

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

BEFORE SHRI C.N.PRASAD, JUDICIAL MEMBER

&

SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA No.5613/Mum/2017
(Assessment Year: 2013-14)

ITO-20(2)(3) Room No.210 Piramal Chamber, Lalbaug Mumbai-400 012	Vs.	Om Shanti Residency 9/A, Chunawala Compound Parel Tank Road Kalachowki Mumbai-400 033
		PAN/GIR No.AABFO2195D
Appellant)	..	Respondent)

&

ITA No. 5614/Mum/2017
(Assessment Year: 2013-14)

ITO-20(2)(3) Room No.210 Piramal Chamber, Lalbaug Mumbai-400 012	Vs.	Om Shanti Housing 9/A, Chunawala Compound Parel Tank Road Kalachowki Mumbai-400 033
		PAN/GIR No.AABFO4424B
Appellant)	..	Respondent)

Assessee by	Shri B.V. Jhaveri, AR
Revenue by	Shri Kumar Padmapani Bora, AR
Date of Hearing	19/11/2019
Date of Pronouncement	10/01/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

These two appeals filed by the revenue are directed against separate, but identical orders of the Ld. Commissioner of Income Tax (Appeals)-32, Mumbai, both dated 20/06/2017 and they pertain to AY's 2013-14. Since, the facts are identical and issues are

common, for the sake of convenience, these appeals were heard together and are disposed- off, by this consolidated order.

ITA.NO.5613/Mum/2017:-

2. The revenue has, more or less raised common grounds in both appeals. Therefore, for the sake of brevity, the grounds of appeal filed in ITA No.5613/Mum/2017 are reproduced as under:-

(i) *"On the facts and circumstance of case and in law, the Ld. CIT(A) erred in granting relief with regards to the additions made u/s 68 of the Income Tax Act, 1961 ignoring the facts that assessee failed to prove the genuineness of the credits claimed to have availed by them.'*

(ii) *"On the facts and circumstance of ease and in law, the Ld CIT(A) erred in granting relief with regards In the additions made u/s 68 of the Income Tax Act, 1961 ignoring the facts that creditors who were claimed to have advanced loans are showing mearge income and hence lack of creditworthiness ."*

(iii) *"On the [acts and circumstance of case and in law, the Ld CIT(A) erred in granting relief u/s 68 of the Income Tax Act, 1961 ignoring the facts that apex court in the case of Sumati Dayal Vs CIT (1995) 214 ITR 801 (SC) stated that burden of proof for establishing that the cash credits does not constitute the income of the assessee completely lies on the assessee and that the assessee's explanation with regard to the cash credits needs to be considered in view of the human probabilities.^{1'}*

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of property development, filed its return of income for AY 2013-14 on 28/09/2013, declaring total income at Rs. Nil. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has taken unsecured loans from five parties, as per report of tax auditor and accordingly, called upon the assessee to explain nature of loans along with documentary evidences. In response, the assessee has filed confirmation letters from all parties

along with ITR and relevant page of the bank statement. In order to verify the identity, genuineness and creditworthiness of the creditors, notices u/s 133(6) was issued. However, notices issued in respect of M/s. Kanika Gems Pvt. Ltd, Radey Jagadamba Shakti Gems Pvt.Ltd. were returned unserved. Thereafter, the Ld. AO called upon the assessee to file complete postal address of lenders for which the assessee has filed new business address of all the parties. Further, the Ld. AO had issued commission u/s 131(1)(d) to DDIT(Inv.), Surat for verification of four lenders for which the DDIT(Inv.) Surat had issued summons to four parties, but same could not be served. The Ld. AO, on the basis of information filed by the assessee coupled with enquiries conducted during the course of assessment proceedings, came to the conclusion that the assessee has failed to prove the identity, genuineness of transactions and creditworthiness of the parties, in respect of unsecured loans taken from five parties. He further observed that on perusal of financial statements of lenders filed by the assessee, all five lender companies have meagre capital and nominal income declared in their respective returns of income. Further, the lender companies have shown huge turnover in the diamond business, but when it comes to profit, the profits shown is negligible, when compared to turnover declared for the year. The Ld. AO has also analysed the balance sheet and noted that except receivables and payables, no other important assets in the companies. Therefore, he opined that all those companies are paper companies and does not have required capacity to explain source of income to support loans given to the assessee and accordingly, came to the conclusion that unsecured loans taken from five parties are non genuine transactions and accordingly, by following certain judicial precedents, made additions towards unsecured loans u/s 68 of the I.T.Act, 1961. Further, the Ld. AO had also made additions

towards interest paid on said loans, on the ground that when, loan itself is a non genuine transactions, corresponding interest paid thereon cannot be considered as genuine transactions. The relevant findings of the Ld. AO are as under:-

4.6 I have carefully gone through various aforesaid submissions made from time to time along with the documents annexure hereto. My observations/findings are as under:

4.7 Since the provisions of section 68 is going to play vital role in determining the assessed income of the assesses, it is being reproduced for the ready reference as under ;

"Where any sum is found credited in the books of an assesses maintained for any previous year, and the assesses offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer satisfactory, the sum so credited may be charged to Income tax as the Income of the assesses of that previous year."

4.8 On a careful examination of the content of the said section, it is clearly noticed that the basic ingredients required for being away from the applicability of the provisions of section 68 are as under :

- i. Genuineness of the transaction
- ii. Identity of the lender
- iii. Creditworthiness of the lender
- iv. Modes operandi of the lender

4.9 On examining the above ingredients with the documents annexed to the covering letter of all the four lenders of loan it is noticed as under :

- i. All the five lenders happened to be Private Limited Companies
- ii. On verification of the return of income of the lenders it is noticed as under:

S.No	Name of the lender	A. Y,	Returned Income (in Rs.)	Amount of Share Capital & Reserves in Rs.)
1	Shri Jagdamba Shakti Gems Pvt.Ltd.	2013-14	39,960/-	1,42,722
2	Radhey Krishna Gems Pvt.Ud.	2013-14	1,04,590/-	2,66,079
3	Siddham Gems .Pvt.Ltd.	2013-14	77,53 1/-	1,95,082

4	Mangalmuri Impex Pvt.Ltd.	2013-14	1,06,360	3,86,428
5	Kanika Gems Pvt.Ltd.	2013-2014	1,70,620/-	Copy of B/s. P&L account not submitted

On verification of the return of income, Profit & Loss account, Balance Sheet of the lenders it is seen that all five lenders are having very meagre paid capital and reserves and the income declared in the return of income is also quite nominal.

iii. These concerns are not an N.B.F.C. They are dealing in diamond business,

iv. Further on verification of details of the money lenders it is seen that assessee is showing huge turnover and very low or negligible profit.

The details are Under :

Sr.No	Name of the party	A.Y.	Total Turnover	Profit
1	Radheykrishna Gems Pvt,Ltd.	2012-13	1,53,54,31,966	62,660
	-do-	2013-14	94,62,51,016	1,07,991
2	Siddham Gems PvtLtd.	2012-13	39,54.75,669	67,226
	-do-	2013-14	62,63,10,094	77,531
3	MangalMurti Impex PvtLtd.	2012-13	92,26,45,755	1,39,918
	-do-	2013-14	78,27,51,096	1,04,084
4	Shri Jagdamba Shakti Gems Pvt.Ltd.	2012-13	47,54,62.942	21,873
	-do-	2013-14	2-87,24,16,178	39,955
5	Kanika Gems Pvt.Ltd	2012-13		

From the data reported in the above chart based purely on audited accounts, it is clearly visible that the lenders were indulging not in real diamond trading business but simply acting as an accommodation entry provider, keeping in mind that the share capital of all the five lenders Pvt. Ltd. companies were hardly Rs. 1,00,000/- with which only an unimaginable turnover running into crores were reported to the I,T. department, not forgetting also the vital fact that none of the lenders did borrow either on short term or long term basis even a single rupee to report such a huge turnover. Thus it is proved that these

concerns are not having any share capital or profit to advance money to other concerns. Further these are not a N.B,F,C. concern so that money could be advanced out of borrowing fund which is proved by the fact that their business is diamond trading:-

v. All the five lenders are having huge amount of trade payables and receivables remaining outstanding at the year end.

vi. All five lenders were indulging in the same line of business i.e,Diamond Manufacturers, Exporters fe Importers.

vii.All the five lenders have advanced very huge sum by way of loans without obtaining any security to secure their hard earned money*

viii. Notice of the lenders have proved their identity by filing photocopy of PAN card, memorandum and articles of association and resolution authorizing change in business address. Not only this, none of lenders have filed photocopy of the documents filed with the Registrar of companies amending the business address,

ix. None of the lenders have filed memorandum and articles of association regarding the main object of the firm

X. . The assessing officer-20(3)-I, Murnbai vide letter dated 28.03.2016 has given information that a commission u/s 131(1)(d) was issued to DDIT(Inv.), Surat for verification of the following loan lenders:

1. M/s.Kaushali Implex Pvt.Ltd.
2. M/s.Radhekrishna Gems Pvt.Ud.
3. M/s.Shankeshwar Diamonds Pvt.Ltd,
4. M/s.Charbuja Diamonds Pvt.Ltd.

The DDIT(Inv.), Unit-I, Surat vide letter dated 23.02.2016 stated that summons u/s.131 of the Act was issued to the above mentioned parties but the same could not be served as the premise was found closed. Therefore the summons was served by affixture on the said addresses. The loan creditors has not responded to the summons u/s, 131 of the I.Tax issued by the DDIT(Inv.) Unit-1, Surat on appointed dated.

xi. The Hon'ble ITAT Indore Bench in the case of Agrawal Coal Corporation(p).Ltd. Vs. Addl-Commissioner of Income Tax, range-5 (2012) 19 taxniann.com 209 has held that were company were found to be non-existent resident at addresses given by assessee and summons/notices issued to them were returned back unnerved and also assessee failed to produce any of directors or employees of those share applicants, initial onus is upon the assessee under section 68 to prove identity of share applicants could not be said to have been discharged by assessee.

xii. The Hon'ble Calcutta High Court in the case of CIT Vs. Precision Finance Pvt,Ltd.(1994) 208 ITR 465(Cal) has held that it is for the assessee to prove the identity of the Creditors, their creditworthiness and genuineness of the transactions. Mere furnishing of particulars is not enough.

xiii. The Hon'ble Madras High Court in the case of Mangilal Jain Vs ITO 315 ITR 105 hedl that mere proof of identity of creditor or that transaction was by cheque is not sufficient. The assessee has to prove the genuineness of the money lenders

xiv.. The Hon'ble Andhra Pradesh High Court in the case Dr.D.Siva Sankara Rao Vs. Income Tax Officer, Ward-2, Eluru (2013) 29 taxmann.com 17 has held that where only identity of creditor is established but his/her creditworthiness and genuineness of transaction is not proved then addition is to be made for purpose of section 68 cash credits.

4,10. In view of the foregoing observations and findings, it is clearly noticed that all the five lenders have failed in proving their identity and creditworthiness thereof. Therefore, I am constrained to cover the fresh loans obtained during the year from all the five lenders within the ambit of provisions of section 68 of the Income Tax Act 1961 which aggregates to Rs. 5,51,00,000/-which is therefore being added u/s.68 as unexplained cash credit to the total income returned. Since borrowed loans from five lenders are being added back, the aggregate amount of Rs, 40,03,550/- of interest paid thereon is also hereby simultaneously added to the total income returned. Penalty proceedings for concealing an income of Rs. 5,5100,000/- and Rs. 40,03,550/-- for furnishing inaccurate particulars of income is hereby separately initiated

Subject to the above remarks and after verification of details filed and after discussion with representative of the assessee, the total Income is computed as under :

(in Rs.)

Income from Business	Nil
Add: Disallowance as per para 4 discussed	5,91,03,550
Total income	5,91,03,550

Assessed u/s,143(3) of the Income-tax Act,1961. Credit for prepaid taxes is given after due verification. Interest u/s 234A, 234B and 234C is charged as per law. The interest is charged as per ITNS 150 which forms part of the order. DN/RO is issued accordingly. Penalty notice u/s, 271(1)(c) r.w.s. 274 of this Act is also issued

4. Aggrieved by the assessment order, the assessee has filed appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions on the issue along with certain judicial precedents, which has been reproduced at para 4 on page 3 to 14 of Ld.CIT(A) order. The sum and substance of the arguments of the assessee before the Ld.CIT(A) are that loans taken from five parties are genuine transactions, which are supported by necessary evidences. The assessee has filed enormous details to

prove identity and genuineness of transactions. The loans have taken through proper banking channels. The assessee has paid interest after deducting applicable TDS as per law. Further, the said loans have been repaid in subsequent financial year. Therefore, the Ld. AO was incorrect in making additions towards unsecured loans only on the basis of non cooperation of the lenders, in response to 133(6) notices and 131(1)(d) commission enquiry conducted by DDIT(Inv.), Surat.

5. The Ld.CIT(A) after considering relevant submission of the assessee and also by taking note of various facts brought out by the assessee during the appellate proceedings held that transactions between the assessee and loan creditor are supported by necessary evidences, including confirmation letters from the parties. The Ld.CIT(A), further observed that although, the Ld. AO has taken support from investigation conducted by the DDIT(Inv.), but, on perusal of report of DDIT(Inv.), which was noticed that DDIT (Inv.) has not made adequate enquiries to reach to the conclusion that the parties are non genuine. The Ld.CIT(A), further noted that the assessee has filed necessary evidences to prove genuineness of transactions and creditworthiness of the parties. Further, the said loans have been repaid through proper banking channels in subsequent financial years. Therefore, he opined that assessee has been able to satisfy all ingredients of cash credits i.e identity, genuineness of transactions and creditworthiness of the parties and accordingly, deleted additions made by the Ld. AO towards unsecured loans along with interest paid thereon u/s 68 of the I.T.Act, 1961. The relevant findings of the Ld.CIT(A) are as under;-

5. DECISION. I have considered the facts of the case, grounds of appeal and oral and written submissions made before me. After a careful

consideration of the same as well as the ; assessment order. All grounds of appeal are correlated therefore 1 dealt together for sake of ' convenience. I proceed to rule as under.

5.1 From the assessment order I find that A.O. made addition u/s. 68 Joan taken from following 5 parties viz. Kanika Gems Pvt, Ltd. Rs, 1,80,00,000/-, Mangalmurti Impex Rs, : 1,00,00,000/-, Siddham Gems P. Ltd. Rs. 1,15,00,000/- Radhey Krishna Gems. P, Ltd. Rs. ' 1,10,00,000/- and Shri Jagdamba Shakti Gems P. Ltd. Rs. 46,00,000/- totaling to Rs, 5, 5 1,00, 000/- . The addition has been done by treating the same as unexplained cash credit stating that lenders are not genuine because appellants remain failed to produce the parties before the A.O. for verification and identity of the lenders and creditworthiness was not provided by the appellant. The AO came to the conclusion that as the declared income by the respective loan creditors was less they were not capable of lending which has been done by ignoring the fact that they had substantial turnover and had a very large base of assets as evident in the respective balance sheet.

I find from the assessment order of the A.Q., in para 4.2 it has been stated that 'assesses has filed confirmations of the above loan parties along with copy of ITR and relevant page of the bank statement'. During the assessment proceedings notice u/s. 133(6) of 2 parties viz Kanika Gems PVT.Ltd. and Shree Jagdamba Shakti Gems Pvt. Ltd. was returned from postal authorities with remark "left'. As it came to notice to the appellant, he produced the new address of the all lenders from whom notices return unserved. I find from para 4.5 of the assessment order wherein AO herself accepted that finally all the lenders filed confirmations. The same extract is as under:

"4.5 Thereafter in this case compliance has been made by all the lenders of loan by speed post from the new business address".

I come on me issue of commission issued by another AO to DDIT (Inv.), Surat. The AO received information that ITO-20(3)(1),Mumbai issued commission to DDIT, Surat u/s, 131(l)(d) to verify the genuineness and creditworthiness of lenders. The DDIT(Inv_r), Surat submitted report stating that he has issued summons u/s. 131 for appearance but due to close premises summons could not be served, therefore summons were served by affixture but loan creditors not responded. In this case one party namely Radhe Krishna Gems Pvt. Ltd, is related To the parties to whom commission was issued in other case. I find that registered office of the lenders has been changed. Before me appellant submitted that changed address of the lenders were provided to the AO during the proceedings. Appellant filed before me proof of change of address in form of Form No. 18 which is the notice of situation or change of situation of registered office pursuant to section 146 of the Companies Act On verification of the same it is noticed that in Sr, No. 4 it is clearly mentioned "notice is hereby given that (a) the address of the registered office of the company with effect from-----

Particulars of the details are as under:

Sr. No	Name of the company	Change address	With effect

			from
	Radhey Krishna Gems Pvt. Ltd.	6/1706, Sainath Building, Gundi Sheri, Mahapura, Surat, Gujral-395003	29/04/2013

All the lenders are Pvt. Ltd. Co. are registered under Companies Act All the details of company are available on public domain. On the above fact I come to the conclusion that the DDIT(Inv.), Surat has not made adequate enquiry nor any adequate report is taken on record by A.O. Only on the basis of the premises closed on one day or notices returned from the postal authority it cannot be accepted that parties from whom the loans were taken are not in existence or they are bogus. The DDIT(Inv.) Surat issued /served notice on the old address ; which have been changed. Therefore compliance of summons issued by him could not be . made. Finally all the confirmation and details called for was provided during the assessment' proceedings as well as before me. It is also pertinent to note that in this cast no commission ' was issued to the DDIT(Inv.) Surat. As no commission was issued in this case and appellant! provided the change of address of the parties during the assessment proceedings, this contention was also accepted by the AO in his order, then A.O should have made enquiry for ;he same but he did not do so.

Before me as well as the A..O. also documents were produced by the parties to prove the genuineness of the transactions which inter alia included the confirmations, bank statements of lenders, acknowledgements ,ROI, from these parties, their Balance Sheets, Profit and Loss accounts. Statements of advances which included name of the appellant as borrower . in two cases and details of interest and principal repaid which were by payees account cheques/RTGS. The appellant has filed details from the records of Ministry of Corporate Affairs which also shows that lender companies are alive. Moreover, the appellant bas¹ not, commenced the construction or done any booking to generate any funds. However, the A.O. brushed this aside on me grounds that the identity itself was not proved. The A.O. further held that the genuineness was not proved because these parties were not credit worthy to advance loans of such magnitude. I find that loans have been given by crossed account-payee cheques/RTGS and they are reflected in their audited books of account and filed their returns of income including bank statements from which the funds have been given to the appellant, this fact was also accepted by the AO. The appellant has produced the audited accounts and returns of income of all the parries which show that the loans given by them to the assessee are reflected in their audited accounts. These parties have not borrowed any funds and thus they have utilized their own funds for giving loans to the assessee on which they have interest.

I am unable to appreciate this position of the A.O, The A.O himself states that the turnover of these parties is in hundreds of crores. In the same

breath he states that these parties are not credit worthy. I find that the A,O has no other corroborative evidence to show that cash had been paid by the appellant to these parties for availing the loans. An accommodation entry of this nature would perforce require the appellant to part with cash in his hands and obtain a cheque in lieu of the same. The A,O, has not been able to establish the cash trail at all. The appellant has filed the entire documents required to establish the identity of the creditors their creditworthiness, as well as the genuineness of the transaction. The source of the said loans thus stands proven. As has been held in several decisions of superior judicial authorities (MurlidharLahorimal v CIT [280 ITR 512 (guj)], Labhchand Bohra v ITO [219 ITR 571 (Raj)] and CIT v Dwarkadhish Investment Private Limited [299 ITR 268 (Del)], the assesses cannot be called upon to prove the source of the source of his loans.

The AO has relied an a number of judgments, however the facts of these judgments are completely different as in this case the appellant has proved the identity and creditworthiness of the lender and the genuineness of the transactions.

As the loans have been subsequently repaid by the appellant through banking channels. Thus, the appellant is able to prove that not only did he take genuine loans, but the same has also been repaid. If these loans were not genuine, then there would not have been a question of repayment. I find that the weight of evidence is in favour of the appellant as he has been able to satisfy all ingredients of cash credit i.e. identity, creditworthiness and genuineness of transactions. Accordingly, I delete the addition of Rs, 5,51,00000/- and interest thereon amounting to Rs.40,03,550/- totaling to Rs, 5,91 ,03,550/- made by the AO.

6. The Ld. DR submitted that the Ld.CIT(A) was erred in deleting additions made by the Id. AO towards unsecured loans u/s 68 of the I.T.Act, 1961, without appreciating the fact that the assessee has failed to prove three ingredients provided u/s 68 of the Act. The Ld. DR further submitted that although, the Ld. AO has brought out various facts, in light of financial statements of loan creditors, including the modus operandi, but, the Ld.CIT(A) has negated all observations of the Ld. AO without assigning any reason, as to how the assessee has satisfied, the conditions prescribed u/s 68 of the Act. The Ld. DR, further submitted that the Ld.CIT(A) has erred in deleting additions made by the Ld. AO, ignoring the fact that the Hon'ble Supreme Court, in the case of Sumati Dayal vs CIT (1995)

214 ITR 801 clearly held that burden of proof for establishing that cash credits does not constitutes the income of the assessee completely on the assessee and that assessee's explanation with regard to the cash credits needs to be considered in view of the human probabilities.

7. The Ld. AR for the assessee, at the outset, submitted that the issue involved in the present appeal is covered by the decision of ITAT, Mumbai bench, in the case of assessee sister concerns, namely M/s Om shanti Realtors for AY 2013-14 in ITA No. 5615/Mum/2017, dated 01/03/2019, where an identical ground raised by the revenue against the identical orders of the Ld.CIT(A) has been considered by the Tribunal and after considering relevant facts deleted additions made by the Ld. AO. The Ld. AR, further submitted that the assessee has proved the identity of the creditors, genuineness of transactions and creditworthiness of five loan creditors by furnishing various information, including their name and address along with copy of ITR filed for the relevant assessment years, bank statements and financial statements of lender companies to prove source of funds to explain loans given to the assessee. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the Ld. AO and his order should be upheld.

8. We have heard both the parties, perused the material available on record and gone through orders of the authorities below along with case laws cited by both the parties. At the outset, we find that the issue is squarely covered in favour of the assessee by the decision of ITAT, Mumbai Bench in assessee's sister concern namely M/s. Om shanti realtors vs ITO in ITA No. 5615/ Mum/2017,

wherein the identical grounds raised by the revenue against identical order of the Ld.CIT(A) has been considered and after considering relevant facts, the Tribunal deleted additions made by the Ld. AO. The relevant findings of the Tribunal are as under:-

5. DECISION: I have considered the facts of the case, grounds of appeal and oral and written submissions made before me. After a careful consideration of the same as well as the assessment order. All grounds of appeal are correlated therefore I dealt together for sake of convenience. I proceed to rule as under.

5.1 From the assessment order I find that A.O. made addition u/s. 68 loan taken from following 8 parties viz. Divyanshi Gems P. Ltd. Rs, 3,09,00,000/- I-, Manbhawan Exim P. Ltd. Rs, 2,00,00,000/-, Siddham Gems P. Ltd. Rs. 37,00,000/- Radhey Krishna Gems. P. Ltd. Rs. 1,29,00,000/-, Shri Brahma Shakti Gems P. Ltd. Rs. 1,50,00,000/-, Shankeshwar Diamonds P. Ltd. Rs. 2,27,00,000/-, Shri Charbhujia Diamonds P. Ltd. Rs. 2,10,00,000/- and Shri Jagdamba Shakti Gems P. Ltd. Rs. 1,68,00,000 totaling to Rs.14,30,00,000/-. The addition has been done by treating the same as unexplained cash credit stating that lenders are not genuine because appellants remain failed to produce the parties before the A.O. for verification and identity of the lenders and creditworthiness was not provided by the appellant. The AO came to the conclusion that as the declared income by the respective loan creditors was less they were not capable of lending which has been done by ignoring the fact that they had substantial turnover and had a very large base of assets as evident in the respective balance sheet.

5.2 I find from the assessment order of the A.O., in para 4.2 it has been stated that 'assessee has filed confirmations of the above loan parties alongwith copy of ITR and relevant page of the bank statement'. During the assessment proceedings notice u/s. 133(6) of 2 parties viz Brahm Shakti Gems Pvt.Ltd. and Shree Charbhujia Diamonds Pvt. Ltd. was returned from postal authorities with remark "left". As it came to notice to the appellant, he produced the new address of the all lenders from whom notices return unserved. I find from para 4.5 of the assessment order wherein AO herself accepted that finally all the lenders filed confirmations. The same extract is as under:

"4.5 Thereafter in this case compliance has been made by all the lenders of loan by speed post from the new business address.

5.3 I come on the issue of commission issued by the another AO to DDIT (Inv.), Surat. The AO received information that ITO-20(3)(1), Mumbai issued commission to DDIT, Surat u/s. 131(1)(d) to verify the genuineness and creditworthiness of lenders. The DDIT(Inv.), Surat submitted report stating that he has issued summons u/s. 131 for appearance but due to close premises summons could not be served,

therefore summons were served by affixture but loan creditors not responded. In this case three parties viz. Shree Charbhujia Diamonds Pvt, Ltd, Shankeshwar Diamonds Pvt. Ltd and Radhey Krishna Gems Pvt. Ltd. are related to the parties to whom commission was issued in other case. I find that registered office of these lenders have been changed. Before me appellant submitted that changed address of the lenders were provided to the AO during the proceedings. Appellant filed before me proof of change of address in form of Form No. 18/Form No. INC-22 which is the notice of situation or change of situation of registered office pursuant to [section 146](#) of the Companies Act 1956/ [section 12\(2\)&4](#) of the Companies Act, 2013 and Rule 25 and 27 of the companies (incorporation) Rules 2014. On verification of the same it is noticed that in Sr. No. 4 it is clearly mentioned "notice is hereby given that (a) the address of the registered office of the company with effect from

Particulars of the details are as under:

Sr.	Name of the company	Change address	With effect from
1	Shree Charbhujia Diamonds Pvt. Ltd	H. No. 5/909, 3rd floor Gansesh Ashish Ghiya Sheri, Kamnath Road Mahidharpura Surat Gujrat-395003	01/07/2013
2	Shankeshwar Gems P.	6/2497, Maze Nine Floor, Office NO.21/08/2014 Ltd M3 Balaji Sadan Limbu Sheri, Mahidharpura Surat 395003	21.08.14
3	Radhey Krishna Gems	6/1766 Sainath Building, Gundi Sheri Mahapura Surat, Gujrat- 395003	29.04.13

All the lenders are Pvt. Ltd. Co. are registered under [Companies Act](#). All the details of company are available on public domain. On the above fact I come to the conclusion that the DDIT(Inv.), Surat has not made adequate enquiry nor any adequate report is taken on record by AO. Only on the basis of the premises closed on one day or notices returned from the postal authority it cannot be acceptable that parties from whom the

loans were taken are not in existence or they are bogus. The DDIT(Inv.) Surat issued /served notice on the old address which have been changed.

Therefore compliance of summons issued by him could not be made. Finally all the confirmation and details called for was provided during the assessment proceedings as well as before me. It is also pertinent to note that in this case no commission was issued to the DDIT(Inv.) Surat. As no commission was issued in this case and appellant provided the change of address of the parties during the assessment proceedings, this contention was also accepted by the AO in his order, then AO should have made enquiry for the same but he did not do so.

5.4 Before me as well as the A.O. also documents were produced by the parties to prove the genuineness of the transactions which inter alia included the confirmations, bank statements of lenders, acknowledgements, ROI, from these parties, their Balance Sheets, Profit and Loss accounts, Statements of advances which included name of the appellant as borrower in two cases and details of interest and principal repaid which were by payees account cheques/RTGS. The appellant has filed details from the records of Ministry of Corporate Affairs which also shows that lender companies are alive. Moreover, the appellant has not commenced the construction or done any booking to generate any funds. However, the A.O. brushed this aside on the grounds that the identity itself was not proved. The A.O. further held that the genuineness was not proved because these parties were not credit worthy to advance loans of such magnitude. I find that loans have been given by crossed account-payee cheques/RTGS and they are reflected in their audited books of account and filed their returns of income including bank statements from which the funds have been given to the appellant, this fact was also accepted by the AO. The appellant has produced the audited accounts and returns of income of all the parties which show that the loans given by them to the assessee are reflected in their audited accounts. These parties have not borrowed any funds and thus they have utilised their own funds for giving loans to the assessee on which they have earned interest.

5.5 I am unable to appreciate this position of the A.O. The A.O. himself states that the turnover of these parties is in hundreds of crores. In the same breath he states that these parties are not credit worthy. I find that the A.O. has no other corroborative evidence to show that cash had been paid by the appellant to these parties for availing the loans. An accommodation entry of this nature would perforce require the appellant to part with cash in his hands and obtain a cheque in lieu of the same. The A.O. has not been able to establish the cash trail at all. The appellant has filed the entire documents required to establish the identity of the creditors their creditworthiness, as well as the genuineness of the transaction. The source of the said loans thus stands proven. As has been held in several decisions of superior judicial authorities {MurlidharLahorima! v CIT [280 ITR 512 (guj)] , Labhchand Bohra v ITO [219 ITr 571 (Raj)] and CIT v Dwarkadhish Investment Private Limited

[299 ITR 268 (Del)], the assessee cannot be called upon to prove the source of the source of his loans.

5.7 The AO has relied on a number of judgements, however the facts of these judgements are completely different as in this case the appellant has proved the identity and creditworthiness of the lender and the genuineness of the transactions.

5.8 As the loans have been subsequently repaid by the appellant through banking channels. Thus, the appellant is able to prove that not only did he take genuine loans, but the same has also been repaid. If these loans were not genuine, then there would not have been a question of repayment. I find that the weight of evidence is in favour of the appellant as he has been able to satisfy all ingredients of cash credit i.e. identity, creditworthiness and genuineness of transactions. Accordingly, I delete the addition of Rs. 14,30,00,000/- and interest thereon amounting to Rs.1,13,74,600/- totaling to Rs. 15,43,74,600/- made by the A.O

7. After having gone through the facts of the present case and perusal of the documents and after hearing both parties at length we find that the assessee had already placed on record all the documentary evidences in order to show the identity and creditworthiness of the lenders and genuineness of the transactions. We have perused the confirmation filed by the parties, copies of acknowledgement of return of income filed by the lenders for the year under consideration, copies of the bank statement of lenders, which establish that the payment towards loans were received during the year under consideration. Therefore the identity of the lenders was not in dispute. We have also considered all the documents placed on record by the assessee in the shape of statement of accounts and documents to show that the transactions were carried out through banking channels and the confirmations which were filed in the form of ledger accounts which reflect that the assessee had received the amount through RTGS. All those documents prove the genuineness of the transactions. Now as far as creditworthiness of the lenders are concerned, we have perused the audited accounts of the lenders which shows the creditworthiness of the lenders to grant loans and advances. Further, we also noticed from the records that Ld. CIT(A) had rightly pointed out in its order that the AO made the additions by holding that as the declared income by the respective loan creditors was less, therefore, they were not capable of lending. However, the AO ignored the fact that the lenders had substantial turnover and had a very large base of assets as is reflected in the respective balance sheets.

8. We have also considered the fact that in the present case, the AO herself had accepted that all the lenders had filed their confirmations apart from other documents as mentioned above. The record of Ministry of Corporate Affairs was also placed on record to show that the lender companies are alive. The loans, which were taken by the assessee had also been repaid and those details have also been filed by the assessee. In the case of *Pr.CIT vs. Paradise Inland Shipping Pvt. Ltd.* (supra) the Hon'ble High Court has categorically held that the initial onus is upon the assessee to place on record all the documentary evidences to establish

the identity and creditworthiness of the lenders and genuineness of the transactions and when once the assessee produce all the documentary evidences to establish the existence of the said lenders then the burden shifts on the Revenue to establish the case. Similar view was also taken by the Hon'ble High Court in the case of *CIT vs. Green Infra Ltd.* (supra) wherein it was held as under: -

"Section 68 of the Income-tax Act, 1961 - Cash credit (Share capital) - Assessment year 2011-12 - Assessee-company offered to sell its shares - Identity of subscribers was confirmed by virtue of Assessing Officer issuing notices to them - Genuineness of entire transaction was recorded in books of account and reflected in financial statements of assessee-company since subscription was done through banking channels as evidenced by bank statements - Tribunal examined case of revenue on parameters of section 68 and found on facts that it was not hit by said section - Whether since revenue was not able to show that factual finding recorded by Tribunal was perverse, no substantial question of law arose - Held, yes [Para 3(c)] [In favour of assessee]."

9. In the case of *CIT vs. Gagandeep Infrastructure Pvt. Ltd.* (supra) the Hon'ble High Court held as under: -

"Section 68 of the Income-tax Act, 1961 - Cash credit (Share Capital) - Assessment year 2008-09 - Whether proviso to section 68 introduced by Finance Act 2012 with effect from 1-4-2013, would not have retrospective effect - Held, yes - Whether where assessee-company had established identity, genuineness and capacity of shareholders who had subscribed to its shares, Assessing Officer was not justified in adding amount of share capital subscription as unexplained credit - Held, yes - Whether where revenue urged that assessee had received share application money from bogus shareholders, it was for Income-tax Officers to proceed by reopening assessment of such shareholders and assessing them to tax in accordance with law and it did not entitle revenue to add same to assessee's income as unexplained cash credit - Held, yes [Para 3] [In favour of assessee]."

10. As far as the facts of the present case, assessee has also repaid the loan which was taken to the lenders through banking channel and in such a situation the Hon'ble High Court in the case of *Rahul Vineet Traders* (supra) has held as under: -

"Section 68 of the Income-tax Act, 1961 - Cash credits [Loan] - Assessment year 2000-01 - Assessee-firm had taken loan from 14 firms out of which loan from four firms were not found by Assessing Officer as genuine because those firms were, allegedly, related to one „G“ involved in providing accommodation entries - Assessing Officer thus invoked section 68 and made addition to assessee's income on account of unexplained cash credits - Commissioner noticed that lenders were regular income- tax assessee and their PANs were on record - It was also undisputed that amount had been advanced through account payee cheques and further before issuing cheques lenders had got sufficient balance in their account - Moreover, amount had also been repaid through account payee cheques - In view of above, Commissioner

(Appeals), taking a view that loan transactions were genuine, deleted addition made by Assessing Officer - Tribunal upheld order of Commissioner (Appeals) - Whether on facts, impugned addition made in hands of assessee was rightly deleted - Held, yes [Para 5] [In favour of assessee]."

11. In the case of Varinder Rawley (supra) the Hon'ble High Court has held as under: -

"Section 68 of the Income-tax Act, 1961 - Cash credit (Sale of goods) - Assessment year 2002-23 - Whether where assessee received and returned amount in question by way of account payee cheques and transactions were reflected in bank accounts of assessee as well as creditor who was an income-tax assessee, assessee had sufficiently explained nature and source of credit entry and in such case entry could not be treated as assessee's income when department failed to prove to contrary - Held, yes [Paras 9 and 10] [In favour of assessee]."

In the case of Apex Therm Packaging (P) Ltd. (supra) the Hon'ble High Court has categorically held that when the assessee had placed on record full particulars, which are inclusive of confirmation with name, address and PAN, copy of income tax returns, balance sheet, etc. in respect of all creditors/lenders then Revenue is not justified in making additions. Similar view has also been taken by the Hon'ble Allahabad High Court in the case of Vijay Kumar Jain (supra) and the Hon'ble Rajasthan High Court in the case of Jai Kumar Bakliwal (supra) and also in the case of ITO vs. Vijay Dwellers Pvt. Ltd. in ITA No.141/Mum/2018" for A.Y. 2009-10 dated 30.01.19, ITO vs. Lotus Grih Nirman Pvt. Ltd. ITA No.3998/Mum/2014 for A.Y.

2010-11 dated 18.10.2018, ITO vs. Shri Nemichand Lalchand Jain ITA No.159/Mum/2017 for A.Y. 2007-08 dated 17.12.2018, Shri Vasant Ramji Savla vs. ACIT in ITA No.6123/Mum/2017 for A.Y. 2011-12 dated 27.12.2018, ACIT vs. Rajesh M. Shah (HUF) ITA No.7105/Mum/2016 for A.Y. 2012-13 dated 30.08.2018 and M/s. Keynote Fincorp Limited vs. DCIT in ITA Nos. 1643 & 1647/Mum/2018 for A.Ys. 2012-13 and 2013-14 dated 5.11.2018.

12. In the present case, Ld. CIT(A) apart from appreciating that all the documents had been placed on record by the assessee, which is specifically mentioned in para no. 5.4 of its order had also categorically mentioned that the audited accounts and return of income of all the parties, show that the loans given by them to the assessee were reflected in their audited accounts and these parties had not borrowed any funds and thus had utilised their own funds for giving loans to the assessee on which they had earned interest. It is also important to mention here that the A.O himself stated that the turnover of these parties was in hundreds of crores and at the same time, AO stated these parties were not credit worthy. In this respect, the A.O had not placed on record any corroborative evidence to show that cash had been paid by the assessee to these parties for availing the loans and had not been able to establish the cash trail at all. On the contrary, the assessee had filed the entire documents, required to establish the identity of the creditors and their creditworthiness, as well as the genuineness of the transaction.

13. As far as the case law relied upon by the Revenue is concerned, we have considered those case law, but they are not applicable to the facts and circumstances of the present case as the pari materia contained in those cases are different from the pari material contained in the present case.

14. We also noticed that Ld. CIT(A) had rightly concluded that the loans taken by the assessee were subsequently repaid through banking channels. Thus, if these loans were not genuine then in that eventuality the same would not have been repaid. Therefore, considering the entirety of the facts, the Ld. CIT(A) had rightly held that the assessee had satisfied all the ingredients of cash credit i.e. identity, creditworthiness and genuineness of transactions and accordingly deleted the additions.

15. Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT (A). Therefore, there are no reasons for us to interfere into or deviate from the findings recorded by the Ld. CIT (A). Hence, we are of the considered view that the findings so recorded by the Ld. CIT (A) are judicious and are well reasoned. Resultantly, these ground raised by the revenue stands dismissed.

16. In the net result, the appeal filed by the revenue stands dismissed with no order as to cost.”

9. We further noted that the Ld.CIT(A) after considering relevant details filed by the assessee, in respect of all five loan creditors has come to the conclusion that the assessee has discharged the onus cast upon it u/s 68 of the I.T.Act, 1961, by filing various details, including confirmation letters from the parties. We, further noted that the Ld.CIT(A) had also recorded categorical findings that the Id. AO has disregarded all evidences filed by the assessee only on the ground that notice issued u/s 133(6) were return unserved, in respect of some parties, without appreciating the fact that on subsequent event all the lender companies had replied to the notices of the Ld. AO issued u/s 133(6) by furnishing documentary evidences, in respect of each of the issues raised therein. Further, the assessee had also furnished bank statement to prove transfer of loans through proper banking channel. The assessee firm had paid

interest on said loans after deducting TDS applicable as per law. The assessee firm had also repaid said loans by crossed account pay cheques in the subsequent assessment years and the details thereof have been filed in form of a chart, which is at pages No. 59 to 63 of the paper book. Therefore, we are of the considered view that when, the assessee has discharged its onus by filing necessary evidences to prove identity, genuineness of transactions and creditworthiness of the parties, the Ld. AO cannot make additions towards unsecured loans only on the basis of non service of 133(6) notices or non cooperation of lenders to said notices issued by the Ld. AO, because, the appearance of parties to notices issued by the Ld. AO is not within the control of the assessee. The assessee at best could file necessary evidences to prove transactions between the parties as genuine, but at the same time non appearance of parties cannot be attributed to the failure of the assessee to hold that transactions between the parties are non genuine. Therefore, we are of the considered view that the Ld. AO was erred in making additions towards unsecured loans taken from five parties u/s 68 of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant facts has rightly deleted additions along with interest paid thereon.

10. Coming back to various case laws relied upon by the assessee. The assessee has relied upon the decision of Hon'ble Bombay High Court, in the case of PCIT vs Paradise Inland Shipping Pvt.Ltd. (2018) 400 ITR 439. We find that the Hon'ble Jurisdictional High Court has examined a similar issue in light of provision of section 68 and held that once, assessee has discharge its onus by filing necessary evidences, including name and address of alleged shareholders, then the revenue is free to proceed on loan creditors in accordance with law, but sum so received from loan creditors

cannot be regarded as undisclosed income of the assessee. The above decision of Hon'ble Bombay High Court has been affirmed by the Hon'ble Supreme Court, thereby concurred with the findings of the Hon'ble High court. Further, the Hon'ble Bombay High Court, in the case of CIT vs Green Infra Ltd. (2017) 392 ITR 7 and CIT vs. Gagandeep Infrastructure Ltd. (2017) 394 ITR 680 had taken similar view and held that once, the assessee discharges its onus by filing necessary evidences, including name and address of creditors, then the department can reopen the assessment of creditors and proceed in accordance with law, but sum so received from the creditors cannot be regarded as undisclosed income of the assessee. A similar view has been upheld by the Hon'ble Allahabad High court, in the case of CIT vs Rahul Vineeth Traders 2014 41 taxmann.com 86. The Hon'ble Punjab & Haryana Court, in the case of CIT vs Varinder Rawalley 2014 366 ITR 233 had taken similar view.

11. In this view of the matter and respectfully following the case laws discussed hereinabove, including the coordinate bench of ITAT, Mumbai bench decision in assessee's sister concerns case namely M/s. Om shanti realtors in ITA No.5615/Mum/2017, we are of the considered view that the Ld. AO was erred in making additions towards unsecured loan and consequent interest paid thereon u/s 68 of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant facts and also by relied upon various judicial precedents has rightly deleted additions made by the Ld. AO. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismissed appeal filed by the revenue.

12. In the result, appeal filed by the revenue is dismissed.

ITA No. 5614/Mum/2017

13. The facts and issues involved in the present appeal are identical to the facts and issues, which we had considered in ITA No.5613/Mum/2017. The reasons given by us in preceding paragraph shall *mutatis-mutandis* apply to this appeal as well. Therefore, for similar reasons recorded in ITA No. 5613/Mum/2017, we are of the considered view that the Ld.CIT(A) was right in deleting additions made by the Ld. AO towards unsecured loans and consequent interest paid thereon u/s 68 of the I.T.Act,1961. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismissed appeal filed by the revenue.

14. As a result, both appeals filed by the revenue are dismissed.

Order pronounced in the open court on this 10 /01/2020

Sd/-
(C.N.PRASAD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 10/01/2020

Thirumalesh Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai