

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

**BEFORE HON'BLE SH. B. R. BASKARAN, AM &
HON'BLE SH. SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 618/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2014-15)

DCIT CEN CIR 1(3), R. No. 905, 9 th floor, Old CGO Building, M. K. Road, Churchgate, Mumbai-400 020	बनाम/ Vs.	Jainam Investments, 11-A, 5 th floor, Rockside Apartment, Walkeshwar Road, Mumbai-400 006
स्थायीलेखासं ./ जीआइआरसं ./ PAN No AAHFJ1230A		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Rajiv Gubgotra, DR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri Suchek Anchaliya, AR

सुनवाईकीतारीख/ Date of Hearing	:	07.02.2019
घोषणाकीतारीख / Date of Pronouncement	:	08.02.2019

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the revenue is against the order of Ld. CIT (Appeal) – 47, Mumbai dated 06.11.17 for AY 2014-15 on the grounds mentioned herein below:-

1. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 8.75 Crore made under section 68 of the Income Tax Act on account of unproved loans shown by the assessee in the light of the lender's admission made u/s. 132(4) that the lending entity was only involved in providing accommodation entries."*

2. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.19,05,042/- claimed as interest payment on these loans when the loans itself are unproved "*

3. *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs.7,15,000/- made under section 69C of the Income Tax Act towards the commission payment for obtaining the loan entries at the rate of 0.2% of such amount, which being the prevalent business practice."*

4. *The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the AO be restored.*

5. The appellant craves leave to amend or alter any ground or to submit additional new ground which may be necessary.

2. The brief facts of the case are that the assessee is a firm engaged in the business of share trading. For the assessment year under consideration, the assessee had e-filed Return of Income on 27.09.2014 declaring Rs. Nil Taxable income. The case was selected under CASS for scrutiny. During the year in due course of business assessee had received unsecured loans from different parties, which included parties belonging to Bhanwarlal Jain Group. It was reported by DDI(Inv.), Mumbai that a Search action was carried out on the Bhanwarlal Jain Group on 3-10-2013, and it was admitted by Shri Bhanwarlal Jain that all the loans given by his group are accommodation entries. A survey action was also carried out on the assessee on 16-10-2014 to 18-10-2014 and the statement of Shri Hemal Jhaveri was recorded on oath. The AO had completed the assessment by making an addition of Rs. 8.75 crores u/s. 68 of the Act treating the loans received by the Assessee, as bogus and he has further made additions of interest paid on such loan and estimated commission

payment on such loans, thereby assessing the total income of the appellant at Rs. 9,01,20,042/-.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties, *partly allowed* the appeal of the assessee.

Now before us, the revenue has preferred the present appeal by raising the above grounds.

Ground No. 1 to 3.

3. These grounds raised by the revenue are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in deleting the additions made by AO u/s 68, 69C, etc of the I.T. Act as well as deleting the additions claimed by the assessee as interest payments on the loans, therefore we thought it fit to dispose of the same by this common order.

4. At the very outset, Ld. AR appearing on behalf of the assessee submitted before us that these grounds are covered by the order of Hon'ble ITAT in **ITA No. 6099/Mum/16 for AY 2012-13 & ITA No. 5637/Mum/2017 for AY 2013-14 in**

assessee's own case, wherein the *identical grounds* raised in the present appeal have already been decided on merits.

5. On the other hand, Ld. DR contested the appeal and relied upon the assessment order passed by AO.

6. We have heard both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the *identical grounds* have already been decided by the Coordinate Bench of Hon'ble ITAT in **ITA No. 6099/Mum/16 for AY 2012-13 and ITA No. 5637/Mum/2017 for AY 2013-14 in assessee's own case**. The operative portion of the order of Hon'ble ITAT passed in **ITA No. 6099/Mum/16 for AY 2012-13** contained in **para no. 2 to 27**, which are reproduced below:-

2. The assessee is engaged in the business of share trading. During the year under consideration, the assessee has taken loan of ` 24.75 crores from various persons. The Revenue carried out search and seizure operations in the case of Mr. Bhanwarlal Jain and his group concerns on 3.10.2013 and the said search

revealed that they are engaged in providing accommodation entries in the form of unsecured loans, bogus sale bills etc., to the interested parties. It was noticed that the assessee has taken the above said loan of ` 24.75 crores from the following persons belonging to Mr. Bhanwarlal Jain group.

Sr.No.	Name of the hawala parties	Bill amount
1.	Aastha Impex	30000000
2.	Balaji Impex	10000000
3.	Impex Gems	5000000
4.	Mayur Exports	15000000
5.	Malhar Exports	5000000
6.	Marvin Enterprises	10000000
7.	Mehul Gems Pvt Ltd	20000000
8.	Minal Gems	5000000
9.	Manas Gems Pvt Ltd	10000000
10.	Mother Exports	5000000
11.	Mouli Gems	5000000
12.	Mohit Enterprises	37500000
13.	Navakar Diamonds	5000000
14.	Prime Star	5000000
15.	Roshan Gems Pvt Ltd	20000000
16.	Sonam Gems Pvt Ltd	50000000
17.	Navkar Diamond	10000000
	Total	247500000

Hence the revenue carried out Survey operation in the hands of the assessee on 16-10-2014. Subsequently, the return of income filed by the assessee was taken up for scrutiny. Since Bhanwarlal Jain had admitted that he and his group of companies are providing only accommodation entries, the AO took the view that the assessee has introduced its unaccounted cash through the bogus loans stated above.

3. Before the AO, the assessee furnished all the details that were called for including details of loans received, details of interest paid, copies of affidavits given by the lenders, financial statement of lenders etc., in order to prove the genuineness of loans in terms of sec. 68 of the Act. Thereafter, the assessee asked the Assessing Officer to give copies of documents relied upon by him and also copies of statements given by Shri Bhanwarlal Jain and others. The assessee also sought an opportunity to cross examine them. The AO did not furnish the details requested by the assessee and also did not afford opportunity to cross examine the persons. The AO, however, proceed to place reliance on the observations made by search team in respect of Bhanwarlal Jain and accordingly concluded that the above said borrowings aggregating to Rs.24.75 crores is unexplained and creditworthiness of the same was not established. Accordingly the AO assessed the above said amount as income of the assessee u/s 68 of the Act. He also disallowed interest expenditure claimed against the above said loan. The AO also took the view that the assessee should have paid commission for availing accommodation entries and estimated such commission expenses at Rs.59.40 lakhs, which was also added to the total income.

4. The Ld CIT(A), however, took the view that the assessee has discharged the initial burden placed upon it u/s 68 of the Act by proving the identity of the creditors, creditworthiness of the creditors and genuineness of transactions. The Ld CIT(A) also expressed the view that

the assessing officer has not discharged the burden shifted upon his shoulders and has totally relied upon inadequate evidences. He also observed that the AO has failed to give incriminating materials to the assessee and also did not give due opportunity to the assessee to cross examine the witnesses, whose statements were sought to be relied upon. Accordingly, the Ld CIT(A) held that there is violation of principles of natural justice also, which would support the case of the assessee. Accordingly he held that the aggregate amount of loan of Rs.24.75 crores cannot be assessed as income of the assessee and accordingly deleted the addition made u/s 68 of the Act. The Ld CIT(A) also deleted the consequent disallowance of interest expenditure and addition of Commission expenses. Aggrieved by the order passed by Ld CIT(A), the revenue has filed this appeal.

5. *The Ld CIT-DR, took us through the assessment order and the appellate order to explain the view point of both the tax authorities. He submitted that the lender companies belonged to Bhanwarlal Jain Group and the directors themselves have confirmed that the transactions entered by their group are bogus. These concerns have adopted Circulatory method to transfer funds through many layers with the objective to give colour of genuineness to the transactions. He submitted that the modus operandi adopted by this group has been clearly established by the revenue and the same methodology has been adopted by all the lenders. It was also proved that the directors of various companies are only employees of Shri Bhanwarlal Jain. This group*

ensured that the transactions are arranged in a perfect manner in order to avoid even slightest of doubt. He submitted that the search team has, however, unearthed the bogus nature of all transactions, which has also been confirmed by Shri Bhanwarlal Jain and other persons.

6. *The Ld D.R submitted that the appellate authorities are also duty bound to conduct necessary enquiries, if there is any deficiency in the enquiry conducted by the AO, as held by Hon'ble Delhi High Court in the case of Jansampark Advertising & Marketing (P) Ltd (ITA 525/2014 dated 11-03-2015). He further submitted that the Hon'ble Delhi High Court has highlighted in the case of Pr. CIT Vs. Bikram Singh (ITA 55/2017 dated 25-08-2017) there is constant use of deception of loan entries to bring unaccounted money into banking channels and the device of loan entries continues to plague the legitimate economy of our Country. The Hon'ble Delhi High Court found in the above said case that the loan transactions did not inspire confidence as being genuine and are shrouded in mystery and accordingly confirmed the addition made by the AO u/s 68 of the Act.*

7. *The Ld D.R further submitted that the discharge of initial onus by the assessee alone will not disentitle the AO to make additions u/s 68 of the Act. He can make further verification to satisfy himself that the transactions are genuine. For this proposition, the Ld DR placed reliance on the decision rendered by Hon'ble Punjab & Haryana High Court in the case of CIT vs. Bhan and sons (2005)(273 ITR 206). The Ld D.R submitted that the*

findings of search officials conclusively prove that the loan transactions are bogus. Accordingly he submitted that mere furnishing of particulars is not enough in the peculiar facts of the present case. Accordingly he submitted that the Ld CIT(A) should not have brushed aside the findings of search officials. In this regard, the Ld D.R placed reliance on the decision rendered by Hon'ble Calcutta High Court in the case of CIT vs. Precision Finance P Ltd (1994)(208 ITR 465). He submitted that the tax authorities are entitled to look into the surrounding circumstances and human probabilities in order to ascertain the genuineness of transactions. He further submitted that they are also entitled to look into the substance by overlooking the form. For these propositions, the Ld CIT-DR relied upon the decisions rendered by Hon'ble Supreme Court in the case of Sumati Dayal (214 ITR 80)(SC) and Durga Prasad More (82 ITR 540)(SC).

8. *The Ld CIT-DR then took us through the financial statements relating to various lenders in order to show that they shared common addresses. He also took us through the copies of bank statements relating to the lenders in order to show to us that the moneys were transferred to the bank account of the lenders from some other account immediately before lending the same to the assessee. He submitted that all the lenders have followed same methodology of getting funds from some other accounts and then lending the same to the assessee. All the lenders have shared common addresses. The search officials have also shown that*

the directors of various companies are employees of Shri Bhanwarlal Jain, meaning thereby all the lender companies are filled with dummy directors. All these factors strengthen the admission made by Shri Bhanwarlal Jain that he and his group of companies are engaged in providing accommodation entries only.

9. *Accordingly the Ld D.R submitted that the order passed by Ld CIT(A) should be reversed. Alternatively he suggested that the matter may be restored to the file of the AO for examining it afresh by conducting further enquiries.*

10. *The Ld A.R submitted that the assessing officer has made the addition u/s 68 of the Act. He submitted that the assessee is required to discharge the initial onus placed upon it u/s 68 of the Act. He submitted that the assessee has furnished all the documents in order to prove the identity and creditworthiness of the creditors. All the transactions have been routed through the banking channels and hence genuineness of the creditors is also proved. The ld A.R submitted that the revenue did not find any incriminating material during the course of survey operations conducted in the hands of the assessee. He submitted that the assessee, vide its letter dated 03-03-2015, has submitted all the documents relating to the loan creditors, viz., copy of their ITR, their financial statements and bank statements, loan confirmation letters obtained from them and thus the assessee has discharged the initial onus placed upon it u/s 68 of the Act. He submitted that the onus to disprove*

the claim of the assessee was accordingly shifted to the assessing officer in view of furnishing of all the details. However, the assessing officer has failed to conduct any further enquiries to disprove the claim of the assessee.

11. *He submitted that the legal principles settled by various Courts have been reiterated in the decisions rendered in the case of Bhan & sons (supra) and Precision finance Company (supra), which were relied upon by the Ld CIT-DR. However the facts prevailing in those cases are different and hence those decisions are not applicable to the facts of the present case. He submitted that, in those cases, either the assessee did not discharge initial onus placed upon him or the assessing officer has not disproved the claim of the assessee. The Ld A R submitted that, in the instant case, the assessee has discharged the initial onus by proving the three main ingredients, viz., the identity of the creditor, the creditworthiness of the creditor and genuineness of transactions by furnishing all the materials. He submitted that the assessing officer has not found fault with these materials and further did not conduct any further enquiries to disprove the various evidences furnished by the assessee. The Ld A.R further submitted that the Survey officials have recorded a statement from Shri Hemal Jhaveri, a key person of the assessee, during the course of survey. He was specifically asked on the admission made by Shri Bhanwarlal Jain. However, Shri Hemal Jhaveri has specifically stated that the admission made by Shri Bhanwarlal Jain do not indicate that the loans taken by*

the assessee are not genuine. The Ld A.R further submitted that Shri Bhanwarlal Jain and his group of companies are engaged in diamond trading business and existence of common address in diamond trade is not uncommon and hence adverse inference should not have been drawn on those facts. He submitted that it is quite common to induct trusted employees as directors of the company and the said fact should not militate against the assessee. Accordingly he submitted that the Ld CIT(A) was justified in deleting the addition made by the AO u/s 68 of the Act and also the consequentia additions.

12. *The Ld A.R submitted that the assessing officer has mainly placed reliance on the report given by the search officials, who conducted the search in the hands of Shri Bhanwarlal Jain, which consisted of certain documents and sworn statements recorded from him and other employees. The assessing officer, however, did not confront those materials and sworn statements with the assessee. He submitted that the assessee, vide its letter dated 13-03-2015 (copy placed at page 89 of the paper book), has requested the AO to furnish copies of information, statements, reports or any document on which the AO has placed reliance. Further the assessee has also requested the AO to allow reasonable opportunity to give submissions and explanations on those materials. The assessee has also specifically asked for an opportunity to confront and cross examine the parties who gave the Statements. The assessee again made similar request in its letter dated 19-03-2015. The Ld A.R submitted that the AO, however, did not furnish*

the copies of documents and also did not allow the opportunity to cross examine the parties who gave adverse statements.

13. *The Ld A.R submitted that the assessing officer is not entitled to rely upon the documents collected behind the back of the assessee. In this regard, the Ld A.R placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Kishinchand Chellaram vs. CIT (1980)(125 ITR 713). He further submitted that the assessing officer has not provided opportunity to cross examine the parties who gave adverse statements. He submitted that the Hon'ble Supreme Court has held in the case of Andaman Timber Industries vs. CIT (Civil Appeal No.4228 of 2006 dated 02-09-2015) that, not allowing cross examination of witnesses by the adjudicating authority will result in violation of natural justice, when the said authority is placing reliance on those statement of the witnesses. Accordingly the Hon'ble Supreme court held that the order passed by the authority is a nullity. The relevant observations made by Hon'ble Supreme Court are extracted below:-*

“According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the Statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by aforesaid two witnesses....”

14. *The Ld A.R further submitted that the assessee, vide its letter dated 19-03-2015 (Placed at pages 90 -93 of paper book) has specifically requested the AO to issue summons to the loan creditors. The relevant submissions made by the assessee are extracted below:-*

“11. As informed earlier, all the loan creditors have been examined by the Investigation wing of the Income tax department and they have confirmed the transactions with our client. Ideally the appearance of the creditors before the Investigation wing and confirming the transactions should conclude the matter beyond anyone’s doubt. If, however, you wish to make independent inquiries, we request you to issue summons to the loan creditors and call for their confirmations so as to once again establish the case of our client.”

However, the AO did not make any further enquiries at all nor did he issue summons to the loan creditors. Accordingly he submitted that the AO was not entitled to make addition u/s 68 of the Act under these facts as held by Hon ble Supreme Court in the case of Orissa Corporation (P) Ltd (159 ITR 78)(SC).

15. *The Ld A.R submitted that the assessee has repaid most of the loans and the same has been noted down by the Ld CIT(A) in paragraph 6.3.32 of his order. The Ld A.R further submitted the statements given by Shri Bhanwarlal Jain has been claimed to have been retracted. He submitted that the co-ordinate bench of the Tribunal has rendered its decision in the case of M/s Vama International (ITA No.7315, 7316 & 7317/Mum/2016 dated 15-02-2018), wherein the issue was related to the disallowance of purchases made from*

M/s Bhanwarlal Jain Group. In the said decision, the Tribunal has recorded that the statements have been retracted by them subsequently. The co-ordinate bench has further held that the purchases could not be treated as bogus simply relying on the statements given in the case of Bhanwarlal Group. Accordingly the Ld A.R submitted that the AO could not have placed reliance on the statements given by Shri Bhanwarlal Jain and others.

16. *We have heard rival contentions and perused the record. We also notice that the Ld CIT(A) has deleted the additions by making detailed observations. For the sake of convenience, we extract below the operative portion of the order passed by Ld CIT(A):-*

“6.3 I have carefully considered the issues brought out by the AO in the impugned assessment order and also the submissions made by the AR on behalf of the appellant. From the material, the AO has brought out in the body of the assessment order, his case against the appellant which is summarised as under:

a. Shri Bhanwarlal Jain, in whose case a search action was conducted in 2013 by the Investigation Wing, had been found to be running a hawala racket through a clutch of benami concerns, run with the help of dummy Directors / Partners / Proprietors, who were simply employees of the said Shri Jain and were paid nominal salaries.

b. Through the said benami concerns, hawala of two types were being given - (1) hawala for purchase of diamonds; and (2) hawala for unsecured loans.

c. Hawala entries were provided against unaccounted cash provided by the beneficiaries.

d. For the hawala services, so rendered by him, Shri Bhanwarlal Jain used to charge from the beneficiaries a certain percentage as commission.

e. In his statement, made under section 132(4), Shri Bhanwarlal Jain had admitted to the said hawala racket and also the existence of dummy/benami entities, through which the said racket was being run.

f. Dummy Directors / Partners / Proprietors had also admitted to being part of the hawala racket run by Shri Bhanwarlal Jain.

g. Names of entities, from whom the impugned loans of `24.75 crore were shown to have been obtained by the appellant, figured in the data base of entities and entries compiled by the Investigation Wing, therefore, these loans, the appellant had shown in its books of account, were suspect.

h. Though the appellant had provided confirmations and other supporting evidence in respect of the impugned credits; in view of the findings of the Investigation Wing, the impugned loans were treated as non-genuine and the loan amounts were added u/s 68 to the computation of total income of the appellant

6.3.1 The above being the basic thrust of the case against the appellant, the impugned assessment order needs to be examined to figure out the quality of appellant-specific evidence if any available. A search for such an examination leads to the following questions:

a. What is the nature of evidence that has been brought on record to show that the lender parties, who advanced the impugned loans to the appellant, were benamis of Shri Bhanwarlal Jain?

b. Is there any material that has been brought out by the Assessing Officer to show that the loans in question are paper entries purchased against payment of unaccounted cash?

c. Has the Assessing Officer brought any material on record to show that commission was paid to Shri Bhanwarlal Jain?

6.3.2 First of all, it would be worthwhile to examine the impugned assessment order with regard to material that shows that the hawala racket was run through benami entities of Shri Bhanwarlai Jain, In this regard it may be mentioned that:

a. In sub-paragraph 4.18 of the assessment order, the Assessing Officer claims that in their respective statements, recorded u/s 132(4) all Directors/Proprietors/Partners of the alleged benami entities run by Shri Bhanwarlal Jain have admitted to being dummies, business in whose names was actually being run by Shri Bhanwarlal Jain.

b. In the very next sub-paragraph 4.19, the Assessing Officer goes on to name 13 individuals (Lunkaran Parasmal Kothari, Anil Khicha, Rajesh Chopra, Ritesh Siroya, Rohit Birawat, Basant D Jain, Shreyansh L Jain, Bharat Omprakash Jain, Mahavir Mangalchand Jain, Ramnivas Choyal, Gautam Kumot, Rajesh Chopra and Atul Ladda). According to the Assessing Officer, these persons were dummy Directors/Partners/Proprietors, used by Shri Bhanwarlal Jain in running his hawala racket. However, no details of the evidence, if any collected from these persons regarding their role in the alleged hawala racket, has been mentioned.

c. When it comes to detailing the adverse material, if any, the Assessing Officer, in sub-paragraph 4.23 of the impugned assessment order, refers to statements made by only three individuals (Lunkaran Parasmal Kothari, Anil Khicha and Ritesh Siroya), who had reportedly admitted to being dummy Proprietors/Partners/Directors in alleged benami concerns of the said Shri Bhanwarlal Jain. However, AO not mentioned anywhere in the assessment order whether these three names are there in the 17 parties from whom the appellant has taken the loans, which are treated as non-genuine borrowings by the AO.

6.3.3 Certain conclusions are obvious. One, the Assessing Officer himself is not so clear about facts and has referred to mostly the material facts which are not relevant to the case. Two, the Assessing Officer has not referred to any adverse material in the cases of loan creditors that are being dubbed by him to be benamis of Shri Bhanwarlal Jain.

6.3.4 Hence, it is to be inferred that the quality of evidence, specific to the appellant is but poor and not fully relied upon. This flaw is further magnified as the adverse material if any (report of the Investigation Wing and alleged confessional statements of Shri Bhanwarlal Jain and others) have never been brought on record by making them available to the appellant. From the impugned assessment order it is seen that though the Assessing Officer appears to have taken the view that the impugned loan creditors are mere entry providers and that the impugned loan entries have been obtained by the appellant against payments made to the said entry providers in cash, no specific material has been brought on record to show that creditors, from whom the impugned loans of ` 24.75 crore were taken are entry providers and that entries for the loans in question have actually been obtained against payments made by the appellant in cash outside regular books of account. There is no evidence brought on record for payment of any commission or fee having been made by the appellant to the alleged hawala givers. All this goes to support the contentions of the appellant that Assessing Officer has passed the order on the basis of mere conjectures and surmises, without bothering to bring any concrete material on record.

6.3.5 Survey Action u/s 133A of the Act at the appellant premises:

Material, brought on record by the appellant before the Assessing Officer in the course of assessment proceedings clearly shows that about a year after search action of 2013 in the case of Shri Bhanwarlal Jain, the appellant was surveyed by the Investigation Wing on 16-10-2014. The survey party found that the

impugned loans of ` 24.75 crore from the aforesaid 17 entities were incorporated in the books of account of the appellant. Statement on oath of Shri Hemal Jhaveri, Key Person, was recorded on the 16th, the 17th and the 18th of October, 2014. Shri Hemal Jhaveri maintained that these loans were genuine and were not part of any hawala. He claimed that no commission whatsoever had been paid to Shri Bhanwarlal Jain; that interest had been paid to the creditors; and, that TDS had regularly been deducted and paid into the Government Treasury. The officers conducting the survey showed Shri Jhaveri an alleged confessional statement of 09-10-2013 made by Shri Bhanwartal Jain, admitting hawala operations through benami entities. Shri Hemal Jhaveri did not dispute the said statement of a third party but he asserted that the statement in question had been retracted by Shri Bhanwarlal Jain; and, the same could not be used against him. Relevant portions from the statement of Shri Hemal Jhaveri are reproduced as below:

Q. No. 28 *In answer to Q No. 16 Shri. Bhanwar Lal Jain has accepted and reaffirmed the modus operandi of activities of all the concerns managed and controlled by him. From his reply it is apparent that all the concerns operated and managed by him are indulged in providing accommodation entries. It has further been accepted by you that unsecured loans in M/s Jainam Investment has also come from same concerns of M/s Bhanwar Lal Jain. In view of same please explain as to why transaction between M/s Jainam Investments and these concerns of Shri. Bhanwar Lal Jain should not be treated as merely accommodation entry.*

Ans. *I cannot comment on modus operandi as stated by Mr. Bhanwarlal Jain in answer to question .16 in the said statement. But, it is observed from the question and answer that the issue covered therein is about goods and payments for those goods. It does not refer to any loans given by them. You had shown me earlier statement of Shri. Bhanwarlal Jain wherein he has admitted that he has given loans to some*

builders. These loans are not considered to be accommodation entries. There is no base for any adverse inference for treating loans received by M/s. Jainam Investments as not genuine.

Q.29 *It is important to emphasise that in his statement he has explained how entries are given to parties in addition to diamond traders and how the whole chain of transaction is completed. Further it has been accepted by him that all the transactions done by his concerns follow the same modus operandi which amounts to only accommodation entries. In view of same, please explain as to why transaction between M/s Jainam Investments and these concerns of Sh. Bhanwar Lal Jain should not be treated as merely accommodation entry.*

Ans. *As stated by me in reply to earlier question, there is no base for that presumption to treat loans received by M/s. Jainam Investment as merely accommodation entry.*

Q.30 *As it has been stated by Shri. Bhanwar Lal Jain that all trading activity done by his concerns are nothing but only accommodation entries. It simply clarifies the fact that there is no real trading activity going on in these concerns. It simply explains that balance sheet which explains source of loan doesn't prove credit worthiness of concerns. In view of this please explain why the unsecured loan taken by the M/s Jainam Investments from the group concerns of Shri Bhanwarlal Jain should not be treated as just accommodation entry?*

Ans. *In view of my reply to earlier question I can't comment on this.*

Q.31 *Please go through the Q. No 29 to 34 of Shri. Bhanwar Lal Jain. In this statement Shri. Bhanwar Lal Jain has admitted that concerns operated by him has certain transactions which are not recorded in regular books of accounts. These transactions had not been routed through banks but through angdiya account in cash. Shri. Bhanwar Lal Jain had also admitted that he used to record these transactions in*

separate parallel books in electric form as well as and in physical form. During the course of search u/s 132 on 03.10.2013 these parallel books of accounts were seized and Shri Bhanwar Lal Jain has also explained in detail the codes under which these accounts were maintained. In post search investigation, these accounts were deciphered wherein your name against transactions through angadiya channel were also recorded. During the course of survey in your premise in the books of accounts of M/s Jainam Investments same entries have been found. In view of above, please, explain as to why transaction between M/ s Jainam Investments and these

Ans. I have gone through the content I reaffirm that my loan transactions with various entities of Shri Bhanwar Lal Jain are not accommodation entries.

Q.32	Please furnish logical argument to contravene the statement of Shri. Bhanwar Lal Jain who is operator of the loan giving concerns and who himself has accepted that all transactions done by his concerns are merely accommodation entries.		
Ans.	In view of my reply to earlier questions I can't comment on this.		
Q.34	In view of the above questions and your reply to the same, why the amount of Rs.116,16,00,000/- should not be treated as your undisclosed income In various financial years as below?		
	F.Yr.	Amount	
	2010-11	22,35,00,000	
	2011-12	25,75,00,000	
	2012-13	55,51,00,000	
	2013-14	12,55,00,000	
	Total	116,16,00,000	
Ans.	Loan received by M/ s. Jainam Investments are not accommodation entries and it is also not so admitted by Shri Bhanwar Lal Jain. Hence no adverse inference should be drawn as suggested by you.		

Q.37	<i>In view of the discussion in Q.No. 25 to 33 above why the unsecured loans taken from parties mentioned in your reply to Q.No.35 above should not be considered as only accommodation entries.</i>
Ans.	<i>There is nothing to suggest even from the statement of Shri Bhanwarlal Jain that loans transactions by the above parties are accommodation entries. As such, no inference should be drawn in absence of any evidence, that these loans are accommodation entries.</i>

6.3.6 As is obvious, Shri Hemal Jhaveri stuck to his contention that even from the statement of Shri Bhanwarlal Jain, it was not possible to draw an adverse inference of hawala regarding the Impugned loans. The appellant, subsequently furnished to the Investigation Wing various details regarding the lenders - their names, PAN, constitution, names of Proprietor/Partner/Director. Further, the appellant provided confirmatory letters issued by the lenders, copies of acknowledgement of respective income tax returns, Balance Sheets, and relevant Bank Statements of all the lenders. Obviously, other than a general statement of Shri Bhanwarlal Jain that had reportedly retracted subsequently, no specific material to suggest the loans are hawala entries. There was nothing to show that there was any actual exchange of cash between the appellant and the alleged hawala givers before the impugned loans were incorporated in the books of account of the appellant. Also, there was no material to show that any commission for arranging the hawala had been paid by the appellant to the said Shri Bhanwarlal Jain. The situation remained unaltered in the course of the assessment proceedings and the Assessing Officer did not in any manner improve upon what had been done by the Investigation Wing.

6.3.7 Non-observance of Principle of Natural Justice: Not making available material used against the appellant & denying opportunity to cross-examine witnesses:

In the grounds of appeal, first six grounds raised by the appellant are dealing with the issue of AO not observing the principles of natural justice and the material relied upon is not made available to the appellant and denying the opportunity of cross examination of witnesses. The record shows that through various letters filed before the Assessing Officer in the course of assessment proceedings, the appellant had on more than one occasion specifically asked the Assessing Officer to make available to it the adverse material, if there was any in the possession of the Assessing Officer (The letters addressed to the AO by the appellant are discussed in detail in para- 6.2 above) Still, at no point of time in the course of assessment proceedings, did the Assessing Officer make available to the appellant any of the details sought by the appellant.

6.3.8 On the above facts, it is obvious that the Assessing Officer, while supposedly acting on a report of the Investigation Wing and some alleged third party evidence, never made the said report and evidence available to the appellant. Thus, the appellant was denied a chance to rebut the evidence by cross-examining those, who had allegedly given statements that could incriminate the appellant. All this is a clear violation of the principles of natural justice, a fundamental point to the validity of the proceedings, before the Assessing Officer.

6.3.9 The facts of the appellant's case are identical to those of in the case of Mehta, decided by the Bombay High Court through an order dated 30.06.2016 in INCOME TAX APPEAL NO.58 OF 2001. In that case, the assessee had adduced evidence by way of bank record to show that loan had been received from a creditor through banking channels. The creditor was not physically traceable, as much time had elapsed and his address had changed. The assessment had been reopened on the basis of third party evidence collected in a search action in the case of a charitable trust. Despite specific request in this

regard, the Assessing Officer concerned did not provide to H R Mehta a copy of the appraisal report & third party statement etc. and proceeded to treat the loan as unexplained. The Hon'ble High Court struck down the order of reassessment by observing that revenue was not justified in making the addition without having first given the assessee an opportunity to cross examine the deponents on the statements relied upon by the ACIT. The relevant discussion, contained in paragraphs 16 and 17 of the High Court's order, is reproduced below:

"16. In the instant case although the appellant assessee has called upon us to draw an inference that the burden shifted to the revenue in the present case once it was established that the payments were made and repaid by cheque we need not hasten and adopt that view after having given our thought to various Issues raised and the decisions cited by Mr. Tralshawalla and finding that on a very fundamental aspect, the revenue was not justified in making addition at the time of reassessment without having first given the assessee an opportunity to cross examine the deponent on the statements relied upon by the A CIT. Quite apart from denial of an opportunity of cross examination, the revenue did not even provide the material on the basis of which the department sought to conclude that the loan was a bogus transaction.

17. In our view In the light of the fact that the monies were advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CTT(A) and the Tribunal vulnerable. In our view the

assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents. Despite the request dated 15th February, 1996 seeking an opportunity to cross examine the deponent and furnish the assessee with copies of statement and disclose material, these were denied to him. In this view of the matter we are inclined to allow the appeal on this very issue."

6.3.10 Opportunity of cross-examination of witnesses is an essential ingredient of the principle of natural justice. This has been affirmed by the Hon'ble Supreme Court in the case of Andaman Timber Industries [Civil Appeal No 4228 of 2006, Date of Pronouncement- Sep ember 02, 2015]. In that case, the Hon'ble Supreme Court held that not allowing assessee the opportunity to cross-examine witnesses, whose statements were made the basis of a demand, is a serious flaw which makes order a nullity, as it amounts to violation of principles of natural justice

6.3.11 In the case of Kishinchand Chellaram Vs. Commissioner Of Income-Tax, Bombay City-II [1980] 125 ITR 713 (SC) It has been held by the Apex Court that in Income Tax proceedings when an evidence is to be used against the assessee and if it is not shown to the assessee and if no opportunity to controvert is given to the assessee, that evidence is not admissible. It further held the department ought to have called upon the manager to produce the documents and papers on the basis of which he made the statements and confronted the assessee with those documents and papers. Before the Income tax authorities could rely upon the evidence, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for an opportunity to cross examine the manager of the bank with reference to the statements made by him.

6.3.12 On Principles of Natural Justice it has been held by the Apex Court in the case of Swadeshi

Cotton Mills vs Union of India in 1981 AIR 818 that phrase "Natural justice" is not capable of a static and precise definition." "Two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind as preeminently necessary to ensure that law is applied impartially objectively and fairly. These twin Principles are (i) audi alterm partem and (ii) nemo judex in re sua. Audi alterm partem is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power." "The maxim audi alterm partem has many facets. Two of there are (a) notice of case to be met and (b) opportunity to explain. "In facts and circumstances of a particular case when non-liance with the implied requirements of the audi alterm partem, rule of natural justice at decisional stage, the impugned order can be struck down as invalid on that score atone"

6.3.13 It has also been held by the Apex Court in the case of *Delhi Transport Corporation vs DTC Mazdoor Congress*, in 1991 AIR 101, that the audi alterm partem rule which in essence enforces the equality clause of Article 14 of the Constitution and is applicable not only to quasi-judicial orders but to administrative orders -affecting prejudicially the party in question.

6.3.14 A similar matter cameup before the Hon'ble Supreme Court in the case of *M/s Gira Enterprises & Another (Civil Appeal Nos. 433-434 of 2006)*; Dated: 21-08-2014. In that case, it was alleged that prices declared for import purposes had been suppressed. The case was based on evidence contained in a computer printout, reportedly prepared on the basis of import data, allegedly collected from Mumbai Port. This print out showed import prices, higher than those declared by the assessee. This printout was not made available to the assessee in the course of adjudication proceedings. After hearing the matter, the Hon'ble

Supreme Court went on to set aside the order with below extracted observations:

"22. the respondent (revenue) did not supply the information (alleged computer printout) which formed the basis of the conclusion that the appellants herein undervalued the goods imported. In such a situation, the appellants obviously cannot and did not have any opportunity of establishing that the claim of the revenue is unsustainable in law. If the information, which formed the basis for the Revenue to reject the appellant's valuation is supplied to the appellants, the appellants perhaps will have the opportunity to dispute the comparability of the import transactions allegedly contained in the computer printout on various counts may not be possible to catalogue.

23. In the absence of any material produced by the Revenue in proof of the alleged comparable imports at a higher value, the impugned order which eventually confirmed the original order of assessment cannot be sustained for two reasons - (1) the mere existence of an alleged computer printout is not proof of the existence of comparable imports; (2) assuming such a printout exists and the contents thereof are true, the question still remains whether the transactions evidenced by the said computer printout are comparable to the transaction of the appellant, The appellant will have to be given reasonable opportunity to establish (if he can) that the transactions are not comparable."

6.3.15 Going by the discussion contained above, it is obvious that the inference drawn by the Assessing Officer against the appellant is not sustainable for the simple reason that the principles of natural justice have not been followed. First and foremost, the appellant has not been given any access to the material (reports, intimations, statements etc.) used against it. Secondly, by withholding the said material, the Assessing Officer has denied to the appellant an opportunity to rebut the evidence by cross-

examining the witnesses, statements, if any made by whom, incriminated the appellant. On both counts, the impugned assessment order fails squarely.

6.3.16 The case law relied by the assessee of Rushabh Enterprises vs. Asst CIT WRIT Petition No. 167 of 2015 is not applicable to the present case as in that case the assessee filed petition against the reopening u/s 148 of the Act and in present the assessment is made u/s 143(3) of the Act.

6.3.17 Absence of material to show that the Loan Entries are Unexplained:

From the forgoing, it is obvious that there is no scope for arriving at a conclusion that the appellant had taken hawala entries to incorporate the impugned loans in its books of account. Hence, the only issue that remains to be seen is whether on the basis of facts brought on record the impugned loans could be treated as unexplained within the fore-corners of section 68 of the Act. At the outset, it will necessary to look at some legal precedents with regard to the intent and application of section 68. It needs no elaboration that through a catena of decisions the Courts have laid down the following three fundamental tests which have to be established to discharge the burden under section 68 of the Act:

- Identity of the creditor*
- Creditworthiness of the creditor, and*
- Genuineness of the transaction.*

6.3.18 The Hon'ble Supreme Court in case of CIT v. P. Mohanakala [2007] 291 ITR 278/161 Taxman 169 held that the expression "assessee offers no explanation" means where the assessee offers no proper, reasonable and acceptable explanation as regards the sum found credited in the books maintained by the assessee. It further held that the opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is

required to be based on proper appreciation of material & other attending circumstances available on record. The opinion of the AO is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion.

6.3.19. The law is well-settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him and where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source [Roshan Di Haiti v CIT[1977] 107 ITR 938 (SC)].

6.3.20 The initial burden to prove the genuineness of cash credit lies on the taxpayer. If the assessee fails to prove satisfactorily the source and nature of amounts of cash received and creditworthiness of the creditor, the AO is entitled to draw inference that the receipts are of an assessable nature [Govindarajulu Mudaliar vs. CIT[1958]34 ITR 807 (SC)].

6.3.21 In the case of Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78 /2S Taxman 80F (SC), the assessee gave the names and addresses of the creditors. It was in the knowledge of the Revenue that the creditors were income-tax assesseees. The revenue apart from issuing notices under section 131 did not pursue the matter further. It did not examine the source of income of the alleged creditors to find out whether they were creditworthy. Therefore, it was held that in these circumstances, assessee could not do any further and it had discharged the burden laid on it.

6.3.22 In the case of Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523 (Guj.) it was held that if the identity of the creditors is proved and the amounts are received by account-payee cheques,

the initial burden of proving credit is discharged and the source of credits need not be proved.

6.3.23 In the case of CIT vs. Smt. Sushiladevi Khadaria [2009] 319 ITR (Bom), Hon. Bombay HC held that when loans were taken 'by account payee cheques and the record indicated that there was no cash payment in the account of the borrower prior to the issuance of such cheques, the loans and interest paid on such loans were not includible in the total income of the assessee u/s.68 of the Act.

6.3.24 In the case of IT O v. Anant Shelters (P) Ltd, [2012] 051 SOT 0234, the Hon'ble TTAT (Mumbai) held that in matters regarding cash credit the onus of proof was not a static one. As per the provisions of the section 68, the initial burden of proof lies on assessee. Amount appearing in books of accounts of the assessee was considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of transaction could be proved by showing that money was received by an account payee cheque or by draft. Credit worthiness of the lender could be established by attending circumstances. Once assessee produces evidences about identity, genuineness and credit worthiness of the lender, onus of proof shifts to revenue. Therefore, it was held that assessee had furnished all the details regarding genuineness of cash credit, i.e., he had discharged his burden of proof. AO did not make any attempt to discharge his burden of proof to rebut the evidences produced by assessee. No addition u/s.68 can be sustained.

6.3.25 In the case of CIT v, Varinder Rawlley [2014] 366 ITR 232 (P&H), it was held by the Punjab & Haryana High Court that Section 68 of the Income-tax Act, 1961, provides for charging of income of the assessee to tax, if, in the opinion of the Assessing Officer, the assessee failed to render any explanation or the explanation offered by the assessee about the nature and source of any sum found credited in the books of the assessee

maintained for the previous year, is unsatisfactory. In other words, it is for the assessee to prove the genuineness of the transaction by identifying creditor and his capacity to advance money. The onus lies upon the assessee to the explain the credit entry but it shifts upon the Assessing Officer under certain circumstances. Where the assessee shows that the entries regarding credit in a third party's account were in fact received from the third party and are genuine, he discharges the onus. In that case the sum cannot be charged as the assessee's income in the absence of any material to indicate that it belongs to the assessee. It was further held by the Hon'ble Court that when assessee sufficiently discharged the burden and when burden clearly shifted to the Department to prove to the contrary and when AO failed to invoke the provisions of section 131 of the Act to prove the contrary, it was sufficient reason to delete the addition.

6.3.26 In the case of CIT v. Jal Kumar Bakliwal [2014] 366 ITR 217 (Raj), it was held by the Rajasthan High Court that all the cash creditors were assessed to Income-tax and they provided a confirmation as well as their permanent account number. They had their own respective bank accounts which they had been operating and it was not the claim of the Assessing Officer that the assessee was operating their bank accounts. Most of the cash creditors appeared before the Assessing Officer and their statements under section 131 of the Income-tax Act, 1961, were also recorded on oath. There was no clinching evidence nor had the Assessing Officer been able to prove that the money actually belonged to non but the assessee. The addition of Rs.17,27,250 under section 68 was not justified.

6.3.27 In the case of CIT v. Kinetic Capital Finance Ltd. [2013] 354 ITR 296 (Del), it was held by the Delhi High Court that the assessee had discharged that initial onus. The assessee was not required thereafter to prove the genuineness of the

transactions as between its creditors and the creditors' source of income, i.e. the sub creditors.

6.3.28 In a recent decision given by the Delhi High Court in case of CIT v. Samtel Color Ltd. 64 DTR 46, it was held that by bringing on record every possible information regarding the depositors included in the application form which included particulars of applicant/depositor, telephone No., particulars of demand draft/cheque through which the deposit was made, tax status of applicant and other deposits with the assessee, if any, assessee had discharged the initial onus laid on it under section 68 and addition could not be made merely for the reason that no confirmation letters were filed in respect of some of the depositors.

6.3.29 The question whether an assessee is required to prove the source of source also has been answered by the Hon'ble Gauhati High' Court in case of Nemi Chand Kothari v. CIT [2004] 136 Taxman 213 The High Court held that the assessee's burden is confined to proving the creditworthiness of creditor with reference to transaction between assessee and creditor and it is not the business of the assessee to find out the source of money of his creditor or of genuineness of transaction which took place between the creditor and sub-creditor and/or the creditworthiness of the sub-creditors.

6.3.30 Hence, it is to be inferred that in a case where the assessee has supplied all possible information to the Assessing Officer to explain the credit transaction, he has satisfactorily discharged the burden cast on him and it would be for the revenue to prove that the transaction is not satisfactorily explained and provisions of section 68 of the Act are applicable.

6.3.31 In the case before me, the record also shows that to prove the genuineness of the impugned loan entries from the 17 creditors, the appellant has furnished to the Assessing Officer

the following details copies of which were also furnished in the present proceedings:

- I. *PAN details of creditors*
- II. *Constitution and address of the creditors*
- III. *Particulars of income-tax returns filed by the creditors [These show that the creditors are legitimate business entities, having the ability to advance the impugned loans to the appellant.]*
- IV. *Confirmatory letters given by the creditors "*
- V. *Audited financial accounts (including balance sheets) of the creditors [These show that the loans are duly reflected in the books of account of the creditors.]*
- VI. *Relevant bank statements of the creditors [These show that the loan amounts were paid through legitimate banking channels. Further these bank statements do not reflect any movement of cash, essential to hawala transactions.]*
- VII. *Details of interest paid to the creditors*
- VIII. *Details of TDS deducted and paid*

6.3.32 *As such, in so far as the appellant is concerned, it has provided all possible documentary evidence to prove identity of the creditors from whom the impugned loans of ` 24,75,00,000 were obtained. This evidence also proves creditworthiness of the creditors and the genuineness of the transactions. Moreover all the loans were repaid through its bank, in the same year or in the subsequent year and those details were also furnished in a tabular form in the present proceedings which was reproduced as under:*

<i>Party Name</i>	<i>Date</i>	<i>MODE</i>	<i>LOAN</i>	<i>LOAN REPAID</i>
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I.T.A. No. 618/Mum/2018
Jainam Investments

			RECIVED	
AASTHA IMPEX	02-06-2011	RTGS	50,00,000	
AASTHA IMPEX	27-06-2011	RTGS	50,00,000	
AASTHA IMPEX	20-03-2012	RTGS	1,00,00,000	
AASTHA IMPEX	20-03-2012	RTGS	1,00,00,000	
AASTHA IMPEX	05-03-2012	RTGS		50,00,000
AASTHA IMPEX	24-08-2012	RTGS		40,00,000
AASTHA IMPEX	12-10-2012	RTGS		10,00,000
AASTHA IMPEX	16-10-2012	RTGS		1,00,00,000
AASTHA IMPEX	16-10-2012	RTGS		50,00,000
AASTHA IMPEX	24-11-2012	RTGS		50,00,000
BALAJI IMPEX	07-05-2011	RTGS	1,00,00,000	
BALAJI IMPEX	13-06-2012	RTGS		1,00,00,000
IMPEX GEMS	23-06-2011	RTGS	50,00,000	
IMPEX GEMS	17-03-2012	RTGS		50,00,000
MAYUR EXPORTS	16-05-2011	RTGS	50,00,000	
MAYUR EXPORTS	25-06-2011	RTGS	1,00,00,000	
MAYUR EXPORTS	22-11-2012	RTGS		1,50,00,000
MALHAR EXPORTS	22-07-2011	RTGS	50,00,000	
MALHAR EXPORTS	06-02-2012	RTGS		50,00,000
MARVIN ENTERPRISES	20-03-2012	RTGS	1,00,00,000	
MARVIN ENTERPRISES	09-10-2012	RTGS		1,00,00,000
MEHUL GEMS PVT. LTD.	29-02-2012	RTGS	1,00,00,000	
MEHUL GEMS PVT. LTD.	29-02-2012	RTGS	1,00,00,000	
MEHUL GEMS PVT. LTD.	13-07-2012	RTGS		1,50,00,000
MEHUL GEMS PVT. LTD.	08-11-2012	RTGS		50,00,000

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Jainam Investments

MINAL GEMS	23-06-2011	RTGS	50,00,000	
MINAL GEMS	17-03-2012	RTGS		50,00,000
MANAS GEMS PVT. LTD.	29-02-2012	RTGS	1,00,00,000	
MANAS GEMS PVT. LTD.	08-11-2012	RTGS		1,00,00,000
MOTHER EXPORTS	25-06-2011	RTGS	50,00,000	
MOTHER EXPORTS	17-03-2012	RTGS		50,00,000
MOULI GEMS	25-06-2011	RTGS	50,00,000	
MOULI GEMS	19-10-2011	RTGS		10,00,000
MOULI GEMS	17-03-2012	RTGS		40,00,000
MOHIT ENTERPRISES	27-06-2011	RTGS	2,75,00,000	
MOHIT ENTERPRISES	20-03-2012	RTGS	1,00,00,000	
MOHIT ENTERPRISES	21-10-2011	RTGS		80,00,000
MOHIT ENTERPRISES	22-10-2011	RTGS		20,00,000
MOHIT ENTERPRISES	09-11-2012	RTGS		1,75,00,000
MOHIT ENTERPRISES	10-11-2012	RTGS		1,00,00,000
NAV KAR DIAMOND	27-06-2011	RTGS	50,00,000	
NAV KAR DIAMOND	04-12-2012	RTGS		50,00,000
NAV KAR DIAMONDS.	20-03-2012	RTGS	1,00,00,000	
NAV KAR DIAMONDS.	22-11-2012	RTGS		1,00,00,000
PRIME STAR	18-05-2011	RTGS	50,00,000	
PRIME STAR	06-12-2012	RTGS		50,00,000
ROSHAN GEMS PVT. LTD.	29-02-2012	RTGS	2,00,00,000	
ROSHAN GEMS PVT. LTD.	08-11-2012	RTGS		2,00,00,000
SONAM GEMS PVT. LTD.	29-02-2012	RTGS	1,50,00,000	
SONAM GEMS PVT. LTD.	29-02-2012	RTGS	1,50,00,000	
SONAM GEMS PVT. LTD.	01-03-2012	RTGS	2,00,00,000	

SONAM GEMS PVT. LTD.	09-11-2012	RTGS		5,00,00,000
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24,75,00,000

24,75,00,000

6.3.33 Thus, it has to be said that the appellant had done everything in its power to prove the three ingredients required to prove the satisfactory nature of the loan transactions. In these circumstances, the onus had shifted to the Assessing Officer. If the Assessing Officer was still not satisfied, he had the option of making inquiries from the alleged lenders by summoning them. However, as seen from the assessment order, he did not do any such thing. Further, if the Assessing Officer was not satisfied with what had been given to him by the appellant, he was duty bound to specify what more material he wanted the appellant to furnish. The Assessing Officer never asked for any further material, though time and again the appellant asked in their submissions. This leads to the inescapable conclusion that the Assessing Officer could not think of any further material to ask for and proceeded to reject the appellant's claims, relying upon the information/material, which he never even brought to the notice of the appellant for any rebuttal. The unequivocal conclusion is that all the three ingredients having been satisfied, the impugned loans of 24.75 crore have to be treated as explained satisfactorily and the Assessing Officer was wrong in having disregarded overwhelmingly supportive evidence. No cogent material was adduced by him to show that loans were unexplained. Therefore, the impugned addition of Rs.24,75,00,000/-, made in the Assessment Order, fails on several counts - (1) reliance on evidence that is totally inadequate; (2) failure to make available incriminating material (reports, statements etc.) forming basis for action by the Assessing Officer; (3) failure to give due opportunity to the appellant to cross-examine witnesses, whose statement might have been relied upon; and, (4) failure to recognise the satisfactory nature of the explanation/evidence

tendered by the appellant to explain identity of creditors, creditworthiness of the creditors and the genuineness of the loan transactions. Hence, the impugned addition of Rs.24.75 crore is hereby deleted.”

17. *There should not be any dispute that the initial burden to prove the cash credits is placed upon the shoulders of the assessee. It has been held by Honourable Courts that the initial burden shall be discharged, if the assessee proves three main ingredients, viz., the identity of the creditor, the creditworthiness of the creditor and genuineness of the transactions. If the assessee has discharged the initial onus, then the onus to disprove the same is shifted to the shoulders of the assessing officer. These legal principles have been reiterated in the cases of Bhan & sons (supra) and M/s Precision Finance P Ltd (supra), which were referred to by Ld CIT-DR. In the instant case, there is no dispute that the assessee has discharged the initial burden of proof placed upon it by furnishing all the materials to prove the three main ingredients, referred above. Hence the burden has shifted to the shoulders of the assessing officer to disprove the evidences furnished by the assessee. We notice that the assessing officer, in the instant case, did not conduct further enquiries or bring any material on record to discharge the burden shifted upon his shoulders. Instead, we notice that the assessing officer has simply placed reliance on the alleged incriminating materials found in the course of search conducted in the hands of Shri Bhanwarlal Jain*

and his group and also upon the sworn statements given by them.

18. *The Ld CIT-DR, by placing reliance on the decision rendered by Hon'ble Delhi High Courts in the cases of Jansampark Advertisement and marketing (supra) and Bikram singh (supra), contended that the appellate authorities are duty bound to conduct further enquiries, if there is deficiency in the enquiry conducted by the AO. However, in the instant case, we notice that the addition has been made u/s 68 of the Act and the assessee has discharged the onus placed upon him under that section. On the contrary, the assessing officer did not bring any material on record to show that the various evidences furnished by the assessee are not reliable and instead rested fully upon the Sworn Statements and the alleged incriminating materials. Hence, in our view, the question of deficiency in the enquiry of the AO does not arise in the instant case.*

19. *The Ld DR also placed reliance on the decision rendered by Hon'ble Supreme Court in the case of Sumati Dayal (supra) and Durgaprasad More (supra) to contend that the surrounding circumstances and human probabilities should also be taken into consideration by the tax authorities. He contended that these loan transactions are deceptive transactions. There should not be any doubt with this proposition of law. In the instant case, the Ld CIT(A), as well as the Tribunal in the case of Vama International (supra) has observed that the sworn statements given by Shri Bhanwarlal Jain and*

others have been retracted. The question whether the revenue is entitled to place reliance on the retracted statements remains unanswered. Further, the assessing officer has placed reliance on the various observations made by the search officials like, sharing of common address by various concerns, inducting employees as directors etc., to come to the conclusion that these transactions are bogus in nature. We notice that the search officials have only drawn adverse inferences on the basis of information gathered by them and it is the duty of the assessing officer to substantiate those inferences by bringing corroborative materials. The Ld CIT-DR has reiterated these inferences as surrounding circumstances. However the moot point that remains is whether the assessing officer could disprove the material evidences furnished by the assessee to prove the cash credits? The various evidences furnished by the assessee, in fact disprove the inferences drawn by the search officials. When the assessing officer could not disprove the material evidences furnished by the assessee, in our view, he is not entitled to place full reliance on the inferences drawn by the search officials, particularly the assessee could rebut those presumptions drawn by the search officials. Though the sworn statement given by Shri Bhanwarlal Jain may be a relevant piece of evidence, yet it is stated that the said statement has been retracted. Further the AO has not shown that the transactions entered by the assessee with the group of Shri Bhanwarlal Jain were examined by the search officials and he has deposed against the

transactions entered between him and the assessee. On the contrary, the Ld CIT(A) has given a finding that the impugned loan transactions have not been specifically stated to be bogus in nature. The key person of the assessee has reiterated in his statement taken from him during the course of survey that the loan transactions are genuine. When it was pointed out that Shri Bhanwarlal Jain has admitted the bogus nature of transactions, the key person has specifically stated that the said admission related to the sale of diamonds and further specifically stated that the loan transactions are not covered in the statement. Hence the Ld CIT(A) was right in observing that the impugned loan transactions have not been specifically covered by the statement given by Shri Bhanwarlal Jain. Hence in our view, the theory of human probabilities and surrounding circumstances need not be applied in this case.

20. *It is a fact that the revenue has conducted survey operations in the hands of the assessee and they did not find any incriminating material concerning these loan transactions at the time of survey. There is also no evidence to show that the cash equivalent to the loan transactions has been given by the assessee to various lenders.*

21. *The Ld A.R placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Kishinchand Chellaram (supra) in order to contend that the AO could not have used the materials, which were not put to the assessee. In the instant case, we notice*

that the assessee has specifically requested the AO twice to give the materials that were relied upon by the assessing officer to take adverse view. Despite the request so made, the AO has not furnished copies of materials to the assessee. Hence, as per the decision rendered by Hon'ble Supreme Court in the above said case, the AO could not have placed his reliance on those materials, which were not confronted with the assessee.

22. *The assessee has also asked for copies of sworn statements given by Shri Bhanwarlal Jain and others. The assessee also asked for an opportunity to cross examine them. However, the AO has failed to furnish copies of sworn statements and also did not afford opportunity to cross examine the deponents. Hence the decision rendered by Hon'ble Supreme Court in the case of Andaman Timer Industries (supra) goes in favour of the assessee and accordingly the Ld CIT(A) was justified in placing reliance on the same and holding that the impugned additions are not justified.*

23. *We notice that the assessee has specifically asked the AO to issue summons to the loan creditors, but the assessing officer has failed to do the same. It is pertinent to note that the assessee has so requested the AO, even after discharging the initial burden of proof by furnishing all the relevant details available with it. In the case of Orissa Corporation P Ltd (supra), the assessee furnished available details and then requested the AO to issue summons to the creditors, since it could not collect further details from them. The AO failed to do so and hence the*

Hon'ble Supreme Court held that the addition made u/s 68 is not justified. The assessee herein, in our view, stand on a stronger footing. The assessee has furnished all the relevant details, which has been summarized by the Ld CIT(A) in paragraph 6.3.31 of his order as under:-

“6.3.31 In the case before me, the record also shows that to prove the genuineness of the impugned loan entries from the 17 creditors, the appellant has furnished to the Assessing Officer the following details copies of which were also furnished in the present proceedings:

- I. PAN details of creditors*
- II. Constitution and address of the creditors*
- III. Particulars of income-tax returns filed by the creditors [These show that the creditors are legitimate business entities, having the ability to advance the impugned loans to the appellant.]*
- IV. Confirmatory letters given by the creditors "*
- V. Audited financial accounts (including balance sheets) of the creditors [These show that the loans are duly reflected in the books of account of the creditors.]*
- VI. Relevant bank statements of the creditors [These show that the loan amounts were paid through legitimate banking channels. Further these bank statements do not reflect any movement of cash, essential to hawala transactions.]*
- VII. Details of interest paid to the creditors*
- VIII. Details of TDS deducted and paid”.*

Even though the assessing officer did not find any fault with these documents, still the assessee has requested

the AO to issue summons to these parties. As stated earlier, the assessing officer did not issue summons and instead relied upon the inferences drawn by the search officials. Hence, in our view, the decision rendered by Hon'ble Supreme Court in the case of Orissa Corporation (P) Ltd (supra) will also come to the support of the assessee.

24. *We notice from the operative portion of the order passed by Ld CIT(A) that the first appellate authority has placed reliance on various other case laws also. In effect, the Ld CIT(A) has examined the documents furnished by the assessee and has held that the assessee has discharged the initial burden of proof placed upon it u/s 68 of the Act. He has also held that the non-furnishing of documents relied upon by the AO and non-providing of opportunity to cross examine the Shri Bhanwarlal Jain and others would make the addition to fail. Even in respect of documents relied upon by the AO, the Ld CIT(A) has found the same to be inadequate to warrant the additions made u/s 68 of the Act. Hence, we are of the view that the Ld CIT(A) has passed a reasoned order by considering the facts of the case, applicable case laws and has taken a justifiable view in this matter. Hence we do not find any infirmity in the order passed by Ld CIT(A). Accordingly we confirm the order passed by Ld CIT(A) in deleting the addition of Rs.24.75 crores made u/s 68 of the Act.*

25. *Since we have confirmed the order of Ld CIT(A) in deleting the addition made u/s 68 of the Act, the interest*

disallowance is also liable to be deleted. Accordingly we confirm the order passed by Ld CIT(A) in respect of interest disallowance also.

26. *The addition made towards commission expenses is also offshoot of the addition made u/s 68 of the Act. For the reasons stated in the preceding paragraph, we confirm the order passed by Ld CIT(A) on this issue also.*

27. *In the result, the appeal filed by the revenue is dismissed.*

7. The above order passed in ITA NO. 6099/Mum/2016 for AY 2012-13 was also followed by the Coordinate Bench in assessee's own case in ITA No. 5637/Mum/17 for AY 2013-14 wherein the operative portion is also reproduced below:-

7 After having heard the counsels at length and after having gone through the facts of the present case as well as considering the orders passed by revenue authorities, we find that in the present case, the AO had made the additions by treating the 'unsecured loans' received by the assessee from 34 parties belonging to Bhawarlal Jain Group as 'unexplained loans received by the assessee' u/s 68 of the Act. From the records, we noticed that the intimation was received by the revenue from the

DDIT(Inv) Mumbai to the effect that assessee was one of the beneficiaries of accommodation entries for loan from various concerns/ entities which were benami concerns, managed and controlled by Bhawarlal Jain Group.

*8. The Investigating Wing of the department had examined all the loan creditors wherein all the creditors had **appeared and confirmed** the transactions of loans advanced to the assessee. The AO had primarily made the additions by believing and relying upon the admission of Bhawarlal Jain by ignoring the fact that nowhere in the statement of Bhawarlal Jain or any of his associates recorded u/s 132(4) of the Act had admitted that any of their concerns had ever given accommodation entries by way of unsecured loans to the assessee. From the documentary records, we also noticed that actually, the assessee had already discharged the onus cast upon him to prove the identity, creditworthiness and genuineness of transactions. Even Ld. CIT(A) had discussed in detail in para no. 4.3.3 of its order, the documents submitted by the assessee and their co-relation with the onus, which stands discharged by the assessee. But on the contrary, the AO had not brought on record any evidence to controvert or rebut the claim of the assessee and even no findings were recorded by the AO to the effect that*

*the evidences produced by the assessee were **untrustworthy or lack credibility**. Although it was claimed by the AO that during the course of search at the residence of Shri Bhanwarlal Jain, a pen drive (Sony 4 GB) was seized and as stated in para-5.1 on page-8 of the impugned order. It was also claimed that after decryption of the data stored in the said pen drive, a database containing details of loans advanced by all 70 benami concerns of Shri Bhanwarlal Jain and Shri Rajesh Bhanwarlal Jain from F.Y.2006-07 and onwards was prepared by the Investigation Wing, Mumbai. Whereas on the repeated request made by the assessee to furnish copies of print outs of date of transactions pertaining to the assessee and relevant to A.Ys.2012-13 and 2013-14. Apart from that the AO was also asked to furnish any other evidence in his possession in regard to the unsecured loans procured by the assessee from various entities of Shri Bhanwarlal Jain Group. But the AO did not supply the same.*

9. Apart from that the AO had also failed to provide copy of "party-wise ledger account" of the assessee containing details of corresponding cash received against loans on various dates and commission charged by Bhanwarlal Jain thereon. Therefore in such circumstances, the AO had no valid basis for treating the 'unsecured loans' as 'accommodation entries'.

There is nothing on the record to show that the assessee admitted at any point of time to have procured accommodation entries of loans.

*10. We also found that the Hon'ble ITAT as mentioned above in assessee's own case, we find that the **identical issue** has already been decided by the Hon'ble ITAT in ITA No. **6099/Mum/16 for AY 2012-13 in assessee's own case**. Therefore on the basis of our above findings and also respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings which are applicable mutatis mutandis in the present case. Resultantly, these grounds raised by the revenue stands **dismissed**.*

8. After having gone through the above orders passed in *assessee's own case*, wherein we find that **identical issues** have already been decided by the Hon'ble ITAT in ITA No. **6099/Mum/16 for AY 2012-13 & ITA No. 5637/Mum/2017 for AY 2013-14**. However, at this stage, Ld. DR relied upon the decision of Hon'ble Delhi High Court in the case of *PCIT Vrs. NDR Promoters Pvt. Ltd. in ITA No. 49/2018 decided on 17th*

Jan 2019. After having gone through the above judgments, we find that the facts in the above case are different from the facts of the present case, thus the same is not applicable. However, in *assessee's own case* under the *identical circumstances*, the issues have been decided in favour of the assessee, therefore respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings which are applicable *mutatis mutandis* in the present case. Resultantly, these grounds raised by the revenue stands *dismissed*.

Ground No. 4 & 5

9. These grounds raised by the revenue are general in nature, thus requires no specific adjudication.

10. In the net result, the appeal filed by the revenue stands **dismissed** with no order as to cost.

Order pronounced in the open court on 8th Feb, 2019.

Sd/-

(B. R. Baskaran)

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :

Sr.PS. Dhananjay

Sd/-

(Sandeep Gosain)

न्यायिकसदस्य / Judicial Member

08.02.2019

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार
(Dy /A stt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai

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