming the addition on irrelevant considerations."

3. The brief facts of the case are that the assessee filed his return of income on 20<sup>th</sup> June, 2007 which was processed u/s 143(1) of the Income Tax Act, 1961 on 6<sup>th</sup> July, 2007. The case was reopened u/s 147 of the Act after recording the reasons and with prior approval of the CIT dated 20<sup>th</sup> July, 2011. Statutory notice u/s 148 and 142(1) of the Act dated 21<sup>st</sup> July, 2011 along with questionnaire was issued and duly served on the assessee. The assessee in response submitted vide his letter dated 19<sup>th</sup> July, 2012 that the original return of income filed may be treated to have been filed in response to the notice u/s. 148 of the Act.

During the course of re-assessment proceedings u/s 147/148 of the Act, the A.O. observed that the assessee is a retired Section Officer of the Defense Estate Office, Colaba, Mumbai. The information called for as per the questionnaire issued by the AO, was submitted by the assessee to the AO. On perusal of the statement of accounts of the assessee, it was observed by the A.O. that in the books of Adarsh Co-Operative Housing Society Ltd. ,

CTS No. 652, Block VI, Colaba Division, Captain Prakash Pethe Marg, Colaba, Mumbai, the assessee was allotted a flat No. 1103 admeasuring area of 650 sq. ft. for which the assessee has paid an amount of Rs. 66,08,512/-. The payment details are as under:-

Sr. No.	Amount paid by assessee to the Adarsh CHSL, Mumbai in Rs.	Date of payment	A.Y.
1	700000	Upto 05.01.2005	2005-06
2	500000	26.11.2005	2006-07
3	500000	28.03.2006	2006-07
4	265000	30.08.2006	2007-08
5	300000	26.02.2007	2007-08
6	350000	01.03.2007	2007-08
7	650000	20.03.2007	2007-08
8	16500	10.10.2007	2008-09
9	540000	25.01.2008	2008-09
10	545000	28.07.2008	2009-10
11	3200	22.09.2008	2009-10
12	1120000	02.04.2009	2010-11
13	545000	04.12.2009	2010-11
14	545000	16.07.2010	2011-12
Total	66,08,500		

The assessee had paid initial membership fee of Rs. 50,000/- out of his own savings which was reflected in the assessee's Balance Sheet as on 31<sup>st</sup> March, 2005. The balance investment amount of Rs. 65,58,500/- paid by the assessee towards the cost of the flat was not disclosed by the assessee in his Balance Sheet. During the instant assessment year 2007-08, the assessee has invested an amount of Rs. 15,65,000/- on the said flat, hence, the A.O. asked the assessee to explain the source of the investment. Statement of the assessee was recorded u/s 131 of the Act on 29<sup>th</sup> July, 2011 wherein the assessee stated that he has invested total amount of Rs.66,08,512/- for the

said flat and out of which an amount of Rs. 65,58,500/- was borrowed from M/s San Finance Corporation, Nagpur for purchasing the said flat. It was observed by the AO that the said loan amount was not routed through the assessee and the amount was directly paid by the said San Finance Corporation to Adarsh Co-operative Housing Society Limited and during the year an amount of Rs. 15,65,000/- was directly paid by the San Finance Corporation, Nagpur to the said society. Since in the opinion of the AO the assessee had not given proper evidence in support of his claim that the assessee has received the above amount as loan from San Finance Corporation, Nagpur and the same was invested in the above mentioned flat/property, the assessee was asked by the AO to explain as to why an amount of Rs. 15,65,000/- should not be added to the total income of the assessee as investment from unexplained sources u/s. 69B of the Act.

The assessee in response submitted that the said amount was given by San Finance Corporation, Nagpur out of their funds directly to Adarsh Co-operative Housing Society Limited in respect to the afore-stated assessee's flat. The assessee submitted that the genuineness of sale transaction is proved beyond doubt and the San Finance Corporation, Nagpur also confirmed the transaction. The assessee submitted that the said Adarsh Co-operative Housing Society Limited was formed by the defense people and later on State Government has issued a GR under which people from various sections of the life was also introduced. The assessee being a defense person got the allotment of flat in the said society on merits. The assessee submitted that he approached the said San Finance Corporation for taking loan and the said San Finance Corporation has also financed other flats in the same society. The amount was directly paid by San Finance Corporation to the society and the transaction is genuine and proper as per the requirement of section 68 of the Act. The assessee relied on the following judicial pronouncements:-

- i) Orient Trading Co. Ltd. v. CIT, 49 ITR 723 (Bom)
- ii) CIT v. Mahalakshmi Textiles Mills Ltd. , 100 ITR 360 (Mad.)
- iii) Addl. CIT v. Hanuman Agarwal, 151 ITR 150 (Patna)
- iv) Sarogi Credit Corporation v. CIT, 103 ITR 344
- v) Addl. CIT v. Bahri Bros (P) Ltd., 154 ITR 244 (Patna)
- vi) Bhadarmal Hajarimal v. ITO, 5TTJ 297
- vii) ITO v. Hindustan Cold Storage and Refrigeration Company, 19 TTJ 467
- viii) ITO v. Sikkanthan Stores, 7 TTJ 294 (Mad.)
- ix) Champaklal Dhamanwala HUF v. ITO, 34 ITD 209 (Ahm.)
- x) Atmaram J. Manghirmalani HUF v. ITO, 67 ITD 289 (Mum)
- xi) J.S. Hastimal v. CIT, 49 ITR 273 (Madras)
- xii) Rohini Builders v. DCIT 256 ITR 360
- xiii) Dimco Silk Mills v. ITO, ITAT Ahd. Bench
- xiv) Micro land v. ACIT 67 ITD 446 (Bangalore)
- xv) CIT v. Daulatram Rawatmull, 87 ITR 349 (SC)
- xvi) Kalwa Devadettam v. Union of India, 49 ITR 165 (SC)
- xvii) ACIT v. Anima Investment Ltd. 73 ITD 125 (Delhi)
- xviii) CIT v. Bedi & Company Pvt. Ltd. 230 ITR 580 (SC)
- xix) Kirloskar Investment and Finance Ltd. v. ACIT, 67 ITD 504
- xx) ACIT v. Govindram Agarwal, 76 ITD 120 (Calcutta)
- xxi) Mola Bux v. ITO, 51 TTJ 1 (JP)
- xxii) CIT v. Hiralal Chgagan Lal Tank, 257 ITR 281 (Rajasthan)
- xxiii) Murlidhar Lahornimal v. CIT, 280 ITR 512 (Gujarat)

The assessee submitted that the identity , capacity and genuineness of the lender is proved beyond doubt who had given the funds out of their account and the assessee has discharged the onus, hence, no addition should be made of the said loan given by the said San Finance Corporation to the assessee.

The A.O. after considering the reply of the assessee held that the case laws relied upon by the assessee related to the unexplained cash credit u/s 68 of the Act while in this case, the assessee did not reflect any cash credits entries in the books of accounts of the assessee and the issue is regarding the partly recorded unexplained investment by the assessee which is covered u/s 69B of the Act whereby the investment has never been fully disclosed by the assessee. The assessee disclosed only Rs. 50,000/- investment in the Adarsh Co-Operative Housing Society Limited in the Balance Sheet and the loan from San Finance Corporation, Nagpur is also not reflected by the assessee as liability in the Balance Sheet filed along with the return of income with the Revenue, hence, the transaction cannot be accepted as genuine loan transaction due to the following reasons:-

- i) There is no proper structured loan agreement entered into between assessee and the lender;
- ii) The lender has not asked from the assessee for the collateral security;
- iii) The lender has not charged any interest from the assessee and;
- iv) The assessee's statement u/s 131 shows that the Secretary of the Society introduced the assessee to the director of the loan creditor and the loan creditor released the loan by flouting the norms related to normal business transactions/prudence;
- v) The transaction is not a prudent business transaction.

The AO held that these loan transaction claimed by the assessee is not genuine and hence it is proved that the assessee has made investment in the flat at Adarsh Co-operative Housing Society Limited, Mumbai and the amount expended on making the investment exceeds the amount recorded in this behalf by the assessee in the Balance Sheet maintained by the assessee and since the explanation offered by the assessee for the source of this investment

is not satisfactory, hence, an amount of Rs. 15,65,000/- was added to the total income of the assessee by the AO under the head 'income from house property' vide assessment orders dated 28-09-2012 passed by the AO u/s. 143(3) read with Section 147 of the Act.

4. Aggrieved by the assessment orders dated 28-09-2012 of the A.O. passed u/s. 143(3) read with Section 147 of the Act, the assessee preferred first appeal before the CIT(A).

5. Before the CIT(A), the assessee reiterated the submissions what were made before the A.O. . The assessee submitted that Adarsh Co-operative Housing Society Limited was formed by the people from defense background though later on the State Government has issued a GR under which people from various sections of life were also included as members. The assessee being an employee of defense department was granted membership and accordingly he paid membership fee of Rs.50,000/- out of his own savings which amount has been reflected in the Balance Sheet as on 31/03/2005. The assessee submitted that the total cost of the flat no 1103 admeasuring 650 square feet was Rs.66,08,500/- , out of which Rs.50,000/- was paid by the assessee and the balance amount of Rs.65,58,500/- was invested in the said flat by raising a loan from M/s San Finance Corporation, Nagpur at the introduction of his old colleague working with defense department and who is presently Secretary of the Adarsh Co-operative Housing Society Limited. The assessee submitted that it was orally agreed between the assessee and M/s San Finance Corporation that the San Finance Corporation, Nagpur will directly pay the amount to the said society on behalf of the assessee. The written agreement containing all the terms will be signed in due course and in process a draft agreement was prepared to be approved jointly. But before it could be signed , then at the instance of Hon'ble Bombay High Court some enquiries were started and all the records of the society were seized by the

CBI and since the issue has become sub-judice , no further action on the draft agreement was taken. The copy of draft agreement was submitted before the CIT(A). The photo-copy of confirmation letter from San Finance Corporation, Nagpur showing amount of loan, date, cheque/DD, name of the bank etc. were submitted before the CIT(A). The ledger extract of the assessee's account in the books of San Finance Corporation, Nagpur for the financial years from 2005-06 to financial year 2010-11 were also submitted before the CIT(A). The loan confirmation letter from San Finance Corporation, Nagpur for the period 01-04-2004 to 21-05-2012 containing its name, address & PAN duly signed and that the cheques were issued directly in the name of Adarsh Co-Operative Housing Society Ltd. by San Finance Corporation on behalf of the assessee , were also submitted by the assessee before the CIT(A). The assessee submitted that it can be seen from loan confirmations that direct payments were made by San Finance Corporation to Adarsh Co-operative Group Housing Society Limited on behalf of the assessee and it is not that no interest will be charged on these loans but for some initial period no interest was charged by the San Finance Corporation, Nagpur, but thereafter it was to be charged which can be seen from the said loan confirmation letter. The assessee submitted that when the lender has confirmed of having given the loan on behalf of the borrower directly to the builder and borrower admits of having raised the loan for acquiring the said flat, the transaction cannot be held as non-genuine. Thus, it does not matter when the loan agreement is entered into . Similarly with regard to whether interest has been charged or not, the assessee submitted that since the lender admits of having released the loan and the purchaser admits of having raised/received the loan, the transaction cannot be held to be non-genuine. The A.O. also had not brought on record any incriminating material to prove that it is assessee's money which has been introduced in the form of loan and the A.O. is relying on presumption and conjectures which is not permitted in law as the suspicion howsoever strong cannot take the place of the proof. The

assessee submitted that the Revenue has also conducted enquiries of San Finance Corporation, Nagpur directly about the identity, creditworthiness and genuineness of the loan transaction. The assessee submitted that the AO erred in rejecting the contention of the assessee that the assessee has borrowed the funds from San Finance Corporation, Nagpur for making investment in the said flat in Adarsh Co-operative Housing Society Limited and the assessee has duly satisfied all the ingredients of Section 68 of the Act by establishing identity and creditworthiness of the lender and genuineness of the loan transaction. The assessee submitted that the assessee is not a businessman but a salaried person having retired from government service and earning only pension and income from doing drafting of documents etc. and the assessee was not well conversant with the maintenance of books of account that is why the investment is not shown in the books of accounts. The assessee submitted that Section 69B of the Act is not applicable to the case of the assessee as there is no requirement cast under law on the assessee for maintenance of books of accounts keeping in view the affairs of the assessee and also it was not an intentional and purposeful default on the part of the assessee to have not reflected the said investment in the flat at Adarsh Co-operative Housing Society Limited and of the corresponding borrowings made from San Finance Corporation. The assessee submitted before the CIT(A) that in any case the assessee during re-assessment proceedings has come forward and has given sufficient documentary evidences to substantiate the raising of loan by the assessee. The assessee submitted the copy of loan confirmation letter of M/s San Finance Corporation, Nagpur dated 8-12-2010 along with copy of accounts for different years and the draft loan agreement have been furnished before the CIT(A) along with written submissions, which were forwarded by the CIT(A) to the A.O. for necessary verifications and investigations about the sources of funds and for submission of remand report.

The A.O. submitted the remand report dated 1st July, 2013 to CIT(A) in which it was stated by the A.O. that notice u/s 133(6) of the Act was issued on 27<sup>th</sup> May, 2013 to San Finance Corporation, Nagpur , calling for the details of the loan given to the assessee and the mode of payment, source of payment duly supported by documentary evidences , copy of Balance Sheet and return of income for relevant period . In reply, the San Finance Corporation, Nagpur has submitted the copies of ledger accounts of the assessee for financial year 2004-05 to financial year 2010-11 and also the bank statement. On perusal of these documents, the A.O. noted that the lender has reflected the assessee as debtor for the loan of Rs. 65,81,632/- as on 31<sup>st</sup> March, 2011 in the books of account. No loan agreement has been entered into for advancement of loans to the assessee. Further, no loan agreement has been signed, no interest has been charged and there is also not any collateral security given by the assessee to said M/s San Finance Corporation, Nagpur and the AO stated in the remand report submitted to the CIT(A) that matter may be decided on merits.

The copy of above remand report of AO dated 01/07/2013 was forwarded by the CIT(A) to the assessee for furnishing of comments . The assessee submitted that out of total investment of Rs. 66,08,512/- in the afore-stated flat at Adarsh Co-operative Housing Society Limited , Rs. 50,000/- payment was made by the assessee in assessment year 2005-06 which was reflected in the balance sheet filed along with the return of income year after year and the balance amount of Rs. 65,58,500/- is out of the loan raised from San Finance Corporation, Nagpur and hence the assessee has conclusively and satisfactorily explained the source of total investment in purchase of the flat No. 1103 on 11<sup>th</sup> floor in Adarsh Co-Operative Housing Society Limited and hence the addition becomes untenable in the eyes of law. The assessee submitted that it is immaterial whether loan agreement was entered into or not , or collateral security was taken by the lender or not and whether

interest was charged or not charged , so long the lender has confirmed the loan transaction and the identity, creditworthiness of the lender is not in doubt and genuineness of the transaction is proved. Cheque payment have been made directly by San Finance Corporation to the society for disbursing this loan and hence it proves the source of investment in the flat and there being no loan agreement or non-payment of interest etc. will have no bearing on the matter involved in this case. The assessee again reiterated its submissions as were made earlier which are not repeated for sake of brevity.

The CIT(A) after considering the facts on records, submissions of the assessee and the remand report of the A.O. , held that the assessee has invested an amount of Rs. 66,08,512/- for purchase of a flat in the said Adarsh Co-op Group Housing Society Limited, but the assessee has only disclosed Rs. 50,000/- in his Balance Sheet. As such the A.O. had strong reasons to believe that the income of the assessee has escaped assessment. The reasons of the re-opening were duly recorded after specific information. The original assessment was completed u/s 143(1) of the Act. There is no change of opinion. The CIT(A) held there is no infirmity in reopening of the assessment by the AO and the AO has validly initiated the proceedings u/s 147 and completed the assessment.

With respect to the source of investment in the said flat at Adarsh co-operative Housing Society Limited of Rs. 15,65,000/- made during the instant year under appeal, it was held that the San Finance Corporation, Nagpur have given the loan of Rs. 65,58,500/- to the assessee by directly making payment to the society from assessment year 2005-06 to the assessment year 2011-12, without any collateral security and without charging any interest as well after such a long period of time having elapsed since the loans were first disbursed, no repayment/recovery of loan and interest is called by the said San Finance Corporation from the assessee

which is not possible in the common parlance. The said San Finance Corporation had no intention of recovering said loan from the assessee. The CIT(A) held that genuineness of the transaction is not proved satisfactorily and the claim of loan is bogus which is to be added as income of the assessee u/s 68 of the Act . Consequently , the investment in the afore-stated house property at Rs.15,65,000/- during the instant year under appeal out of bogus loans remained unexplained and hence the same is liable to be added to the total income of the assessee u/s. 69B of the Act. Accordingly the addition made by the A.O. was confirmed by the CIT(A) vide orders dated 30.12.2013.

5. Aggrieved by the orders dated 30.12.2013 passed by the CIT(A), the assessee is in appeal before the Tribunal.

6. The ld. Counsel for the assessee submitted that the instant appeal is filed by the assessee. The stay petition was rejected by the Tribunal but early hearing was allowed. The assessee was Section Officer with defense department and now is a retired defense officer. The assessee had booked a flat in Adarsh Co-operative Housing Society Ltd. and had paid Rs. 50,000/- towards membership fee and the total investment made towards investment in the said flat was Rs. 66,08,512/- , out of which payment of Rs.50,000/- was made by the assessee for purchase of the said flat towards membership fee and balance payment of Rs.65,58,512/- was made by borrowings from San Finance Corporation, Nagpur. The assessee has reflected payment made by him towards membership fee of Rs.50,000/- in the Balance Sheet , while the loan of Rs.65,58,512/- raised from San Finance Corporation and the payment so directly made by said San Finance Corporation to Adarsh Co-operative Group Housing Society is not reflected in the Balance Sheet of the assessee. The A.O. has objected that there was no structured loan agreement between the assessee and the said lender San Finance Corporation , no collateral securities have been taken by the said San Finance Corporation to

secure the lending and no interest is charged on the said loans , thus this transaction is an unusual transaction , hence addition u/s 69-B of the Act is attracted as genuineness of the loan transactions is not proved. The CIT(A) directed AO to make verification and called for the remand report from the A.O. . The A.O. issued notice u/s 133(6) of the Act to the lender San Finance Corporation, Nagpur who has confirmed the transaction of having made direct payment to the society towards the purchase of the said flat by the assessee. The CIT(A) after considering the submission and remand report held that this is not a normal transaction and confirmed the orders of the A.O. . No action has been taken by the Revenue against the lender. The ld. counsel for the assessee stated that the finance company has given the loan directly to the Adarsh Co-operative Housing Society Limited. The assessee has only declared Rs. 50,000/- which is the initial payment made by the assessee in his Balance Sheet while the loan raised from San Finance Corporation is not reflected in the balance sheet which was doubted by the A.O. and the CIT(A). The loans have been granted since assessment year 2005-06 to assessment year 2011-12 and the appeal filed by the assessee for other years are pending with the CIT(A). No loans have been repaid to San Finance Corporation till date by the assessee. The AO has invoked section 69B of the Act , while the CIT(A) has invoked Section 68 and 69B of the Act.

7. The ld. D.R., on the other hand, submitted that these are case related to 'Adarsh Co-operative Housing Society Limited' , which are monitored by Hon'ble Bombay High Court. There has been no attempt made by the said Finance company to recover the loan from the assessee since assessment year 2005-06 till date. No loan agreement is entered into by the assessee with the lender and no interest has been charged by the said lender on the loan granted to the assessee. The assessee has also not given any collateral security to the lender. The assessee has made no attempt to prove that the loans are genuine. As held by the CIT(A), the genuineness of the loan

transaction is not proved satisfactorily and hence this transaction is a bogus transaction. He supported the orders of CIT(A) at the time of hearing. The ld. DR submitted that written submissions, if required will also be filed by the Revenue in the instant case for which permission may be granted .The Bench permitted Revenue to file the written submissions with the Tribunal, if so desired by the Revenue with a copy to be given to the ld. Counsel for the assessee simultaneously .

8.      The ld. Counsel for the assessee, in the rejoinder, drew our attention to the re-assessment order (paper book,page No. 44-45) with respect to the San Finance Corporation, Nagpur, re-assessment orders dated 30.12.2011 passed by the Revenue u/s 143(3) r.w.s. 147 of the Act whereby only addition has been made by the Revenue with respect to the disallowance of interest on the grounds that interest bearing funds are diverted to advance interest free advances . However, no addition has been made by the Revenue with respect to the sources of funds raised by the said San Finance Corporation which were later deployed to give advances and loans to various parties including the assessee. The ld. Counsel drew our attention to P.B. page No. 31 which is the audited accounts of the San Finance Corporation, Nagpur as on 31<sup>st</sup> March, 2007 wherein it is reflected that it has given deposit and advance of Rs. 32,37,432/- to the assessee as at 31.03.2007.

9.      We have considered the rival contentions and also perused the material on record including the case laws relied upon by the rival parties. The Revenue has not filed any written submissions as was indicated during the course of hearing as set-out above , thus we are proceeding to adjudicate the instant appeal based on material and facts as are available presently on record. We have observed that the assessee has booked a flat in Adarsh Co-operative Housing Society Limited in the previous year relevant to the assessment year 2005-06 and payment of Rs. 50,000/- was made by the

assessee towards membership fee which has been duly reflected in the Balance Sheet's filed by the assessee with Revenue . The assessee has stated to have raised loan from San Finance Corporation, Nagpur of Rs. 65,58,500/- as on 31<sup>st</sup> March 2011 which has been disbursed by San Finance Corporation, Nagpur over a period from the assessment year 2005-06 to assessment year 2011-12 by making direct payment to Adarsh Co-operative Housing Society Limited . The assessee has produced the loan confirmation letter dated 08-12-2010 from San Finance Corporation which is placed at paper book page 19 - 21 along with details of disbursement of loans to the assessee. The assessee has produced the ledger extracts of the said San Finance Corporation representing assessee's account in the books of accounts of San Finance Corporation for the period from the assessment year 2005-06 to assessment year 2011-12 which are placed at paper book, page 22-28 filed with the Tribunal. The assessee has also filed the relevant audited Balance Sheet of San Finance Corporation as at 31-03-2007 i.e. for the assessment year 2007-08 along with the assessment order dated 30-12-2011 passed by the Revenue u/s 143(3) r.w.s. 147 of the Act in the case of San Finance Corporation, Nagpur which are placed at paper book-2, page 1-36 and 44-47. From the Schedule of deposits and Advances as on 31-3-2007 of the San Finance Corporation, Nagpur shows that the deposit and advance of Rs. 32,37,432/- to the assessee was disbursed as on 31-03-2007. From perusal of the said assessment order dated 30-12-2011 , it is revealed that no addition has been made by the Revenue in the hands of the San Finance Corporation for the loans so made to the assessee or source thereof while additions have been made vide disallowance of interest on borrowed funds which were deployed for granting interest free loans. It is stated by the authorities below in their order's that the bank statement for relevant period were also submitted by San Finance Corporation directly to AO during remand report proceedings in pursuance to notice u/s 133(6) of the Act. The assessee himself took the possession of the flat on 14<sup>th</sup> October, 2010 from

Adarsh Co-operative Housing Society, vide letter of possession being placed in the paper book , page 29 filed with the Tribunal. The assessee being a pensioner claimed that he had failed to disclose the payment directly made from time to time by the San Finance Corporation, Nagpur to Adarsh Co-operative Housing Society Limited of Rs 65,58,500/- made over a period from assessment year 2005-06 to assessment year 2011-12, in the return of income filed with the Revenue. The assessee has brought on record afore-stated material and evidences to prove its contentions to substantiate the identity , creditworthiness of the lender and genuineness of the loan transaction. The Revenue on the other hand has doubted the genuineness of the loan transactions on the ground that no structured loan agreement has been entered into between the assessee and the lender, no interest has been charged by the lender on the loans so disbursed, no collateral securities have been taken by the lender from the assessee to secure loan amount disbursed and no effort has been made by San Finance Corporation to recover the said loan and interest on these loans from the assessee and the assessee has also not made any re-payment of loan to San Finance Corporation till date. The assessee has also not declared these loans and investment in the afore-stated flat to the tune of Rs.65,58,500/- in his Balance Sheet filed with the Revenue over the years and only initial payment of Rs.50,000/- made by the assessee towards membership fee has been disclosed. The Revenue has thus doubted the genuineness of the loan transaction and it was incumbent on the assessee to give explanation not only to prove by cogent material identity and creditworthiness of the lenders but also it is incumbent on the assessee to prove the genuineness of the whole loan transactions as the said loan transactions were undertaken by the assessee and the primary onus is on the assessee to prove the genuineness of the loan transaction. The assessee has given an explanation that there was a draft loan agreement which was prepared but due to investigations being under-taken by the CBI on directions of Hon'ble Bombay High Court, this agreement could not be signed

as the documents of the society were seized and matter became sub-judice. The assessee has also termed the other concerns of the revenue as set-out above such as no structured loan agreements has been entered into between the assessee and the lender , no interest has been charged by the said lender, no collateral security has been taken by the lender, no repayment of loan and interest has been made till date, being immaterial and irrelevant as the assessee contended that once the loan confirmations are brought on record and the lender has confirmed the transaction , the transaction's genuineness stand proved. On perusal of the extracts of ledger accounts of the assessee in the books of accounts of San Finance Corporation(placed at paper book page 23 and 24) for the financial year 2005-06 and 2006-07 which were also supplied directly by said San Finance Corporation to Revenue during remand report proceedings, we have observed certain un-usual entries. Before discussing the same , we are re-producing the said relevant ledger extracts which are placed in paper book filed with the Tribunal by the assessee at page 23-24 as under:

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San Finance 05-06	01 Apr 2006	
Ledger for the period 01 Apr, 2005 to 31 Mar,2006		
Group : Assets	Account selection:Selected transacted Accounts	(All amounts in Rs.)

Document				Running Balance
Date	Number	Narration	Debit	Credit
		Opening Balance		6,50,650.00
24 Nov, 2005	MBP M24112005 1	To Ch No. 158541 Paid Adarsh Co Op Housing Society Ltd Colaba Mumbai	5,00,000.00	11,50,650.00
25 Mar, 2006	MBP M25032006 1	To Ch No. 158544 Paid Adarsh Co Op Housing	5,00,000.00	16,50,650.00

	Society Ltd Colaba Mumbai			
<b>31 Mar, 2006 JV 31032006 77</b>	<b>To advance paid transfer to Sanson Developers Properties A/c</b>		<b>16,50,650.00</b>	<b>0.00</b>
	Total/Closing Balance	10,00,000.00	16,50,650.00	0.00

San Finance 06-07

31 Mar,2007

Ledger for the period 01 Apr, 2006 to 31 Mar,2007

Group : Assets Account selection:Selected transacted Accounts (All amounts in Rs.)

Document				Running Balance
Date	Number	Narration	Debit	Credit
Hinduja Parmanand		Opening Balance		0.00
25 Aug, 2006	MBP M25082006 1	To Ch No. 158545 of ICICI Bank Ltd Paid on Account	2,65,000.00	2,65,000.00
22 Feb, 2007	MBP M22022007 1	To Ch No. 243051 of ICICI Bank Ltd Paid on Account	3,00,000.00	5,65,000.00
26 Feb, 2007	MBP M26022007 1	To Ch No. 158546 of PNB D Peth Paid on A/c	3,50,000.00	9,15,000.00
15 Mar, 2007	MBP M15032007 1	To Ch No. 243052 of ICICI Bank Ltd Paid on Account	6,50,000.00	15,65,000.00
31 Mar, 2007	JV 31032007 71	Being interest up to Mar.07 on balance	21,782.00	15,86,782.00

JV 31032007 104	Being bal. trf. From Sanson Developers as per instruction by SHri Anand Sir & Mayur Sir	16,50,650.00		32,37,432.00
	Total/Closing Balance	32,37,432.00		32,37,432.00

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The assessee relied upon the above ledger extracts of the account of the assessee in the books of accounts of San Finance Corporation to contend that the loans granted by San Finance Corporation to the assessee were duly recorded in the books of accounts of San Finance Corporation and hence the loans are genuine. The perusal of the above ledger extract of San Finance Corporation for the financial year 2005-06 (paper book, page 23) reveals that the closing balance outstanding being receivable from assessee in the books of accounts of San Finance Corporation as at 31-03-2006 with respect to the said loans were reduced to 'Nil' by passing a journal entry by the said San Finance Corporation on 31-03-2006 titled '**To advance paid transfer to Sanson Developers Properties A/c-Rs.16,50,650**' meaning thereby that the amount of Rs.16,50,650/- which stood receivable from the assessee on account of said loans as on 31-03-2006 was reduced to 'Nil' by passing the above journal entry by making the corresponding debit entry to 'Sanson Developers Properties'. This balance outstanding of 'Nil' as on 31-03-2006

from the assessee in the books of accounts of 'San Finance Corporation' is not matching with the loan confirmation submitted by San Finance Corporation for the entire period 13-09-2004 to 21-05-2012 whereby this journal voucher entry is not reflected (PB,page 21). Similarly ,the perusal of the above ledger extract of San Finance Corporation for the financial year 2006-07 (paper book, page 24) reveals that the opening balance outstanding to be receivable from the assessee in the books of accounts of San Finance Corporation as at 01-04-2006 with respect to the said loans was 'Nil'. The said San Finance Corporation by passing a journal entry on 31-03-2007 (after one year of earlier journal voucher entry passed on 31-03-2006) in its books of accounts titled '**Being bal. trf. from Sanson Developers as per instruction by SHri Anand Sir & Mayur Sir -Rs.16,50,650'**' brought back the said loans receivable back into the name of the assessee in its books of accounts meaning thereby that the amount stood receivable from the assessee as on 31-03-2007 was enhanced by this amount of Rs.16,50,650/- which was earlier on 31-03-2006 transferred to 'Sanson Developers Properties' and the balance receivable from the assessee as at 31-03-2007 in the books of San Finance Corporation now stood at Rs.32,37,432.00 which is matching now with loan balance confirmation submitted by the assessee but again this journal entry of 31-03-2007 is not appearing in the said loan confirmation submitted by the 'San Finance Corporation' for the entire period 13-09-2004 to 21-05-2012 (PB,page 21) . This aspect has not been clarified by the assessee as to why San Finance Corporation transferred the loan receivable from the assessee to the Debit of 'Sanson Developers Properties' on 31-03-2006 and why the balance loan receivable from the assessee as at 31-03-2006 stood at 'nil' in the books of San Finance Corporation and why after almost one year , the said entry was brought back into the books of San Finance Corporation on 31-03-2007 as set out above. The reason and purpose for transferring the loan receivable from assessee to 'Sanson Developers Properties' by the lender San Finance Corporation as on 31-03-2006 is very

important to come to conclusion and adjudicate this appeal to understand the entire factual matrix and pith and substance of the nature and substance of entire loan transaction which the assessee has not clarified .The assessee has merely stated that the loans are outstanding in the books of lender M/s San Finance Corporation while the fact of the matter is that the said San Finance Corporation by passing journal entry on 31-03-2006 has removed/erased the loan outstanding of Rs.16,50,650/-- due from the assessee from its books of account and the amount of Rs.16,50,650/- stood transferred to being receivable from 'Sanson Developers Properties' as on 31-03-2006 and the receivable from assessee in books of San Finance Corporation was reduced to Nil as on 31-03-2006. It is almost after one year on 31-03-2007, the said amount of Rs.16,50,650/- was transferred back to the debit of the assessee as being receivable by said San Finance Corporation by passing a journal entry on 31-03-2007 of the amount of Rs.16,50,650/-. No clarification and explanation has been given by the assessee with respect to above entries. Revenue also has not made any enquiry and examination to understand the reason and purpose of transferring the entry by San Finance Corporation by debiting to the account of 'Sanson Developers Properties' as on 31-03-2006 with Rs.16,50,650/- and removing the name of the assessee as borrower of the said loans from San Finance Corporation from its books of accounts as on 31-03-2006 and bringing the loan receivable from assessee to 'Nil' as on 31-03-2006 , before fastening liability on the assessee. Thus, in our considered view , it is very important to bring on record why the loan receivable from the assessee was reduced to Nil on 31-03-2006 by San Finance Corporation by transferring the outstanding loan receivable amount of Rs.16,50,650/- from the assessee to the debit of said 'Sanson Developers Properties' on 31-03-2006 as set out above and again why the said amount was brought back as receivable from the assessee on 31-03-2007. In our considered view and in the interest of justice, this matter need to be set aside to file of the AO for de-novo enquiries and examination to bring on record the

pith and substance of the nature of entire loan transactions undertaken by the assessee with the said San Finance Corporation to evaluate its genuineness. The assessee is also required to co-operate with the revenue to discharge its onus as cast under the Act to prove the genuineness of this loan transaction . There are other critical issues raised by the Revenue connected with the raising of the loan by the assessee from San Finance Corporation as set out above which need to be properly explained and answered by the assessee to discharge his onus cast under the Act . Needless to say proper and adequate opportunity of hearing will be given by the AO to the assessee in accordance with principles of natural justice in accordance with law. The assessee will be allowed by the AO to produce necessary and relevant evidences and explanations in support of his defense. We order accordingly.

9. Further, we have observed that the assessee's return of income was filed on 20<sup>th</sup> June, 2007 which was processed u/s 143(1) of the Act on 6<sup>th</sup> July, 2007 and since the return was processed u/s 143(1) of the Act, it cannot be held that the A.O. has formed any opinion with respect to the investment made by the assessee in the flat in the Adarsh Co-operative Housing Society Limited. Information has been received by the Revenue that the assessee has invested an amount of Rs. 66,08,512/- and based upon that the Revenue has reopened the case and the notices has been issued within four years from the end of the assessment year by issuing notice u/s 148 and 142(1) of the Act dated 21<sup>st</sup> July, 2011 and since the Revenue has received cogent tangible material having live link/nexus with the reasons to believe that the income has escaped assessment , the return of income was originally processed and accepted u/s 143(1) and not u/s 143(3) r.w.s. 143(2) of the Act and the Revenue has re-opened the assessment within four years of the end of the assessment year, we hold that the Revenue has rightly invoked the provisions of section 147/148 of the Act and we uphold the reopening of the assessment. We order accordingly.

10. In the result, the appeal filed by the assessee in ITA NO. 1049/Mum/2014 for the assessment year 2007-08 is partly allowed for statistical purposes.

Order pronounced in the open court on 27<sup>th</sup> April, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 27-04-2016 को की गई ।

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 27-04-2016

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व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "D" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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