

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'SMC'
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No.2304 and 2305/Ahd/2017

निर्धारण वर्ष/Asstt. Year: 2010-11 and 2011-12

Nitin Rasiklal Sanghvi Prop. M/s.Bony Exports 1, Paras Society Neminath Nagar, At. Deesa Tal. Deesa, Dist. Banakantha. PAN : AMJPS 3742 E	Vs.	ITO, Ward-2 Palanpur.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Anil Brahmkshatriya
Revenue by :	Shri Anand Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 22/02/2019

घोषणा की तारीख/Date of Pronouncement: 8 /03/2019

आदेश/ORDER

Present two appeals are directed at the instance of the assessee against separate orders of the Id.CIT(A) dated 4.9.2017 passed for the Asstt.Year 2010-11 and 2012-12.

2. The grounds of appeal taken by the assessee are verbatim same except variation in the quantum. He has taken three grounds of appeal in both the years. However, his grievance revolves around a single issue i.e. the Id.CIT(A) has erred in confirming the additions of Rs.2,00,000/- and Rs.5,63,833/- in the Asstt.Years 2010-11 and 2011-12 which have been added by the AO on the ground that the assessee has inflated its expenditure and failed to prove genuineness of the purchases made by him.

3. Facts on all vital points are common, rather assessment orders and orders of the Id.CIT(A) are also identical except variations of dates and quantum. Therefore, for the facility of reference, I am taking facts mainly from the Asstt.Year 2010-11.

4. Brief facts of the case are that the assessee at the relevant time was engaged in the business of dealing in export of cut & polished diamonds and jewellery in the name and style of M/s.Bony Exports. He has filed his return of income showing total income at Rs.2,79,615/- and Rs.5,15,600/- in the Asstt.Years 2010-11 and 2011-12. The information came to the possession of the AO that M/s.Bony Exports had made purchases from Kriya Impex Pvt. Ltd., and Kalash Enterprise which was run by one Shri Rajendra Jain who has carried out the business of providing accommodation entries. A search was carried out at the premises of Shri Rajendra Jain and he declared under oath that he has only provided accommodation entries. In the Asstt.Year 2011-12 such purchases were made from Kalash Enterprises which was run by Shri Manish Jain who was also engaged in the business of providing accommodation entries. On the basis of above information, assessment proceedings were reopened in both the years and notices under section 148 of the Act were issued and served upon the assessee in both the assessment year. In response to the notice, the assessee has submitted that return originally filed be treated as filed in response to this notice. The AO issued notice under section 143(2) in both the years and commenced investigation. He confronted the assessee to show genuineness of the purchase from these concerns. The assessee contented that these purchases were made telephonically and payments were made through banking channel. According to the

assessee, he has submitted bank certificate from the seller showing payments were received through bank channel. Copy of the income-tax return, PAN and confirmation from Kriya Impex Pvt. Ltd., and Kalash Enterprises were stated to be filed before the AO. The Id.AO was not satisfied with the nature of evidence submitted by the assessee. He assigned (vii) reasons for rejecting the explanations and arrived at a conclusion that the assessee has inflated the expenses. The reasons given by the AO in both the assessment years are common which reads as under:

"(i) In view of the above information in respect of non-genuine bills/bogus seals, it is noticed that the assessee is one of the beneficiary of bogus bill and has obtained bogus bills for the purchase amounting to Rs.2,00,000/- in F.Y.2008-09 relevant to A.Y.2009-10 from the Kriya Impex P.Ltd., Surat.

(ii) The Income tax department has conducted search and seizure action in the case of Group concerns of Shri Rajendra Jain & Gautam Jain and conclusively proved that these parties are engaged in the business of providing accommodation entries only as can be seen from the discussions in the preceding paragraphs. Kriya Impex Pvt. Ltd is run by shri Rajendra Jain and is issuing bills without delivering any goods and services.

(iii) Evidently the assessee had adopted a modus operandi to reduce its true profits by inflating its purchase expenses by taking accommodation entries from Kriya Impex Pvt. Ltd.

(iv) Thus in the stock statement of the assessee, the purchases to the extent made from Kriya Impex Pvt, Ltd remained un verifiable and hence I arrive at the conclusion that the purchases shown by the assessee in the stock statement are inflated and bogus purchases are debited to trading account to suppress the true profits from disclosure to the department.

(v) The assessee is failed to produce any documentary evidence regarding the details of Quantity of goods traded, internal communication regarding goods, transaction and delivery of goods and disposal of the above goods.

(vi) The onus was upon the assessee to establish the genuineness of the purchases made by the assessee.

(vii) Mere filing of evidences in support of purchases and payment through cheques can not be conclusive in a case where genuineness of transaction is in doubt. Payments by account payee cheques are not sacrosanct.

(viii) All the evidences point to the fact that no actual goods were supplied by the above parties; the argument of the assessee that it purchased goods in the good faith is not tenable."

5. In this way, the Id.AO has made disallowance of Rs.2 lakhs in the Asstt.Year 2010-11 and Rs.5,63,833/- in the Asstt.Year 2011-12. On appeal, the assessee has reiterated his contentions, as were raised before the AO, but the Id.CIT(A) did not find any merit in the contentions of the assessee. Basically, the Id.CIT(A) has confirmed the addition by relying on the order of the ITAT, Ahmedabad in ITA No.2447/Ahd/2016 in the case of Pavankumar M. Sanghvi Vs. ITO. The Id.CIT(A) has reproduced this order fully, which is an elaborate order. It is worth to take note of finding of the Id.CIT(A) on this issue, which read as under:

"DECISION:

5. The submission of the appellant and the assessment order has been carefully considered. The only effective ground of appeal is against the additions of Rs.2 lac made by the Assessing officer stating that the purchases made from Kriya Impex Pvt. Ltd. is not genuine. The Assessing Officer had information from the investigation wing, Mumbai that Shri Rajendra Jain, promoter of group companies including Kriya Impex Pvt.Ltd. stated on oath during the course of search

proceedings that he is indulging in providing accommodation entries in the form of bogus loans and sales. On the basis of this information and the statement of Shri Rajendra Jain, the A.O. made the additions of Rs.2,00,000/-. The appellant contended that purchases made from Kriya Impex Pvt. Ltd, are genuine because the payments have been made by Account Payee Cheques. The purchases made by the appellant shown in stock register and shown as sales and the A.O. did not found any discrepancy in books of accounts maintained by the appellant. The appellant also contended that opportunity of cross examination of Shri Rajendra Jain was not given to the appellant. The facts of the case, assessment order and the submission of the appellant has been carefully considered. It is found that the case of the appellant is squarely covered by the order of Hon'ble ITAT 'SMC' Bench, Ahmedabad in ITA No.2447/AHD/2016 in the case of Pavankumar IVI. Sanghvi Vs, ITO 3(1U2), Vadodara. The above mentioned order is reproduced below:

“3. Briefly stated, the relevant material facts are as follows. The assessee before me is an individual, owning a proprietorship concern by the name of Ravi Steels, and he claims to have received unsecured loans of Rs 10 lakhs each from Natasha Enterprises on 11th August 2006 and from Mohit International on 27th April 2006. His assessment was initially completed under [section 143\(1\)](#) of the Act, but subsequently the Assessing Officer came to know, through reports received from the Directorate of Income Tax (Investigation), that Natsha Enterprises and Mohit International were a part of the group of shell entities, managed by one Praveen Kumar Jain (PKJ, in short), used as a vehicle for various financial manoeuvres. It was in this backdrop that the assessment was reopened. During the ensuring reassessment proceedings, the assessee was confronted with this information but he had nothing to say. He did, at the fag end of assessment proceedings, filed the loan confirmations, copies of ledger account and other supporting evidences to justify the transactions. The Assessing Officer, however, was not satisfied. He noted that the assessee had nothing to say on the specific questions put to him on genuineness of these transactions. He was thus apparently of the view that mere filing of balance confirmation and details of existence of the creditors does not show that the transactions are genuine. It was in this backdrop that the Assessing Officer proceeded to make addition of Rs 20,00,000 as unexplained credits. The Assessing Officer also noted that the assessee had claimed deduction in respect of the interest payments, in respect of these alleged unsecured loans,

aggregating to Rs 3,66,041, but since the loan transactions were treated as not genuine, the interest was also liable to be disallowed. He thus disallowed deduction in respect of the interest deduction as well. Aggrieved by the stand of the Assessing Officer, assessee carried the matter in appeal before the CIT(A) but without any success. The assessee is not satisfied and is in further appeal before this Tribunal.

4. Learned counsel for the assessee begins by pointing out that the unsecured loans have been treated as unexplained cash credit only on the basis of the information received, by the AO, from the Investigation Wing. It is pointed out that this information pertains to some investigations, and search and seizure operation, carried out in the case of PKJ on 1st October 2013, and is based on a statement of this person recorded by the investigation wing. However, what the Assessing Officer has overlooked is that PKJ himself had retracted his statement and, in any case, the assessee was never confronted with this statement. It is submitted that the assessee cannot be put to any disadvantage on the basis of a confessional statement recorded by a third party- particularly when the assessee did not even have the opportunity to peruse such a statement. Learned counsel further points out that the assessee was duly entitled to an opportunity to cross examine PKJ but the Assessing Officer did not provide the assessee any such opportunity. On these facts, according to the learned counsel, the impugned additions are contrary to the well settled principles of natural justice which are well entrenched in the tax jurisprudence. In any event, according to the learned counsel, PKJ has subsequently retracted, on 15th May 2014, his confessional statement, as evident from the retraction affidavit dated 15th May 2014 - a copy of which was also filed before me. Learned counsel then submits that nothing prevented the Assessing Officer from using his powers under [section 133\(6\)](#) and examining the matter further by enforcing attendance of the lenders, but, rather than doing what the Assessing Officer ought to have done, he is simply swayed by unverified inputs received from the investigation wing. Learned counsel then invites my attention to the affidavits filed by the proprietors of Natasha Enterprises and Mohit International which confirm that the loans were actually advanced by these persons on 12% interest, that the loans have since been repaid and that the interest earned on these loans has been duly offered to tax. Under these circumstances, there cannot be any lawful reasons to reject bonafides of these loan transactions. It is then submitted that the loan transactions were by cheques, which is duly evidenced from the bank statements of the lenders as filed by the assessee, copies of loan confirmations and statements of accounts were duly filed by the assessee, the accounts of the

lenders were duly audited under [section 44AB](#), and that the initial onus of demonstrating the bonafides of loan transactions was duly discharged by the assessee. Learned counsel then referred to Hon'ble Supreme Court's judgment in the case of *Kishanchand Chelaram Vs CIT [(1980) 125 ITTR 713 (SC)]* in support of the proposition that the income tax authorities could not rely upon any statement which has not been confronted to the assessee and in respect of which the assessee has not been given opportunity to cross examine. Learned counsel for the assessee also referred to certain discrepancies pointed out by the CIT(A) and made an effort to demonstrate that these discrepancies are factually incorrect. A reference was then made to Hon'ble Bombay High Court's judgment in the case of *H R Mehta Vs ACIT (ITA No. 58 of 2001; unreported judgment dated 30th June 2016)* in support of the proposition that when the assessee was not given an opportunity to cross examine the person who has deposed against the assessee, such a material could not be put against the assessee, and merely because a lender is not available at the same address several years after the loan transaction has taken place, it cannot be inferred that the transaction is not genuine. As regards the disallowance of deduction for interest, learned counsel submits that since the related loans, in the light of the arguments so advanced, cannot be said to be bogus, the interest deductions are also required to be allowed in accordance with the law. On the strength of these submissions, learned counsel urges me to delete the impugned addition of Rs 20,00,000 and impugned disallowance of Rs 3,66,041. I am thus urged to set aside findings of the authorities below on these points. Learned Departmental Representative, on the other hand, submits that it is inconceivable that some rank outsiders give unsecured loans, aggregating to Rs 20,00,000, to the assessee, and yet the assessee is not even able to produce the same or give sufficient information about the nature of relationship with him. The documents filed by the assessee are self serving documents and a mere statement on affidavit cannot be accepted irrespective of the ground realities. It is submitted that in each loan transaction, three elements are required to be examined- existence of lender, genuineness of transaction and credit worthiness of the lender. In the present case, all that the assessee has proved is existence of the person as the transactions have taken place through banking channels. Just because a person existed, it does not mean that all the transactions with him are genuine and the person had means to advance the loans in question. It is also pointed out that the lenders are believed to be shell entities and this fact was duly brought to the notice of the assessee but the assessee did not have anything to say on this point. On one hand, according to the learned Departmental Representative, PKJ is so closely in touch with the assessee that the assessee is able to obtain and file the

retraction affidavit made by PKJ, and, on the other hand, the assessee feigns ignorance about the statement made by PKJ before the income tax authorities. It is then pointed out that at no stage in the assessment proceedings, the assessee asked for the statement of PKJ or expressed the desire to cross examine PKJ. Even the fact of the alleged lenders being in the business of giving accommodation entries was duly put to the assessee during the assessment proceedings, by way of note sheet entries, and the assessee had nothing to say on this point during the assessment proceedings. In any case, irrespective of the statement of Praveen Kumar Jain, the onus is on the assessee to demonstrate that the loan transactions are genuine, in the normal course of business, and bonafide. This onus has not been discharged by the assessee. It is also submitted that the alleged lenders are shell entities, and, in the case of shell entities, it is not the completion of paper work but genuineness of transactions which is crucial. My attention is then drawn to the apparent inconsistencies in the version put by the assessee. I am urged to disregard the make believe documents filed by the assessee and uphold the findings of the authorities below. In his brief rejoinder, learned counsel reiterated his submissions and submits that the legal contentions advanced by him remain uncontroverted. He also submits that the Departmental Representative, or for that purpose, this Tribunal cannot go beyond the case made out by the Assessing Officer and raise the issues which have not been raised by the Assessing Officer. Lack of genuineness is not, according to the learned counsel, case of the Assessing Officer. The short point of the authorities below is that the loan entries are alleged accommodation entries but then there is nothing to evidence this fact. It is for the person who makes the allegations to prove that the allegations are correct. The Assessing Officer, therefore, must demonstrate that the loan transactions in question are not genuine transactions, and when he cannot do so, the related additions can only be deleted. Learned counsel once again urges me to vacate the findings of the authorities below, and delete the impugned additions and disallowances.

5. I have noted that the assessee did not raise any issue against validity of reopening proceedings at any stage- assessment, first appeal as also second appeal. When the assessee was told about the alleged lenders being shell entities, he did not have anything to say either. The assessee did not ask for the cross examination of PKJ in the assessment proceedings nor did he raise that issue, as evident from a copy of the grounds of appeal before the CIT(A)- as filed before me, at the first appellate stage. Yet, his plea before me is that since he was not afforded any opportunity to cross examine PKJ, the impugned additions should be deleted. I donot think such a plea can be entertained at this stage,

particularly in the light of peculiar facts of this case. I have noted that the assessee feigns ignorance about the statement of PKJ, as recorded by the income tax authorities, but he files a copy of the retraction affidavit dated 15th May 2014. There is an inherent contradiction in this approach. As a matter of fact, even in the first appellate proceedings, the assessee did not ask for the cross examination of PKJ as evident from the limited argument of the assessee, noted at page 5 of the CIT(A)'s order, to the effect that "it is submitted that Pravin Kumar Jain has also retracted his statement on oath under [section 131](#) dated 15.5.2014 and has confirmed that the above transactions with the said parties are genuine (copy enclosed herewith for your records)". There is not even a whisper about incorrectness of the original statement of PKJ but all that the assessee states is that this statement is subsequently retracted. It is also interesting to note that, as has been observed in the assessment order at page 2, the income tax authorities had, during the search operations on PKJ group, also recorded a statement of Nilesh Parmar, proprietor of Mohit International and the person who looked after the accounting and all other matters of Natasha Enterprises, but neither the assessee disputes nor raises any issues about it. There is no suggestion about retraction of this statement either. The assessee has filed an affidavit dated 27th February 2017 of Nilesh Parmar, claiming bonafides of assessee's transactions with Mohit International, but neither there is any issue about cross examining him nor any mention of retraction, if any, of his confessional statement. The assessee has so much of an access to these lenders that he is able to produce their bank accounts, their year end financial statements and even all the audit reports, but he is unaware of the statement these lenders made to the income tax authorities and yet he is not in a position to produce the parties or even know their current whereabouts. These contradictions are unexplainable. It was clearly put to the assessee that, as per information gathered by the income tax authorities as a result of search and seizure operations on PKJ group, it is clear that (i) PKJ is a director in some of the entities but he de facto controls a large number of shell entities through various dummy directors and proprietors; (ii) all such PKJ group concerns, while include Natasha Enterprises and Mohit International, are not carrying on any genuine business nor do they have any physical stock of goods that they are dealing in; (iii) all these PKJ group entities have no employees, except common accountants; and (iv) all these PKJ group entities are engaged in the activities of providing accommodation entries. When assessee is confronted with this information, he maintains a stoic silence, and simply gives the documentation in support of the fact of transactions. What he overlooks is that the existence of documentation in support of these transactions was not even disputed by the revenue

authorities, and that the real issue, in the backdrop of these inputs, is on the genuineness of the transactions. There was not even an attempt to deal with that aspect of the matter, or state even one word against what the Assessing Officer had to tell the assessee on this front. In these circumstances, it cannot be open to the assessee to contend that the additions should be deleted simply on the ground that the assessee was not given an opportunity to cross examine PKJ. When the assessee is confronted with all the facts at the assessment stage, he has nothing to say. He maintains his stoic silence even at the first appellate stage. However, when he comes before me in the second appeal, his grievance is about violation of principles of natural justice at the assessment and the first appellate stage. There are clear inconsistencies and contradictions in the approach of the assessee.

6. Be that as it may what is even more important is that while the reassessment has indeed been resorted to on the basis of the inputs from the investigation wing, with which the assessee is not aggrieved anyway, in my considered view, the impugned additions are not made on the basis of these inputs simplicitor.

7. In my considered view, so far as the legal foundation of the impugned additions is concerned, it consists of assessee's inability to satisfy the Assessing Officer about all the three essential ingredients of a credit entry in the books of accounts—existence of the lender, ability of the lender to advance funds in question, and, above all, genuineness of the transaction. There is no dispute about the basic legal position about section 68 which provide that where any sum is found credited in the books of accounts of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and sources thereof, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as income of the assessee of that previous year. The expression 'nature and source' appearing in section 68 has to be understood as a requirement of identification of source and its genuineness. It is also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. In the case of CIT Vs United Commercial and Industrial Co Pvt Ltd [(1991) 187 ITR 596 (Cal)], Hon'ble Calcutta High Court has held that "it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions". Similarly, in the case of CIT Vs Precision Finance Pvt Ltd [(1994) 208 ITR 465

(Cal)], it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions". There is thus no escape from proving genuineness of a transaction. As regards learned counsel's contention that nothing can be added to the objections specifically taken by the Assessing Officer, I am unable to approve this plea for the simple reason that as long as subject matter of the disallowance or addition is the same, there is no bar on examination of any related aspect by the Tribunal, as has been specifically held by a full bench of Hon'ble Bombay High Court in the case of Ahmedabad Electricity Co Ltd Vs CIT [(1993) 199 ITR 351 (Bom FB)] and reiterated by a Special Bench of this Tribunal in the case of Tata Communications Ltd Vs JCIT [(2009) 121 ITD SB 384 (Mum)]. That is, of course, besides the fact that there is no attempt, direct or indirect, to enlarge the subject matter of appeal. The legal plea of the learned counsel proceeds on clearly fallacious assumptions.

8. As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-à-vis the ground realities. The facts of the case cannot be considered in isolation with the ground realities. It will, therefore, be useful to understand as to how the shell entities, which the loan creditors are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities.

9. I have noted that the assessee has received an amount of Rs 10,00,000 from Natasha Enterprises on 12th August 2006, and, as a plain look at the Canara Bank statement of the lender, which is placed at pages 40 onwards of the paper book, would show, there is a credit of Rs 10,00,000 just before this cheque is paid. The bank balance before these two transactions, and after these two transactions, was only Rs 13,717. Quite interestingly, again on 14th August 2006 in the same bank account, there are debit and credit transactions of around Rs 15 lakhs each and the balance as on the end of that date is Rs 8,737. On 18th and 19th August 2006, again there are quite a few transactions aggregating to Rs 10 lakhs on debit as also credit side, and yet again closing balance is Rs 7,578. On 22nd August 2006, there are transactions of debits and credits of around R 32.50 lakhs each, and the closing balance at the end of the day is again Rs 7,578. As can be seen from this statement, on 29th August 2006, there are debit and credit transactions of Rs 15 lakhs each and once again the closing balance of the day is Rs 7,578. This kind of the state of bank account does not inspire any faith in the proposition that the entity in question is a genuine business concern. A look at the financial statements filed by the assessee does not lead to this conclusion either. The lender has shown a turnover of Rs 122.92 crores but there is no closing stock, and a profit of almost 0.09% on the turnover leading to a tax payment of Rs 1,96,138. The lender makes purchases of Rs 123.04 crores in such diversified areas as cut and polished diamonds (Rs 73.15 crores), plywood and aluminium (Rs 11.72 crore), rough diamonds (Rs 4.36 crores), software (Rs 25.01 crores) and other items (Rs 8.79 crores), and sells these products too but all that the lender has spent on salaries is Rs 2,26,000, on office expenses is Rs 8,560, on office rent is Rs 27,600 and on printing and stationery is Rs 8,560. All this is simply not representative of what a genuine business would typically be. As regards Mohit International also, the story is no different. The bank statement, which is placed at pages 75 onwards, has the same theme of high transactions during the day and a consistently minimal balance at the end of the working day. On 28th April 2006, i.e. the day the assessee is given Rs 10,00,000, there are credit entries of almost similar amounts, and he balance after these transactions is a small amount of Rs 13,020. Similar is the pattern of transactions on all the days in respect of which this statement is placed before me. On 23rd March 2007, for example, the opening balance is Rs 1,36,611 and there are huge debits and credit entries on 23rd and 24th March, aggregating to almost Rs 4 crores on debit as also credit, and the closing balance at the end of 24th March is Rs 85,991. On a turnover of Rs 127.87 crores, the profit is less than 0.09% resulting in tax outgo of Rs 2,96,218. To effect this scale of operations, the lender incurs no travelling or telephone expense,

and entire expenses of the business, except on brokerage and assortment of diamonds, are less than Rs 5 lakhs in the year. Interestingly, in today's world where an average human being, much less a business organization, can live without telephones, this business entity has prospered without a rupee spent of telephones. The level of turnover and the expenditure incurred on achieving such high turnover do not match at all. The numbers do not add up and the details filed in respect of these lenders do not convince me that the lenders are routine businesses. Given this background the assessee's inability to produce the related persons or even give their current whereabouts makes the story of genuine transactions even more unbelievable. It is also important to bear in mind the fact that lending for an interest @12% p.a. without any security is not something which people do for rank outsiders. There has to be some close association to get such a kind of unsecured credit at such low rates. When I consider this situation, coupled with the fact that (i) the assessee has not been able to produce these lenders for verification and reasonably explain the complete circumstances in which these lenders, who were not even routinely engaged in the business of giving loans and advances, gave him unsecured loans on 12% p.a interest-which essentially is possible in situations of close relationships and trust; and (ii) the assessee has maintained stoic silence on being told about these lenders being alleged to be shell entities, I am not inclined to believe that these are genuine business transactions. As I do so, I am reminded of Hon'ble Supreme Court's observation, in the case of CIT Vs Durga Prasad More [(1971) 82 ITR 540 (SC)], to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities". Similarly, in a later decision in the case of Sumati Dayal Vs CIT [(1995) 214 ITR 801 (SC)], Hon'ble Supreme Court rejected the theory that it is for allegor to prove that the apparent and not real, and observed that, "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities.Similarly the observation..... that if it is alleged that these tickets were obtained through fraudulent means, it is upon the allegor to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available.....In our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected

unreasonably". I will be superficial in my approach in case I donot examine the claim of the assessee on the basis of documents and affidavits filed by the assessee and overlook clear the unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra), ".....it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents". As a final fact finding authority, this Tribunal cannot be superficial in its assessment of genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted before the Tribunal but also in the light of all the surrounding circumstances, preponderance of human probabilities and ground realities. Genuineness is a matter of perception but essentially a call on genuineness of a transaction is to be taken in the light of well settled legal principles. There may be difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the fact finding authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidences. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in my considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, documents and examining them, in a pedantic manner, with the blinkers on. I may also add that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of financial world, about modus operandi of shell entities. There were, therefore, not many questions raised about genuineness of

transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation as well. As Hon'ble Supreme Court has observed in the case in Mumbai Kamgar Sabha v. Abdulbahi Faizullabhai AIR 1976 SC 1455 "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark".

Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent. As the things stand now, genuineness of transactions is to be examined in the light of the prevailing ground realities, and that is precisely what I have done. In my considered view, and for the detailed analysis set out earlier in this order, the alleged loan transactions of the assessee cannot be held to be genuine on the peculiar facts and circumstances of this case. As the genuineness of transactions stands rejected, it is not really necessary to deal with other aspects of the matter.

10. In the light of the above discussions, as also bearing in mind entirety of the case, I uphold the action of the authorities below in bringing the impugned alleged loan transactions of Rs 20 lakhs to tax, and, as a corollary thereto, in declining deduction in respect of interest of Rs 3,66,041 on these alleged borrowings.

11. In the result, the appeal is dismissed."

On going through the above mentioned case, the case of the appellant is squarely covered by the order of the Hon'ble ITAT, 'SMC' Bench, Ahmedabad, as the method adopted by the promoter, Shri Rajendra Jain including Kriya Impex Pvt. Ltd., is identical to the method adopted by the persons involved in the case law mentioned above. In both the cases, the promoter of shell companies admitted on oath during the course of search that they are indulging in providing

accommodation entries of loan/sales and no real transaction took place. The entry provider merely charged commission and the payment received/made by account payee cheques is nothing but to give colour of genuineness to the bogus transaction. Therefore, additions made by the A.O. are confirmed. This ground of appeal is dismissed.”

6. Before me, the Id.counsel for the assessee submitted that similar purchases were made by the assessee in the Asstt.Year 2008-09 and 2012-13. On the basis of identical evidences, additions were deleted by the Id.CIT(A). Since the relief given by the CIT(A) was below monetary limit for filing such appeal before the ITAT, therefore, those orders attained finality. He submitted that on the basis of those order additions in these two years be also deleted.

7. In next fold of submissions, he submitted that the assessee has filed copy of income-tax return of Kriya Impex Pvt. Ltd. and Kalash Enterprises; stock register of the assessee, bank statement highlighting relevant transactions/payment and copies of purchase bills. He contended that the assessee has produced all the relevant evidences, and therefore addition ought to be deleted. In support of his contentions, he relied upon the order of the ITAT in the case of Shailesh Keshavlal Shah Vs. ITO, ITA No.1877 to 1879/Ahd/2015. Copy of this order has been placed on record. He also relied upon the judgment of Hon'ble Gujarat High Court in the case of Pr.CIT Vs. Tejua Rohitkumar Kapadia rendered in Tax Appeal No.691 of 2017. He further contended that in the case of Tejua Rohitkumar Kapadia(supra), SLP of the Department has also been dismissed by the Hon'ble Supreme Court.

8. On the other hand, the Id.DR relied upon orders of the Revenue authorities. He contended that order of the ITAT relied upon by the CIT(A) has also been upheld by the Hon'ble Gujarat High Court as well as Hon'ble Supreme Court.

9. The Id.counsel for the assessee also contended that he was not allowed to cross-examine Shri Rajendra Jain, and therefore, his statement cannot be relied upon by the AO.

10. I have duly considered rival contentions and gone through the record carefully. A perusal of the assessment order would indicate that the AO has not basically relied upon the statement of Shri Rajendra Jain or any other persons for doubting the transaction of the assessee. He only confronted the assessee that the Department was able to lay its hand on the information that these concerns were indulging in providing accommodation entries. They were not having actual business. This is one of the facets of transactions. Purchases were made by the assessee, and the AO directed him to prove genuineness of the purchases by producing relevant evidence. Had the assessee produced representative of Kriya Impex Pvt. Ltd., and Kalash Enterprise, then probably he could have proved his purchases. He was not in a position to bring anybody from that source. When the AO asked the assessee about the internal communication, and how he has placed orders on these concerns, then, the assessee failed to give any communication, i.e. forwarding letter with cheque for making payment or email or any receipt from that concern showing cheque was received etc. The assessee failed to produce any evidence demonstrating the delivery of goods at the premises of the assessee or dispatched from the premises of the seller. ITAT

in the case of Pavankumar M. Sanghvi Vs. ITO, (supra) relied upon by the Id.CIT(A) has elaborately discussed *modus operandi* of shell companies and how they function. The Tribunal has considered their activities, and how they demonstrate genuineness of the transaction which actually not taken place. At the cost of repetition, I would like to take note of para-8 of that order which has highlighted this aspect:

"8. As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-à-vis the ground realities. The facts of the case cannot be considered in isolation with the ground realities. It will, therefore, be use ul to understand as to how the shell entities, which the loan creditors are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities.

11. I have examined the evidence submitted by the assessee in the light of the above discussion, and find that only evidence possessed by the assessee is that payment to the alleged seller was made through banking channel. Payment through banking channel cannot be sacrosanct in all conditions. It has its own limitation to prove genuineness of the transaction. It is one of the basic conditions for making accommodation entries that payment should be made through banking channel. That does not mean that transaction has actually been taken place. As discussed above, had the assessee able to produce any corroborative evidence in the shape of any agreement or correspondence, any evidence showing delivery of goods or dispatch of goods, probably to some extent, he could able to demonstrate the purchases made from these concerns. The assessee has only produced certain self-serving evidences in a straight-jacket formula normally collected in this type of transaction. If these evidences are tested in the background, how the shell entities used to function, discussed by the ITAT, in the case of Pavankumar Sanghvi (supra), then it would reveal that it is not sufficient evidence to arrive at a conclusion that the assessee has made purchases from these concerns.

12. As far as case law relied upon by the Id.counsel for the assessee are concerned, the only similarity is that allegations against those assessees were also for making bogus purchases, but when such allegation was tested on the quality of evidence, the Tribunal did not concur with the AO and deleted the addition. There is no ratio laid down in both the decisions that, where the AO is able to lay his hand on the evidence, showing bogus purchases claimed by the assessee or where the assessee failed to

demonstrate genuineness of his purchases then also additions will be deleted. To my mind, the assessee cannot get any benefit from both these decisions.

13. As far as additions deleted by the Id.CIT(A) in other two years are concerned, the appeals could not be filed before the Tribunal, because tax effect in these appeals was less than the monetary limit provided in the instructions by the CBDT, which authorized its authorities not to challenge those orders before the Tribunal. It is also important to note that there is no negative equity in law i.e. if a person is being acquitted from a guilty, that does not mean he will be acquitted from all actions. Considering well reasoned orders of the Id.CIT(A), I do not find any merit in both the appeals. They are dismissed.

14. In the result, the appeals of the assessee are dismissed.

Order pronounced in the Court on 8th March, 2019.

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER