

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.709/M/2024
Assessment Year: 2013-14**

M/s. Top Class Capital Markets Private Limited, 2 nd Floor, Bombay Mutual Building, DR D N Road, Fort, Mumbai G.P.O. Mumbai - 400001 Maharashtra PAN: AACCT5800G	Vs.	Assistant Commissioner of Income Tax, Central Circle 6(2) Air India, Narmian Point Mumbai - 400001 Maharashtra
(Appellant)		(Respondent)

**ITA No.974/M/2024
Assessment Year: 2013-14**

DCIT CC 6(2) Income Tax, Air India Building, Mumbai -400020	Vs.	M/s. Top Class Capital Markets Private Limited, 2 nd Floor, Bombay Mutual Building, DR D N Road, Fort, Mumbai – 400001 Maharashtra PAN: AACCT5800G
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Madhur Agrawal, Ld. A.R. a/w
Shri Ravikant Pathak, A.R.

Revenue by : Shri Biswanath Das, Ld. CIT DR

Date of Hearing : 12.09.2024

Date of Pronouncement : 12.11.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These cross appeals by the Assessee and the Revenue Department have been preferred against the order dated 27.12.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

2. Relevant facts for adjudication of the instant appeals are that the Assessee being engaged in the business of trading in shares & securities had declared its income at a loss of (-) Rs.3,64,08,424/- by filing its return of income on dated 30.09.2013 for the AY under consideration.

2.1 Subsequently, the case of the Assessee was selected for scrutiny and ultimately resulted into passing the original assessment order dated 23.03.2016 u/s 143(3) of the Act and computing the income at (-) Rs.2,37,66,572/- and making the addition of Rs.1,26,41,851/- on account of disallowance of loss from trading in securities.

2.2 The Assessee though challenged the original assessment order 23.03.2016 by filling 1st appeal before the then Ld. CIT(A) however, could not get succeeded. The Assessee in order to buy peace, did not file any further appeal.

3. Thereafter, a survey action u/s 133A of the Act was conducted by the Investigation Wing, Mumbai in the case of the Assessee on 27.05.2017 and as per information received from investigation department, the reasons for reopening were recorded as reproduced in para 2 of the assessment order by

the AO and consequently the case of the Assessee was reopened, by issuing a notice dated 17.03.2020 u/s 148 of the Act to the Assessee.

4. The Assessee in response to the notice u/s 148 of the Act , filed its return of income on 15.04.2020 declaring total loss of (-)Rs.3,64,08,424/- u/s 115JB of the Act. Thereafter as recorded in the assessment order, the Assessee was communicated with the reasons recorded for reopening of the assessment vide notice issued u/s 143(2) of the Act dated 21.09.2020. The Assessee was also show caused *“as to why the amount of Rs.12,59,00,000/- being unsecured loans claimed to have been raised from various entities during the year should not be considered as unexplained cash credit made u/s 68 of the Act and the subsequent interest be disallowed as non genuine expenditure”*.

5. In response to the show cause notice, the Assessee filed its reply, gist of the same as recorded by the Assessing Officer (AO) is as under:

“The assessee has taken loan through banking channels and also subsequently repaid the same through banking channels.

1. Further, the assessee submitted confirmations, ITR, bank statements and relevant extracts from the accounts of the parties from whom loan was accepted.

2. The assessee has stated that the parties had enough assets to advance the loan to the assessee.

3. The assessee has discharged its primary onus of proving the identity, genuineness and creditworthiness of the transactions and hence no additions should be made on this account.

4. The assessee is not obligated to prove source of source of funds. Once the primary onus is discharged, the assessee cannot be held liable for any discrepancies in the books of the lender.

5. The assessee has provided the CIN of the company and the date of last balance sheet filed which indicates that the company is still existing and active."

6. Though the submissions of the Assessee were considered by the AO however the same were not found acceptable mainly on the following reasons:

6.6 The submissions of the assessee have been considered. However, the same are not found to be acceptable for the reasons given below. The reasons for rebuttal are also explained in detail subsequently:

i) The companies from which the assessee has taken loans do not have the requisite creditworthiness from their financial analysis to undertake the huge risk. The financial profiling of these companies is shown in point iii of para 6.6.

ii) The major source of funds in these companies is the share premium received from shareholders. It will be also explained subsequently that the shareholders are not traceable at their official address and even the neighbors were unaware of the existence of such parties.

iii) The financials profiles (as provided by the investigation wing in its report) of the companies from whom the assessee has taken unsecured loans is shown below:

Name of company	PAN	Last ITR filed (AY)	Address as per last ITR	Nature of business as per last ITR	Turnover in FY 2015-16	Gross Total Income (GTI) in FY 2015-16	Turnover in 2014-15	GTI in FY 2014-15	Turnover in FY 2013-14	GTI in FY 2013-14
Dev Rashtra Diamond Pvt Ltd	AACB0847G	2016-17	133, Gopichandrapur, Bhujabhai Ni Sheri, Mahidharpara, Surat - 395003 Gujarat	0203-0203 Trading Others	14,92,37,000	7,20,743	14,19,92,063	13,46,094	74,21,953	11,80,761
CRYSTAL MINE & GEMS PVT LTD	AABCB4147L	2016-17	519-B, Panchratna, V F Road, Cytera House, Mundlur	0203-0203 Wholesale	296,73,75,275	1,91,637	40,32,69,117	8,99,157	26,21,153	2,22,380
Rajjini Export Pvt Ltd	AAFCB0727F	2016-17	6/2132, 3rd Floor, Cetus Ni 301/1, Laxmi Gunji Sheri, Mahidharpara, Surat - 395003 Gujarat	0203-0203 Wholesale	14,26,45,743	1,16,393	16,51,15,511	1,37,186	31,17,539	1,66,236
Seal Diamond Pvt Ltd	AADCB6996E	2016-17	201, 2nd Floor, Panchratna Apartment, Bhujabhai Ni Sheri, Mahidharpara, SURAT - 395003	0203-0203 Wholesale	112,45,16,374	1,12,973	166,54,72,205	98,023	12,10,137	98,133
SAMRAJ MERCHANDISE PRIVATE LIMITED	AAMCS7488R	2016-17	6/1821, Off No. 303, Front Side, Rajaji Metalur, Bhujabhai, Mahidharpara, Surat - 395003 Gujarat	0203-0203 Wholesale	11,57,84,473	1,04,519	34,28,80,090	1,10,138	77,03,851	1,79,262
SALASAR DIAM PVT LTD	AAMCS9901M	2016-17	6/2057, Office No.301, 3rd Floor, Papadwala Ridge, Bhoja Ehai Ni Sheri, Surat, Gujarat-395003	0203-0203 Wholesale	126,85,13,009	2,41,895	3,41,34,57,662	5,99,431	112,21,542	3,25,129
Octavia Impex Pvt Ltd	AADCR7132G	2016-17	6/1821, Off No. 303, Front Side, Rajaji Metalur Bhujabhai Ni	0203-0203 Wholesale	14,77,62,898	1,11,877	35,71,88,968	1,41,555	62,18,061	1,36,593

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not commensurate with the risks being taken in advancing huge unsecured loans. Any prudential businessman would not undertake such a high risk for such a low reward.

v) Mere producing of confirmations and bank statements and such documents is not sufficient for proving genuineness and creditworthiness of the parties, especially when the physical verification has shown otherwise. It is a settled position that mere routing of transactions through banking channels is no indication of their genuineness.

vi) Further, during the post survey proceedings, investigation wing verified all the above-mentioned parties from whom the assessee has received unsecured loans, however, most of the entities are either closed or not carrying out any genuine business activities and none of the above companies were found occupying the premises that they have filed in their return of income. These companies can only be presumed to be providing bogus loan entries to the assessee companies. The verification report of the investigation wing has been provided to the assessee in show cause.

vii) It can be a coincidence that a company is not available at the address given in its financials due to change of address. However, in this case most of the entities are not available at the address mentioned in their ITR. This is unbelievable coincidence that all the parties who are not found at their addresses have very similar financials. From the same, it is clear that it is a planned way for taking accommodation entries and avoiding tax.

viii) Further, during the course of survey proceedings, statement of Shri Ajay Ramakant Sharma, Vice President (Accounts) in Centrum Capital Ltd. and Director in Top Class Capital Markets Pvt. Ltd. was recorded. In statement, he was confronted with the above findings and was asked to offer his comments. In reply, he has not provided any explanation whatsoever to the above findings. The relevant portion of his statement is reproduced as under:

Q.63 During field enquiry done by the team today at Mumbai and Surat offices of these loan parties, it is found that most of these parties are not found at their premises. The details of which are as under Please offer your comments.

S. No.	Name	Verified Address	Remark
1	Abhay Raj Gems Pvt. Ltd. and Rishabh Impex	6-1507, Office No. A-3, 1 st floor, Enderwar Park, Panchshara Kansharasheri, Mahidharpura, Surat	Premises was closed
2	Manmohan Export Private Limited	219, World Diamond Centre, Hathfaliya, Mahidharpura, Surat	Premises was closed
3	Creative Diamond Pvt. Ltd.	6/2020/61-A office no. 107, Vedanta Bldg., Bhoja Bhai Ni Sheri, Mahidharpura, Surat	Premises was closed
4	Lakshika Diamond Pvt. Ltd	6/2037 2 nd floor, Office No. 203, Paladwala Building, Bhojabhai Ni Sheri, Mahidharpura, Surat	Premises was owned by some other entity.
5	Sachiya Exports Pvt. Ltd.	405, Santok Diamond, Hthfaliya, Mahidharpura Surat	Premises in the name of Arthav Gems and Ruchika Export.
6	Dhiman Trading Private Limited	Office No. 210, 2 nd floor, Suparsva Building, Thoba Sheri, Mahidharpura, Surat.	Premises closed.
7	Rajgiri Exports Private	5/1127, 1 st floor, Office E, Syndicate House,	Premises closed

P. K.
28/3/2017

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28/3/2017

	Limited	Gajar Faha, Haripura Surat	
8	Samrat Merchandise Pvt. Ltd.	401, Nishit Diamond, Complex, Hathialiya Haripura Surat	Premises closed
9	Salasar Diam Pvt. Ltd.	6/2037 3 rd floor, Office No. 301, Papadwala Building, Bhojabhai Ni Sheri, Mahidharpura, Surat	Premises closed
10	Octavia Impex Pvt. Ltd.	6/2060-2061, 2 nd floor, Off N Vechani Building, Bhojabhai Ni Sheri, Surat	Premises not found.
11	Rashmi Diamond Pvt. Ltd.	103, Gopinathji complex, Bhojabhai Ni Sheri, Mahidharpura, Surat	Premises closed
12	Mangalmurti Impex Private Ltd.	H. No. 6/2251/52, 3 rd floor, Office 302, Umiya Diamond Complex, Havadiya Sheri, Mahidharpura Surat.	Premises closed

Ans. I am not aware about this.

ix) Further, Section 12 of Companies Act, 2013 which states the following:

12. Registered office of company

(1) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(2) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

(3) **Every company shall—**

(a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefore are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;

x) Thus, the companies at the address are deliberately not following a clear statutory provision. The only plausible reason for the same is that the companies mere exist on paper with no genuine business.

xi) All the above facts clearly point to only one conclusion, namely that the transactions with these entities are merely sham transactions which are nothing but accommodation entries designed to hide the assessee's unaccounted income.

xii) In view of the above discussion, unsecured loans amounting to Rs. 12,59,00,000/- are treated as unexplained cash credits u/s 68 of the Income-tax Act, 1961 for pertaining to A.Y.2013-14 as the explanation offered by the assessee is not satisfactory in the opinion of the undersigned. This income will be taxed as per provision of section 115BBE of the Act. No deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of this act in computing the income u/s.68 of the Act. The interest paid on these loans of Rs.46,90,849/- is disallowed as they are not genuine payments. Penalty proceedings u/s.271(1)(c) is initiated for concealment of income."

7. The AO therefore on the aforesaid reasons, treated the unsecured loans amounting to Rs.12,59,00,000/- as unexplained cash credits u/s 68 of the Act and consequently taxed the same as per the provisions of section 115BBE of the Act, without allowing any deduction qua any expenditure or

allowance or set off of any loss under any provisions of this Act, in computing the income u/ 68 of the Act.

7.1 Further, the AO also disallowed the amount of Rs.46,90,849/- being interest paid on these unsecured loans.

8. The Assessee, being aggrieved challenged the reopening of the case u/s 147/148 of the Act also the aforesaid additions on merits, by filing first appeal before the Ld. Commissioner.

8.1 The Ld. Commissioner though affirmed the reopening of the case u/s 147/148 of the Act as valid and as per law, however deleted the addition of Rs.9,85,00,000/- which pertains to following 7 parties by holding that the Assessee has duly discharged its onus cast upon it u/s 68 of the Act to prove the identity, creditworthiness and genuineness of the transactions by producing the relevant documents in respect of following 7 parties from whom loans/ICD amounting to Rs.9,85,00,000/- have been taken.

<i>Sr. No,</i>	<i>Name of the Entities</i>	<i>Amount (Rs.)</i>
1	<i>Rashmi Diamonds Pvt Ltd</i>	<i>1,70,00,000</i>
2	<i>Rajgiri Exports Pvt Ltd</i>	<i>2,00,00,000</i>
3	<i>Samrat Merchandis Pvt Ltd</i>	<i>70,00,000</i>
4	<i>MalikExim Pvt Ltd</i>	<i>10,00,000</i>
5	<i>Gateway Leasing Pvt Ltd</i>	<i>3,65,00,000</i>

6	<i>Octavia Impex Pvt Ltd</i>	<i>1,50,00,000</i>
7	<i>Creative Diamonds</i>	<i>20,00,000</i>
	<i>Total</i>	<i>9,85,00,000</i>

8.2 However, the Ld. Commissioner affirmed the addition of Rs.2,74,00,000/- in respect of following 5 parties mainly on the reason that the onus cast on the Assessee remains un-discharged.

<i>Sr. No.</i>	<i>Mame of Bogus Entities</i>	<i>Amount (Rs.)</i>	<i>Discrepancy Noted</i>
1	<i>Salasar Diem Pvt Ltd</i>	<i>44,00,000</i>	<i>Loan Confirmation Not Provided</i>
2	<i>Dhiman Trading Pvt Ltd</i>	<i>1,45,00,000</i>	<i>Audited Financial Statements Not Provided</i>
3	<i>Sejal Diamonds Pvt Ltd</i>	<i>10,00,000</i>	<i>Loan Confirmation Not Provided</i>
4	<i>Tushar Commodities Pvt Ltd</i>	<i>45,00,000</i>	<i>Audited Financial Statements Not Provided</i>
5	<i>Mahak Diam Pvt Ltd</i>	<i>30,00,000</i>	<i>Loan Confirmation Not Provided</i>
	<i>Total</i>	<i>2,74,00,000</i>	

9. The Assessee as well as the Revenue Department has challenged the impugned order by filing its respective appeals and raised various grounds of appeal.

10. We observe from the appeals of the parties that the Revenue Department is aggrieved against the deletion of the addition of Rs.9,85,00,000/- by the Ld. Commissioner, whereas the Assessee is aggrieved by the decision of the Ld. Commissioner in affirming the addition of Rs.2,74,00,000/- as well as reopening of the case u/s 147/148 of the Act on various reasons.

10.1 As the Assessee has raised the legal grounds also in its appeal, which goes to the root of the case, hence for the sake of brevity, we are inclined to adjudicate the Assessee's appeal i.e. ITA No.709/M/2024 **first**, in which the Assessee has raised the following grounds of appeal:

- "1. (a) *The Commissioner of Income Tax (Appeals) 54, Mumbai (hereinafter referred as CIT(A)) erred in confirming the action of the AO in reopening the assessment by issuing notice u/s 148 of the Act and passing order u/s 143(3) r.w.s. 147 of the Act.*

The Appellant, on the facts and circumstances of the case, submits that there is no income chargeable to tax which has escaped the assessment; therefore, the assessment passed u/s 143(3) r.w.s. 147 of the Act is bad in law, illegal, ultra-vires and contrary to the provision of the Income Tax Act, 1961 (Act); hence, deserves to be quashed.

(b) The AO erred in passing the order u/s 143(3) r.w.s 147 of the Act without providing (i) complete reasons recorded for reopening the assessment (ii) application made to Hon'ble Principal Commissioner (PCIT) of Income for approval of

reopening and (iii) copy of approval given by PCIT to reopen the assessment.

2. The CIT(A) erred in confirming the action of AO in making addition under section 68 of the Act as well as interest paid on the loan taken from the parties tabulated below

<i>Sr.No</i>	<i>Name of the parties</i>	<i>Amount</i>
<i>1</i>	<i>Salasar Diem Private Limited</i>	<i>44,00,000</i>
<i>2</i>	<i>Dhiman Trading Private Limited</i>	<i>1,45,00,000</i>
<i>3</i>	<i>Sejal Diamonds Private Limited</i>	<i>10,00,000</i>
<i>4</i>	<i>Tushar Commodities Private Limited</i>	<i>45,00,000</i>
<i>5</i>	<i>Mahak Diam Private Limited</i>	<i>30,00,000</i>
	<i>Total</i>	<i>2,74,00,000</i>

The Appellant submit that on the facts and circumstances of the case, the identity and creditworthiness of the lenders as well as genuineness of transactions have been duly explained; thus, the transactions of loan taken does not constitute unexplained cash credit within the meaning of section 68 of the Act. Therefore, the addition made u/s 68 of the Act and confirmed by the CIT(A) shall be deleted.

Your Appellant craves leave to add, to alter or to amend the aforesaid ground of appeal."

11. From the **Ground no. 1(b)** raised by the Assessee, it appears that the Assessee has raised the issue as emphasized during the hearing as well that the AO erred in passing the order u/s 143(3) r. w. s 147 of the Act , without providing complete reasons recorded for reopening the assessment and therefore, the assessment passed u/s 143(3) r.w.s. 147 of the

Act is bad in law, illegal, ultra-vires and contrary to the provision of the Act; hence, deserves to be quashed.

11.1 The Assessee has submitted that vide notice dated 17.03.2020 u/s 148 of the Act, the case of the Assessee was reopened, in response to which the Assessee filed its return of income on 15.04.2020 and also asked for reasons for reopening. Considering the request of the Assessee vide a letter/notice dated 21.09.2020 u/s 143(2) r.w.s. 147 of the Act, the reasons recorded for reopening of the case were communicated, which read as under:

Notice under section 143(2) read with section 147 of the Income-tax Act, 1961(Act)

Dear Taxpayer,

Thank you for filing your return of income for Assessment Year 2013-14 in response to notice under section 148 of the Act, vide Ack, no. 333161741150420 on 15/04/2020

2. While acknowledging the care and diligence you have taken in preparing the return, there are certain issues as mentioned below which need further clarification: -

Issues as per reasons recorded for reopening

In this case, information was received from the office of DDIT (Inv.), Unit-1(4), Mumbai vide letter dated 19.12.2019 that a survey action under section 133A of the Income-tax Act, 1961 was carried out on 27.05.2017 in the case of M/s. Centrum Financial Services Limited, M/s. Centrum Direct Limited (both are part of Centrum Group) and M/s. Top Class Capital Markets Private Limited (a closely associated company with the Centrum Group) at "Centrum House, CST Road, Vidyanbagari Marg, Kalina, Santacruz (East), Mumbai and 2nd floor, Bombay Mutual Building, Dr. D.N. Road, Fort, Mumbai being the office premises of above companies.

M/s. Centrum Direct Limited is an unlisted public company engaged in forex services and has outlets in all major cities for converting currencies. M/s. Centrum Financial Services Limited is a non-banking financial company and is part of Centrum Group M/s. Top Class Capital Markets Limited is a closely associated company with the Centrum Group and its directors are employed by the Centrum Group of companies. During the survey action, computer data backup of books of accounts and other documents was impounded and the survey action unearthed the following findings: -

Bogus unsecured loans Entries: - During the survey proceedings, it is found that M/s. Top Class Capital Markets Limited has taken accommodation entries of bogus unsecured loan from the following entities / companies in A.Y 2013-14: -

Sr. No.	Name of Bogus Entities	A.Y 2013-14
1	Rashmi Diamond Pvt Ltd.	1,70,00,000
2	Rajgiri Export Pvt. Ltd.	2,00,00,000
3	Sejal Diamond Pvt. Ltd.	10,00,000
4	Samrat Merchandis Pvt. Ltd.	70,00,000
5	Salasar Diem Pvt. Ltd.	44,00,000
6	Octavia Impex Pvt. Ltd.	1,50,00,000
7	Mahak Diam Pvt. Ltd.	30,00,000
8	Dhiman Trading Pvt. Ltd.	1,45,00,000
9	Tushar Commodities Pvt. Ltd.	45,00,000
10	Malik Exim Pvt. Ltd.	10,00,000
11	Creative Diamonds :	20,00,000

12	Gateway Leasing Pvt. Ltd.	3,65,00,000
	Total	12,59,00,000

Field verification of the addresses of the above companies / entities revealed that the above companies/entities are not situated/available at the addresses mentioned in their last return of income. It is also found that most of the address are incomplete and, in some cases, addresses are entirely wrong. Further, the enquiry carried out by ADIT (Inv)-1, Surat under section 131 of the act, in case M/s. Creative Diamonds Private Limited and M/s. Dhiman Trading Private Limited also confirmed that these two companies/entities are not involved into any genuine business activities and are only involved in providing bogus accommodation entries to the various beneficiaries. It is also found that the above entities are reporting net losses and do not have any net worth.

Survey findings revealed that M/s. Top Class Capital Markets Private Limited has also obtained bogus accommodation entries of unsecured loan of Rs. 12,59,00,000/- from above companies/entities in A.Y 2013-14. The above findings of survey team were also confronted to Shri Ajay Ramakant Sharma (Director in M/s. Top Class Capitals Markets Private Limited) during the survey proceedings and his statement was recorded u/s 131 of the Act on 28/03/2017. However, Shri Ajay Ramakant Sharma did not offer any explanation to the findings of the survey team. To reply to above findings, Shri Ajay Ramakant Sharma asked for one week time. However, till date Shri Ajay Ramakant Sharma has not submitted any reply. It is also seen that M/s. Top Class Capital Markets Private Limited has also claimed deduction of payment of interest of Rs. 76,40,318/- to the above bogus companies/ entities in A.Y 2013-14.

In view of the above, the amount of Rs.13,35,40,318/- (Rs.12,59,00,000/- + Rs. 76,40,318/-) has to be taxed in the hand of assessee company in A.Y 2013-14.

3. In view of the above, you may submit your response with supporting documents (if any) on the above-mentioned issues to undersigned electronically in 'E-proceedings' facility through your account in e-Filing website(www.incometaxindiaefiling.gov.in) at your convenience on or before 06/10/2020.

4. In course of assessment proceedings, if required specific questionnaire(s) or requisition(s) for information/document may be issued subsequently.

5. A brief note on E- Proceeding is enclosed for your kind reference. In case you require any assistance in filing your response, you may contact toll free Call Centre number 18001034215.”

12. Thereafter, the Assessee vide letter dated 28.10.2020 and by referring to the notice dated 21.09.2020 conveying reasons recorded for reopening the assessment, asked the AO to provide certain documents including full reasons recorded for reopening the assessment, on the ground that reason given to the Assessee is an extract of reason recorded. For clarity and better understanding, we are reproducing the letter dated 28.10.2020.

“TOP CLASS CAPITAL MARKETS PRIVATE LIMITED
Reg Off.: 1001 Sunshine Heights, CST Road, Kalina, Santacruz
East, Mumbai-400058
email id: topclasspl@gmail.com
CIN: U74900MH2006PTC166238

Date: 28.10.2020

To,

*The Asstt. Commissioner of Income Tax-Circle 1(3)(1)
Room No. 540, 5th Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400 020.*

Respected Madam,

Ref: Top Class Capital Markets Private Limited

PAN: AACCT5800G

I.T. Asstt. Year: 2013-14

Sub: Documents required for preparing the objection against reopening of assessment u/s 148 of the Income Tax Act, 1961 (Act)

We refer to the notice dated 21.09.2020 conveying the assessee reasons recorded for reopening the assessment of subjected year by issuing issued u/s 143(2) r.w.s 147 of the I.T. Act.

In this connection, we submit that we require the following documents in order to prepare the objection against reopening: -

1. Full reason recorded for reopening the assessment (reason given to us is extract of reason recorded)

2. Application made to Honorable PCIT for approval of reopening the assessment

3. Approval given by Honorable PCIT.

4. Document found during survey proceeding at the premises of in the case of M/s Centrum Financial Services Limited, M/s. Centrum Direct Limited (both are part of Centrum Group) and M/s. Top Class Capital Markets Private Limited (a closely associated company with the Centrum Group) at "Centrum House, CST Road, Vidyanagari Marg, Kalina, Santacruz (East), Mumbai" and 2nd floor, Bombay Mutual Building, Dr. D.N. Road, Fort, Mumbai, resulting into reopening of completed assessment of the assessee.

We request you to provide the above documents which will help us in preparing the objection against reopening of the assessment and filing the same with you.

Thanking You

Yours faithfully,

For Top Class Capital Markets Private Limited

(Authorized Signatory)"

(Highlighted by us for clarity)

13. The Assessee further claimed that despite of asking full reasons recorded for reopening the assessment, the AO failed to provide the same and the Assessee came to know about the complete/full reasons recorded for reopening of the Assessment, from the assessment order only, which reads as under:

"Reasons for reopening of the assessment

1. M/s. Top Class Capital Markets Private Limited filed its return of income of A.Y.2013-14 on 30.09.2013 declaring loss of (-) Rs.3,64,08,424/- under regular provision of the Act and Book Profit of Rs.8,41,82,756/- under section 1153B of the Act. The case of the Assessee was selected for scrutiny and the assessment was completed u/s 143(3) of the Act determining loss of the Assessee at Rs. (-) 2,37,66,572/- under regular provision of the Act and Book Profit at Rs.8,41,82,756/- under section 115JB of the Act.

2. In this case, information was received from the office of DDIT (Inv.), Unit-1(4), Mumbai vide letter dated 19.12.2019 that

2.1 A survey action under section 133A of the Income-tax Act, 1961 was carried out on 27.05.2017 in the case of M/s. Centrum Financial Services Limited, M/s. Centrum Direct Limited (both are part of Centrum Group) and M/s. Top Class Capital Markets Private Limited (a closely associated company with the Centrum Group) at "Centrum House, CST Road, Vidyanbagari Marg, Kalina, Santacruz (East), Mumbai and 2nd floor, Bombay Mutual Building, Dr. D.N. Road, Fort, Mumbai being the office premises of above companies.

2.2 M/s. Centrum Direct Limited is an unlisted public company engaged in forex services and has outlets in all major cities for converting currencies. M/s. Centrum Financial Services Limited is a non-banking financial company and is part of Centrum Group M/s. Top Class Capital Markets Limited is a closely associated company with the Centrum Group and its directors are employed by the Centrum Group of companies. During the survey action, computer data backup of books of accounts and other documents was impounded and the survey action unearthed the following findings: -

2.3 Bogus unsecured loans Entries: - During the survey proceedings, it is found that M/s. Top Class

Capital Markets Limited has taken accommodation entries of bogus unsecured loan from the following entities / companies in A.Y 2013-14: -

<i>Sr. No.</i>	<i>Name of Bogus Entities</i>	<i>A.Y 2013-14</i>
1	<i>Rashmi Diamond Pvt Ltd.</i>	<i>1,70,00,000</i>
2	<i>Rajgiri Export Pvt. Ltd.</i>	<i>2,00,00,000</i>
3	<i>Sejal Diamond Pvt. Ltd.</i>	<i>10,00,000</i>
4	<i>Samrat Merchandis Pvt. Ltd.</i>	<i>70,00,000</i>
5	<i>Salasar Diem Pvt. Ltd.</i>	<i>44,00,000</i>
6	<i>Octavia Impex Pvt. Ltd.</i>	<i>1,50,00,000</i>
7	<i>Mahak Diam Pvt. Ltd.</i>	<i>30,00,000</i>
8	<i>Dhiman Trading Pvt. Ltd.</i>	<i>1,45,00,000</i>
9	<i>Tushar Commodities Pvt. Ltd.</i>	<i>45,00,000</i>
10	<i>Malik Exim Pvt. Ltd.</i>	<i>10,00,000</i>
11	<i>Creative Diamonds :</i>	<i>20,00,000</i>
12	<i>Gateway Leasing Pvt. Ltd.</i>	<i>3,65,00,000</i>
	<i>Total</i>	<i>12,59,00,000</i>

2.3.1 *Field verification of the addresses of the above companies/entities revealed that the above companies/entities are not situated/available at the addresses mentioned in their last return of income. It is also found that most of the address are incomplete*

and, in some cases, addresses are entirely wrong. Further, the enquiry carried out by ADIT (Inv)-1, Surat under section 131 of the act, in case M/s. Creative Diamonds Private Limited and M/s. Dhiman Trading Private Limited also confirmed that these two companies/entities are not involved into any genuine business activities and are only involved in providing bogus accommodation entries to the various beneficiaries. It is also found that the above entities are reporting net losses and do not have any net worth.

2.3.2 Survey findings revealed that M/s. Top Class Capital Markets Private Limited has also obtained bogus accommodation entries of unsecured loan of Rs. 12,59,00,000/- from above companies/entities in A.Y 2013-14. The above findings of survey team were also confronted to Shri Ajay Ramakant Sharma (Director in M/s. Top Class Capitals Markets Private Limited) during the survey proceedings and his statement was recorded u/s 131 of the Act on 28/03/2017. However, Shri Ajay Ramakant Sharma did not offer any explanation to the findings of the survey team. To reply to above findings, Shri Ajay Ramakant Sharma asked for one week time. However, till date Shri Ajay Ramakant Sharma has not submitted any reply. It is also seen that M/s. Top Class Capital Markets Private Limited has also claimed deduction of payment of interest of Rs. 76,40,318/- to the above bogus companies/ entities in A.Y 2013-14.

3. Hence, it is clear that there is failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment for the year in question within the meaning of the provision of section 147 of the Act.

4. In view of the above, I have reason to believe that income chargeable to tax to the tune of Rs.13,35,40,318/- (Rs.12,59,00,000/- + Rs.76,40,318/-) has escaped within the meaning of section 147 of the Act for the A.Y. 2013-14. It is therefore proposed to issue notice u/s 148 of the Income Tax Act, 1961 for A.Y. 2013-14 to reassess such income and also any

other income chargeable to tax which has escaped assessment and which may come to notice subsequently in the course of proceedings under this section.”

13.1 The Assessee therefore has claimed that despite of asking full reasons recorded for reopening the assessment, the AO failed to provide the same and the Assessee came to know about the complete/full reasons recorded for reopening of the Assessment, from the assessment order only and therefore in view of the decision in the case of PCIT vs. Shodiman Investment (P) Ltd. (2020) 422 ITR 337 (Bombay) and other various judgments as filed by the Assessee in the paper book, **entire re-assessment made by the AO is bad in law and thus the Assessment order based on the reasons provided to the Assessee, being void-ab-initio, is liable to be quashed.**

14. On the contrary, the Ld. D.R. vehemently submitted that the reasons for reopening the case have been communicated/shared to the Assessee vide notice dated 21.09.2020 u/s 143(2) of the Act, as it also appears clearly from the remand report dated 12.10.2023 filed before the Ld. Commissioner. Therefore, the contention of the Assessee that reasons recorded for reopening the assessment, were not provided, is incorrect and without any merits and hence not tenable.

15. We have heard the parties and perused the material available on record. From the reasons recorded, as

communicated to the Assessee vide letter/notice dated 21.09.2020 u/s 143(2) r.w.s. 147 of the Act, it appears that reasons as mentioned in such letter/notice itself (but not attached separately) were conveyed to the Assessee by issuing the same and the Assessee was asked to submit its response with supporting documents (if any) on the mentioned issues to the AO on or before 06.10.2020.

15.1 In response, the Assessee vide letter dated 28.10.2020 has asked the AO specifically to provide full reasons recorded for reopening the assessment but of no avail.

15.2 Perusing the reasons recorded in the assessment order, we observe that contents recorded in para 1, 3 & 4 (**highlighted by us**) in such reasons recorded as reproduced in the Assessment order, are not there in the reasons for reopening of the case as recorded in/conveyed through notice/letter dated 21.09.2020, which for sake of brevity, clarity and better understanding are reproduced herein.

“1. M/s. Top Class Capital Markets Private Limited filed its return of income of A.Y.2013-14 on 30.09.2013 declaring loss of (-) Rs.3,64,08,424/- under regular provision of the Act and Book Profit of Rs.8,41,82,756/- under section 1153B of the Act. The case of the Assessee was selected for scrutiny and the assessment was completed u/s 143(3) of the Act determining loss of the Assessee at Rs. (-) 2,37,66,572/- under regular provision of the Act and Book Profit at Rs.8,41,82,756/- under section 115JB of the Act.

2.

3. *Hence, it is clear that there is failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment for the year in question within the meaning of the provision of section 147 of the Act.*
4. *In view of the above, I have reason to believe that income chargeable to tax to the tune of Rs.13,35,40,318/- (Rs.12,59,00,000/- + Rs.76,40,318/-) has escaped within the meaning of section 147 of the Act for the A.Y. 2013-14. It is therefore proposed to issue notice u/s 148 of the Income Tax Act, 1961 for A.Y. 2013-14 to reassess such income and also any other income chargeable to tax which has escaped assessment and which may come to notice subsequently in the course of proceedings under this section."*

15.3 As observed above, that from the reasons recorded for reopening of the case as provided to the Assessee and as reproduced in Assessment order, it clearly appears that contents recorded in para 1, 3 & 4 are not there in the reasons for reopening of the case as conveyed to the Assessee through notice/letter dated 21.09.2020 and the Revenue Department also failed to bring any document/evidence on record to prove that complete reasons were infact served/provided to the Assessee and therefore following question emerge:

"Whether partial furnishing of reasons for reopening to the Assessee, would be fatal to the Assessment Order and/or Assessment order is liable to be quashed".

15.4 We observe that Hon'ble Jurisdictional High Court in the case of PCIT vs. Shodiman Investment (P) Ltd. (2020) 422 ITR 337 (Bombay) has also dealt with the identical issue wherein complete reasons for reopening were not provided to the

assessee and the Hon'ble High Court held that in fact, partial furnishing of reasons will also necessarily meet the same fate i.e. render the assessment order on reopening notice bad. For ready reference and completeness, the concluding part of the judgment on the issue under consideration is reproduced herein below:

*"7. Being aggrieved, the respondent filed a further appeal to the Tribunal. **The impugned order of the Tribunal records the fact that it found that the reasons as communicated to the respondent, was not complete.** Therefore, it called upon the Revenue to file complete reasons recorded by the AO, while issuing the notice dt. 30th March. 2010 for reopening the assessment. The complete reasons as recorded, read as under:*

"Intimation regarding reopening the assessment under s. 147 of the IT Act, 1961 has been received in this office on 29th March, 2010 from Dy. Director of IT (Inv.). Unit 1(4), Mumbai.

It was intimated that search action was conducted under s. 132 of IT Act 1961 on 25th Nov., 2009. In the case of Mahasagar Securities (P) Ltd., where it is found suspicious transaction taken place in the bank account of the company and its related company. The copy of said letter which is self-explanatory which is forwarded to Your Honour.

From verification of blue book, it is found that there is no such Assessee is assessed in his charge. Similarly, no PAN is furnished. However, the Assessee has jurisdiction in this charge and the action is going by bar by its of limitation of time.

I have reason to believe that there is escapement of the income within meaning of under s. 147 of the IT Act, 1961.

As per proviso to s. 151(2) of the IT Act, no notice under s. 148 issued by the AO below the rank of the Jt. CIT after the expiry of 4 years from the end of relevant assessment year unless the Jt. CIT is satisfied on the assessee recorded by the AO that it is fit case for the issue of such notice.

In view of the above, sanction of issue of notice under s. 148 of the IT Act, 1961 for asst. yr. 2003-04 may be accorded if deemed fit."

On the basis of the above reasons as recorded, the impugned order of the Tribunal found that the reasons proceed on the basis that there was no assessee such as respondent in its charge. Nevertheless, the reopening notice was issued to the respondent-assessee. It further holds that the reasons as recorded did not indicate any application of mind on the part of the AO to the information received from the Dy. Director of IT (Investigation). It observes that the reason as recorded only records that intimation received from the Dy. Director of IT (Investigation) only mentions that the Mahasagar Securities (P) Ltd.. was engaged in suspicious transactions. However, there is no further indication as to how the respondent-assessee could be linked to the activity of Mahasagar Securities (P) Ltd. (supra) which has led to escapement of income. Thus, relying upon the decision of this Court in Raja Bahadur Motilal (P) Ltd. vs. K.R. Vishwanathan, ITO & Anr. (1990) 82 CTR (Bom) 381: (1990) 183 ITR 80 (Bom) and the decision of the Delhi High Court in the case of CIT vs. SFIL Stock Broking Ltd. (2010) 233 CTR (Del) 69: (2010) 41 DTR (Del) 98: (2010) 325 ITR 285 (Del), the impugned order dt. 12th Dec., 2014 allowed the respondent-assessee's appeal.

8. Mr. Mohanty, learned counsel for the Revenue, submits that in view of the apex Court's decision in Asstt. CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (2007) 210 CTR (SC) 30: (2007) 291 ITR 500 (SC) is entitled to reopen an assessment for whatever reason. In particular, he places reliance upon the following sentence in para 17 of the above decision i.e., 'In other words, if the AO for whatever reason, has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. Therefore, this reopening notice cannot be challenged. This for the reason that it will be open to the assessee during reopened proceeding to establish that seeking to tax the additional income, was not warranted. It is his submission that information received from the Dy. Director of IT (Investigation) was sufficient reason for the AO to issue the reopening notice. Thus, the Tribunal could not have held that the reopening notice dt. 30th March, 2010 is bad in law.

9. We find that at the time of reopening of the assessment, the AO did not provide the reasons recorded in support of the reopening notice in its entirety, to the respondent-assessee. This was contrary to and in defiance of the decision of the apex Court in GKN Driveshafts (India) Ltd. vs. ITO & Ors. (2003) 179 CTR (SC) 11: (2003) 259 ITR 19 (SC). The entire objects of reasons for reopening notice as recorded being made available to an assessee, is to enable the AO to have a second look at his reasons recorded before he proceeds to assess the income, which according to him, has escaped assessment. In fact, non-furnishing of reasons would make an assessment order bad as held by this Court in CIT vs. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom). In fact, partial furnishing of reasons will also necessarily meet the same fate i.e.. render the assessment order on reopening notice bad. Therefore, on the above ground itself, the question as proposed does not give rise to any substantial question of law as it is covered by the decision of this Court in Videsh Sanchar Nigam Ltd. (supra) against the Revenue in the present facts."

{Highlighted relevant part by us for clarity and better understanding}

15.5 The Hon'ble Jurisdictional High Court in PCIT vs. Shodiman Investment (P) Ltd. has held that non-providing the complete reasons for reopening are contrary to and in defiance of the decision of the Hon'ble Apex Court in GKN Driveshafts (India) Ltd. (supra). Entire objects of the reasons for reopening notice as recorded being made available to an Assessee, is to enable the AO to have a second look to his reasons recorded before he proceeds to assess the income,

which according to him has escaped assessment. In fact, non-furnishing of reasons would make an assessment order bad as held by this court in CIT vs. Videsh Sanchar Nigam Ltd. (2012) 340 ITR 66 (Bom.). **Further, in fact, partial furnishing of reasons will also necessarily meet the same fate i.e. render the assessment order on reopening the notice bad.**

15.6 We further observe that the Hon'ble Jurisdictional High Court in CIT vs. Trend Electronics (2015) 379 ITR 456 (Bombay) also reminded that this Court (Mumbai High Court) in CIT Vs Videsh Sachar Nigam Ltd. (2012) 340 ITR 66 (Bom) has held *"that it is axiomatic that power to reopen a completed assessment under the Act, is an exceptional power and whenever Revenue seeks to exercise such power it must consistently comply with the prerequisite conditions viz. the reopening of the reasons to indicate that the AO had reason to believe that income chargeable to tax has escaped assessment, which would warrant the reopening of an assessment. The reasons recorded must be furnished to the Assessee when sought for, so as to enable the Assessee to object to the same before the AO. Thus, in the absence of reasons being furnished, when sought for, would make an order passed on reassessment as bad in law. The recording of reasons and furnishing of the same has to be consistently complied with, as it is a jurisdictional issue. The requirement is very salutary as it not only ensures reopening notices are not lightly issued beside in case the same have been issued on some misunderstanding/ misconception, the Assessee is given an opportunity to point out that the reasons to believe as recorded in the reasons do not warrant reopening before the reassessment proceedings are commenced. The Assessing Officer disposes of these objections and if satisfied*

with the objections, then the impugned reopening notice under section 148 of the Act is dropped/withdrawn otherwise it is proceeded further”.

15.7 From the judgments referred to above, it is clear requirement for recording the reasons and furnishing of the same **in entirety** is not a mere formality but has to be strictly complied with and cannot be taken lightly and the Assessee is to be given an opportunity to point out that the reasons to believe as recorded in the reasons do not warrant reopening before the reassessment proceedings are commenced. Further where the jurisdictional issue such as reopening of the case is involved, the same must be strictly complied with by the authority concerned. **Non-furnishing of the reasons would make an assessment order bad in law and/or the partial furnishing of the reasons as well would also face the same fate of rendering the assessment order on reopening notice as bad in law and would be liable to be quashed.** Hence the question posed is answered accordingly.

15.8 Thus, considering the peculiar facts and circumstances of the case, as the reasons conveyed to the Assessee vide notice/letter dated 21.09.2020 u/s 143(2) r.w.s. 147 of the Act and as reproduced in para 2 of the assessment order are not exactly same. In fact, in the reasons conveyed vide letter dated 21.09.2020, allegations qua failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment for the year in question within the meaning of the provision to section 147 of the Act and the belief of the AO that income chargeable to tax has escaped within the meaning of section 147 of the Act and therefore he proposes

to issue the notice u/s 148 of the Act, to reassess such income and also any other income chargeable to tax which has escaped assessment and which may come to notice subsequently in the course of proceedings under this section, **are missing or not recorded or conveyed to the Assessee** for clarity and better understanding. Hence, respectfully following the judgment of Hon'ble Jurisdictional High Court in the case of Shodiman Investment (P) Ltd. (supra), on this legal issue itself, the assessment order itself is liable to be quashed, thus the same is quashed and consequently the Impugned order is set aside being infructuous.

17. As we have quashed the assessment order on the legal issue and set aside the Impugned order being infructuous and resultantly allowed the appeal of the Assessee, hence we are inclined not to delve into the merits of the case, as the adjudication of the same would be futile exercise.

18. Coming to the Revenue's appeal, wherein the following grounds of appeal have been raised:

"i. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made u/s. 68 of Rs.9,85,00000/- in the assessment order despite the fact that assessee has failed to establish the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties from whom the assessee has taken unsecured loans?

ii. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made u/s. 68 of

Rs.9,85,00000/- in the assessment order despite the fact that inquiry conducted by the investigation wing had conclusively proved that parties were not operating from the address provided in ITR and were not carrying genuine business activity?

iii. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made u/s. 68 of Rs.9,85,00000/- in the assessment order by relying on PAN, ITR and confirmation from the party despite the fact that these paper documents are prepared in all bogus/non-genuine transactions and not-genuineness can be proved only on the basis of findings during physical verification of premises?

iv. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made on interest paid on unsecured loans of Rs. 37,03,671/-in the assessment order despite the fact that assessee has failed to establish the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties from whom the assessee has taken unsecured loans?

v. The Applicant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be."

19. As in Assessee's appeal i.e. ITA No.709/M/2024, we have quashed the assessment order and set aside the impugned order being infructuous and therefore in view of our judgment in ITA No.709/M/2024, this appeal is liable to be dismissed being infructuous, thus the same is dismissed accordingly.

20. In the result, the appeal filed by the Assessee i.e. ITA No.709/M/2024 is allowed, whereas the appeal filed by the Revenue Department i.e. ITA No.974/M/2024 is dismissed being infructuous.

Order pronounced in the open court on 12.11.2024.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar,
ITAT, Mumbai.