

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

श्री रमेश सी. शर्मा, लेखा सदस्य एवं श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI RAMESH C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 69/JP/2018  
निर्धारण वर्ष/Assessment Year : 2012-13.

Shri Nitin Raj Jain, 4/435, Malviya Nagar, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 6(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AGLPJ 9645 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal (CA)  
राजस्व की ओर से/ Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख/ Date of Hearing : 28.03.2019.  
घोषणा की तारीख/ Date of Pronouncement : 14/05/2019.

आदेश/ ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 20<sup>th</sup> November, 2017 of Id. CIT (A), Ajmer for the assessment year 2012-13. The assessee has raised the following grounds :-

- " 1. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in confirming the action of Id. AO in rejecting the books of accounts by invoking provisions of section 145(3) of the Income Tax Act, 1961 on the observation of decline in GP rate by completely ignoring the manifold increase in turnover, thus the action of Id. AO deserves to be hold bad in law and consequent addition deserves to be deleted.
- 1.1. That Id. CIT (A) has further erred in confirming the trading addition of Rs. 5,13,878/- by estimating turnover at Rs. 11,00,00,000/- as against turnover of Rs. 10,53,89,705/- declared by assessee and further erred by applying GP rate of

0.80% on such estimated turnover. Appellant prays addition so confirmed deserves to be deleted.

2. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in confirming the disallowance of Rs. 50,000/- out of disallowance of Rs. 1,00,000/- made by Id. AO, without pointing out any specific discrepancy in the books of accounts. It is thus prayed disallowance so confirmed deserves to be deleted.
3. On the facts and in the circumstances of the case and in law, Id. CIT (A) erred in confirming the addition of Rs. 3,00,00,000/- made by Id. AO by alleging the unsecured loans received by assessee as bogus solely on the basis of statements of third parties recorded in some other matter, by some other officers and that too behind the back of assessee, thus the addition so made deserves to be deleted.
  - 3.1. That the Id. CIT (A) further erred in confirming the addition of Rs. 3,00,00,000/- made by Id. AO without providing opportunity to cross examine of persons, whose statements were relied upon for making addition, which is against the principle of natural justice, thus addition so made is not in accordance with law and deserves to be deleted.
  - 3.2. That the Id. CIT (A) has further erred in confirming the addition by not appreciating the fact that the assessee company has submitted all the plausible evidences like confirmations, ITR, balance sheet set etc. in order to establish the identity, genuineness of the transactions and creditworthiness of the lender beyond doubt, thus the assessee has duly discharged the onus lied upon it, therefore the additions so made deserves to be deleted.
4. On the facts and in the circumstances of the case and in law, lower authorities has erred in not allowing the benefit of telescoping and set off of trading addition made against the addition made u/s 68 of the Act. Appellant prays that the without prejudice to grounds of appeal No. 1 to 3 telescoping set off deserves to be allowed.
5. That the appellant craves the right to add, delete, amend or abandon the ground of this appeal at the time or before the actual hearing of the case."

**Ground No. 1 & 1.1 are regarding rejection of books of account by invoking provisions of section 145(3) and consequential trading addition by applying GP rate of 0.80%.**

2. The assessee is an individual and proprietor of M/s. Vinod Steels which is engaged in the business of trading of TMT Bars. The assessee filed his return of income for the year under consideration on 19.09.2012 declaring total income of Rs. 1,86,260/-. The AO in the assessment order has observed that the assessee was not cooperative during the course of assessment proceedings as under :

“ Before proceeding to complete the assessment it is pertinent to note that the assessee has not been cooperative during the course of assessment proceedings. In order to examine the veracity of facts, assessee has been asked to produce books of accounts vide issue of notice u/s 142(1) on 5.3.2015 and the case was fixed for 12.3.2015, however on the given date no body appeared and produced books of accounts. The assessee had also been issued summons u/s 131 of the Income Tax Act, to know the exact nature of his business, however, he did not bother to attend the proceedings nor has the reply been filed by the assessee for non compliance of the summons. When Shri Amit Goyal & Rajeev Kumar attended to produce books of accounts, in reply to show cause issued, he submitted that the assessee had fallen ill and hence he did not comply with the summons issued where as the discreet enquiry of the Inspector of the Ward revealed that the assessee was not ill and he had been going to his A.R's office regularly. In support of the claim made by the A.R no medical certificate has been submitted. Thus implying that the

assessee has been non cooperative and he has been absconding so that by way of investigation the true nature of his business would not be revealed.”

2.1. Apart from the conduct of the assessee avoiding the proceedings and enquiry to be conducted by the AO to find out the correctness of the books of account and return of income, the AO further noted that during the year under consideration the assessee has declared turnover of Rs. 10,53,89,705/- and GP of Rs. 3,66,122/- which gives GP rate of 0.35% in comparison to the GP rate of 0.80% declared by the assessee in the immediately preceding year on the turnover of Rs.3,44,23,099/-. The assessee was asked to give the reason for fall in the GP rate. In response, the assessee explained that the profit rate has declined due to mass supply to M/s. RSWM and as per the terms and conditions for supply, the goods were to be delivered at the door step. Thus the assessee explained that due to the freight expenses of Rs. 6,98,586/- borne by the assessee on the sale to M/s. RSWM the gross profit rate declined. The AO noted that there has been no bills of unloading expenses shown at Rs. 1,02,376/- in the trading account and further the godown rent of Rs. 75,150/- claimed by the assessee is also not found to be used for the business purposes of the assessee. Thus the AO doubted the genuineness of the claim of godown rent. Similarly, the AO observed that the valuation of closing stock is also not possible as the assessee has not maintained stock register item-wise. Sale bills of cash bill do not mention name of the person or address, therefore, in the absence of necessary particulars even the description of the goods sold, the same cannot be verified. Even the sale bills on credit or through cheque did not have complete address of purchaser nor was delivery address mentioned. Accordingly,

the AO observed that the transactions of purchase as well as sales are not verifiable. Finally, the AO held that when majority of entries of trading account remained unproved/unverifiable, then the books of account are liable to be rejected and trading results of the assessee to be estimated. The AO estimated the turnover of the assessee at Rs. 11,00,00,000/- as against Rs. 10,53,89,705/- and applied GP rate of 0.80% to estimate the income of the assessee. Consequently the AO has made the addition of Rs. 5,13,878/- on this account. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that the books were rejected by the AO primarily for the reason that GP rate declared by the assessee has declined during the year under consideration in comparison to the immediately preceding year. The AO has also observed that the assessee is not maintaining item-wise stock register and the claim of godown rent is also not found genuine. The Id. A/R has contended that the assessee is maintaining regular books of account following the mercantile method of accounting regularly employed on year to year basis. The books of account were subjected to audit as per the provisions of section 44AB of the IT Act and no irregularity was found by the auditor. As regards the decline in GP rate, it was submitted that due to the bulk supply to M/s. RSWM with the condition that the assessee has to supply goods at the door step and bear the cost of freight, the assessee has incurred an expenditure of Rs. 6,98,586/- on this account. Further, when the turnover of the assessee was increased for more than 3 times, then a marginal decline in GP rate is natural and normal. The AO has not disputed the bulk supply to M/s. RSWM on the condition of supply at door step of

the purchaser. Therefore, once the assessee has explained the reason for decline, it cannot be a reason for rejection of books of account. The assessee furnished complete details of closing stock along with its valuation but the AO has disregarded the same on general remarks that assessee was not maintaining item-wise, quality-wise stock register. He has contended that the AO has not pointed out any single defect in the books of account of the assessee but some general and minor remarks were made. The entire turnover of the assessee was duly reported in VAT return and accepted by the Sales Tax Department. Therefore, there was no reason to estimate the turnover without any basis. The Id. A/R has relied upon the decision of Hon'ble Jurisdictional High Court in the case of Malani Ramjivan Jagannath vs. ACIT, 316 ITR 120 (Raj.) as well as the decision of Jodhpur Bench of the Tribunal in case of Haridas Parikh vs. ITO, 29 SOT 13 (Jodh.). He has submitted that when the assessee has furnished the reasonable explanation for reduction in the profit during the year, then the books are not required to be rejected on this ground. The Id. A/R has submitted that the action of the AO rejecting the books of account and then making trading addition is not justified.

4. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the conduct of the assessee was not cooperative as stated by the AO and further the closing stock of the assessee was also not subjected to verification as the assessee was not maintaining item-wise stock register. The sale bills do not contain the necessary particulars and, therefore, were not subjected to verification. Thus the AO has pointed out various defects in the books of account and accordingly rightly rejected the book result. The AO has estimated the income

of the assessee based on the past history and applied the GP as declared by the assessee in the immediately preceding year.

5. We have considered the rival submissions as well as the relevant material on record. Though the AO has made some disturbing remarks about the conduct of the assessee being not cooperative during the assessment proceedings, however, subsequently the assessee produced the relevant record before the AO which were examined by the AO. As regards the decline in GP rate, we find that the explanation of the assessee that the assessee had to incur freight charges in respect of bulk supply to M/s. RSWM and, therefore, due to the cost of freight of Rs. 6,98,586/- borne by the assessee in the said supply order, the GP rate declined for the year under consideration. We further note that the AO has compared the GP declared by the assessee with the GP of immediately preceding year. However, the turnover for the year under consideration has increased manifold from Rs. 3.44 crores in the preceding year to Rs. 10.53 crores during the year under consideration. This increase in the turnover is also due to the bulk supply made to M/s. RSWM. Therefore, when the AO has not disputed this fact of bulk supply and freight cost borne by the assessee then the reasons explained by the assessee cannot be rejected without any contrary facts or material. Another reason for rejecting the books of account found by the AO is non verification of the valuation of closing stock and sale bills. We find that the assessee is not a manufacturer but trader of TMT bars and, therefore, once the quantity of purchase, sale and closing stock is duly recorded in the stock register then the item-wise maintenance of stock register is not a necessary condition. The books of the assessee are audited and no defect was

found by the auditors. Further, the entire sales of the assessee were subjected to VAT and were accepted by the Sales Tax Department. Therefore, merely because the assessee has not given the full particulars of the purchaser on the cash sale bills when the quantity as recorded in the books of account is not in dispute, then the sale transactions of the assessee without any other contrary record or finding cannot be doubted. The AO has also doubted the genuineness of the godown rent, however, for rejection of books and estimation of income by applying the GP, the said item is not relevant as it is not part of the trading account. Therefore, we find that the minor adverse remarks by the AO without pointing out a specific and material defect in the books of account cannot be a reason for rejection of books even otherwise if the claim of expenditure is not found to be genuine otherwise the same can be disallowed but it cannot be a reason for rejection of books of account. Hence, in view of the above facts and circumstances of the case, we are of the considered opinion that the AO was not justified in rejecting the books of account by invoking the provisions of section 145(3) and consequent estimation of income by the AO by applying the GP as declared in the immediately preceding year without considering the average of past history which should be at least 3 to 5 years. Hence the orders of the authorities below qua this issue are set aside and the trading addition made by the AO is deleted.

**Ground No. 2 is regarding confirming adhoc disallowance of Rs. 50,000/- out of disallowance of Rs. 1,00,000/- made by the A.O.**

6. The AO noted that in the Profit & Loss account the assessee has debited the expenses of Rs. 1,58,093/-, however, none of the expenses can be proved as bills

and vouchers for the expenses has not been produced for verification. Accordingly in the absence of proper bills and vouchers of expenses debited through self made vouchers, the AO disallowed a sum of Rs. 1,00,000/- out of the total expenses of Rs. 1,58,093/-. On appeal, the Id. CIT (A) has restricted the disallowance to Rs. 50,000/- as against Rs. 1,00,000/- made by the AO.

7. Before us, the Id. A/R of the assessee has submitted that the AO has made an adhoc addition of expenses which were confirmed by the Id. CIT (A) which is not permissible under the law. In support of his contention, he has relied upon the decision of Hon'ble Andhra Pradesh High Court in case of Indwell Constructions vs. CIT, 232 ITR 776 (AP). The Id. A/R has further submitted that the disallowance was made solely on the presumption without giving a finding that the claim of expenses was on higher side, therefore, such disallowance on ad hoc basis is not justified when the assessee has declared the turnover of Rs. 10.53 crores during the year under consideration.

8. On the other hand, the Id. D/R has submitted that there is no dispute that the assessee has not produced any supporting bills or vouchers to show that the said expenditure was incurred wholly and exclusively for the purpose of business of the assessee, therefore, the disallowance restricted by the Id. CIT (A) to Rs. 50,000/- is just and reasonable. He has relied upon the orders of the authorities below.

9. We have considered the rival submissions as well as the relevant material on record. We find that the AO has discussed this issue in para 3 as under :-

*" 3. Disallowance from the expenses debited in profit & loss account. In profit & loss account the assessee has debited the expenses of Rs. 1,58,093/- however during the examination of the books of accounts the none of the expenses could be proved as the bills and vouchers for the expenses debited had not been produced for verification. In absence of the proper bills and vouchers the expenses debited through self made vouchers cannot be considered to be explainable, hence I restrict the expenses in all to Rs. 58,093/- and a sum of Rs. 1,00,000/- is added to the income of the assessee."*

The assessee has not controverted the findings recorded by the AO that the assessee has not produced any bill/voucher for verification of the AO. Therefore, when the expenditure claimed by the assessee are not supported by the proper bills and vouchers, then the assessee has failed to discharge its onus to establish that the expenditure has been incurred wholly and exclusively for the business of the assessee. The Id. CIT (A) has restricted this disallowance to Rs. 50,000/- which we find as proper and reasonable having regard to the facts and circumstances of the case. Accordingly, we do not find any error or illegality in the impugned order of Id. CIT (A) qua this issue.

**Ground Nos. 3 to 3.2 are regarding an addition of Rs. 3,00,00,000/- under section 68 of the IT Act on account of unsecured loans treated as unexplained cash credit.**

10. The AO noted that the assessee has received loan of Rs. 1,00,00,000/- from M/s. Punit Oils & Chemicals and Rs. 2,00,00,000/- from M/s. Tanish Tradecom Pvt. Ltd. In order to examine the genuineness of the loans, the assessee was asked to give the complete address of the loan creditors. The AO issued notices under section 133(6) at the addresses provided by the assessee. The notice sent to M/s. Punit Oils & Chemicals received back unserved and to M/s. Tanish Tradecom Pvt. Ltd. was served and a confirmation of loan in the form of ledger of the assessee was sent by the loan creditor. The AO then issued a letter under section 133(6) to the banker of M/s. Tanish Tradecom Pvt. Ltd. i.e. Manager, Karnataka Bank Ltd., Kolkata as well as the banker of M/s. Punit Oils & Chemicals Ltd. In reply, the AO found that both loans were given to the assessee from the same branch of Karnataka Bank Ltd. and the source of the loan was found to be RTGS from the Bank of Baroda, Branch C-Scheme, Jaipur. The AO then referred to the investigation carried out by the DDIT Kolkata and information received vide letter dated 12<sup>th</sup> January, 2015 wherein it was stated that M/s. Punit Oils & Chemicals Ltd. and M/s. Tanish Tradecom Pvt. Ltd. were engaged in providing bogus entry for loan, long term capital gain and assessee has received bogus loans from these companies. The AO accordingly proposed to make an addition under section 68 of the IT Act and issued a show cause notice to the assessee. After considering the reply of the assessee, the AO has made the addition of Rs. 3,00,00,000/- under section 68 by treating the same as unexplained cash credit. In appeal, the assessee raised various objections that the report of the Investigation Wing of Kolkata was considered without supplying the copy to the assessee. The Id. CIT (A) then asked the AO to submit the report and

after considering the report of the AO as well as further investigation carried out by the AO through DDIT, Kolkata Wing, the Id. CIT(A) has confirmed the addition made by the AO.

11. Before us, the Id. A/R of the assessee has submitted that the AO has treated the loan transaction as accommodation entry on the basis of report received from DDIT Investigation Wing Kolkata as well as the statement of Shri Anand Sharma in whose case search was conducted. Further, the AO has observed that the lender companies have no operational income and no interest was charged on unsecured loans given to the assessee. He has referred to provisions of section 68 and submitted that as per the said provisions, an addition can be made by the AO only when the assessee does not offer any explanation or the explanation offered by the assessee is not upto the satisfaction of the AO. The Id. A/R has contended that in the instant case, appellant has not only offered explanation regarding nature and source of credits but also substantiated the same with documentary evidences in the shape of ITRs, Confirmations, Balance Sheet, Bank Statement of lender which were not at all doubted by AO but all such vital evidences have been ignored solely because summons issued in the name of lenders returned unserved and further as per report of DDIT Inv, companies were bogus and were providing accommodation entries. It is further submitted that to come out of rigors of section 68, an assessee has to prove identity and creditworthiness of the creditor and genuineness of the transaction. In the instant case, assessee has established all the three conditions. The identity of creditor is established as both the lenders are companies

incorporated under Companies Act and holding PAN. Copies of their ITRs, confirmations, Assessment orders were furnished to prove their identity. Creditworthiness was proved by producing copy of audited financial statements as well as bank statement was furnished where the loan given is duly evident. Genuineness of transaction is proved as loan was received through banking channel. Assessee has furnished confirmation from the party as well as financial statements wherein loan taken by assessee is appearing. It is also a matter of fact that nowhere in the assessment order, Id. AO has established that the money paid by such company was that of appellant. It is further submitted that assessee was neither supplied with copy of investigation report relied upon by Id. AO nor was provided with opportunity to cross examine Shri Anand Sharma, whose statements have been heavily relied upon for making such a huge addition in the hands of assessee. Even the copy of statements of Shri Anand Sharma was not provided to the assessee during the course of assessment proceedings. Moreover, nowhere in the assessment order, Id. AO has specified that Shri Anand Sharma has anywhere admitted the assessee to be the beneficiary of the alleged entry providing activity. Your honours would appreciate that such statements were recorded behind the back of assessee and not in the assessment proceedings of the assessee and in some other case. In such scenario, Id. AO was duty bound to make further specific enquiries during assessment proceedings in the case of assessee and further to provide assessee with the opportunity to cross examine him. It is a settled proposition of law that opportunity to cross examine is one of the basic principles of natural justice and not providing assessee with it amounts to gross violation of the

principles of natural justice and renders entire proceedings void. He has relied upon the decision of Hon'ble Supreme Court in case of Andaman Timber Industries vs. CCE, (2016) 15 SCC 785 (SC) and submitted that the statement relied upon by the AO without giving the opportunity of cross examination by the assessee cannot be a basis for assessment order and addition made by the AO. He has also relied upon the following decisions :-

M/s. Kota Dall Mill vs. DCIT  
In ITA No. 997 to 1002/JP/2018 & 1119/JP/2018)

M/s. Choice Buildestate P. Ltd. vs. ITO  
In ITA No. 431/JP/2016)

DCIT vs. M/s. Premium Bars (P) Ltd.  
In ITA No. 143/JP/2017)

Thus the Id. A/R has pleaded that the addition made by the AO under section 68 of the IT Act may be deleted.

12. On the other hand, the Id. D/R has submitted that the AO has conducted due enquiry and investigation through DDIT Kolkata and has brought on record the fact that the immediate source of the loan given to the assessee was a transfer of fund from Bank of Baroda, C-Scheme, Jaipur to the loan creditors at their bank at Kolkata. Further it was also brought on record that both these companies were belonging to Shri Anand Sharma who was involved in providing accommodation entries of loans, long term capital gain, share capital etc. Thus the AO has

established the fact that the transactions are not genuine and further the lender companies were not having any source from their operating income to grant such loans that too without charging any interest. Even the Id. CIT (A) further called for a report from the AO and during the appellate proceedings further investigation was carried out which has proved that the transactions are not genuine but it is accommodation entries provided by these companies to the assessee. He has relied upon the orders of the authorities below and submitted that the AO has relied upon various decisions including the decision of Hon'ble Supreme Court in case of Kale Khan Mohammed Hanif vs. CIT, 50 ITR 1 (SC). The decisions relied upon by the AO have been reaffirmed by the Hon'ble Supreme Court in the latest decision in case of Pr. CIT vs. NRA Iron & Steel Pvt. Ltd., 412 ITR 161 (SC)

13. We have considered the rival submissions as well as the relevant material on record. In the case in hand, the assessee has shown unsecured loan of Rs. 3,00,00,000/- taken from two companies, namely, M/s. Punit Oils & Chemicals Ltd. of Rs. 1,00,00,000/- and M/s. Tanish Tradecom Pvt. Ltd. of Rs. 2,00,00,000/-. There is no dispute that the unsecured loans taken from these Kolkata based companies by the assessee were without any charge of interest. This fact is not found in the normal transaction of loan that too unsecured loans taken from these so called unrelated parties. The AO has conducted an enquiry to find the genuineness of the transaction and creditworthiness of the loan creditors. The enquiry conducted from the concerned banks revealed that these loans were given by loan creditor companies from the same branch of Karnataka Bank Ltd situated at

Kolkata and the immediate source of loan was RTGS from the Bank of Baroda, Branch C-Scheme, Jaipur. This fact revealed in the enquiry further gives the reason to the AO to find out the genuineness of transaction. The AO then considered the investigation carried out by the DDIT Kolkata in case of search of Shri Anand Sharma and found that the loan creditor companies are operated by Shri Anand Sharma and engaged in providing bogus entry for loan/LTCG. It is settled proposition that as per the provisions of section 68 of the IT Act, the initial burden is on the assessee to establish the genuineness of the transaction, creditworthiness and identity of the creditor. Thus the identity and capacity of the creditor to advance the money has to be established by producing some cogent evidence. Similarly, the genuineness of the transaction is also required to be established from the fact that the creditor was having the capacity and creditworthiness as well as a reason to advance the money to the assessee. In the case in hand, the assessee has not disputed the fact that the loan creditors have not charged any interest. Therefore, it defies the commercial purpose of transaction. The AO has discussed this issue in para 4 as under :-

4 Addition u/s 68 of the Income Tax Act 1961 for loans received from M/s Punit oils & chemicals & M/s Tanish tradecom Pvt Ltd.

As per the copy of the balance sheet submitted by the A.R of the assessee along with the audit report it is seen that the assessee has received loans of RS 1,00,00,000/- from Punit Oils & chemicals and of Rs 2,00,00,000/- from Tanish Tradecom Pvt Ltd . In order to examine the genuineness of the loan the assessee was asked to give complete address of the loan giving companies . The A.R supplied the address of both the companies and then the letter seeking information u/s 133(6) of the Income Tax Act 1961 were sent . The letter sent to Punit oils & chemicals Pvt Ltd returned unserved. and M/s Tanish tradecom Pvt Ltd received the letter and sent the confirmation of the loan in the form of ledger of assessee, however there seemed to be a glitch which lead to the investigation of the bank accounts of the companies regarding the source of the loan provider.

Hence letter u/s 133(6) of the Income Tax Act 1961 was written to the banker of Tanish Tradecom , i.e. manager Karnataka Bank Ltd, Kolkata and for determining the bank account of M/s Punit oils & chemicals Ltd banker of assessee , the manager Bank of baroda ,Jaipur ,was contacted .

In reply the Bank Manager, Bank of baroda , banker of assessee stated that M/s Punit oils & chemicals had sent the loan to assessee through their bank account maintained in Karnataka bank Ltd Central avenue branch Kolkata.

Hence it was found that both the loan giving companies had provided loan from the same branch of Karnataka bank Ltd. The manager of Karnataka Bank Ltd was asked u/s 133(6) of Income Tax Act to give the immediate source of the loans provided by both the companies namely M/s Punit oils & chemicals & M/s Tanish Tradecom Pvt Ltd. In response to the letter issued u/s 133(6) of the Income tax Act the manager replied that the immediate source of loan by both these companies was the RTGS from The bank of Baroda branch C-scheme and the sum had been transferred from the account of M/s Premier bars Pvt Ltd on the same day.

In the another set of Investigations by the DDIT(inv)Unit2 (1), Kolkata in his letter no. DDIT(inv)/unit 2(1)/KJM/2014-15 dated 12/01/2015 had informed that the companies M/s Punit oils & chemical Pvt Ltd & M/s Tanish Tradecom were companies which provided bogus entries for loans/ LTCG and M/s Premier Bars Pvt Ltd as well as assessee had obtained bogus loans from these companies .

DDIT (INV) UNIT 2 (1)  
KOLKATA

TANISH TRADECOM

In view of above discussion show cause was issued to the assessee to show why the loans should not be considered as bogus and addition be made u/s 68 of the Income Tax Act 1961.

In reply to the show cause issued the A.R stated that the confirmation of the loan giver along with their copy of return, bank account statement and the copy of the audit report have been provided. The assessee has therefore discarded its liability to prove the identity of the loan giver, genuineness of the loan and credit worthiness of the loan giver. The assessee is not required to examine the source of the source, hence the loans should not be considered as bogus. The A.R further placed reliance on few judgments pronounced by the various judicial authorities as under

- 1 Addl CIT v/s Bahri Bros (p) ltd 154 ITR 244 (patna)
- 2 Nemichand Kothari V/s CIT 264 ITR 254 (guj)
- 3 Jalan Timbers v/s CIT 223 ITR 11(guj)
- 4 S.K, Bothra & sons , HUF v/s ITO 203 taxmann 436 (kol)
- 5 CIT v/s Doulat ram Rawatmull 87 ITR 349(SC)

The submission of the A.R is considered but not accepted for the following reasons

- 1 The confirmation letter sent by the department to M/s Punit oils & chemicals Pvt Ltd returned unserved.
- 2 The Companies M/s Punit oils and chemical Pvt Ltd & m/s Tanish Tradecom Pvt Ltd are the concerns of same group of directors even the address of the companies is same.
- 3 Both companies do not have any operational income as it is revealed from the audit report of both companies, Further no interest has been shown to have been charged on the loan. The companies have not shown any interest receipt also in the audit report, then how is it possible that such huge amounts are forwarded for charity especially when the loan giving company does not have plentiful.
- 4 The DDIT Inv have proved that the both the companies are bogus concerns and are just providing accommodation entries the end sources of which have been the cash deposits in some bank account He has further mentioned in his letter the specific bank account no. 4342000100080301 of Karnataka bank ltd central avenue branch , Kolkata. In case of Punit oils & chemicals ltd which has been used to provide bogus entries. It is the same bank account through which the assessee has received the loan. In case of

Tanish tradecom the specific bank account has been mentioned as 4342000100080201 in the Karnataka Bank Ltd, central Avenue branch Kolkata , it is the same bank account through which the assessee has received the loan from Tanish tradecom. The investigation further revealed that these companies are controlled by entry operator Anand Sharma in whose case search u/s 32 of the Income Tax act was conducted and he has admitted that the various companies controlled by him are functioning for the purpose of providing accommodation entries and m/s Punit Oils & chemicals Ltd & Tanish Tradecom Pvt Ltd featured in the list of the bogus companies controlled and managed by Anand Sharma.

- 5 The Investigation have further proved that the ultimate source of the assessee M/s Premier Bars Pvt Ltd has been involved in activities which have been under the scanner of law
- 6 No interest has been paid on such huge loans , even though the loan giving companies did not have reserves and surplus
- 7 It is established principal of law that the law enforcing authorities need not establish the case by precision of mathematical accuracy. Many facts related to the illicit business remain in the knowledge of the assessee and his associates, and if the assessee fails to establish to explain the facts , adverse inference can be drawn which coupled by the presumptive evidence proves the assessee guilty
- 8 Thus the loans obtained by the assessee are bogus and hence liable to be added u/s 68 of the Income Tax Act. The decisions relied upon by the assessee are considered but to counter then the discussion and the reliance of the case laws in as per the forthcoming paragraphs
- 9 The assessee has stated that the credit worthiness, Identity and the genuineness of the loans have been proved, however the fact is not true. The department has on the contrary proved the loan giving companies to be bogus and just entry providers. The discussions above prove that the assessee has entered into sham transactions to enter his undisclosed money into circulation. This is clearly evident from the bank account of the assessee. Hence show cause was issued to the assessee and in reply to show cause the assessee's A.R has just submitted that the assessee is not

required to explain the source of the source and has relied on various judgement pronounced by the Honorable courts

- 10 The judicial pronouncement relied upon by the assessee have been considered but not acceptable since it has been clearly established by making intrinsic enquiries that the credit entries in the name of M/s Punit Oils & chemicals Pvt Ltd & of M/s Tanish Tradecom Pvt Ltd are bogus and are liable to be added u/s 68 of the Income Tax Act 1961.
- 11 While introducing the section 68 of the Income Tax Act 1961 the intention of the legislature was to curb the menace of dubious credit entries. Further it may, however, be understood that the view expressed by the Hon. High Court of Allahabad and the Honourable bench of the ITAT, Jaipur are in given facts and circumstances of the case and it does not necessarily mean that in each and every case the facts are identical as such onus on the part of the assessee is not discharged by merely providing the PAN & confirmation of the creditors. In fact, there are enough judicial pronouncements favoring Revenue where it has been acknowledged that the burden does not shift by mere mention of income-tax file number of creditor and it will not suffice and the genuineness of the cash credit cannot be said to have been proved by the assessee - CIT v. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (Cal.). More so, in the cases where efforts have been made by the Assessing Officers to gather evidences by conducting enquiry to examine the truth in respect of the cash credit.
- 12 In this respect the Honourable apex court and the jurisdictional High courts have pronounced various decisions and the gist of the pronouncements is that
- (i) The provision of section 68 applies on all credit entries.
  - (ii) Under Section 68, the onus is on the assessee to offer explanation where any sum is found credited in the books of account and where the assessee fails to prove to the satisfaction of the Assessing Officer, the source and nature of the amount of cash credits, he is entitled to draw an inference that the credit entries represent income taxable in the hands of the assessee. It is not the duty of the Assessing Officer to locate the exact source of the cash credits. The burden to identify the source lies upon the assessee and he is required to explain the genuineness of the credit entry.

- 13 However in the present case the credit entries have been verified & have been brought to an logical end. Further reliance is placed on the decision of the various courts as under:-

**Khandelwal Constructions v. CIT 227 ITR 900 (Gau.)**

It has been held that Section 68 of Income Tax Act, 1961, empowers the Assessing officer to make enquiry regarding cash credit. If he is satisfied that these entries are not genuine he has every right to add these as income from other sources. But before rejecting the assessee's explanation A.O. must make proper enquiries and in the absence of proper enquiries, addition cannot be sustained.

- 14 In the case of the assessee detailed Enquiries have been made and only when the end point has been reached and the end source, M/s Premier bars has been proved to have been involved in clandestine activities the logical inferences have been drawn. Thus as per the judicial pronouncement proper enquiries have been made. The contention of the assessee that the assessee is not required to explain the source of the source is here by rejected by placing reliance on the above order. Provision applies to all credit entries :-  
In the cases where credit entry has been made in the books of the assessee, the ambit of Section 68 is wide and inclusive. Provision applies to all credit entries. The language of Section 68 shows that it is general in nature and applies to all credit entries in whomsoever name they may stand, that is, whether in the name of the assessee or a third party as held in the case of Gumani Ram Siri Ram v. CIT [1975] 98 ITR 337 (Punj. & Har.).

Burden of Proof :-

As stated above in preceding paras Under Section 68, the onus is on the assessee to offer explanation where any sum is found credited in the books of account and where the assessee fails to prove to the satisfaction of the Assessing Officer, the source and nature of the amount of cash credits, he is entitled to draw an inference that the credit entries represent income taxable in the hands of the assessee. It is not the duty of the Assessing Officer to locate the exact source of the cash credits. The burden to identify the source lies upon the assessee and he is required to explain the genuineness of the credit

- 15 Thus from the reasons cited above the loan of Rs 30000000/- is considered to be bogus and the added to the income of the assessee. The principle embodied in Section 68 is only a statutory recognition of what was always understood to be the law based upon the rule that the burden of proof is on the taxpayer to prove the genuineness of borrowings since the relevant facts are exclusively within his knowledge. Even before the enactment of Section 68, this rule of evidence was applicable vide *Kale Khan Mohammed Hanif v. CIT* [1963] 50 ITR 1 (SC).

It has been clearly held in case of *CIT Vs. United Commercial and Industrial Co. (Pvt.) Ltd.* (1991) 187 ITR 596 (Cal), that Though the Assessing Officers, often, acts on confirmatory letters as evidence, the onus does not get discharged merely by such confirmatory letters as found in nor is the fact that the amount is received by account payee cheques is sacrosanct as was pointed out in *CIT vs. Precision Finance Pvt. Ltd.* (1994) 208 ITR 465 (Cal). This view was further held in the case of *Nemi Chand Kothari v. CIT* [2003] 264 ITR 254 (Gau.) where in it was held that it cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct.

On the issue of burden of proof a very specific and illustrious decision was from the Hon. Calcutta High Court in *CIT vs. Precision Finance Pvt. Ltd.* (1994)208 ITR 465 (Ca I) where in it was laid down that the assessee is expected to establish:-

1. Identity of his creditors;
2. Capacity of creditors to advance money; and
3. Genuineness of transaction.

As to the issue of genuineness of transaction, it was further held in the above decision that the transaction is genuine, simply because some, out of many, of the transactions are by cheque. Where certain sum of money claimed by the assessee to have been borrowed from certain persons, it is for the assessee to prove, by cogent and proper evidence, that they are the genuine borrowings for the reason that the facts are exclusively within the assessee's knowledge.

The expression nature and source in Section 68 has to be understood together as a requirement of identification of the source and the nature of the source, so that the genuineness or otherwise could be inferred. The Law on the subject has been illustrated in a number of decisions by the Hon. Supreme Court, in *Kale Khan Mohd. Hanif Vs. CIT (supra)*, pointed out that the onus on the assessee has to be understood with reference to the facts of each case and proper inference drawn from the facts. Here in the case of the assessee the department has discharged its onus of proving the credits to be sham, the assessee has not discharged his liability cast and shifted upon him by way of show cause notice issued to him instead has just sought time to linger on the time barring assessment proceedings. The unsecured loan/cash credits found in the books of the assessee in the name of M/s Punit oils & chemicals Pvt Ltd of Rs 100,00,000/- & M/s Tanish Tradecom Pvt Ltd of Rs 2,00,00,000/- are held to be unexplained and are added to the income of the assessee under section 68 of the Income Tax Act 1961.

Penalty u/s 271(1)(c) of the Income Tax Act 1961 is initiated for furnishing of inaccurate particulars & concealment of Income.

We further note that during the appellate proceedings before the Id. CIT (Appeals), the AO was again asked to furnish the report and information sought for. The Id. CIT (Appeals) has discussed the relevant facts and issue in para 4.3 as under :-

4.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. During the course of appellate proceedings, the AO vide letter dated 24.03.2017 was requested to furnish following information:

*“It is seen from the assessment order that you have mentioned:-*

*(i) that the companies M/s Punit Oils & Chemicals Pvt. Ltd. and M/s Tanish Tradecom Pvt. Ltd. are concerns of same group of directors. It is not clear from the assessment order which group of directors, the AO is referring to.*

*(ii) that the DDIT Investigation has proved that both the companies are bogus concerns and are just providing accommodation entries, the end sources of which have been the cash deposits in some bank account.*

*(iii) that these companies are controlled by entry operator, Shri Anand Sharma.*

*(iv) that ultimate source of the assessee M/s Premier Bars Pvt. Ltd. has been involved in activity which have been under the scanner of law.*

*(v) That Shri Anand Sharma had admitted that the various companies controlled by him are functioning for the purpose of providing accommodation entries and M/s Punit Oils & Chemicals Pvt. Ltd. and M/s Tanish Tradecom Pvt. Ltd. featured in the list of bogus companies controlled and managed by Shri Anand Sharma.*

*(vi) That the DDIT, Investigation Unit 2(1) Kolkata in his letter no. DDIT(Inv)/Unit 2(1)/KJM/2014/15 dated 12.01.2015 had informed that M/s Punit Oils & Chemicals Pvt. Ltd. and M/s Tanish Tradecom Pvt. Ltd. were companies which provided bogus entries for loans/ LTCG and M/s Premier Bars Pvt. Ltd. as well as assessee had obtained bogus loans from these concerns.*

*In the assessment order, the AO has not discussed either the statement of Shri Anand Sharma or the evidences, if any found and seized by the Investigation Wing which shows that M/s Punit Oils & Chemicals Pvt. Ltd. and M/s Tanish Tradecom Pvt. Ltd. and M/s Premier Bars Pvt. Ltd. are companies indulged in providing bogus entries for loans / LTCG. Therefore, you are requested to send by 31.3.2017, the copy of the statements of Shri Anand Sharma, copy of the information received from DDIT Investigation Unit 2(1) Kolkata and copy of other evidences on which the AO has relied upon for coming to the conclusions discussed above.”*

The AO vide letter dated 06.09.2017 submitted the copy of the report dated 28.08.2017 received from the ADIT(Inv.), Unit-2(1), Kolkata and the Inspector's Enquiry Report received by the ADIT(Inv.), Unit-2(1), Kolkata which are as under:



Letter dated 28.08.2017 :

*"1. For verification of creditworthiness and genuineness of M/s Punit Oils & Chemicals Pvt Ltd and M/s Tanish Tradecom Pvt Ltd summons dated 31.07.2017 were issued but same were returned unserved with remarks left".*

*2. Further, a inspector was deputed to trace the assessec companies and verify the creditworthiness and genuineness of assessee companies. However, the deputed inspector neither could trace the assessee companies our he found any genuine business of the assessee companies. (Inspector Report is being enclosed herewith).*

*3. Further, a statement of Mr. Torun Kumar Sharma, director of M/s Punit Oils & Chemicals Pvt Ltd and M/s Tanish Tradecom Pvt was recorded on oath on 31.01.2014. In his statement Mr. Tarun Kumar Sharma has stated that these companies are shell company and controlled & managed by Mr. Anand Sharma, a well known entry provider. (The statements of Mr. Tarun Kumar Sharma and Mr. Anand Sharma are being enclosed herewith).*

*This is for information and necessary action at your end."*

Inspectors Report :-

Inspector's Reports

Enquiry Regarding:

Sl. No.	Name of the companies/ concerns	Address of the companies/ concern
1.	M/s Punit Oils & Chemicals P Ltd.	2B, Grant Lane, Room No. 408, Kolkata-700012
2.	M/s Tanish Tradecom P Ltd.	Same

Findings/Verification status:

*As directed by the ADIT (Inv.), Unit-2(1), Kol, I went to the address of the company mentioned as above in order to serve Notice with reference to the Income tax Proceedings u/s. 131 of the I. T. Act. '61.*

*This Premises is seven storied old building having many offices and residential flats as well. But in said premises, I did not find any such company. I also could not find any sign Board as well as letter Box in the name of the above mentioned companies at the aforesaid address. The room was found to be loked.*

*When I met several persons in vicinity of the above mentioned address no person could state the existence and the business activity of the both companies.*

*Thus the Summon u/s 131 could not be served.*

*Submitted for kind Information."*

The ADIT also sent the copy of statement of Shri Tarun Kumar Sharma recorded u/s 131 who was Director in M/s Punit Oils & Chemicals Pvt. Ltd.

and M/s Tanish Tradecom Pvt. Limited. Shri Tarun Kumar Sharma in his statement in reply to Question No. 12 has admitted that M/s Punit Oils & Chemicals Pvt. Ltd. and M/s Tanish Tradecom Pvt. Ltd. were being operated by Shri Anand Sharma for providing accommodation entries. The relevant portion of the statement is reproduced hereunder:

*“Q-12. I am showing you bank accounts of Puneet Oils & Chemical Pvt. Ltd. (4342000100080301) and Tanish Tradecom Pvt. Ltd. (4342000100080201) with Karnataka Bank, Central Avenue Kolkata. In these bank accounts various amounts have been received and subsequently transferred to other parties. You have informed that Shri Anand Sharma is controlling and managing these companies for the purpose of providing accommodation entries, which means that the amounts which have been received from a source has passed through various stages and have reached the bank accounts of Puneet Oils & Chemical Pvt. Ltd. and Tanish Tradecom Pvt. Ltd. to be transferred to the final beneficiary. Therefore it means that the parties from whom various amounts have been received are also non-genuine, paper companies having no real business. In this respect I am showing you the bank account details of other companies from whom various amounts have been received. You are requested to identify these parties. Further you are requested to identify the parties to whom various amounts have been transferred from the above mentioned bank accounts. Please read and understand this question carefully.*

*Ans. sir, it is true that Puneet Oils & Chemical Pet. Ltd. and Tanish Tradecom Pvt. Ltd. are being operated by Shri Anand Sharma for providing accommodation entries. From the details (bank accounts of various parties from whom various amounts have been received by Puneet Oils & Chemical Pvt. Ltd. and Tanish Tradecom Pet. Ltd.) furnished as well as Ans. shown by you, in all certainty it appears that these companies are also paper companies utilised for the purpose of providing accommodation entries. Sir, it will be difficult for me to state the identity (whether they are, beneficiaries or not) of the parties to whom the amounts have been transferred.*

*Q-13. For the purpose of functioning as dummy director in the companies controlled and managed by Shri Anand Sharma, please state the amount of remuneration you receive from Shri Anand Sharma. Further you are requested to inform whether the salary/ remuneration is reflected in your return of income or not.*

*Ans. Sir, for different companies I receive different remuneration and I duly reflect the income received in my return of income.”*

The statement of Shri Anand Kumar Sharma was also recorded u/s 131 in connection with the search and seizure and survey operation conducted on 02.07.2013 and subsequent dates. Shri Anand Kumar Sharma while explaining the seized material bearing Page No. 1 to 143 in reply to Q.No. 4 has accepted that M/s Punit Oils & Chemical Pvt. Ltd. was used for providing accommodation entries. The copy of the statement of Shri Anand Sharma and Shri Tarun Kumar along with the report dated 28.08.2017 of

ADIT(Inv.), Unit-2(1), Kolkata and Inspectors report were provided to the appellant along with the notice of hearing issued on 04.10.2017 fixing the date of hearing 16.10.2017. On 16.10.2017, no one has attended nor any written submission has been filed. Therefore, one more opportunity was given to the appellant vide notice dated 16.10.2017, fixing the date of hearing as 06.11.2017 to furnish his objection, if any, to the finding given by the ADIT Kolkata in his report dated 28.08.2017. On 06.11.2017 also, no one has attended nor any written submission has been filed. One more opportunity was given to the appellant vide notice dated 06.11.2017 fixing the date of hearing on 20.11.2017. On 20.11.2017 also, no one has attended. However on 17.11.2017, a letter dated 15.11.2017 was received in "dak" stating as under:

*"This is with reference to your letter dated 06/11/2017 fixing the date of hearing for 20/11/2017. In this regard we have to submit that assessee had submitted his contention along with all the documentary evidences available with him and nothing remains to be submitted in this matter on the part of assessee.*

*Sir we request your good self to kindly consider the submission of the assessee and grant relief as the assessee was not indulged in any accommodation entry. Looking for favorable response."*

As the enquiries have been conducted by the ADIT(Inv.), Unit-2(1), Kolkata during the course of appellate proceedings to ascertain the genuineness of the transactions and creditworthiness of M/s Punit Oils & Chemicals Pvt. Ltd. and M/s Tanish Tradecom Pvt. Limited. The ADIT has informed that his Inspector could not find these companies at the addresses given by the appellant. No genuine business activities of these companies were found. Shri Tarun Kumar Sharma in his statement recorded on oath u/s 131 has admitted that M/s Punit Oils & Chemicals Pvt. Ltd. and M/s Tanish Tradecom Pvt. Ltd. were used for providing accommodation entries. The appellant has not filed any objection to the report of the ADIT. He has not rebutted the observation made by the ADIT in his report dated 28.08.2017. Therefore, I am of the considered view that the appellant has introduced unexplained credit of Rs. 3 crore in the name of M/s Punit Oils & Chemicals Pvt. Ltd. (Rs. 1 crore) and M/s Tanish Tradecom Pvt. Ltd. (Rs. 2 crore) by obtaining accommodation entries in the form of unsecured loan from these companies. Hence, the addition of Rs. 3 crore made by the AO u/s 68 is hereby confirmed.

Thus it is clear that the AO has conducted an enquiry during the assessment proceedings and thereafter as per the direction of the Id. CIT (A) a further enquiry was conducted through the DDIT Investigation Wing Kolkata and report of the investigation clearly established that these companies are operated by Shri Anand Sharma and were engaged in providing accommodation entry. The statements of Director of these companies were also recorded during the investigation carried out as per the direction of the Id. CIT (A) which established the fact that these companies were not having any operating income but were providing accommodation entries. Once the AO has brought on record all these material to show that the transactions of loans are not genuine, then the burden was shifted on the assessee to controvert the said material brought on record by the AO. The assessee has not produced any contrary material to controvert the evidence brought on record by the AO. Further, we note that the assessee never demanded cross examination of Shri Anand Sharma but raised this plea first time before us. Even otherwise the finding of the AO as well as of the Id. CIT (A) is not based solely on the basis of statement of Shri Anand Sharma but it is based on the investigation carried during the assessment proceedings as well as first appellate proceedings before the Id. CIT (A). As regards the decisions relied upon by the assessee in the case of Kota Dall Mills and other decisions of Coordinate Bench of this Tribunal, we find that in those cases the AO did not conduct any enquiry but relied upon the report of the Investigation Wing, Kolkata based on the search conducted in the case of Shri Anand Sharma. Therefore, the said decisions cannot be applied in the facts of the present case where the AO has conducted due and proper enquiry and the

findings of the AO and Id. CIT (A) are based on the evidence in the nature of enquiry conducted. Accordingly, in view of the facts and circumstances of the case we do not find any error or illegality in the impugned order of Id. CIT (A) qua this issue.

14. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 14/05/2019.

Sd/-  
( रमेश सी. शर्मा )  
(RAMESH C. SHARMA )  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल रॉव )  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 14/05/2019.

Das/

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

1. The Appellant- Shri Nitin Raj Jain, Jaipur.
2. The Respondent – The ITO, Ward 6(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 69/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar