

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM**

I.T.A. No.5376/Mum/2016  
(Assessment Year: 2010-11)

I.T.O.-13(3)(3), Room No. 227, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M K Road, Mumbai-20	Vs.	M/s. Ved Investment & Trading Co. Pvt. Ltd. 301, Chawada Commercial Centre, Chinchpokli Bunder Road, Behind Evershine Mall, Malad (W), Mumbai-400 064
PAN/GIR No. AAACV 5293 M		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri S. K. Saikia
<b>Respondent by</b>	:	Shri Vijay Mehta

<b>Date of Hearing</b>	:	06.06.2018
<b>Date of Pronouncement</b>	:	21.08.2018

**ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order by the Commissioner of Income Tax (Appeals)-21, Mumbai dated 27.06.2016 and pertains to the assessment year 2010-11.

2. The grounds of appeal read as under:

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in directing the AO to allow the unaccounted loan which is not reflected in the balance sheet of the assessee whereas the money routed through its bank account?

2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is right in directing the AO to allow the loan given by the assessee through its bank account and not shown in its balance sheet but shown that loan in the books of other party?

3. The appellant prays that the order of the CIT(A) on the grounds be set aside and that of the Assessing Officer be restored.

3. Brief facts of the case are that the return of income was filed on 26.09.2010 showing Nil income. Subsequently information was received by the Assessing Officer that in the course of the assessment proceedings in the case of M/s Jaico Textiles Pvt. Ltd. for A.Y. 2010-11 it was noticed that the assessee company had advanced loans amounting to Rs.16,02,00,000/- to M/s Jaico Textiles Pvt. Ltd. These loans are not reflected in the Balance Sheet of Ved Investments & Trading Co. It was further informed that the said amount was deposited in assessee's bank account by Navseeman Properties & Securities Pvt.Ltd. The Assessing Officer re-opened the assessment u/s 147 by issue of notice u/s 148 dt. 24.12.2013.

4. In the assessment proceedings the assessee was issued show cause notice on 17.03.2015 in which it was stated that the assessee had advanced loan of Rs.16,02,00,000/- to M/s Jaico Textiles Pvt. Ltd., but the loan was not reflected in the balance sheet of the assessee company. Why the addition of Rs.16.02 crs should not be made in the assessee's case? In response, it was explained that there was a proposal for amalgamation of the assessee company and Wisdom Engg. Pvt.Ltd. Wisdom Engg. Pvt.Ltd had to make payments to M/s Jaico Textiles Pvt. Ltd. The assessee company arranged the funds to pay to M/s Jaico Textiles Pvt. Ltd., on behalf of Wisdom Engg. Pvt.Ltd. Appropriate ledger entries were passed. The assessee company has received and paid the money through proper banking channels. The transactions are transferred to the books of accounts of Wisdom Engg. Pvt.Ltd. pursuant to the scheme of amalgamation.

All parties have confirmed the same. Moreover this amount has been added to the income of M/s Jaico Textiles Pvt. Ltd. for A.Y. 2010-11 and therefore making such addition in the assessee's case would amount to double taxation.

5. The Assessing Officer however, went by the fact that the assessee company had not shown receipt of any loan or advancing of any loan of Rs.16.02 crs as was seen from the balance sheet of the assessee company. From the bank statement of the assessee company with Andhra Bank, Vadodara, having account No.0734111000000104, it was noted that amount of Rs.6.02 crs was received on 02.09.2009 from M/s Powerlink Project & Engineers Ltd and M/s Shiny Infrastructure Pvt.Ltd. and Rs.10 crs was received on 05.11.2009 from AIM InfrastructurePvt.Ltd. and Relish Infrastructure Pvt.Ltd. The amounts were transferred to M/s Jaico Textiles Pvt. Ltd. on 02.09.2009 and 05.11.2009. Thus the transactions were routed to the bank of the assessee company, but did not find an entry in the balance sheet of the assessee company. The assessee explained that this was an adjustment entered and was made on an emergency in anticipation of amalgamation. A copy of the petition filed for amalgamation before the Hon'ble High Court on 12.03.2013 was filed in support. The Assessing Officer however noted that the lodging date of amalgamation is 12.03.2013 for transactions carried out in F.Y. 2009-10, and, therefore, is an afterthought. For the reasons mentioned in para 7 of the assessment order, the Assessing Officer held that the amount of Rs.16.02 crs is an unexplained investment u/s 69A of the Income Tax Act. The addition was accordingly made in the assessment order.

6. Before making the addition, the Assessing Officer made elaborate observation in para 7 of his order which reads as under:

"4. In response to the final show cause notice on 20th March,2015 the A.R of the assessee submitted only basic details such as copy of ITR, computation of Income, balance sheet. Profit & loss a/c, advance received, bank statement, share holding pattern, details of incorporation, confirmation etc. Vide order sheet noting dated 20<sup>th</sup> March2015, the A.R of the assessee once again given an opportunity to submit his reply regarding the show cause dated 04.03.2015 received by him on 17.03.2015. With reference to the show cause the A.R of the assessee submit a letter on 27.03.2015. The gist of the letter is as under:

"Proposal for amalgamation of Ved Investment ft Wisdom Engineering was put up in year 2009 by board resolution dtd 01.08.2009. Meantime Wisdom Engineering Put. Ltd need to make payment to Jaico Textiles Put. Ltd, Ved Investment & Trading Put. Ltd arranged the funds to pay to M/s. Jaico Textiles Pvt Ltd on behalf of the Wisdom Engineering with approval of members as it was urgent. Wisdom Engineering & Ved Investment & Trading Pvt. Ltd made ledger entries in their respective accounts. They further stated that Ved has received & paid said money through proper banking channels. The transactions are transferred to the books of accounts of Wisdom Engineering pursuant to the scheme of amalgamation & all parties have confirmed the same".

"We are of the opinion that the same cannot be added as the amount has been routed through proper banking channels as explained above. Further as we have explained all the credit entries also the same could not be treated as unexplained credit and added to the income under section68 of the Income Tax Act, 1961.

Moreover in any case if you want to add, the same would amount to double taxation as the said amount has already been added to the income of Jaico Textiles Private Limited for the AY. 2010-2011, which is not justifiable".

The explanation of the assessee is placed on records.

5. On perusal of the balance sheet it is seen that in the said Financial Year 2009-10 relevant AY. 2010-11, the assessee's balance sheet as under:

Ved Investment and Trading Company Private Limited.  
Balance sheet as at 31<sup>st</sup> March, 2010.

Particulars	Schedule	As at 31.03.2010	at As at 31.03.2009
Sources of Funds			
Shareholders fund			
Share Capital	A	100,000	100,000
Reserves Surplus	B	6,0494,015	5,127,163

Unsecured Loans	C	4,300,000	5,250,000
Total		10,494,015	10,477,163
Application of Funds			
Fixed Assets		-	-
Investments	D	9,444,240	9,444,240
Current Assets. Loans & Advances ( Cash And Bank Balance	E	1,059,775	1,055,107
Total (a)		1,059,775	1,055,107
Current Liabilities & Provisions			
Liabilities for expenses		10,000	10,000
Provision for Tax		-	12,184
Total (b)		10,000	22,184
Net Current As sets	a-b	1,049,755	1,032,923
Miscellaneous Expenditure ( to the extent not written off or adjusted profit & loss account)			
Total		10,494,015	10,477,163
Notes forming part of Account			

It shows that the assessee has neither received any loan nor paid loans or advances to anybody amounting to Rs.16,02,00,000/-. To substantiate its claim of receiving & giving any amount the assessee has submitted the confirmation of the parties along with copy of their bank statement from whom the loans has been received and to whom the loan has been given.

On perusal of the bank statement of M/s Ved Investment & Trading Pvt Ltd., it is seen that the said amount under question is gone through the bank account of Ved Investment & Trading Pvt Ltd. Andhra Bank, Vadodara, having account no. 0734111000000104. The details of the transactions are as under:

Date of transaction	Particulars	Debit / Withdrawal	Credit / Deposits
17/06/09	Account open with Rs 5.000/-		5000
2/09/09	Trfd From Powerlmk Project & Engineers Ltd., & Shiny Infrastructure Pvt. Ltd		6,02,00,000
2/09/09	Trfd To Jaico Textiles	3,25,21,000	
2/09/09	Trfd To Jaico Textiles	2,76,79,000	
5/11/09	Trfd From Aim Infrastructure Pvt. Ltd.. & Relish Infrastructure Pvt. Ltd.		10,00,00,000
5/11/09	Trfd To Jaico Textiles	3,16,41,000	
5/11/09	Trfd To Jaico Textiles	4,58,22,000	
5/11/09	Trfd To Jaico Textiles	2,25,37,000	

Total		16,02,00,000	16,02,00,000
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From the above it is seen that the amount has been routed through the bank account and the entry is not taken in the Balance Sheet.

Further, the assessee AR vide letter dated 27/03/2015, stated that this adjustment was made as it was an emergency and M/s Ved Investment & Trading Co., and M/s. Wisdom Engineering Pvt. Ltd., were under amalgamation. As a proof of amalgamation the AR has submitted a copy of amalgamation filed before the Hon'ble High Court on 12/03/2013.

On perusal of all the documents submitted by the AR it is seen that the amalgamation is afterthought as the lodging date of amalgamation is 12/03/2013 and the transactions carried out in FY-2009-10. Hence, the possibility of amalgamation in the year of transaction is ruled out.

In the submission, the AR has given the ledger copies of M/s Ved Investment & Trading Co., and M/s. Wisdom Engineering Pvt. Ltd., which shows the entries of paid amount of Rs. 16,02,00,000/- was given & taken but actually it does not goes through in the book.

Section 269 SS of the I.T.Act,1961 say as under:

" I Mode of taking or accepting certain loan and deposits , No person shall, after the 30<sup>th</sup> day of June, 1984 , take or accept from any other person ( hereafter in this section referred to as the depositor) , any loan or deposit otherwise than by an account payee cheque or account payee bank draft [ or use of electronic clearing system through a bank account], if-

(a). the amount of such loan or deposit or the aggregate amount of such loan and deposit: or

(b). on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid ( whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid: or

( c). the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clausefb), is [ twenty] thousand rupees or more:

As per the Section the giving of loan to M/s. Wisdom is ruled out as it is otherwise than account payee cheque or a/c payee bank draft. In support of the loan given the.- assessee has provided the ledger copies of M/s. Ved & M/s. Wisdom but as per the above Section of I. T. Act, it is not acceptable.

It is seen thai M/s. Ved Investment has paid amount to M/s. Jaico Textiles Pvt Ltd.. which is seen from the bank a/c but not shown in the balance sheet.

Section 68 of the IT.Act,1961 say as under:

“Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation

about the nature and source thereof or the explanation offered by him is not in the opinion of the [Assessing] Officer , satisfactory, the sum so credited may be charged to income -tax as the income of the assessee of that previous year:

Section 69A of the I.T.Act,1961 say as under:

"Where in the financial year the assessee is found to be the owner of any money, Jewellery or other valuable article and such money bullion , Jewellery or valuable article is no recorded in the books of account, if any maintained by him for any source of income and the assessee offer no explanation about the nature and source of acquisition of the money, bullion, Jewellery or other valuable article, or the explanation offered by him is not. in the opinion of the [Assessing] Officer, satisfactory, the money and the value of the bullion , Jewellery or other valuable article may be deemed to be the income of the assessee for such financial year".

In view of the above, loan confirmations submitted by the assessee and the explanation provided for the cash credit of Rs.16,02,00,000/- proves to be false, The assessee was given more than enough opportunities to provide all the details pertaining to the cash credit and was also issued a show cause notice so that whatever information pertaining to the cash credit with the assessee could be provided to this office for correct determination of Income.

This leads to the only conclusion that whatever information is provided by the assessee is the only information which it wants to give to this office and it has no further information to submit in this matter. This is purposeful misrepresentation of facts and submission of false explanation.

**Loan Back:** The loan back transaction is the best know form of money laundering by means of a loan and is the one most likely to be encountered. Through this arrangement one " borrows" one's own money back without is being visible to the outsider. This is done by creating a loan agreement with a "friendly relationship"

In this example the person is holding large sums of cash they wish to launder. This cash is deposited in various bank accounts in amounts that will not attract the attention of regulators. These amounts are then wired to a bank where they are consolidated in an account controlled by known company which is in turn controlled by the owner of the funds. These funds are loaned back to the owner's own company for use by the original owner of such funds. The sources of these funds appears on the books of company as a loan payable to such controlled company.

The facts of the case as elaborately discussed above clearly prove it beyond doubt-that he assessee has failed each of the tests in proving the transaction as genuine. The facts discussed elaborately as above proves beyond doubt that;

- a. That the burden to prove the identity, capacity and genuiness was on the assessee and assessee failed to prove the same.
- b. The cash, credit is not satisfactorily explained by the assessee and hence it is justified to treat it as income from "undisclosed sources". These entry operators do not have any business of their own. All the money , appearing in its Bank Accounts originate from some other accounts down the line. The entities in which the amount are deposited are obviously only paper entities. These entities are not into any activity or business or than the activity of being accomplice in providing accommodation entries.
- c. The assessee has to establish that the amount was actually given by the lender, which it failed to do so and the explanation it gave was not supported by any documentary evidence since the Balance Sheets of Ved Investment &, Trading Co., Pvt. Ltd & Niranwal Credit & Holding Pvt. Ltd., the two companies which emerged out of investigation of this office do not show loans and advances given to Fair & Wisdom, or for that matter the assessee. Whatever the explanation provided needs to be justified /corroborated with the entries in the books of account which is not the case. The accounts submitted of Ved Investment &, Trading Co. Pvt Ltd and Niranwal Credit & Holding Pvt. Ltd. do not show any amount of loan given either to the assessee or to Wisdom and flair. In fact the Balance Sheets of both these companies as on 31.03.2010 submitted by the assessee on 12.02.2013 and 26.02.2013 do not have the heading loans & Advances on the asset side, in fact the explanation provided by the assessee has been proved to be false by investigations of this office and therefore, the deeming fiction created by section 68 is being invoked.
- d. The identity of the alleged lender has not been established voluntarily.
- e. The genuiness of the transaction has not been established.
- f. The sources of income or funds from the alleged lenders remain unexplained in view of the non -appearance of the name of the lenders in the Balance Sheet.
- g. The creditworthiness of the alleged lenders and the purpose of the loans have not been proved and established.
- h. The assessee has not offered any plausible explanation about the nature and source thereof and the explanations offered by the assessee are not satisfactory and not supported by any authentic evidences.
- i. The companies file the application u/s.391 to 394 of the Companies Act 1956 before the Hon'ble Murnbai high court only on 22.02.2013 which is after the issue in scrutiny was raised. The said application is in admission stage and not yet admitted. Even the admission of the said application for Amalgamation and Transfer of these entities does not alter the positions as already established with un-refutable evidences gathered through inquiries in this case. The copy of the documents for the proposed Amalgamation or

transfer does not provide or throw much light on the source and genuineness of the transaction in question. As such, even if the scheme is subsequently approved or rejected by the Hon'ble High Court, it does not alter the facts and findings made and the position taxability or otherwise of this sum in the hands of the assessee.

8. In view of the above, the submissions now made by the AR have no relevance to the issue under consideration and deserves to be rejected and are accordingly rejected.

Finally, the onus is on the assessee to prove the bonafides of the claim made by it. The bonafides of these companies are not proved due to the discussion made above. Also, despite the show causes, the assessee has failed to prove the bonafides of the companies and has never produced the loan lenders, viz. Flair Engineering Pvt Ltd., M/s. Wisdom Engineering Pvt. Ltd. Under these circumstances, all the conditions laid down in section 69A to treat these amounts as unexplained investment in the assessee are fulfilled. Accordingly an amount of Rs. 16,02,00,000/- being the amount debited to the assessee's Bank A/ c. alleged to be loans given to Jaico Textile is treated as unexplained investment u/s.69 A of the I.T.Act,1961 and charged to Income Tax as the income of the assessee for the year under consideration. Since the assessee cannot be charged twice for the same transaction on amount of Rs. 16,02,00,000/- is added back to the Income of the assessee u/s.69A of the I.T.Act,1961.

7. Before the Id. Commissioner of Income Tax (Appeals), the assessee challenged the validity of reopening as well as merits of the addition. The Id. Commissioner of Income Tax (Appeals) upheld the validity of reopening by observing that there was definitely clear information that funds have been received by Jaico Textiles Pvt. Ltd. of Rs.16.02 crores from the assessee company but the same was not reflected in the balance sheet of the assessee company. He held that this is factually a correct position and did suggest that income has escaped assessment.

8. The assessee has not challenged Id. Commissioner of Income Tax (Appeals) in upholding the validity of reopening before the ITAT.

9. However, as regards merits of the addition, the Id. Commissioner of Income Tax (Appeals) decided in favour of the assessee. Though he acknowledged that the assessee to be a link in the chain of money transfer, which was called by the Assessing Officer as 'best know form of money laundering' deleted the addition by holding that addition u/s. 69A is not warranted as the investment is recorded in the books of accounts and the transaction has been explained. The observation of the Id. Commissioner of Income Tax (Appeals) are as under:

In the appellate proceedings it was submitted that the appellant had requested Wisdom Engg. Pvt. Ltd. to give a loan of Rs.16.02 crs. The appellant was instructed by Wisdom Engg. Pvt. Ltd. to directly disburse the amount of Rs.16.02 crs to M/s Jaico Textiles Pvt, Ltd. Accordingly the amount of Rs.16.02 crs was debited by the appellant to the account of Wisdom Engg. Pvt.Ltd. in its books of accounts. This amount was received by taking loan from the following companies.

Sr. No.	Name of Company	Amount
a.	Powerlink Project & Engineers Ltd.	1.02 crs
b.	Shiny Infrastructure Pvt.Ltd.	5 crs.
c.	Aim Infrastructure Pvt.Ltd.	5 crs.
d.	Relish Infrastructure Pvt.Ltd.	5 crs.
	Total	16.02 crs

9. From the assessment order it is noticed that the assessment was effectively taken up in March 2015. The show cause notice issued on 4.3.2015 was served by affixture. The notice was served on the AR on 17.03,2015. Finally the assessment order was passed on 30.03.2015 wherein an amount of Rs 16.02 crores was added as deemed income u/s 69A of the IT Act.

10. The appellant has explained that money was received from the four companies in its bank account and was transferred to Jaico Textiles Pvt. Ltd. The entry passed in its books of accounts was to show the amount received from the four parties as credit from Wisdom Engineering Pvt. Ltd. as it was received on its behalf. Similarly on payment to Jaico Textiles Pvt. Ltd., the entry passed was to debit of Wisdom Engineering Pvt. Ltd. as it was paid on its behalf. Thus, the account got squared off. In such a scenario, the transaction will not appear in the Balance sheet as the amount was not outstanding on 31.3.2010. Just because, the amount was not reflected in the Balance Sheet, it cannot be concluded that

investment is not recorded in its book of accounts. It is the ledger account and journals which are the primary records to reflect the transaction in the books of accounts. The transaction has been confirmed by all the parties in question. As per the appellant, the confirmation by the parties were received by the assessing officer.

11. The transaction is recorded in the bank account, and ledger accounts. The assessing officer has erroneously applied section 69A which applies only if investments owned by an assessee is not recorded in its books of accounts. Further, the appellant has explained the source and destination of the money which has been confirmed by the parties concerned. Thus an explanation has been filed supported by confirmations.

12. The assessing officer has not accepted the part of explanation that the transactions were thus recorded on behalf of Wisdom Engineering Pvt. Ltd. with which amalgamation between Wisdom Engineering Pvt. Ltd. and appellant was proposed. However, this does not make the transaction unrecorded.

13. It is further noted that the appellant had pointed out that addition had been made in the case of Jaico Textiles Pvt. Ltd. but was not appreciated by him. Details were called in respect of assessment in that case and the appellate order of the First Appellate Authority. Copy of ledger accounts and bank statements of the six parties was also called. Copy of amalgamation petition filed by the appellant in the High Court was also called. The same was submitted and has been perused.

14. It is noted that an addition of Rs 26.02 crores u/s 68 of the IT Act was made in the case of Jaico Textiles Pvt. Ltd. in AY 2010-11 vide order dated 14.03.2014 which includes Rs 16.02 crores shown to be received from Wisdom Engineering Pvt. Ltd. The balance amount was claimed to be received from Flair Engineering Pvt Ltd (Rs 10 crores). This amount was invested by Jaico Textiles Pvt. Ltd. in Sterling Oil Reserves Ltd. The assessing officer noted that the amounts claimed to be received from Wisdom Engineering Pvt. Ltd. was in fact received from bank account of Investments & Trading Co. Pvt. Ltd. Similarly, the amounts claimed to be received from Flair Engineering Pvt Ltd. was in fact received from bank account of Niranwal Credit Holding Pvt. Ltd. The assessing officer made the addition of Rs 26.02 crores u/s 68 of the IT Act. The addition m has been sustained by the Ld. CIT(A) vide his order dated 2.09.2014 in appeal in the case of Jaico Textiles Pvt. Ltd. as unexplained cash credit.

15. The appellant company in the present appeal before me is neither ultimate source nor ultimate destination for the amount of Rs 16,02 crores. Thus, an addition in the hands of the appellant is taxing the same amount in multiple hands.

16. In this fact matrix, the addition u/s 69A is not warranted since the investment has been recorded in the books of accounts and the transaction has been explained. Accordingly, ground of appeal no 3 is allowed.

10. Against the above order, the Revenue is in appeal before us.

11. We have heard the counsel and perused the records. Before proceeding further, it will be apposite to refer to the provision of section 69, 69A, 69B in this regard, which reads as under:

Unexplained investments.

69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the <sup>47</sup>[Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income<sup>50</sup>, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the <sup>47</sup>[Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income<sup>50</sup> of the assessee for such financial year.

Amount of investments, etc., not fully disclosed in books of account.

69B. Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the <sup>47</sup>[Assessing] Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the <sup>47</sup>[Assessing] Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

12. The learned departmental representative referred to the order of the assessing officer. He submitted that the addition has been correctly made in the hands of the

assessee and the Id. Commissioner of Income Tax (Appeals) has erred in deleting the same.

13. The learned counsel of the assessee supported the order of the Id. Commissioner of Income Tax (Appeals). He submitted before us certain confirmation of accounts. These confirmations show that the assessee has shown the credits from four parties to have been received on behalf of M/s. Wisdom Engineering Pvt. Ltd. and the assessee has further shown debits of Rs.16.02 crores to JTPL which has been squared off in this manner.

14. In the present case we note that it has been observed from the bank account of the assessee that assessee had given a sum of Rs.16.02 crores to M/s. Jaico Textiles Private Ltd. (hereinafter called JTPL). This sum was not found to be reflected in the balance sheet of the assessee. In explanation thereof, the assessee explained that it had arranged funds for JTPL on behalf of Wisdom Engineering Private Limited. For this purpose, the assessee company has raised money from following parties :

Name of the party	Cheque No.	Date	Amount
Powerlink Project & Engineers Ltd.	206508	02.09.2009	1,02,00,000/-
Shiny Infrastructure private Limited	205001	02.09.2009	2,33,61,000/-
	205002	02.09.2009	2,66,39,000/-
Aim Infrastructure Private Limited	205106	05.11.2009	2,13,00,000/-
		05.11.2009	2,87,00,000/-
Relish Infrastructure Private Limited	205153	05.11.2009	1,99,24,000/-
	205154	05.11.2009	3,00,76,000/-

However both the transaction of credit and loan got squared off and the same was not reflected in the balance sheet of the assessee company. It has further explained that

this sum has been added as unexplained income in the hands of JTPL. In these facts the assessing officer was of the opinion that this is a scheme of money-laundering. He observed that amalgamation plan is an afterthought as the lodging date of amalgamation is 12.03.2013 after the initiation of enquiry, which is still in admission stage, the transaction carried out being in financially 2009-10. The Assessing Officer found that in view of section 269SS giving of loan is ruled out as it is otherwise than account payee cheque or draft. In this regard, the assessing officer noted that the assessee was given adequate opportunity to prove the source of sums given but the assessee failed to do the same. The assessing officer did give the finding that the source of funds for granting the said loan has not been explained properly. The Assessing Officer observed that entry passed in the assessee's books was to show that the amount received from the four parties as credit from M/s. Wisdom Engineering Pvt. Ltd. The payment of Rs.16.02 crores to JTPL was again debited to M/s. Wisdom Engineering Pvt. Ltd. Thus no balance remained in this ledger account. Hence, the loan taken and given remained outside the books of account and the balance sheet. Accordingly, the assessing officer held that deeming fiction created by section 68 is being invoked. He observed that identity of the eligible lender has not been established. That the genuineness of the transaction has not been established. That the source of income or funds from the eligible lenders remain unexplained in view of non appearance of the name of the lenders in the balance sheet. The creditworthiness of the eligible lenders and the purpose of loans have not been established. He further found the amalgamation plan as an afterthought.

14. Accordingly, the Assessing Officer has held that all the conditions laid down in section 69A for unexplained investment are fulfilled. Hence, the Assessing Officer added the amount u/s. 69A. In this regard, we note that the Assessing Officer has called the addition to be unexplained investment falling u/s.69A. We find that the amount involved which the Assessing Officer has sought to add is the advance of Rs.16.02 crores made to JTPL supposedly on behalf of M/s. Wisdom Engineering Pvt. Ltd. In this view of the matter, it falls under the unexplained investment coming under the ken of section 69B. We find that though the Assessing Officer has made the addition as unexplained investment, but he has referred to section 69A. In our considered opinion, this error in mentioning the correct section cannot be said to be fatal to the assessment. Be as it may, we are of the considered opinion that the concerned amount is in fact an unexplained investment. To recap the facts, the assessee has paid a sum of Rs.16.02 crores to JTPL. This sum of money has been received from four parties. All these payment (debits) and receipts (credits) have been entered into the ledger account of M/s. Wisdom Engineering Pvt. Ltd. In explanation for this Act, the assessee has submitted that there was a scheme of amalgamation with M/s. Wisdom Engineering Pvt. Ltd. and hence the assessee was requested by M/s. Wisdom Engineering Pvt. Ltd. to arrange on its behalf an amount of Rs.16.02 cores for payment to JTPL. The explanation of a scheme of amalgamation has been found by the Assessing Officer to be an afterthought inasmuch as an application for amalgamation was submitted to the Hon'ble High Court on 12.03.2013 after the initiation of enquiry by the Assessing Officer. This admission of the scheme is still pending. However, the transaction was carried out in the financial year 2009-10.

15. We find that the Id. Commissioner of Income Tax (Appeals) has held that the books of accounts being ledger and journal are the primary records and if these transactions are recorded therein, it cannot be said that the investment is not recorded in the books of account. We find that the Id. Commissioner of Income Tax (Appeals) has clearly glossed over the ingenuity displayed by the assessee in recording this entry. It is clear that the assessee himself has arranged funds from the four parties. Instead of showing the same as such in the books of account; these receipts have been credited in the name of M/s. Wisdom Engineering Pvt. Ltd. Similarly, when the assessee has paid Rs.16.02 crores to JTPL, instead of showing the same as debit to JTPL, it has been debited in the ledger account of M/s. Wisdom Engineering Pvt. Ltd. As a consequence not only this ledger account shows nil balance, there is no reflection in the balance sheet. In this factual background, the entries are misleading and they cannot be considered to be a proper recording of entry in the books.

16. We find that the Hon'ble jurisdictional High Court in the case of *CIT vs. Triumph International Finance (I) Ltd.* [2012] 345 ITR 270 (Bom) has held that squaring off entries by journal entries in the books of account has to be treated as making of loans/deposits by means other than account payee cheque and draft. Hence, this explanation by the assessee that this squaring off in the ledger account absolves the assessee of the liability of duly reflecting this sum of advance in its books of account, is not sustainable being diametrically opposite to the ratio from the Hon'ble jurisdictional High Court. The Id. Commissioner of Income Tax (Appeals) has further held that action

of the Assessing Officer will lead to addition of the same amount in multiple hands inasmuch as in the hands of JTPL, the same amount has been added as unexplained cash credit and the matter is at appellate stage. We find that as held by the Hon'ble Higher Courts in catena of cases, it is the duty of the Revenue authorities to make the addition in correct hands. We find that addition as unexplained credit in the hands of JTPL (which is not as if JTPL has accepted the cash credit liability to be taxed in its hand, rather the matter is in appeal) cannot grant immunity to the assessee in the present case who has been found to have failed to record the investment being advance given to JTPL otherwise then by account payee cheque and overdraft in the books of accounts. We further find that there is no cogent reason for this scheme of entry and accounting by the assessee. If M/s. Wisdom Engineering Pvt. Ltd. wanted the parties to advance sum on its behalf to JTPL, it could have plainly asked these parties to give the advance to JTPL. There is no reason whatsoever as to why these sums would be routed through account of the assessee except for the scheme of layering of entries which fall under the realm of money laundering. These multi layering of entries are classic device to hide the source, destination and movement of unaccounted money. There is also no tax law that in a scheme of layering of entry falling under the ken of money laundering, tax has to be levied at one point only. Furthermore, as noted above, this multi layering and camouflaging is also not permitted as per section 269SS and Hon'ble jurisdictional High Court decision in the case of *Triumph International Finance (I) Ltd.* (supra). Hence, once when it has been established that the creditworthiness and other aspects of the sources from whom the amount was obtained is not established, the granting of advance

by the assessee clearly falls under the realm of unexplained investment. In these circumstances, we are of the considered opinion, that both the grounds on which the Id. Commissioner of Income Tax (Appeals) has granted relief are not sustainable.

17. As we have already found the recording of these entries in the name of M/s. Wisdom Engineering Pvt. Ltd. and squaring off can by no means considered to be proper means of recording in the books of account. When the assessee has arranged on its own funds from certain parties and has been unable to cogently explain the source, it cannot be said that the amount advanced by those sources can be considered to be a duly explained investment. As we have already narrated above, this investment/advance was given in a camouflaged manner by multi layering the book entries. Hence, the explanation of the assessee and contention by the Id. Counsel of the assessee in this regard are repelled as sans merits.

18. Hence, addition as unexplained investment in this case is proper. Accordingly, we set aside the order of the Id. Commissioner of Income Tax (Appeals) and hold that the amount involved is liable to be added in the hands of the assessee as unexplained investment. Hence, the addition by the Assessing Officer is restored.

19. In the result, we set aside the order of the Id. Commissioner of Income Tax (Appeals) and confirm the addition of Rs.16.02 crores in the hands of the assessee as unexplained investment.

20. In the result, the appeal filed by the Revenue stands allowed.

*Order pronounced in the open court on 21.08.2018*

Sd/-

(Sandeep Gosain)  
Judicial Member

Mumbai; Dated :21.08.2018  
Roshani, Sr. PS

Sd/-

(Shamim Yahya)  
Accountant Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai