



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

**BEFORE SHRI R.C.SHARMA, AM**

**&**

**SHRI. RAM LAL NEGI , JM**

**ITA No.1477/Mum/2017**

**(Assessment Year :2008-09)**

Assistant Commissioner of Income Tax – 25(3) Room No.601, C-10, 6 <sup>th</sup> Floor, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra(E) Mumbai-400051	Vs.	M/s.Shree Ganesh Developers 301, Krishna Kunj, Plot No.30 V.L. Mehta Marg, JVPD Scheme, Vile Parle(W) Mumbai-400056
<b>PAN/GIR No. ABCF6098P</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Revenue by	Shri Chaudhary Arun Kumar Singh
Assessee by	Shri Prakash Jotwani
<b>Date of Hearing</b>	<b>25/10/2018</b>
<b>Date of Pronouncement</b>	<b>20/11/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the Revenue against the order of CIT(A)-37, Mumbai dated 07/12/2018 for A.Y.2008-09 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act.

2. Total ten grounds have been raised by the Revenue. The crux of issue revolves around addition of Rs.1,75,00,000/- u/s.68 and Rs.3,50,000/- on account of commission.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee is a firm and is engaged in the business of builder and development. The AO received an information from the Investigation Wing, that the assessee had obtained accommodation entries provided by Praveen Kumar Jain along with his associates, engaged in providing bogus accommodation entries. Based on the said information the AO reopened the assessment by way of issue of notice u/s.148 dated 14.11.2014 after duly recording the reasons. During the course of reassessment proceedings the A.O. has observed that assessee has taken loan of Rs.1,75,00,000/- from the following persons:-

Sr.No.	Name	PAN	Amount
1	Duke Business P. Ltd. (JPK Trading I Pvt.Ltd)	AABCJ6245N	50,00,000/-
2	Duke Business P. Ltd. (JPK Trading I Pvt.Ltd)	AABO6245N	.35,00,000/-
3	Casper Enterprises P. Ltd. (Ostwal Trading I P. Ltd.)	AAAC07955M	40,00,000/-
4	Sumukh Commercial Pvt.Ltd. (CapstownMer.P.Ltd.)	AACCC400M	50,00,000/-
	Total		Rs. 1,75, 00,000/-

5. The A.O. has not accepted the transactions as genuine. Accordingly, the loan of Rs.1,75,00,000/- treated as unexplained and added to the total income of the assessee.

6. By the impugned order CIT(A) deleted the addition after observing as under:-

*“5. I have carefully gone through the assessment order passed by the A.O, written submissions filed by the appellant and relevant case laws cited by the appellant during the appellate proceedings.*

*5.1 All the grounds of appeal are related with addition of Rs.1,75,00,000/- u/s.68 of IT.Act on account of accommodation entries. Therefore for the sake of convenience, all the grounds are disposed together.*

*5.2 The AO has received the information from the Investigation Wing, that the appellant had obtained accommodation entries. Based on the said information the then Assessing Officer had reasons to believe that the income had escaped assessment and reopened the assessment by way of issue of notice u/s.148 dt.14.11.2014 after duly recording the reasons. Shri.Praveen Kumar Jain along with his associates were engaged in fraudulent billing activities and in giving accommodation entries in order to enable the clients to declare Speculation Profit/loss, Short term capital gain, Long term capital gain, Profit/loss on account of commodity trading, introducing share application money or introduce money in the form of gifts. A search u/s.132 of the Act was conducted in the case of Shri. Praveen Kumar Jain along with his associates were engaged in fraudulent billing activities and were providing bogus speculation profits/loss, short-term/long term capital gain/loss, share application money, profit/loss on commodity trading (through MCX)to various persons. From the computer seized, a list of clients/beneficiaries who transacted with the above company was prepared and sent to the respective jurisdictional Assessing Officers for taking the necessary action. As discussed in the assessment order, the assessee Shree Ganesh Developers was one of such clients whose name appears in the list.*

*5.3 During the appellate proceedings, the appellant has stated that he had taken loan of Rs.1,75,00,000/- from the above mentioned parties. The loan taken by the appellant was a genuine loan, During the assessment proceedings, the appellant has submitted Loan Confirmations, Copy of Acknowledgement and Copies of the Bank Statements of these two parties. Further stated that the appellant has proved the identity, creditworthiness of the said parties as well as the genuineness of the transaction. The AO has not brought any material on records to prove the loan taken by the appellant as the accommodation entry. On the contrary the appellant has **proved the transaction of loan as genuine loan with evidence on records. The AO has not contravened any one of these three conditions. The AO has made the disallowance u/s 68 even in spite of all the conditions satisfied by the appellant.***

*5.4 The expression "nature and source" has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise could be inferred. The Hon'ble Supreme Court, in Kale Khan Mohd. Hanif vs. CIT, pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. If the prima facie inference on the fact is that the assessee's explanation is probable, the onus will shift to the Revenue. As far as the creditworthiness or financial strength of the creditor/subscriber is concerned, that can be proved by producing the bank statement of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. Once these documents are / produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinize the same and in case he nurtures any doubt about the veracity of these documents, to prove the matter further.*

*5.5 Element of credit worthiness and satisfaction of AO thereafter is subjective and requires more efforts/inquiry on the part of the AO to give a finding in the order that lender is not credit worthy. The AO must make proper enquiry before making any addition. In Khandelwal Constructions v. CIT 227 ITR 900 (Gau.), it has been held that empowers the Assessing officer to make enquiry. If he is satisfied that these entries are not genuine he has every right to add these as income from other sources. But before rejecting the assessee's explanation, A.O. must make proper enquiries and in the absence of proper enquiries, addition cannot be sustained.*

*5.6 It is clear from the above discussion that all the transactions were through account payee cheques and appellant has submitted sufficient details before the AO during the assessment proceedings. The source of receipt through banking channel clearly establish the genuineness of the credit which is reflected in the books of accounts. The decision of the Hon'ble Gujarat High Court in the case of Dy. CIT vs Rohini Builders - [256 ITR 360] is held that all the loans were received by the assessee by account payee cheques and the repayment of loans have also been made by account payee cheques along with interest in relation to those loans and that the assessing officer having allowed the interest claimed/paid by the assessee in relation to the cash credits cannot treat the cash credits as not genuine. It held that the assessee had discharged the initial onus which lay on it in terms of Section 68 by proving the identity of the creditors by giving their complete addresses, nos. and copies of assessment orders wherever readily available and That has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from the bank accounts of the creditors. It held that the assessee is not expected to prove the genuineness of the cash deposited in the*

*bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of accounts but not the source of the source.*

*5.7 Further stated that addition u/s 68 of the Act, the assessee must satisfy three important conditions, namely, (i) the identity of the creditor; (ii) the genuineness of the transaction; and (iii) the financial capacity of the of the person giving cash credit to the assessee, i.e. the credit worthiness of the creditor. However, the onus of the assessee is limited to the extent of proving the source from which he received the cash credit. The credit worthiness of the creditor has to be judged vis-avis the transaction which had taken place between the assessee and the creditor, and it is not the burden of the assessee to find out the source of creditworthiness of the lender to prove the genuineness of the transaction. This is held by the Gauhati High Court in the case of CIT v. Smt. SanghamitraBharali (2014) 361 ITR 481 (Gau) at page 482.(Copy enclosed)The aforesaid points were also affirmed in the past by the Appex Court in the case of CIT v. Orissa Corporation P, Ltd reported in (1986) 159 , ITR 78 (SC). In the case of CIT v. Varinder Rawley (2014) 366 ITR 232 (P & H) the court held that "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 assessee", particularly in a case where no summons u/s 131 is issued against the third party.*

*5.8 Further, in the case of Namichand Kothari vs CIT - [264 ITR 254] [Gau], the Hon'ble High Court had held that:*

*"A harmonious construction of section 106 of the Evidence Act and section 68 of the Income-tax Act will be that though apart from establishing the identity of the creditor, the assessment establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditor nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the assessee. It is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transaction, which took place between the creditor and sub-creditor since, these aspects may not be within the special knowledge of the assessee.*

5.9 The assessee must satisfy three important conditions, namely, (i) the identity of the creditor; (ii) the genuineness of the transaction; and (iii) the financial capacity of the of the person, i.e. the credit worthiness of the creditor. However, the onus of the assessee is limited to the extent of proving the source from which he received the cash credit. The credit worthiness of the creditor has to be judged vis-a-vis the transaction which had taken place between the assessee and the creditor, and it is not the burden of the assessee to find out the source of creditworthiness of the lender to prove the genuineness of the transaction. This issue is dealt by the Gauhati High Court in the case of CIT v. Smt. Sanghamitra Bharali (2014) 361 ITR 481 (Gau). The aforesaid points were also affirmed in the past by the Appex Court in the case of CIT v. Orissa Corporation P. Ltd reported in (1986) 159 ITR 78 (SC). In the case of CIT v. Varinder Rawley (2014) 366 ITR 232 (P & H) the court held that "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 assessee", particularly in a case where no summons u/s 131 is issued against the third party.

5.10 The Bombay High Court has recently decided the case of Rushabh Enterprises vs ACIT, 24(3), Mumbai in Writ Petition no. 167 of 2015. In this case assessee had taken loans from 45 parties and out them 4 parties belonging to the same group of Bhanwarlal Jain were considered non genuine by the AO. It was pointed out that aforesaid 4 parties had advanced loans from through account paying cheques which were encased in the petitioner's Dank account used for business transactions. Interest is also paid on these loans and at the time of payment of interest, tax was deducted at source and TD5 returns were filed. It was contended by the department that they have received information from DGIT (InvJ that assessee had taken unsecured loans from the above parties by way of unaccounted cash / accommodation entries. High Court observed that there is a bald statement on the part of the department there is no tangible material to re-open the assessment. The High Court held that "we do not find anything in the said affidavit that establishes there is a reason to believe that income has escaped assessment." The Court also held that "they are unable to agree with the department since petitioner has clearly seated that all the payments were made Dy account payee cheques which were encashed in the bank account of the petitioner in regular course of business. We find that the petitioner has also paid interest on these loans after deduction of tax at source and TDS returns are also accordingly filed. There is no dispute in regard to the above. We find nothing to support the said contention of revenue. The revenue's contention in affidavit in reply has no merit. On the other hand, loans

*appear to be taken in regular course of business and were found amongst the 45 members in respect of which all particulars have already been furnished by assessee to assessing officer. We find no such reason for the assessing officer or revenue to come to a conclusion that income had escaped the assessment".*

*5.11 Further, it has been held by the Hon'ble Bombay High Court, in the case of CIT vs. Smt. Sushiladevi Khadaria [2009] 319 ITR (Bom) 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. It was also held by the Hon'ble ITAT (Mumbai) in the case of ITO vs Anant Shelters (p) Ltd. [2012] 051 SOT 0234 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*

*5.12 From the assessment order, it transpires that the AO has solely relied upon the statement did not carry out any worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted by the appellant. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transactions cannot be doubted. Once evidences related to a transaction is submitted before the A.O., the onus shifts on him to prove these as non-genuine or bogus. The A.O. has not discharged the onus casted on him. In my opinion, merely based on the statement of a third person without any corroborative evidence will not make the loan transactions, in question, as accommodation entries. As such, in the absence of any contrary evidence placed on record, the transaction cannot be treated as accommodation entries.*

5.13 As far as the question of validity of the transaction done through M/s.Duke Business P.Ltd. (JPK Trading I Pvt.Ltd., Casper Enterprises P.Ltd. (Ostwal Trading P.Ltd. and Sumukh Commercial Pvt.Ltd. (Capstown Mer.P.Ltd. are concerned, even if some of the transactions entered into by Shri.Pravinkumar Jain Group are found to be not genuine, it does not lead to the conclusion that all the transactions entered into by these brokers were bogus or non-genuine including the transactions related to the appellant. There is no evidence brought in the assessment order to prove the above conclusion, by the AO. The outcome of investigation carried out in the case of Shri.Pravinkumar Jain, the conclusions drawn therein cannot be applied ipso facto to all other cases. Simply relying on the report and statement, the AO cannot conclude that all transactions are accommodation entries.

5.14 The case of the appellant is covered by the decision of ITAT, T Bench, Mumbai, in the case of Satish N. Doshi HUF Vs. ITO, Ward 21(2)(4), Mumbai in ITA IMo-2329/Mum/2009 and the decision of ITAT, 'E' Bench, Mumbai in the case of Shaf Broadcast Pvt. Ltd Vs. ACIT, Cir-9(3), Mumbai in ITA No.1819/Mum/2012. Both the cases relate to re-opening of assessment on the basis of statements of Mr. Mukesh Choksi and Mr. I.e. Choksi and associated brokerage companies. The Hon'ble ITAT on the analysis of the findings made in the assessment orders has reached to the conclusion that the re-opening itself is bad in law and quashed the orders accordingly. The ratio of these judgments is applicable to the facts of the instant case. This is confirmed by the Delhi Bench of the Income Tax Appellate Tribunal in the case of DCIT v. Nipun Builders & Developers P. Ltd. (ITA No.557/DEL/2010) wherein the Tribunal dismissed the Revenue appeal by holding that the Assessing Officer has primarily relied upon the Report of the Investigation Win which cannot conclusively prove that assessee's own money was invested in the form of share application money.

5.15 Further, in the recent judgment of Shri.Jafferli K Rattsonsey V. DCIT reported in 5068/Mum/209, the Mumbai Bench of the Income Tax Appellate Tribunal has also held that the mere statement of a person cannot be a deciding factor for rejecting the genuineness of the purchase of shares by the assessee specially when all other supporting evidences filed by the assessee were neither proved to be false or untrue. The Hon'ble ITAT Mumbai in the case of ITO vs Anand Shelters Pvt.Ltd. (2012) 20 Taxmann.com 153 has enumerated certain principles which would be extremely useful in understanding the issue in hand. It has been stated in the said judgment that over the years, law regarding cash credits have evolved and has taken a definite shape. A few aspects of law u/s.68 can be enumerated.

1. *Sec. 68 can be invoked when there is a credit of amounts in the books maintained by the assessee, such credit is a sum of money during the previous year and either the assessee offers no explanation about the nature and source of such credits or the explanation by the assessee in the opinion of the AO is not satisfactory.*
2. *The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required . to be formed objectively with reference to the material on record.*
3. *Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner.*
4. *The onus of proof is not static. The initial burden lies on the assessee to establish the identity and the credit worthiness of the creditor as well as the genuineness of transaction.*
5. *The identity of creditors an be established by either furnishing their PANs or assessment orders. The genuineness of the transaction can be proved if it was shown that the money was received by A/c payee cheque. Creditworthiness of the lender can be established by attending circumstances.*

*5.16 During the assessment proceedings, the appellant has submitted Loan Confirmations, Copy of Acknowledgement and Copies of the Bank Statements of these parties. If the above referred principles are applied to the facts of the case under consideration, it can De seen that the identity of the creditors has been established as they are having PAN and they are regularly filing return of income. The genuineness of the transaction is established from the fact that both the acceptance and repayment of loan has been through banking channels. The Creditworthiness of tne lenders can be established from the ledger a/c, bank statements and balance sheet of the lenders which were filed before the AO.In the assessment order, the A.O. did not at all discuss the merit of submission made by the appellant and casually brushed aside the details filed by the appellant. Further, the appellant has stated that he had furnished all the relevant details during the course of the assessment proceedings and accordingly had duly discharged its onus by furnishing the identity and address of the parties. Further, the source of receipt through banking channels to substantiate the genuineness of the credits reflected in its books of Account.*

*5.17 Further, it may be pointed out that section 68 under which the addition has been made by the Assessing Officer reads as under:-*

*"68. Where any sum is found credited in the books of an assessee maintained*

*for any previous year, and the assessee offers no explanation about the nature and source 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 the income of the assessee of that previous year.*

5.16 *The phraseology of section 68 is clear. The Legislature has laid down that*

*In the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570.*

5.17 *After considering the totality of facts, the rival submissions, the applicable law and on the basis of discussions mentioned above, I have come to the conclusion that nature and source of credit in the books of account of appellant stands explained. Consequently, addition u/s 68 cannot be sustained. Therefore, A.O. is directed to delete the addition of Rs.1,75,00,000/-. This ground of appeal is allowed.*

5.18 *The other ground is related with addition of Rs.3,50,000/- on account of alleged commission paid in cash @ 2% of Rs.1,75,00,000/-. These additions were made on the basis of cost of the accommodation entries. However, the above mentioned addition has clearly been explained that the transactions are genuine and not as an accommodation entries. Therefore, addition made on account of cost of accommodation entry cannot be sustained and the same is deleted.*

**6. In the result, appeal is allowed."**

7. Against the above order of CIT(A), revenue is in further appeal before us.

8. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that to substantiate genuineness of its claim of Rs.1,75,00,000/- received from

four different parties, the assessee has furnished following documents before the lower authorities.

<i>S.no</i>	<i>Name of the Loan Party</i>	<i>PAN</i>	<i>Amount</i>
<i>1</i>	<i>Duke Business Pvt. Ltd (J.P.K Trading (1) Pvt. Ltd)</i>	<i>AABCJ6245N</i>	<i>50.00.000/-</i>
<i>2</i>	<i>Duke Business Pvt. Ltd ( J.P.K Trading (1) PVT Ltd,</i>	<i>AABCJ6245N</i>	<i>35,00,000/-</i>
<i>3</i>	<i>Casper Enterprises Pvt Ltd (Ostwal Trading I P Ltd/</i>	<i>AAACO7955M</i>	<i>40.00.000/-</i>
<i>4</i>	<i>Sumukh Commercial Pvt Lid (Capetown Met-. P. Lid)</i>	<i>AACCC4QQM</i>	<i>50,00,000/-</i>
	<i>Total Rs.</i>		<i>1,75,00,000/-</i>

9. A letter dt.26.08.2015 along with documentary evidences relating to the identity, credit worthiness and the genuineness of the transaction was submitted to the AO (A copy of the said letter and the documentary evidences are placed on record.

10. Also a letter dt.21. 12.2015 was submitted to the AO on 22.12.2015 in response to the show cause notice of the AO. (A copy of the said letter also placed on record.

11. The statement made before the DDIT (Inv) was RETRACTED by the said Praveen-Kumar Jain. The reason given for the withdrawal was thus the statement was obtained under the coercion, pressure and threat and harassments from the DDIT (Inv). The affidavit of retraction

also placed on record 'with the copy of the letter submitted on 22.12.2015.

12. From the record we found that during the assessment proceedings, the assessee has submitted the following:

**A. CASPER ENTERPRISES P. LTD, (formerly known as OSTWAL TRADING INDIA P. LTD.)**

- a) Copy of Ledger account of Casper Enterprise P. Ltd. as it appears in the books of M/S. Shree Ganesh Developers for the period 01-04-2007 to 31-03-2010.
- b) Loan Confirmation for the Period 2007-08, 2008-09 & 2009-10.
- c) Certificate of Incorporation from Registrar of Company.
- d) Copy of **Bank Statement** of Casper Enterprises P. Ltd. **highlighting the payment made to M/S. Shree Ganesh Developers.**  
The sources of the fund is the loans received back by Casper Enterprises P. Ltd., from:

- |                                                                                                                                                                        |                       |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| i) Kunal Gems                                                                                                                                                          | <b>Rs.1400,000/-</b>  |
| ii) Kush International                                                                                                                                                 | Rs 26,00,000/-        |
| iii) Kunal Gems                                                                                                                                                        | <b>Rs.10,00,000/-</b> |
| iv) Natasha Enterprises                                                                                                                                                | Rs. 36,00,000/-       |
| e) Copy of PAN Card                                                                                                                                                    |                       |
| f) Copy of Income Tax Return.                                                                                                                                          |                       |
| g) Copy of Annual Repon and Balance Sheet for the Y.£ 31-03-2008.                                                                                                      |                       |
| h) <b>The identity, creditworthiness of the M/S. Casper Enterprises P. Ltd. is proved and the genuinity of the loan transaction in also proved as required u/s 68.</b> |                       |

**B. DUKE BUSINESS P. L TD. (formerly known as J P K TRADI.\G (INDIA) P. L TD,)**

- a) Copy of Ledger Account of Duke Business P. Led. as it appears in the books of M/S. Shree Ganesh Developers for the period 03-04-2007 to 31-03-2010.
- b) Loan Confirmation for 'Me Period 2007-08, 2008-09 & 2009-10.
- c) Certificate of Incorporation from Registrar of Company.
- d) Copy of **Bank Statement** of Duke Business P. Ltd. highlighting the payment made to M.'S. Shree Ganesh Developers.

The **Sources of Fund** is (he loan received back by Duke Business P. Lid. from :

- i) New Plane! Trading Co. P. Ltd. Rs. 17,00,000/
- ii) Natasha Enterprises Rs. 13.80,000
- e) Copy of PAN Card.
- f) Copy of Income Tax Return.
- g) Copy of Annual Report and Balance Sheet for the Y.E.. 31-03-2008.
- h) The identity, credit worthiness of the M/S. **Duke Business P. Ltd** is proved **and the** genuineness of the loan transaction is also proved as required u/s 68.

**C. SUMUKH COMMERCIAL P. LTD. (formerly known as CAPETOWN MERCANTILE P. LTD.)**

- a) Copy of Ledger Account of Sumukh Commercial P. Ltd as it appears in the books of M/S. Shree Ganesh Developers for the period 01-04-2007 to 31-03-2010.
- b) Loan Confirmation for the Period 2007-08, 2008-09 & 2009-10.
- c) Certificate of Incorporation from Registrar of Company.
- d) Copy of Bank statement of Sumukh Commercial P Ltd highlighting the payment made to M/S. Shree Ganesh Developers.

The sources of Fund is the loan received back by Sumukh Commercial P. Ltd from :

- i) Faststone fading Rs. 5.50.200/-
- ii) Mohil International Rs. 14,60,020/-
- iii) Prachi Rs. 23.50.000/-
- e) Copy of PAN Card
- f) Copy of income Tax **Return**.
- g. **Copy** of Annual Report and Balance Sheet for the Y.E.31/03/2008.
- h) The identity, creditworthiness of the M/S. Casper Enterprises P. Ltd. is proved and the genuineness of the loan transaction is also proved as required u/s 68.

13. Ld. AR further contended that the assessee had requested the AO to issue a notice u/s 133(6) to the said Pravin Kumar Jain and call for further information. However, the AO did not issue any such notice and completed the assessment by-making the addition of the loan to the returned income. Natural Justice is denied to the assessee. The

assessee was not provided with the copy of the statement recorded by the said Pravin Kumar Jain in front of the DDIT (Inv). The assessee was not informed about how Pravin Kumar Jain was associated with these aforesaid Companies.

14. As per learned AR, the AO has erred in utilizing a 3<sup>rd</sup> person's statements against the assessee without giving an opportunity to the assessee for Cross Examining and Interrogation of the 3<sup>rd</sup> <sup>1</sup> person in the presence of the A O. Additions to the income made merely on the basis of the statement made by an unknown person without giving an opportunity to the assessee to defend itself is a gross violation of natural justice and such additions made deserves to be deleted.

15. Our attention was invited to the fact that Pravin Kumar Jain has retracted from the statement given by him before the DDIT (Inv). Attention was invited to the copy of retraction by Pravin Kumar Jain. AR referred to the point no 7 and onwards of the retraction Affidavit, to show that the statement given to the DDIT (Inv) was under coercion, pressure and threat from the DDIT (Inv). The statement was recorded under the extenuating circumstances and Pravin Kumar Jain was not even aware of the content that was recorded by the DDIT(inv). The Search operation continued for 9 days and Pravin Kumar Jain in his Retraction affidavit has said that he signed the statement to ensure that the 9 days long search action ends.

16. Ld. AR relied on following judicial pronouncements in support of contention that the conditions of section 68 are proved with documentary evidences, where the AO has not investigated the loans receipts on his own and has just relied on the statement of an unknown person, where a statement of a person unknown to the assessee is used against the assessee and no opportunity is given to the assessee to cross examine such unknown person. Where the said unknown person RETRACTED from his statement given to the DDIT (inv) by giving the reason that the statement was obtained from him under coercion and threat, then, any additions made on these grounds to the income of the assessee shall be deleted.

- i) *CIT vs Tania Investments Pvt Ltd. (2010) 322ITR 3W (BOM)*
- ii) *DCIT vs. Rohim Builders. (2003) 12~ Taxmann 523 (Guj)*
- iii) *Nemichand Kothari vs. CIT(2004) 136 Taxman 213 (GAU)*
- iv) *Jai KishanDadlani vs. ITO (2005) 4 SOT 138 MUM*
- v) *CITvs. Dalmia Resorts International (2006) 152 Taxman 47 (Delhi)*
- vi) *Golden Remedies (p; Lid vs. ITO (2007) 18 SOT 260 (DELHI)*
- vii) *CIT I'vs Real Time Marketing Pvi Ltd. (2008) 173 TAXMAN 41 (Delhi)*
- viii) *Arvali Trading Co. vs. ITO (2010) 18^ TAXMAN 338 (RAJ)*
- ix) *CIT vs RanchhodJivabhaiNakhava (2012) 21 Taxman.com 159 (Guj)*
- x) *CIT vs. H.S Builders Pvt Ltd. (2012) 26 Taxmann.com 86 (Raj)*
- xi) *Dinesh kumar Jain vs. CIT Cir I. ITA No. 262/Agra/2009.*

17. After considering the documents filed before AO and after controverting the findings recorded by AO, CIT(A) concluded that all the transactions were through account payee cheques and assessee has

submitted sufficient details before the AO during the assessment proceedings. The CIT(A) further observed that the source of receipt through banking channel clearly establish the genuineness of the credit which is reflected in the books of accounts.

18. The Hon'ble Gujarat High Court in the case of Dy. CIT vs Rohini Builders - [256 ITR 360] held that where loans were received by the assessee by account payee cheques and the repayment of loans have also been made by account payee cheques along with interest in relation to those loans and that the assessing officer having allowed the interest claimed/paid by the assessee in relation to the cash credits cannot treat the cash credits as not genuine. It held that the assessee had discharged the initial onus which lay on it in terms of Section 68 by proving the identity of the creditors by giving their complete addresses, PAN nos. and copies of assessment orders wherever readily available and that has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from the bank accounts of the creditors. It held that the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of accounts but not the source of the source.

19. After considering the various judicial pronouncements with reference to the factual matrix of the case the CIT(A) concluded that

assessee has discharged the primary onus with respect to the identity, genuineness and creditworthiness of the loan creditors. It was also brought to our notice that the loan so taken by the assessee has been repaid in the next assessment year 2010-11 by the account payee cheque. The confirmations filed by all the loan creditors are also placed on record acknowledging the repayment of loans. The AO had passed scrutiny assessment order in assessee's case for the A.Y.2010-11 dated 25/03/2013, wherein there is no adverse observation with regard to the repayment of loan already taken by the assessee to the respective loan creditors. Considering the documentary evidence filed before the lower authorities, the CIT(A) has recorded categorical findings to the effect that the assessee has discharged the burden cast on him with regard to the identity of the loan creditors, genuineness of the transaction and creditworthiness of loan creditors. The detailed finding so recorded by CIT(A) are as per material on record which has not been controverted by learned DR by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings so recorded by CIT(A).

**20. In the result, appeal of Revenue is dismissed.**

Order pronounced in the open court on this 20/11/2018

**Sd/-**  
**(RAM LAL NEGI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 20/11/2018  
Karuna Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**