

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ ए, मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "A", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं**

**श्री राजेन्द्र, लेखा सदस्य, के समक्ष ।**

**Before Shri Joginder Singh, Judicial Member and  
Shri Rajendra, Accountant Member**

**ITA NO.369 /Mum/2017  
Assessment Year-2013-14**

Anil Chhaganlal Jain, Room No.13, 02 <sup>nd</sup> Floor, Bhagwan Bhavan, 15, Dadi Santuk Lane, JSS Road, Chira Bazar, Mumbai-400002	<b><u>बनाम/</u></b> Vs.	ACIT-18(1), 04 <sup>th</sup> Floor, Earnest House, Mumbai
PAN No. <b>AAAPJ7018F</b>		
(निर्धारिती /Assessee)		(राजस्व /Revenue)

**ITA NO.370/Mum/2017  
Assessment Year-2013-14**

Anil Chhaganlal Jain ( <b>HUF</b> ), Room No.13, 02 <sup>nd</sup> Floor, Bhagwan Bhavan, 15, Dadi Santuk Lane, JSS Road, Chira Bazar, Mumbai-400002	<b><u>बनाम/</u></b> Vs.	ACIT-18(1), 04 <sup>th</sup> Floor, Earnest House, Mumbai
PAN No. <b>AAFHA8889L</b>		
(निर्धारिती /Assessee)		(राजस्व /Revenue)

निर्धारिती की ओर से / Assessee by	Shri Prakash Jotwani
राजस्व की ओर से / Revenue by	Shri Rajesh Kumar Yadav-DR

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>11/04/2017</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>13/04/2017</b>

### **आदेश / O R D E R**

#### **Per Joginder Singh (Judicial Member)**

These two appeals are by the different assessee against the impugned orders both dated 05/12/2016 of the Ld. First Appellate Authority, Mumbai. First, we shall take up appeal in ITA No.369/Mum/2017, wherein, ground raised pertains to confirming the addition made u//s 68 of the Income Tax Act, 1961 (hereinafter the Act), of Rs.,1,77,00,000/-, being loan received from Eence Securities Pvt. Ltd.

2. During hearing, the ld. counsel for the assessee, Shri Prakash Jotwani, advanced arguments which is identical to the ground raised. It was contended that the assessee received unsecured loan of the impugned amount from Eence Securities Pvt. Ltd. The Assessing Officer asked the assessee to submit the loan confirmation, bank statement and return of Eence Securities Pvt. Ltd. to prove the genuineness of the loan, which as per the assessee were duly filed before the Assessing Officer. It was pleaded that the assessee is not expected to prove the source of source of the loan amount but duly discharged the onus caste

upon the assessee. It was asserted that confirmation of loan, creditworthiness of the party and genuineness of the loan was duly explained before the Assessing Officer. It was empathetically explained/claimed that the impugned amount was not a share application money rather it was a simplicitor a loan. On a query from the Bench with respect to any addition, if any, has been made in the case of Encee Securities Pvt. Ltd.. It was explained that addition has been made in the case of Encee Securities Pvt. Ltd. and the appeal is pending before the Ld. Commissioner of Income Tax (Appeal) by further adding that it is a case of double addition of the same amount. It was claimed that it is up to the Department to choose as in whose hands addition has to be made. The ld. counsel further asserted that no question was put to the assessee with respect to Encee Securities Pvt. Ltd. as the assessee was neither confronted with the alleged statement of the Director of Encee Securities Pvt. Ltd.. It was pleaded that share application money has nothing to do with the assessee. The crux of the argument is that Encee Securities Pvt. Ltd. never denied of giving loan to the assessee and the loans are still live and the concerned parties duly confirmed that the loans are genuine and the assessee is not prove the source of source of the impugned amount. Our attention was invited to various paras of the assessment order as well as the impugned order along with the contents of the statement. It was also asserted that in reply to the show cause notice,

the assessee explained its position and the alleged statement, which was recorded under duress and threat was retracted within a reasonable time by Shri Harish Sharma. Plea was also raised that the assessee was never examined/confronted with respect to the statement of Shri Shirish Shah. Plea was also raised that the statement of Shri Shirish Shah was never provided to the assessee in spite of request of the assessee. A strongly plea was raised even it is presumed that Encee Securities Pvt. Ltd. got the money through share application from some persons, how it can be added u/s 68 of the Act in the hands of the present assessee.

2.1. On the other hand, the ld. DR, Shri Rajesh Kumar Yadav, strongly defended the addition made in the hands of the present assessee by claiming that the whole issue is arranged transaction given in the form of loan to the assessee, therefore, the addition was argued to be rightly made. Our attention was invited to para 3.2, 5.1 and 7.1 of the impugned order. It was pleaded that it was a colourable device and the loan was nothing but the money of the assessee itself.

2.2. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee, an individual declared total income of Rs.40,05,590/- in his return on 05/09/2013. During scrutiny proceedings, it was noticed by the Assessing

Officer that the assessee has taken unsecured loan of Rs.1,77,00,000/- from M/s. Encee Securities Pvt. Ltd. The assessee was asked to file loan confirmation, bank statements and return of income of M/s. Encee Securities Pvt. Ltd. to prove the genuineness of the loan. As per the Revenue, at the same time, the Assessing Officer received information from the Ahmadabad Investigation wing, wherein, a search and seizure operation was conducted on Amrapali Group, Ahmadabad. In post search investigation, it was found that the group was involved in arranging accommodation entries of share capital and bogus long term capital gain through a Mumbai based operator i.e. Shri Shirish Shah, who was also subsequently searched. The statement of Shri Shirish Shah was recorded, wherein, he admitted that he provides accommodation entries through companies controlled and managed by him. Some of the companies of Shri Shirish Shah includes M/s Parinita Industries Ltd., Shri Ganesh Spinners Ltd. , M/s Vishesh Infotech Ltd., M/s Channel Guide Ltd., M/s Mohan Industries Ltd, M/s Empower India Ltd., M/s Emporish Projects Ltd., M/s Sanguine Media Ltd., M/s Yantra Naturals Ltd. etc. The Ld. Assessing Officer further observed that the share premium has been paid to M/s. Encee Securities Pvt. Ltd. by few share holders, which are summarized as under:-

Shareholder Name	No. of equity shares	Amount per share
Aadhar Venture India Ltd.	57000	10
Sanguine Media Limited	114000	10
Emporis Projects Ltd.	82500	10
Yantra Natural Resources Ltd.	82500	10
Speciality Paper Limited	1,80,5000	10

As per the Revenue, the statement of Shri Harish Sharma was recorded, wherein, it was claimed that he categorically stated that he was not aware about the business activities of M/s Encee Securities Pvt. Ltd. Before this Tribunal, the ld. DR heavily relied upon the statement tendered by Shri Harish Sharma, therefore, it is our bounded duty to analyze the same, consequently, the contents of the statement are reproduced hereunder:-

**“Q1. Please *identify yourself* and *confirm* that oath has been administered to you and you have also been made aware of consequence of giving false statement under oath.**

Ans. I am Harish Madanlal Sharma aged 38 years, son of Mr. Madanlal Dhanraj Sharma, residing at Room No. 8, Somji Bldg. 198, North Block Street, Nr. Gol Devi Mandir, Mumbai - 400004. My native place is Village-Khiwandi, TahsilSumerpur, District- Pali, Rajasthan, PIN code - 306901. I can read, write and understand Hindi and English. My mobile number is 9324015206. I confirm that oath has been administered to me and I have also be made aware of the cōnsequences of giving false statement under oath .I Further submit that I am physically fit and in good position to depot statement on oath.

**Q2. Please *state your educational qualifications*, and *confirm* that you can read, write and understand English,.**

Ans. I am 12th commerce pass in 1995 with Sscvganj High School, Dist. Sirohi, Rajasthan. Yes, I confirm that I can read, write and understand English.

**Q3. Please State your sources of income & annual approximate income from each source, your PAN & office of the A.O. where you and other members of your family are assessed to tax.**

Ans. My source of income is Director's remuneration from the companies M/s Milton Generic Pvt. Ltd. and Encee Securities Pvt. Ltd. in which I am a director and I received commission income from M/s Milton Pharma. My PAN is BKUPS7104Q. I do not know where I am filing return. I am filing return for last 15 years. My return is filed by Shri Suresh Jain, CA. My wife is Smt. Dimple Harish Sharma (before marriage Dimple Jethalal Sharma).

**Q4. Please explain in detail the business and other Income generating activities in which you or your family members are involved.**

Ans I through Milton Generic Pvt. Ltd., in which I am a director engaged in the pharmaceutical distributorship. The operations of Milton Generic Pvt. Ltd. are spread over Maharashtra. Our company is trading in goods of Ranbaxy, Laborate, Cipla, and other companies. The turnover of the company is approximate 20-25 crores for last financial year. The business of M/ s Encee Securities Pvt. Ltd. is yet to be commenced as we have not received C&F agency.

**Q5. When Encee Securities Pvt. Ltd. was registered.**

Ans. The company was registered in the year of 1994.

**Q6. Who has registered the company M/s Encee Securities Pvt. Ltd.**

Ans. Sir, I do not know who has registered the company.

**Q7. Who help you to register the company M/s Encee Securities Pvt. Ltd**

Ans. Sir, I humbly say that I do not know.

**Q8. For what purpose you have formed the company M/s Encee Securities Pvt. Ltd..**

Ans. Sir, I have been made shareholder of M/s Encee Securities Pvt. - Ltd. and later on made director in the year 2011. There is no real business activity in the company. I am not aware about the purpose.

**Q9. How much capital you have invested to establish M/s Encee Securities Pvt. Ltd.**

Ans. I do not remember how much capital I have invested.

**Q10. When you became the Director of the company.**

Ans. I became Director of the company in year 2011.

**Q11. How much remuneration you have received from M/s Eence Securities Pvt. Ltd.**

Ans. I have not received any remuneration from the above company.

**Q12. Where is registered office of M/s Eence Securities Pvt. Ltd. .**

Ans. I confirm that it is at Room No. 8, 1st floor, Soneji Building, Kumbharwada, Mumbai - 400004 and incidentally my residential address is same i.e Room No. 8, 1st floor, Soneji Building, Kumbharwada, Mumbai - 400004, I am staying with my family in the said premises from 1994 onwards which belongs to shri Chaganlal Bhikamchand Jain who is father of shri Anil C. Jain.

**Q13. Whether any rent payment is made by M/s Eence Securities Pvt. Ltd. for this office premises.**

Ans. Sir, I am not aware.

**Q14. It means your residential address is mentioned as registered address of company. Please confirm there is no company business activity in premises mentioned in answer number**

Ans. Sir, I am staying with my family at Room No.8, 1<sup>st</sup> Floor, Soneji Building, Kumbharwada, Mumbai-40004, I confirm that there is no business activity of company at said premises. There is no staff working for company. I myself and other director shri Nikhil Kumar Jain, only signing the books of accounts and statutory documents.

**Q9. I am showing you the ROC statement wherein the authorized capital of company M/s Eence Securities Pvt. Ltd. is Rs. 75 lacs and paid up capital of Rs. 60.96 lacs . The total number of shareholder are 13 including you and your other director. Please confirm.**

Ans. Yes, I have been shown ROC statement. I confirm that authorized capital of company M/s Eence Securities Pvt. Ltd. is Rs. 75 lacs and paid up capital of Rs. 60.96 lacs . The total number of shareholder are 13 including me and my other director.

**Q16. I am showing you the details of 13 shareholders**



**including you and Shri Nikhil Kumar Jain. Please confirm.**

Ans. Yes, I have been shown list of 13 shareholders appearing in ROC document. I further confirm that except Shri Nikhil Kumar Jain and Shantilal Bhikamchand Jain, I do not know and neither met rest of the 10 shareholders in AGM or otherwise.

**Q17. As a director you should be knowing your shareholders because yours is not publically listed company. This is closely held company. Why one should invest in your company without knowing financial and background of your company:**

Ans. Sir, I am 'director of company since 2011 and I confirm that I do not know any of 10 other shareholders list is shown to me as below.

- i. B. Jhanwar 86 Co. Pvt. Limited..
- ii. Sujla Tie-up Pvt. Limited.
- iii. Bhawani Vanija Pvt. Limited.
- iv. Trisuri Distributors Pvt. Ltd.
- v. Aadhaar Ventures India Limited.
- vi. Sanguine Media Limited.
- vii. Speciality Papers Limited.
- viii. Rajesh Kamat.
- ix. Emporis Projects Limited.
- x. Yantra Natural Resources Limited.

The Encee Securities Pvt. Ltd is controlled and managed by Shri Anil C. Jain.

**Q18. Please explain in details business activity of M/s Encee Securities Pvt. Ltd.**

Ans. Sir, I am basically working with Milton Generic Pvt. Ltd. as a director. Wherein I myself, shri Anil C. Jain, Shri Nikhil Kumar Jain and shri Arun D. Vaishnav are shareholders. I derive Director's remuneration about 50-55 thousand per month. I look after day, to day activity of distributorship. Sir, there is no real business activity of M/s Encee Securities Pvt. Ltd. The company controlled and managed by Shri Anil C. Jain and on his instruction myself signs document as asked.

**Q19. M/s Encee Securities Pvt. Ltd. has received share premium amount from 10 companies <sup>4</sup>mentioned in Q No. 17 of which few are coincidentally company managed and controlled by Pravin Kumar Jam S/o shri Hukmi Chand Jain who was searched by Mumbai Investigation Wing in 2013 for giving accommodation entries of bogus unsecured loans and arranging accommodation entry of share capital. Please confirm that you know shri Pravin Kumar Jain who has arranged accommodation entry of share capital in Encee Securities Put. Ltd.**

Ans. Sir, I do not know Pravin Kumar Jain personally or otherwise. I further confirm that I do not know other 10 companies directors personally or otherwise. The Encee Securities Pvt. Ltd. is controlled and managed by Shri Anil C. Jam.

**Q20. Please explain what do you mean by accommodation entries and explain the modus employed for giving various types of accommodation entries.**

Ans. Sir, I again confirm that I do not know what is accommodation entries and what is modus employed for giving various types of accommodation entries. Sir, I again repeat that The Encee Securities Pvt. Ltd. is controlled and managed by Shri Anil C. Jam. The Encec Securities Pvt. Ltd. is controlled and managed by Shri Anil C. Jam. They might be knowing other 10 above mentioned shareholders.

**Q21. Who looks after books of account, day to day banking transaction of unsecure loans receipt and unsecured loan to advance to various party also interest received and interest payment. Please produce books of accounts of M/s Encee Securities Pvt. Ltd.**

Ans. I Am not in possession of books of accounts They are not kept my residential address i.e Room No. 8, Somji Bldg., 198, North Block Street, Nr. Gol Devi Mandir, Mumbai -400004. It might be kept at office of Milton Generic' Pvt. Ltd. The information about books of accounts known to accountant shri N.B. Trivedi and shri Anil C. Jain.

**Q22. There is a reserves and surplus of Rs. 3,97,26,295/- as**

**on 31.03.2013. Please provide details.**

Ans. Sir, I do not know the financials of the company although I am signing all financial document as a director. Shri Anil C. Jain who control and manage Encee Securities Pvt. Ltd. knows about it.

**Q23. The Encee Securities Pvt. Ltd. has provided long term loans and advances o/s as on 31.03.2013 is Rs. 4,57,60,000/, Please provide details of it like to whom loans was advanced, on what condition loans was advanced, what securities you have taken to advanced the loan, whether board resolution have passed to give advance. Please explain.**

Ans. Sir, I once again repeat that I do not know the financials of the company, although I am signing all financial document as a director. Shri Anil C. Jain. who control and manage Encee Securities Pvt. Ltd. knows about all transactions of loans given by emcee Securities Pvt. Ltd.

**Q24. M/s Encee Securities Pvt. Ltd. has advanced loan of Rs. 54 lacs to M/s Milton Genext prop. M/s Anil Chaganlal Jain HUF and Rs. 187 lacs to M/s Milton Pharma Prop. Shri Anil C. Jain in KY. 2012-13. Please confirm.**

Ans. I have signed cheques' alongwith shri Nikhil Kumar Jain on behest of our owner shri Anil C. Jain. I have also signed for others loans given on behest of shri Anil C. Jain.

**Q25. In individual capacity you have advanced loan of Rs. 17.13 lacs to M/s Milton Genext prop. M/s Anil Chaganlal Jain, HUF and Rs. 5.34 lacs to M/s Milton Pharma Prop. Shri Anil C. Jain in various financial years till 31.03.2013. Please confirm and explain source of unsecured loan given. Please produce your bank statement.**

Ans. Sir, I do not know transaction of my bank account as I merely signed various cheques. I do not have bank statement at present but I will produce in due course.

**Q26. Have you receipt any interest income apart from bank interest.**

Ans. Sir, I do not know.

**Q27. What relation you and shri Anil C. Jain have with Other shareholder of Eence Securities Pvt. Ltd. Le shri Shantilal Bhikamchand Jain.**

Ans. Sir, shri Shantilal Bhikamchand Jain is uncle of Shri Anil C.. Jain.

**Q28. Do you want to state anything else.**

Ans. No Sir.”

2.3. We note that in the aforesaid statement, Shri Harish Sharma, has tendered that he was getting directors remuneration from M/s Milton Generic Pvt. Ltd. and M/s Eence Securities Pvt. Ltd. He duly explained the nature of operation of M/s Milton Generic Pvt. Ltd. as is evident from reply to question no.4 (page-41 of the paper book) and in reply to question no. 6 & 7 with respect to registration of M/s Eence Securities Pvt. Ltd., he specifically denied that he was not aware about the registration of the company. In reply to question no.11 with respect of receipt of remuneration from M/s Eence Securities Pvt. Ltd. he specifically tendered that he was not getting any remuneration from the said company. In reply to question No.18 with respect to details of business activities of M/s Eence Securities Pvt. Ltd., Mr. Sharma tendered that he is basically working with M/s Milton Generic Pvt. Ltd., where he is looking after day to day activity of distributorship and was not aware with respect to real business activity of M/s Eence Securities Pvt. Ltd.. In reply to question no.20 with

respect to accommodation entries, he specifically denied that he was not aware what accommodation entries are? In reply to question no.21 with respect to books of accounts and banking transaction of unsecured loan receipt, he said that he was not in possession of such books of accounts. In reply to providing long term loans and advances by M/s Encee Securities Pvt. Ltd., he specifically denied the same. It is also noted that in the aforesaid statement, it is evidently clear that nothing is oozing out on the basis of which addition can be made in the hands of the present assessee, more specifically when, the aforesaid statement was retracted by Shri Harish Sharma within a reasonable time. This aspect was confronted to the Ld. DR, wherein, he admitted that the statement was retracted by him. In such a situation, the authenticity of the stated is under cloud and cannot be considered as sole basis of addition. The retraction letter dated 23/02/2016 supported by an affidavit is available at page 71 to 78 of the paper book. In the affidavit, it has been specifically stated that he received the copy of the statement recorded on 08/01/2016 and 19/02/2016, which was recorded under duress and under pressure and he was forced to sign the statement. The affidavit is self speaking. The contents of the same are reproduced hereunder:-

From  
Harish M.Sharma,  
Room No. 8, 1<sup>st</sup> Floor, Somji Bldg,  
North Brook Street, 198,  
3rd Khumbharwada,

Mumbai—400004.

Dated:23<sup>rd</sup> Feb 2016.

To,  
Asstt.Comm. of Income Tax  
18(1)  
Mumbai.

Sub: Filing of Affidavit of Retraction.

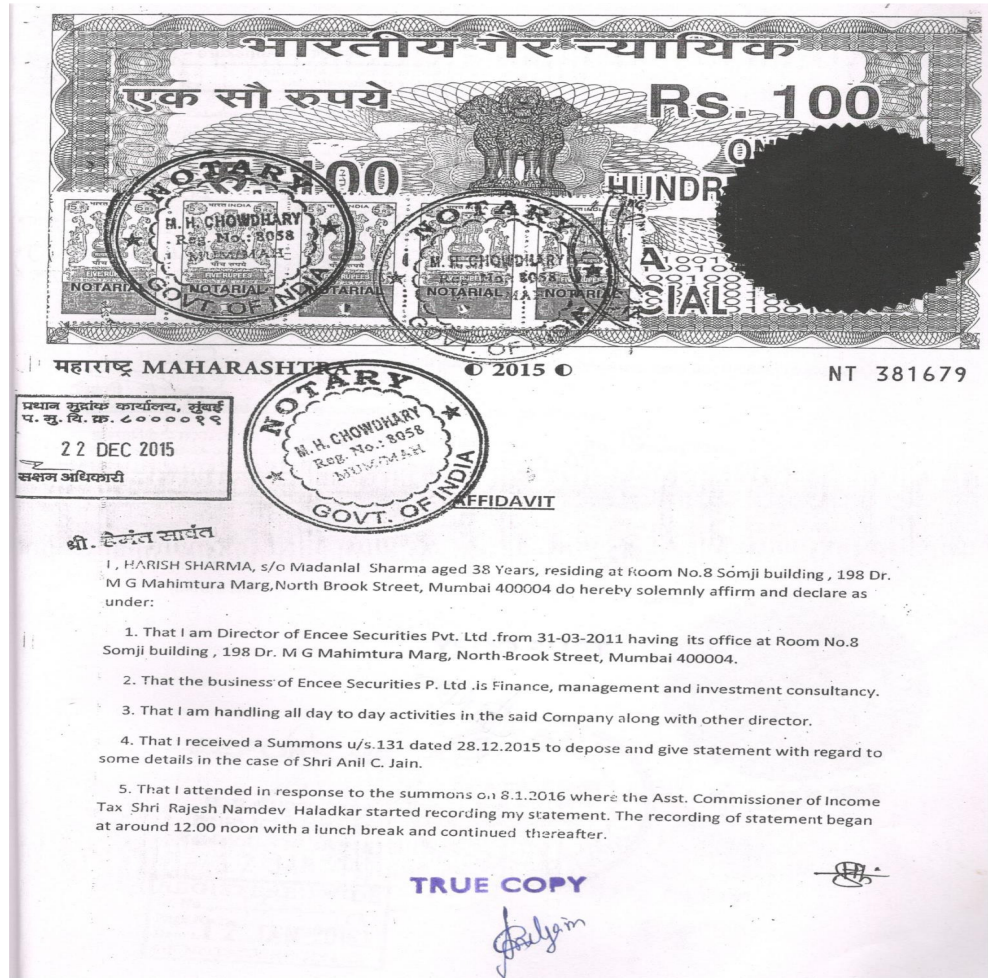
Dear Sir,

I am furnishing herewith the affidavits of Retraction Copies dated 12/01/16 and dated 23/02/16 for statement taken on 08/01/16 in the case of Shri Anil C. Jain and Shri Anil C. Jain HUF for Asstt. Year 2013-14.

Please take the same on record and kindly acknowledge the same.

Thanking You."

Harish M. Sharma





NOTARY  
 D. No.133  
 Expiry Date  
 15-12-2017  
 GOVT. OF MAHARASHTRA

(a) That the company i.e. Encee Securities P. Ltd. was registered in 1994.

(b) That the company was formed in 1994 by old shareholders for running the business of finance, investment and management consultancy. That The Companies Net worth as on 31-3-13 as per of Company's Audited Balance sheet is Rs. 45822495/-.

(c) The old shareholders were Nihalchand C Chouhan and Shanti N Chouhan and new shareholders are Shantilal B Jain, Nikhil S Jain and Harish M Sharma. During the FY 2012-13 further shares were issued to raise fund for business purpose.

(d) That I have not received remuneration from the said Company as the company did not have much revenue during the year.

(e) That the business of the company is of finance, investment and management consultancy, and was done from my residential premises hence was not paying rent. Therefore I could not state that I am not aware.

(f) That shareholders of the Company as stated in the statement are known to me and the other director.

(g) That the Company belongs to Shareholders of the Company and I never stated that the Company belongs to Anil C. Jain

(h) That the Company has never received any accommodation entries from any person & the Company is managed by both of us directors and that I am not aware as to for what reason the Asstt. Comm. of IT write this question and also type the answer.

(i) That the books of accounts of the Company are maintained at the address and account details are known to me and the other director.

(j) That the company had provided Loans to Milton Pharma ( Prop. Anil C. Jain ) and Milton Genext ( Prop. Anil. C. Jain HUF ) and net closing balances as on 31-03-2013 are Rs 1,67,00,000/- and Rs.39,00,000/- respectively and all entries are reflected in the bank statements & books of accounts maintained by the Company and hence it is not possible that I would state that I am not aware.

(k) That all loans to Anil C. Jain given by the Company are made at the decision taken in the board meeting & not at the behest of Anil C. Jain.

(l) That I agree that I had given loans to Milton Genext ( Prop. Anil C Jain HUF ) and Milton Pharma ( Prop. Anil C Jain ) in individual capacity from my bank account. If the money has been debited from my bank account, I cannot state that I am not aware.

(m) That I state and confirm that the loans advanced to Milton Pharma ( Prop. Anil C. Jain ) and Milton Genext ( Prop. Anil. C. Jain HUF ) are genuine and bonafide & whatever stated in the statement recorded on 8.1.16 were not my answers and the ACIT himself of his own, typed the questions and answers and coerced me to sign the statement. That my replies above prove that when I was aware of

TRUE COPY  
 Anil Chhaganlal Jain

NOTARY  
 D. No.133  
 Expiry Date  
 15-12-2017  
 GOVT. OF MAHARASHTRA

all the activities of the company, I could not state that I am not aware and then push the blame on Anil C. Jain. That the answers itself speak that they were not my answers.

That whatever stated above is true and correct to the best of my knowledge and belief.

Solemnly affirmed at Mumbai this 23<sup>rd</sup> day of February 2016.

(Before Me)

J. S. OBEROI  
 B.A., LL.B.  
 Advocate and Notary  
 Popatwadi, Kalbadevi Road,  
 Bombay-400 002.

(Harish M.Sharma)

Sr. No. 756/2016 In the Notarial Register

NOTARY  
 J. S. OBEROI  
 GR. BOMBAY  
 REGD. No. 133  
 Expiry Date  
 15-12-2017  
 GOVT. OF MAHARASHTRA

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 J. S. OBEROI  
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TRUE COPY  
 Anil Chhaganlal Jain

**भारतीय गैर न्यायिक**  
**एक सौ रुपये** **Rs. 100**

NOTARY  
 M. H. CHOWDHARY  
 REG. No.: 8058  
 GOVT. OF INDIA

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NT 381679

महाराष्ट्र MAHARASHTRA 2015

22 DEC 2015

सक्षम अधिकारी

NOTARY  
 M. H. CHOWDHARY  
 REG. No.: 8058  
 GOVT. OF INDIA

AFFIDAVIT

श्री. दिनेश सावंत

I, HARISH SHARMA, s/o Madanlal Sharma aged 38 Years, residing at Room No.8 Somji building, 198 Dr. M G Mahimtura Marg, North Brook Street, Mumbai 400004 do hereby solemnly affirm and declare as under:

1. That I am Director of Eence Securities Pvt. Ltd .from 31-03-2011 having its office at Room No.8 Somji building, 198 Dr. M G Mahimtura Marg, North-Brook Street, Mumbai 400004.
2. That the business of Eence Securities P. Ltd .is Finance, management and investment consultancy.
3. That I am handling all day to day activities in the said Company along with other director.
4. That I received a Summons u/s.131 dated 28.12.2015 to depose and give statement with regard to some details in the case of Shri Anil C. Jain.
5. That I attended in response to the summons on 8.1.2016 where the Asst. Commissioner of Income Tax Shri Rajesh Namdev Haladkar started recording my statement. The recording of statement began at around 12.00 noon with a lunch break and continued thereafter.

TRUE COPY

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6. After about writing of around 20 odd pages, at around 11.p.m. Shri Rajesh Haladkar threatened me with police action, arrest etc. and then tore off all the pages typed and initialed by me.

7. The ACIT then on his own typed a statement where he personally wrote the questions and answers which comprised of around 7 pages and asked me to sign the statement.

8. On my refusal to sign, the ACIT threatened that he would detain me further, bring the police and have me detained under police arrest for 4 days.

9. That under duress, I signed the statement and thereafter I was allowed to leave the chamber of the ACIT.

10. That I hereby state that I was not aware of the contents of the statement recorded on 8.1.2016 and that the same was obtained under duress and pressure hence I do not stand by it.

11. That I have orally requested for copy of statement on the same day itself but till date I have not received so as to enable me to rebut on the same.

12. That on receipt of the statement, I shall make a fresh affidavit.

Solemnly affirmed at Mumbai this 12 JAN 2016 of January 2016.

12 JAN 2016

(Before Me)

(Harish M.Sharma)

BEFORE ME

M. H. CHOWDHARY  
 PUBLIC NOTARY  
 (GOVT. OF INDIA)  
 12 JAN 2016

REGISTERED VIDE  
 Sr. No.: 12  
 Page No.: 19  
 Date: 12 JAN 2016  
 OF NOTARY REGISTER

NOTARY  
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12 JAN 2016



There is no dispute to the fact that statement of Shri Harish Sharma was recorded by the Ld. ACIT, which was retracted by him on 23/02/2016 (page-71 of the paper book). Such retraction was duly supported by affidavits (pages 72 to 78 of the paper book). From page-72 (para-3), it has been specifically, affirmed/tendered that the statement was recorded under duress under threat on 08/01/2016 by Ld. ACIT and Mr. Sharma was coerced to sign the statement. In another affidavit (page-78 of the paper book) in para-6, it has been mentioned that the assessee was threatened by police action/arrest etc and the initial papers were torn off and the assessee was forced to sign certain tight papers, prepared by the ACIT. In such a situation, the authenticity of the statement comes under clouds. Thus, in the light of the foregoing discussion, one clear fact is oozing out that the statement recorded by the officer and retracted by Shri Harish Sharma cannot be the sole basis of making the addition in the hands of the present assessee.

2.4. It is also noted that the assessee filed the audited account for the year ending 31/03/2013 (page to 2 to 39 of the paper book), which was made available before the Ld. Assessing Officer as well as before the Ld. Commissioner of Income Tax (Appeal). It is also noted that M/s Encee Securities Pvt. Ltd. duly confirmed of giving loan to the assessee. M/s Encee Securities Pvt. Ltd. duly

filed the return (page 79 to 88 of the paper book), which was also available with the Ld. Assessing Officer and Ld. Commissioner of Income Tax (Appeal), wherein, the loan to the present assessee was claimed to be given. The Bench asked the Ld. representative, whether any addition has been made in the case of M/s Encee Securities Pvt. Ltd. the Bench was informed that yes addition has been made and the appeal is pending before the Ld. Commissioner of Income Tax (Appeal). At this stage, the ld. counsel for the assessee asserted that it is clear cut case of double addition as the department was uncertain whether the addition of the same amount is to be made in the hands of the present assessee or in the case of M/s Encee Securities Pvt. Ltd. The case of the Revenue is that in the hands of M/s Encee Securities Pvt. Ltd., the share application money has been camouflaged and own money has been used in the form of share application money. In such a situation, we are of the view, that addition can be made, if found to be otherwise, in the hands of M/s Encee Securities Pvt. Ltd. but in the case of the assessee loan was received from M/s Encee Securities Pvt. Ltd., which is still live, therefore, addition cannot be made in the hands of the present assessee. Even otherwise, the assessee is not expected to prove the source of source as has been held in various decisions from Hon'ble Apex court as well as Hon'ble High Courts. If the Department is apprehensive of certain foul play/non-genuineness of the amount in the

form of share application money then the matter may be extensively examined and addition could have been made in the hands of the M/s Encee Securities Pvt. Ltd. Admittedly, the Department has option/choice, where, the addition has to be made but under the facts available on record, since, unsecured loans was taken by the assessee, no addition justifiably be made in the hands of the present assessee, because, the assessee has nothing to do with the genuineness of the share application money and he merely received loan from M/s Encee Securities Pvt. Ltd. The related parties confront that loan was genuine and given to the assessee. In our humble opinion, no addition can be made of the same amount at two places.

2.4. So far as, addition u/s 68 of the Act is concerned, before coming to any conclusion, we are reproducing hereunder the relevant portion of the provision of Act.

***"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 :*

***Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

*(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

**Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of [section 10](#)."

2.4. As per section 68 of the Act, onus is upon the assessee to discharge the burden so caste upon. First burden is upon the assessee to satisfactorily explain the credit entry contained in his books of accounts. The burden has to be discharged with positive material (Oceanic Products Exporting Company vs CIT 241 ITR 497 (Kerala.)). The legislature had laid down that in the absence of satisfactory explanation, the unexplained cash credit may be charged u/s 68 of the Act. Our view is fortified by the ratio laid down in Hon'ble Apex Court in P. Mohankala (2007)(291 ITR 278)(SC). A close reading of section 68 and 69 of the Act makes it clear that in the case of section 68, there should be credit entry in the books of account whereas in the case of 69 there may not be an entry in such books of account. The law is well settled, the onus of proving the source of a sum, found to be received/transacted by the assessee, is on him and where it is not satisfactorily explained, it is open to the Revenue to hold that it is income of the assessee and no further burden lies on the Revenue to show that income is from any other particular source. Where the assessee failed to prove satisfactorily the source and nature of such

credit, the Revenue is free to make the addition. The principle laid down in Ganpati Mudaliar (1964) 53 ITR 623/A. Govinda Rajulu Mudaliar (34 ITR 807)(SC) and also CIT vs Durga Prasad More (72 ITR 807)(SC) are the landmark decisions. The ratio laid down therein are that if the explanation of the assessee is unsatisfactory, the amount can be treated as income of the assessee. The ratio laid down in Daulat Ram Rawatmal 87 ITR 349 (SC) further supports the case of the assessee. In the case of a cash entry, it is necessary for the assessee to prove not only the identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the assessee, under the facts available on record. A harmonious construction of section 106 of the evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of the creditors. In CIT vs Korlay Trading Company Ltd. 232 ITR 820 (Cal.), it was held that mere mention of file number of creditor will not suffice and each entry has to be explained separately by the assessee (CIT vs R.S. Rathaore) 212 ITR 390 (Raj.). The Hon'ble Guwahati High Court in Nemi Chandra Kothari vs CIT (264 ITR 254)(Gau) held that transaction by cheques may not be always sacrosanct. In the present appeal, we note that the assessee has duly proved the identity of the party from where loan was taken, therefore, identity is not in

dispute, since, the loan was taken through banking channel, and therefore, its genuineness cannot be doubted. So far as, explanation is concerned, the assessee duly explained the same that the loan was received from M/s Encee Securities Pvt. Ltd. The totality of facts, clearly indicates that the assessee duly discharged the onus cast upon the assessee.

2.5. It is also noted that if the Ld. Assessing Officer was apprehensive about the genuineness of the amount, he was duty bound to examine in the hands of the M/s Encee Securities Pvt. Ltd. or its share holders. At least, the money was germinated from the hands of the share holders, who contributed to M/s Encee Securities Pvt. Ltd. but in the hands of the present assessee, it is merely a loan and this fact has not been denied by any of the party. Even till this date, M/s Encee Securities Pvt. Ltd. has never denied that loan was given to the present assessee, therefore, the assessee is not expected to prove the source of source. In reply to notices, issued u/s 133(6) of the Act dated 19/10/2015 to few unsecured loan parties including M/s Encee Securities Pvt. Ltd., the confirmation was received by the Assessing Officer on 05/11/2015 in tapal. This fact has been mentioned in para 4.4 of the assessment order itself. In para 4.5 of the assessment order, the broad allegation has been thrust upon the business of Shri Shirish Chandrakant Shah, who was

described to be receiving unaccounted cash by using 212 companies, owned by him, which includes 16 listed companies. In such a situation, whether the responsibility/addition can be fastened upon the assessee. The obvious reply is no. It is noted that addition has been made in the case of assessee broadly on the basis of statement of Shri Harish Sharma, which was retracted by him, supported by an affidavit. However, the assessee has fulfilled the conditions required u/s 68 of the Act.

2.6. We have also perused the reply dated 25/02/2016 (filed with the ACIT on 26/02/2016 page-48 of the paper book), wherein, it has been specifically mentioned that copy of statement tendered by Shri Harish Sharma was not provided to the assessee. In this reply, the assessee has duly emphasize that no addition can be made on the basis of statement of Shri Harish Sharma as the assessee has discharged the onus caste upon him and the assessee has duly complied with the requirement of section 68 of the Act by proving the identity, capacity and genuineness of the transaction. The reply contained in para-2 (page-48) clearly explains the position of the assessee. The identity of the lender, capacity and genuineness of the loan is not in doubt. Therefore, in our opinion, the addition made by the Assessing Officer in the hands of the present assessee is not justified. As mentioned earlier, if any, foul play is found then addition

can be made in the hands of M/s Encee Securities Pvt. Ltd. and not in the hands of the present assessee.

2.7. It is also noted that nothing prevented the Ld. Assessing Officer to record the statement of shares subscribers or other persons and confront the assessee, if something is found against the assessee. The present assessee was never examined by the Assessing Officer with respect to the statement tendered by Shri Harish Sharma or Shri Shirish Shah. The present assessee was never provided the statement of Shri Shirish Shah. Neither any query was raised from these persons with respect to the present assessee. Even it is presumed that M/s Encee Securities Pvt. Ltd. got the money from certain share applicants/some persons, how addition can be made u/s 68 in the hands of the present assessee. It seems that addition has been made of the same amount in difference hands like substantive addition in the hands of M/s Encee Securities Pvt. Ltd. and on protective basis in the hands of the present assessee, which cannot be said to be justified. Totality of facts and the circumstances clearly indicates that at least the addition in the hands of the present assessee cannot survive. Even no question was put to Shri Harish Sharma against Shri Shirish Shah, while recording the statement. Thus, considering the totality of facts, and the material available on record, we don't find any justification to make the addition u/s 68 of the Act in



the hands of the present assessee, therefore, the appeal of the assessee is allowed.

3. Now, we shall take up appeal in ITA No.370/Mum/2017. The ld. representatives, from both sides, during hearing, contended that the issue and the facts are identical. While disposing off the appeal in ITA No.369/Mum/2017, we have found that addition made u/s 68 was not justified and since the facts are identical, therefore, on the same reasoning, we delete the addition made in the present appeal also.

Finally, both the appeals of the assessees are allowed.

This order was pronounced in the open in the presence of ld. representatives from both sides at the conclusion of the hearing on 11/04/2017.

**Sd/-  
 (Rajendra)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

**Sd/-  
 (Joginder Singh)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 13/04/2017

*Shekhar, P.S./नि.स.*

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

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.

4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**