

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ “डी”, मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH “D” MUMBAI
BEFORE SHRI D.T.GARASIA, JM AND SHRI RAJESH KUMAR, AM

I.T.A. No.1069 to 1071/Mum/2017
(निर्धारण वर्ष / Assessment Years : 2008-09 to 2010-11)

M/s Reliance Corporation 101, Borivili Ashirvad CHS Ltd., Ram Mandir road, Vazira Naka, Borivali(W), Mumbai-400091	<u>बनाम/</u> Vs.	Income Tax Officer, Ward 32(3)(2), Mumbai-400020.
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(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
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I.T.A. No.4946/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

Asstt. Commissionr of Income Tax, -32(3), Room No.108, 1 st floor,C-11, Pratyakshakar Bhavan, BKC, Bandra (E), Mumbai-400051	<u>बनाम/</u> Vs.	M/s Reliance Corporation, Mumbai.
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(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
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स्थायी लेखा सं./PAN : AAIFR8460R

अपीलार्थी की ओर से / Assessee by	:	Dr.P.Daniel
प्रत्यर्थी की ओर से/ Revenue by	:	Shri Purushottam Kumnar

सुनवाई की तारीख /Date of Hearing	:	9.3.2017
घोषणा की तारीख /Date of Pronouncement	:	12. 4.2017

आदेश / ORDER**PER RAJESH KUMAR, A. M.:**

The assessee has filed three appeals against the order dated 10.2.2017 passed by the Id.CIT(A)-44, Mumbai for the assessment years 2008-09 to 2010-11 and the revenue has filed appeal directed against the order dated 26.5.2016 passed by Id. CIT(A)-44, Mumbai for the assessment year 2012-13. Since these appeals pertain to same assessee and grounds raised therein more or less are identical and therefore these appeals are clubbed together, heard together and are being decided by this consolidated order for the sake of convenience.

ITA No. 1071/Mum/2017.

2. At the outset, the Id.AR submitted that he does not want to press ground No.2 relating to reopening of assessment u/s 147 of the Income Tax Act, 1961. Therefore, ground no.2 is dismissed as not being pressed.
3. In the remaining grounds the issue raised by the assessee is against the confirmation of additions of Rs.1,29,04,231/- as made by the AO as unexplained cash credit u/s 68 of the Act and Rs.3,45,000/- as unexplained expenditure u/s 69C of the Act.
4. Facts of the case are that the assessee filed its return of income on 15.10.2010 declaring a total income at Rs.56,732/-. The return was processed under section 143(1) and the assessment was completed u/s 143(3) assessing

the total income of the assessee at an income of Rs.33,82,280/- vide order dated 20.3.2013. The case of the assessee was re-opened under section 147, on the basis that the information has been received from DGIT(Inv), Mumbai upon search and seizure action u/s 132 of the Act carried out on the group of Shri Bhanwarlal Jain that the assessee has received accommodation entries from the said parties/ concerns managed and operated by him. According to the information, the assessee obtained accommodation entries in the form of unsecured loans from M/s Laxmi Trading Company, M/s Rose Impex and Megha Gems, which are belonging to Shri Bhanwarlal Jain. The AO accordingly formed an opinion that the income to the tune of Rs.2,02,62,016/- has escaped assessment within the meaning of section 147 of the Act and accordingly re-opened the assessment by issuing notice under section 148 of the Act dated 18.3.2015 and ultimately the assessment was completed vide order dated 4.3.2016 passed under section 143(3) read with section 147 of the Act assessing the total income of the assessee at an income of Rs.1,66,31,511/- as against the earlier assessment made at Rs.33,82,280/- made under section 143(3) dated 20.3.2013 thereby making two additions namely unexplained cash credit from the parties referred hereinabove of Rs.1,29,04,231/- and unexplained expenditure of Rs.3,45,000/- under section 69C of the Act. The assessee filed before the AO various informations/details like loan confirmations from the lenders, ledger account, PAN of the parties, Profit & Loss account and the

balance sheet etc including the bank statement of the lenders and also of the assessee confirming the receipt of money through banking channel and form No.16 qua the TDS deducted. The lenders confirmed the loans having been given to the assessee during personal appearance before the AO in response to notice u/s 133(6) of the Act. However, the AO acting solely on the information received from DGIT(Inv), Mumbai rejected the contentions of the assessee and framed the assessment as stated above.

5. Aggrieved by the order of the AO, the assessee preferred an appeal before the Id.CIT(A) who dismissed the appeal of the assessee ex-parte on the ground that the assessee failed to appear before the Id.CIT(A) by observing and holding as under :

"4 Decision on grounds of appeal no.1:

4.1 The relevant facts are like this. The assessee is a firm which is engaged in the business of builders & developers. A search & seizure action was conducted in the Bhanwarlal Jain group of cases by Investigation Wing Mumbai. As a result of search, it was found by the Investigation Wing that this group is a leading entry provider of Mumbai. There are many concerns floated by the group who provide accommodation entries of bogus loan. The AO received an information that the appellant has also taken loan from concerns found in the list of entry providers related with Bhanwarlal Jain group of cases. The AO asked the appellant to show cause as to why loan taken from M/s Laxmi Trading Company & M/s Rajan Diamonds should not be disallowed and added to the total income. As per the assessment order the appellant did not file any written submission on this issue. The AO added the amount of fresh loans and interests on existing doubtful loans paid during the AY 2010-11 to the total income of the appellant. In this way, addition of Rs 1,29,04,231/- was made to the total income of the appellant.

4.2 During the course of appeal proceedings, no one appeared nor was any written submission made. In the statement of facts and grounds of appeal only general facts are stated. In absence of any written submission against the view taken by the AO in the assessment order it is held that the AO has rightly made the addition. The grounds of appeal No.1 is accordingly dismissed.

5 Decision on grounds of appeal no.2:

5.1 As per the assessment order the AO took a view that the appellant had introduced unexplained cash credits from entities related with Bhanwarlal Jain group of cases through accommodation entries arranged on commission basis. The AO accordingly computed 3% of Rs 1,15,00,000/- as undisclosed expenditure within the meaning of section 69C of the Act. In this way addition of Rs 3,45,000/- was made to the total income of the appellant.

5.2 During the course of appeal proceedings, no one appeared nor was any written submission made. In the statement of facts and grounds of appeal only general facts are stated. In absence of any written submission and/or document to substantiate the argument of the appellant against the view taken by the AO in the assessment order it is held that the AO has rightly made the addition. The grounds of appeal nO.2 is accordingly dismissed.

Aggrieved by the order of the FAA, the assessee is in appeal before us.

6. The Id. AR vehemently submitted before us that the order upholding the addition by the FAA was wrong and against the provisions of the Act. The Id. AR respectfully submitted before the Bench in order to make addition u/s 68C of the Act when the following three things are not established i.e. (i) identity of the creditors (ii) genuineness of the transactions and (iii) creditworthiness of the creditors. The Id.AR submitted that the onus is cast upon the assessee to explain the sources from which he has received the cash credit and the creditworthiness of the creditors is to be gauged vis –a-vis the transactions

which occurred between the assessee and the creditors. The Id. AR submitted that it was not the burden or responsibility of the assessee to find out the source of creditors or the capacity of the creditors in order to prove the genuineness of transactions as has been held by the Hon'ble Gauhati High Court in the case of CIT V/s Smt. Sangmitra Bharali reported in 361 ITR 481). The Id AR further submitted that the addition was made out of unsecured loans raised by the assessee from the group concern of Bhanwarilal Jain Group engaged in providing accommodation entries. On the contrary, there was no indication or proof that loans taken by the assessee were merely accommodation entries and the money actually gone back to the lenders. The Id.AR also submitted that the creditors appeared before the AO in response to the notice issued u/s 133(6) and during the course of recording statements by the AO the lenders confirmed the loans having given to the assessee. Besides all the necessary details were submitted before the AO during the assessment proceedings. The assessee also provided the loan confirmation from the creditors, PAN of creditors ledger extract copy of Income tax return, profit and loss account, balance sheet and bank statement of the creditors and also of the assessee and form no.16 issued qua the TDS deducted and deposited. The Id. AR further submitted that the assessee has completely discharged its onus cast upon it by filing necessary informations/details before the AO and the AO without carrying out any further investigations and verification in the matter solely relied upon the

information received from the DGIT(Inv) Mumbai that the creditors were engaged in issuing accommodation entries. In support of his contention, the Id.AR relied on the decision of the Hon'ble Supreme Court in the case of ITO V/s Lakhmani Mewal Das reported in (1976) 103 ITR 437 (SC), the decision of the Hon'ble Delhi High Court in the case of CIT V/s Gangeshwari Metal (P) Ltd reported in (2013) 96 DTR 299, wherein it has been held that there was a clear lack of enquiry on the part of the AO. Once the assessee had furnished all the material including PAN, loan confirmations and bank statements, in such an eventuality, no addition can be made u/s 68 of the Act. According to the Id.AR, the AO merely proceeded on the basis of information received from the third party and framed the assessment by making additions by stating in the assessment order that the explanation of the assessee is not acceptable. The Id. AR further relied upon the number of decisions like :

- i) CIT V/s Varinder Rawley (2014) 366 ITR 232 (P&H);
- ii) CIT V/s Sachital Communications (2014) 227 Taxman 219 (Mag);
- iii) CIT V/s Patel Ramniklal Hirji (2004) 222 Taxman 15 (Mag);
- iv) CIT V/s Jaikumar Bakliwal (2014) 366 ITR 217 (Raj);
- v) Nemi Chand Kothari V/s CIT (2003) 264 ITR 254(Gauhati);
- vi) CIT V/s Shalimar Buildwell Pvt (2014) 220 Taxman 138) (All);
- vii) CIT V/s Lalpuria Construction P L (2013) 215 Taxman 12(Mag) (Raj)
- viii) M/s Rushabh Enterprise V/s ACIT (Mum) WP 167/2015

- ix) Andaman Timber Industries V/s CCE (2015) 281 CTR 0241 (SC)
- x) CIT V/s M/s Ashish International in ITA 4299/Mum/2009

7. Per contra, the Id.DR relied upon the orders of the authorities below by submitting that the loan creditors M/s Bhanvarilal Jain group was found to be engaged in the business of providing accommodation entries during the search and seizure action his group and the assessee was found to be the one of the beneficiaries of the said accommodation entries. The Id. DR submitted that in the present case though the assessee has filed all the necessary information but since the assessee borrowing monies from the tainted parties who were provided accommodation entries, it is beyond doubt that money borrowed by the assessee was nothing but accommodation entries. Lastly, the Id. DR prayed that in view of the facts and the order of the FAA should be upheld by dismissing the appeal of the assessee.

8. We have heard the rival contentions perused the material placed before us including the orders of authorities below and orders relied upon by the parties. We find that undisputedly the assessee has borrowed money by way of loan from three aforesaid three parties i.e M/s Laxmi Trading Company, M/s Rose Impex and Megha Gems from whom the assessee borrowed the money and total outstanding including the interest as on 31.3.2010 were amounting to Rs.1,29,04,231/-. The case of the assessee was re-opened upon receiving the

information from DGIT(Inv), Mumbai that the assessee was one of the beneficiary of the said accommodation entries provided by Mr.Bhanwarlal Jain and group. We find from the record that the assessee filed during the course of assessment proceedings all the details like loan confirmation letters from the creditors, PAN of the creditors, bank statements of the creditors and the assessee, form no.16 qua TDS on interest ,profit and loss account and balance sheet including the ledger account of the creditors, and ITR etc. Moreover, the loan creditors also appeared before the AO in compliance to the notice issued under section 133(6) of the Act and filed confirmations before the AO that loans were actually given to the assessee. From all these details and facts on record, we find that the assessee has discharged its onus cast upon it by filing all the necessary details as called for by the AO to corroborate the transactions of borrowing the money and thereby satisfied all the three main ingredients i.e. creditworthiness of the creditors, genuineness of the transactions and identity of the creditors by filing all the details as discussed above which proved that the identity of the creditors, genuineness of the transactions and creditworthiness of the creditors have been established by the assessee. So much so that the loan creditors in response to the notice issued under section 133(6) appeared before the AO and confirmed that they have given interest bearing loans to the assessee on which TDS have been deducted and paid and form no.16A issued to the loan creditors also filed before the AO. Once the assessee has filed all

the necessary documents before the AO then the onus is shifted to the department to disprove the stand of the assessee, which department has failed to do so in the present case. The AO has merely proceeded and relied on the information received from the DGIT(Inv), Mumbai that the assessee is one of the beneficiary of the accommodation entries without bringing any material against the assessee on record by contrary to the defense put up by the assessee during the course of appellant proceedings. No cross examination was allowed to the assessee and information was used against the assessee causing violation of natural justice. The FAA dismissed the appeal of the assessee ex-parte for non attendance of the Id.AR.

➤ In the case of Lakhmani Mewal (supra) the Hon'ble Supreme Court has held as under :

"Section 147 of the Income-tax Act, 1961 [Corresponding to section 34(1) of Indian Income-tax Act, 1922] – Income escaping assessment – Illustrations – Assessment year 1958-59 – Whether reasons for formation of belief contemplated by section 147(a) for reopening of assessment must have rational connection with or relevant bearing on formation of belief, and rational connection postulates that there must be direct nexus or live link between material coming to Income-tax Officer's notice and formation of his belief that there has been escapement of assessee's income from assessment in particular year because of his failure to disclose fully and truly all material facts – Held, yes – Whether duty cast upon assessee is to make true and full disclosure of primary facts at time original assessment, and it is for Income-tax Officer to draw correct inference from primary facts – Held, yes – Whether if Income-tax Officer draws inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment – Held, yes – ITO completed original assessment by allowing deduction of interest paid to certain creditors – Subsequently, he reopened assessment for reasons recorded in report submitted to Commissioner for

obtaining sanction under section 147(a) that one creditors had confessed that he was doing only name lending and that other creditors were only name lenders – There was no material to show that confession made by said creditor related to loan to assessee and not to some one else and also that said confession related to period which was subject matter of assessment – There was also no material to show that other creditors were name lenders – Whether live link or close nexus which should be there between material before Income-tax Officer and belief which he was to form regarding escapement of income of assessee from assessment because of latter's failure or omission to disclose fully and truly all material facts was missing in case – Held, yes – Whether, thus, High court was not in error in holding that said material could not have led to formation of belief that income of assessee had assessment because of his failure or omission to disclose fully and truly all material facts – Held, yes

- In the case of Smt. Sangmitra Bharali (upra) the Hon'ble Gauhati High Court held as under :

"I. Section 68, read with sections 45 and 54F, of the Income-tax Act, 1961 - Cash credits (Undisclosed income v. LTCG) - Assessment year 2001-02 - Assessee held shares of company BPAL just for a period over 12 months and declared sale value 25 times more than purchase price - Company BPAL was not found at given address nor were its directors traceable - Purchase was not made through banking channel nor purchase price was verifiable in any way - Whether it was simply a sort of modus operandi to convert undisclosed income into a long-term 'capital gain' claiming same to be exempted invoking section 54F - Held, yes [Para 44] [In favour of revenue]

II. Section 68 of the Income-tax Act, 1961 - Cash credits (Advance by purchaser) - Assessment year 2001-02 - One VHPL allegedly advanced assessee cash against booking of flat - Assessee proved that amount so received was duly recorded in books of account of VHPL - Identity of VHPL was also established by filing its IT returns, balance sheets, etc. - Whether no addition could be made in hands of assessee - Held, yes [Para 59] [In favour of assessee]

III. Section 68 of the Income-tax Act, 1961 - Cash credits (Advance by purchaser) - Purchaser of car advanced certain sum to assessee - Identity of purchaser and genuineness of transaction was established - Whether transaction could not be treated as bogus and impugned amount could not be treated as an undisclosed income of assessee - Held, yes [Para 64] [In favour of assessee]"

- In the case of Gangeshwari Metal (P) Ltd (supra), the Hon'ble Delhi High Court has held as under :

" There are two types of cases, one in which the Assessing Officer carries out the exercise which is required in law and the other in which the Assessing Officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the Assessing Officer, after noting the facts, merely rejected the same. [Para 9]

- *There was a clear lack of inquiry on the part of the Assessing Officer once the assessee had furnished all the relevant material. In such an eventuality no addition can be made under section 68. [Para 10]*
- *In view of above, impugned order passed by the Tribunal was to be upheld. [Para 11]*

- In the case of Varinder Rawley (supra), the Hon'ble Punjab and Hariyana High Court has held as under :

"where the assessee shows that the entries regarding credit in a third party's account were in fact received from 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", particularly in a case where no summons u/s 131 is issued against the third party"

- In the case of Sachitel Communications P.Ltd (supra), the hon'ble Gujarat High Court has held as under :

""II. Section 68 of the Income-tax Act, 1961 - Cash credit (Loans) - Assessment year 2006-07 - Commissioner (Appeals) and Tribunal concurrently found that assessee proved identity of creditor and capacity to pay and that payment was made through banking channel - Whether no addition could be made on account of unsecured loan - Held, yes [Para 3] [In favour of assessee]"

- In the case of Patel Ramniklal Hirji, the Hon'ble Gujrat High Court has held as under :

"The addition on the basis that four depositors furnished requisite details to prove their identity and showed the place of their residence. The loan was received through account payee cheques. Copies of Bank Statements was given and the details of PAN were available. All the materials duly proved the genuineness of the transaction of loan as well as creditworthiness of the depositors. Hence, the addition u/s. 68 "

- In the case of Jaikumar Bakliwal (supra), the Hon'ble Rajasthan High Court has held as under:

"Three things are required to be proved by recipient of money i.e. (1) identity of the creditor (2) capacity of the creditor to advance money and (3) genuineness of the transaction.

Held, dismissing the appeal, that all cash creditors were assessed to income-tax and they proved 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 none but the assessee. The addition of Rs.17,27,2501- under section 68 was not justified.

- In the case of Nemi Chand Kothari (supra), the Hon'ble High Court has held as under :

"16. A person may have funds from any source and an assessee, on such information received, may take loan from such a person. It is not the business of the assessee to find out whether the source or sources from which the creditor had agreed to advance the amounts were genuine or not. If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the

assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep the same in the bank, the said amount cannot be treated as income of the assessee from undisclosed source. In other words, the genuineness as well as the creditworthiness of a creditor have to be adjudged vis-a-vis the transactions, which he has with the assessee. The reason why we have formed the opinion that it is not the business of the assessee to find out the actual source or sources from where the creditor has accumulated the amount, which he advances, as loan, to the assessee is that so far as an assessee is concerned, he has to prove the genuineness of the transaction and the creditworthiness of the creditor vis-a-vis the transactions, which had taken place between the assessee and the creditor and not between the creditor and the sub-creditors, for, it is not even required under the law for the assessee to try to find out as to what source or sources from where the creditor had received the amount, his special knowledge under section 106 of the Evidence Act may very well remain confined only to the transactions, which he had with the creditor and he may not know what transaction(s) had taken place between his creditor and the sub-creditor. No such additional burden can be placed on an assessee, which is not envisaged by section 106 of the Evidence Act. The Revenue/Assessing Officer, however, remains free to show that the amount, which has come to the hands of the assessee by way of loan from the creditor actually belonged to the assessee, but this conclusion cannot be reached by mere failure on the part of the sub-creditor to show his creditworthiness and/or the genuineness of the transaction between the creditor and sub-creditor, for, the creditor may receive any amount from sources known to the creditor only and if he fails to show how he has received the amount, in question, or if he fails to show the creditworthiness of his sub-creditor, such an amount may be treated as the income from undisclosed source of the creditor or of the sub-creditor, as the case may be, but such failure, on the part of the creditor cannot, in the absence of any clinching evidence, be treated as the income of the assessee derived from undisclosed source.

:Held (i) that the assessee had established the identity of the creditors. The assessee had also shown, in accordance with the burden, which rested on him, under section 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors which was not in dispute. Once the assessee had established these, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter, the burden had shifted

to the Assessing Office to prove the contrary. The failure on the part of the creditors to show that their Sub-creditors had creditworthiness to advance the said loan amounts to the assessee, could not, under the law be treated as the income by the appellant from undisclosed sources merely on the failure of the sub-creditors to prove their creditworthiness from undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. The Assessing Officer failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. Therefore, the Assessing Officer could not have treated the said amounts as income derived by the assessee from undisclosed sources."

(ii) that no assessment could be made contrary to the provisions of law. In the instant case, the very basis for making the assessment was under challenge. If the assessment was based on a completely erroneous view of law, such findings could not be regarded as mere findings of facts, but must be treated as substantial questions of law. Therefore, the question raised in the appeal was a substantial question of law because it went to the very root of the assessment made.

The aforesaid view has been also considered and fortified and favourably referred to by the Allahabad High Court in the case of C.I.T. v. Shalimar Buildwell Pvt. Ltd. (2014) 220 Taxman 138 (All.)

- In the case of Lalpuria Construction P. Ltd (*supra*) the Hon. Rajasthan High Court has held that

"that in the case of Accommodation entry - without giving an opportunity of cross examination merely on the basis of oral statement additions cannot be made u/s. 68. It is further held that:

"The oral statement of a third party recorded by Search authorities which was never placed to be confronted by assessee and no documentary evidence was supplied to assessee, could not be considered in making addition u/s. 68 on account of alleged accommodation entries. "

Besides, it is further submitted that the Hon'ble Bombay High Court in the case of M/s. Rushabh Enterprise v. ACIT had occasion to go through the

identical issue and two of the Creditors in that case, i.e. Mls. Laxmi Trading Co. and Mls. Rose Impex were also parties in the case of the assessee.

- In the case of Andaman Timber Industries (supra), the Hon'ble Supreme Court held as under :

"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 nullify in as much as it amounted to violation of principles of Natural Justice because of which the assessee was adversely affected." The order was vacated.

The aforesaid view was earlier considered by the Jurisdictional High Court in the case of CIT v. Ashish International.

In our considered view the facts of the assessee case are squarely covered by the ratio laid down in the decisions referred to above. We, therefore, in view of our observations and the ratio laid down by the various decisions are inclined to set aside the order of CIT(A) and direct the AO to delete the additions of Rs. 1,29,04,231/-. Since we have decided the issue of addition u/s 68 in favour of the assessee, the addition as sustained by the Id CIT(A) u/s 69C of the Act of Rs. 3,45,000/- is also ordered to be deleted. In result the appeal of the assessee is allowed.

9. In remaining appeals of the assessee for the assessment years 2008-09 and 2009-10, the grounds taken by the assessee are same excepts figures and the loan creditors and hence the decision taken in ITA No.1071/Mum/2017 would

,mutatis mutandis, apply to these appeals as well and hence these appeals are allowed as indicated above.

ITA No.4946/Mum/2016

10. Grounds of appeal taken by the revenue are as under :

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.73,58,000/- made on account of unsecured loans and interest as the assessee has failed to prove the identity, creditworthiness and genuineness of the said loan".*

2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.73,58,000/- made on account of unsecured loans and interest despite the fact that the party from whom the alleged loan was received by the assessee was listed as hawala entry provider who indulged in providing accommodation entry of unsecured loans and related to Bhanwarlal Jain and his group."*

3. *"On the facts and in the circumstances of the case the finding of Ld. CIT(A) that the AO has only discussed the facts of Bhanwarlal Jain group and the AO has not appreciated the fact that he was not making the assessment of Bhanwarlal Jain. This finding is perverse on facts as the assessee has introduced the accommodation entries of loan from the group concerns controlled by Bhanwarlal Jain as such the AO's finding and reliance placed on the investigation made by the Investigation made by the Investigation wing was right."*

4. *"On the facts and in the circumstances of the case the finding of the Ld. CIT(A) that the assessee has proved identity, creditworthiness and genuineness of loan in perverse on facts as the assessee has not furnished any evidence to justify the creditworthiness and genuineness of the loan."*

5. *"The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the AO be restored."*

Since, we have decided the appeals of the assessee for the assessment years 2008-09 to 2010-11 in favour of the assessee and the grounds taken by the

revenue in AY 2012-13 are same with respect to accommodation entries from the same group. Since we have already decided the issue in favour of assessee in ITA No 1071/Mum/2017. Therefore in view of our decision in ITA No 1071/Mum/2017 the appeal of the revenue stands dismissed.

11. In the result, the appeals of the assessee are partly allowed and that of revenue stands dismissed.

Order pronounced in the open court on 12th April, 2017.

Sd
(D.T.GARASIA)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated :12.4.2017

Sr.PS:SRL:

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
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