

Respected Sir,

With Reference to captioned assessee in captioned matter, we have been directed to submit the following details/information/documents as required by your good self:

1. Alleged accommodation entries in form of bogus purchases (Questionnaire Point No. 1 of notice dated 24.10.2019)

On perusal of aforesaid notice dated 24.10.2019, it is observed that following transactions are alleged to be accommodation entries provided by Sh. Vipin Garg in form Bogus Purchases through various entities operated by him:

FY	Bank account	Amount (in Rs.)	Name of paper concern of A	A/c No. of paper concern used for entry purpose
2014-15	123456789	15,50,000	XYZ	99999999999

In regards to aforementioned allegation, it is submitted that the alleged transaction are genuine entries entered by the assessee during the course of his normal business operations. Following is the comparison of alleged transactions with transactions reflected in books of accounts.

FY	Party Name	Value Involved as per Questionnaire (In Rs.)	Value as per books of accounts (In Rs.)	Remarks
2014-15	XVZ	15,50,000/-	15,50,000/-	Alleged transaction pertains to sale of cotton seed cake. <i>Copy of account for relevant period is attached herewith on page no.</i>

1.1. The aforementioned purchases from M/s. XVZ are genuine transactions and duly considered in financial statements prepared for period under consideration. Following evidentiary documents supporting the claim of assessee is attached herewith:

1.1.1. Copy of Account for FY 2014-15 **on page no.**

1.1.2. Copy of Purchase Bills alongwith bill of transporter **on page no.**

1.1.3. Copy of stock records of Market Committee **on page no.**

1.1.4. Relevant extract of Audited Financial Statements for FY 2014-15 indicating Guar Purchased during the year **on page no.**

Further, it is submitted that all the payments made to M/s. XVZ in respect of alleged purchase transactions are made through proper banking channels and the bank statements for the relevant period can be produced before your goodself for verification. In light of aforementioned documentary evidences, it is clearly evident that the allegation of bogus purchases is incorrect and baseless and the same may please be dropped.

1.2. Further, it is observed that the allegation in respect of accommodation entries taken by the assessee in form of alleged bogus purchases from entities allegedly operated by Shri. A and receives back cash from them, and actual purchases are made from grey market in cash directly from the farmers, is solely based on the statement of a farmer Shri. B, a person not connected to the assessee group in any manner. He is a stranger having no knowledge of the business affairs of the assessee group. However, if your goodself is in possession of any other evidence such as sale transaction / purchase transaction / agency agreement on which commission is paid to him etc., indicating that Sh. B is directly or indirectly connected to the business affairs of assessee group, then kindly provide the same so that assessee can comment upon them accordingly.

1.3. On perusal of the statement of Shri. B recorded on 29.08.2017, it is clearly evident that he is nowhere related to the business affairs of the assessee group, he was only a companion of Sh. D, Chartered Accountant of the assessee group, who was present at the premise where his statement was recorded merely by chance and with no intent. Further, he has given a very generalized statement regarding the industry practice for purchase of raw material from farmers without any specific indication that the assessee is directly or indirectly involved in such practice. *(For ready reference, copy statement of Shri. B is attached herewith on page no.)*

It is a point of discussion that how can department rely on statement of a person not related to any of the party or group as a whole involved in search proceedings neither he himself was party called for or summoned by the Search Party. Merely relying on a very vague and generalized statement of a person neither connected to any of the assessee group in any manner nor aware of the business affairs of the group, clearly indicates that the allegation of the department is baseless and incorrect and shall must be dropped.

Further, in this regards we place our reliance on following recent judicial pronouncements:

a. Hon'ble Apex Court in the case of **CIT vs. Odeon Builders Pvt. Ltd.** [2019] 110 Taxmann.com 64 (SC), stated as under:

"Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of

such statements to the appellant, thus denying opportunity of cross examination to the appellant, who has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs. 19,39,60,866/-, is directed to be deleted."

b. **CIT v/s JMD Computers and Communications Pvt. Ltd. [[2009] 180 Taxman 485 (Delhi)]**

"...In the impugned judgment the Tribunal meticulously went through the evidence on record and returned the following findings of fact:

(i) it is undisputed that the assessee was maintaining complete accounts including daily item-wise, stock register, purchase book, sales book, purchase bills and sales books;

(ii) the accounts of the assessee have been duly audited under the Income-tax Act as well as the Companies Act;

(iii) sales invoices of vendors were placed on record before the Assessing Officer. Insofar as purchases made by the assessee, were concerned they were entered in the item-wise stock register maintained by the assessee;

(iv) all payments for purchases have been made by cheques;

(v) a complete quantitative analysis between purchases made and corresponding sales were prepared and filed before the Assessing Officer. The quantitative analysis made has not been called into question by the Assessing Officer;

(vi) ledger accounts of the six suppliers showed substantial debit balances indicating that the assessee had made advance payments to the suppliers on several dates.

In view of this, the Tribunal came to the conclusion that the deletion made by the CIT(A) had to be sustained. The Tribunal in particular, noted that the Department having accepted the purchases, it could not have been assumed that the assessee had inflated its purchase by introducing fictitious purchases. The Tribunal made a particular note of the fact that the statement of Sh. Ashok Kumar who is the brother of Sh. T.R. Chadda, the source from which the revenue had received information about bogus purchases by the assessee had evidently made a statement on 26-2-2002 admitting therein that he was carrying on the

business of issuing bogus accommodation bills on commission basis with the assessee; which was not put to the assessee, for rebuttal or cross-examination."

c. CIT vs. M/s Rice India Exports Pvt. Ltd., ITA No. 999/2010 dated 03.08.2010 (Del)

"It is settled law that in revenue matters, the onus of proof is not a static one. Though the initial burden of proof lies on the assessee yet when it files purchase bills and affidavits, the onus shifts to the Revenue. One must not forget that it is Revenue which has powers regarding discovery, inspection, production and calling for evidence as well as survey, search, seizure and requisition of books of accounts."

In the instant matter, assessee has duly discharged its initial burden of substantiating the genuineness of the purchase transactions by attaching necessary documentary evidences mentioned above. Thus, in light of the aforementioned judicial pronouncements, it is humbly submitted that the allegation in respect of accommodation entry in form of bogus entry is false and must be dropped.

- 1.4. Without prejudice to aforesaid submissions in regards to alleged accommodation entries taken by assessee in form of alleged bogus purchases, it is submitted that, the assessee had maintained proper stock records along with books of accounts and the same were audited by a chartered accountant. Complete quantitative details of raw material and finished goods are provided for in the audited financial statements and also the same is duly reported in clause 35 of Tax Audit Report filed for the relevant period. *(Copy of relevant extract of audited financial statements and tax audit report is attached herewith on page no.)* The alleged bogus purchases have been duly delivered to assessee and the same is recorded into our stock records and thereafter consumed for further production of final products and/or sold to various parties in regular course of business.
- 1.5. In respect of cash being received back from the alleged parties operated by alleged entry operator Sh. A, it is submitted that no supporting evidence have been provided to us in respect of which assessee can comment upon. Merely, relying on the statement of third party without any independent investigation is illegal under law and unjustified. In support of our contention, we place our reliance on following judicial pronouncements:
 - a. PCIT Vs. Tejuarohit Kumar Kapadia [2018] 94 taxmann.com 325 (Supreme Court)

"Where purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque and there was no evidence to show that amount was recycled back

to assessee, Assessing Officer was not justified in treating said purchases as bogus under section 69C."

b. **ACIT Vs. Pinaki D. Panani, ITA 119/MUM/2015, AY 2009-10, ITAT Mumbai**

Considering the totality of facts and the foregoing discussion including various judicial pronouncements, we find that the assessee duly maintained books of account. The contract receipts are completely verifiable as they are paid/received through accounts payee cheque and subjected to TDS. This factual matrix was not even controverted by the Revenue. Thus, mere appearance of the purchase parties on the website of the Sales Tax Department does not falsify the purchases, claimed to be made by the assessee. There is a possibility that some other parties might have engaged with such parties in a suspicious manner but in the present case, no evidence has been brought on record to fortify the suspicion raised by the Assessing Officer, more specifically when the purchase was made through account payee cheque and the payment of receipt from the contractee party/MCGM is also through banking channel. There is no evidence that any payment was paid back in cash. In the light of therefore going discussion, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal), it is affirmed, resulting into dismissal of appeal of the Revenue.

c. **CIT Vs. Nangalia Fabrics (P) Ltd. [2014] 220 Taxmann 17 (Gujarat)**

"Tribunal held that since purchases were supported by bills, entries were made in books of account and payment was made by cheque, addition should have to be deleted. Issue being based on facts, required no consideration."

d. **CIT Vs. Smt. Anju Jindal [2016] 387 ITR 418 (Punjab & Haryana)**

"Where for all purchases ordered to be disallowed by Assessing Officer, payments had been made by assessee through account payee cheques, Tribunal rightly deleted addition made by Assessing Officer."

e. **CIT vs. Manish Enterprises, 276 CTR 89 (Calcutta)**

"6. Since the Tribunal had found from the materials on record that payments were made by account payee cheques which were duly debited to the assessee's bank account and credited in the bank accounts of the suppliers and the AO had presumed and made the addition by observing that the assessee had purchased goods by making cash payments, in our view, there is no substantial question of law arises."

- 1.6. Further, it is pertinent to note that your goodself had neither disputed the stock records of the assessee nor have raised any concern regarding the sales reported in statement of profit & loss prepared for the relevant

period. In such case, it is next to impossible for the assessee to inflate purchases by taking alleged accommodation entries in form of alleged bogus purchases as the assessee maintains daily stock records and all the alleged purchase transactions have been duly considered in preparation of such stock records. If it is alleged that there exists any bogus purchases in the books of accounts, then there must be corresponding bogus sales recorded therein and the same must be reduced from total sales.

In support of our contention, we place our reliance on following recent judicial pronouncements:

a. **Pr. CIT Vs. M/s. Mohommad Haji Adam & Co., ITA No. 1004 of 2016, Bombay High Court**

“....., we are of the view that the assessee cannot be punished since sale price is accepted by the revenue. Therefore, even if 6% gross profit is taken into account, the corresponding cost price is required to be deducted and tax cannot be levied on the same price.”

b. **ACIT Vs. M/S Steel Line (India), ITA No. 1321/MUM/2016(AY 2009-10), ITAT Mumbai**

“If the AO has not disputed the genuineness of sales and the quantitative details and the day to day stock register maintained by the assessee, a trader, he cannot make an addition in respect of peak balance of the bogus purchases. He can only determine the element of profit embedded in the bogus purchase.”

c. **CIT Vs. Simit P. Sheth, 356 ITR 451 (Gujarat), AY 2006-07**

In the present case, the Commissioner of Income-tax (Appeals) believed that when as a trader in steel the assessee sold certain quantity of steel, he would have purchased the same quantity from some source. When the total sale is accepted by the Assessing Officer, he could not have questioned the very basis of the purchases. Therefore, the Commissioner (Appeals) believed the assessee’s theory that the purchases were not bogus but were made from the parties other than those mentioned in the books of account.

d. **ACG Arts & Properties (P.) Ltd. vs. DCIT [2018] 93 taxmann.com 486 (Mumbai - Trib.)**

“5.....The Ld. Representative for the assessee pointed out that so far as the instant year is concerned, qua the four paintings which are in stock, there is no net debit in Profit and loss account which reduces the taxable income, in as much as, whatever purchase price is debited, the same has been carried forward as closing stock. In

relation to one painting, whose stated cost is Rs. 11,25,000/-, the same has been sold for Rs. 16,87,500/and the assessee has a net credit in its Profit & loss account of Rs. 5,62,500/-.....

7.2 In fact, with regard to one of the transaction, wherein one painting has been sold and profit thereof has been credited in the P&L Account, there is no doubt about the sale made. The Ld. Representative for the assessee is quite justified in invoking the ratio laid down by the Hon'ble Bombay High Court in the case of NikunjEximpEnterprises(P.) Ltd. (supra), in such a situation, to canvass that where sale of purchased goods is not doubted, the corresponding purchases could not be construed as bogus."

e. Once sales are not in dispute purchases cannot be disallowed as has been held by the decision of Mumbai Bench in the case of **ITO vs. Rajpal Singh reported in 91 TTJ 993.**

f. **Pushpal Kumar Das vs. DIT, ITA No 1442/Kol/2012, Date of judgment- 10.12.2015 (ITAT-Kolkata)**

"7. We have given a very careful consideration to the rival submissions. It is clear from the order of the CIT(A) and the evidence on record that there was no valid basis to treat the entire purchases as bogus as was done by the AO. If purchases are being disallowed to the extent of Rs.10,14,942/- what will happen to the corresponding sales being shown. The CIT(A) therefore was right in concluding that the A.O. was not justified in considering the entire purchases as bogus from these nine parties. The fact that the other parties avoided notices u/s 133(6) of the Act could be because they were not disclosing sales made to the Assessee in their books of accounts. The AO at best could have rejected the books and estimated income of the assessee but he has not done so. Treating the entire purchases as bogus and making addition would result in absurd results in that the entire sale proceeds would get taxed as income. In the given facts and circumstances of the case, the addition made was rightly deleted by the CIT(A). We find no ground to interfere with the order of the CIT(A). Consequently, Gr.No.1 raised by the Revenue is dismissed".

g. **RupeshChinmanlalSavla vs. ITO, ITA No 6179-6182/Mum/2016, Date of judgment- 30.01.2017 (ITAT- Mumbai)**

"We have heard the rival submissions, perused the orders of the authorities below and the material available on record. It is very much apparent from the assessment order that the basis for treating the purchases made by the Assessee from certain parties as

mentioned in the assessment orders is only the information obtained by the Assessing Officer from Sales Tax department. We find that this information was not parted to the Assessee by the Assessing Officer. It is also not known as to what kind of information Assessing Officer has got from the Sales Tax department relating to the present Assessee before us. Solely based on this information obtained from Sales Tax department, Assessing Officer required the Assessee to produce these parties for verification and simultaneously he deputed the Inspectors to issue notices under Section 133(6) to these parties. Again, we noticed from the assessment order that Inspector has given a report stating that some of the notices were returned unserved and it was also reported by the Inspector that no such business activities are carried out at the given address in some of the parties. Again, this report of the Inspector was never forwarded to the Assessee at any point of time, but was kept on record. Thus, it is apparent that sole basis of addition is only the information obtained from the Sales Tax department by the Assessing Officer. **The Assessee for whatever reason might not have produced the parties for verification may be due to lapse of time or may be due to the dealers shifting from their business premises etc., but he has produced the copies of bank statements, where the payments were made through cheques and the ledger copies of the books of the Assessee of the parties etc. to prove the genuineness of the purchases. The Assessing Officer never doubted the sales made by the Assessee for such purchases, in fact, he has accepted the sales. Without there being any purchases, there could not be any sales. It is also not proved by the Assessing Officer that the amounts paid by the Assessee to the dealers were returned back to the Assessee and the purchase bills issued are only accommodation entries. Simply because the Assessee could not produce the dealers, the entire purchases cannot be treated as bogus purchases. The Assessing Officer could have made further investigations to ascertain the genuineness of the transactions”.**

h. **ACIT v. Mahesh K. Shah, 148 DTR 1, ITA No. 5194/Mum/2014, Date of pronouncement – 31.01.2017, ITAT - Mumbai**

“4.3.4 On an appreciation of the material on record, it is evident from the order of assessment that it is primarily on the basis of information/details obtained from the Sales Tax Department, Government of Maharashtra that the AO issued the show cause notice to the assessee to explain the said purchases and issued notices under section 133(6) of the Act to the said 12 parties from whom the said purchases were made, to which there was no response. We find

that the AO primarily relying on the information obtained from Sales Tax Department, i.e. statements/affidavits given before them by these parties, held the said purchases amounting to `96,45,645/- to be bogus. While it may be true that the said parties did not appear before the AO, for whatever reason, the fact remains that the assessee had filed copies of purchase invoices; extracts of stock ledger showing entry/exit of materials, copies of bank statements to evidence that payments for these purchases were made through normal banking channels, etc. to establish genuineness of the aforesaid purchases. **From the record it is evident that the AO has not doubted the sales affected by the assessee and therefore it would be logical to conclude that without corresponding purchases being made, the assessee could not have affected sales.**

4.3.5 In our considered view, the AO has not brought on record any material evidence to conclusively prove that the said purchases are bogus. Mere reliance by the AO on information obtained from the Sales Department or on statements/affidavits of the 12 parties before the Sales Tax Department or that these parties did not respond to notices issued under section 133(6) of the Act, would not in itself suffice to treat the purchases as bogus and make the addition under section 69C of the Act. **If the AO doubted the genuineness of the said purchases, it was incumbent upon him to cause further inquiries in the matter in order to ascertain the genuineness or otherwise of these transactions. Without causing any further enquiries to be made in respect of the said purchases, the AO cannot make the addition under section 69C of the Act by merely relying on information obtained from the Sales Tax Department, the statements/ affidavits of third parties, without the assessee being afforded any opportunity of cross examination of those persons for non-response to information called for under section 133(6) of the Act.**

4.3.6 In the factual matrix of the case on hand, where the AO failed to cause any enquiry to be made to establish his suspicions that the said purchases are bogus, the assessee has brought on record documentary evidences to establish the genuineness of the said purchase transactions, the action of the AO in brushing aside these evidences cannot be accepted. **Further the Hon'ble Bombay High Court in the case of CIT vs. Ashish International (ITA No. 4299 of 2009) (Bom) has held that the genuineness of the statements relied upon by Revenue is not established when the assessee disputes the correctness thereof and has not been afforded opportunity to cross examine these parties.** Moreover, when the payments for the said purchases to the said 12 persons is

through proper banking channels and there is no evidence brought on record by the AO to establish that the said payments were routed back to the assessee, the addition made by the AO is unsustainable. We are fortified in this view of ours by the decisions, inter alia, the Hon'ble Bombay High Court in the cases of *NikunjEximp Enterprises Pvt. Ltd. (supra)* and *Ashish International (supra)* and the decision of the Coordinate Bench in the case of *M/s. Vaman International Pvt. Ltd. (ITA No. 794/Mum/2015 dated 16.11.2016)*. In this factual and legal matrix of the case on this issue, as discussed above, we find no reason for interference in the order of the learned CIT(A) and consequently uphold her order deleting the addition of `96,45,645/- made under section 69C of the Act as unexplained expenditure in respect of the aforesaid purchases. Consequently, ground 1 to 4 of the Revenue's appeal are dismissed."

i. CIT vs. NikunjEximp Enterprises (P.) Ltd., 216 Taxman 171 (Bombay)

"Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of [Burden of proof] - Assessment year 2001-02 - Assessing Officer disallowed income of assessee alleging non-genuine purchases from different parties - Commissioner (Appeals) upheld order of Assessing Officer - Assessee filed letters of confirmation of suppliers, copies of bank statement showing entries of payment through account payee cheques to suppliers and stock reconciliation statements - Sales of purchased goods were not doubted and substantial amount of sales made by assessee was to Government department - Further, books of account of assessee had not been rejected - Tribunal deleted disallowance - Whether merely because suppliers had not appeared before Assessing Officer or Commissioner (Appeals), it could not be concluded that purchases were not made by assessee"

j. CIT vs. Precious Jewels Corporation, 205 Taxman 22 (Raj)(MAG.)

"6. This is how the Tribunal dealt with this issue relating to impugned addition in para 5 of impugned order:

"5. Considering the above submissions, we find substance in the argument of the ld. A/R that after completion of the transaction assessee was having no control over the suppliers from whom claimed purchases were made nor it was justified to expect control of the assessee over the suppliers to utilize the money paid in consideration against the purchases of goods differently. The assessee had furnished all the necessary information supported with documents which could have been expected from a prudent purchaser to establish the genuineness of the claimed purchases. These

documents were copies of vouchers of purchases containing all the necessary details including Sales-tax Registration Number, Bank account of the assessee showing the payment made to the parties against purchases, export invoices reflecting the export of the goods purchased from the claimed parties and copy of bank account showing the receipt of remittances of export sales. These documents have been placed at pages 1 to 77 and 83 to 115 of the paper book. **Payments have been made by account payee cheques. Their confirmations were also filed. In the cases of M/s. Kartika Exports, M/s. Gems Hi Gems, M/s. RAS Gems Exports, M/s. Gaurave Exports, M/s. Shilp Exports, M/s. S.Gulab Chand & Co., M/s. GirishDiam, M/s. Veni Gems and M/s. ArunJewellers, the assessee had also filed copies of their Income-tax return, computation, ledger account. In the case of Fine Jewellery Co., the assessee had filed their confirmations, and copies of ledger account besides purchase bills. Thus we find in one hand the assessee had furnished all the necessary information supported with documents to establish the genuineness of the claimed purchases made from the said parties whereas in other hand there was no any positive evidence on record to support the allegation of the AO that the above stated parties were not genuine. The AO has not come with any positive evidence to establish that the goods were not purchased from those parties but from someone else and that the amount paid by the assessee in consideration against the supply of goods to them were ultimately returned by them to the assessee. Merely because assessee could not produce the suppliers, on the later occasion during the course of assessment proceedings or in some cases the parties did not respond summons served upon them does not lead to the conclusion beyond doubt that the purchases claimed and the suppliers were not genuine, especially when the export of goods has not been denied by the AO. Under these circumstances we are of the view that the ld. AO having distinguishable facts and circumstances are not of any assistance to the revenue.**The decisions in the case of DCIT v. Adinath Industries, (supra), DCIT v. Brahmaputra Steels Pvt. Ltd. (supra), Raunaq Finance Co. v. JCIT (supra), Shiv Trading co. v. ITO (supra), Om Metals & Minerals Ltd. v. JCIT (supra), Sagar Mal Daa& Co. v. ITO (supra), Sambhav Gems Ltd. v. ACIT (supra), Parasmal Jain v. DCIT (supra) and Praksh Chand Vijay (supra) relied upon by the ld. A/R also support the decision of first appellate authority. We thus do not find reason to interfere with the

first appellate order on the issue. The same is upheld. The ground is thus rejected."

k. ACIT vs. Sanvik Engineers India Pvt. Ltd., ITA No. 3201/D/2015)

l. M/s. MansaroverInfratech Pvt. Ltd. vs. ACIT, ITA No. 7022/Del/2014, ITAT Delhi

m. M/s. Electromac Industries vs. ITO, ITA No. 4697/Mum/2017, ITAT Mumbai

In light of the aforementioned documentary evidences, explanations and judicial pronouncements, we request your goodself to appreciate the aforesaid facts & circumstances of the case, well settled legal position of the matter, and the allegation may please be dropped and no adverse inference may please be drawn.

2. Alleged ingenuine unsecured loans from various entities. (Questionnaire Point No. 2 of notice dated 24.10.2019)

2.1. In this regards, it is submitted that the assessee had already filed party wise detail of unsecured loans taken from various entities during the period under consideration i.e. FY 2015-16 relevant to AY 2016-17 and FY 2016-17 relevant to AY 2017-18 vide letters dated 23.09.2019 filed in response to notices dated 28.08.2019 issued u/s 142(1) of the act for AY 2016-17 and AY 2017-18. *(For ready reference, relevant extract of such replies is attached herewith for your kind perusal on page no.)*

2.2. We submit that the assessee had duly discharged his burden to prove the genuineness of the alleged unsecured loans taken from enlisted entities during the period under consideration by providing copy of ITR-V, Bank Statements and third party confirmations in respect of each and every party enlisted in impugned notice. It is a very well settled legal position in respect of alleged ingenuine unsecured loan transactions, assessee is required to substantiate basic three element of the unsecured loan namely, identity of the lender, genuineness of the transaction and creditworthiness of the lender. The assessee had duly substantiated the identity and creditworthiness of all of the alleged parties by providing PAN, Address, Copy of ITR-V and Copy of Bank Statements for the relevant period under consideration, whereas the genuineness of the transaction is substantiated by providing third party confirmations from each of them. Thus, it is proven beyond doubt that the alleged transactions are genuine.

2.3. In this regards, we draw your kind attention to following portion of allegation made by your goodself vide notice dated 24.10.2019. Relevant extract of Para 2 of aforesaid notice is reproduced hereunder:

"During the course of search action, the residence of Sh. D CA of the group was also covered. During the course of recording of his statement, he admitted that he files the returns of income of individuals of this group and also admitted that the income shown in their returns

are bogus and no actual transaction took place. Vide reply to question no. 26, he explained that the loans taken by individuals are not genuine and these are mere book entries for the formation of capital in the hands of respective persons."

On perusal of statement of Shri. D, recorded on 23.08.2017, it is observed that the question no. 26 is not related to alleged unsecured loan transactions. We hereby reproduce question no. 26 of the aforesaid statement:

"Ques 26:- Please provide name of the broker who has facilitated the unaccounted purchase of food grain to aforesaid concerns."

We hereby request your goodself to provide copy of statement referred to you in support of your allegation as the question mentioned by your goodself in the notice is nowhere relates to allegation of ingenuine unsecured loans.

- 2.4. Further, your attention is drawn to other portion of allegation made by your goodself vide notice dated 24.10.2019. Relevant extract of Para 2 of aforesaid notice is reproduced hereunder:

"Further, during post search proceedings, you vide questionnaire, issued by DDIT (Inv.)-11, Gurgaon, dated 04.09.2017 were asked to provide complete details of unsecured loans raised during the period and also provide necessary confirmations from such lenders, however, no details were furnished by you in this regard.

In order to verify the genuineness of the lenders, summonses were also issued to the lenders (including family members) from whom unsecured loans were raised by you. But in response, no compliance was made from these parties. Further, vide order sheet entry dated 10.10.2017, your counsel was asked to produce all the persons from whom unsecured loans were taken. But, as per order sheet entry dated 13.12.2017, the counsel expressed his inability to produce these parties."

In this regards, it is submitted that during the course of investigation proceedings, alleged third parties to which notices u/s 131(1A) of the act was issued by Ld. DDIT (Inv.) – 11, Gurgaon, all those parties have duly replied to such notices and provided all the required details. *(Copy of covering letters filed by alleged parties with Ld. DDIT (Inv.) during the course of investigation proceedings is attached herewith for your kind perusal on page no.)* Further, it is pertinent to note that the Investigation proceedings before DDIT (Investigation) is a summary proceedings where he analyses all the documents seized during the course of search proceedings and conduct brief enquiry with the third parties regarding affairs of the assessee group. However, the findings of the investigation proceedings are not conclusive as the assessing officer is required to conduct detailed and independent investigation of matters

identified during investigation proceedings. It is very much possible that due to lack of opportunity being heard provided to various parties during investigation proceedings, all of the desired information, documents and explanations were not filed by them with DDIT (Investigation). However, it is pertinent to note that during the course of assessment proceedings, assessee had provided for all necessary documents substantiating the genuineness of the transaction including third party confirmations not received by the DDIT (Investigation). Thus, it is submitted that, where third party fails to provide proper reply to enquiry conducted during investigation proceedings, but later on the same is provided to Ld. AO during assessment proceedings by the assessee, then no adverse inference shall be drawn in this regards.

- 2.5. Further, it is submitted that the assessee had duly discharged the primary onus to prove genuineness of the transactions. However, your goodself had merely relied on a third party statement without bringing on record any corroborating evidences in support of your allegations. However, if your goodself is in possession of any other material in this regards, then you are requested to kindly provide the same, so that assessee can reply accordingly. It is pertinent to note that in the instant case of assessee, we have duly provided all necessary documentary evidences in support of our contention whereas your goodself had not provided any supporting evidences substantiating your allegation. Further, in support of our claim, we place our reliance of following judicial pronouncements:

- a. Hon'ble Apex Court in case of **Pr. CIT vs. Hi-Tech Residency Pvt. Ltd. [2018] 96 Taxmann.com 403 (SC)** rejected the appeal and upheld the order of Hon'ble Delhi High Court where it was stated as under:

"The Court finds that the exercise for determining the identity, genuineness and creditworthiness of the investors of the share capital of the Assessee as well as lenders was undertaken in an elaborate manner by the CIT (A). Comments from the AO were sought. Detailed reasons have been given by the CIT (A) to come to the conclusion that the Assessee had discharged its onus of establishing the identity, genuineness and creditworthiness of both the investors as well as the lenders. This has been concurred with by the ITAT in the impugned order which is again an extremely detailed one.

5. The concurrent factual findings of both the CIT (A) and ITAT have not been shown to be perverse by the Appellant. This is virtually the fourth stage of the litigation.

6. Question (1) is accordingly answered in the negative, i.e., in favour of the Assessee and against the Revenue. Question (2) is

answered in the affirmative, i.e., in favour of the Assessee and against the Revenue. Question (3) is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.

- b. Hon'ble High Court of Rajasthan in case of **CIT vs. Jai Kumar Bakliwal** [2014] 45 Taxmann.com 203 (Raj.) held as under:

“18. The logical interpretation will be that while the assessee has to prove as special knowledge i.e. from where he has received the credit and once he disclosed the source from which he has received money, he must also establish that so far as his transaction with his creditor is concerned, the same is genuine and his creditor had the creditworthiness to advance the loan which the assessee had received. When the assessee discharges the burden so placed on him, onus then shifts to the AO, if the AO assesses the said loan as the income of the assessee from undisclosed source he has to prove either by direct evidence or indirect/ circumstantial evidence that the money which the assessee received from the creditor actually belong to and was owned by the assessee himself.

19. If there is direct evidence to show that the loan received by the assessee actually belong to the assessee, there will be no difficulty in assessing such amount as the income of the assessee from undisclosed source but if there is no direct evidence in this regard, then the indirect or circumstantial evidence has to be conclusive in nature and should point to the assessee as the person from whom the money has actually flown to the hands of the creditor and then from the hands of the creditor to the hands of the assessee.

20. When we peruse the facts herein above, it is an admitted position that all the cash creditors have affirmed in their examination that they had advanced money to the assessee from their own respective bank accounts. Therefore, when there is categorical finding even by the AO that the money came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition cannot be sustained and has been rightly deleted by both the two appellate authorities. There is no clinching evidence in the present case nor the AO has been able to prove that the money actually belonged to none but the assessee

himself. The action of the AO appears to be based on mere suspicion.

21. Accordingly, in our view, the ITAT, after appreciation of evidence has rightly come to the aforesaid conclusion and when there is appreciation of evidence, then it is purely a finding of fact and no question much less substantial question of law can be said to emerge out of the said order of the Tribunal and we do not find any infirmity or perversity in the order of the ITAT so as to call for any interference of this Court. In our view, no substantial question of law arises out of the order passed by the ITAT.

22. Consequently, the appeal, being devoid of merit, is hereby dismissed in limine. No order as to costs."

- c. Hon'ble Gujarat High Court in case of **CIT vs. Apex Therm Packaging Pvt. Ltd. [2014] 42 Taxmann.com 473 (Gujarat)** held as under:

"We are in complete agreement with the reasoning given by the CIT(A) as well as the ITAT. When full particulars, inclusive of the confirmation with name, address and PAN Number, copy of the Income Tax Returns, balance sheet, profit and loss accounts and computation of the total income in respect of all the creditors/lender were furnished and when it has been found that the loans were received through cheques and the loan account were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition of Rs. 33,55,011/-. Under the circumstances, no question of law, much less substantial question of law arises in the present Tax Appeal. Accordingly, the present Tax Appeal deserves to be dismissed and is accordingly dismissed."

- d. Hon'ble High Court of Madras in case of **CIT vs. Mark Hospitals Pvt. Ltd. [2015] 58 Taxmann.com 226 (Madras)** stated as under:

"6. Before us, learned standing counsel appearing for the Revenue tried to plead that the amount was credited on the previous day and cheques were issued on the next day. There appears to be no legal bar for such transaction. It is seen from the order of the Commissioner of Income-tax (Appeals) as well as from the order of the Tribunal that the assessee had given plausible explanation for having taken a loan for a sum of Rs. 37 lakhs, for which, the assessee had produced evidences to prove the creditworthiness and genuineness of the transaction. From the evidences produced it

is clear the assessee had fulfilled the requirements under section 68 of the Income-tax Act.

7. We find that the issue raised is pure question of fact. Hence, we find no question of law much less any substantial question of law arises for consideration in this appeal. Accordingly, the order of the Tribunal stands confirmed and this tax case (appeal) stands dismissed. No costs."

e. Dwarkadhish Investment (P.) Ltd. Vs. CIT-IV, High Court of Delhi, [2010] 194 TAXMAN 43

The initial burden of proof lies on the assessee, yet once he proves the identity of the creditors/share applicants by either furnishing their PAN numbers or income-tax assessment numbers and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue.

In light of aforesaid documentary evidences, explanations and judicial pronouncements, it is most humbly submitted that assessee had substantiated the genuineness of the alleged transactions beyond doubt. Thus, your goodself is requested to kindly acknowledge the aforesaid submissions and drop the impugned allegations.

3. Alleged Cash Payments in excess of Rs. 20,000/- in a single day against purchases and other expenses required to be disallowed u/s 40A(3) of the act. (Questionnaire Point No. 3 of notice dated 24.10.2019 as well as notice dated 14.10.2019)

In this regards, it is submitted that alleged transactions are not in contravention of provisions of section 40A(3) of the act as these transactions is either payment to farmers for procuring raw material or a consolidated entry is passed in respect of payments of same nature made to different parties. On perusal of provisions of Rule 6DD of the Income Tax Rules, 1962 (hereinafter referred as 'the rule') it is inferred that a payment in excess of Rs. 20,000/- made to a farmer is exempt from the provisions of section 40A(3) of the act.

For ready reference, relevant extract of Rule 6DD of the rules is reproduced hereunder:

"Cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft. No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession

under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely :—

a).....

b).....

c).....

d).....

e) where the payment is made for the purchase of—

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(iii) fish or fish products; or

(iv) the products of horticulture or apiculture,

to the cultivator, grower or producer of such articles, produce or products;”

On perusal of notice issued by your goodself on 24.10.2019, we have prepared an summary of cash payment indicated by your goodself to disallowed u/s 40A(3) of the act being alleged to be incurred in contravention of provisions of the act. We hereby produce such summary of entries identified by your goodself in the aforesaid notice dated 24.10.2019 for each of the period under consideration i.e. FY 2015-16 and FY 2016-17:

For FY 2015-16

Particulars	Amount (Rs.)	Remarks
Sarso Purchase A/c, Narma Purchase A/c and Henna Purchase A/c	18,00,495/-	These transaction relates to market fees paid to ‘Market Committee, Charkhi Dadri’, for purchase of Mustard Seeds i.e. ‘Sarso’ from farmers through auction conducted by the ‘Market Committee, Charkhi Dadri’. We hereby enclose the receipts issued by Market Committee in respect of alleged payments. As these payments are government payments, mandatorily required to be made in cash, thus these transactions are not in contravention of provisions of section 40A(3) of the act as the same is covered under Rule 6DD of the rule. Relevant extract of rule 6DD(b) of the rules is reproduced hereunder: “(b) where the payment is made to the

		<p><i>Government and, under the rules framed by it, such payment is required to be made in legal tender;"</i></p> <p>Thus, the alleged transactions may please be allowed.</p>
'AK, Karoli', 'Umed, Bahu' and other farmer's ledger accounts.	64,31,466/-	<p>These are the payment made to farmers for purchase of raw material from them. <i>Copy of ledger account is attached herewith for your kind perusal on page no.</i></p> <p>Kindly note that the impugned transaction is exempt from disallowance u/s 40A(3) of the act as the same is covered by the provisions of rule 6DD of the Income Tax Rules, 1962 thus, the alleged transactions may please be allowed.</p>
Labour A/c, Salary A/c & Wages A/c	11,79,749/-	<p>These are the payments made to labourers and employees of the assessee at the end of the each month in respect of their services. A consolidated entry of total salary paid is recorded in the books of accounts. However, payment to single employees or labourers do not exceed stipulated limit of Rs. 20,000/-. Copy of ledger namely 'Labour A/c', 'Salary A/c', 'Wages A/c' and monthly attendance register indicating payments made to individual employee or labourer is attached herewith for your kind perusal.</p> <p>In light of the attached documents, it is clearly evident that the impugned transactions are not in contravention of provisions of section 40A(3) of the act and may please be allowed.</p>
ABC, Ch. Dadri	6,58,00,000/-	<p>These transactions relate to transfer of cash from 'Kanina Road office' to office maintained at 'Mandi, Charkhi Dadri' for facilitating various purchases farmers at Mandi, Charkhi Dadri. In this regards, it is submitted that 'ABC Enterprises, Ch. Dadri' is branch office of the assessee only. We hereby attached copy of 'GST REG - 06' of ABC & Co.' and license granted by Market Committee, Charkhi Dadri on page no.</p>

		<p>..... to substantiate that the assessee have maintained a separate office at Mandi, Charkhi Dadri and the same is shown as ABC Enterprises, Ch. Dadri in books of accounts of ABC & Co.</p> <p>As these payments are payment to other office of same assessee, these are not in the nature of expenses and thus, not covered by the provisions of section 40A(3) of the act and the same may please be allowed.</p>
Building A/c	84,500/-	<p>These transactions relate to registration charges paid to Haryana Govt. for registration of building. Copy of ledger namely 'Building A/c' and receipt of registration fees is attached herewith for your kind perusal on page no.</p> <p>As these payments are government payments, mandatorily required to be made in cash, thus these transactions are not in contravention of provisions of section 40A(3) of the act as the same is covered under Rule 6DD of the rule. Relevant extract of rule 6DD(b) of the rules is reproduced hereunder:</p> <p><i>"(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;"</i></p> <p>Thus, the alleged transactions may please be allowed.</p>
Total	7,52,96,210/-	

For FY 2016-17

Particulars	Amount (Rs.)	Remarks
Narma Purchases A/c	3,44,194/-	These transaction relates to market fees paid to 'Market Committee, Charkhi Dadri', for purchase of Mustard Seeds i.e. 'Sarso' from farmers through auction conducted by the 'Market Committee, Charkhi

		<p>Dadri'. We hereby enclose the receipts issued by Market Committee in respect of alleged payments. As these payments are government payments, mandatorily required to be made in cash, thus these transactions are not in contravention of provisions of section 40A(3) of the act as the same is covered under Rule 6DD of the rule. Relevant extract of rule 6DD(b) of the rules is reproduced hereunder:</p> <p><i>“(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;”</i></p> <p>Thus, the alleged transactions may please be allowed.</p>
Mill Expenses	34,500/-	<p>These are the payments made to various labourers working for repair of office building of assessee. A consolidated entry of total expense incurred is recorded in the books of accounts. However, payment to single labourers do not exceed stipulated limit of Rs. 20,000/-.</p> <p>Copy of ledger namely 'Mill Expenses' along with payment vouchers duly signed by respective labourer is attached for your kind perusal on page no. to substantiate that the payments are not in contravention of the provisions of section 40A(3) of the act.</p> <p>In light of the attached documents we of the view that the impugned transactions are not in contravention of provisions of section 40A(3) of the act and may please be allowed.</p>
Labour A/c, Salary A/c and Wages A/c	8,95,085/-	<p>These are the payments made to labourers and employees of the assessee at the end of the each month</p>

		<p>in respect of their services. A consolidated entry of total salary paid is recorded in the books of accounts. However, payment to single employees or labourers do not exceed stipulated limit of Rs. 20,000/-. Copy of ledger namely 'Labour A/c', 'Salary A/c', 'Wages A/c' and monthly attendance register indicating payments made to individual employee or labourer is attached herewith for your kind perusal.</p> <p>In light of the attached documents we of the view that the impugned transactions are not in contravention of provisions of section 40A(3) of the act and may please be allowed.</p>
ABC Enterprises, Ch. Dadri	4,27,95,670/-	<p>These transactions relate to transfer of cash from 'Kanina Road office' to office maintained at 'Mandi, Charkhi Dadri' for facilitating various purchases farmers at Mandi, Charkhi Dadri. In this regards, it is submitted that 'ABC Enterprises, Ch. Dadri' is branch office of the assessee only. We hereby attached copy of 'GST REG – 06' of ABC & Co.' and license granted by Market Committee, Charkhi Dadri on page no. to substantiate that the assessee have maintained a separate office at Mandi, Charkhi Dadri and the same is shown as ABC Enterprises, Ch. Dadri in books of accounts of Amit & Co.</p> <p>As these payments are payment to other office of same assessee, these are not in the nature of expenses and thus, not covered by the provisions of section 40A(3) of the act. And the same may please be allowed.</p>
Machinery Pur. A/c	61,610/-	These are the payments made to transporters for transportation of

		<p>machinery. <i>Copy of ledger account along with bills of transporter is attached herewith on page no. for your kind perusal.</i></p> <p>Kindly note that payments have been made to transporters and no single payment exceeds Rs. 35,000/-. There is no contravention of provisions of section 40A(3) of the Act as the same is duly covered by second proviso to section 40A(3) of the act. For ready reference, the same is reproduced hereunder:</p> <p>“Provided further that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted.”</p> <p>In light of the attached documents, it is clearly evident that the impugned transactions are not in contravention of provisions of section 40A(3) of the act and may please be allowed.</p>
Car A/c	84,100/-	<p>This transaction relates to Registration Fees paid for registration of car paid to Transport Department of state government. We hereby enclose the receipts issued by Market Committee in respect of alleged payments. As these payments are government payments, thus these transactions are not in contravention of provisions of section 40A(3) of the act as the same is covered under Rule 6DD of the rule. Relevant extract of rule 6DD(b) of the rules is reproduced hereunder:</p> <p><i>“(b) where the payment is made to the Government and, under the rules framed by it, such payment is</i></p>

		<i>required to be made in legal tender;"</i> Thus, the alleged transactions may please be allowed.
Total	4,42,15,159/-	

In light of aforementioned documents and explanations, we request your goodself to kindly allow the alleged cash payments as the same are not in contravention of provisions of section 40A(3) of the act read with rule 6DD of the rules.

We hope you will find the above submissions in order. Sir, should your good self require any other information, the assessee shall be too willing to furnish the same. Needless to state here that, a fair and proper opportunity be granted to the assessee before drawing any adverse inference or relying upon any material against the assessee. Please do the needful and oblige.

Thanking you