

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**

**श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष**  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER**  
**AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

<b>आ.अ.सं./I.T.A. No.277 &amp; CO.16/Ind/2014</b>
<b>निर्धारण वर्ष /Assessment Year:2008-09</b>

<b>1. DCIT 1(1) Indore</b> <b>2. Modern Laboratories 45</b> <b>Sector 45, Sector D-2,</b> <b>Sanwer Road ,</b> <b>Industrial Area Indore</b> <b>PAN:स्था.ले.सं.:AACFM5920B</b>	<b>V.</b>	<b>1. Modern Laboratories 45</b> <b>Sector 45, Sector D-2,</b> <b>Sanwer Road , Industrial</b> <b>Area Indore</b> <b>PAN:स्था.ले.सं.:AACFM5920B</b> <b>2.DCIT 1(1) Indore</b>
<b>अपीलार्थी /Appellant</b>		<b>प्रत्यर्थी /Respondent</b>

<b>अपीलार्थी की ओर से/Appellant by</b>	<b>Shri S.S. Deshpande, CA</b>
<b>प्रत्यर्थी की ओर से/Respondent by</b>	<b>Shri Mohd. Javed, Sr. D.R.</b>

<b>सुनवाई की तारीख/Date of hearing</b>	<b>11-07-2017</b>
<b>उद्घोषणा की तारीख/ Pronounced on</b>	<b>10 -08-2017</b>

**आदेश /O R D E R**

**PER O.P.MEENA, ACCOUNTANT MEMBER.**

1. This appeal by the Revenue and Cross Objection by the assessee are directed against the order dated 29 January 2014 of the Commissioner of Income-tax (Appeal)-I, Indore for the assessment year 2008-09.

**2. Ground No. (i) of Revenue relates to direction of restriction to 50% of commission expenses of Rs. 63,82,160/- by the Ld. CIT (A). Whereas by Ground No. 1 in Cross Objection, of the assessee has challenged the confirmation of 50% commission expenses at Rs. 31,91,080/-, even though, it was proved before CIT (A) that the commission to Shafa A. M. Consultants was paid as business expediency and confirmation was duly filed.**

3. Succinctly, facts as culled out from the orders of lower authorities are that the assessee is in the business of manufacturing and sales of pharmaceuticals products and around 95% sales is to government Departments. The assessee supplies goods to M. P. Laghu Udhog Nigam (MPLUN). The assessee has debited commission expenditure of Rs. 63,82,162 and Rs. 27,57,557 under the head commission on sales and MPLUN commission respectively to Profit & Loss Account. The AO was of the view that there is no scope of any middlemen for giving assignment of purchase of medicines to the State government Departments. The AO therefore, allowed commission payments to MPLUN and disallowed the entire commission payments paid to other against of Rs. 63,82,162 on the ground that middlemen is not allowed in sales and products made to government agencies, as government takes serious view of the same. The AO

also observed that no explanation was offered as regards the service rendered by such commission agents. The AO noted that some State government have assigned the task of carrying out any formalities relating to purchase to government body, like MPLUN in the case of Government of MP. This aspect makes it clear even if any commission is requires to be paid it goes to coffers of a government agency only of which books of accounts are subject to audit by the C&AG. As per agreement executed between the assessee and MPLUN, which is submitted only in respect of one contract, shows that MPLUN charges 1% service charge +12% Service tax and 1% on inspection charge + 12% service tax. Accordingly, the aggregate charge payable to MPLUN worked out to 2.24% of the supply amount. The AO was of the view that same hold good to different Departments of government of MP through MPLUN. The AO found that there is exorbitant commission payments varying from 0.5% to 25% shown in respect of some parties. The AO noted that commission payments of Rs. 24,14,034 to M/s. Shafa-E-Am Consultants, Delhi relates to supply of goods to Director of Health Services, Guwahati, Director of Animal Husbandry, Delhi, Medical Officer Delhi, Medical Superintendent, Delhi, Superintendent Health Services,

Dibrugarh and Silchar in addition to some Private Parties. The commission ranging from 6% to 25% in case of government supply whereas in case of private parties it ranging from 5, 8, and 10%. In case of Nav Enterprise, commission shown @5% on one occasion and on other occasion it is 10%. Further, the assessee has not furnished copy of ledger account and details of intermediate government bodies like MPLUN in respect of other states. In view of these facts, the AO hold that commission paid is nothing but entry to minimize the incidence of tax. In case of Ms. Leena Mohanty, Bhubneshwar through which supply to Dy. Director Medical Health Services at different places of Orissa to whom commission rate is shown at 4% to 11% and to Dy. Director of Medical Health Services, Balasor on which different rate of commission of 9% to 11% is charged. The AO further noted that there were certain infirmities like bill of previous year debited in this year and bills were not tallying with TDS certificates and there was huge variation from 1% to 25%. Accordingly, the AO disallowed the entire commission of Rs. 63,82,162 claimed in respect of commission to other agents.

**4.** Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). The assessee filed details submissions before the CIT (A)

which are reproduced by the CIT (A) at para 2 on page No 2 to 6 of his order. The CIT (A) has also called for remand report from the AO on this issue. After careful consideration , the CIT (A) observed that it emerges that the appellant is into business of manufacturing and sales of pharmaceuticals products, where selling is entirely based on canvassing done by selling agents. Hence, existence of selling agents is reality is such business and this is proved from the facts that all these parties are unrelated to the appellant and each one of them have confirmed to the AO that they were working as agents to the appellant The CIT (A) further observed that such commission agents are not middlemen as so far no proof has been adduced by the AO that out of such payments to agents any gratification was paid to government Departments for procuring such orders. But these commission payments were for helping to the appellant for filing various tenders , pursuing the authorities for placement of orders, helping in smooth supply of goods and recovery of monies from the government. MPLUN only doing the tendering job. But the pre tender and post tender activity can very well be done by the commission agents as held in the case of Nestor Pharmaceuticals (P.) Ltd. [2010] 33 DTR 293(Del), Bharat Medical

Stores [2009] 308 ITR 373(P&H) and Voltamp Transformers Pvt. Ltd. [1981] 129 ITR 105 (Guj). This explain the role of commission agents in government contract and describes the details of service rendered by them in such contracts. On merits, the CIT (A) observed that there is mismatch in the case of M/s. Apex Pharmaceuticals, Bhopal regarding bills and TDS and variation of commission payments from 1% to 25%. The appellant explained that though the bills may pertains to earlier year but payment is made during the current year, but that could not be valid explanation as the assessee follows mercantile system of accounting. With regard to higher amount of commission, the CIT (A) observed that the appellant has explained that it was paid because supplies were made in remote areas/ location and different agencies were involved and in such situation it was not practically possible to mange affairs by himself. Beside, some long pending recoveries were made from remote location. But the appellant has failed to proved specific details as to what was the amount of recovery from these remote areas was collected. Beside it was noticed that out of total 20 commission agents commission was paid ranging between 1% to 5% in case of 16 commission agents , in respect of 4 commission agents namely Shafa- E-Am

Consultants, Ms. Chanchal Jain, Mr. RK Jain, Ms. Leena Mohanty, commission rate was ranging as high up to 25%. No satisfactory explanation and specific details given as to what service rendered by these 4 commission agents and how they were superior to services rendered by 16 commission agents. Considering these facts, the Ld. CIT (A) has disallowed 50% commission expenses out of Rs. 63,82,160 as claimed by the appellant. Thus, relief of Rs. 31,91,080 was allowed on this account.

**5.** Being dissatisfied with relief of 50% out of commission payments, the Revenue has filed this appeal before us and the assessee has aggrieved against the sustenance of 50% disallowance through Cross Objection. The ld. Sr. DR submitted that the assessee is supplying drugs through nodal agency MPLUN. The commission payments to MPLUN was allowed by the AO while commission payments to other private parties was disallowed as there was no system keeping middleman in supply to goods to government Departments. The Ld. Sr. D.R. contended that the Ld. CIT (A) has accepted that the commission payments to 16 parties was in the range of 1% to 5% whereas commission payments to 4 commission agents was in the range up to 25%.

Further, the assessee was unable to prove that what type of services were rendered by these agents. Therefore, the Ld. CIT (A) was not justified in allowing deduction of 50% out of total commission payments. The Ld. Sr. D.R. also relied in the case of DCIT v. Shri Nautmal & Sons I.T.A. No. 78/Ind/2013 dated 19-07-2013 [Indore-Tribunal] wherein such exorbitant commission payments at the rate of 20% allowed by the CIT (A) was set-aside to the file of the AO by the Tribunal. The Ld. Sr. D.R. further placed reliance in the case of DCIT v. McDowell & Co Ltd. [2007] 291 ITR 0107 (Karn) wherein disallowance of commission payments for providing service of sale of liquor to canteen stores Department of Indian Military by the assessee company was upheld on the ground that such canvassing was prohibited by the government Circular dtd. Dtd. 13<sup>th</sup> July 1992 and 24<sup>th</sup> July 1992.

**6.** On the other hand, the Ld. D.R. of the assessee submitted the assessee supplies goods to various government department like MPLUN, who is authorized to put orders for purchase of goods on behalf of the government of Madhya Pradesh. For the purpose of floating tenders and placing orders for which MPLUN charge the service charge @ 2.24% and further charges 5% for

the performance guarantee. For filing of tenders, supply and approval of the goods to the government bodies and especially for the recovery of the amounts, the assessee engages the agencies and pays commission to them. The commission paid to such agencies ranges approximately 7% to 10%. For some local sales commission is paid between 1% to 3%. In some hard cases, the commission has been paid up to 18%. The supplies are made not only to MP Government bodies but to other State government bodies also. The assessee had filed complete details of commission agents with PAN and sales effected through them(PB34) The details of commission payment party-wise with bills were also filed before lower authorities (PB36 to 61) It was explained that commission was paid as business expediency on which TDS was also deducted under section 194H. In remand report proceedings , the AO issued notice under section 133(6) to all commission agents and all of them have confirmed rendering services and receiving commission. The AO disallowed commission payment on the reasons that in some cases bills are of different dates and rate of commission of 2.24% to MPLUN whereas rate of commission to others is at higher rate. However, the AO failed to appreciate that the payment of MPLUN is not

commission but is the service charge/ inspection charged by them on the basis of condition of tender. In support of his contention, the Ld. AR also placed reliance in the case CIT vs. Pure Pharma (P) Ltd. [2005] 270 ITR 382(MP)/ [2005] 144 Taxman 364(MP) wherein commission was found paid on supplies made to Government and its agencies and all the payments were made to various parties by account payee cheques/demand drafts, the identity of each of the agents was established and the expenditure was found incurred for business purposes. It was held that such expenses were allowable and consequently the addition was deleted. In the instant case also, the agents have confirmed the services rendered and the AO has not brought on record anything contrary to the admission of the agents, whether the payments have been made by cheques after deduction of TDS. The Ld. AR also cited decision of this Tribunal in the case of Kriti Industries v. ACIT 4(1) Indore in I.T.A. No. 268/Ind/2016 dated 27-10-2016(Tribunal-Indore) (PB-16 PB-II), CIT v. Bharat Medical Stores [2009] 308 ITR 373 (P&H), Prochem Laboratories Pvt. Ltd. v. ACIT , I.T.A. No. 86/Ind/2010 dtd. 28-11-2011, CIT v. Septu India Pvt. Ltd. [2008] 305 ITR 295 (P&H) and other as per his written submissions.

7. We have considered the facts, rival submissions and perused the material available on record. Ongoing through the assessment record as well as findings of the Id. CIT(A), we find that the assessee has submitted detailed evidences like names of the agents, PAN numbers, describing services rendered by the Agents, confirming the transaction, details of the TDS made. In remand report proceedings, the AO issued notice under section 133(6) to these against who appeared before the AO and admitted of rendering services as a receipt of commission from the assessee. We also note that the MPLUN was nodal agency for supply of goods but was not charge as commission instead it was charging service charges as per agreement entered in to between the assessee and it. We also note that the assessee is dealing in supplies of pharmaceuticals products to various states like Orissa, Assam, Meghalaya which are falling in remote areas which is spread over a large geographical area. Therefore, requirement of Representatives for doing such jobs cannot be denied. Further, these commission agents have filed detailed reply before the AO and described the various formalities and services required to be handled by the assessee or representatives of the agents. Further M/s. Shafa-E-Am

Consultants to whom commission of Rs. 24,14,786/- (PB-37) paid, has filed copies of bills (PB-62 to 73). Similarly details of commission and bills and sales effected by M/s. Chanchal Jain, Ms. Leena Mohanty and Mr. R. K. Jain were also filed. Therefore, we are of the considered opinion that the ld. CIT(A) was not justified in deleting only 50% of the commission payments paid to private parties debited to the profit and loss account. We also find that payments made to commission agents are unrelated to the assessee therefore, there cannot be said that the quantum of commission is not justified. The case laws of Nautamlal & Son (Supra) relied by the ld. Sr. D.R. is not applicable as in that case the tribunal had set-aside the issue to the AO for further examination of facts. Further the case laws in the case of Macdowell Co Pvt. Ltd. (supra) is in respect of liquor supply to Military Canteen , an government body in which canvassing was prohibited by the government, hence, there was no question of any commission and commission payment was against the policy of the government, whereas in the case of the assessee, the commission has been paid in respect of service rendered for facilitating the recoveries, giving information of tenders etc. which are not prohibited by law. This view is also supported by the

decision of the Jurisdictional High Court as relied upon by the Ld. AR on the Hon'ble High Court in the case of CIT vs. Pure Pharma, (2005) 144 Taxman 364 (MP) in para 3 & 4 held as under :-

*“3, A few facts material for deciding the said appeal, in short, may be mentioned as under :*

*The Respondent/assessee company is engaged in manufacturing and sale of pharmaceutical formulations. During the previous financial year, the assessee had paid total commission of Rs. 13,35,336/-. Out of this, a sum of Rs. 10,24,290/- was paid as commission on sales made to the Government and its agencies and a sum of Rs. 3,11,046/- was paid as commission to non-Government purchases. Since, a doubt was raised with regard to the payments made to various parties as commission, enquiry was held. It was found that all the payments have been made as commission to various parties by demand drafts, wherein the identity of each of the agents was also established. It has also been found that the commission was paid exclusively for business purposes only.*

*4. All these are findings of fact and no substantial question of law, as is required to be formulated for deciding the appeal, arises in the same. The Tribunal has also placed reliance on a judgment of the Delhi High Court reported in CIT vs. Electric Construction Equipment Co. Ltd., [1990] 182 ITR 510, wherein the Delhi High Court dealing with identical question has already decided the matter against the present appellant-Revenue.”*

**8.** Therefore, considering the totality of the facts and respectfully following the decision of Jurisdictional High Court, we are of the view that no disallowance of commission payment is called for. Accordingly, Ground No. (i) of the appeal of the

Revenue is dismissed. Further the disallowance of Rs. 31,91,080 as sustained by the Ld. CIT (A) are deleted , accordingly, Ground No. 1 and 1.1 of Cross Objection of the assessee is allowed.

**9. Ground No. (ii) and (iii) of Revenue relates to deleting addition of Rs. 1,33,00,000 made under section 68 of the Act and Ground no. 2 of Cross Objection of the assessee relates to confirming addition of Rs. 15 lacs in respect of M/s. Plasia Leasing & Investment Pvt. Ltd.**

**10.** Facts apropos of this ground are that during the year under consideration the assessee has shown unsecured loan with interest in the balance sheet from M/s. Anekant Shares and Securities Pvt. Ltd., Mumbai Rs.5,00,000, M/s. East West Finvest India Ltd. Bilaspur, Rs. 30,00,00, M/s. Purvi Finvest Ltd. Bilaspur, Rs.35,00,000, M/s. Trimurthi Finvest Ltd. Bilaspur, Rs. 30,00,000, M/s. Palasia Leasing and Investment Pvt. Ltd., Ujjain Rs.15,00,000, M/s. Sea Entertainment Ltd. Mumbai Rs.5,00,000, M/s. Skytouch Infrastructure Pvt. Ltd. Mumbai Rs. 5,00,000 M/s. Uno Industries, Mumbai Rs. 23,00,000 aggregating to Rs.1,48,00,000 plus interest thereon of Rs. 1,46,660. In order to prove the genuineness of transaction, the assessee filed copy of confirmation, copy of income-tax return, copy of PAN etc. However, the AO made addition on the basis of

general observation that such creditors have been found to be providing accommodation entries to a large number of persons. The confirmation letters and copy of returns of such depositors was furnished before the AO, but the AO was of the view that they have low income and thus, have not having credit-worthiness to provide such unsecured loan. The assessee had furnished confirmation along with PAN numbers. All these amounts, were received by cheques. Notice under section 133(6) issued to such parties who have directly confirmed the transaction. However, the AO made the addition of Rs.1,48,00,000 under section 68 of the Act.

**11.** Being, aggrieved, the assessee filed an appeal before the Ld. CIT (A). During the course of appellate proceedings, confirmation letters, copy of acknowledgement of returns, copy of bank account of depositors, were filed which were forwarded to the AO for his comments. The CIT (A) noted that the AO has made three observation in remand report that depositors have shown meagre income, they have deposited substantial amounts in their accounts just prior to advancing loans and they have failed to produce directors of such companies to prove identity. The AO has relied on the decisions in the case of Agarwal Coal

Corporation Ltd. v. Addl. CIT [2011] 135 ITD 270 (Indore-Trib) : 142 ITJ 409 ;[2012] 13 ITR(T) 531 (Indore-Tribunal) I.T.A. No. 151/Ind/2009 dated 31.01.2011(Indore-Trib). However, the assessee submitted that said decision is not applicable in their case, as that was regarding addition of share capital while appellant's is that of receiving unsecured loans, wherein identity of all depositors are established, as they are assessed to tax and in number of cases even assessment were made under section 143 (3) in case of depositors is also filed. It was further submitted that the AO framed assessment assuming that various depositors were of Lunkad group, but none of these companies belong to Lunkad group. It was further submitted that AO's remarks that there was huge deposits in their bank account is correct but the AO had forgot to mention that all those deposits were through cheques and none of them were cash deposits. Considering these facts, the Ld. CIT (A) has held as under:

**15.** *I have gone through the arguments of both AO as well as that of the appellant. Since all depositors have confirmed about giving such deposits, the amounts were given through account payee cheques, the depositors were all filing returns of income, proof of which is furnished and even bank statements of depositors were furnished except that of M/s. Plasia Leasing & Investment Pvt. Ltd. as per remand report of the AO, and in such bank accounts of depositors, no cash deposits were seen. Further, the*

*reference of AO to survey of Lunkad group & to the term of accommodation entries provider does not help revenue's case because that survey took place in 2006 and after considering the findings of survey the Hon`ble ITAT, Indore in the case of M/s. Narmada Extrusion Pvt. Ltd. came to the conclusion that various credits provided by Lunkad group could be considered as unexplained only if name of such party appeared in the cash-book impounded during survey of Lunkad group failed to explain the source of the same. However, that cash-book, was pertaining to A.Y.2007-08 and there were no entries for the year under consideration i.e. A.Y. 2008-09 and that is why AO did not refer to any adverse material but made a bald remark without any evidence. In the circumstances the appellant has discharged the initial onus as held in the case of M/s. Kinetic Capital Finance Ltd. [2013] 354 ITR 282(Del).*

*15.1 In the event the revenue still had a doubt with regard to genuineness of transaction or as regard to creditworthiness of creditors, it would have to discharge the onus which has shifted on it. If revenue has any doubts with regards to creditworthiness of depositors, the revenue could always bring it to tax in the hands of creditors as held in case of Lovely Exports (P) Ltd. [2008] 216 CTR (SC)195 and Mod Creations (P) Ltd. [2013] 354 ITR 282 (Del). Since appellant discharge initial onus, the onus shifted on revenue and there was no legal obligation on the appellant to produce directors of creditors before AO and if AO had any doubt about identity of share applicants despite their filing income-tax returns, he could have summoned them as held in case of Victor Electrodes Ltd. [2010] 329 ITR 271 (Del). Where ROI (Return of income) was filed by the creditors of the appellant and was accepted by the AO and payments were made through account payee cheques, genuineness of transaction cannot be doubted, AO has not conducted any enquiry into the same or has no material in his possession*

*to show those particulars are false and cannot be acted upon, then no addition can be made in hands of the appellant u/s. 68 as held in case of Gangeshwari Metal Pvt. Ltd. [2013] 214 Taxman 423(Del). In this case it was noted by the Hon`ble judges that AO sat with folded hands till the appellant exhausted all the evidence or material in his possession and then forward to merely reject the same on the presumptions. In such an eventuality, no addition can be made u/s. 68 of I. T. Act.*

*15.2 Following the aforesaid discussion, the addition of Rs. 1,33,00,000/- of unsecured loan from various deposits added u/s. 68 of the I.T. Act cannot be sustained while addition of such unsecured loan of Rs. 15 Lakh received from M/s. Plasia Leasing & Investment Pvt. Ltd. is confirmed because as AO reported in a table annexed to remand report, the appellant selectively avoided to file copy of bank account of this depositor, while bank a/c of all other depositors were filed. This indicate strong possibility of cash deposits in bank a/c of such depositor which shifts back the onus on the appellant in this case and put huge question mark on genuineness of such transaction, all more so when such depositor has disclosed income only Rs. 4,777/- in its return. Deposit of cash in bank account of creditor make it questionable because Income Tax Act itself has money provisions restricting cash transaction of loans , purchases and consequently sales etc. beyond Rs. 20,000/- . Therefore, in case of Plasia Leasing & Investment Pvt. Ltd. there are sufficient grounds to make strong case of addition u/s. 68 of Income Tax Act. Gr. No.2 of appeal is therefore, partly allowed in so far as out of total addition of Rs. 1,48,00,000/- addition of Rs. 15,00,000/- is confirmed and balance addition of Rs. 1,33,00,000/- is deleted.*

**16.** Being aggrieved, the Revenue has filed this appeal before the Tribunal. The Ld. DR submitted that the assessee has failed

to produce the directors of creditor companies before the AO during the course of assessment proceedings and also in remand report, hence, Ld. CIT (A) was not justified in deleting the addition. The Ld. Sr. D.R. further relied in the case of CIT v. Rathi Finlease Ltd. [2008] 215 CTR (MP) 429 in support of his contentions. The Ld. Sr. D.R. further contended that depositor does not have source for such loan and before giving loan by cheque to the assessee. Thus, the genuineness of loan transaction is not proved hence, the order of CIT (A) be quashed and that of the AO be restored.

**17.** On the other hand, the Ld. AR for the assessee submitted that the addition of Rs. 1,48,00,000 was made on account of unexplained cash credit under section 68 of the Act. Out of this the Ld. CIT (A) deleted addition of Rs. 1,33,00,000 by treating same as genuine transaction. The assessee has borrowed fund from various parties of which confirmation, together with PAN numbers, bank statements and income-tax returns were furnished. In most of the cases, notice under section 133(6) have been issued and majority of the parties have directly confirmed the transaction with the assessee. The AO has not bothered to verify the creditworthiness from the PAN of respective parties,

which would show that creditors were genuine. The Ld. AR submitted that there is no cash deposits in the account of creditors before issue of cheques, hence, in the light of decision in the case of Gangeshwari Metal Pvt. Ltd. [2013] 214 Taxman 423(Del). The Ld. AR submitted that the ratio of the decision of the Hon'ble Madhya Pradesh High Court in the case of Rathi Finlease Limited (supra) is not applicable to the present case as it is related with share application money and the share applicants were not found to be in existence and in that case, amounts were paid in cash on the same dates on which the amounts were credited to the bank accounts of such applicants. The Ld. AR further submitted that other decisions of the Hon'ble High Court, as relied upon by the learned DR, do not apply to the present case having distinct facts and circumstances. Therefore, the first appellate order may kindly be upheld and sustained by dismissing the appeal of the revenue. The Ld. AR further relied on following decision viz: CIT v. Tania Investment Pvt. Ltd. [2011] 322 ITR 394 (Bombay), CIT v. Varinder Rawley [2014] 366 ITR 232 (P&H), CIT v. Kinetic Capital Finance Ltd. [2013] 354 ITR 296 (Del), ACIT v. Pravin Mittal [2016] 28 ITJ 473 (Trib-Indore), CIT v. Metachem Industries [2000] 245 ITR 160 (MP):161 CTR

444 (MP) : [2001] 116 Taxman 572 (MP), were cited and special attention was drawn in the case of CIT v. Pithampur Conzima (P) Ltd. [2000] 244 ITR 442 (MP) wherein it was held that *where in appeal before the Tribunal, the assessee showed that the credits given to the assessee duly declared by the creditors in their respective returns, where upon Tribunal concluded that the investment in the hands of the assessee-firm was duly explained and no addition was called for in the hands of the assessee and deleted the said addition. Held that deletion of addition in the hands of the assessee on the basis of satisfaction by the Tribunal and on the appreciation of material by the Tribunal and accordingly, no question of law arose for reference.*

**18.** The Ld. AR submitted that the ratio of the decision of the Hon'ble Madhya Pradesh High Court in the case of Rathi Finlease Limited (supra) is not applicable to the present case as it is related with share application money and the share applicants were not found to be in existence and in that case, amounts were paid in cash on the same dates on which the amounts were credited to the bank accounts of such applicants. The Ld. AR further submitted that other decisions of the Hon'ble High Court, as relied upon by the learned DR, do not apply to the present

case having distinct facts and circumstances. Therefore, the first appellate order may kindly be upheld and sustained by dismissing the appeal of the Revenue.

**19.** We have heard the rival submissions of both the parties and perused the material available on record. We find that the creditors except M/s. Plasia Leasing & Investment Pvt. Ltd., when we analyze the facts of the case in view of the contentions and submissions of the assessee vis-à-vis the findings recorded by the authorities below then we hold that there is no dispute regarding existence and identity of the five companies as the assessee submitted their names, addresses and PAN along with all relevant documents in the shape of returns, financial results and accounts of these companies. Since undisputedly the amounts were received from all the five companies through cheques and banking channel, thus identity of the creditors and genuineness of the loan transactions cannot be disputed. In the present case, when we analyse the company wise facts then we find that these companies have filed reply to notice under section 133(6) to the AO directly. There are no cash deposit before issue of cheque to the assessee. All the creditors have filed copy of income-tax return acknowledgement, confirmation letters,

copies of the bank statements, copies of accounts, acknowledgement of ITRs, computation, audited annual accounts, etc. were placed on record which are available from page 11 to 53 of the assessee's paper book-I and at pages 5 to 9 and 37 to 41 of the departmental paper book. The balance sheet of both the companies has been signed by the assessee himself as director. From the copies of bank statements of these two companies available at pages 8 and 40 of the departmental paper book we observe that there were no cash deposits during the assessment year under consideration in these accounts. The AO himself in his remand report has not pointed out any major discrepancies. In the present case in view of the above foregoing discussion, we observe that the assessee filed all possible documents before the AO which were also submitted to the AO by the respective companies in response to notices u/s 133(6) of the Act issued during remand proceedings and thus we can safely hold that the assessee discharged its onus lay upon its shoulders to prove the identity, creditworthiness of the creditors and genuineness of the transactions. From the relevant part of the assessment order, we observe that the AO merely proceeded to make addition under section 68 of the Act keeping aside all the

relevant documents, which were filed by the assessee and the alleged companies. Accordingly, we have no hesitation to hold that we are unable to see any ambiguity, perversity or any other reason to interfere with the first appellate order which granted relief to the assessee. Hence, we uphold the same. Accordingly, ground Nos. (ii) and (iii) of the Revenue, being de void of merit, are dismissed.

**20.** In the result, the appeal of the Revenue is dismissed.

**Cross Objection No16/Ind/2014/A.Y. 2008-09 by the assessee:**

**21. Ground No.1 relates to maintaining disallowance of Rs. 31,90,080 being commission expenses claimed by the assessee.**

**22.** This ground had been dealt with in ground No.(i) of Revenue appeal wherein the disallowance maintained to Rs.31,90,080 by the Ld. CIT (A) have been directed to be deleted, hence, for the reasons as discussed therein, this ground no. 1 and 1.1 of appeal in the Cross Objection of the assessee is allowed.

**23. Ground No. 2 relates to maintaining addition of Rs. 15,00,000 on account of M/s. Plasia Leasing & Investment Pvt. Ltd. whereas the confirmed was filed hence, confirmation of addition is bad-in-law and hence, be deleted.**

**Similarly disallowance of interest of Rs. 30,685 may also be deleted.**

**24.** The Ld. AR submitted that the assessee had submitted the copy of confirmation with PAN (PB-173-178) and said company is assessed to tax at Ujjain. The amount has been received by cheques on which interest has been paid and TDS was done, hence, no addition should have been sustained. Further, the Tribunal in the case of ACIT v. Pravin Mittal [2016] 28 ITJ 473 (Trib-Indore) had allowed the appeal of the assessee for deposit from Lunkad group of companies, by the tribunal, hence, the addition of maintained by the Ld. CIT (A) deserve to be deleted. The Ld. AR submitted that the ratio of the decision of the Hon'ble Madhya Pradesh High Court in the case of Rathi Finlease Limited (supra) is not applicable to the present case as it is related with share application money and the share applicants were not found to be in existence and in that case, amounts were paid in cash on the same dates on which the amounts were credited to the bank accounts of such applicants. The Ld. AR further submitted that other decisions of the Hon'ble High Court, as relied upon by the learned DR, do not apply to the present case having distinct facts and circumstances.

**25.** On the other hand, the ld. Sr. DR submitted that said company is found to be paper company and addition related o said company is also upheld by the Hon`ble Jurisdictional High Court in the case of CIT v. Rathi Finlease Ltd. [2008] 215 CTR (MP) 429. Therefore, the Ld. CIT (A) was justified in confirming the addition in the case of said creditor. We have heard the rival submissions of both the parties and perused the material available on record. We also find that Ld. CIT (A) has also confirmed the addition in the case of this company on the ground that the assessee has not able to file copy of bank account and other details. We also observe that the Ld. Sr. D.R. has contended that Hon'ble High Court of Madhya Pradesh in the case of CIT v. Rathi Finlease Ltd. [2008] 215 CTR (MP) 429 has sustained the addition under section 68 of the Act in respect of M/s. Plasia Leasing & Investment Pvt. Ltd. In para 11, the Hon'ble High Court held that in the case of Palasia Leasing & Finance Company, entry was not accepted on the ground that merely by filing the confirmation letter, the burden could not be discharged when the inquiries reveal that the company was not in existence nor any books of accounts or directors were traceable. Therefore, respectfully following the same, in and in

absence of relevant details like confirmations, copy of account of this company, copy of relevant extract of bank account, copy of account in the books of the assessee, the assessee has failed to establish the identity, genuineness of transaction, existence and creditworthiness of this company and failing to respond to notice under section 133(6), we upheld the addition on account of cash credit in respect of this company as unexplained under section 68 of the Act in the light of the ratio of the decision of the Hon'ble Madhya Pradesh High Court in the case of Rathi Finlease Limited (supra). Accordingly, Ground No. 2 of Cross Objection of the assessee is therefore, dismissed.

**26. Ground No. 3 related sustenance of disallowance of amount of interest of Rs. 49,585 under section 36(1)(iii) or in the alternative the AO may be directed to allow in subsequent years.**

**27.** Facts apropos of this ground are that the assessee has raised loans during the year for capital work in progress of building construction of Rs. 4,95,856 as the building has not been put to use during the year under consideration. Hence, interest attributable to Rs.4,985 being @10% on capital work in progress of Rs. 4,95,856 was disallowed under section 36(1)(iii) of the Act.

**28.** The CIT (A) observed that the appellant has raised this ground for the sake of it for which no details of loans and for the purpose for which these were provided nor any argument were filed. Hence, disallowance of interest was confirmed.

**29.** The Ld. AR submitted that disallowance of interest is bad-in-law as the building was not under construction but expenses were debited after 30-09-2006. The assessee has claimed depreciation, which has been allowed as deduction by the assessee. The building has been put to use during the year under consideration and as such, disallowance of interest is not called for.

**30.** The Ld. Sr. D.R. relied on order of lower authorities.

**31.** We have heard the rival submissions of both the parties and perused the material available on record. The perusal of Annexure -C, forming part of Form No. 3 CB (PB- 11& 20 )showed that that the assessee had shown addition of Rs. 4,95,856 after 30.09.2006 to building account on which depreciation has been claimed and allowed by the AO. Thus, it is discernible that there is work in progress on account of building construction account; hence, disallowance on account of interest on addition to building account is not justified. Therefore, the AO

is directed to delete such disallowance of interest expenses. We order accordingly. This ground of appeal is thus, allowed.

**32.** In the result, the CO of the assessee is partly allowed.

**33.** In the result, the appeal of the Revenue is dismissed and Cross Objection of the assessee is partly allowed.

**34.** The order pronounced in the open Court on 10<sup>th</sup> August 2017.

Sd/-

Sd/-

**( C.M. GARG )  
JUDICIAL MEMBER**

**(O.P. MEENA)  
ACCOUNTANT MEMBER**

दिनांक / **Dated : 10<sup>th</sup> August 2017**

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

**Assistant Registrar, Indore**