

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.382 & 383/Ind/2014
Assessment Years:2006-07 & 2007-08**

Asstt. Commissioner of Income Tax, 3(1), Indore	Vs.	Shri Pramod Kumar Sethi, 106, Navneet Darshan, 16/2 Old Palasia, Indore
(Appellant)		(Respondent)
PAN No. AEXPS7774Q		

**ITA No.392/Ind/2014
Assessment Year 2006-07**

Shri Pramod Kumar Sethi, 106, Navneet Darshan, 16/2 Old Palasia, Indore	Vs.	Asstt. Commissioner of Income Tax, 3(1), Indore
(Appellant)		(Respondent)
PAN No. AEXPS7774Q		

Revenue by	Shri P.K.Mitra, Sr. DR
Respondent by	Shri Thribhuvan Sachdeva, CA
Date of Hearing:	10.09.2018
Date of Pronouncement:	06 .11.2018

आदेश / O R D E R

PER MANISH BORAD, A.M.:

The above captioned Cross appeals for Assessment Year 2006-07 and Revenue's appeal for A.Y. 2007-08 are directed against the order of Ld. Commissioner of Income Tax(Appeals)-I, Indore, (in short 'CIT(A)'), vide appeal No. IT-433/2008-08 & 290/2009-10 order dated 21.02.2014 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 27.02.2015 by ACIT, Range-3, Indore.

2. As the facts and issues raised in these appeals are mostly common and relating to the same assessee, these were heard together and are being disposed off by this common order for sake of convenience and brevity.

3. Briefly stated facts as culled out from the records are that the assessee is an individual engaged in the business of real estate. He declared income of Rs. 15,56,530/- in the return of income filed on 13.10.2006. Case selected for scrutiny. Notices u/s 143(2) and

142(1) of the Act were duly served upon the assessee. Ld.A.O while examining the financial statements noticed that certain unsecured loans were taken during the year from four parties for a total amount of Rs.1,02,00,000/- and interest of Rs.6,14,855/- was paid thereon. In order to satisfy about the identity, genuineness and creditworthiness of alleged unsecured loans, Ld.A.O called for various information which were duly supplied by him. Ld.A.O linked the alleged cash creditor companies as part of Lunkard Group of Companies on which survey was conducted u/s 133A of the Act on 2.5.2006 wherein it was noticed that some of the group companies are alleged to be in the practice of providing accommodation entries. Ld.A.O gave his finding of fact that the alleged cash creditor companies which gave loan to the assessee were not part of the group of companies held by the Lunkard Group but they were in association with the Lunkard Group of companies. Though the assessee furnished all necessary evidences to prove the identity, genuineness and creditworthiness of the cash credit companies by way of providing various documentary evidences along with the confirmation letters to show that the alleged loans were repaid during the year itself and the interest for

the period for which they were held as loan was given after deducting tax at source and all the transactions were carried out through account payee cheque. But these evidences were not sufficient to satisfy the Ld.A.O and he held that the alleged unsecured loans are not genuine and made addition u/s 68 of the Act at Rs.1,05,00,000/-. Ld.A.O also disallowed interest expenditure of Rs. 6,14,855/- claimed on these unsecured loans. Ld.A.O also made addition for unexplained expenditure of Rs.5,25,000/- being the amount that the assessee may have incurred for procuring alleged accommodation entries.

4. During the assessment proceedings Ld.A.O also observed that the assessee has shown rental income of Rs.26,87,635/- and has claimed deduction u/s 24 of the Act at Rs.7,99,350/-. Ld.A.O denied this deduction by taking a view that as the assessee is engaged in the real estate business, the alleged rental income should be treated as business income. After making above addition income assessed at Rs.1,39,88,735/- in following manner;

Income as per return	Rs. 15,56,530/-
Add:	
1. Addition U/s 68 of the I.T. Act, 1961	Rs.1,05,00,000/-

2. Interest on the loans	Rs. 6,14,855/-
3. Expenditure incurred for procuring loans	Rs. 5,25,000/-

4. Addition on account of Rental income	
Treated as business income	<u>Rs. 7,92,350/-</u>
Total assessed income	<u>Rs.1,39,88,735/-</u>

5. Similarly for Assessment Year 2007-08, the assessee declared income of Rs.27.72,380/- in the income tax return filed on 25.10.2007. The case was selected for scrutiny. Similar issue of unsecured loan at Rs.1,25,00,000/- came up before Ld.A.O from the same cash creditors as were there in A.Y. 2006-07. This year the total sum was Rs.1,25,00,000/-. Taking the same view as that for Assessment Year 2006-07, Ld.A.O made the addition for unexplained cash credit u/s 68 of the Act and the interest on the loans and expenditure incurred for accommodation entries at Rs.1,25,00,000/-, Rs.5,55,875/-, and Rs.6,25,000/- respectively thereby assessing income at Rs.1,64,53,255/- in following manner;

Income as per return	Rs. 27,72,380/-
Add:	
1. Addition U/s 68 of the I.T. Act, 1961	Rs.1,25,00,000/-

2. Interest on the loans	Rs. 5,55,875/-
3. Expenditure incurred for procuring loans	<u>Rs. 6,25,000/-</u>
Total assessed income	<u>Rs.1,64,53,255/-</u>

6. Aggrieved assessee preferred appeal before the Ld.CIT(A) for Assessment Year 2006-07 and 2007-08. Ld.CIT(A) deleted the addition relating to unexplained cash credit and interest paid there on and unexplained expenditure along with the relevant ground raised by the assessee. However the addition for disallowance of deduction u/s 24 claimed by the assessee on the rental income was sustained at Rs.7,92,350/-.

7. Now both the revenue and assessee are in cross appeal for Assessment Year 2006-07 and revenue appeal for Assessment Year 2007-08.

8. We will first take up revenue's appeals I.T.A.No.382/Ind/2014 & I.T.A.No. 383/Ind/2014 raising following common ground for Assessment Year 2006-07 and 2007-08 respectively.

"1. Deleting the addition of Rs.1,05,00,000/- & Rs.1,25,00,000/- for A.Y. 2006-07 & 2007-08 respectively. That on the facts & circumstances of the case, the identity, creditworthiness and genuineness of the creditors was not properly proven before AO and therefore the same needed to be added.

2. Deleting the addition of Rs.6,14,855/- and Rs.5,55,875/- on account of interest on these loans. That on the facts & circumstances of the case, as the creditors were not properly proven and therefore the same needed to be added.
 3. Deleting addition on account of estimation of expenditure incurred for procuring the above mentioned loans of Rs.5,25,000/- and Rs.6,25,000/- by simply stating that the same was consequential in nature”.
9. The Ld. Departmental Representative vehemently argued supporting the orders of Ld.A.O submitting that the assessee failed to prove the genuineness of the alleged unsecured loans.
10. Per contra Ld. Counsel for the assessee supported the finding of Ld.CIT(A) and also submitted that all the unsecured loans are taken through account payee cheque and are repaid during the year itself. Interest has been paid after deduction of tax. All the four companies giving unsecured loans to the assessee for both the assessment years 2006-07 and 2007-08 are duly assessed to tax and their assessment u/s 143(3) of the Act has been framed and the copies of the same are available at page 66-73 of the paper book. Ld. Counsel also submitted that unsecured loans from these parties were taken in the preceding years also but no such addition have been made in the assessment proceedings completed by the

revenue authorities. Ld. Counsel for the assessee also submitted that the issue raised in the ground raised by the revenue is squarely covered in favour of the assessee by the decision of Hon'ble Indore Tribunal in the case of ACIT V/s Girish Kumar Sharda (2014) 23 ITJ 701 (Trib. Indore) order dated 30.1.2014 as the very same set of facts came up for adjudication regarding unsecured loan taken from same companies and were held to be unexplained cash credit u/s 68 of the Act. Ld.CIT(A) in this case deleted the addition and when the revenue came in appeal before the Tribunal, the issue was decided against the revenue and in favour of the assessee holding that all the four alleged cash creditors are genuine and the loan taken from these cash creditors are duly evidenced by necessary documents which proves the identity, genuineness and creditworthiness.

11. The Ld. Counsel also placed reliance on the following judgments;

1. Mod Creations (P) Ltd V/s ITO 354 ITR 282 (Delhi)
2. CIT v/s Peoples Gen. Hospital Ltd 356 ITR 65 (M.P)
3. CIT v/s Kinetic Cop Finance 354 ITR v/s 296 (Delhi)
4. Gangeshwari Metal (P) Ltd Income-tax Act, 1961, 597/2012 order dated 21.01.2013 (High Court of Delhi)

12. We have heard rival contentions and perused the records placed before us and gone through the judgments carefully. Revenue is aggrieved with the deletion of following additions by Ld.CIT(A) made by the A.O for Assessment Year 2006-07 and 2007-08 for the alleged unexplained cash credit and interest paid there on and undisclosed expenditure for procuring accommodation entries.

S.No.	Name of the Company	Unsecured loans taken	Interest paid
1	Trimurti Finvest P.Ltd	30,00,000/-	1,65,040/-
2	Purvi Finvest Ltd	5,00,000/-	63,782/-
3	K.K. Patel Finance Ltd	40,00,000/-	3,08,740/-
4	East West Finvest India Ltd	27,00,000/-	77,293/-
		1,02,00,000/-	6,14,855/-

Addition of Rs.5,25,000/- made for Assessment Year 2006-07 for procuring loans.

S.No.	Name of the Company	Unsecured loans taken	Interest paid
1	Trimurti Finvest P.Ltd	35,00,000/-	1,80,875/-
2	Purvi Finvest Ltd	30,00,000/-	1,25,250/-
3	K.K. Patel Finance Ltd	30,00,000/-	1,05,000/-
4	East West Finvest India Ltd	30,00,000/-	1,44,750/-
		1,25,00,000/-	5,55,875/-

Addition of Rs.6,25,000/- made for Assessment Year 2007-08 for procuring loans.

13. From the perusal of the assessment order for Assessment Year 2006-07 as well as details annexed in the paper book we find that the unsecured loans taken from the four companies is in total Rs.1,02,00,000/- but the addition made by the A.O is at Rs.1,05,00,000/- and this particular figure of Rs.1,05,00,000/- is consistently appearing in all the communications as well as appellate order and the ground of appeal raised by the revenue. Confirmation of account submitted by the assessee reveals that the correct figure of unsecured loan referred from the above four parties totals Rs.1,02,00,000/- and not Rs.1,05,00,000/-.

14. We find that the above additions made by the Learned Assessing Officer were deleted by the Ld.CIT(A) for both assessment years 2006-07 & 2007-08 observing as follows;

“5.Gr. No. 1st of appeal is against addition of unsecured loans of Rs.1,05,00,000/--& Rs.1,25,00,000/- and interest thereon of Rs.6,14,855/- & Rs.5,55,875/- for AY 2006-07 and AY 2007-08 The addition has been made by AO on the basis of a general observation that such creditors have been found to be providing accommodation entries to a large number of persons. The

confirmation letter and copy of returns of such depositors was furnished before AO, but AO was of the view that they have low income & thus they were not having creditworthiness to provide such unsecured loan. The appellant submitted that confirmation from all depositors were filed alongwith PAN numbers. All the amount were received by cheques.

6. During appellate proceedings appellant filed copy of confirmation letter of depositors, copy of their acknowledgement of income tax returns, copy of bank accounts of depositors and even assessment orders u/s 143(3) in case of all the 4 depositor companies, which were forwarded to AO for his comments. The AO has only referred to the decision in case of Narmada Extrusion P. Ltd. (ITAT, Indore) and to the examination of Mr. Lunkad as regards the material found in survey, who according to AO was evading appearance. AO could not furnish final remand report despite giving opportunities on 10-12-2010, 08-01-2013, 09-10-2013, 31-10-2013, 23-12-2013, 17-01-2014 and 21-02-2014. According to appellant case of Narmada Extrusion P. Ltd. is not applicable to their case, as that was regarding addition of share capital while appellant's case is that of receiving of unsecured loans, wherein identity of all depositors is established, as they are assessed to tax and even assessment made is] s 143(3) in case of depositors is also filed. They further submitted that AO framed assessment assuming that various depositors were of Lunked group, but none of these companies belong to Lunkad group as they are belonging to Darak group.

7. I have gone through the arguments of both AO as well as that of

appellant. Since all the 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 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 entry 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 case of Mis Narmada Extrusion P. ltd came to 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 and Lunkad group failed to explain source of the same. However name of appellant do not appear in cash book impounded in survey of Lunkad Group reproduced on page 9,10 and 11 of assessment order and that is why AO did not refer to any adverse material directly implicating appellant but made a bald remark without any evidence. AO failed to examine the depositors or appellant and failed to establish that such unsecured loan transaction was a part of pre meditated plan - a smokescreen - conceived and executed with the connivance of the assessee. In these circumstances the appellant has discharged the initial onus as held in cases of M/s Kinetic Capital finance Ltd.(2013) 354 ITR 296 (Del) and Mod Creations (P) ltd (2013)354 ITR 282 (Del).

8. In the event the revenue still had a doubt with regard to genuineness of transaction or as regards to creditworthiness of creditors, it would have to discharge the onus which has shifted on it. If revenue has any doubts with regard 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 discharged 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 creditors of appellant and was accepted by AO of the creditors even u/s 143(3) of LT. Act. 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 appellant vij s 68 as held in case of Gangehwari Metal P. 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 came forward to merely reject the same on .the presumptions. In such an eventuality no addition can be made u/ s 68 of LT. Act.

9. On the basis of facts of the case and relying on various case laws discussed above the addition of unsecured loans Rs.1,05,00,000 1- & Rs.1,25,00,0001- and interest on such loans of Rs.6,14,855/- & Rs.5,55,875/- In AY 2006-07 & AY 2007-08 is deleted. Gr. No. 1&2 of appeal are allowed.”

15. It is also observed that Ld. Counsel for the assessee placed heavy reliance on the decision of the Indore Tribunal in the case of ACIT V/s Girish Kumar Sharda (*supra*) wherein similar issue of

unexplained cash credit from the same set of four companies came up for adjudication and the Tribunal dismissed the revenue's appeal observing as follows;

"9. Rival contentions have been considered and records perused. From the record, we found that the assessee had borrowed loans from the following parties.

S.No.	Name of the parties & Address	PAN No
1	M/s. K.K. Patel Fianance Ltd, 114, Sarlit Tower, Y.N. Road, Indore	AABCK4282G
2	M/s Purvi Finvest Ltd, G-1 "Rudrash", 127 Baikunthdham Colony, Indore (M.P)	AABCCP6564C
3	M/s Trimurti Finvest Ltd, 9, Bhoj Nagar, Annapurna Road, Indore	AAACT6383N
4	M/s. East West Finvest Ltd, G-1 "Rudrash", 127 Baikunthdham Colony, Indore (M.P)	AAACE6834D

10. During the course of assessment, the Assessing Officer asked the assessee to establish identity, genuineness and creditworthiness of these creditors. It was submitted that MIs. K.K. 'Patel Finance Limited, Indore, is being regularly assessed to tax and engaged in the finance activities and they have given the deposits on interest basis to other also. As per balance sheet filed with the Department they have share capital to the tune of Rs.89,32,500/and reserve and surplus of Rs. 6,14,53,923/- total amounting to Rs.1,50,76,423/-. M/s. East West Finvest India Limited, Indore, is being regularly assessed to tax and filed confirmation of account along with the bank statement in which . transaction of assessee is reflected, The said company also engaged in the business of finance activities and they have

given the deposits as and when maturity of deposits received from others. M/ s. Purvi Finvest Limited, Indore, is being regular! assessed to tax. and filed confirmation of account along with the bank statement in which transaction of assessee is reflected. The address of the creditor and M/ s. East West Finvest India Limited is common and it may be possible that the' directors are common and hence signed by one person. The S-al company also engaged in the business of finance activities and they have given deposits as and when maturity of deposits received from others.

11.From the record, we also found that the Ld. Assessing Officer asked to explain the genuineness of the credits as well as identity and creditworthiness Q creditors. in response, the assessee filed confirmation from the creditors.

12.However, the Assessing Officer did not agree with the assessee's contention and added the amount u/s 68 of the Income-tax Act, 1961. By the impugned order, the Ld. CIT(A) deleted the addition by following his order in another assessee, wherein similar additions were deleted by observing that these additions were not warranted in the hands of the assessee but in the hands of the lenders. During the course of hearing, the Ld. CIT DR drew our attention to the order of the Tribunal, in the case of Asstt. CIT Vs. Narmada Extrusion Ltd. (2012) 19 ITJ 202 (Trib.-Indore), Order dated 30.12.2011, wherein the Tribunal have observed that the Ld. CIT(A) was not justified in deleting the addition on the ground that the addition is to be made in the hands of the person who has given the loan and not in the hands of the beneficiaries. It is clear from the order of the Tribunal in that order of the Ld. CIT(A) was reversed on the issue of taxability of

the impugned amount in the hands of creditors or assessee who was beneficiaries. The Tribunal have held that amount is required to be added in the hands of the beneficiaries, thus, reasoning given by the Ld. CIT(A) was not accepted. However, in this order of Narmada Extrusions (supra), the Tribunal have also dealt with the merit of the addition and found that addition to be restricted to the extent of entries found in the material collected during the course of survey at Lunkad Group and not to the extent of entire amount of loan so taken from Lunkad Group.

13. From the record, we found that Assessing Officer has made addition in respect of the loans which were taken and even repaid by the assessee. While making the addition, following was the precise observations of the Assessing Officer :-

"The assessee's balance sheet reflects credits amounting to Rs. 2,70,21,800/-. He asked to explain the genuineness of the credits as well as identity and creditworthiness of the creditor, in response, the assessee has filed confirmations from the said creditors, in response, the assessee has filed confirmations from the said creditors, copies of final accounts have been filed in respect of one creditor and copy of acknowledgement of return in respect of one person. The lender's names include some of the persons who are considered to be regular name lenders'. The names in question alongwith the amount shown as received from them are reflected below :-

<i>1</i>	<i>M/s. K.K. Patel Fianance Ltd, Indore</i>	<i>Rs. 10,00,000/-</i>
<i>2</i>	<i>M/s. East West Finvest Ltd, Indore</i>	<i>Rs. 35,00,000/-</i>
<i>3</i>	<i>M/s Purvi Finvest Ltd, Indore</i>	<i>Rs. 29,00,000/-</i>
<i>4</i>	<i>Ms/ Trimurti Finvest Ltd, Indore</i>	<i>Rs. 61,50,000/-</i>
	<i>Total</i>	<i>Rs. 1,35,50,000/-</i>

The same wordings are given in the subsequent assessment years for making the addition of Cash Credit."

14. *The Ld, CITCA) has deleted the addition by observing that addition is warranted In the hands of lenders and not in the hands of the assessee, otherwise it will amount to double addition. On merit of the addition so made b the Assessing Officer, we do not find any substance in so far as the assessee has discharged the onus casted upon a cost upon him by filing a confirmation certificate of the creditors duly signed and specifying full name, address and PAN of the creditors. In addition to the confirmation certificate the assessee has also filed the acknowledgement for filing of return of income by the creditor along with their computation of income, audited accounts, bank statements and copies of account.*
15. *After perusing bank statement of the creditors as placed on record, we find that no cash was deposited in the Bank prior to issuance of cheque moreover there is no cash transaction in the bank statement and we found that all the amounts are received and paid through account payee cheques.*
16. *As per material placed on record, we found that the Ld. Assessing Officer has not made any efforts by calling information Vis 133(6) or by issuing summon VIS 131 to any of the creditors which is evident from the, assessment order itself. Moreover, it is also clear from the assessment order that the Assessing Officer had never asked the assessee to produce the creditors.*

17. As per requirement of Section 68 the sum credited in the books of accounts can be considered to be the income of the assessee in a case where the assessee does not offer any explanation or the explanation offered by him, in the opinion of Assessing Officer is not satisfactory. The explanation of the assessee in the present case is that all these creditors are income tax assessee^{es} and their PANs have given alongwith their copy of bank account as well as preceding years. By filing these evidences, it can be said that the assessee had is charged the initial burden laid upon him under Section 68. When the particulars regarding income tax assessment and bank account, audited balance sheet duly indicating advancing of loan to the assessee, have been filed then initial burden has to be held to be discharged and then the burden shifts on the Revenue to show that what is stated or explained by the assessee is not satisfactory. No material whatsoever, has been brought on record by the Ld. Assessing Officer to show that what was explained by the assessee, was not a correct state of affairs. If any sum is found credited in the accounts of the creditors. Then the creditors may be examined so as to explain the credit so far as the source of deposit in the account of the assessee is concerned. The assessee can be considered to have explained by bringing the material on record in the shape of confirmations, bank account and income tax numbers of that person. Thus the assessee had filed ample evidence to discharge the burden cast upon him and the Ld. Assessing Officer has not brought any material on record to show that the explanation filed by the assessee, was in any manner, unsatisfactory consequent thereto the evidence filed by the assessee remain unrebutted,

18. There is no dispute to the fact that the loan taken from these

creditors were were duly repaid by the assessee by account payee cheques in the Assessment Years 200.5-06 to 2007-08 i.e, much prior to the date of search carried by the Department which is evident from copies of account of these creditors.

19.After persuing the balance sheet of various lender companies as per the au ted acoounts, we found that all the parties from whom loan was taken were having substantial funds available with them to advance the money. Position of share capital, reserves and surplus cash and balance, as per the audited balance, as per the audited balance sheet with various companies were as under :

<i>Name of the creditor</i>	<i>Paidup share capital as on 31st March</i>	<i>Reserve & surplus as on 31st March</i>	<i>Cash & Bank balance as on 31st March</i>
<i>East West Finvest India Ltd</i>	<i>3,67,11,000/-</i>	<i>86,424/-</i>	<i>21,31,898/-</i>
<i>Purvi Finvest Ltd</i>	<i>4,47,67,000/-</i>	<i>63,229/-</i>	<i>20,62,494/-</i>
<i>Trimurti Finvest Pvt. Ltd</i>	<i>3,60,00,000/-</i>	<i>3,08,99,041/-</i>	<i>21,23,021/-</i>
<i>K.K. Patel Finance Ltd</i>	<i>89,32,500/-</i>	<i>61,43,922/-</i>	<i>26,73,752/-</i>

20.Merely on the basis of returned income, the Assessing Officer jumped to the conclusion that these lenders were not having sufficient funds to advance the money to the assessee. The Ld. Assessing Officer without going through the audited accounts unnecessarily gone on the fact that these creditors are not having sufficient income to advance the money. It is settled law that the financial worth of a company could not be judged with its income but one has to see that how many funds is available

with it in the bank account at the time of advancing loan.

21. *It was also contention of Ld. Authorized Representative that the Ld. CIT(A) has rightly deleted the addition by relying on various decisions given in his order in addition to that reliance was also placed on the following decision :-*

(a) CIT v. Orissa Corporation P. Ltd., (1986) 159ITR 78 (SC) (1986) 52 CTR 138 in the instant case, the Hon'ble Apex Court held as under : "In this case, the assessee had given the names and address of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income tax assesseees. Their index numbers were income tax assesseees. Their index numbers were in the file of the Revenue. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on same evidence on which a conclusion could be arrived at, no question of law as such arises."

22. *Now coming to the decision of armada Extrusions Limited in IT(SS).A. Nos. 3271jnd12011 order dated 30.12.2011, as cited by the Ld. CIT DR, we found that in this case also on merit it was held that the addition should be restricted with reference to the incriminating documents found during course of survey La the*

case of Lunkad Group from 1.4.2006 to 1.5.2006. It was also observed at page 53 of the said order that the addition should be made with reference to the amount of cash found to be given by the assessee to the Lunkad Group as per incriminating documents so found at Lunkad Group during survey after giving opportunity to the assessee for cross examination. Merely presumption without any material on record to the effect that even in respect of earlier years, the assessee might have given cash to the Lunkad Group for getting unsecured loan, is not justified. In the instant case before us, the Assessing Officer could not bring out any material to suggest that any incriminating entry was found in the documents so collected by the Department from Lunkad Group which pertains to the period 1.4.2006 to 1.5.2006. It is not in dispute that all the loan transactions were through account payee cheques, confirmations were given, creditworthiness were also proved from the balance sheet. Furthermore, all the loans were also repaid by cheques, we, therefore, do not find any merit in the action of Assessing Officer for making any addition in respect of these loan transactions.

23.As the addition made U/S 68 is held to be not justified, we do not find any infirmity in the order of CIT(A) for deleting the disallowance of interest, which was based on the addition of cash credit U IS 68.

24.As we have already dealt with the issue on merit we are not going in the validity of the assessment framed U/S 153A read with Section 143(3) for making addition, where no incriminating material relating to assessment years in question were found and seized from the premises of the assessee.

16. Examining the fact of instant appeal for Assessment Year 2006-07 and 2007-08 in the light of the above judgment of the Co-ordinate Bench in the case of ACIT V/s Shri Girish Kumar Sharda (*Supra*), we find that the same set of companies i.e. M/s. K.K. Patel Finance Limited, Indore, M/s. East West Finvest India Limited, Indore, M/s. Purvi Finvest Ltd, Indore and M/s. Trimurti Finvest Ltd, Indore are in question before the Tribunal in the instant two appeals before us. It has been clearly held by the Hon'ble Tribunal that all the alleged four companies are genuine and unsecured loans from these companies cannot be held to be unexplained cash credit u/s 68 of the Act. Even the linking of the assessee's case to the Lunkard Group was there in the case of ACIT V/s Girish Kumar Sharda (*supra*) and detailed finding has been given by the Tribunal in its order dated 30.1.2014. It is also evident from the perusal of the record that all the four companies are regularly assessed to tax and their assessment u/s 143(3) of the Act have been framed for Assessment Year 2006-07 and copies of the same are placed at page 66-73 of the paper book. They carry regular business activities and have sufficient

funds for giving on credit towards interest. Identity of four companies are well established. Genuineness is duly proved by the transactions which are made through account payee cheque. All necessary details including bank statement/ financial statements, confirmation of account, PAN detail have been filed with these four companies and are placed on record at all proceedings are sufficient to prove the creditworthiness. The alleged unsecured loan of Rs.1,02,00,000/- and Rs.1,25,00,000/- were accepted during the year and were repaid also during the year which supports the contention of the assessee that the alleged loans were taken for business needs and were repaid back when the funds were available.

17. We therefore in the given facts and circumstances of the case and respectfully following the decision of Hon'ble Tribunal in the case of ACIT V/s Girish Kumar Sharda (*supra*) as well as detailed finding of fact by Ld.CIT(A) which is unconverted by the Ld. Departmental Representative as no material evidence has been placed to prove anything contrary. Therefore we find no infirmity in the finding of Ld.CIT(A) deleting the addition of

Rs.1,02,00,000/- and Rs.1,25,00,000/- for alleged unsecured loans and also deletion of disallowance of interest on such loans at Rs.6,14,855/- and Rs.5,55,815/- and also deleting the addition for undisclosed expenditure of Rs.5,25,000/- and Rs.6,25,000/-. We accordingly dismiss Revenue's Ground No.1, 2 & 3 for Assessment Year 2006-07 and 2007-08 respectively.

18. Ground No.4 being general in nature needs no adjudication.

19. In the result appeal of the Revenue for Assessment Year 2006-07 and 2007-08 stands dismissed.

20. Now we take up assessee's case for Assessment Year 2006-07 being I.T.A.No.392/Ind/2014 raising following grounds;

"1. That on the facts & circumstances of the case, the learned CIT has erred in treating the rental income earned from House property for Rs.26,87,635/- as business income and thereby confirming an addition of Rs.7,92,350/- claimed u/s 24 as a deduction".

21. The sole grievance raised is against the order of Ld.CIT(A) denying the benefit of deduction u/s 24 of the Act at

Rs.7,92,350/- against the income earned from House property at Rs.26,87,635/-. Brief facts relevant to this issue are that the assessee is engaged in the real estate business. Some immoveable property which remains unsold are part of the closing stock. As these properties could not be sold the assessee leased them for earning rental income to various consultants. The rental income received at Rs.26,87,635/-has been shown under the head income from house property and deduction u/s 24 of the Act @30% of the rent received was claimed at Rs.7,92,350/-. Ld.A.O took a view that the main activity of the assessee is of real estate business and leased out properties were commercial complex, therefore the alleged receipt of Rs.26,87,635/- is a business receipt and no deduction is allowable u/s 24 of the Act. Appeal filed by the assessee before the Ld.CIT(A) find no favour to the assessee.

22. Now the assessee is in appeal before the Tribunal.

23. Ld. Counsel for the assessee has made following written submissions in support of his contention that the rental income from the said unsold immoveable property is being regularly shown under the head income from house property

and deduction u/s 24 of the Act have been claimed consistently. In the subsequent years also this claim has been allowed by the revenue authorities.

1. In the appellant's case for the said AY appellant was engaged in the business of real estate.
2. That appellant had shown rental income of Rs.26,87,635/- under the head income from house property and claimed standard deduction of 30% u/s 24 of Income Tax Act, 1961 amounting to Rs.7,92,350/- while offering the rental income for income tax.
3. That Ld.AO had alleged that the appellant has wrongly considered the rental income as income from house property instead the same should be offered to tax under the head Income from business since the assessee was engaged in the business of real estate during the said AY.
4. That it is pertinent to note here that assessee has submitted before Ld.AO that Ld.CIT (A) that as a matter of fact the assessee claimed that the rented portion of the building built by him was included in the closing stock. Since the same was not sold out, it was rented out to the various concerns therefore, the income was rightly shown under the head income from house property.
5. That Ld.AO and thereafter Ld.CIT(A) both have disallowed the claim of appellant in this particular ASSESSMENT YEAR by citing the reason that the main business activity of the assessee was to lease out land, commercial complex etc and therefore the rental income would be chargeable under the head income from business and not income from house property.
6. That it is pertinent to submit before this Hon'ble bench that the similar issue was raised by Ld.AO while doing assessment for AY 2005-06 i.e treating rental income as income from business instead of income from house property and disallowed the standard deduction of 30% u/s

24 of Income Tax Act, 1961. However, Ld.CIT(A) upon appeal of appellant against the impugned order of Ld.AO has allowed the appeal in favour of the appellant. Also, it is important to note here that department has not appealed further in this case against the order of Ld. CIT(A).

7. That we wish to submit before this bench that even in A Y 2007-08 department has allowed the standard deduction of 30% on rental income and has not raised this issue during the course of assessment proceedings.

8. Ld. Counsel for the assessee relied on following judgments;

- i) East India Housing and Land Development Trust Ltd. V(1961) 42 ITR 49 (S.C)
- ii) Azimganj Estate Pvt. Ltd Vs CIT (2013) 352 ITR 82(Cal)
- iii) New Delhi Hotels Ltd. V(2014) 360 ITR 187 (Del)

24 Per contra Ld. Departmental Representative vehemently argued and supporting the orders of both the lower authorities.

25. We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee relates to the eligibility of the deduction u/s 24 of the Act @30% from rental income from house property. The assessee is engaged in the business of real estate and some part of the constructed area which remain unsold were being rented out. The rented immoveable properties are included in the closing stock of the

company. Now whether the rental income received from such immovable properties which are part of the business stock are to be taken as business income or from house property. The above question needs to be adjudicated in the light of judicial pronouncements of Hon'ble Apex Court in the case of East India Housing and Land Development Trust Ltd (*Supra*) wherein Hon'ble Apex Court has categorically held that “the income derived by the company from shops and stalls was income received from house property and fell under the specific head described in Section 9. The character of that income was not altered because it was received by the company formed with the object of developing and setting up markets”.

26. The Hon'ble High Court of Calcutta in the case of Azimganj Estate Pvt. Ltd Vs CIT held that “in the case of property builder and developer assessee-rental income from unsold flats are to be taken as income from house property”.

27. Hon'ble High Court of Delhi in the case of New Delhi Hotels Ltd has also held that “in case of property builder and developer assessee rental income from unsold flats shown as

stock in trade is assessable as income from house property”.

28. We therefore respectfully following above judgment and examining the facts of instant appeal are of the considered view that the alleged receipts of Rs.26,87,635/- are purely rental income from renting out unsold property and manner of earning such income is purely taxable under the head income from house property and by no canon can be treated as business income and therefore the assessee is eligible for deduction u/s 24 of the Act @30% of the rental income which in this case is Rs.7,92,350/-. The plea of the assessee further finds support that in the subsequent years this claim of the assessee of showing rental income of house property and claim of deduction u/s 24 of the Act has been consistently allowed by the revenue authorities. We therefore set aside the finding of Ld.CIT(A) for Assessment Year 2006-07 and allow the sole ground No.1 raised by the assessee.

29. Ground No.2 being general in nature which needs no adjudication.

Pramod Kumar Sethi
I.T.A. No. 382 & 383/Ind/14

30. In the result appeal filed by the revenue being I.T.A.No.382 & 383/Ind/2014 are dismissed and I.T.A.No.392/Ind/2014 filed by the assessee is allowed.

Order was pronounced in the open court on 06.11.2018.

Sd/-

(KUL BHARAT)
JUDICIALMEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANTMEMBER

Indore; दिनांक Dated : 06 /11/2018

/Dev

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

By order
Asstt. Registrar,I.T.A.T.,Indore