

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member  
and Shri Sandeep Gosain, Judicial Member**

**ITA No. 2908/Mum/2012**  
(Assessment Year: 2008-09)

A C I T - 23(3) C-10, Pratyakshakar Bhavan, 4 <sup>th</sup> Floor, BKC Mumbai 400051	Vs.	Smt. Vimla J. Gurnani F-401, Redwood Socity Vasant Garden, Behind Veena Nagar Mulund (W) - 400080 PAN - AECPG0902R
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**Appellant**

**Respondent**

Appellant by: Shri Dipak Kumar Sinha  
Respondent by: Shri Jigna Parekh

Date of Hearing: 24.08.2016  
Date of Pronouncement: 16.09.2016

**ORDER**

**Per Jason P. Boaz, A.M.**

This appeal by Revenue is directed against the order of the CIT(A)-33, Mumbai dated 24.02.2012 for A.Y. 2008-09.

2. The facts of the case, briefly, are as under: -

2.1 The assessee, an individual, filed her return of income for A.Y. 2008-09 on 31.07.2008 declaring loss of ₹17,30,697/-. The case was subsequently taken up for scrutiny and completed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act') vide order dated 28.12.2010, wherein the income of the assessee was determined at ₹1,94,19,483/- in view of the following additions: -

- |   |                |
|---|----------------|
| (i) Unexplained cash credit under section 68                  | ₹2,05,22,380/- |
| (ii) Unexplained cash deposit in Andhra Bank                  | ₹ 1,5,000/-    |
| (iii) 10% interest income on bank deposits                    | ₹ 77,800/-     |
| (iv) Unexplained source of investment in Reliance Mutual Fund | ₹ 4,00,000/-   |

2.2 Aggrieved by the order of assessment dated 28.12.2010 for A.Y. 2008-09, the assessee preferred an appeal before the CIT(A)-33, Mumbai. The learned CIT(A) disposed off the appeal allowing the assessee partial relief. In the impugned order the learned CIT(A) deleted the additions made in the order of assessment listed at para 2.1 of this order (supra) at (i) Unexplained cash credits of ₹2,05,22,380/- and at (iv) Unexplained source investment in Reliance Mutual Fund of ₹4,00,000/-. The other two additions made by the Assessing Officer (AO) listed at para 2.1 of this order (supra) at (ii) and (iii) were upheld.

3. Aggrieved by the order of the CIT(A)-33, Mumbai the Revenue is in appeal raising the following grounds: -

- “1. On the facts and circumstances of the case and in law CIT(A) erred in deleting the addition of Rs.2,05,22,380/- on account of unexplained cash credit u/s 68 of the I.T. Act, 1961. Even though the Assessee failed to prove the genuineness of unsecured loans.*
- 2. On the facts and circumstances of the case and in law, the learned CIT(A) erred in admitting the additional evidence without giving opportunity to the A.O. which is in violation of Rule 46A of the I.T. Rules, 1962.*
- 3. The appellant craves leave to add, to amend, alter, substitute or modify any of the above ground or add a fresh ground as and when found necessary either before or at the time of hearing.”*

4. **Ground No. 3**, being general in nature, no adjudication is called for thereon.

5. **Grounds 1 and 2:**

5.1 In these grounds, which are interconnected, Revenue assails the order of the learned CIT(A) in deleting the addition of ₹2,05,22,380/- on account of unexplained cash credits under section 68 of the Act even though the assessee has failed to prove the genuineness of unsecured loans. It was further contended that the learned CIT(A) had erred in admitting additional evidence without affording opportunity to the AO which is in violation of Rule 46A of the IT Rules, 1962. The learned D.R. for Revenue was heard and placed strong reliance on the order of the AO on this issue.

5.2.1 Per contra, the learned A.R. for the assessee supported the finding of the learned CIT(A) in deleting the addition of ₹2,05,22,380/- made on account of unexplained cash credits under section 68 of the Act by the AO. The learned A.R. for the assessee reiterated the submissions put forth before the learned CIT(A). According to the learned A.R. the assessee was staying alone in a rented premises after the death of her husband, as all her children were NRIs, married and settled abroad. After their father's death, the assessee's children decided to purchase a flat for their mother (i.e. Flat No. 406, Oberoi Springs, Goregaon (E), Mumbai from M/s. Oberoi Construction P. Ltd.) Since the assessee was a widow, staying alone, the children elicited the help of the assessee's sister Smt. Laxmi Bhatia to deal with the Builder in the purchase of the flat and it is for this reason that Smt. Bhatia's name was included as purchaser thereof, instead of the assessee, who is the actual purchaser. In these circumstances, the Builder refused to enter into any agreement with the assessee and instead, made a tripartite agreement between Smt. Bhatia, the assessee and itself, wherein the consideration for sale of the flat was shown at ₹1,51,84,152/- as against actual sale price of ₹88,72,500/- and the difference thereof was shown as payable.

5.2.2 It is submitted that both before the AO and learned CIT(A), the assessee had furnished the copies of purchase agreement of flat, copies of bank account, copies of relevant pass books of the assessee's relatives who had contributed towards purchase of the aforesaid property for the assessee and confirmation thereof, i.e. of Shri Dilip Gurnani (son), Deepa Hopchandani (daughter), Kamal Sadhwani (brother-in-law) and Manju Kamal Sadhwani (sister). The learned CIT(A) has also acknowledged that the same details were filed before her in the form of a paper book. It is submitted that apart from the above, the assessee had also filed an affidavit of Smt. Laxmi Bhatia reiterating the facts of the matter, which were already explained to the AO in assessment proceedings. In this context, it is submitted by the learned A.R. for the assessee that the contention of Revenue that the learned CIT(A) had admitted additional evidence without giving the AO opportunity under Rule 46A of the IT Rules

is baseless. All the evidences in the form of copies of PAN, passports, bank accounts and confirmations of the aforesaid blood relatives considered by the learned CIT(A) while deleting the addition of ₹2,05,22,380/- made on account of unexplained cash credits under section 68 of the Act, were also admittedly before the AO in assessment proceedings. It is contended that the written submissions put forth before the learned CIT(A) in appellate proceedings are only arguments and not additional evidence and the affidavit of Smt. Laxmi Bhatia was only to corroborate and reiterate the facts of the matter which were urged before the learned CIT(A). No additional evidences were admitted by the learned CIT(A) in the course of appellate proceedings as is evident from the findings rendered at paras 3.3 to 3.12 of the impugned order. It was prayed that in the light of the above, Revenue's appeal be dismissed.

5.3.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record. The dispute raised before us by Revenue is the deletion by the learned CIT(A) of the addition of ₹2,05,22,380/- under section 68 of the Act as unexplained cash credits in the assessee's hands, made by the AO in respect of the following parties: -

1.	Kamal S. Sadhwani	₹49,11,550/-
2.	Manju Kamal Sadhwani	₹29,85,486/-
3.	Deepa Hopchandani	₹84,14,092/-
4.	Laxmi Bhatia	<u>₹62,11,252/-</u>
	Total addition under section 68	<u>₹2,05,22,380/-</u>

5.3.2 The above addition under section 68 of the Act made by the AO in the context of the sources of investment in the purchase of flat No. 406, Oberoi Springs, Goregaon (E), Mumbai by the assessee, was deleted by the learned CIT(A) in the impugned order holding as under at paras 3.4 to 3.12 thereof: -

*“3.4 After going through all these facts and submissions made by the appellant I have come to understand the facts as under:*

*(1) The appellant is a lady staying in a rented house alone whereas her children, all major, married are settled abroad and still having bank accounts in India as per the chart given below:*

S. No.	Name	Citizen of the country	PAN	Bank A/c in India	Whether return is filed for A.Y. 2008-09
1	Kamal S. Sadhwani	Spain	BJGPS4876N	Axis Bank No. 004010100502993 & No. 004010100503006	Yes
2	Manju K. Sadhwani	Spain	BJGPS5172K	Axis Bank No. 572010100017693	N.A.
3	Deepa Hotchandani	Resident of Shanghai	ACJPH0710R	NRE Bank account HDFC No. 00151060009614 NR Preferred and Bank of Baroda	N.A.
4	Laxmi Bhatia	India	-	-	N.A.

(2) Subsequent to death of their father these children decided to purchase a house for the mother however she being alone and not competent to deal with the Builder, Oberoi Constructions P. Ltd., the builder was approached by her sister Mrs. Laxmi Bhatia for purchase of flat No.406 in Oberoi Springs. A letter of allotment of 18.05.2006 was issued by the builder in the name of Mrs. Laxmi Bhatia for a consideration of Rs.88,72,900/-. Against the same Mrs. Laxmi Bhatia has paid the amount in installment.

(3) The appellant has filed ledger account of Mrs. Laxmi Bhatia as it appears in the books of accounts of Oberia Construction Pvt. Ltd. given by them. Same is in form of Annexure-'A'. It is noted that:

(i) The first payment of Rs.4,43,645/- made by Mrs. Laxmi Bhatia on 12.04.2006 by cheque No.062670 then second Rs.15,18,225/- vide cheque No. 0282147 dated 15.05.2006 and third Rs.7,00,000/- by cheque No. 816754 dated 12.05.2006. Then there are further payments as can be seen from Annexure-A totaling to Rs. 35,00,358/- done by Mrs. Laxmi Bhatia. It is seen that the booking amount of Rs. 4,43,645/- paid by Mrs. Laxmi Bhatia was reimbursed to her by cheque No. 990231 dated 12.05.2006 for an amount of Rs. 4,43,645/- from joint saving account No.SB/01/00000336 of Mrs. Vimla J. Gurnani and Jeevan L. Gurnani, her late spouse.

(ii) Coming to payment of Rs. 15,18,225/- and Rs. 7,00,000/- as well as others appearing in Annexure-A they all have been paid by cheques issued by Mrs. Deepa Hotchandani, the daughter of appellant, Smt. Vimla J. Gurnani as is evident from the account number maintained by Deepa Hotchandani with HDFC Bank, Mulund Branch A/c. No. 00 151060009614N preferred and Bank of Baroda. Thus the initial booking was done by Smt. Laxmi Bhatia and that amount was also reimbursed by the appellant only from her joint account and then other payments appearing in the ledger account which are confirmed by the builder while issuing the letter of allotment were also made by

appellant's daughter Deepa Hotchandani. It emerges that Smt. Laxmi Bhatia was only a facilitator for booking the flat. Same is evident from the details given in form of the chart for the payments received by builder through Mrs. Laxmi Bhatia with letter of allotment dated 18.5.2006.

Sr. No.	Cheque No./ date	Amount	Bank on which drawn	Actually paid by
1	06270 13.04.2006	4,43,645/-	HSBC, Mumbai	Mrs. Vimla Gurnani by way of reimbursement
2	082147 12.05.2006	15,18,225/-	Bank of Baroda	Mrs. Deepa Hotchandani
3	816754 12.05.2006	7,00,000/-	HDFC, Mumbai	Mrs. Deepa Hotchandani
	Total	26,61,870/-		

3.5 The appellant was also asked to furnish copy of purchase deed of the house. Same has been furnished. I have perused the clauses of the agreement, the relevant are reproduced as under:

"(xix) Pursuant to the request made by the confirming party/ies the developer agreed to allot to the confirming party/ies Flat No.406 admeasuring about 997 sq.ft. (built-up) including the planter area on the 4<sup>th</sup> floor at Building Oberoi Springs shown on the plan hereto annexed marked a Annexure (hereinafter referred to as "the said premises") together with 1 car parking/s for the consideration of Rs.88,72,900/- (Rupees Eighty Eight Lakhs Seventy Two Thousand Nine Hundred only) and on the terms and conditions as recorded in the letter of allotment dated 18 May 2006 of the said premises.

(xx) Out of the total consideration of Rs.88,72,900/- (Rupees Eighty Eight lakhs Seventy Two Thousand Nine Hundred only) the confirming party/ies have paid a sum of Rs.55,36,689/- (Rupees Fifty Five Lakhs Thirty Six Thousand Six Hundred Eighty Nine only) to the developer and Rs.33,36,211/- (Rupees Thirty Three Lakhs Thirty Six Thousand Two Hundred and Eleven only) is still payable by the confirming party/ies to the developers."

"4. Out of the total consideration of Rs.15,184,152/-(Rupees One Crore Fifty One Lakh Eighty Four Thousand One Hundred and Fifty Two only) a sum of Rs.11,847,941/- (Rupees One Crore Eighteen Lakhs Forty Seven Thousand Nine Hundred and Forty One only) shall be payable by the purchaser to the confirming party/ies and the balance sum of R.3,336,211/- (Rupees Thirty Three Lakhs Thirty Six Thousand Two Hundred and Eleven only) shall be payable by purchaser to the developer.

5. The purchaser has paid the said sum of Rs.5,536,689/- (Rupees Fifty Five Lakhs Thirty Six Thousand Six Hundred and Eighty Nine only) to the confirming party/ies on or before execution hereof (the payment and receipt the confirming party/ies both hereby admit and acknowledge). The balance sum of Rs.6,311,252/- (Rupees Sixty Three Lakhs Eleven Thousand Two Hundred Fifty Two only), shall be paid by

the purchaser to the confirming party within 30 days from the execution of these presents.

6. The purchaser/s shall pay to the Developer the balance consideration of Rs.3,336,211/- (Rupees Thirty Three Lakhs Thirty Six Thousand Two Hundred and Eleven only) (in addition to all other amounts including amounts mentioned in clause 29 & 30 hereafter), in the following manner."

3.6. The letter of allotment also shows the actual consideration agreed with the parties was Rs.88,72,900/- against which the amount of Rs.55,36,689/- was received by the builder till date of agreement and balance Rs.33,36,211/- only was payable. The appellant was asked the reason for sudden enhancement in the consideration amount of the flat reflected at Rs. 1,51,84,152/-. In response to the same appellant has brought to my attention to clause 4,5,6 on page 10 which have already been reproduced above. It is noted from the same that the builder has actually got Rs.88,72,900/- only whereas enhanced price of the flat has been taken to make the agreement for the reason that he was entering into the agreement with others also approximately at this rate for the flats sold to others. The Builder apparently raised a technical objection that letter of allotment was in the name of Mrs. Laxmi Bhatia whereas actually the purchaser is the appellant Mrs. Vimla J. Gurnani. In view of this the builder has made a tripartite agreement at the price at which he was selling the flats at that time i.e. at the time of registering the agreement. It is also not disputed that these cheques were issued by appellant's daughter, son and sister-in-law who all are staying abroad through their accounts maintained in India and these cheques issued by them were cleared from their accounts though handed over through Mrs. Laxmi Bhatia. At the time of entering into an agreement for taking possession of the property on 28.12.2007 and registered on 11.01.2008 it is undisputed that the market price is Rs.50,40,000/- whereas the consideration has been reflected at ₹1,51,84,152/-.

3.7 It is not disputed that even as per stamp duty valuation the flat was commanding price of Rs.50,40,000/- only. It is also not disputed that builder has allotted the flat way back in 2006 by letter of allotment of 18.05.2006 for the price of Rs.88,72,900/- which is much above the market rate as per stamp duty authorities of Rs.50,40,000/- prevailing in January 2008. Even if it is assumed that builder was selling others the flat @ rate which has been reflected at Rs.1,51,84,152/-, the appellant being purchaser cannot be brought into the net of provision of sec.50C which is applicable to the seller. In this case neither purchaser nor seller are hit by provision of sec.50C for the reason that seller is the builder. Thus sec.50C is not applicable for the reason that the appellant is the purchaser of the property.

3.8 After going through all these details I am convinced that it is a case where a tripartite agreement has been entered for the enhanced consideration of the flat which was neither due nor paid and same

was not payable even subsequent to agreement entered into 11.01.2008. It is also a case that the appellant has filed a case declaring total loss at Rs. 17,30,697- against which the other investments as well as purchase of immovable property amount has been added to tax income in her hands at Rs.1,94,19,483/- when the facts remains that the total investments have been made by the appellant's children whose identity is not doubted as is evident from the passport that they are citizen of Spain and Singapore. Further the credit worthiness is not doubted as they are well settled and living with their respective families. Then coming to the transactions it is also not doubted that accounts are maintained in their account in India as NRI account from where all these cheques are issued.

3.9 Coming to the unexplained loans reflected in the name of Mrs. Laxmi Bhatia at Rs.62,11,252/- it has actually never been taken and hence is not due and payable. It has come into the picture only for the reason that said investment in flat is being reflected at Rs.1,59,58,232/- in place of actual amount payable and paid as per letter of allotment and in accordance with the registered agreement remains at Rs.88,72,900/-. Thus there is an artificial increase of Rs.63,11,252/- out of which Rs.62,11,252/- is reflected in the name of Mrs. Laxmi Bhatia, Then Mrs. Laxmi Bhatia who has been shown as original purchaser of the property in the letter of allotment and letter of confirming party at the time of registering the agreement for purchase of the property is actually nothing more than the carrier of the cheques. It is not the case. That she has invested any amount towards purchase of the property in her name even initially out of her funds. It is a matter of record that she is not an income tax payer also.

3.10 This way it comes to be the case where the balance sheet of the appellant has been prepared where names of these creditors ie. sons, daughter, sister and brother-in-law and another sister have been reflected out of whom no amount is refundable to any of these children and Mrs. Bhatia. As regards the loan amount in the name of sister and brother-in-law they have been confirmed to be loans. Thus it is sheer gesture on the part of the children of the appellant that the amount has been invested for purchase of the property though in the name of mother and son Mr. Dilip Gurnani only jointly which actually belongs to her and children with a very obvious intention that whenever they come to India they have a place to stay.

3.11 The affidavit filed by Smt. Laxmi Bhatia also reiterates the same that she was only a facilitator for the purchase of said flat as the amount was paid from the funds arranged through her sister; the appellant herself and the appellant's sons and daughters and sister and brother in law. Even keeping the affidavit aside the bank account copies furnished are showing the entries and supporting the claim of appellant. Hence I find force in the argument of the appellant that no fund of Smt. Laxmi Bhatia was invested in the flat which is appearing in the name of appellant and hence the affidavit filed by Smt. Laxmi Bhatia that she does not have any right, title or interest in the said flat

*that no amount is payable to her for the difference as is reflected in the tripartite agreement dated 11.01.2008 is reliable being supported by facts.*

*3.12 In view of this, coupled with the undisputed fact that appellant's son whose name is also incidentally appearing as purchaser along with the appellant on page 2, Mr. Dilip J. Gurnani and that he himself, daughter Deepa Hotchandani, brother-in-law Kamal Sheetal Das Sadhwani Gopwani and sister Manju Kamal Sadhwani who all are staying abroad (as is evident from the passport in their names) where they have business abroad and have invested the funds through their bank accounts maintained in India, the identity, credit worthiness and the purpose of transactions for the amount appearing in the name of these persons cannot be doubted. It is noteworthy that this balance sheet was drawn during the course of assessment hearings only showing the same as it was never drawn being a case of individuals with no books of accounts maintained. It is also noteworthy that the appellant being an individual dealing only in share trading and not maintaining books of accounts has drawn the balance sheet during the assessment proceedings in order to match her assets and liabilities. In view of the fact that the amount shown in the following names are properly explained addition u/s.68 for these amount totaling to Rs.2,05,22,380/- as below :*

<i>Ms. Deepa Hopchandani, daughter</i>	<i>: Rs.84,14,092/-</i>
<i>Kamal S. Sadhwani- Brother-in-law</i>	<i>: Rs.29,11,550/-</i>
<i>Manju Kamal Sadhwani- Sister and</i>	<i>: Rs.29,85,486/-</i>
<i>Laxmi Bhatia, Sister</i>	<i>: Rs.62,11,252/-</i>
<i>Dilip Gurnani</i>	<i>: Rs.8,00,000/-</i>

*In view of this addition u/s. 68 being not sustainable is deleted herewith. Hence ground No.1 is allowed.”*

5.3.2 As can be seen from the finding rendered by the learned CIT(A) (supra), the learned CIT(A) while dealing with this issue of investments made by close relatives of the assessee, i.e. Dilip Gurnani (son), Deepa Hotchandani (daughter), Kamal S. Sadhwani (brother-in-law) and Manju Kamal Sadhwani (sister-in-law), all NRIs settled abroad, has examined the proof of their citizenship, copy of respective passports, copy of bank accounts for the relevant period, copy of purchase agreement of said flat and confirmation from these relatives, which we find were also before the AO and considered in assessment proceedings. On the basis of these documents and other written submissions the learned CIT(A) has disposed off the assessee's appeal on this issue by deleting the aforesaid addition made under section 68 of the Act, since the learned CIT(A) was of the view

that the identity, credit worthiness and genuineness of the transaction of purchase of flat was established.

5.3.3 The learned CIT(A), in the impugned order, after examining the material on record, observed that the facts of the case on hand are that the assessee, a widow, has been living alone in a rented premises after the death of her husband. Subsequent to their father's death, the assessee's children decided to purchase a flat for her at No. 406, Oberoi Springs, Goregaon (E), Mumbai ('said flat'). In this regard the children sought the help of the assessee's sister Smt. Laxmi Bhatia to deal with the Builder, M/s. Oberoi Construction P. Ltd. As per the letter of allotment dated 18.05.2006 issued by the Builder the consideration for the said flat was ₹88,72,900/-. The allotment letter was issued in the name of Smt. Laxmi Bhatia since she dealt with the Builders and facilitated payments in respect to acquisition of the said flat. In these circumstances, the Builders refused to enter into any agreement with the assessee, but rather entered into a tripartite agreement with Smt. Laxmi Bhatia, the assessee and itself; wherein the consideration for sale of flat was shown as ₹1,51,84,152/- (the Builder was said to be selling other flats to customers at that rate) as against the recorded sale price of ₹88,72,900/- which was also recorded in the agreement.

5.3.4 The learned CIT(A) at para 3.4 of her order, after examining the bank statements of Mrs. Laxmi Bhatia vis-a-vis her ledger account, as it appeared in the books of account of the Builders, observed that the cheques issued by her to the Builders from her bank account for acquisition of the said flat were reimbursed by the assessee and her children, the details of which are at para 3.4(3)(ii) of CIT(A) order and extracted as under: -

<i>Sr. No.</i>	<i>Cheque No./ date</i>	<i>Amount</i>	<i>Bank on which drawn</i>	<i>Actually paid by</i>
1	06270 13.04.2006	4,43,645/-	HSBC, Mumbai	Mrs. Vimla Gurnani by way of reimbursement
2	082147 12.05.2006	15,18,225/-	Bank of Baroda	Mrs. Deepa Hotchandani
3	816754 12.05.2006	7,00,000/-	HDFC, Mumbai	Mrs. Deepa Hotchandani
	<i>Total</i>	26,61,870/-		

5.3.5 On examination of the purchase deed of the said flat, the learned CIT(A) observed that both the purchase deed dated 11.01.2008 as well as the letter of allotment shown the actual sale consideration of the said flat at ₹88,72,900/-, against which an amount of ₹55,36,689/- was paid to the Builder till the date of agreement and ₹33,36,211/- only was the balance payable. The learned CIT(A) also admitted that there is no dispute with the fact that the cheques towards purchase of the said flat were issued by the assessee's daughter, son and other close relatives, staying abroad, through their bank accounts maintained in India and that these were handed over through Mrs. Laxmi Bhatia. The learned CIT(A) also noted that at the time of entering into the agreement for taking possession of the flat and date of registration of the sale agreement dated 11.01.2008, the market price of the said flat was ₹50,40,000/- as per stamp duty valuation authorities, whereas the consideration in the agreement/allotment letter was ₹88,72,900/- which was much higher. The learned CIT(A) at para 3.8 of the impugned order (supra) held that the total investment in purchase of the said flat is undoubtedly by the assessee's children; whose identity is established as per their passports, prove that they are citizens of Spain and Singapore; then the genuineness of transaction concerned with and relevant to purchase of the said flat are also not to be doubted.

5.3.6 In respect of the alleged unexplained loans reflected in the name of Smt. Laxmi Bhatia, at ₹62,11,252/-, the learned CIT(A) has, after judiciously examining the material on record in this regard, come to the finding that the said transactions had never actually taken place and therefore was not due and payable. This figure of ₹61,11,252/- was an artificial increase in the name of Mrs. Laxmi Bhatia and had appeared, since the investment in the flat as per the agreement was shown at ₹1,51,84,152/-; whereas as per the letter of allotment and in accordance with the registered agreement the consideration for purchase of the flat is recorded at ₹88,72,900/-. In fact, according to the learned CIT(A) Mrs. Bhatia's name appeared in the allotment letter only because of her dealing with the builder for facilitating purchase of the said flat for the assessee and it is not the case of the AO that she had invested any amount in the

purchase of the said property at any stage. The learned CIT(A) also observed that the affidavit of Mrs. Laxmi Bhatia reiterates the fact that she was only facilitator for the purchase of the said flat on behalf of the assessee, as the funds for purchase thereof were arranged through the assessee's and her close relatives and the entries in the bank account copies examined, corroborate the claim of the assessee.

5.3.7 In the factual matrix of the case, as discussed above, we concur with the factual findings of the learned CIT(A) that it has been established that the assessee's son, Dilip Gurnani; daughter Ms. Deepa Hotchandani; brother-in-law Shri Kamal S. Sadhwani and sister-in-law Smt. Manju Kamal Sadhwani, resident and carrying on business abroad, have invested their funds through their bank accounts maintained in India, in the purchase of the said flat. The identity of the investors; close family members and their creditworthiness has been established and the genuineness of the transactions cannot be doubted. We, therefore, uphold the finding of the learned CIT(A) in the impugned order that the amount of ₹2,05,22,380/- shown in the names of the four persons (viz. above relatives of the assessee) as listed in para 5.3.1 of this order are properly explained and therefore the addition of this amount as unexplained cash credits under section 68 of the Act is to be deleted. Consequently, ground No. 1 of Revenue appeal is dismissed.

5.4 Revenue contends in ground of appeal No. 2 that the learned CIT(A) erred in admitting additional evidence and decided the issue in favour of the assessee without affording the AO an opportunity of being heard in the matter, which is in violation of Rule 46A of the I.T. Rules, 1962. We have perused the finding of the learned CIT(A) (supra) and do not find any instance of the learned CIT(A) having admitted any additional evidence, which required that the AO to be provided an opportunity to rebut the same under Rule 46A of the IT Rules. In our view, on the basis of the facts on record, we find that the documents/details considered by the learned CIT(A) in coming to the finding she did were filed before the AO in assessment proceedings as can be seen from the order of assessment. The learned D.R.

was also unable to point out any such instance of the learned CIT(A) admitting any additional evidence on the basis of which the addition under section 68 of the Act was deleted. In this factual matrix, we find no merit in the ground No. 2 raised by Revenue and accordingly dismiss the same.

6. In the result, Revenue's appeal for A.Y. 2008-09 is dismissed.

Order pronounced in the open court on 16<sup>th</sup> September, 2016.

Sd/-  
**(Sandeep Gosain)**  
**Judicial Member**

Sd/-  
**(Jason P. Boaz)**  
**Accountant Member**

Mumbai, Dated: 16<sup>th</sup> September, 2016

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -33, Mumbai*
4. *The CIT - 23, Mumbai*
5. *The DR, "F" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

n.p.