

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 802/Ahd/2016
(निर्धारण वर्ष/Assessment Year: 2003-04)**

The DCIT Circle-3(1) Ahmedabad	बनाम/ Vs.	M/s.Rajesh Malleables Ltd. C/o. Anuj Mehta Nandanvan Opp. Shapath-IV, Nr. Karnavati Club SG High Way Ahmedabad-380 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCR 0270 K		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri L.P. Jain, Sr.DR
प्रत्यर्थी की ओर से/ Respondent by:	Shri Anil Kshatriya

सुनवाई की तारीख/ Date of Hearing	24/10/2019
घोषणा की तारीख / Date of Pronouncement	20/01/2020

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-9, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-9/93/ITAT/10-11 dated 04/01/2016 arising in the assessment order passed under s.144 of the Income Tax Act, 1961(hereinafter referred to as "the Act") dated 17/02/2006 relevant to Assessment Year (AY) 2003-04.

2. The Revenue has raised the following grounds of appeal:-



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1. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.4,48,03,196/- made on account of unexplained loans u/s.68 of the Act.*
2. *The Ld.CIT(A) has erred in law and on facts by not appreciating the facts that as per the Tax Audit report, loan of Rs.1,crore from Rampion Eyetech Pvt.Ltd., Rs.18,54,000/- from Shri Sunil K Jain, HUF, Rs.1,27,626/- from Shri Anuj R Mehta were shown to have been received otherwise than by account payee cheques/drafts and the assessee had failed to produce bank accounts to enable the A.O. to verify the genuineness of the transactions.*
3. *The Ld.CIT(A) has erred in law and on facts by not appreciating that the loans amounting to Rs.1,21,00,000/- were squired up during the year and the assessee has failed to furnish documentary evidences to prove the genuineness of the transactions and creditworthiness of the lenders.*
4. *The Ld.CIT(A) has erred in law and on facts by not considering the facts that the assessee failed to furnish relevant evidences in support of loan amounting to Rs.10,00,000/- shown in the name of Vishal Agencies in tax audit report.*
5. *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.11,23,686/- made u/s.36(1)(iii) on account of disallowance of interest expenses.*
6. *The Ld.CIT(A) has erred in law and on facts by not appreciating that when the assessee itself had become sick, there cannot be any expediency in giving interest free loan to subsidiary.*
7. *The Ld.CIT(A) has further erred in law and on facts in deleting the disallowance of Rs.2,21,082/- made on account of foreign travel expenses without appreciating the facts that the assessee could not establish the business purpose of the visit.*
8. *On the facts and circumstances of the case, the Ld.Commissioner of Income Tax (A) ought to have upheld the order of the Assessing Officer.*
9. *It is, therefore, prayed that the order of the Ld.Commissioner of Income Tax (A) may be set-aside and that of the Assessing Officer be restored.*

2. The interconnected issue raised by the Revenue in ground Nos. 1 to 4 is that the learned CIT (A) erred in deleting the addition made by the AO for Rs. 4,48,03,196/- on account of unexplained cash credit under section 68 of the Act.

3. The facts in brief are that the assessee in the present case is a limited company and engaged in the business of manufacturing & dealing in GIP Pipes Fitting, Plastic Planter, trading in barrel Nipple and PVC resin. The assessee in the year under consideration has shown unsecured loan amounting to Rs. 4,48,03,196/- in its financial statement as on 31 March 2003. The AO during the assessment proceedings required the assessee to



furnish the necessary details about such unsecured loan for the purpose of verification. But the assessee failed to do so. Accordingly the AO treated the same as unexplained cash credit under section 68 of the Act and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).

3.2. The assessee before the learned CIT (A) submitted that it has received fresh unsecured loan in the year under consideration amounting to Rs. 2,41,28,949/- only. The assessee further filed the details of the parties from whom it has taken the unsecured loan as detailed under:

<u>S.No.</u>	<u>Party Name</u>	<u>Unsecured Loan amount</u>
a)	M/s Rampion Eyetech pvt ltd.	2,00,00,000/-
b)	Sunil Kumar K Jain HUF	9,84,000/-
c)	Shri Anuj R Mehta	31,44,949/-

3.3. The assessee in support of above loan has furnished the following details:

i. In the case of Rampion Eyetech Pvt.Ltd.

- a) Assessment order of the same AY of Rampion Eyetech Pvt Ltd.
- b) Ledger copy of the assessee in books of account of the Rampion Eyetech Pvt. Ltd.
- c) Confirmation along with PAN and address of the party.
- d) Copy of ITR of Rampion Eyetech Pvt. Ltd.

ii. Sunil Kumar K Jain HUF

- a) Confirmation along with PAN and address of the party.
- b) Ledger Copy of the assessee in the books of account of party.



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c) Copy of the ITR of shri Sunil Kumar K Jain HUF

iii. Anuj R. Mehta

- a) Confirmation along with PAN and address of the Party.
- b) Copy of the ITR of Shri R. Mehta

3.4 The Ld.CIT (A) called for the remand report on the submissions/details filed by the assessee from the AO who submitted as under:

- i. The assessee has taken loan in the year under consideration amounting to Rs. 3,89,81,726/- as evident from the tax audit report. Out of such loan, the assessee has squared up the loan for Rs. 1,21,00,000/- in the year under consideration. Thus the fresh loan which remained outstanding as on 31st 2003 is of Rs. 2,68,81,726/-.
- ii. The assessee has taken a loan of Rs. 10 lakhs from M/s Vishal agencies which was not squared up in the year under consideration. But the assessee failed to furnish the details of such loan during the remand proceedings.
- iii. The assessee has not furnished the copies of the ledger with respect to the loans for Rs. 1,21,00,000.00 squared up during the year under consideration.
- iv. The creditworthiness of the parties who extended loan to the assessee as per submission namely Rampion Eyetech Pvt Ltd. Sunil Kumar K Jain and Anuj R Mehta was not commensurate with the income declared by the parties. Similarly, the reserve and surplus of Rampion Eyetech Pvt Ltd. stands at Rs. 1.60 crores only whereas the loan extended to the assessee of Rs. 2.00 crores.

3.5. In view of the above, the AO requested in his remand report for confirming the impugned amount of unsecured loan which were accepted by the assessee in the year under consideration.



3.6. However, the Ld. CIT (A) after considering the submission of the assessee and the remand report of the AO deleted the addition made by the AO by observing as under:

"1.2. I have perused the observations of the A.O. and the appellant. The A.O. has made an addition of Rs.4,48,03,196/- u/s.68 of the Act. According to the A.O. the appellant has failed to substantiate its claim with regard to unsecured loan. The then CIT(A)-XI, Ahmedabad vide its order dated 19/2/2007 has deleted the said addition. During the first appellate proceedings, the appellant has taken a stand that major part of the unsecured loans of Rs.4.48 crores is the brought forward component. It had placed its reliance on the judgment of Karnataka High Court in the case of Shreedev Enterprise 193 ITR 165. As the Hon'ble ITAT has set aside the order of the CIT(A) on the ground that the A.O. should have given the opportunity to go through the additional evidences and comment upon the same. Accordingly, the additional evidences submitted by the appellant were sent to the A.O. for comments. According to the A.O. the assessee has contended that out of the unsecured loan of Rs.4.48 crores only three loans from Rampion Eyetech Pvt.Ltd. (Rs.2 crores) which is sister concern of the appellant. Rs.9.84 lacs from Sunilkumar K. Jain HUF and Shri Anuj R. Mehta Rs.31,44,949/- are the new loans. The A.O. has accepted the facts that some of the loans pre-existed and were not new loans. From the submissions made during the appellate proceedings which were forwarded to the A.O. for remand report, it is observed that there are four loans obtained by the appellant which were new and were part of Rs.4.48 crores. These four new loans pertain to Rampion Eyetech Pvt.Ltd. for an amount of Rs.2 crores, from Vishal Agencies for an amount of Rs.10 lacs. Sunilkumar K.Jain HUF for an amount of Rs.9.84 lacs and from Anuj R.Mehta for an amount of Rs.31,22,726/-. The additional evidences has been filed by the appellant in respect of three loans except for Vishal Agencies as mentioned above. Rampion Eyetech Pvt.Ltd. and Anuj R. Mehta were assessed by the same A.O. hence, all the details in respect of the two were already available with the A.O. In respect of Sunilkumar K. Jain HUF, the appellant as filed the copy of return of income along with PAN for the said person. As far as Vishal Agencies is concerned it is mentioned by the appellant that the opening balance of unsecured loan was of Rs.30,41,308/-. During the year under consideration an addition of Rs.10 lacs was made to this unsecured loan. During the year there was a repayment of Rs.9,41,308/- leaving behind the balance of Rs.21 lacs. Hence, the unsecured loan from Vishal Agencies was the brought forward loan and Rs.21 lac is the part of total unsecured loan of Rs.4.48 crores. The A.O. in his remand report has mentioned that the appellant has not furnished the bank statements or the ledgers from the persons from whom new loans were taken. The appellant in its reply to the



remand report has stated that the A.O. has submitted his remand report (1) either having a look as to what is quantity of additional material and to cross verify with records (2) or without books of accounts being requisition or examination (3) without specifying other documents for conducting further investigation. In this context it may be mentioned here that at the time of calling of remand report the A.O. was categorically asked to confront the additional evidences with the appellant, to requisite books of accounts or books of accounts for examination or any other documents for further investigation. The A.O. has submitted its report accordingly. When the CIT(A) has categorically asked the A.O. to conduct the necessary investigation or requisition the books of accounts etc, if the A.O. has not undertaken the said exercise then the A.O. cannot take the plea that necessary bank statement, ledger etc. have not been furnished by the appellant. Out of the four new loans the assessment records of the two of them mainly Rampion Eyetech Pvt.Ltd. and Anuj R. Mehta are available with the A.O. himself. The loan from Vishal Agencies was a brought forward loan and during the earlier assessment year i.e. A.Y. 2002-03. The revenue has accepted the said loan in the order u/s.143(3). Further, no additions were made u/s.68 of the Act during assessment proceedings for A.Y. 2002-03. The only loan remain was that of Rs.9,34,000/- from Shri Sunilkumar K.Jain HUF for which the PAN and the copy of return of income was submitted by the A.O.

In light of the above discussion and after confronting the additional evidence with the A.O. and also following the decision of Karnataka High Court in the case of Shreedev Enterprise 193 ITR 165, I am of the view that AO is not justified in making the addition of rs.4,48,3,196/- on account of unsecured loans u/s.68 of the Act. Therefore, the addition of Rs.4,48,03,196/- is directed to be deleted."

Being aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

4. The learned DR before us filed 8 paper books running from pages 1 to 7, 1 to 159, 1 to 12, 1 to 14, 1 to 6, 1 to 18, 1 to 149 and 1 to 85 respectively and submitted that the original assessment records are not traceable. In this regard, the Id. AR drew our attention on the letter furnished by the AO dated 11-10-2019 which is placed on record.



5. On the contrary, the learned AR before us filed a paper book running from pages 1 to 85 and submitted that the assessee has repaid the loan amount in subsequent year. The assessee to substantiate its claim submitted the following details:

- 1) A chart depicting the payment and the balance of all unsecured loan details from AY 2003-04 to AY 2011-12 with respect to all the parties. (pages nos. 42 and 43 of paper book)
- 2) Ledger account of Vishal agencies showing the payment from AY 2004-05 to AY 2005-06. (pages nos. 62 and 63 of paper book)
- 3) Ledger Account of Sunil Kumar K Jain HUF showing the payment from AY 2003-04 to AY 2010-11. (pages nos. 64 to 71 of paper book)
- 4) Ledger account of Rampion Eyetech Pvt Ltd. from AY 2003-04 to AY 2010-11. (Pages nos. 72 to 79 of paper book)
- 5) Ledger account of Anuj R Mehta showing the payment from AY 2003-04 to AY 2005-06. (pages nos. 80 to 85 of paper book)

5.1. The ld. AR regarding the loans which were squared up during the year submitted that the AO neither the assessment proceedings nor the remand proceedings required the assessee to furnish the details about such loans. Similarly, the learned AR also submitted that the matter was remanded by the learned CIT (A) to the AO for furnishing the report on the loans which were appearing in the balance sheet as on 31 March 2003. As such, the loans which were squared up during the year were not appearing in the balance sheet as on 31st March 2003. As such, the AO exceeded his jurisdiction in the remand proceedings by submitting that the assessee has not furnished the



details about the loans which were squared up in the year under consideration.

Both the Id. DR and AR before us relied on the order of authorities below.

6. We have heard the rival contentions and perused the materials available on record. The dispute in the instant case relates to the unsecured loan received by the assessee in the year under consideration from certain parties which was treated as unexplained cash credit under section 68 of the Act by the AO. However, the learned CIT (A) subsequently deleted the addition made by the AO.

6.1. The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 of the Act by the Hon'ble Calcutta High Court in the case of CIT Vs. Precision Finance (P) Ltd reported in 208 ITR 465 wherein it was held as under:

"It was for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. On the facts of this case, the Tribunal did not take into account all these ingredients which had to be satisfied by the assessee. Mere furnishing of the particulars was not enough. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently, the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, it was to be presumed that the transactions were genuine. It was not for the ITO to find out by making investigation from the bank accounts unless the assessee proved the identity of the creditors and their creditworthiness. Mere payment by account payee cheque was not sacrosanct nor could it make a non-genuine transaction genuine."



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6.2. The AO in the assessment proceedings has treated the entire amount of loan shown by the assessee in its balance sheet for Rs. 4,48,03,196/- as unexplained cash credit. But the AO in his remand report has given a finding that the assessee has taken fresh loan of Rs. 3,89,81,726/- only during the year. Thus the assessee in effect gets the relief for the amount of Rs. 58,21,470/-.

7. Now taking up the matter further, we note that the assessee has taken the loan through the banking channel as well as in cash from the parties detailed as under:

<u>S.No.</u>	<u>Lender Name</u>	<u>Total fresh Loan Amount</u>	<u>Cash element</u>
i.	Rampion evetech	2,00,00,000/-	1,00,00,000/-
ii.	Sunil Kumar K HUF	20,54,000/-	18,54,000/-
iii.	Anuj R Mehta	3827726/-	1,27,726/-

7.1. Regarding the loan taken from Rempion Eyetech Pvt Ltd, we note that the assessee has filed the confirmation along with the PAN, copy of the ITR, ledger account of the assessee in the books of Rempion eyetech pvt ltd. ledger account in the assessee's book which are placed on pages 82, 90 and 88 of the paper book.

7.2. Similarly, we also note that the AO in the assessment of Rempion Eyetech Pvt Ltd. has admitted the fact that Rempion Eyetech Pvt Ptd. has advanced loan of Rs. 2 crores to the assessee vide order date 17/02/2006. The relevant extract of the order is reproduced as under:

"On perusal of the financial statements appended with the return of income it has been observed that during the year under question the assessee company has advanced interest free advances to an associate concern named Rajesh Malleables.



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Vide issue of questionnaire and during the course of hearing too the said issue was raised and countered as to why corresponding interest on borrowed funds should not be disallowed u/s.36(1)(iii) of the I.T. Act, if interest on such advances have not been charged or charged at a lower rate of interest. With respect to the same the representative of the assessee company was asked to furnish the parties from whom unsecured loans/deposits were accepted during the year.

The assessee company vide its submission dated 30/1/16 has submitted its details as per point No.8 at 2, with respect to loans and advances above Rs.1 lac, along-with the details of interest receipt and interest paid during the year under consideration.

It is submitted vide a tabular chart the amount of Loans and Advances passed on during the year at regular intervals to Rajesh Malleables in all amounting to Rs.2,00,00,000/-.

<u>Date</u>	<u>Cheque No.</u>	<u>Amount Rs.</u>
26/9/02	526501	50,00,000
27/12/02	399714	25,00,000
31/12/02	599739	25,00,000
28/3/03	125879	1,00,00,000

		2,00,00,000
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No interest has been charged by the assessee on the funds advanced to Rajesh Malleables. During the year interest has been receipted from only Banking institutions such as HDFC Bank Ltd., Co-op. Bank of India and Bank of India in all amounting to Rs.5,07,677.53/-. As against this the amount of interest expenses borne by the company on its loans and deposits during the year under consideration is to the tune of Rs.35,05,817/-. During the year assessee company is paying interest @ 12# on unsecured loans and deposits accepted by it. It's a known fact that no prudent assessee would resort to such type of accounting principles wherein it incurs interest expenses on the funds borrowed from outside agencies but doesn't charge interest on its own funds passed on to outside agencies or be it, to ones own associate concern. Accordingly, for the reasons as aforesaid and the stand adopted by the assessee in not furnishing the details/reasoning for having not charged interest on such loans and advances passed on to an associate concern, as amount equal to 12% out of such loans and advances advanced is disallowed u/s.36(1)(iii), treating the same as being incurred for non-business purposes."

7.3. Now coming to the loan accepted from Sunil Kumar K Jain HUF, we note that the assessee has filed the confirmation along with the PAN, copy of the ITR, ledger account of the assessee in the books of Sunil Kumar K Jain HUF and ledger copy of assessee's books which are placed on pages 87,94, and 89 of the paper book.



7.4. Now coming to the loan accepted from Anuj R Mehta, we note that the assessee has filed the confirmation along with the PAN, copy of the ITR, and ledger copy of assessee's book which are placed on pages 86 and 95 of the paper book.

7.5. Similarly, we also note that the assessee in respect of source of fund in the hands of the above mention lender i.e. Rempion Eyetech Pvt Ptd, Sunil Kumar K Jain HUF, and Anuj R Mehta has furnished the sufficient documentary pieces of evidence such as, ledger copy of of the lenders, confirmation, address, detail the income of all the lender which has been elaborated in the preceding paragraph. Further we note that as per the audit report there is clearly mention about the loan whether it was received in cash or through the banking channels. Therefore in our considered view, the assessee has discharged its onus imposed under section 68 of the Act.

7.6. We further note that the assessment of the Rampion Eyetech Private limited was done by the same AO who was also assessing the income of the assessee.

7.7. Furthermore, the AO admitted the fact that the Rempion Eyetech Pvt Ltd given a loan of Rs. 2 crores to the assessee.

7.8. The assessee in the present case has duly explained the source of money received in its hands. The assessee is not answerable to justify the source of the source of the money received by it. In this connection, we place our reliance on the judgment of Hon'ble Gujarat High Court in the case of



DCIT Vs. Rohini Builders reported in 256 ITR 360 wherein it was held as under:

"It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of [Orient Trading Co. Ltd. v. CIT](#) [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."

7.9. We also conscious to the fact that the assessee has furnished the basic details about the loan taken from all the parties as discussed above such as, confirmation along with address, ledger copy of ITR , but the AO has not made any verification from such parties and arrived at the conclusion that the impugned amount represents unexplained cash credit under section 68 of the Act.

7.10. We also note that there is no prohibition to accept the loan in cash under the provisions of section 68 of the Act. As such the provision of section 68 of the Act has not differentiated the amount of cash credit accepted by the assessee through the cash and cheque. It means the test laid down to justify the cash credit under section 68 of the Act is same when the loan is taken in cash and through banking channel.

7.11. In our considered view, once the assessee has discharged primary onus by proving the identity of lender, genuineness of transaction and capacity to advance the loan then it is the burden of the Revenue to prove it otherwise. In this regards we drew guidance and support from decision of Hon'ble Madhya Pradesh High Court in the case of CIT vs. Metachen Industries reported in 116 Taxman 572 where it was held as under;



"Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment, whether the money invested is properly taxed or not. The assessee is only to explain that the investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open for the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income-tax payer or not or from where he had brought this money, is not the responsibility of the firm. The moment the firm has given a satisfactory explanation and produced the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open for the Assessing Officer to take appropriate action under section 69 against the person who has not been able to explain the investment."

7.12. In this respect we also find support and guidance from the judgment of Hon'ble Supreme Court in case of PCIT vs. NRA Iron Steel (P.) Ltd. reported in 103 taxmann.com 48. The relevant extract of the judgment are as under;

"8.2 As per settled law, the initial onus is on the Assessee to establish by cogent evidence the genuineness of the transaction, and credit-worthiness of the investors under Section 68 of the Act.

The assessee is expected to establish to the satisfaction of the Assessing Officer CIT v. Precision Finance (P.) Ltd. [1995] 82 Taxman 31/[1994] 208 ITR 465 (Cal.):

- ◆ *Proof of Identity of the creditors;*
- ◆ *Capacity of creditors to advance money; and*
- ◆ *Genuineness of transaction*

This Court in the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68."



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7.13. Thus, in the present facts and circumstances, all informations were available about the loans but AO did not make further inquiry. If he has any doubt on unsecured loan of all above mention parties, the AO could have conducted necessary enquiries. But the AO failed to do so. However assessee has discharged its onus by providing the documents such as confirmation, ITR, address of the lender, ledger copy of the lender. The AO has not pointed out any specific defect in documents furnished by the assessee. In view of the above, we find no reason to interfere in the order of Ld. CIT (A) to the extent of the loan from the parties as discussed above.

7.14 Now, coming to the amounts of loans for Rs. 1,31,00,000/- which were accepted by the assessee during the year from the parties and squared up in the year under consideration. The details of such parties stand as under:

<u>S.NO.</u>	<u>Lender Name</u>	<u>Amount (Rs.)</u>
1.	Shree Mangal Finance	99,00,000/-
2.	Vishal Agencies	10,00,000/-
3.	Babul Bhai R Patel	22,00,000/-

7.15. Regarding the loan accounts squared up in the year under consideration, we find that such loan account were never subject to the addition in the original assessment proceedings which was framed under section 144 of the Act.

7.16. Similarly, we also note that the learned CIT (A) has called for the remand report from the AO on the amount of loan appearing in the balance sheet of the assessee as on 31 March 2003 which were added by the AO during the assessment proceedings. This fact can be verified from the letter



issued by the learned CIT (A) dated 26-12-2012 to the AO in the remand proceedings on the items as reproduced below:

"2. Assessment in the above mentioned case was framed u/s.143(3) of the I.T.Act vide assessment order dated 17/2/2006. In this assessment order the following additions were made:-

i.	Addition u/s.68	Rs.4,48,03,196/-
ii.	Disallowance of interest expenditure	Rs. 11,23,686/-
iii.	Disallowance out of foreign travel exp.	Rs. 2,21,082/-
iv.	Disallowance against late payment Of ESI, PF	Rs. 10,41,768/-

In the first appeal the ld.CIT(A) vide his order dated 19/2/2007 had deleted these additions after accepting the additional evidences. The Hon'ble ITAT in ITA No.1900/Ahd/2007 dated 29/3/2010 had restored back these additions to the file of CIT(A) for fresh adjudication. In the above mentioned appeal, the Hon'ble ITAT has directed the CIT(A) to confront the additional evidences admitted during first round of appellate proceedings to the Assessing Officer. In the course of examination, you are free to requisition of books of accounts or any other documents and conduct further investigation as deemed fit. After verification, detailed remand report to respect of above mentioned additions should reach this office within 15 days of receipt of this letter."

7.17. The amount of loan for Rs. 4,48,03,196.00 represents the loan which were outstanding in the books of the assessee as on 31 March 2003. This fact can be verified from the financial statements of the assessee available on record. Thus the loans which were squared up in the year under consideration were not part of the amount of loan appearing in the financial statements of the assessee as on 31 March 2003. It is also a fact on records that the assessee has duly furnished the details of the loans which were squared up in the year under consideration in its tax audit report available on record. But the AO either in the assessment proceedings or remand proceedings required the assessee to furnish details of such loans squared up during the year. Thus the assessee never got the occasion to furnish the details about such squared up loans.



7.18. From the above letter dated 26 October 2012, it is transpired that the learned CIT (A) never enquired about the loans which were squared up in the year under consideration. Thus, the controversy arises whether the AO can extend the scope of dispute beyond the direction provided by the learned CIT (A). The answer stand negative in view of the judgement of Hon'ble Gujarat High Court in the case of Saheli Synthetics Pvt. Ltd Vs. CIT reported in 302 ITR126 wherein it was held as under:

“Similarly even where an assessment is set aside simpliciter, without any enhancement proposal, it is always in the context of the appeal against an order of assessment and cannot be read to mean that the appellate authority granted powers to the Assessing Officer in relation to items of assessment which were never forming part of the appeal before the appellate authority. At the cost of repetition it is required to be noted that processing a new source of income which was on the record before the Assessing Officer but is not forming part of subject-matter of appeal before the appellate authority can be undertaken by the appellate authority only in the course of enhancement of the assessment and, therefore, any set aside, which does not involve a proposal for enhancement, cannot be used for the purpose of expanding the scope of the powers available to the Assessing Officer while making a fresh assessment pursuant to a set aside.”

7.19. Thus, we hold that the allegation of the AO in the remand proceedings that the assessee failed to furnish the details of the loans which were squared up in the year under consideration is not sustainable in the present facts and circumstances. Accordingly, we do not find any resentment affair in the order of the learned CIT (A). Hence the ground of appeal of the Revenue is dismissed.

8. The second issue raised by assessee in this appeal is that Ld CIT(A) erred in confirming the order of AO by sustaining the disallowance of interest expenses on account of diversion of borrowed fund.



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9. The AO during the assessment proceedings observed that the assessee has incurred interest expenditure of Rs. 30,67,057/- on the borrowed fund of Rs. 4,04,89,542/- only. The AO further observed that the assessee has given interest free loans and advances of Rs. 74,91,240/- to its subsidiary namely M/s Ramprasad trading and Investment (P) Ltd. without charging any interest. Accordingly, the AO proposed to make the disallowance of Rs. 11,23,686/- u/s 36(1)(iii) of the Act on account of diversion of fund. Accordingly, the AO sought an explanation from the assessee on the issue as discussed above. But the assessee failed to make any reply. Accordingly the AO disallowed the sum of Rs. 11,23,686.00 being 15% of the loan amount u/s 36(1)(iii) of the Act and added the same to the total income of the assessee.

Aggrieved, assessee preferred an appeal to Ld. CIT(A).

10. The assessee before the Ld. CIT(A) submitted that it has made advance of Rs. 61,81,016/- for the purpose of business in the year 1997-98 to its subsidiary. The cash flow statement for that year was also submitted by it to substantiate its claim. However, the loan to the subsidiary increased over the period of time to Rs. 71,64,664/-

10.1. The assessee further submitted that the subsidiary has incurred loss in the AY 2001-02. Therefore it is not possible even to recover the principal amount from the subsidiary. Accordingly the assessee has not made provision for the interest.

10.2. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by him by observing as under:



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"2.2. I have perused the observations and contentions of the A.O. as well as the appellant. The disallowance of interest of Rs.11,23,686/- has been made u/s.36(1)(iii) on account of interest free loans of Rs.74,91,240/- given to its sister concern/subsidiary company namely M/s.Ramprasad Trading and Investment Pvt.Ltd. The A.O. in the remand report has alleged that the appellant has not been able to furnish any evidence to establish the business purpose as well as no evidence of the said company acting as distributor have been furnished. It is pointed out by the appellant that the same issue had arisen during the A.Y. 2002-03. On perusal of the assessment order for A.Y.2002-03. It is noticed and accepted by the then A.O. that originally the loan to the subsidiary company was given in 1997-98 was to the tune of Rs.61.81 lacs and over a period of time it has increased to Rs.71.64 lacs. As per the said assessment order the amount of loan advanced is changing every year. The A.O. in the said order has concluded as follows:

"Since the company to whom assessee company has advanced interest free loan is a person specified u/s.40A(2)(b). It is concluded that on the fact of the case of the assessee company provision of Sec.40A(2)(a) is clearly attracted and therefore interest to the extent of Rs.18,67,089/- relating to the interest free fund at the rate of 18% is disallowed and added to the total income of the assessee company."

Hence it is seen that the addition during the A.Y. 2002-03 is made u/s.40A of the Act. The loan which was given in 1997-98 to the subsidiary company. It is clear that it was given for business purposes since the said company was working as distributor of the appellant company. As the appellant company came to be declared as sick and because of strategic decision to revive the company, the appellant company had changed its distribution network affecting the business of the subsidiary company. This has resulted in loss to the subsidiary company resulting in uncertainty over chances of recovery of loan given. As rightly pointed out by the appellant, it has relied upon the judgment of Hon'ble Apex court in the case of S.A. Builders Ltd. vs. CIT 288 ITR 1 (SC). I am of the considered opinion that the loan was given to the subsidiary company from 1997-98 as a measure of commercial expediency. Therefore, no disallowance can be made on this account u/s.36(1)(iii). The addition of Rs.11,23,686/- is hereby deleted."

Being aggrieved by the order of Id. CIT(A) assessee is in appeal before us.

10.3. The Id. DR before us vehemently supported the order of the AO.

10.4. On the other hand, the Ld. AR before us demonstrated that its own fund exceeds the amount of loans and advances. Accordingly, the Id. AR claimed that there cannot be any disallowance of interest expense for the



diversion of funds. The Id. AR in support his contention drew our attention on balance sheet as on 31st March, 2003, which is placed on page 11 of the paper book.

11. We have heard the rival contentions and perused the materials available on record. In the instant case, the AO made the disallowances of the interest expenses on the ground that the borrowed fund has been diverted to the interest free loans and advances. However, on perusal of the balance sheet, we note that own fund including non-interest bearing fund exceeds the amount of loans and advances as detailed under:

<i>"SOURCES OF FUNDS</i>	<i>SCHEDULE</i>	<i>31-3-2002</i>	
		<i>Rs.</i>	<i>Rs.</i>
<i>Shareholder's Funds :</i>			
<i>Share Capital</i>	<i>I</i>	<i>29,998,500</i>	<i>29,998,500</i>
<i>Reserves & Surplus</i>	<i>II</i>	<i><u>65,471,667</u></i>	<i><u>70,630,921</u></i>
		<i>95,470,157</i>	<i>100,629,421</i>
<i>Loan Funds:</i>			
<i>Secured Loans</i>	<i>III</i>	<i>40,050,236</i>	<i>57,774,375</i>
<i>Deferred Payments Credits</i> <i>(Guaranteed to Vijaya Bank</i> <i>Against hypothecation of</i> <i>Specific machinery and third</i> <i>Charge over existing Plant &</i> <i>Machineries and other</i> <i>Assets of the company)</i>		<i>4,391,306</i>	<i>4,285,506</i>
<i>Unsecured Loans</i>	<i>IV</i>	<i>44,803,196</i>	<i>26,096,221</i>
<i>Deferred Tax Liability</i> <i>(See Note No.17 of Schedule XX)</i>		<i>1,633,117</i>	<i>665,493</i>
	<i>TOTAL</i>	<i>186,348,022</i>	<i>189,451,016</i>
		<i>=====</i>	<i>=====</i>

11.1. From the above, it is clear that the own fund of the assessee exceeds the interest free loans and advances as discussed in the assessment order. In



such facts and circumstances, a presumption can be drawn that the loans has been provided out of the owned funds of the assessee. In holding so, we find support and guidance from the judgment of Hon'ble Bombay High Court in the case of *Reliance Utilities and Power Ltd.* reported in 313 ITR 340 wherein it was held as under:-

"The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT(A) and Tribunal"

11.2. In view of above proposition, we hold that no disallowance of interest expense claimed by the assessee can be made under the provision of Section 36(1)(iii) of the Act on account of diversion of interest bearing fund. Hence, we confirm the order of Ld. CIT-A. Accordingly, the AO is directed to delete the addition made by him. Hence the ground of appeal of the Revenue is dismissed.

12. The next issue raised by the Revenue is that the Ld. CIT(A) erred in deleting the addition made by the AO for Rs. Rs. 2,21,082/- on account of foreign travelling expenses.

12.1. The assessee in the year under consideration has claimed foreign travelling expenses amounting to Rs. 2,21,082/- in its financial statement as on 31 March 2003. The AO during the assessment proceedings required the assessee to furnish the necessary details about such expenses for the purpose of verification. But the assessee failed to do so. Accordingly the AO disallowed the same and added to the total income of the assessee.



The aggrieved assessee preferred an appeal before the Ld. CIT(A).

12.2. The assessee before the Id. CIT(A) filed the bills and ledger account related to foreign expenses. The assessee further submitted that this expense has been incurred for the business purposes.

12.3. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:

"3.2. I have perused the observations and contentions of the A.O. as well as the appellant. It can be seen from the remand report that during the visit of the concerned person abroad certain personal expenses cannot be ruled out. The appellant had submitted the relevant documents for the foreign tour undertaken by Shri Anuj R.Mehta, Director of the appellant company. Nothing has been brought on record by the A.O. to substantiate that foreign travel was for personal use. Hence the addition of Rs.2,21,082/- is hereby deleted."

Being aggrieved by the order of the Ld. CIT(A) the Revenue is an appeal before us.

13. The Ld. DR vehemently supported the order of the AO.

14. The Ld. AR drew our attention on the details filed in support of the expenses such statement of foreign travelling expenses, JK industries Bill regarding purchase of Foreign exchange, Receipt of LKP Finance Merchant Financing Ltd. which are available on record.

15. We have heard the rival contentions and perused the materials available on record. In the instant case, the AO made the disallowances of the foreign travelling expenses on the ground that the personal nature cannot be



overruled. Subsequently the Ld. CIT(A) deleted the addition made by the AO by observing that the AO has not brought on record from which it can be proved that the expenses are personal in nature. Therefore the Revenue is in appeal before us. At the outset, we note that the assessee has not provided any documentary evidences to prove that the expenditure on foreign travelling was for the business purpose. Admittedly there is no doubt that the expense has been incurred on foreign travelling. But such expenses incurred for the business needs to be justified by furnishing the details of the person travelled, email correspondence, any business expansion from such foreign tour. However we note that the Ld. AR for the assessee has furnished before us detail of foreign exchange, ticket but these are not sufficient to establish the business purpose of such expenses. Therefore we are of the view that the expenditure on foreign tour was not for Business purpose. In this regard we draw support & guidance from the judgment of Hon'ble ITAT Ahmedabad in case of genesis Organic (P) Ltd. Vs. reported in 52 taxmann.com 74 wherein it was held as under:

"We have considered rival submissions and perused the orders of the Assessing Officer and the Commissioner of Income-tax (Appeals) and various details of foreign travelling expenses filed by the assessee in the compilation before us. We find that the assessee could not prove the business purpose of the said expenditure on foreign travel. In annexure II copy filed at page 129 of the compilation before us, the last column "benefit derived", the assessee could not give any details of the business purpose of the foreign trips. The so-called details of the foreign travel expenses filed by the assessee before the Revenue authorities and copy filed in the compilation before us, shows that the details consisted of amount spent on air-ticket, medi-claim charges, hotel, taxi and other expenses have been mentioned. There is no detail of places or name of cities visited by the director of the assessee-company, nor any detail of the persons or business concerns visited, was given. The onus to establish that the foreign trip was undertaken for business purpose is with the assessee, which the assessee has failed to discharge in this case. Mere mentioning the name of the country visited along with mentioning of the total amount of expenditure under various heads of the expenses like, hotel



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bills, air-ticket, etc., does not indicate or establish the business purpose of the foreign travel expenses incurred by the assessee-company. In the facts and circumstances of the case of the assessee, we hold that in the absence of even elementary evidence to prove the business purpose of the foreign travel undertaken by the directors of the assessee private limited company, the expenditure was rightly disallowed by the learned Commissioner of Income-tax (Appeals), and accordingly, the order of the Commissioner of Income-tax (Appeals) on this issue is confirmed and the ground No. 2 of the assessee is dismissed."

16. Thus, in view of the above, we reverse the order of the Ld. CIT(A). Accordingly we confirm the addition made by the AO. Hence, the ground of appeal of the Revenue is allowed.

17. In the result, the appeal of the Revenue is partly allowed.

This Order pronounced in Open Court on	20/01/2020
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Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 20/01/2020

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS



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आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-9, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad