

|आयकर अपीलीय न्यायाधिकरण न्यायपीठ, मुंबई|

**IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,
MUMBAI**

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 2165/MUM/2019

(निर्धारण वर्ष / Assessment Year :2012-13)

DCIT CC – 7(3), Room No. 655, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020	v/s. बनाम	M/s. Tirupati Developers. 419, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri (W.), Mumbai-400053
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFT6810B		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

प्रति आपत्ति सं./ CO No. 110/MUM/2021

(Arising out of ITA No. 2165/Mum/2019)

(निर्धारण वर्ष / Assessment Year :2012-13)

M/s. Tirupati Developers. 419, Laxmi Plaza, Laxmi Industrial Estate, New Link Road, Andheri (W.), Mumbai-400053	v/s. बनाम	DCIT CC – 7(3), Room No. 655, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFT6810B		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Rushabh Mehta
राजस्व की ओर से /Revenue by:	Shri Biswanath Das

सुनवाई की तारीख / Date of Hearing	18.07.2025
घोषणा की तारीख/Date of Pronouncement	21.07.2025

आदेश / ORDER**PER RENU JAUHRI [A.M.] :-**

The above appeal is filed by the revenue, against which the assessee has filed the cross objection, challenging the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-49 [hereinafter referred to as "CIT(A)"] dated 29.01.2019 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2012-13.

2. The revenue has raised the following ground of appeal:

1. "On the fact and circumstances of the case and in law, The Id. CIT(A) erred in deleting the addition u/s 68 of Rs 6,93,00,000/- with respect to the unsecured loans received by it, without appreciating that the retraction of statement is only an afterthought and the AO was correct in the treatment of the unsecured loans considering the preponderance of probability.."

3. The assessee has raised the following ground of cross objections:

"1. (a) The Id. CIT(A) erred in facts and law in dismissing the jurisdictional validity of assessment u/s. 143(3) r.w.s. 153A of the Act.
(b) The Id. CIT(A) erred in facts and law in not appreciating the fact that assessment had attained finality and no incriminating material was found during the course of search."

4. Brief facts of the case are that the assessee had filed its return declaring nil income for AY 2012-13 on 28.09.2012. The assessee firm is a part of the 'Lotus Group', on which a search action was carried out u/s 132 on 09.10.2014 by the Investigation Wing, Mumbai. On the basis of information found during the course of the search, a notice u/s 153A was issued on 08.02.2016 requiring the assessee to furnish its return of income. The assessee again filed the return declaring nil income on 18.04.2016. The assessment was completed vide order



dated 23.12.2016 u/s 153A r.w.s. 143(3) of the Act at an income of Rs. 7,44,28,290/- after making an addition on account of unsecured loan of Rs. 6,93,00,000/- u/s 68 of the Act and disallowance of interest paid thereon to the tune of Rs. 51,95,330/-.

5. Aggrieved with the order of Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). Vide order dated 29.01.2019, Ld. CIT(A) allowed relief to the assessee on merits.

Aggrieved with the order of Ld. CIT(A), the department has filed the present appeal before the Tribunal.

6. The sole substantive issue involved in this appeal is the addition of Rs. 6,93,00,000/- received as a loan from M/s. Satyam Projects Ltd., which has been treated as unexplained u/s 68 of the Act. It has been submitted by Ld. DR that the entire group was found to be engaged in providing/receiving accommodation entries. On the basis of various documents found, as well as statements recorded during the course of the search, it was held that the group entities have introduced their unaccounted money through paper companies based in Kolkata and Mumbai. The loan received from M/s. Satyam Projects Ltd., during the year by the assessee, was regarded as an accommodation entry and added u/s 68 of the Act by the Ld. AO. He has argued that the Ld. CIT(A) was not justified in deleting the addition on merits, and the same deserves to be upheld.



7. On the other hand, Ld. AR has argued that the relief has been allowed by the Ld. CIT(A) after considering facts and circumstances in detail and on merits with the following observations:

7.5. I have perused the aforesaid documents. It is observed that the assessee company is a registered NBFC since 1998 which has later merged with 8 companies through a scheme of amalgamation duly sanctioned by the Hon'ble Calcutta High Court. By providing the aforesaid documents, the assessee submits that the lender Satyam Projects Ltd is a genuine company which has carried out so many compliances M/s. regularly with RBI/ Auditors and has also been sanctioned merger with the approval of the Hon'ble Calcutta High Court.

From the records, it is noticed that the alleged lender was served a notice u/s. 133(6) of the Act by the AO which was duly complied. The assessee therefore submits that there is no adverse finding in this regard by the AO in his assessment order.

Apropos creditworthiness of the lender company, it is seen that initially two companies-Aisley Dealers Pvt Ltd and Appollane Mercantile Pvt Ltd having aggregate net worth of Rs. 9.53 crores merged with Satyam Projects Ltd on 26.06.2008. Later, other six companies namely Goldmoon Merchandise Pvt Ltd, Jaldham Suppliers Pvt Ltd, Impression Distributors Pvt Ltd, Deesha Dealer Pvt Ltd and Aashiana Tie-up Pvt Ltd having aggregate net worth of Rs. 91.06 crores merged with Satyam Projects Ltd on 15.12.2010. The aforesaid companies had huge capital and reserves appearing in the balance sheet prior to the merger. Consequent to the merger, the AR submits that total net worth of the lender company was increased by Rs.100.59 crores which was then utilised by it for the purpose of its business. The AR has further pointed out that the assessment in the case of these aforesaid six merged companies was carried out wherein the share capital issued by these companies have been verified by the concerned AO. Accordingly, the net worth of the lender company stood at Rs.1,01,30,88,008/- which was infact substantially examined by the revenue. Further, the turnover of the lender for the year under consideration was Rs. 8.27 crores and its returned income was Rs. 21,32,680/-

The AO has relied on the statements of Shri. Hitesh Thakkar, Shri. Jignesh Mavadiya & Shri. Uday Shankar Mahawar. In this regard, the appellant contends that the statements were not provided to it and hence the same cannot be used against it. The appellant also contends that no opportunity of cross examination of the aforesaid parties has been accorded to the assessee. The assessee further stated that the aforesaid parties have given the statement under coercion and influence of the search party and have subsequently retracted the statements which were made by them.

In his statement u/s. 133A of the Act on 10.10.2014, Shri. Hitesh Thakkar, managing director of the lender company has stated that Bhagwanji Patel has acquired M/s. Satyam Projects Ltd in May 2014 and that he was a director for name sake only and detailed explanation in relation to Satyam Projects Ltd could be given by Bhagwanji Patel. He has further stated that the overall affairs of the company are being looked



after by Shri. Bhagwanji M Patel. He ultimately agreed that the said company is a paper company.

Similarly, Shri. Jignesh Thakkar in the course of statement u/s. 131 of the Act on 09.10.2014 has stated that he was a clerk in Prince Ply Agency Pvt Ltd and he was a namesake director in Satyam Projects Ltd. He was unaware about the other directors of the lender company.

In his statement, Shri Uday Shankar Mahawar u/s. 131 on 25.08.2014 has also stated that he opened around 200 bogus jamkharchi companies which were used to provide bogus accommodation entries One of Such companies as stated in his statement was Satyam Projects Ltd.

However, the AR states that all the aforesaid statements relied upon by the AO are retracted by the said parties on the ground that they were based on influence and coercion of search party. The retraction affidavit of these parties have been placed in the course of assessment as well as before me. In the course of assessment proceedings, Shri. Uday Shankar Mahawar was produced before the Id. Assessing Officer wherein he has affirmed his retraction and clarified that the earlier statement given by him was recorded under coercion. The AR also stated that Shri. Bhagwanji M Patel is the shareholder of M/s. Satyam Projects Ltd.

7.6. In light of above, it is now important to examine the validity of addition based on the aforesaid statement which have been retracted by the respective parties. I find that the assessee group was covered under search action and no document or other assets were found in the course of search which could indicate that the assessee had obtained accommodation entry. It is stated by the AR that a search is a strict measure under the Act which invades the privacy of the assessee and even in these proceedings no concrete evidence was found except for mere oral confirmation of certain parties which also stand retracted later. My attention in this regard was invited to the CBDT Instruction F.No.286/98/2013-IT (INV.II) dated 18/12/2014 and letter dated 10/03/2003 issued by the Ministry of Finance & Company Affairs wherein it is stated that the search party must focus on collection of evidences and not merely admission/confession of additional income The Hon'ble Gujarat High Court has relying on the aforesaid instructions upheld the view that addition should not be made based on oral confession in the case of CIT v. Ramanbhai Patel (TA no. 207 of 2008) and Chetnaben J Shah v. ITO [TA no. 1437 of 2007]. Thus, respectfully following the CBDT circular as well as the decision cited by the assessee (supra), I find that the addition cannot be sustained merely on the basis of the statements taken during the search devoid of any evidence/material to incriminate the assessee.

Section 68 is not a charging section but a deeming fiction dealing with the burden of proof. The section casts initial onus w/s. 68 of the Act on the assessee to prove identity, genuineness and creditworthiness of the transaction to the satisfaction of the AO. If the assessee fails to do so or the explanation offered by him is not satisfactory to the AO, the AO is empowered to add the same to the total income of the assessee. The said power is to be exercised judiciously by the AO. Thus, once the initial onus is discharged by the assessee, the onus shifts on the AO to bring out fallacies in evidence brought by the assessee or by bringing new evidence that indicate the transactions undertaken by the assessee are non-genuine. Thus, the section deals with an equilibrium of onus of proof and must be viewed to evaluate as



to whether the evidences brought by the assessee or AO weigh more and accordingly in whose favour the equilibrium bends. In the present case, on one hand, the assessee has placed evidence in the form of voluminous documents in relation to RBI compliances, ROC compliances compliances and merger sanctioned by the Hon'ble Calcutta High Court. Further, the audit assessee has also placed on record the assessment orders of 6 merged companies for the A.Y 2010-11 and also that of the alleged lender - M/s. Satyam Projects Ltd for A.Y. 2010-11. I have also gone through the confirmation, ITR Acknowledgement, financial statements of the lender company and bank statements relating to the alleged transaction of unsecured loan of Rs.6,93,00,000/- taken by the assessee during the year under consideration. It is observed that the lender company is formed in 1981 and is registered NBFC since 1998 engaged into the business of finance and investment and has also engaged into trading in cloth in the year under consideration. The lender company has shown substantial turnover of Rs. 8.27 crores with an income of Rs. 21,32,680/- offered in its return of income. The transaction are also carried out through account payee cheques. Even, in the subsequent years, it is seen that the lender company has earned substantial income as under:

AY	Returned income
2013-14	51,81,018/-
2014-15	1,61,13,093/-
2015-16	1,16,80,862/-

Accordingly, the assessee has discharged its onus u/s 68 of the Act by substantiating even the source of source of alleged lender company.

On the contrary, the Assessing Officer has solely placed reliance on the statement of Hitesh Thakkar, Jignesh Mavadia and Uday Shankar Mahawar which has been retracted by all of them. Further, the AO has made allegation that M/s, Satyam Projects Ltd is a company run by various entry operators but have failed to bring anything concrete on record. In fact, during the course of assessment proceedings, enquiries were made by the AO in form of issue of notice u/s. 133(6) which was duly complied by the lender. Even the evidences referred above were not disputed by the Assessing Officer. It is informed that Uday Shankar Mahawar was appointed as a director in M/s. Satyam Projects Ltd on 30.10.2010 and Hitesh Thakkar and Jignesh Mavadia had been appointed as a director on 04.03.2014. Also, Shri. Uday Shankar Mahawar was produced before the Assessing Officer who had affirmed his retraction thereby confirming that the transaction of Satyam Projects Ltd were genuine and that it is not a paper company.

7.7. The decision of the Hon'ble Jurisdictional ITAT in the case of ITO v. Sringeri Technologies Pvt Ltd [ITA No. 3924/Mum/2014] is also relevant wherein similar facts were involved before the Hon'ble ITAT and it was observed as under:

11. Having considered arguments of both the sides and materials available on record, we do not find any merit in the reasons given by the AO to come to the conclusion that the assessee has failed to prove the genuineness of transaction and creditworthiness of the parties on the ground that the assessee has filed enormous details in respect of 9 companies including their PAN details, CIN master data, affidavits sworn before Executive Magistrate, reply to the notices issued u/s 133(6). The assessee also filed copies of assessment order



passed u/s 143(3) by the department in respect of 4 companies. The assessee also filed a certificate from a Chartered Accountant certifying the active status of the company in the website of Ministry of Corporate Affairs. On going through various detailed filed by the assessee, we find that there is no reason for the AO to doubt the genuineness of transactions of creditworthiness of the parties. We further notice that all 9 companies are active in the website of ROC and also they have filed their balance-sheet upto 31-03-2016 and in some cases upto 31-03-2017. We further notice that the AO has furnished a report accepting the fact that all these companies are active in the website of MCA and none of the companies' name is struck off from the list published by the MCA as shell company. We further notice that the assessee has filed balance-sheet of all 9 subscribers wherein they have huge share capital and reserves and surplus to establish creditworthiness of the parties. On perusal of the balance-sheet filed by the assessee, we find that the aggregate of share capital and reserves of 9 companies is at Rs.333.67 crores, whereas investment in assessee company is only Rs. 12 crores. We further notice that all companies are having regular business ranging from 2 to 3 crores. The assessee also furnished copies of sales-tax returns filed with Commercial Tax Department to prove the business activity of the assessee. All these evidences go to prove an undoubted fact that these companies are not paper companies and recognized with business activity. We further observe that the assessee also filed affidavit from the directors of subscriber companies, wherein they have explained the reasons for not receiving communication sent by the AO u/s 133(6) of the Act. They further stated in the affidavit that they have subscribed to the share capital of the company and also furnished supporting evidences to justify investment in share capital of the company. We further notice that the assessee has furnished bank statement of subscribers wherein we do not find any instance of cash deposits or transfer from other companies prior to the date of transfer to the assessee company. Therefore, we are of the view that the AO was incorrect in treating share capital alongwith share application money as unexplained cash credit u/s 68 of the Income-tax Act, 1961."

Further, Ld. AR has pointed out that M/s. Satyam Projects Ltd. is a Non-Banking Financial Company (NBFC), and no adverse inference has been drawn by the department while finalising the assessments of the company. Moreover, in the other group cases, on loan received by these entities from M/s. Satyam Projects Ltd, relief has been granted by the coordinate benches under similar facts and circumstances. Specifically, Ld. AR has placed before us a copy of the order of the coordinate bench in ITA No. 3698/Mm/2019, M/s. Lotus Logistics



& Developers Pvt. Ltd. In this case also, the addition of Rs. 2.81 cr. treated as unexplained cash credit was deleted by the Ld. CIT(A) against which the revenue filed the appeal before the ITAT. The appeal of the revenue was dismissed by the coordinate bench with the following observations:

“18.2 We heard the parties on this issue and perused the record. The Ld. DR argued that the additions were made by the AO on the basis of statements recorded from Shri. Jagdish Purohit, Shri Hitesh Thakkar, Mr. Jignesh Mavadiya, and Shri Uday Shankar Mahavar. He submitted that the Ld CIT(A) should not have recognized the retraction of these statements. He reiterated his contentions that the apparent documentary evidences should be ignored and the addition made by the AO should be confirmed. On the contrary, the Id A.R submitted that the Ld CIT(A) has passed a detailed order with proper reasoning and hence the same does not call for any interference.

18.3 Having heard rival submissions, we are of the view that the order passed by Ld CIT(A) on this issue does not call for any interference. We notice that the Ld. CIT(A) has given a clear finding that the assessee has discharged the initial burden placed upon it by proving the identity of the investor, the credit worthiness of investor and the genuineness of the transactions. Further, the above said investor is one of the partners in a group concern of the assessee. We notice that the AO has placed reliance on the statements given by certain persons, which has later been retracted. One of the persons has confirmed the retraction before the AO also. Hence, we are of the view that the AO could not have placed sole reliance on the statement given by certain persons by totally disregarding the evidences available in that regard. Further those statements are contrary to the financial statements and bank statements of the investor. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the addition of Rs.2.81 crores made by the AO.”

8. We have heard the rival submissions and perused the material placed before us. Ld. AR has placed on record a copy of the assessment order u/s. 143(3) for AY. 2012-13 in the case of the lender M/s. Satyam Projects Ltd. wherein no adverse inference has been drawn qua the impugned transaction. Documentary evidences of repayment of the loan in subsequent years and the financials of the lender company have also been filed.



8.1. After careful consideration of the facts and circumstances, we are of the view that the Ld. CIT(A) has examined the impugned loan transaction in detail and has allowed relief to the assessee on sound reasoning as reproduced in Para 7 hereinabove. Moreover, under similar facts and circumstances, the coordinate bench has allowed relief on account of similar loan transactions with M/s. Satyam Projects Ltd. in the case of *M/s. Lotus Logistics & Developers Pvt. Ltd. (supra)*. Under these facts and circumstances, we are of the view that the decision of the Ld. CIT(A) is based on merits and does not call for any interference. Accordingly, revenue's appeal on this issue is dismissed.

9. The other ground regarding the disallowance of interest on the loan is also decided against the revenue as the loan transaction itself has been held as genuine, and therefore, interest paid thereon is directed to be allowed.

CO No. 100/Mum/2021

10. In the cross objection, the assessee raised the legal issue regarding the issue of notice u/s 153A in the absence of incriminating material found during the course of the search. Since we have already granted relief on merits, this issue is rendered academic in nature and has become infructuous and hence, is not being adjudicated upon.

11. Since the appeal of the revenue has been dismissed on merits, legal grounds raised in the cross objection by the assessee are not being adjudicated upon.



ITA No. 2165/Mum/2019 & 110/Mum/2021
A.Y. 2012-13
M/s Tirupati Developers

12. In the result, both the appeal of the revenue and CO of the assessee are dismissed.

Order pronounced in the open court on 21.07.2025.

Sd/-

KAVITHA RAJAGOPAL

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 21.07.2025

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,**

**सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.**

