

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA Nos. 3375 & 3376/Del/2011
A.YRS. 2005-06 & 2006-07**

Assistant Commissioner of Income Tax vs. Shri Vikrant Puri,
Central Circle-13, New Delhi A-1/36, Panchsheel Enclave,
New Delhi
(PAN:AFYPP9110K)
(APPELLANT) **(RESPONDENT)**

Department by : Sh. Amit Mohan Govil, CIT(DR)
Assessee by : Sh. V.K. Agarwal, AR

**Date of Hearing : 17-02-2016
Date of Order : 30-03-2016**

ORDER

PER H.S. SIDHU, JM

The Department has filed these Appeals against the separate impugned Orders both dated 06.04.2011 passed by the Ld. CIT(A) pertaining to assessment year 2005-06 & 2006-07. Since some of the issues involved in both the Appeals are common and identical, hence, the appeals were heard together and now are being disposed of by this common order for the sake of convenience, by dealing with ITA No. 3375/Del/2011 (AY 2005-06).

2. The Grounds raised in the Appeal No. 3375/Del/2011 (AY 2005-06) reads as under:-

- “1. The order of the Ld. CIT(A) is not correct in law and facts.
2. Whether the Ld. CIT(A) has erred in admitting evidence under Rule 46A during the course of appellate proceedings, even though

the assessee had been given sufficient opportunity during the course of assessment proceedings.

3. Whether the Ld. CIT(A) has erred in holding that in respect of the assessment proceedings u/s. 153A, where no incriminating material has been found during the course of search, no addition could be made u/s. 153A/143(3) of the Income Tax Act, 1961.
 4. Whether the Ld. CIT(A) has erred in holding that the addition of Rs. 1,19,20,000/- of unsecured loans was not sustainable as no incriminating material regarding these loans was found during the course of search.
 5. Whether the Ld. CIT(A) has erred in deleting the addition of 1,19,20,000/- received as unsecured loans from various parties as vital facts have been ignored by the CIT(A).
 6. Whether the Ld. CIT(A) has erred in deleting the addition of Rs. 27,02,471/- received as a gift from M/s International World Wide as the identity and creditworthiness of the donor has not been analysed by the CIT(A).
 7. Whether the Ld. CIT(A) has erred in deleting the addition of Rs. 51,000/- received as a gift from Shri Rajesh Mohan, as the CIT(A) has ignored the fact that cash deposits were made into bank accounts of the donor immediately before the gift was made.
 8. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the appellate proceedings.
3. The Grounds raised in the Appeal No. 3376/Del/2011 (AY 2006-07)

reads as under:-

- “1. The order of the Ld. CIT(A) is not correct in law and facts.
2. Whether the Ld. CIT(A) has erred in admitting evidence under Rule 46A during the course of appellate proceedings, even though the assessee had been given sufficient opportunity during the course of assessment proceedings.

3. Whether the Ld. CIT(A) has erred in holding that in respect of the assessment proceedings u/s. 153A, where no incriminating material has been found during the course of search, no addition could be made u/s. 153A/143(3) of the Income Tax Act, 1961.
4. Whether the Ld. CIT(A) has erred in holding that the addition of Rs. 5,36,00,000/- of unsecured loans was not sustainable as no incriminating material regarding these loans was found during the course of search.
5. Whether the Ld. CIT(A) has erred in deleting the addition of 5,36,00,000/- received as unsecured loans from various parties as vital facts have been ignored by the CIT(A).
6. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the appellate proceedings.

ITA NO. 3375/DEL/2011 (AY 2005-06)

4. The brief facts of the case are that the search and seizure action u/s. 132 of the I.T. Act, 1961 was carried out in Suresh Nanda Group of cases on 28.2.2007. The case was centralized by CIT, Kolkata vide order u/s. 127(2) of the I.T. Act. The assessee has filed return of income declaring an income of Rs. 16,46,050/- on 2.6.2009. Notice u/s. 143(2) was issued on 15.9.2009. Notice u/s. 142(1) alongwith questionnaire was issued on 17.9.2009. In response to the same, Assessee's Authorised Representative attended the proceedings and filed the necessary details/ clarifications. The assessee had declared income from business and profession, income from house property and income from other sources being interest from bank etc. Thereafter, the Assessing Officer, completed the assessment u/s. 143(3) of the Act at an income of Rs. 1,63,93,239/- passed vide order dated 29.12.2009 and made various additions.

5. Aggrieved with the Assessment order dated 29.12.2009, Assessee filed appeal before the Ld. CIT(A) who vide impugned order dated 06.4.2011 has allowed the appeal of the Assessee.

6. Aggrieved with the order of the Ld. CIT(A)'s, Revenue is in appeal before the Tribunal.

7. Ld. DR relied upon the order of the Assessing Officer and reiterated the contentions raised in the grounds of Appeal.

7.1 On the other hand, Ld. Counsel of the Assessee relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has passed a well reasoned order which does not need any interference and the same may be upheld.

8. We have heard both the parties and perused the records, especially the Order of the revenue authorities.

8.1 Ground No. 1 is general, hence, need not be adjudicated.

8.2 **Apropos Ground No. 2 relating to admission of additional evidences** under rule 46A during the course of appellate proceedings is concerned, we find that assessee has filed an Application u/r. 46A before the Ld. CIT(A) who forwarded the same to the AO for Report and AO has sent his report and copy of the Report was given to the assessee who filed his rejoinder. It is an admitted fact from the remand report itself that confirmation called for the first time on 28.10.2009 and the first hearing was fixed for 17/11/2009 subsequently on every hearing, the assessee filed confirmations. Last hearing was conducted on 11.12.2009 and the assessment order was passed on 29.12.2009, i.e., after a gap of 18 days. The AO could not have provided some further time as he did not pass the order for a period of more than 2 weeks. It is also a fact that the AO

did not rebut the categorical assertion of the Assessee's counsel that during the course of hearing, the AO was satisfied with the evidences filed as he did not raise any further query and while passing the assessment order, he changed his mind and made the addition. The AO has nowhere mentioned either in the assessment order or in the remand report that he had pointed out any deficiency in the documents filed by the assessee to support the unsecured loans. Obviously, the assessee came to know the mind of the AO regarding his non-satisfaction of the evidences for the first time from the assessment order. Therefore, Ld. CIT(A) has rightly observed that he is satisfied that sufficient opportunity was not provided to the assessee and he was prevented by sufficient cause to file the relevant evidences. We have seen the copies of summons issued to the lenders. It is very clear that summons were issued to Shri S. C. Puri, Ms. Sharmila Puri, Ms. Hanisha Puri and Ms. Priyanka Puri. But the observation of the AO is without any application of mind because during this year, no credit was received from any of these persons. We note that it is a settled law that if prima facie information is necessary to examine the claim of the assessee, the Ld.CIT(A), should consider the necessary evidence in exercise of his powers u/s. 250(4) and it is also a settled law that when a statutory authority has the power to do something, then it has a corresponding duty to exercise such powers whenever circumstances warranting exercise of such powers exist. This view is supported by the ITAT, Calcutta Bench decision in the case of ITO vs. Bajoria Foundation (254 ITR (AT) 65).

8.3 In the background of the aforesaid discussions and precedent relied upon in the CIT(A)'s order, we are of the view that Ld. CIT(A) has rightly

admitted the additional evidences, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on this ground and dismiss the ground no. 2 raised by the Revenue.

9. **Apropos ground no. 3 & 4**

These grounds are regarding deletion of additions on account of unsecured loans on the ground that the addition cannot be made u/s. 153A if no incriminating material is found. Search u/s. 132, in this case, was conducted on 29.2.2007. Neither any undisclosed income / properly nor any undisclosed account books / documents were found during the search. The addition of Rs. 1,19,20,000/- have been made in respect of unsecured loans received by the assessee in spite of the fact that no document or any other evidence was found during the search relating to loans.

9.1 In this case original return was filed on 22.12.2005 which was processed u/s. 143(1). Therefore, no assessment proceedings were pending on the date of search. On this account Ld. CIT(A) has deleted the additions by passing a detailed and speaking order on the issue in dispute and dealt these additions from para no. 10, 12 to 35 from pages 8 to 26 of the impugned order. For the sake of convenience, we are reproducing the para no. 10, 12 to 35 at pages 8 to 26 of the Ld. CIT(A)'s Order as under:-

“10. I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by the AR as well as the position of law and the facts of case. I have also considered the various case laws relied upon by the AR. The jurisdictional ITAT, in the case of Anil Kumar Bhatia, has considered the various cases including LMJ International Ltd. vs. DC IT, ITAT (Kol) and Meghmani Industries & Organics Ltd., ITAT (Ahd) which have been relied upon by the AR. The jurisdictional ITAT also considered the decision of Hon'ble Supreme Court in the case of Parashuram Pottery Works Co. Ltd. vs. ITO, 106 ITR 1 (SC) wherein

it was held that we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that settled issues should not be reactivated beyond a particular stage and that lapse of time must set at rest judicial and quasi judicial controversy as it must in other spheres of human activity. The Hon'ble ITAT held that in respect of an assessment u/s 153A, where processing of return u/s 143(1)(a) stood completed in respect of returns filed in due course before search and no material is found in search thereafter, no addition can be made. In the case of the appellant also, additions are not based on any material found during the course of search. No incriminating document / evidence was found during the search in respect of unsecured loans I gifts. The unsecured loans and gifts added u/s 153A were already declared in the original return filed before the search. Therefore, following the judgment of the jurisdictional ITAT which is binding, it is held that no addition could be made u/s 153A. The ground is therefore allowed./

12. Ground NO.3 - This ground is regarding addition of Rs. 1,19,20,000/- on account of alleged unexplained loans from various persons as under: -

- a). S. C. Puri 17,00,000/-*
- b). Hanisha Puri 10,00,000/-*
- c). Priyanka Puri 10,00,000/-*
- d). Sharmila Puri 10,00,000/-*
- e). MIs Design One 07,20,000/-*
- f). Mohit Puri 32,00,000/-*

g).	<i>Neelam Mohan</i>	15,00,000/-
h).	<i>Varun Puri</i>	10,00,000/-
i).	<i>Ashish Kohi</i>	15,00,000/-
	<i>TOTAL</i>	1,19,20,000/-

13. *Since it has already been held that no addition could be made in 153A, the addition of Rs. 1,19,20,000/- is hereby deleted. Though the appeal has been decided on legal ground in favour of the appellant, however, to dispose off the ground separately, the merit of the case is also being considered in the subsequent paras.*

14. *The appellant had filed detailed written submissions in respect of each of the credit vide letter dated 10/2/2011. A copy of this letter was forwarded to the AO for his comments vide this office letter dated 10.02.2011. However, no reply has been received till date.*

15. *S. C. Puri - The AO has made the addition of Rs. 17,00,000/- on account of credit in the name of Shri S. C. Puri on the ground that confirmations has not been filed. The mode of transaction was also not clear and therefore, according to him genuineness of transaction was in doubt. He has further observed that details of his assets have not been submitted and therefore, the creditworthiness is not established. The AR argued that Shri S. C. Puri has duly confirmed the transaction vide his letter dated 8/12/2009 directly received in the office of the AO in response to summons u/s 131. The appellant has further filed confirmations from individual as well HUF, PAN, IT return, copy of cheques and balance sheet. He has emphasized that all these documents*

clearly prove the identity, genuineness and creditworthiness vide his letter dated 10/2/2011, relevant extract from which as under: -

"2) a) During the course of assessment, the addition of Rs. 17,00,000/- was made in the hands of the appellant in respect of loans from S. C. Puri on the ground that details of his assets have not been submitted. He has further observed that Shri S. C. Puri has not confirmed the transaction in spite of the fact that on enquiry he confirmed the transaction as under (Page 10 of the assessment order): -

"I have transaction with Mr. Vikrant Puri in the F. Y. 2004-05 and same amount stands in the F. Y. 2006-07"

Shri S. C. Puri, along with confirmation, also filed copies of his IT returns for F. Y. 2004-05, 2005-06 and 2006-07 clearly indicates name, address, PAN etc.

b) Now the assessee has filed the following documents along with application u/r 46A: -

i) Confirmation as S. C. Puri (Individual) clearly indicating date of transaction, cheque no. and amount of transaction (Rs. 5,00,000/-)

ii) IT Return clearly indicating name, address as 105, Kohinoor Building, Park Street, Flat No. 39, 3rd Floor, Calcutta - 700016 and PAN as AFUPP9565J.

iii) Balance sheet clearly indicating advance of Rs. 5,00,000/- to Shri Vikrant Puri.

iv) Copies of cheques indicating that cheques were drawn on Standard Chartered Bank, 20, Community Centre, New Friends Colony, New Delhi - 1100065 from saving bank account no. 544-1-010587-5.

v) Confirmation as S. C. Puri (Karta of HUF) clearly indicating date of transaction, cheque no. and amount of transaction (Rs. 5,00,000/-).

vi) IT Return clearly indicating name, address as 105, Kohinoor Building, Park Street, Flat No. 39, 7th Floor, Calcutta - 700016 and PAN as AAFHS4543D.

vii) Balance sheet clearly indicating advance of Rs. 5,00,000/- to Shri Vikrant Puri and that HUF's bank account is with Punjab National Bank, New Friends Colony, New Delhi - 1100065 bearing saving bank account no. 119606.

c) i) Identity of Shri S. C. Puri is established by the name, address, PAN and the fact that summons u/s 131 were served on him. PAN is enough to prove the identity of a person as held by Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd., (2010) 45 DTR (Del) 281. It has also been held by Hon'ble ITAT Agra in the case of ITO vs. Mayur Agarwal, 133 TTJ (Agr) TM 1, that once the summons were dully served on the parties, their identity is proved. Hence, identity of Shri S C Puri is fully established.

ii) Genuineness of the transactions is also fully established by the fact that the transaction is duly confirmed by the creditor, the amount is duly reflected in the balance sheet of the creditors as advance to the appellant and the fact that the amount is received by Alc Payee cheque

indicating cheque no, date, amount, saving bank account no. as well as name and address of the bank.

iii) Creditworthiness of the creditor is also fully established by the fact that the amount is received by A/c Payee cheque indicating cheque no, date, amount, saving bank account no. as well as name and address of the bank. This view is fully supported by the judgment of Hon'ble Delhi High Court in the case of CIT vs. Kishori Lal construction Ltd., [2010J 5 Taxmann.com 60 (Delhi), the relevant extract from which is reproduced hereunder: -

"After considering the arguments of both the sides, we find ourselves in favour of the submission made by learned counsel for the respondent. As mentioned above the assessee had produced the following which would clearly demonstrate it has discharged its initial burden: (a) The identity of Yadav and Company, by filing their confirmation and their assessment particulars; (b) genuineness of the transaction by pointing out that the assessee had sold shares to Yadav and Company in the immediately preceding year (which has been accepted by the Department) and that the payment received during the relevant previous year was against the debt due from Yadav and Company.

(c) creditworthiness of the creditor by pointing out that the amount was received by way of cheques drawn on the bank account of Yadav and Company maintained with Union Bank of India, Moti Bagh Branch, New Delhi, which, despite denial by the Yadavs, was, as per bank records,

found to be opened and operated by Sh. O.P. Yadav/ Mohinder Singh Yadav.

The initial burden thus discharged, it was for the Revenue to establish that the transaction in question was bogus."

iv) Hon'ble ITAT Mumbai in its latest judgment dated 71112011 in the case of Guruprerna Enterprises vs. ACIT, ITA No. 255,256 & 257/Mum/2010 has held on page 25, para 35 as under: -

"When a lender gives money by way of crossed cheques, reflects the same in his balance sheet and filed the balance sheets alongwith the return of income with the Income Tax Department, the conclusion that the assessee is not able to explain the source of funds of the lender properly, is not correct. "

d) There has been some clerical mistake on the part of the accountant of the appellant. He has mixed up a few entries of family members of Shri S C Puri. The balance sheet of the appellant indicates credit in the name of Ms. Sharmila Puri at Rs. 3 Lacs who is wife of Shri S. C. Puri while the confirmation from her indicates total credit of Rs. 5 Lacs, Rs. 3 Lacs vide cheque no. 852402 and Rs. 2 Lacs vide cheque no. 852401. This cheque bearing no. 852401 though received from Ms. Sharmila Puri yet was wrongly credited to the account of Shri S C Puri. Similarly cheque no. 095285 for Rs. 2.5 Lacs and cheque no. 095286 for Rs. 1 Lacs drawn on Punjab National Bank were received from Kush Puri who is minor son of Shri S. C. Puri. Since the cheques were signed by Shri S C Puri being natural guardian of Kush Puri, they were credited to the account

of Shri S C Puri. As regards credit in the account of Shri S C Puri for Rs. 1.5 Lacs, it is submitted that this Alc payee cheque bearing no. 734035 dated 61412004 drawn on Punjab National Bank, Maharani Bagh, New Delhi - 110065 was issued by Shri S C Puri from his company Mis International Building & Furnishing Co. Pvt. Ltd., Kolkata. The Accountant wrongly credited this cheque in the account of Shri S C Puri instead of the concerned company. Copy of the cheque has already been filed alongwith the application u/r 46A.

e) Therefore, identity, genuineness and creditworthiness of the creditor is fully established. The initial burden on the assessee thus discharged, it was for the revenue to establish that the transaction was bogus. But the Ld. AO has not pointed out to any material to establish that the transactions are bogus. Hence, credit of Rs. 17,00,000/- from Shri S C Puri stands duly explained. "

16. The AO, in his remand report has mentioned that Shri S. C. Puri gave a loan of Rs. 17,00,000/-- while the confirmation is only for Rs. 5,00,000/-. He has also mentioned that no proof has been submitted to establish that the relevant cheques were cleared from the bank account of Shri S. C. Puri and credited to the account of Shri Vikrant Puri. The AR made his submissions on these observations vide his letter dated 21/3/2011 as under: -

"11. S. C. Puri including S. C. Puri (HUF) - The Ld. AO says that the assessee has not disputed the addition of Rs. 17,00,000/- in the case of Mr. S. C. Puri. Kindly refer to ground no. 3 of appeal where the same is

clearly disputed by the appellant. The Ld. AO has mentioned that the confirmation has been filed only for Rs. 5,00,000/-. It seems that he has seen only one confirmation while the appellant has filed two confirmations one from the individual and other from the HUF each being for Rs. 5,00,000/-. As regards the discrepancy in the conformations indicating loan of Rs. 10,00,000/- and additions for Rs. 17,00,000/- the same has already been explained in para 2(d) on page 3 of my earlier letter dated 10/212011. As regards genuineness and creditworthiness, the same has been explained in para 2 on page 2 and 3 of my earlier letter dated 101212011."

17. I have considered the AO's order, the AR's submissions, the remand and the rejoinder by the AR as well as the position of law and the facts of case. The appellant has filed confirmations from individual as well as HUF, PAN, IT return, copy of cheques and balance sheet. As regards Rs. 5,00,000/- received from Shri S. C. Puri, individual, it clearly mentions the date of transaction, amount and the cheque no. According to the confirmation, Rs. 3,00,000/- were received vide cheque no. 568863 on 3/4/2004 and Rs. 2,00,000/-- vide cheque no. 568864 on 5/4/2004. The bank account of the appellant in HSBC bank is placed on Page 54 of the paper book which clearly indicates that cheque no. 568864 for an amount of Rs. 2,00,000/-- has been duly credited on 5/4/2004. Similarly, the bank account of the appellant with Standard Chartered Bank placed at page 81 of the paper book clearly indicates that Rs. 3,00,000/-- has been credited on 3/4/2004 by way of internal

transfer. This is because of the reason that the cheque issued by Shri S. C. Puri was also drawn on Standard Chartered Bank. Obviously, when the cheques were drawn by Shri S. C. Puri from his bank account, they had to be cleared from this account only. Moreover, Balance sheet of the creditor clearly indicates advance of Rs.5,00,000/-- to Shri Vikrant Puri /Shri S. C. Puri is being regularly assessed to tax, his PAN being AFUPP9565J. The copy of return filed by him clearly mentions his detailed address. The summons issued by the AO uls 131 for the F. Y. 2006-07 were duly served upon him and he has directly replied to the AO confirming the transaction in F. Y. 2004-05 which continued in Y. 2006-07. I have also considered the case laws relied upon by the AR. In the case of CIT vs. Kishori lal Construction Ltd., (2010) 5 taxmann.com 60, Hon'ble Delhi High Court has held that creditworthiness of the creditor has been established because the amount was received by way of cheques drawn on the Bank account of the creditor though the creditor denied the same. The initial burden was thus discharged, it was for the AO to establish that the transaction in question was bogus. Similarly, Hon'ble ITAT Mumbai in its latest judgment dated 7/1/2011 in the case of Guruprerna Enterprises vs. ACIT, ITA No. 255,256 & 257/Mum/2010 has held that when a lender gives money by way of crossed cheques, reflects the same in his balance sheet and filed the balance sheets alongwith the return of income with the Income Tax Department, the conclusion that the assessee is not able to explain the source of funds of the lender properly, is not correct. Identity of Shri S.

C. Puri is established by the name, address, PAN and the fact that summons u/s 131 were served on him. PAN is enough to prove the identity of a person as held by Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd., (2010) 45 DTR (Del) 281. It has also been held by Hon'ble ITAT Agra in the case of ITO vs. Mayur Agarwal, 133 IT J (Agr) TM 1, that once the summons were duly served on the parties, their identity is proved. Hence, Identity of Shri S C Puri is established. Genuineness of the transactions is also indicated by the fact that the transaction is duly confirmed by the creditor, the amount is duly reflected in the balance sheet of the creditors as advance to the appellant and the fact that the amount is received by Alc Payee cheque indicating cheque no, date, amount, saving bank account no. as well as name and address of the bank. Creditworthiness of the creditor is also fully established by the fact that the amount is received by Alc Payee cheque indicating cheque no, date, amount, saving bank account no. as well as name and address of the bank and in view of the case laws discussed above. It is also seen that balance sheet of the creditor clearly indicates advance of Rs.5,00,000/- to Shri VikrantPurL Moreover, the AO has not brought any material on record to prove that credit is bogus. The assessee has discharged the primary onus cast upon him by filing various evidences as discussed above. Therefore, now the onus gets shifted on the AO to prove that credit is bogus which he failed to do. Similar is the position in regard to the credit of Shri S. C. Puri (HUF). Confirmation has been filed for a loan of Rs. 5,00,0001- and all other

documents as in the case of the individual have been filed. Even the AO has taken them together. Therefore, as discussed in detail, in the case of individual, credit of Rs. 5,00,000/- from HUF is so fully explained. The balance of Rs. 7,00,000/- has been explained as having been received from different family members of Shri S. C. Puri like Rs. 2,00,000/-- from wife, Ms. Sharmila Puri, Rs. 3,50,000/-- from Mr. Kush Puri, the minor son and Rs. 1,50,000/-- from M/s International Building and Furnishing company, Calcutta of which Shri S. C. Puri is the MD. The factual position in respect of all these credits is same as in the case of Shri S. C. Puri as discussed above. All the credits have been received through account payee cheques and are duly credited in the bank account of the appellant. Therefore, as discussed in detail, in the case of individual, credit of Rs. 7,00,000/- is to be considered as explained.

18. Ms. Hanisha Puri - The AO has made :m addition of Rs. 10,00,000/- on the same ground as in the case of credit from Shri S. C. Puri. The AR also argued on the same lines as in respect of credit from Shri S. C. Puri. The relevant extract from his argument is reproduced hereunder: -

"3) a) During the course of assessment, the addition of Rs. 10,00,000/- was made in the hands of the appellant in respect of loans from Ms. Hanisha Puri on the ground that details of his assets have not been submitted. He has further observed that Ms. Hanisha Puri has not confirmed the transaction in spite of the fact that on enquiry she confirmed the transaction as under (Page 10 of the assessment order): -

"I have transaction with Mr. Vikrant Puri in the F. Y. 2004-05 and same amount stands in the F. Y. 2006-07"

Ms. Hanisha Puri, alongwith confirmation, also filed copies of her IT returns for F. Y. ,2004-2005, 2005-06 and 2006-07.

b) Now the assessee has filed the following documents alongwith application u/r 46A: -

i) Confirmation clearly indicating date of transaction, cheque no. and amount of transaction (Rs. 5,00,000/-)

ii) IT Return clearly indicating name, address as 105, Kohinoor Building, Park Street, Flat No. 39, r" Floor, Calcutta - 700016 and PAN as AFZPP0575K.

iii) Copies of cheques indicating that her bank account is with Punjab National Bank, New Friends Colony, New Delhi - 1100065.

c) i) Identity of Ms. Hanisha Puri is established by the name, address, PAN and the fact that summons u/s 131 were served on her. PAN is enough to prove the identity of a person as held by Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd., (2010) 45 DTR (Del) 281. It has also been held by Hon'ble ITAT Agra in the case of ITO vs. Mayur Agarwal, 133 TTJ (Agr) TM 1, that once the summons were duly served on the parties, their identity is proved. Hence, identity of Hanisha Puri is fully established.

ii) Genuineness of the transactions is also fully established by the fact that the transaction is duly confirmed by the creditor and the amount is

received by Alc Payee cheques indicating cheques no, date, amount as well as name and address of the bank.

iii) Creditworthiness of the creditor is also fully established by the fact that the amount is received by Alc Payee cheque indicating cheque no, date, amount as well as name and address of the bank. This view is fully supported by the judgment of Hon'ble Delhi High Court in the case of CIT vs. Kishori Lal construction Ltd., [2010] 5 Taxmann.com 60 (Delhi) and Hon'ble ITAT Mumbai in the case of Guruprerna Enterprises vs. ACIT, ITA No. 255,256 & 257IMumi2010, as discussed above in respect of credit of Shri S. C. Puri.

d) The Balance sheet of the appellant indicates credit in the name of Ms. Hanisha Puri at Rs. 5 Lacs. As per ledger account, cheque no. 095257 for Rs. 3 Lacs was returned by the bank as the same was dishonored. Similarly cheque no. 095256 for Rs. 2 Lacs was returned by the bank as the same was dishonored. Rs. 2 Lacs were received vide cheque no. 095256 and 3 Lacs were received vide cheque no. 095259. Therefore, total amount received was only Rs. 5 Lacs which was wrongly taken as Rs. 10 Lacs by the Ld. AO.

e) Therefore, identity, genuineness and creditworthiness of the creditor are fully established. The initial burden on the assessee thus discharged, it was for the revenue to establish that the transaction was bogus. But the Ld. AO has not pointed out to any material to establish that the transactions are bogus. Hence, credit in the name of Ms. Hanisha Puri stands duly explained.

19. *The AR further filed his submissions on the remand report as under: -*

"Ms. Hanisha Puri - The Ld. AO says that the assessee has not disputed the addition of Rs. 10,00,000/- in the case of Ms. Hanisha Puri. Kindly refer to ground no. 3 of appeal where the same is clearly disputed by the appellant. Moreover, the Ld. AO has seen only deposit side of the bank account and not the withdrawal side where cheque no. 095257 for Rs. 3,00,000/-- and cheque no. 095256 for Rs. 2,00,000/- from Ms. Hanisha Puri have been shown as cheque returned (Page 54, 81, PB). Therefore, if the cheques for Rs. 5,00,000/-- were returned by the bank and fresh cheques were taken, the loan will be only Rs. 5,00,000/-- as shown in the bank account as well as balance sheet and not Rs. 10,00,000/-- as taken by the Ld. AO. The Ld. AO has nowhere disputed the figures of balance sheet and entries in the bank account. It is also mentioned in the bank account itself that the cheque for Rs. 3,00,000/- was returned due to signature difference (Page 54, PB) which is not uncommon in banking transactions. Cheques no. 095258 and 095259 for Rs. 2,00,000/- and Rs. 3,00,000/- respectively are 'also duly credited in the bank account of Shri Vikrant Puri (Page 54, PB). Hence, creditworthiness of Ms. Hanisha Puri is clearly proved beyond any shadow of doubt which has also been explained in para 3 on page no. 4 and 5 of my earlier letter dated 10/2/2011."

20. *I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by the AR as well as the position of law and the*

facts of case. I have also considered the bank accounts of Shri Vikrant Purl. The Balance sheet of the appellant indicates credit in the name of Ms. Hanisha Puri at Rs. 5 Lacs. As per ledger account, cheque no. 095257 for Rs. 3 Lacs was returned by the bank as the same was dishonored. Similarly cheque no. 095256 for Rs. 2 Lacs was returned by the bank as the same was dishonored. Rs. 2 Lacs were received vide cheque no. 095258 and 3 Lacs were received vide cheque no. 095259. Further, I find from the bank account of the appellant that Rs. 3,00,000/- - was credited in his account vide cheque no. 095257 on 05/04/2004 but the same was returned by the bank due to difference in signatures on the cheque and is duly debited in the account on 7/4/2004 due to non clearance of the cheque. Similarly, cheque no. 095256 was credited on 5/4/2004 in the bank account of the appellant with Standard Chartered Bank. The same was also not cleared and hence was returned on 6/4/2004 which is duly debited in the account. In fact, loan of Rs. 3,00,000/-- and Rs. 2,00,000/-- was received vide cheque no. 095259 and 095258 which are duly credited in the bank account with HSBC bank. Therefore, it is held that Ms. Hanisha Puri has advanced only Rs. 5,00,000/-- to the appellant and not Rs. 10,00,000/--. Since, the loan received from Ms. Hanisha Puri was Rs. 5,00,000/-- only and not Rs. 10,00,000/-, the AO should have considered only Rs. 5,00,000/--. The facts in regard to this creditor are same as in the case of her father Shri S. C. Puri. Therefore, as discussed in detail, in the case of Shri S. C.

Puri, credit of Rs. 5,00,000/-- wrongly considered as Rs. 10,00,000/-- by the AO from Ms. Hanisha Puri is also to be considered as explained.

21. Ms. Priyanka Puri - The AO has made an addition of Rs. 10,00,000/- on the same ground as in the case of credit from Ms. Hanisha Puri. The AR also argued on the same lines as in respect of credit from Ms. Hanisha Puri. The only difference is in respect of the amount of credit in regard to which the AR has argued as under: -

d) The Balance sheet of the appellant indicates credit in the name of Ms. Priyanka Puri at Rs. 5 Lacs. As per ledger account, cheque no. 095275 for Rs. 5 Lacs was returned by the bank the same was dishonored. Rs. 5 Lacs were received vide cheque no. 325357. Therefore, total amount received was only Rs. 5 Lacs which was wrongly taken as Rs. 10 Lacs by the Ld. AO."

22. The AR has further made his submissions on the remand report as under: -

"12. Priyanka Puri - The Ld. AO says that the assessee has not disputed the addition of Rs. 10,00,000/- in the case of Ms. Priyanka Puri. Kindly refer to ground no. 3 of appeal where the same is clearly disputed by the appellant. Moreover, the Ld. has seen only deposit side of the bank account and not the withdrawal side where cheque no. 095275 for Rs. 5,00,000/-- from Ms. Priyanka Puri has been shown as cheque returned (Page 54, PB). Therefore, if the cheque for Rs. 5,00,000/-- was returned by the bank and fresh cheque was taken, the loan will be only Rs. 5,00,000/-- as shown in the bank account as well as balance sheet and

not Rs. 10,00,000/-- as taken by the Ld. AO. The Ld. AO has nowhere disputed the figures of balance sheet and entries in the bank account. Cheque no. 325357 for Rs. 5,00,000/-- is duly credited in the bank account of Shri Vikrant Puri (Page 55, PB). Hence, creditworthiness of Ms. Priyanka Puri is clearly proved beyond any shadow of doubt which has also been explained in para 4 on page no. 5 and 6 of my earlier letter dated 10/2/2011.

23. I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by the AR as well as the position of law and the facts of case. I have also considered the bank accounts of Shri Vikrant Puri. The Balance sheet of the appellant indicates credit in the name of Ms. Priyanka Puri at Rs. 5 Lacs. As per ledger account, cheque no. 095275 for Rs. 5 Lacs was returned by the bank as the same was dishonored. Rs. 5 Lacs were received vide cheque no. 325357. Further, I find from the bank account of the appellant that Rs. 5,00,000/-- was credited in his account-vide cheque no. 095275 on 05/04/2004 but the same was returned by the bank due to difference in signatures on the cheque and is duly debited in the account on 7/4/2004 due to non clearance of the cheque. In fact, loan of Rs. 5,00,000/-- was received vide pay order no. 325357 which is duly credited' in the bank account with HSBC bank. The payment was received through pay order because of the problem in signature. Therefore, it is held that Ms. Priyanka Puri has advanced only Rs. 5,00,000/-- to the appellant and not Rs. 10,00,000/-. Since, the loan received from Ms. Priyanka Puri was Rs.

5,00,000/- only and not Rs. 10,00,000/-, the AO should have-considered only Rs. 5,00,000-. The facts in regard to this creditor are same as in the case of Shri S. C. Puri. Therefore, as discussed in detail, in the case of Shri S. C. Puri, credit of Rs.5,00,000/- wrongly considered as Rs. 10,00,000/- by the AO from Ms. Priyanka Puri is also to be considered as explained.

24. *Ms. Sharmila Puri - The AO has made an addition of Rs. 10,00,000/- on the same ground as in the case of credit from Ms. Hanisha Puri. The AR also argued on the same lines as in respect of credit from Ms. Hanisha Puri. The only difference is in respect of the amount of credit in regard to which the AR has argued as under: -*

"There has been some clerical mistake on the part of the accountant of the appellant. He has , mixed up a few entries of family members of Shri S C Puri. The balance sheet of the appellant indicates credit in the name of Ms. Sharmila Puri at Rs. 3 Lacs who is wife of Shri S. C. Puri while the confirmation from her indicates total credit of Rs. 5 Lacs, Rs. 3 Lacs vide cheque no. 852402 and Rs. 2 Lacs vide cheque no. 852401. This cheque bearing no. 852401 though received from Ms. Sharmila Puri yet was wrongly credited to the account of Shri S C Puri. "

25. *The AR has further made his submissions on the remand report as under: -*

"10. Sharmila Puri - The Ld. AO says that the assessee has not disputed the addition of Rs. 3,00,000/- in the case of Ms. Sharmila Puri. Kindly refer to ground no. 3 of appeal where the same is

clearly disputed by the appellant. As regards discrepancy in the conformation indicating loan of Rs. 5,00,000/- and additions for Rs. 3,00,000/-- the same has already been explained in para 5(d) on page 7 of my earlier letter dated 10/2/2011. As regards genuineness and creditworthiness, the same has been explained in para 5 on page 6 and 7 of my earlier letter dated 10/12/2011."

26. I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by the AR as well as the position of law and the facts of case. I have also considered the bank accounts of Shri Vikrant Puri. The balance sheet of the appellant indicates credit in the name of Ms. Sharmila Puri at Rs. 3 Lacs who is wife of Shri S. C. Puri while the confirmation from her indicates total credit of Rs. 5 Lacs, Rs. 3 Lacs vide cheque no. 852402 and Rs. 2 Lacs vide cheque no. 852401. This cheque bearing no. 852401 though received from Ms. Sharmila Puri yet was wrongly credited to the account of Shri S C Puri. This figure of Rs. 2,00,000/- has already been taken into account-while deciding the credit in the name of Shri S. C. Puri wherein this addition has been confirmed. Therefore, Rs. 3,00,000/-- only were credited in the name of Ms. Sharmila Puri. Since, the loan received from Ms. Sharmila Puri was Rs. 3,00,000/-- only and not Rs. 10,00,000/-, the AO should have considered only Rs. 3,00,000/--. The facts in regard to this creditor are same as in the case of her husband Shri S. C. Puri. Therefore, as discussed in detail, in the case of Shri S. C. Puri, credit of Rs. 3,00,000/-

- wrongly considered as Rs. 10,00,000/-- by the AO from Ms. Sharmila Puri is also to be considered as explained.

27. Mohit Puri - The AO has made an addition of Rs. 32,00,000/-- on account of credit in the name of Shri Mohit Puri, the brother of the appellant. The addition was made on the ground that creditworthiness is not proved. He has also mentioned that genuineness of transaction is also in doubt. The AR argued that confirmation was filed during the course of assessment proceedings. Thereafter, further documents like copy of IT return of communication from AO regarding PAN and of bank account with HSBC and Allahabad Bank were filed u/r 46A establishing the identity and genuineness and creditworthiness of the creditor. He further contended that the addition cannot be made by making an observation that genuineness is under doubt. He vehemently argued that the AO himself is not sure whether the transaction is genuine. On the basis of doubts, surmises and conjectures, addition cannot be made. He emphasized that for making an addition there has to be a definite finding and not mere suspicion. The relevant extract from his submissions is as under: -

"6) a) During the course of assessment, confirmations were filed from Shri Mohit Puri in the capacity of individual and in the capacity of Proprietor of Mohit Enterprises. The Ld. AO has made the additions of Rs. 32,00,000/- - on the ground that creditworthiness has not been established. He further observed that IT particulars have not been filed.

b) Now the assessee has filed the following documents alongwith application ulr 46A:-

i) IT Return clearly indicating name, address as 105, Kohinoor Building, Park Street, Flat No. 39, 7th Floor, Calcutta - 700016 and PAN as AFZPP0577.

ii) Copy of letter from ITO, Ward 32(2) communicating PAN to Shri Mohit Puri at the above address.

iii). Copy of bank account with HSBC bearing account no. 094-242484-006 and the local address as A-1/36, Panchsheel Enclave, New Delhi. This account clearly shows the debit of Rs. 26.5 Lacs on 251512004 vide cheque no. 011601. In fact this is a transfer entry from the bank account of Shri Mohit Puri to the bank account of the appellant. The other bank account with Allahabad Bank also shows debit of Rs. 2.50 Lacs vide cheque no. 50076 through clearing.

iv) Bank account of Mohit Enterprises with HSBC bank bearing account no. 094-242914-001 and the local address as A-1136, Panchsheel Enclave, New Delhi. This account clearly shows the debit of Rs. 3 Lac on 261512004 vide cheque no.013101 through clearing.

v) Therefore, bank accounts for total credit of Rs. 32 Lacs have been filed.

c) i) Identity of Shri Mohit Puri is established by the name, address, PAN and the fact that communication from the ITO was served on him. PAN is enough to prove the identity of a person as held by Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd.,

(2010) 45 DTR (Del) 281. It has also been held by Hon'ble ITAT Agra in the case of ITO vs. Mayur Agarwal, 133 TtJ (Agr) TM 1, that once the summons were dully served on the parties, their identity is proved. Hence, identity of Shri Mohit Puri is fully established.

ii) Genuineness of the transactions is also fully established by the fact that the transaction is duly confirmed by the creditor and the amount is received by Alc Payee cheques which are duly debited in the bank account of Shri Mohit Puri and he has confirmed the same.

iii) Creditworthiness of the creditor is also fully established by the fact that the amount is duly debited in the bank accounts of Shri Mohit Puri. This view is fully supported by the judgment of Hon'ble Delhi High Court in the case of CIT vs. Kishori Lal construction Ltd., [2010J 5 Taxmann.com 60 (Delhi) and Hon'ble ITA T Mumbai in the case of Guruprerna Enterprises vs. ACIT, ITA No. 255,256 & 257/Mum/2010 as discussed above in the case of credit from Shri S. C. Puri.

iv) The Ld. AO has mentioned on page 14 (para 10.1) of the assessment order that the genuineness of transaction is also in doubt. The additions cannot be based on doubts and have to be based on findings relying on evidences to that effect. This view is further confirmed by the Hon'ble ITAT Mumbai's latest judgment dated 7/11/2011 in the case of Guruprerna Enterprises vs. ACIT, ITA No. 255,256 & 2571/Mum/2010, page 26, para 36, the relevant extract from which is as under: -

"The addition cannot be made by making an observation that the loans do not appear to be genuine"

d) Therefore, identity, genuineness and creditworthiness of the creditor is fully established. The initial burden on the assessee thus discharged, it was for the revenue to establish that the transaction was bogus. But the Ld. AO has not pointed out to any material to establish that the transactions are bogus. Hence, credit of Rs. 32,00,000/- from Shri Mohit Puri stands duly explained. "

28. *The AR has further made his submissions on the remand report as under: -*

"8. a) Shri Mohit Puri - The Ld. AO has stated that there is a cash deposit of Rs. 7,50,000/- in the bank account of Shri Mohit Puri who has given a loan of Rs. 32,00,000/- In this connection it is submitted that it is clearly evidenced from the bank account that before giving loan of Rs. 26,50,000/- on 25/5/2004, cash of only Rs. 40,000/- was deposited on 5/5/2004, i.e., 20 days back. The balance after giving loan to the appellant was Rs. 1,24,130/- in the bank account of the creditor which is more than Rs. 40,000/- deposited in cash. Therefore, cash deposit of Rs. 40,000/- is immaterial as far as loan of Rs. 26,50,000/- is concerned. Loan of Rs. 3,00,000/- Lacs was given on 26/5/2004 out of opening balance of Rs. 4,02,000/-- and still there was balance of Rs. 1,02,000/-- after giving the loan. As regards loan of Rs. 2,50,000/-, there are some cash as well as credit entries in the bank account but the assessee is not liable to explain source of source. What is meant by the creditworthiness is the availability of funds in the hands of the creditor. The availability of funds is clearly evidenced from the bank account itself. Source of

funds in the bank account of the creditor can only be questioned in the hands of the creditors because in the case of appellant source of source cannot be questioned. This issue has been discussed in detail in para (b) (v), (vi) and (vii) on page 9 and 10 as well as para (b) on page 12 and 13 of earlier submissions dated 10/12/2011. For the sake of brevity, they are not repeated here. In any case, it is only an amount of Rs. 2,00,000/- which is involved w.r.t. cash deposit.

b) The Ld. AO further says that details of transfer entries for transaction of money from bank account of Shri Mohit Puri to Shri Vikrant Puri are not given and therefore, creditworthiness is not proved. In fact, there is only one transfer entry of Rs. 26,50,000/- where the bank account of Shri Mohit Puri itself records transfer of amount to account no. 094-242476-006 of Shri Vikrant Puri. There cannot be any better evidence for transfer entry than the records of the bank itself. As regards other loans, cheques were issued which are duly debited in the bank account of Shri Mohit Puri and credited in the bank account of Shri Vikrant Puri clearly giving even the cheque nos. Therefore, creditworthiness of Shri Mohit Puri is proved beyond any shadow of doubt. Kindly also refer to para (c) on page 8 of my earlier submissions dated 10/2/2011 in this regard.”

29. I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by the AR as well as the position of law and the facts of case. I have also considered the explanation regarding the bank accounts of Shri Mohit Puri, the creditor. As regards Identity of Shri Mohit Puri, the same is established by the name, address, PAN and the

fact that communication from the AO was served on him as discussed in respect of credit from Shri S. C. Puri The AO has stated in the Remand Report that genuineness of transaction is in doubt. He has not given any reasons for the doubts in his mind. The additions cannot be based on doubts and have to be based on definite findings relying on evidences to that effect. I agree with the AR that addition cannot be made on the basis of doubts, suspicions, surmises and conjectures. Hon'ble ITAT Mumbai has clearly upheld this ratio in the case of Guruprerna Enterprises. Moreover, genuineness of the transaction is also established by the fact that the transaction is duly confirmed by the creditor and the amount is received by Alc Payee cheques which are duly debited in the bank account of Shri Mohit Puri and he has confirmed the same. Therefore, it is held that genuineness of transaction is to be considered as established. As regards creditworthiness, from the bank accounts of Shri Mohit Puri with HSBC Bank, bearing Alc no. 094-242484-006, it is observed that before giving loan of Rs. 26,50,000/- on 25/5/2004, cash of only Rs. 40,000/- was deposited on 5/5/2004, i.e. 20 days back. The balance after giving loan to the appellant was Rs. 1,24,130/-- in the bank account of the creditor which is more than Rs. 40,000/-- deposited in cash. Therefore, cash deposit of Rs. 40,000/-- is immaterial as far as loan of Rs. 26,50,000/-- is concerned. As regards loan of Rs. 3,00,000/-- from HSBC Alc no. 094-242914-001, it is observed that this Loan of Rs. 3,00,000/- was given on 26/5/2004 out of opening balance of Rs. 4,02,000/- and still there was balance of Rs. 1,02,000/-- after giving the

loan. As regards loan of Rs. 50,000/- from Allahabad Bank bearing Alc no. 710933, it is observed that there are some cash as well as credit entries in the bank account. Before issuing cheque of Rs. 2,50,000/--, Rs. 50,000/-- was credited by clearing while Rs. 2,00,000/- was deposited in cash. However, the fact remains that the funds were available with the creditor. I have also considered the case laws like CIT vs. Taj Borewells, (2007) 291 ITR 232 (Mad), CIT vs. Diamond Products Ltd., (2009) 21 DTR (Del) 9, Jaikishan Dadlani vs. ITO, (2005) 4 SOT 138 (Mum) and Tolaram Daga vs. CIT, (1966) 59 ITR 632 (Assam) wherein it has been held that source of source cannot be examined by the AO. If the AO has any doubt about the source of cash deposit (Rs. 2,00,000/--) in the account of the creditor, it can be considered in the hands of the creditor only and not in the hands of the appellant. The AO has mentioned in the remand report that the assessee has not furnished the date and details of the corresponding entries for transfer of money from the bank account of Shri Mohit Puri to the bank account of Shri Vikrant Puri. Thus, he observed that the creditworthiness of Shri Mohit Puri is not established. In this respect it is observed that in fact, there is only one transfer entry of Rs. 26,50,000/- where the bank account of Shri Mohit Puri itself records transfer of amount t to account no. 094-242476-006 of Shri Vikrant Puri. There cannot be any better evidence for transfer entry than the records of the bank itself. As regards other loans, cheques were issued which are duly debited in the bank account of Shri Mohit Puri and credited in the bank account of Shri Vikrant Puri giving the cheque

nos. Accordingly, it is held that creditworthiness of the creditor is fairly established in respect of entries of Rs. 26,50,000/--, Rs. 3,00,000/-- and Rs. 2,50,000/--. Hence, the credit of Rs. 32,00,000/-, would stand duly explained.

30. Varun Puri - The AO has made an addition of Rs. 10,00,000/-- in respect of credit from Shri Varun Puri on the ground that creditworthiness is not proved because there is a cash deposit of Rs. 10,00,000/- three days prior to advancing the loan. He has also mentioned that the genuineness of transaction is in doubt. The AR argued that confirmation, PAN, Cheque No., Address, Bank account etc. of the creditor have been filed during the course of assessment proceedings establishing identity, genuineness and creditworthiness of the creditor. Relevant extract from his written submissions are as under:

"7) a) During the course of assessment proceedings, in respect of credit of Rs. 10,00,000/- from Shri Varun Puri, the appellant filed confirmation, PAN, IT Return and bank statement before the AO. However he made the addition on the ground that credit worthiness is not proved. In this connection following is submitted: -

- i) Confirmation filed clearly indicates the date of transaction, PAN, cheque no. and amount of transaction (Rs. 10,00,000/-)*
- ii) IT Return clearly indicates name, address as 105, Kohinoor Building, Park Street, Flat No. 39, 7th Floor, Calcutta - 700016 and PAN as AHPPP1216K.*

iii) *Copy of bank account with Standard Chartered Bank, Greater Kailash, New Delhi, bearing account no. 521-1-012448-7 and the local address as B-64, Greater Kai/ash-I, New Delhi - 110048 was filed. This account clearly shows the debit of Rs. 10 Lacs on 241512004 vide cheque no. 480582 through clearing.*

b) i) *Identity of Shri Varun Puri is established by the name, address, PAN and confirmation. PAN is enough to prove the identity of a person as held by Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd., (2010) 45 DTR (Del) 281.*

ii) *Genuineness of the transactions is also fully established by the fact that the transaction is duly confirmed by the creditor and the amount is received by Alc Payee cheque which is duly debited in the bank account of Shri Varun Puri and he has confirmed the same.*

iii) *Creditworthiness of the creditor is also fully established by the fact that the amount is duly debited in the bank account of Shri Varun Puri. This view is fully supported by the judgment of Hon'ble Delhi High Court in the case of CIT vs. Kishori Lal construction Ltd., [2010J 5 Taxmann.com 60 (Delhi) and Hon'ble ITAT Mumbai in the case of Guruprerna Enterprises vs. ACIT, ITA No. 255,256 & 2571Mum12010, as discussed above in the case of credit from Shri S. C. Puri.*

iv) *The Ld. AO has mentioned on page 15, para 12.1 that the genuineness of transaction is in serious doubt. The additions cannot be based on doubts and have to be based on findings relying on evidences to that effect. This view is further confirmed by the Hon'ble ITAT*

Mumbai's latest judgment dated 7/1/2011 in the case of Guruprerna Enterprises vs. ACIT, ITA No. 255,256 & 2571Mum12010, page 26, para 36, the relevant extract from which is as under: -

"The addition cannot be made by making an observation that the loans `do not appear to be genuine"

v) The Ld. AO has also observed that in the bank account of Shri Varun Puri there is a cash deposit of Rs. 10 Lacs three days prior to advancing the loan. In this regard it is submitted that the appellant does not have any mechanism to explain the source of source. The appellant has fully established that the amount was received from Shri Varun Puri who has also owned up the transaction by filing confirmation. Therefore, the primary onus cast on the appellant is discharged. In this connection reliance is placed on the judgment of Hon'ble MP High Court in the case of CIT vs. Metachem Industries, 245 ITR 160, relevant extract from which is reproduced hereunder: -

"4.....once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is responsibility of that individual to account for the investment made by him. If that person owns that entry, then, the burden of the assessee firm is discharged. It is open for the

AO to undertake further investigation with regard to that individual who has deposited this amount."

vi) *Similarly Hon'ble Bombay High Court, in the case of Orient Trading Co. Ltd. vs. CIT, (1963) 49 ITR 723 (Bom), has held as under: -*

"Cash credit-Burden of proof-When the entry stands in the name of a third party and the assessee establishes the identity of the creditor and produces evidence showing that the entry is not fictitious, initial burden lying on the assessee stands discharged; the burden shifts on to the Revenue to show that the entry represented assessee's suppressed income-Cash credit, in the facts and circumstances of the case, could not be treated as assessee's undisclosed income"

vii) *The Ld. AO has further held that the assessee has routed his unaccounted income through the bank account of Shri Varun Puri. The observation is purely based on surmises and conjectures as he has not brought any material on record to establish that it is the assessee's money which was deposited in the bank account of Shri Varun Puri. The onus is on the revenue to establish the same. Reliance is placed on the following case laws, the relevant extracts from which are reproduced hereunder for ready reference: -:-*

ITO vs. Smt. Bibi Rani Bansal, (2010) 133 TTJ (Agra) (TM) 394,

"Assessee having submitted copies of contract notes, bills, share certificates along with details of demand draft issued from the account of the broker to substantiate the sale of shares made by her, and the AO having failed to establish that the assessee had introduced her own unaccounted money in the shape of sale proceeds of shares, the transaction of sale of shares cannot be treated as non-genuine"

Aravali Trading Co. vs. I TO, (2008) 220 CTR (Rai) 622

"Once the existence of the creditors is proved and such persons own the credits which are found in the books of the assessee, the assessee's onus stands discharged and the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him and, therefore, addition under s. 68 cannot be sustained in the absence of anything to establish that the sources of the creditors' deposits flew from the assessee itself. "

CIT vs. Value Capital Services (P) Ltd., (2008) 307 ITR 334 (Del)

"Income-Cash credit-Share application money-CIT(A) accepted the existence of the applicants-It is very difficult for the assessee to show the creditworthiness of strangers-Revenue has not shown that the applicants did not have the means to make the investment and that such investment actually emanated from the coffers of the assessee company-Addition rightly deleted by the Tribunal-No substantial question of law arises. "

c) Therefore, identity, genuineness and creditworthiness of the creditor is fully established. The initial burden on the assessee thus discharged, it was for the revenue to establish that the transaction was bogus. But the Ld. AO has not pointed out to any material to establish that the transactions are bogus. Hence, credit of Rs. 10,00,000/- from Shri Varun Puri stands duly explained. "

31. The AR further argued that by now it is judicially settled that the appellant cannot be asked to explain the source of source. It is also judicially settled that if the revenue has any doubt about the genuineness of the source of funds in the hands of the creditors, addition could have been made in the hands of creditors and not the assessee. For this he relied on various case laws as under: -

CIT vs. Diamond Products ua.. (2009) 21 DTR (Del) 9

"AO is not permitted to examine the source of the source once the assessee is able to establish that the transaction with his creditor is genuine and the identity and creditworthiness of the creditor have been established. "

CIT vs. Taj Borewells, (2007) 291 ITR 232 (Mad)

"Income-Cash credit-Genuineness-Assessee firm did not maintain any books of account-It has shown the capital contributions of the partners in the P&L alc and balance sheet-P&L alc and balance sheet are not books of account as contemplated under the provisions of the Act-Further, explanation offered by the assessee firm has not been rejected by the AO-AO cannot ask the assessee to prove the source of a source-If

the AO doubted the genuineness of the source of the partners, he could have made additions in the hands of the partners only and not in the hands of the firm- Addition under s. 68 was not therefore sustainable"

Jaikishan Dadlani vs. ITa, (2005) 4 SOT 138 (Mum)

"Income from undisclosed sources-Cash credit-Genuineness-While examining applicability of s. 68, source of source cannot be investigated-Factum of borrowing and identity of creditor not being in doubt, no addition could be made under s. 68"

Tolaram Daga vs. CIT, (1966) 59ITR 632 (Assam)

"Income from undisclosed sources-Burden of proof-Cash credit found in the books of firm in which assessee is a partner in the name of assessee's wife-Wife, claiming the money as belonging to her and as having been deposited by her-Genuineness and regularity of the accounts not challenged-u/s. 34, Evidence Act, the accounts are prima facie proof of correctness of entry and the entry is prima facie proof of deposit of money by the person in whose name it stands-Assessee cannot be attributed the knowledge of source of the amount under section 106 of Evidence Act merely because he happens to be the husband of the depositor-Burden of proof about source of the amount of deposit cannot be placed on the firm or the partners-Amount could not be treated as undisclosed income of assessee. "

32. I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by the AR as well as the position of law and the facts of case. I have also considered the bank accounts of Shri Varun

Puri, the creditor. Identity of the creditor is established as discussed in detail in the case of Shri S. C. Puri. Genuineness is also established as discussed in detail in the case of Shri Mohit Puri. As regards creditworthiness, the fact remains that the funds were available with the creditor. I have also considered the case laws like CIT vs. Taj Borewells, (2007) 291 ITR 232 (Mad), CIT vs. Diamond Products Ltd., (2009) 21 DTR (Del) 9, Jaikishan Dadlani v ITO, (2005) 4 SOT 138 (Mum) and Tolaram Daga vs. CIT, (1966) 59 ITR 632 (Assam) wherein it has been held that source of source cannot be examined by the AO. If the AO has any doubt about the source of cash deposit in the account of the creditor, it can be considered in the hands of the creditor only and not in the hands of the appellant. I have also considered the judgment of Hon'ble MP High Court in the case of CIT vs. Metachem Industries, 245 ITR 160 wherein it has been held that once it is established that the amount has been invested by a particular person, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. If that person owns that entry, then, the burden of the assessee firm is discharged. Accordingly, in the case of the appellant also, primary onus has been discharged by the appellant and now the onus gets shifted on the AO to prove that credit is bogus which he failed to do. Therefore, in view of the legal position as discussed above, the credit of Rs. 10,00,000/- is to be considered as explained.

33. *Neelam Mohan* - The AO has made an addition of Rs. 15,00,000/- in respect of credit from Ms. Neelam Mohan. The AR has stated that no credit was received from Ms. Neelam Mohan during the year. Since, the AO has not disputed the claim of the appellant in spite of the fact that a copy of the submissions were forwarded to him for his comments, the addition is treated as null and void.

34. *Shri Ashish Kohli and MIs Design One* - The AO has also added Rs. 15,00,000/- on account of alleged unexplained credit in the name of Shri Ashish Kohli and Rs. 7,20,000/- in the name of MIs Design One of which Shri Ashish Kohli is the Proprietor. The AR has argued as under: -

"The address of Shri Ashish Kohli is as under: -

Shri Ashish Kohli

Proprietor M/s Design One,

R/O Kothi no. 894, Section 17B, HUDA

Gurgaon, Haryana"

Copy of Pay-in slip has been filed u/r 46A which indicates that amount of Rs. 7,20,000/-- was received from M/s Design One vide cheque no. 020201 drawn on HSBC Bank, DLF-I, Mehrauli Gurgaon Road, Delhi. Similarly another copy of Pay-in slip has also been filed u/r 46A which indicates that amount of Rs. 15,00,000/- was received from Shri Ashish Kohli vide cheque no. 0042094 drawn on HSBC Bank. The confirmation along with other documents were misplaced in the appellant's office and that's why they could not be filed. Since now the appellant is not in good terms with Shri Ashish Kohli, he has refused to cooperate. It is therefore,

requested that enquiries may kindly be made directly from the creditor at the cost of the appellant. It is beyond the control of the appellant to obtain any document from the creditor. The appellant does not have any authority to enforce compliance by the creditor of the requirements by the department. The Revenue Authorities have all the powers to enforce the production of necessary documents from anybody and everybody including the personal attendance. In fact, loan of Rs. 15 lacs was taken on 9/2/2005 and returned on 16/2/2005 through Alc Payee cheques only. Ledger account of Andhra Bank in the books of the appellant along with bank statement were filed before the Ld. AO but he ignored the same. The bank statement clearly indicates that Rs. 15 Lacs were received vide cheque no. 0042094 and were paid back to Shri Ashish Kohli on 16/2/2005 vide cheque no. 0980913. Similarly ledger account of Standard Chartered Bank indicates receipt of Rs. 7.02 Lacs from M/s Design One which was outstanding as on 31st March, 2005 as indicated in the balance sheet. Since the credits are genuine, the addition may kindly be deleted. In case of any doubt about the genuineness or creditworthiness, summons or commission u/s 131 may kindly be issued to Shri Ashish Kohli at our cost for verification of the credits in the interest of natural justice."

35. I have considered the AO's order, the AR's submissions, the remand report and the rejoinder by the AR as well as the position of law and the facts of case. From the perusal of the document, it is found that amount of Rs. 7,20,000/- was received from M/s Design One vide cheque no.

020201 drawn on HSBC Bank, DLF-II, Mahrauli Gurgaon Road, Delhi. Similarly, Rs. 15 Lacs were received vide cheque no. 0042094 drawn on HSBC Bank and were paid back to Shri Ashish Kohli on 16/2/2005 vide cheque no. 0980913. Both the transactions were through proper banking channel. No evidence or other incriminating document was either found or seized during the course of search to suggest any non genuineness of such transaction. The appellant had to this extent discharged his onus to explain the fact of receipt of credits which the AO failed to rebut otherwise. Therefore, as discussed in paras above, no addition could have been made and hence this addition is also hereby deleted. Therefore, in view of the above findings, Ground no. 3 is allowed.”

10. After going through the Order of the Ld. CIT(A), we find that Ld. CIT(A) has elaborately discussed the issue in dispute in coming to his conclusion in deleting the impugned additions, we do not find any flaw or infirmity to take a contrary decision.

101. Even otherwise, we also find that the issue in dispute is also covered by the decision of the Hon'ble High Court in the case of CIT(Central)-III vs. Kabul Chawla in ITA No. 707, 709, 713/Del/2014 wherein the Hon'ble High Court has held that if the additions are made, but not based on any incriminating material found during search operation, then these additions were not sustainable in the eyes of law. For the sake of clarity, we also reproducing the relevant para no. 37 & 38 of the judgment as under:-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the

aforementioned ITA Nos. 707, 709 and 713 of 2014 of decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six Ays immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an ITA Nos. 707, 709 and 713 of 2014 of assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

10.2 We further find that the Hon'ble High Court in the case of CIT vs. Jakson Engineers Ltd. vide order dated 7.12.2015 reported in 2015-TIOL-2789-HC-DEL-IT has dealt the similar issue wherein the decision of the Hon'ble High Court in the case of CIT vs. Kabul Chawla (Supra) was discussed and followed.

10.3 After going through the impugned order as well as the case laws cited by the Ld. CIT(A) in the impugned order and the case law in the case of CIT vs. Kabul Chawla (Supra) and CIT vs. Jakson Engineers Ltd. (Supra), we are of the considered view that the assessment /reassessment proceedings u/s. 153A of the I.T. Act, can be based only on incriminating material found during the course of search. As per record, the AO is not based upon incriminating material/ documents found in the search operations. Therefore, the additions made by the AO is not sustainable in the eyes of law. Thus, the Ld. CIT(A) has rightly adjudicated the issue in favour of the Assessee and against the Revenue. Respectfully, following the various decisions of the Hon'ble High Court and the Tribunal mentioned in the impugned order and also respectfully following the decisions of the Hon'ble Jurisdictional High Court in the cases of CIT vs. Kabul Chawla (Supra) and CIT vs. Jakson Engineers Ltd. (Supra), we uphold the well reasoned order passed by the Ld. CIT(A) and dismiss the ground no. 3, 4 & 5 raised in the Revenue's Appeal.

11. **Apropos ground no. 6 relating to deletion of addition of Rs. 27,02,471/- received as gift from M/s International World Wide** as the identity and creditworthiness of the donor has not been analysed by the CIT(A) is concerned, we find that an amount of Rs. 27,02,471/- was found credited in

the books of account of the assessee and the same was reflected in the nature of “gift” received during the relevant period under consideration. We also find that it is on record that the said gift was received from one party namely, M/s International Worldwide which was stated to be owned by one time close family friend, Mr. Dikshant Sakhuja, of the assessee. It was also seen that the said friend of the assessee also made a gift in the previous financial year to his father, Mr. Vinay Puri. The fact of the gift was disclosed in the books of account, capital account and statement of affairs already filed by the assessee with the AO. The said amount was shown to have been received through normal banking channels and stood reflected and disclosed prior to the search. No evidence or other incriminating document was either found or seized during the course of search to suggest any non-genuineness of such transaction. The assessee had discharged his onus to explain the fact of receipt of such gift which the AO failed to rebut otherwise. Therefore, Ld. CIT(A) has rightly deleted the additions in dispute, which in our opinion needs no interference on our part, hence, we uphold the same and dismiss the ground no. 6 raised by the Revenue.

12. **Apropos ground no. 7 relating to deletion of addition of Rs. 51,000/- received as a gift from Sh. Rajesh Mohan,** is concerned, we find that the gift of Rs. 51,000/- was given on the occasion of marriage, it is not taxable u/s. 56. Since, the facts about the creditworthiness are same as in the case of Mr. Varun Puri, creditworthiness of the donor is considered as established as discussed in detail in respect of credit from Sh. Varun Puri, accordingly, Ld. CIT(A) has rightly deleted the addition and treated the same as

explained. In our considered opinion, the Id. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, we uphold the same and dismiss the ground no. 7 raised by the Revenue in its appeal.

ITA NO. 3376/DEL/2011 (AY. 2006-07)

13. The ground no. 1 & 6 are general. With regard to ground no. 2 to 5 are concerned, following our consistent view taken in ITA no. 3375/Del/2011 (AY 2005-06), as aforesaid, the ground no. 2 to 5 also stand dismissed and accordingly, the ITA No. 3376/Del/2011 (AY 2006-07) also stand dismissed.

14. In the result, both the Revenue's Appeals stand dismissed.

Order pronounced in the Open Court on 30/03/2016.

Sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 30/03/2016

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,

ASSITANT REGISTRAR
