



IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAM LAL NEGI, JM

ITA No.3127/Mum/2017

(Assessment Year :2013-14)

The ACIT 25(2) R.No.508, C-10, 5 th Floor Pratyaksha Kar Bhavan Bandra Kurla Complex, Bandra (E) Mumbai – 400 051	Vs.	M/s. H.K. Pujara Builders 11, Swastik Plaza, V.L. Mehta Road, JVPD, Vile Parle (West) Mumbai – 400 049
PAN/GIR No.AAAFH7230H		
(Appellant)	..	(Respondent)

Revenue by	Ms. Jyothilakshmi Nayak
Assessee by	Shri Prakash K Jotwani
Date of Hearing	04/02/2019
Date of Pronouncement	22/022019

आदेश / ORDER

PER M. BALAGANESH (A.M):

This is an appeal filed by the revenue directed against the order of Commissioner of Income Tax (Appeals)-37, [hereinafter referred to as the Id CIT(A), Mumbai dated 16/02/2017 for A.Y. 2013-14 in the matter of order passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961.

2. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the addition made towards unsecured loans in the sum of Rs.3,75,00,000/- as unexplained cash credit u/s.68 of the Act in the facts and circumstances of the case. The interconnected

issue involved thereon is as to whether the Id CITA was justified in deleting the disallowance of interest paid on loans in the sum of Rs 2,28,92,766/- in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is a partnership firm engaged in the business of builders and developers. The assessee is engaged in construction of both residential and commercial projects in suburb area of Mumbai. The return of income for the A.Y.2013-14 was filed by the assessee on 29/09/2013 declaring total income of Rs.2,98,06,730/-. During the course of assessment proceedings, details of unsecured loans and advances were furnished by the assessee along with confirmation from the parties who had advanced loans and advances.

3.1. The Ld. AO observed in his order that during the appellate proceedings before this Tribunal in assessee's own case for the A.Y.2008-09, the then CIT (DR) ITAT wrote a letter to the Investigation Wing of Income Tax Department, Pune, for obtaining a statement of one Shri Jagdish Prasad Purohit u/s.131 of the Act in the course of search action conducted by DDIT (Inv)Unit-I(3), Pune in the case of Pride Group, Pune. Accordingly, the statement was recorded and in the said statement, Shri Jagdish Prasad Purohit had admitted that he is involved in the business of giving loans and advances and that various companies were incorporated by his employees at different places as per the directions and these companies were used to provide bogus share application monies against the payment of cash to various entities. M/s. Grafton Merchant Pvt. Ltd.,

is one such group company controlled by Shri Jagdish Prasad Purohit from which the assessee before us had availed loan. The Ld. AO observed that M/s. Grafton Merchant Pvt. Ltd had advanced loan of Rs.3,75,00,000/- to the assessee during the year. M/s. Grafton Merchant Pvt. Ltd had furnished ledger account for the period 01/04/2012 to 31/03/2013, bank statement and acknowledgement of return of income for A.Y.2013-14 together with their audited financial statements in response to notice u/s.133(6) of the Act issued by the Ld. AO. Vide order sheet entry dated 23/03/2016, the Ld. AO handed over a copy of this statement of Shri Jagdish Prasad Purohit recorded u/s.131 of the IT Act on 19/10/2011 by Pune Investigation Wing of Income Tax department to the authorised representative of the assessee. The Ld. AO showcaused the assessee as to why the alleged loan received from M/s. Grafton Merchant Pvt. Ltd be not treated as unexplained cash credit u/s.68 of the Act in the hands of the assessee. In response to the same, the assessee filed a detailed submission dated 29/03/2016 which is reproduced as under:-

“1) As informed by you that you are in possession of a recorded statement given u/s.131 by one Shri Jagdish Prasad Purohit, in which he has claimed that the loan given to the assessee by on Grafton Merchant Pvt. Ltd is an accommodation entry.

The assessee denies and disagrees with the statement of Shri Jagdish Prasad Purohit. Also Mr, Jagdish Prasad Purohit has RETRACTED from the said statement mentioned by you. The related Affidavit is enclosed herewith.

We request you not to rely on the statement of Shri Jagdish Prasad Purohit.

The assessee submits that the loan received from M/s Grafton Merchant Pvt. Ltd is a genuine loan and shall not be treated as accommodation entry merely based on an in general statement made u/s 131 by any third party.

Addition, if any is made merely based on the statement of any third person given in general and which is "Retracted" thereafter, shall not be relied if an opportunity is not given to the assessee to cross examine the said third person in the presence of the assessing officer. In his Retraction affidavit, Shri Jagdish Prasad Purohit, has stated that his Statement u/s 131 was taken under threat of search & seizure of his premises and reopening of the assessment proceedings of his companies. To get rid off of any such actions from the Income Tax Department, he signed the statement prepared by the DDIT Unit 1(3).

Under the circumstances, Where

- i) There is a forceful recording of a Statement u/s 131,*
- ii) There is a Retraction from such Statement by the person, and*
- iii) Where no opportunity is given to the assessee for cross examination and interrogation of such third party in the presence of the Assessing Officer,*

We request you not to make addition of the loan received from M/s Grafton Marketing Pvt. Ltd. to the returned income of the assessee.

2) Further, we submit herewith the explanation why the loan received from M/s Grafton Merchant Pvt. Ltd. should not be income u/s 68 as Unexplained Cash Credit.

Section 68 of the Income Tax Act, 1961 reads as under:

"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.

Thus, to tax any receipt u/s 68, the assessee should fail to offer any explanation about the nature and source of such receipt, or, the explanation so offered by the assessee is not satisfactory in the opinion of the AO.

We submit the explanation that the amount of Rs.375,00,000/- received from Grafton Merchant Pvt. Ltd is a loan. The loan has been received through banking channels. The Source of the loan is out of the loans received back by M/s Grafton Merchant Pvt. Ltd.,

from the other parties to whom it had given loans earlier. The source of loan is not out of the Cash deposited in the bank. Also on receipt of loan, there are no cash withdrawals from the bank by the assessee. This proves the Genuinity of the Loan.

The assessee has paid Interest on the said loan and M/s Grafton Merchant Pvt. Ltd has duly offered the same as income in its Return of Income for the asst year 2013-14.

To prove the IDENTITY of M/s Grafton Marketing Pvt. Ltd. we submit –

- i) copy of the ITR filed by M/s Grafton Marketing Pvt. Ltd.,*
- ii) copy of the Bank Statement of M/s Grafton Marketing Pvt. Ltd*
- iii) Audited Financial Statements and Auditor's Report.*

Also, the notices u/s 133(6) issued by you are served on M/s Grafton Marketing Pvt. Ltd.

The CREDITWORTHINESS of lender means the capacity to lend the money, the SOURCE, from which the lender has lent the money. It is not necessary that the loan has to be given out of the Taxable Income of the lender. The lender can have several sources to lend the loans.

In the case on hand, the Bank Statement of M/ s Grafton Marketing Pvt. Ltd is enclosed herewith, which clearly reflects the SOURCE through which it has lent the loan amount to the assessee. The Bank Statement shows that M/ s Grafton Marketing Pvt. Ltd has received back loans from third parties and the said money has been given as loan to the assessee. Thus, the source of loan proves the CREDITWORTHINESS of M/s Grafton Merchant Pvt. Ltd.

We request you to refer to the Financial Statements of M/ s Grafton Merchant Pvt. Ltd. which shows Rs.38.56 crores of Share Capital and Reserves & Surplus. This clearly indicates the CREDITWORTHINESS and Capacity of M/s Grafton Merchant Pvt. Ltd. to lend the money on loans.

The Loan money is transferred through Banking Channels. The Interest on loan is also paid. There is part repayment of loan during the year. Also by the end of March 2015, the complete loan has been repaid to M/s Grafton Merchant Pvt. Ltd. All these are sufficient to prove the GENUINITY of the Loan. There are no immediate cash deposit or cash withdrawals from the bank on the execution of the loan transaction.

Interest is paid on loan; TDS is made on interest and duly deposited to the Revenue Department. The Grafton Merchant Pvt. Ltd has offered the same as their income in the Return of Income filed by them. Tax is paid on the interest income.

The Identity, Credit worthiness of the loan parties are established by the assessee and the genuinity of the loan transaction is also proved by the assessee.

However, the onus lies on the AO to substantiate his opinion, with evidence, why he believes that the explanation submitted by the assessee is not satisfactory.

To substantiate our claim of the Loan as genuine loan, we enclose herewith the following:

- i. Copy of the RETRACTION STATEMENT by Shri Jagdish Prasad Purohit.*
- ii) Loan Confirmation for the year ending 31-03-2013, 31-03-2014 and 31-03-2015.*
- iii) Copy of ITR and Computation of Income of M/s Grafton Merchant Pvt. the Asst. Year 2013-14.*
- iv) Copy of the Audited Financial Statement as on 31.03.2013.*
- v) Copy of Ledger Account of M/s H.K. Pujara Builders in the books of M/s Grafton Merchant Pvt. Ltd for the year ending 31-03-2013, 31-03-2014 and 31-03-2015.*
- vi) Copy of "Interest on loans" account in the books of M/s Grafton Merchant Pvt. Ltd for the year ending 31-03-2013,31-03-2014 and 31-03-2015.*
- vii) Copy of FORM 26AS of M/s Grafton Merchant Pvt. Ltd. for the f.y. 2012-13 which shows Tax Deducted at Source on Interest given by M/s H.K. Pujara Builders to M/s Grafton Merchant Pvt. Ltd.*
- viii) Copy of Bank Statements of M/s Grafton Merchant Pvt. Ltd. showing Loans transaction and the SOURCE of the loan.*
- ix) Copy of the Ledger Account of M/s Grafton Merchant Pvt. Ltd. for the years 2012-13, 2013-14, 2014-15 in the books of the assessee M/s H.K. Pujara Builders.*
- x) Copy of Bank Statement of the assessee for the year 2012-13, 2013-14 and 2014-15 showing loan repayments to M/s Grafton Merchant Pvt. Ltd. Based on the above we request you to treat the loan received as loan and do not make addition under sec. 68".*

3.2. Ld. AO referred to various replies given by Shri Jagdish Prasad Purohit in the statement recorded on oath u/s.131 of the Act by the Pune Income Tax department on 19/10/2011 where he had admitted to have provided accommodation entries against cash through various companies

controlled by him to various parties. The Ld. AO observed that assessee herein is one of the beneficiaries of said accommodation entry in the form of loan received from M/s. Grafton Merchant Pvt. Ltd., the company controlled and managed by Shri Jagdish Prasad Purohit. The Ld. AO observed that mere filing of annual accounts, ITR acknowledgement, confirmations, bank statement, affidavits does not prove the identity, genuineness and creditworthiness of the lender when the credentials and the genuineness of the creditor *per se* are in dispute.

3.3. The Ld. AO further observed that from the perusal of the balance sheet of M/s. Grafton Merchant Pvt. Ltd., as on 31/03/2013, there was nil stock of shares as on 01/04/2012 as against 2800 under closing stock of shares as on 31/03/2013. The said company had trade payables of Rs.78,39,729/- as on 31/03/2013 and trade receivables of Rs.75,76,520/-. The loans and advances given by that company as on 31/03/2012 was Rs.54,76,35,136/- and the same was reduced to Rs.43,78,49,069/- as on 31/03/2013. The Ld. AO observed from the bank statement of Kotak Mahindra Bank of M/s. Grafton Merchant Pvt. Ltd., that the transactions for inflow and outflow of funds were practically carried out on the same day in support of which he quoted certain instances of certain transactions in the said bank statement.

3.4. The Ld. AO also observed that in the earlier years i.e., A.Yrs.2008-09, 2009-10, 2010-11 and 2011-12, the Assessing Officer had made additions u/s.68 of the Act on account of unsecured loans received from

M/s.Albright Consultants Pvt. Ltd., and M/s. Nataraj Vinimay Pvt. Ltd., which are comparables controlled by Shri Jagdish Prasad Purohit. The Ld. AO also recorded a fact that Shri Jagdish Prasad Purohit subsequently retracted his original statement on oath u/s.131 of the Act by way of filing an affidavit to that extent and the copy of the said affidavit was also reproduced by the Ld. AO in pages 15 & 16 of his order. The Ld. AO however, disregarded the same on the ground that Shri Jagdish Prasad Purohit is an Advocate by profession and that he is fully aware of the consequences of giving false statements before the Investigation Wing of the Income Tax department. He had also given a declaration at the time of original statement that no coercion or mental pressure was imposed on him for giving a statement. The Ld. AO also observed that the affidavit retracting the original statement was made only on 31/03/2014 at Pune which is almost 29 months after the original statement was recorded. The affidavit has not been signed by the Panchas i.e., witnesses in whose presence the original statement was recorded. Accordingly, the Ld. AO observed that there is no merit in the affidavit retracting the statement filed by Shri Jagdish Prasad Purohit.

3.5. With regard to opportunity to cross examine Shri Jagdish Prasad Purohit sought by the assessee, the Ld. AO observed that summon u/s.131 of the Act was issued on 29/03/2016 to appear for cross examination on 30/03/2016. In response to the same, a letter dated 30/03/2016 was received by the Ld. AO on behalf of Shri Jagdish Prasad

Purohit stating that he was out of Mumbai and shall reach Mumbai only after 10/04/2016. The Ld. AO later recorded that assessee expressed his inability to produce Shri Jagdish Prasad Purohit on 30/03/2016 before him. He also observed that since Shri Jagdish Prasad Purohit is out of Mumbai till 10/04/2016, the assessee's request to cross examine him could not be adhered to and more so in the event of assessee's inability to produce Shri Jagdish Prasad Purohit before him.

3.6. The Ld. AO later placed reliance on various judicial pronouncements and observed that assessee has not been able to prove that the concerned creditor is capable of giving loans to assessee and despite being given opportunities, the assessee had failed to discharge its onus. Accordingly, he concluded that the unsecured loans shown by the assessee are nothing but its own money. With these observations, he brought the sum of Rs.3.75 crores to tax by treating them as 'unexplained cash credit' u/s.68 of the Act.

3.7. The interconnected issue involved herein is that the assessee had also paid interest of Rs.2,28,92,766/- on the loans taken from M/s. Grafton Merchant Pvt. Ltd., and claimed the same as deduction under the head 'income from business'. Since the loan was treated as bogus u/s.68 of the Act, the entire interest of Rs.2,28,92,766/- was also disallowed by the Ld. AO in the assessment.

4. Before the Ld. CIT(A), the assessee stated that it had taken loans from M/s. Grafton Merchant Pvt. Ltd., in the earlier years also and the same were duly accepted as genuine by the Ld. AO. The interest in the sum of Rs.2,28,92,766/- was paid to M/s. Grafton Merchant Pvt. Ltd., after due deduction of tax at source on the loans borrowed from them in earlier years. The assessee also furnished the ledger account for the relevant parties of M/s. Grafton Merchant Pvt. Ltd., and actual payment of interest together with the repayment of loans made thereon. It was pleaded that the entire details were duly submitted before the Ld. AO and that the Ld. AO could not find any flaw with the submission and could not rebut the documentary evidences submitted explaining the nature and source of money received from M/s. Grafton Merchant Pvt. Ltd. It was argued before the Ld. CIT(A) that in the statement of Shri Jagdish Prasad Purohit which had been heavily relied upon by the Ld. AO, he had not implicated the assessee at all. Moreover, the said statement had been subsequently retracted by him. Hence, his statement does not carry any weightage or evidentiary value. The assessee pleaded that how can a statement given by a third person in connection with the transactions pertaining to some Pride group at Pune be made applicable to the transactions pertaining to the assessee. The assessee pleaded before the Ld. CIT(A) that in order to substantiate the addition u/s.68 of the Act, the Ld. AO ignored the documentary evidences submitted by the assessee. He must investigate the matter and must bring on record his own findings to

justify the decision to make addition u/s.68 of the Act. The Ld. AO had not done any investigation to find out the facts. He has failed to bring any evidences to prove the loan transaction as an accommodation entry.

4.1. On the contrary, the assessee had proved the identity of the creditor by submitting their copy of ITR, bank statements, and audited financial statements. A reply was also submitted by the said company in response to notice u/s.133(6) of the Act issued by the Ld. AO behind the back of the assessee. The creditworthiness of the said lender was proved from the bank balances available in the bank statement. The source for Grafton Merchant Pvt Ltd has been explained by the assessee to be recovery of loans given by it to various parties in earlier years. This fact is quite evident from the balance sheet of Grafton Merchant Pvt Ltd that the loans and advances figure had been reduced from Rs 54.76 crores as on 31.3.2012 to Rs 43.78 crores as on 31.3.2013. The loan given to the assessee is out of cheque clearances made in the very same bank account of lender. The assessee is under no obligation to verify the source of the credits received into the banks of the lender. It was pleaded that the lender has also assessed to income tax. The Ld. AO having jurisdiction on the said lender would assess every credit entry appearing in his bank book. The genuineness of the transaction is proved since the transactions are routed through regular bank channels by account payee cheques. The nature of money is loan. The interest on loan is paid through banks. The lender M/s. Grafton Merchant Pvt. Ltd., had duly

offered the interest income in its return of income. The assessee had deducted tax at source on interest payment made to M/s. Grafton Merchant Pvt. Ltd.,. The TDS claim was duly made thereon by M/s. Grafton Merchant Pvt. Ltd., in its return of income. These documents stood unrebutted by the Ld. AO.

4.2. With regard to the observations made by the Ld. AO that for the A.Yrs 2008-09, 2009-10, 2010-11 and 2011-12, the concerned Assessing Officer had made additions u/s.68 of the Act. In respect of loans taken by the assessee from companies managed by Shri Jagdish Prasad Purohit is concerned, the assessee submitted as under:-

1. For A.Y.2008-09, there was no addition u/s.68 of the Act.
2. For A.Y. 2009-10, the additions made u/s.68 of the Act by the Ld. AO were deleted by the Ld. CIT(A) and thereafter, the revenue appeal was dismissed by ITAT, Mumbai
3. For A.Y.2010-11, the Ld. CIT(A) had deleted the addition made by the Ld. AO.
4. For A.Y.2011-12, the Ld. CIT(A) deleted the addition made by the Ld. AO.

The relevant order copies were given to the Ld. CIT(A).

4.3. With regard to the disallowance of interest of loans paid to M/s. Grafton Merchant Pvt. Ltd., in the sum of Rs.2,28,92,766/-, the assessee stated that the same pertains to prorata interest on the gross loan amount of Rs.22,42,12,986/-. It was pleaded that the opening balance of

loan from M/s. Grafton Merchant Pvt. Ltd. was Rs.30,36,09,497/- payable by the assessee. The loan of Rs.13,75,00,000/- was repaid and loan of Rs.3,75,00,000/- was received by the assessee during the year under consideration. Balance loan of Rs.22,41,21,986/- was outstanding as on 31/03/2013. The assessee pleaded that the payment on interest of loan itself is an evidence of loan being a genuine loan. The assessee also pleaded that in the A.Y.2012-13, the interest of Rs.1,67,88,330/- was paid to M/s. Grafton Merchant Pvt. Ltd., and the same was allowed by the Ld. AO in the assessment framed u/s.143(3) of the Act.

4.4. The Ld. CIT(A) apart from various observations further observed as under:-

“5.7. It is clear from the submission of appellant 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, GIR nos./PAN nos. and copies of assessment orders wherever readily available and that it 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.”

4.5. The Ld. CIT(A) further observed that the Ld. AO had solely relied on the statement of Shri Jagdish Prasad Purohit and did not carry out any worthwhile independent enquiry in the matter. He had totally ignored the documentary evidences submitted by the assessee despite the fact that the Ld. AO had admitted existence of these details. No defect whatsoever had been pointed out in the said documentary evidences submitted during the assessment proceedings. He observed that once evidences reflecting the genuinity of transaction are submitted before the Ld. AO, the onus shifts on him to prove that those were not genuine, which had not been discharged by the Ld. AO in the instant case. He observed that merely based on the statement of a third person without any corroborative evidence will not make the loan transaction in question as accommodation entries. He further observed that Shri Jagdish Prasad Purohit was the witness of the department and it is the duty of the department to produce the said person for cross examination and not the assessee. When the opportunity to cross examine such person was denied by the Ld. AO to the assessee, then no reliance whatsoever could be placed on the statement recorded from such person. In this regard, he placed reliance on the decision of Hon'ble Apex Court in the case of Andaman Timber Industries in Civil Appeal No.4228/2006, which was subsequently followed by the Hon'ble Jurisdictional High Court in the case of H.R. Mehta vs. ACIT in ITA No.58/2001 dated 30/06/2016. The Ld. CIT(A) further observed that as far as the question of validity of the

transactions done through Shri Jagdish Prasad Purohit are concerned, even if some of the transactions entered into by him are found to be not genuine, it does not lead to the conclusion that all the transactions entered into by him were not genuine including the transactions related to the assessee. There is no evidence brought on record in the assessment order by the Ld. AO to prove the above conclusion. The outcome of investigation carried out in the case of Shri Jagdish Prasad Purohit and the conclusions drawn thereon cannot be applied *ipso facto* to all other cases. The Ld. CIT(A) by appreciating various documentary evidences submitted by the assessee in the course of assessment proceedings which were also filed before him as part of the paper book, observed that assessee had duly satisfied the three ingredients of Section 68 viz., the identity of the creditors, creditworthiness of the creditors and genuineness of the transactions in the facts and circumstances of the case. He also took note of the fact that assessee had duly repaid the loan to M/s. Grafton Merchant Pvt. Ltd., together with interest and that such interest was subjected to due deduction of tax at source. He also took note of the fact that similar loans received from M/s. Grafton Merchant Pvt. Ltd., has been accepted to be genuine by the revenue in the earlier years. Hence, any interest paid on such loans cannot be subject matter of any disallowance in any case during the year. Since, similar additions made by the Ld. AO in earlier years i.e., A.Y.2008-09, 2009-10, 2010-11 and 2011-12 are either deleted by the Tribunal or by his predecessors, as

the case may be, and in the facts and circumstances of the case, there cannot be any addition u/s.68 of the Act and accordingly deleted the addition of Rs.3,75,00,000/- towards loans received from M/s. Grafton Merchant Pvt. Ltd. Since the loan was treated as genuine, the interest paid on such loan was also directed to be deleted by the Ld. CIT(A).

5. Aggrieved, the revenue is in appeal before us.

6. The Ld. AR at the outset stated that this issue is covered by the order of the Tribunal in assessee's own case for A.Y.2009-10, 2010-11 dated 09/05/2016 and 27/12/2016 respectively but fairly submitted that in case if the Ld. DR would like to argue further, he may be given an opportunity to putforth his evidences against the arguments advanced by the Ld. DR. In response there to, the Ld. DR stated that the issue under dispute is not covered by this order of the Tribunal in view of the fact that the loan creditor during this year is different from that adjudicated by this Tribunal in earlier years. The Ld. DR started explaining the documents of the entire case by arguing as to how the assessee firm in connivance with an entry operator Shri Jagdish Prasad Purohit and through his companies had managed to obtain unsecured loans in lieu of cash. She argued that merely because the said loan received from M/s. Grafton Merchant Pvt. Ltd., by the assessee by account payee cheques through regular banking channels, repayment of loans made thereon together with interest duly subjected to deduction of tax at source, would not make the transactions genuine. In this regard, she placed reliance on the statement accorded

u/s.131 of the Act by the Investigation Wing of Income Tax department Pune from Shri Jagdish Prasad Purohit in connection with the search conducted in the case of Pride Group at Pune. In the said statement, Shri Jagdish Prasad Purohit had admitted that M/s. Grafton Merchant Pvt. Ltd., is one of the companies controlled and managed by him and that the said entity also is involved in giving unsecured loans to various persons against cash. With regard to retraction statement made by Shri Jagdish Prasad Purohit, the Ld. DR argued that the said retraction happened after 29 months from the month of issuing the statement and hence, cannot be relied upon. In the instant case from the perusal of the bank statements of M/s. Grafton Merchant Pvt. Ltd., the Ld. AO had duly satisfied himself even the source of the source of M/s. Grafton Merchant Pvt. Ltd., which eventually traced its origin to the entry operator. The assessee was directed to produce Shri Jagdish Prasad Purohit for the purpose of cross examination which the assessee failed to comply. Hence, there cannot be any grievance on the part of the assessee for not getting an opportunity for cross examination of Shri Jagdish Prasad Purohit. The Ld. AO in the instant case made all the enquiries possible from his side and had taken the enquiries to its logical end by holding that assessee had indeed involved in giving of cash through the entry operator and that the said monies had travelled in multiple layers down the line and had eventually reached the assessee in the form of unsecured loan through M/s. Grafton Merchant Pvt. Ltd.,. Hence, the genuineness of the transaction is not

proved by the assessee and accordingly, the addition has been made rightly u/s.68 of the Act by the Ld. AO.

7. Per contra, the Ld. AR argued that the prime reliance placed by the Ld. AO was only a statement on oath recorded u/s.131 of the Act from Shri Jagdish Prasad Purohit by the Pune Investigation Wing in connection with the search conducted in the case of Pride Group, Pune. This statement stood later retracted by Shri Jagdish Prasad Purohit. Hence, the contents of the statement becomes doubtful and hence, cannot be relied upon. The Ld. AR further argued that, in any case, Shri Jagdish Prasad Purohit had not implicated the assessee in any manner in his statement. He also drew our attention to the Co-ordinate Bench decision of this Tribunal in A.Y.2011-12 in assessee's own case in ITA No.1056/Mum/2016 dated 24/01/2018 wherein the revenue itself had raised the ground before this Tribunal by stating that Shri Jagdish Prasad Purohit in his reply to Question No.11 stated that the Pride Group, Pune had approached them to invest into group concerns of Pride Group in the form of share capital as an accommodation entry and all the book entries were made against the cash payments made by the Pride Group. This goes to prove that Shri Jagdish Prasad Purohit had allowed himself to be treated as an entry operator only with regard to providing accommodation entry in the form of share capital to Pride Group against cash received from Pride Group. Admittedly, the assessee herein does not belong to Pride Group, Pune. He argued that similar loans received from M/s.

Grafton Merchant Pvt. Ltd., in the earlier years were accepted as genuine by the Ld. AO and accordingly, when subsequent loan has been received from the very same party, the same cannot be disturbed by the Ld. AO. Reliance in this regard was placed on the decision of Hon'ble Karnataka High Court in the case of Sridev Enterprises reported in 192 ITR 165 [Kar]. The interest paid on loans received in earlier years to the tune of Rs. 2,06,03,489/- cannot be disallowed in any case by the Ld. AO during the year under consideration. He also drew our attention to the page No.107 of the paper book containing the ledger account of M/s. Grafton Merchant Pvt. Ltd., as appearing in the books of assessee firm for the period 01/04/2012 to 31/03/2013 wherein there is an opening loan balance received from M/s. Grafton Merchant Pvt. Ltd., to the tune of Rs.30,36,09,497/-. During the year under consideration, the assessee firm had received a sum of Rs.3,75,00,000/- as fresh loan from M/s. Grafton Merchant Pvt. Ltd., the assessee has repaid the sum of Rs.13,75,00,000/- to M/s. Grafton Merchant Pvt. Ltd., during the year under consideration. He also stated that the interest paid on loans received from M/s. Grafton Merchant Pvt. Ltd., was allowed as deduction in the earlier years by the Ld. AO. He also submitted that M/s. Grafton Merchant Pvt. Ltd., is a company which is still functional and active in the records of Registrar of Companies and cannot be brushed aside as a mere paper company engaged in providing accommodation entries as alleged by the Ld. AO. He placed reliance on page 77 & 78 of the paper book containing bank

statements of M/s. Grafton Merchant Pvt. Ltd., to drive home the point that there was no cash deposits made in the said bank account to even suspect that it is the assessee's cash which had gone to M/s. Grafton Merchant Pvt. Ltd., and which in turn had come back to the assessee in the form of unsecured loan. He also placed on record the ledger account of M/s. Grafton Merchant Pvt. Ltd., for the period 01/04/2013 to 31/03/2014 wherein assessee repaid the sum of Rs.17,03,00,000/- during A.Y.2014-15 to M/s. Grafton Merchant Pvt. Ltd., and the entire loan amount get squared off on 20/03/2015 by the assessee. This goes to prove that assessee has been frequently receiving and repaying loans periodically from/to M/s. Grafton Merchant Pvt. Ltd., together with applicable interest thereon and hence, there cannot be any doubt on the genuineness of the transactions carried out by the assessee.

7.1. With regard to retraction statement filed by Shri Jagdish Prasad Purohit after a period of 29 months, the assessee cannot be implicated or any adverse inference could be drawn on the assessee for the same. It is for the Ld. AO of Shri Jagdish Prasad Purohit to take necessary action for filing retraction beyond a period of 29 months. Absolutely, there was no evidence found during the search to prove that loan received by the assessee from M/s. Grafton Merchant Pvt. Ltd., is ingenuine. Source of source even though proved in the instant case is only suspected by the Ld. AO and assessee cannot be penalised for the mere suspicion on the part of the Ld. AO. In any case, Shri Jagdish Prasad Purohit is a witness

of the revenue and hence, it is the revenue who has to bring Shri Jagdish Prasad Purohit for the purpose of cross examination because the Ld. AO had placed heavy reliance on the statement recorded from Shri Jagdish Prasad Purohit.

7.2. In response, the Ld. DR clarified a point that cash entry in one point and later went to multiple layers through series of companies and finally exited in the form of unsecured loans to various parties, hence, to this extent, the arguments of the Ld. AR is incorrect. She argued that earlier year genuinity of the transaction does not make the current year transaction genuine. Nature and source of source during the year is to be proved by the assessee. The Ld. DR also submitted that in earlier years, the Ld. AO had committed a mistake by allowing the interest on loan and accepting the loans as genuine that does not give sanctity to the loans received during the year.

8. We have heard the rival submissions. At the outset, it is not in dispute that the entire addition has been made disbelieving the entire documentary evidences submitted by the assessee by placing predominant reliance on the statement recorded from Shri Jagdish Prasad Purohit on 19/10/2011 by Investigation Wing of Income Tax department, Pune in connection with search and seizure operations of Pride Group at Pune. It is not in dispute that M/s. Grafton Merchant Pvt. Ltd., is one of the companies controlled and managed by Shri Jagdish Prasad Purohit. We find that Shri Jagdish Prasad Purohit had also filed an affidavit

retracting the original statement recorded on oath from him u/s.131 of the Act by the Pune Investigation Wing. Since, this retraction statement was filed after a gap of 29 months from the date of original statement, the Ld. AO in the course of proceedings of the assessee before us decided to ignore the same and proceeded to make the addition based on the original statement recorded from him. In this regard, it is pertinent to reproduce Question No.11 & 12 and reply given thereon by Shri Jagdish Prasad Purohit in his statement on oath recorded u/s.131 of the Act on 19/10/2011.

“Q.11 As stated by you in answer to Q.No.10 please state how and when this share capital was introduced in the above stated group concerns of Pride Group of Pune?”

Ans: Shri Arvind Jain who is CMD of Pride Group had approached us to invest into the group concerns of Pride Group in the form of share capital as an accommodation entry. He had asked for a book entry in the concerns stated above. As per this it was decided to give an accommodation entry in form of share capital to the various concerns which includes the following concerns:

- 1) Prime Centre and Developers Pvt Ltd.*
- 2) Jewel Housing and Construction Pvt Ltd. and*
- 3) PPL Properties (India) Pvt Ltd.*

As per the requirement of Shri Arvind Jain and his group concerns it was decided that share capital will be introduced with a premium in a ratio of 10:90 i.e. a 10 Rupees share was purchased by my group companies along with 90 Rupees premium. These all were merely accommodation entries. All these book entries were introduced against the cash payments made by the Pride Group. The requisite amount of the cash was paid by Pride Group at Mumbai against which we have given them accommodation entries in the share capital.

Q. 12 As stated by you in answer to Q. No. 11, please state how was the cash introduced into the share capital in the case of Pride Group?

Ans: In this case cash was taken from the Pride Group. Then we sold the old existing shares of my group concerns to various other groups. As the

shares were sold, the cheques were obtained from those parties. These parties to whom we have sold old existing shares took the cash and gave the cheque. These amounts which came through the cheques in our capital account were further forwarded to the Pride Group of concerns as share capital. In this way we have given accommodation entries in the share capital against which we have taken cash.”

8.1. The aforesaid replies given by Shri Jagdish Prasad Purohit clearly proves that he was in receipt of cash from Pride Group and same were utilised to give back in the form of accommodation entry in the form of share capital at an agreed premium of Rs.90/- per share through various entities to Pride Group. In any of these questions referred to Shri Jagdish Prasad Purohit at the time of recording the statement, there was absolutely no reference either by the Officer regarding the statement or by Shri Jagdish Prasad Purohit implicating the assessee before us. Though this statement from Shri Jagdish Prasad Purohit was recorded by the Pune Investigation Wing in connection with the search and seizure proceedings of Pride Group, Pune, the Ld. AO, in order to place reliance on the said statement, for the purpose of framing assessments in the case of certain assesseees at Mumbai, should have recorded yet another statement from Shri Jagdish Prasad Purohit to establish the nexus / link, if any, with the assessee before us. Admittedly, no such statement was recorded by the Ld. AR in the impugned proceedings of the assessee before us. Hence, merely placing reliance on a statement recorded from a third party in connection with a search conducted in third party premises and implicating the assessee thereon by looking at all the transactions with

jaundiced eyes does not gel well in the eyes of law. The assessee had borrowed loans from M/s. Grafton Merchant Pvt. Ltd., in the earlier years also and the said loans were accepted as genuine by the Ld. AO. The interest paid on such loans were also allowed as deduction in the earlier years. During the year the assessee had paid total interest of Rs.2,28,92,766/- to M/s. Grafton Merchant Pvt. Ltd., which admittedly includes interest of opening balance of loans to the tune of Rs.2,06,03,489/-. When the opening balance has been accepted as genuine by the Ld. AO, receiving loans from the very same party on the same terms and conditions during the year under consideration cannot be allowed to be taken a divergent stand. In this regard, the reliance placed by the Ld. AR on the decision of Hon'ble Karnataka High Court in the case of Sridev Enterprises reported in 192 ITR 165 is very well founded. We found from the ledger accounts placed on record before us of M/s. Grafton Merchant Pvt. Ltd., as appearing in the books of the assessee firm for the period upto 31/03/2015 that the assessee had been making frequent repayment of loans to the said party and had also availed loans from time to time from the said party and the entire loan account together with interest thereon [duly subjected to TDS] has been completely squared off on 20/03/2015. The entire transactions i.e., the receipt of loans, repayment of loans and payment of interest thereon have been made through regular banking channels from account payee cheques. There is no case of any cash deposits made either at the time of

receipt of loan in the account of M/s. Grafton Merchant Pvt. Ltd., or in the account of assessee while making repayment of loan or payment of interest. Hence, there is no need to suspect the entire gamut of transactions before us. We find that the entire addition of principal amount of loans of Rs.3.75 Crores and disallowance of interest of Rs.2,28,92,766/- on loans has been made by the Ld. AO with surmise and conjecture and without any basis. No deficiencies whatsoever were found in the documentary evidences submitted by the assessee before the Ld. AO which admittedly included copy of PAN, ITR acknowledgement, audited financial statements, computation of income, confirmation from lender, bank statements evidencing the immediate source of credit of the lender etc. All these documents clearly prove the identity, creditworthiness of the lender and genuineness of the transaction in the peculiar facts of the instant case. Hence, it could be safely concluded that assessee had indeed complied with all the three necessary ingredients of Section 68 of the Act.

8.2. With regard to non-production of Shri Jagdish Prasad Purohit by the assessee before the Ld. AO for the purpose of cross examination of him by the assessee, we hold that it is the revenue which had placed reliance on the statement of Shri Jagdish Prasad Purohit. Hence, Shri Jagdish Prasad Purohit becomes the witness of the revenue. Hence, it is the duty of the revenue to produce the party as their witness in order to enable

the assessee to cross examine the said party, if it so desires. This responsibility cannot be shifted to the assessee by the Ld. AO.

8.3. In view of the aforesaid findings in the peculiar facts and circumstances of the case, we hold that the Ld. CIT(A) had rightly deleted the addition made u/s.68 of the Act and disallowance of interest on loans, which in our considered opinion, does not call for any interference. Accordingly, the grounds raised by the revenue are dismissed.

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this

22/02/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 22/02/2019

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai