

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES , JAIPUR

श्री भागचन्द, लेखा सदस्य एव श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 1056/JP/2016
निर्धारण वर्ष/Assessment Year: 2013-14

The ACIT Central Circle-1 Jaipur	बनाम Vs.	M/s. Harsh Macro Buildhome Pvt. Ltd (formerly known as M/s. World Buildhome Pvt. Ltd) 28-289, Mahaveer Nagar, Durgapura, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECN 1993 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by:Shri Varinder Mehta, CIT - DR
निर्धारिती की ओर से/ Assessee by: Shri S.R. Sharma and
Shri R.K. Bhatra, CA

सुनवाई की तारीख/ Date of Hearing : 20/09/2017
घोषणा की तारीख/ Date of Pronouncement : 27 /09/2017

आदेश / ORDER

PER BHAGCHAND, AM

The Revenue has filed an appeal against the order of the Id.
CIT(A)-4, Jaipur dated 14-09-2016 for the assessment year 2013-14
raising therein following grounds:-

(1) Whether on the facts and in the circumstances of the case, the Id. CIT(A) was right in entertaining additional evidence u/s 46A of the I.T. Rules wherein the fact is that during the assessment proceeding sufficient opportunity was given to the assessee to prove the genuineness, identity and creditworthiness of the depositors.

(2) Whether on the facts and in the circumstances of the case, the ld. CIT(A) was right in deleting the addition of Rs. 10,48,91,135/- made by the AO u/s 68 of the I.T. Act, 1961.”

2.1 Apropos Ground No. 1 and Ground No. 2 of the Revenue, the facts as emerges from the order of the ld. CIT(A) are as under:-

Ground No.1 – Additional evidence u/r 46A)

2.1.3 I have duly considered AO's remand report, assessee's submission and rejoinder filed. The additional evidences so filed for the first time during the appellate proceeding are vital and of prime importance for adjudication of this appeal. It is pertinent to mention here that A.O. issued show cause letters to loan creditors on 17/3/2015, however they could not comply within stipulated deadline, accordingly AO passed the order on 31/3/2015. Now I find that there are sufficient reasons beyond their control, which prevented from placing those documentary evidences before the AO during assessment proceedings because very short time was allowed for compliance. It is also submitted that during the stipulated time, the required documents/details from available loan creditors could not be received as loan creditors were having their principal officer away from Jaipur except loan creditor Smt. Prabha Saxena who filed some documents directly to AO but none of the remaining loan creditors could file to A.O. or send to the assessee company said required documents etc. Therefore assessee was prevented with sufficient cause to adduce required evidences before Ld. A.O. in allowed time. Now, vide additional evidences under Rule 46A assessee filed documentary evidences pertaining to immediate source of fund, identity of creditors, credit worthiness of loan creditors & genuineness of transactions, therefore, for the sake of adjudication and duly following the principles of natural justice, these evidences are allowed to be placed on record u/s 46A of the IT Rules, 1962.”

Ground No. 2 – Deletion of addition of Rs. 10,48,81,135/- made by the AO u/s 68 of the Act.

3.1.2 I have duly considered assessee's submission and carefully gone through assessment order. I have also take a

note of factual matrix of the case as well as applicable case laws relied upon. A.R. of the assessee also referred enclosed documents from the paper book to support his contention that burden upon the assessee to prove the genuine credits have been discharged. It is well settled law that burden is upon the assessee u/s 68 of the I.T. Act, 1961 to prove identity of the creditors, their creditworthiness and genuineness of the transaction. Here I find that in this case, the assessee has filed documentary evidences to support the genuineness of the credits. Further on careful perusal of the assessment order and remand report submitted by the AO, it is seen that the AO has not been able to show that the assessee had made no efforts to produce relevant details of loan creditors or creditors before the AO. In this case, transactions were through cheques which are easily verifiable from the bank statements produced in the remand proceedings. There are sufficient causes for not furnishing the relevant details before the AO during the assessment proceeding. The additional evidences produced in the remand proceedings u/r 46A of the I.T. Rules, 1962 have already been admitted. The details so furnished by the assessee to prove its contentions are as under:-

(i).Smt. Prabha Saxena

(a) confirmation letter

(b) Acknowledgement letter filed by loan creditor to the AO.

© Brief note on business activity carried out by loan creditor

(d) Copy of ledger account of appellant in the books of loan creditor.

(e) Copy of return of income, computation of total income, balance sheet, profit & loss account and audit report of loan creditor for the year.

(f) photocopy of PAN card of Smt. Prabha Saxena

(g) Copy of net worth certificate.

(ii) M/s. Gemini Commerce Pvt. Ltd.

(a) Confirmation letter

- (b) Photocopy of Pan Card
- (c) Computation of total income.
- (d) Copy of audit report alongwith audited financial statements for the A.Y. 13-14.
- (e) Copy of bank statement of M/s. Gemini Commerce Pvt Ltd.
- (f) Copy of annexure of loans and advances given by M/s. Gemini Commerce Pvt. Ltd
- (g) Copy of challan to view public document on ROC website.
- (h) Copy of Bank statement of M/s. Harsh Builhome Pvt.Ltd.

(iii) M/s. Gurukripa Trademart Pvt. Ltd.

- (a) Confirmation letter.
- (b) Copy of certificate of incorporation
- (c) Copy of audit report and financial statements
- (d) Copy of Bank Statement to M/s. Harsh Buildhome Pvt. Ltd.

From the above, It is seen that the loan creditors who filed their respective I.T. returns, are assessed to tax and holds valid PAN No. and in case of company they are registered with Registrar of Companies and their name appears in ROC record. Further, the loan creditors complied to the notice u/s 133 (6) sent by the A.O. by sending their explanation supported with evidence. The loan creditors have also submitted the nature of immediate source of loan provided. But the A.O. however, further desires to find the veracity of source stated for loan provided by loan creditors to assessee company or raised quarries such as 'Why is company engaged in the business of lending money to other persons' " But it is also a fact that A.O. has not made any further enquiry to disprove assessee's contention. Mere raising doubt will not suffice. From the above, it is also seen that assessee has filed confirmation from creditor, PAN, cheque transaction supported by copy of bank account and that similar loan was treated as genuine in the A.Y. Here in this case, A.O. should have proved beyond doubt that the loan creditors were not

able to explain its source of deposit or advancing loan to the assessee through genuine source. It is fact and requirement of the Law that the primary onus always lies on the assessee to prove the nature and source of credits in its account. It is necessary for the assessee to prove prima facie the identity of his creditors, the capacity of such creditors to advance the money and lastly the genuineness of the transactions. Only when these things are not proved by the assessee prima facie and only after the assessee has not adduced evidence to establish the aforesaid facts does the onus shift on to the Revenue, It is well settled law that burden is upon the assessee to prove ingredients of section 68 of the Act by proving identity and creditworthiness of the creditors and genuineness of the transactions. Therefore, once the assessee has been able to prove the creditworthiness of the creditors who were having sufficient income to advance money in form of loan to the assessee, A.O. cannot make any addition u/s 68 of the Act. Apart from this, A.O. in respect to unsecured loan of Rs. 86,13,865/- advanced by M/s Gemini Commerce Pvt. Ltd. To M/s Harsh Share Portfolio Pvt. Ltd. In the same year while simultaneously completing assessment of said company accepted the unsecured loan as explained while the unsecured loan from same company in same assessment year as held unexplained in case of assessee company, which is not correct proposition of law. Further, decisions of Hon'ble Rajasthan High Court in case of Kanhaiyalal Jangid (supra) and Mangilal Agarwal (supra) are directly in favour of assessee. The other case laws relied upon by the assessee also support assessee's contention.

Therefore, in view of facts and circumstances of the case as discussed above, addition of Rs. 10,48,91,135/- made u/s 68 of the Act is hereby deleted. Assessee's appeal in Gr. No. 1 stands allowed”

2.2 During the course of hearing, the ld. DR supported the order of the AO.

2.3 During the course of hearing, the ld.AR of the assessee supported the order of the ld. CIT(A) and filed the following written submission on the respective grounds raised by the Revenue.

“Submission of Assessee

The assessee company relies on appeal order of CIT (A). The groundwise submissions are made as under:-

Ground No. 1

Whether on the facts and in the circumstances of the case the CIT (A) was right in entertaining additional evidence u/r 46 of the I.T. Rules, wherein, the fact is that during the assessment proceedings sufficient opportunity was given to assessee to prove the genuineness, identity and creditworthiness of the depositors.

The assessee company during the year taken loan from following three persons: -

(i)	Smt. Prabha Saxena	Rs.	4,98,20,000/-
(ii)	M/s. Gurukripa Trademart Pvt. Ltd.	Rs.	1,70,00,000/-
(iii)	M/s Gemini Commerce Pvt. Ltd.	Rs.	3,80,71,135/-
		Rs.	<u>10,48,91,135/-</u>

The assessee during assessment proceedings filed confirmation in support of advancing unsecured loans to company from those persons before Ld. A.O. The Ld. A.O. much thereafter issued a show cause notice on 17-03-2015 (assessment completed on 31-03-2015) to assessee to explain satisfactorily the nature & source of all the sums credited in its books of accounts in the name of above three persons and to establish credit worthiness of these persons. The assessee thereafter asked loan creditors to sent to assessee company or direct to A.O. the supporting documents such as copy of PAN, ITR acknowledgement, copy of Balance Sheet and Bank Statement etc. but due to short time allowed the required documents/details from available loan creditors could not be received in time by assessee as loan creditors were having their principal office away from Jaipur and so except loan creditor Prabha Saxena who filed some documents directly to A.O. none of the remaining loan creditors could file

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required details/documents in time to A.O. or send to the assessee company said required documents etc. The assessee company for filing those documents was wholly dependent on loan creditors who supplied them late

It was on the above facts it was contended before CIT (A) that assessing company was prevented from sufficient cause to adduce evidences before Ld. A.O. in allowed time and, therefore it was prayed that additional evidences submitted by assessee company now may kindly be admitted u/s 46A (1) & also under powers vested in your honour u/s 46A (4) of I. T. Rules, 1962 and u/s 250 of I. T. Act, 1961.

The Ld. CIT (A), thereafter forwarded a letter to AO (reproduced on page 2 – 3 of appeal order) stating *“During the assessment proceedings in compliance to the notice issued on 12.03.2015, assessee could not produced relevant details/particulars of loan creditors so as to prove their identity, creditworthiness and genuineness of transactions because there principal officers were away from Jaipur. Because of these facts, assessee could not produce those relevant documents before the A.O. I find that assessee was prevented with sufficient cause to adduce required documentary evidences before the A.O. within stipulated dead line. Accordingly, you are directed to call for following evidences and then carry out necessary investigation/inquiry so as to prove the identity, source of fund, genuineness of transactions and creditworthiness of loan creditors Smt. Prabha Saxena (Rs. 4,98,20,000/-) M/s Guru Kripa Trade Mart Pvt. Ltd. (Rs. 1,70,00,000/-) & M/s Gemini Commerce Pvt. Ltd. (Rs. 3,80,71,135/-).*

- a) *Proof of identity*
- b) *Copy of PAN*
- c) *Copy of ITR Acknowledgement*
- d) *Copy of Balance Sheet & P & L account for the year relevant to A.Y. 2013-14.*
- e) *Copy of bank statement showing immediate sources of the fund meant for advancing loan to assessee company.*
- f) *Confirmation of accounts as maintained by loan creditor which is duly authenticated.*

[3] Further you may also furnish additional documentary evidences to rebut assessee contention. Please treat this as requirement of remand report required under rule 46A, accordingly, you are required to call for aforementioned documents, carry out necessary investigation and submit your report by 2nd August, 2016”

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The CIT (A) on receiving the remand report and after obtaining the rejoinder thereon from assessee company gave following finding in para 2.1.3 on page 9 of appeal order which reads as under: -

“I have duly considered AO's remand report, assessee's submission and rejoinder filed. The additional evidences so filed for the first time during the appellate proceeding are vital and of prime importance for adjudication of this appeal. It is pertinent to mention here that A.O. issued show cause letters to loan creditors on 17/3/2015, however they could not comply within stipulated deadline, accordingly AO passed the order on 31/3/2015. Now I find that there are sufficient reasons beyond their control, which prevented from placing those documentary evidences before the AO during assessment proceedings because very short time was allowed for compliance It is also submitted that during the stipulated time, the required documents/details from available loan creditors could not be received as loan creditors were having their principal officer away from Jaipur except loan creditor Smt. Prabha Saxena who filed some documents directly to AO but none of the remaining loan creditors could file to A.O. or send to the assessee company said required documents etc. Therefore assessee was prevented with sufficient cause to adduce required evidences before Ld. A.O. in allowed time. Now, vide additional evidences under Rule 46A assessee filed documentary evidences pertaining to immediate source of fund, identity of creditors, credit worthiness of loan creditors & genuineness of transactions, therefore, for the sake of adjudication and duly following the principles of natural justice, these evidences are allowed to be placed on record u/s 46A of the IT Rules, 1962.”

Thus Ld. CIT (A) on the facts of the case in accordance with rule 46A of I. T. Rules and after following proper procedure of law rightly allowed and admitted the additional evidence.

The power of CIT (A) to make further enquiry under Sub section (4) of section 250 includes the power to admit fresh and additional evidence. That discretion is regulated by rule 46A. The rule provides that the appellant shall not be entitled to produce any evidence whether oral or documentary before the CIT (A) which was not produced in the course of assessment proceedings before the A.O. except in specified circumstances given in rule 46A. In the case of *Prabhawati Vs. CIT 231 ITR 1* and in case of *CIT Vs. K. Ravindran 265 ITR 217* that the implications of the word 'entitled' in rule 46A are that (i) the appellant has a right to produce additional evidence in the circumstances specified in the rule, and (ii) the appellant may be permitted to produce additional evidence in a fit case which falls outside the specified circumstances. The rule further provides that the

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CIT (A) shall not admit additional evidences unless he has recorded his reason for admitting it, and that he shall not take into account such evidence, unless the A.O. has been allowed a reasonable opportunity to examine it and to produce evidence in rebuttal thereof. The rule specifically provides that nothing contained in it shall affect the power of the CIT (A) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal; he should exercise this power judicially and should make enquiry where facts so demand. It will be noticed from appeal order that the Ld. CIT (A) has completely followed the said law and required procedure while admitting additional evidences filed by assessee company u/r 46A and hence the same is correct in law.

It is thus submitted that order of CIT (A) admitting the additional evidence u/r 46A is just, correct and in accordance with law which may kindly be upheld. The ground of appeal raised by department has no merit which deserves to be dismissed.

Ground No. – 2

Whether on the facts and in the circumstances of the case the CIT (A) was right in deleting the addition of Rs. 10,48,91,135/- made by the assessing officer u/s 68 of the Income-tax Act.

It was submitted by assessee to CIT (A) that examination of documents submitted before him completely establish the identity, genuineness and credit worthyness of the amount advanced by the said unsecured loan creditors credited in the books of assessee company. We may submit that the Ld. A.O. in respect to unsecured loan of Rs. 86,13,865/- advanced by M/s Gemini Commerce P. Ltd. to Harsh Share Portfolio P. Ltd. in the same year and while simultaneously completing assessment of said company accepted the unsecured loan as explained while the unsecured loan from same company in same assessment year is held unexplained in case of assessee company. The Ld. A.O. has wrongly sought to invoked provisio to Section 68 of I.T.Act, 1961 but it is submitted that the same is inapplicable in case of assessee company as it applied only to the “sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called”. Thus provisio applies only to share capital etc. and not to unsecured loans. The Ld. A.O. held that income returned by loan creditors are low as per details given in assessment order and only by taking the said reason the A.O. held that, therefore creditworthiness of loan creditors are not satisfactorily explained. It is submitted that it is not a correct proposition in law.

It is submitted that from the remand report sent by Ld. A.O. it is evident that the assessee filed confirmations of creditors, the loans

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are through account payee cheques verifiable for Bank statement of both the parties. The loan creditors maintains books of accounts wherein transaction of loan given appears and loan is appearing therein and is verifiable from Balance Sheet of relevant year of the loan creditors. The loan creditors have filed their respective I.T. returns are assessed to tax and holds valid PAN No. and in case of company they are registered with Registrar of Companies and their name appears in ROC record. The loan creditors complied the notice u/s 133 (6) sent by Ld. A.O. and sent their explanation supported with evidence. The loan creditors have also submitted the nature of immediate source of loan provided. The Ld. A.O. however, further desires to find the veracity of source stated for loan provided by loan creditors to assessee company or raised queries such as 'Why is company engaged in the business of lending money to other persons'. It is submitted that for judging the identity, genuineness and credit worthiness of loan creditor all necessary documents were furnished by assessee and examined by Ld. A.O. The assessee cannot be required to explain or know the veracity of source explained by loan creditor for judging its credit worthiness which is not necessary for explaining the credits in terms of Section 68 of I.T. Act, 1961. The Ld. A.O. is therefore not correct in law to hold that credit worthiness and genuineness of the three loan creditors, Smt. Prabha Saxena, M/s Gurukripa Trade Mart P. Ltd. and Gemini Commerce P. Ltd. remains unverified.

The assessee firm submits that it has submitted confirmation with complete address & P.A. No. from all loan creditors and other supporting documents such as copy of PAN card, ITR acknowledgement, copy of Balance Sheet etc. and loans were received through account payee cheques and so genuineness of transaction are proved and the credits are satisfactorily explained. Hon'ble Rajasthan High Court in the case of Mangilal Agarwal v/s ACIT 300 ITR 372 has held that once assessee point out depositor from whom he has received money who has owned advancement of money to the assessee then the further enquiry into source cannot result in invoking provisions of S.68 of I.T. Act unless the existence of the person in whose name credit entry is found is not proved or he disowns having made such deposit. But once creditor is proved and existing as well as he admits having lent the money, money cannot be considered as assessee's income unless the revenue established by some evidence that it really followed directly from assessee himself. Similarly, Hon'ble Rajasthan High Court in another case of Kanhiyalal Jangid v/s ACIT 217 CTR 354 has held that while it was assessee's burden to furnish explanation regarding cash credit but this burden does not extend beyond proving the existence of the creditor and further proving that such creditor owns to have advanced amount credited in the accounts of assessee. However, burden does not go beyond to put

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assessee under an obligation to further prove that where from creditor has got or procured the money to be deposited or advanced to the assessee. The fact that explanation furnished by creditor about source from where he procured the money to be deposited or advanced to the assessee is not relevant for the purpose of rejecting explanation furnished by assessee and to make addition of such deposit as income from undisclosed source u/s 68 of O.T. Act unless it can be shown by department that source of such money comes from assessee himself or such source could be treated of assessee himself. The fact that explanation furnished by creditor about source of advancing loan has not been accepted by revenue authority cannot lead to any presumption that source of such advance by creditor emanated from assessee. Such view has also been accepted by ITAT Jaipur Bench in the case of Raj Kumar Mehta v/s ITO Ward 3 Sikar in ITA No. 935/JP/08 dated 29.08.2008 and recently in case of I.T.O. Vs. Ratan Kanwar ITA No. 334/JP/2014 order dated 16-06-2017.

In following cases the different High Courts and ITAT Benches has held as under: -

CIT V. Anurag Agarwal [2015] 54 taxmann.com 75/229 Taxman 532 (All.)- Where in respect of credit entries, the assessee established identity of creditors by bringing on record their PAN and complete addresses and, moreover, transaction was made through proper banking channel, impugned addition made under section 68 was to be set aside.

Asstt. CIT V. Sanjay M. Jhaveri [2015] 61 taxmann.com 28/70 XOT 502/168 TTJ 751 (Mum.) -During assessment proceedings, the Assessing Officer found that the assessee had taken unsecured loans. He observed that the assessee had filed only confirmation letters and same could not prove creditworthiness of persons advancing loans. Accordingly, entire loan amount was assessed as his unexplained cash credit. The Commissioner (Appeals) held that the assessee had furnished necessary confirmations from all parties which were duly supported by their respective bank account statements, copies of acknowledgement of returns of income filed, balance sheets etc; all transactions were found recorded in contra bank account statements of the assessee as well as of respective creditors; that the assessee had duly discharged his burden as required under section 68; confirmations filed by the assessee were not disproved by the Assessing Officer, that no contrary evidences were brought on record to prove that creditors were ingenuine or bogus and that all transactions were made through regular banking channels. *Held* that said documents were sufficient to prove genuineness of transactions as well as creditworthiness of

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lenders. The Assessing Officer was not justified in invoking provisions of section 68.

CIT V. Apex Therm Packaging (P.) (Ltd.) [2014] 42 taxmann.com 473/222 Taxman 125 (Mag.) (Guj.)- When full particulars, inclusive of confirmation with name, address and PAN Number, copy of income tax returns, balance sheet, profit and loss account and computation of total income in respect of all the creditors/lenders were furnished and when it had been found that loans were furnished through the cheques and loan account were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition.

CIT V. Rama Krishna Jewellers [2014] 52 taxmann.com 23/368 ITR 588 (Delhi)- Various additions were made under section 68 for relevant years as confirmations, bank account statements, and income-tax returns of persons who had given unsecured loans and cash credits to the assessee were not brought on record. The assessee, before the Commissioner (Appeals), had filed several details including their PAN, bank statements and income-tax returns. The Commissioner (Appeals) had deleted additions being based on no material.

We in support of our contention that the assessee company has proved genuineness, creditworthiness and source of loan by furnishing requisite evidence in the form of I. T. Return and financial statement of creditor evidencing receipt of loan and confirmation of said loan creditors relies on following judicial decisions: -

CIT V. Tania Investments (P) Ltd. [2010] 322ITR 394 (Bom.) H.C.-Where in the books of account produced by creditors corresponding entries of alleged cash credits were found and, hence, addition on account of cash credits was deleted;

Held that, as the books of account were available to the Assessing Officer, the books of account itself would indicate the capacity of the party to advance loan and there was no further need on the part of the assessee to prove the capacity of the creditors.

Fort Projects (P) Ltd. v. Dy. CIT [2013] 29 taxmann.com 84/[2012] 145 TTJ 340 (Kol.) ITAT- During relevant assessment year, the assessee company received certain sum as loan from company 'T'. The Assessing Officer alleged that the said company was a typical entry company and, therefore, the loan received by assessee was bogus. The Assessing Officer, thus, treated said sum as income of the assessee-company from undisclosed sources. On appeal, the

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Commissioner (Appeals) deleted the addition by observing that Assessing Officer had not proved that 'T' was a typical entry company with supporting evidences and no specific finding in respect of documentary evidence furnished by the assessee in support of identity, creditworthiness and genuineness of transaction was given.

Held that the assessee had successfully proved genuineness and source of loan by furnishing the requisite evidences in the form of IT return and financial statements of creditor evidencing receipt of loan and also confirmation of the said party. Therefore, the Commissioner (Appeals) was justified in deleting the addition.

CIT V. Jai Kumar Bakliwal [2014] 45 taxmann.com 203/224 Taxman 87 (Mag.)/267 CTR 396/366 ITR 217 (Raj.)- Unsecured loan raised by the assessee from relatives was added in income of the assessee on ground that none of creditors was able to prove source of amount advanced to the assessee and immediately before grant of loan by them cash was deposited in their accounts. However, it was admitted by the Assessing Officer that all creditors were assessed to Income-tax and they had provided confirmation as well as their PAN. Moreover, all payments were through account payee cheques.

Held that since there was no clinching evidence nor the Assessing Officer had been able to prove that money actually belonged to none but to the assessee himself, action of the Assessing Officer appeared to be based on mere suspicion and, thus, addition required to be deleted.

It is, therefore, submitted that Ld. CIT (A) has rightly treated the said credits appearing in the books of accounts of assessee as explained in terms of Section 68 of I. T. Act, 1961 and deleted the addition so made by Ld. A.O. The appeal order of CIT (A) is just after making detailed enquiry and considering the documents submitted and thus correct in law. The ground raised by department has no merit which deserves to be dismissed.

It is prayed that appeal order passed by CIT (A) may kindly be confirmed and appeal filed by department deserves to be dismissed.”

2.4 We have heard the rival contentions and perused the materials available on record. Brief facts of the case are that the assessee company is engaged in real estate business. It is also noted from the assessment order that the assessee company got incorporated on 01-12-2012. Earlier it was known as 'New World Buildhome Pvt. Ltd. The assessee company did not carry any business activity during this year. It is also noted that the a search and seizure operation u/s 132(1) of the Act was carried out on 23-01-2013 at the various premises of Harsh Group. The business premises (288-289, Mahaveer Nagar, Jaipur) of the assessee was also covered. It is noted that notice u/s 142(1) of the Act was issued to the assessee on 19-12-2013. In response to the notice u/s 142(1) of the Act, the assessee furnished its return of income on 30-09-2013 declaring total loss of Rs. (-) 2,31,360/-. It is noted that the assessee had take unsecured loan from Smt. Prabha Saxena amounting to Rs. 4,98,20,000/-, M/s. Gurukripa Trademart Pvt. Ltd amounting to Rs. 1,70,00,000/- and M/s. Gemini Commerce Pvt. Ltd amounting to Rs. 3,80,71,135/- alongwith other persons and entities. The AO asked the assessee to furnish confirmations of all new cash creditors. The assessee furnished confirmations of the cash creditors/ unsecured loans. The assessee was show caused by the AO vide letter no. 1285 dated 17-03-2015 requiring

him to explain as to why the unsecured loans received from Smt. Prabha Saxena, M/s. Gemini Commerce Pvt Ltd. and M/s. Guru Kripa Trademart Pvt Ltd. should not be considered as bogus in view of the findings that the Income Tax Return (ITR) of Smt. Prabha Saxena is showing a meager income in their ITRs. However, the assessee had not furnished any reply before the AO against his letter dated 17-03-2005. The AO further noted that the assessee had filed confirmation letters only which did not prove the identity, creditworthiness and genuineness of the said transactions. Hence the AO made the addition of Rs. 10,48,91,135/- (Rs. 4,98,20,000+1,70,00,000+3,80,71,135) u/s 68 of the Act in the hands of the assessee. In first appeal, the ld. CIT(A) has accepted the additional evidences produced by the assessee u/r 46A of the Income Tax Rules, 1962 and also deleted the addition of Rs. 10,48,91,135/- made by the AO u/s 68 of the Act., In this appeal, it is noted that the Revenue is before this Bench only for adjudication of two issues i.e. Entertaining the additional evidences u/r 46A of the I.T. Rules by the ld. CIT(A), submitted by the assessee and also deletion of addition of Rs. 10,48,91,135/- made by the AO. It is observed from the ld. CIT(A)'s order that he in order to give natural justice to the assessee accepted the additional evidences placed before him, with following observation.

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“2.1.3.....The additional evidences so filed for the first time during the appellate proceeding, are vital and of prime importance for adjudication of this appeal. It is pertinent to mention here that A.O. issued show cause letters to loan creditors on 17/3/2015, however they could not comply within stipulated deadline, accordingly A.O. passed the order on 31/3/2015. Now I find that there are sufficient reasons beyond their control which prevented from placing those documentary evidences before the A.O. during assessment proceeding because very short time was allowed for compliance. It is also submitted that during the stipulated time, the required documents/details from available loan creditors could not be received as loan creditors were having their principal officer away from Jaipur except loan creditor Smt. Prabha Saxena who filed some documents directly to AO but none of the remaining loan creditors could file to A.O. or send to the assessee company said required documents etc. Therefore, assessee was prevented with sufficient cause to adduce required evidences before the A.O. in allowed time. Now, vide additional evidences under Rule 46A assessee filed documentary evidences pertaining to immediate source of fund, identity of creditors, creditworthiness of loan creditors & genuineness of transactions, therefore, for the sake of adjudication and duly following the principles of natural justice, these evidences are allowed to be placed on record u/r 46A of the I.T. Rules...”

It is noted that the Id. CIT(A) adopted the principles of natural justice by taking into consideration the facts and circumstances of the case as to why the assessee could not produce the supporting evidence / documents concerning the case before the AO. In this view of the matter, we concur with the findings of the Id. CIT(A) as to admission of additional evidence under rule 46A of Income Tax Rules, 1962.. Thus Ground No. 1 of the Revenue is dismissed.

2.4.1 As regards the issue of deletion of addition of Rs. 10,48,91,135/- u/s 68 of the Act by the AO, it is noted that the burden is upon the assessee to prove the identity of the creditors, their creditworthiness and

genuineness of the transactions. In this case, the assessee had filed the documentary evidences before the Id. CIT(A) to support the genuineness of the credits. It is also noted from the assessment order as well as from remand report that that the AO could not controvert the fact that the assessee had not made efforts to produce relevant details of loan creditors . It is also noted that the transactions were through cheques which is verifiable from the bank statements produced in remand proceedings. Once the assessee has been able to prove the creditworthiness of the creditors who were having sufficient source to advance money in form of loan to the assessee then the AO cannot make any addition u/s 68 of the Act. It is noted that the Id. CIT(A) has explicitly dealt with the issue in question and decided it taking into consideration all the relevant facts, circumstances of the case and also the judicial pronouncement as mentioned in his order. In this view of the matter, we find no reason to interfere with the order of the Id. CIT(A) on the issue of deleting the addition of Rs. 10,48,91,135/- made by the AO. Thus Ground No. 2 of the Revenue is dismissed.

3.0 In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 27-09-2017.

Sd/-

(कुल भारत)

(KUL BHARAT)

न्यायिक सदस्य /Judicial Member

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य /Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

27 /09/ 2017

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ACIT, Central Circle-1, Jaipur
2. प्रत्यर्थी / The Respondent- M/s. Harsh Macro Buildhome Pvt. Ltd. Jaipur
3. आयकर आयुक्त / CIT,
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 1056/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar