

**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.6832/Mum/2019
(Assessment Year: 2016-17)**

Garware Synthetics Limited Manish Textile Ind. Premises Opp. Golden Chemicals Penkar Pada, Post Mira Thane-401 104	Vs.	ACIT, Circle-15(1)(2) Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No.AAACG4208M		
(Appellant)	..	(Respondent)

Assessee by	Shri Haridas Bhat, AR
Revenue by	Shri V.Vinod Kumar, JCIT -DR
Date of Hearing	24/02/2020
Date of Pronouncement	24/06/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against order of the Ld. Commissioner of Income Tax (Appeals)-24, Mumbai, dated 23/08/2019 and it pertains to Assessment Year 2016-17.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case, and in law, the Income Tax Officer, Circle 15(1)(2), Mumbai ("The AO.") erred in adding unsecured loans of Rs.1,23,00,000/- as unexplained cash credits u/s 68 of the IT Act.*

2. *On the facts and circumstances of the case, the Income Tax Officer, Circle 15(1)(2), Mumbai ("The AO.") erred in adding Rs.15,00,000/- being the difference in the amount of loan taken during the year and amount appearing in bank statement as cash credits us 68 of the IT Act.*

3. *On the facts and circumstances of the case, the income Tax Officer, Circle 15(1)(2), Mumbai ("the AO.") erred in disallowing Rs.13,83,200/-*

being the interest expense claimed by the assessee in respect of the loans taken from certain parties.

4. Without prejudice to the above, The AO erred in disallowing all the interest paid considering the same as interest on Loans disallowed u/s 68, ignoring the fact that only Rs.7,00,000/- is the interest on such loans. The Appellant therefore prays that the disallowance if made should be restricted to Rs.7,00,00/- only.

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing of Nylon monofilaments, Nylon Bristles, Nylon rods, Nylon tubes etc., has filed its return of income for AY 2016-17 on 27/03/2018, declaring total income at Rs.23,65,050/-. The case has been selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that the assessee has taken unsecured loans from four parties as listed in his assessment order at para 5.5 amounting to Rs.2.58 crores and accordingly, he has called upon the assessee to furnish necessary details, including name and address, PAN number along with confirmation from the parties to prove the identity, genuineness of transaction and creditworthiness of the parties. In response, the assessee has filed details of creditors along with their name, address, PAN etc,. In order to verify genuineness and creditworthiness of the said loans, information u/s 133(6) of the I.T.Act, 1961 was called from the creditors, for which M/s Garware Finance Corporation Ltd. has filed details sought for by the Ld. AO, vide letter dated 05/12/2018. Insofar as, other three parties namely M/s Arya Global Shares and Securities Pvt.Ltd, M/s Kyra Landscapes Ltd. and M/s Venus Portfolio & Finance Pvt.Ltd. none have responded to notices issued by the Id. AO.

4. Thereafter, the Ld. AO has called upon the assessee to explain as to why, unsecured loans taken from three parties amounting to Rs.1.23 crores and the difference in amount taken from M/s Garware Finance Corporation Ltd. amounting to Rs.15 Lacs and in total a sum of Rs.1.38 crores cannot be treated as unexplained cash credit within the meaning of section 68 of the I.T.Act. In response, the assessee has filed confirmation letter from all the parties, but could not file any other details, including financial statements and their ITR copies. The Ld. AO was not convinced with the explanation furnished by the assessee, insofar as, loans taken from three parties amounting to Rs.1.23 crores, on the ground that the assessee has failed to file necessary details in order to prove the identity, genuineness of transactions and creditworthiness of the parties. Insofar as, loan taken from the M/s Garware Finance Corporation Pvt. Ltd, the Ld. AO has observed that although, the assessee has filed necessary details, but as per the confirmation filed by the party, there is a difference of Rs.15 Lacs in the loans shown to have taken from the party and accordingly, made additions towards difference of Rs.15 Lacs u/s 68 of the I.T.Act, 1961. The AO, while, doing so has taken support from the report of Investigation wing, Mumbai, as per which M/s. Arya Global Shares & Securities Pvt.Ltd. is a shell company, which is engaged in providing accommodation entries to various beneficiaries. Therefore, he opined that unsecured loans taken from above three parties is non genuine in nature and accordingly, made additions of Rs.1.38 crores u/s 68 of the Act. Similarly, the Ld. AO has made additions of Rs.13,83,200/- being corresponding interest payment claim to have made to above parties by the assessee, on the ground that when, the loan itself is non genuine, corresponding interest payment

cannot be considered as genuine expenditure and accordingly, made additions towards interest expenses u/s 68 of the I.T.Act, 1961. The relevant findings of the Ld. AO are as under:-

5.2 During the course of assessment proceedings, the assessee vide this office letter dated 24-19-2018 was asked to submit the details of above said loans taken during the year along with the bank statement. In response to the same, the assessee has filed the name, address PAN, amount, etc in the form of statement.

5.3 To verify the genuineness and credit worthiness of the above said loans, information u/s 133(6) of the IT Act dated 22-11-2018 was called from the above parties. However, notices issued to the following parties were either returned unserved or not replied by the parties concerned, the details of which are as under:-

Sr.No.	Name of the party	Amount	Remarks
1	Arya Global Shares & securities Pvt.Ltd.	43,00,000	Returned unserved
2	Kyra Landscapes Ltd.	73,00,000	Returned unserved
3	Venus Portfolio & Finance Pvt.Ltd.	7,00,000	No Response
	TOTAL	1,23,00,000	

5.4 Since there is no response from the above said parties, the assessee, vide this office letter dated 01-12-2018 was asked to show case, why the above said loans should not be treated as unexplained cash credits u/s 68 of the IT Act and added to your income. In response to the same, the assessee has e-filed single page confirmations of the above said parties, however, no other details viz., copy of return of income, bank statements, ledger confirmations, etc. has been filed to substantiate the above said unsecured loans taken received.

5.5 Further, Ms Garware Finance Corporation Ltd., vide its letter dated 05/12/2018 has filed the copies of return of income and its financials along with bank statement. However, ledger confirmations has not been filed to substantiate the outstanding loans as on the date of 31/03/2016. Therefore, the bank statements has been verified, wherein it was found that during the year the M/s. Garware Finance Corporation Ltd., has given loan to the assessee company to tune of Rs.1,20,00,000/-. However, as per assessee records, the loan received during the year is show as Rs.1,35,00,000/-. The difference of Rs.15,00,000/- is unexplained.

5.6 Since there is no response from the assessee nor any details to prove the genuineness and credit worthiness of the creditor has been filed, the assessee was once gain an opportunity vide this office letter dated 09-12-2018, by

bringing the above facts to the notice and since the matter is getting barred by limitation of time on 31-12-2018, the assessee was asked to show cause in the absence of any details, the genuineness and credit worthiness of the above said parties cannot be proved, therefore, was asked to produce the parties by 12-12-2018, failing which assessment will be completed based on the material available on record without any further opportunity. However, the assessee has not filed any reply to the said show cause.

5.7 Since, these entries of loans are appearing in the books of accounts of the assessee and it is assessee, who is claiming them to Be unsecured laons, the onus is on the assessee to prove the identity and creditworthiness of the alleged lenders and genuineness of the transaction. Precisely for this, assessee was repeatedly asked to furnish documents like loan confirmations, copies of returns of income and other financial documents and produce the parties. It was only after several reminders, adjournments and a lapse of sufficient time that the assessee furnished only detail of unsecured loans received in a chart form and single confirmation letter. Assessee has not put forth any plausible reasons as to why ledger confirmation of these three parties were not filed, nor it sought any further opportunity to file these details. It is therefore concluded that the assessee has no confirmation from the said parties against the credits appearing in its books of account.

5.8 In all the above cases, assessee has not filed any ledger confirmations, copies of the ITRs, or the bank statement. The primary onus to establish the identity creditworthiness and genuineness of the transactions in respect of the alleged unsecured loans, appearing as credits in the books of account of the assessee is on the assessee. However, since assessee has not filed any evidence whatsoever, in support of its claim, the said credits remain unexplained.

5.9 The case of the assessee needs to be further appreciated in a situation, where assessee is showing unsecured loans from 6 parties. Out of which 1 party has filed the copy of return and banks statement, that too showing the difference as compared to assessee books of account. In case, these loans were explainable assessee must have submitted proper loan confirmations containing all the required details lie ledger confirmation, bank statements, ROI, etc of the lenders. These are not random loans or loans taken from one or two parties, who may not be in touch with the assessee or assessee may have spoiled financial relation so as to obtain the loan confirmation in their totality. Such huge amount of loans from 3 parties, if genuine, must be supported with proper documentation, which clearly indicates that the onus cast upon by the section 68 of the I.T.Act, 1961 has not been discharged by the assessee.

5.10 Further, it is not out of place to mention here that inquiries has recently been conducted by the Investigation Wing, Mumbai which has revealed that M/s Arya Global Shares & Securities Pvt. Ltd. Is a bogus company that has been used by the entry operators to provide accommodation entries to various beneficiaries . Shri Deepak Rathod, Director of M/s Arya Global Shares & Securities Pvt. Ltd has stated in his statement recorded on oath on 21-06-2018

before the DDIT (Inv.) Unit VIII(2), Mumbai that he is working as a tempo driver and has no idea of the operations of the company. He also stated that he does not even know about the directorship fo the company. He has just even his credentials (PAN, Ration card, Photo etc.) and signs certain documents for which he gets some amount as income. In effect , he is a dummy director and the company has been created to provide accommodation entries.

5.11 In view of the facts and circumstances of the case as discussed above, it is established that the credits in the form of alleged unsecured loans appearing in the books of account of the assessee amounting to Rs.1,23,00,000/- from the above mentioned three parties and the difference found in the books of M/s Garware Finance Corporation Ltd. Of Rs.15,00,000/- totaling to Rs.1,38,00,000/- remained unexplained cash credits and therefore, brought to tax u/s 68 of the income tax Act, 1961. Further, since the loans aggregating to Rs.1,38,00,000/- from 3 parties are held as unexplained cash credit, the corresponding interest claimed by the assessee of Rs.13,83,200/- is also hereby disallowed as bogus claim and added back to the total income of the assessee. Penalty proceedings u/s 271(1)(c) of the Income tax At, 1961 are initiated simultaneously for concealment of particulars of income.

5. Being aggrieved by the assessment order, the assessee has preferred an appeal before the Ld.CIT(A). Before, the Ld. CIT(A), the assessee has filed detailed written submissions along with certain judicial precedents, which has been reproduced at para 4.1 on pages 6 to 8 of Ld.CIT(A) order. The sum and substance of arguments of the assessee before the Ld.CIT(A) are that unsecured loans taken from above parties are genuine, which are supported by necessary evidences, including confirmation from the parties. It was further submitted that merely for the reasons that parties did not respond to 133(6) notices issued by the Ld. AO, no adverse interference could be drawn against the assessee, when the assessee has discharged primary onus cast upon u/s 68 of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant submissions of the assessee and also, by relied upon certain judicial precedents, including the decision of Hon'ble Delhi High court, in the case of CIT vs Jansampark Advertising & Marketing Pvt.Ltd. (ITA 525/204) (Del.), has confirmed additions made by the Ld. AO towards

unsecured loans taken from four parties along with interest payment claims to have made to them, on the ground that the assessee has failed to furnish necessary evidences to establish identity of his creditors, capacity of creditors to advance money and genuineness of transaction. The relevant findings of the Ld.CIT(A) are as under:-

5.2.3 I have perused the documents on record and the factual matrix of the case. Before I proceed to decide on the matter, it is imperative to look at section 68 of the Act, which is reproduced hereunder for ready reference and analysis:-

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

Provided that where the assessee is a company (not being accompany in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee – company shall be deemed to be not satisfactory, unless-

(a) The person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.

As per section 68 of the Ac, onus is upon the appellant to discharge the burden so cast upon. First burden is upon the appellant to satisfactorily explain the credit entry contained in his books of accounts. The burden has to be discharged with positive material. This has been observed in Oceanic Products Exporting Company v CIT 241 ITR 497 (Kerala). The legislature had laid down that in the absence of satisfactory explanation the unexplained cash credit may be charged u/s 68 of the Act. This view is fortified by the ratio laid down in Hon'ble Apex Court in P. Mohankala (2007) (291 ITR 278 (SC). The law is well settled, the onus of proving the source of a sum, found to be received/transacted, it is open to the Revenue to hold that it is income of the appellant and no further burden lies on the revenue to show that income is from any other particular source. It is necessary for the appellant to prove not only identity of the creditor but also the capacity of the creditor and genuineness of the transactions. The onus lies on the appellant, under the facts available on record. A harmonious construction of section 106 of the Evidence Act and section 68 of the Income Tax Act will be that apart from establishing the identity of the creditor, the appellant must establish the genuineness of the transaction as well as the creditworthiness of the creditors.

In this case, the appellant was required to explain the unsecured loans and prove the genuineness and creditworthiness of the lender party. However, the appellant has failed to furnished all the requisite documents to prove the same

except for submitting the loan confirmation. On the contrary, the AO issued notice u/s 133() of the Act which were un-served or not replied to. This clearly shows that the bonafideness and genuineness of the transaction does not get established.

5.2.4 On a perusal of the assessment order it appears that the AO, basis the report of the Investigation Wing, Mumbai, has also noted that M/s. Arya global Shares & Securities Pvt.Ltd. was a bogus company and was used to provide accommodation entries by the entry providers.

5.2.5 The law is well settled that the onus of providing the source of a sum, found to be received/transacted by the assessee, is on him and where it is not satisfactorily explained, it is open to the revenue to hold that it is income of the appellant and no further burden lies on the revenue to show that income is from any other particular source. Where the appellant failed to prove satisfactorily the source and nature of such credit, the revenue is free to make the addition. The principle laid down in Ganpati Mudaliar (1964) 53 ITR 632/A. GovindaRajuly Mudaliar (34 ITR 807)(SC) and also CIT v Durga Prasad More (72 ITR 807) (SC) are the landmark decisions. The ratio laid down therein are that if the explanation of the assessee is unsatisfactory, the amount can be treated as income of the assessee.

5.2.6 The Delhi High Court in the case of Principle CIT v. Bikra Singh ITA No.55/2017 has held that where the transactions herein do not inspire confidence as being genuine and are shrouded n mystery, as to why so-called creditors would lend such huge unsecured, interest free loans-that too without any agreement. In the absence of the same, the creditors fail the test of creditworthiness and the transactions fail the test of genuineness.

In this case, the assessee has been able to submit only its own documents like bank account, ledger, etc and has not preliminary discharged the obligation of establishing the genuineness of the transaction and the creditworthiness of the lender parties.

The Hon.Calcutta High court in CIT vs Precision Finance Pvt.Ltd. (1994) 208 ITR 465 (Cal.) laid down that the assessee is expected to establish:-

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

As to the issue of genuineness of transaction, it was further held in the above decision that the transaction is not genuine, simply because some, out of many, of the transactions are by cheque. Where certain sum of money claimed by the assessee to prove, by cogent and proper evidence, that they are the genuine borrowings for the reason that the facts are exclusively within the assessee knowledge.

In CIT vs. Oasis Hospitalities Pvt.Ltd. 333 ITR 119(Delhi) it was held by the Hon. Court that "The initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are (i) identity of the investor; (ii) their creditworthiness /investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise.

The appellant has not been able to prove the genuineness and creditworthiness of the transaction of the transaction. Moreover, it could not produce the party for verification. In this case of CIT vs Jansampark Advertising & Marketing Pvt.Ltd. (ITA 525/2014) (Del.), the additions have been made u/s 68 in respect of the share capital received by the assessee from various companies and during the course of investigation, it was found that the share capital has been received from three entry operators, who are allegedly in the business of providing accommodation entries. Notices issued u/s 131 to these parties were returned undelivered by the postal authorities with the remark left/no such person. Under these circumstances, the Hon'ble High court took a view that the assessee failed to discharge the burden to prove the credit worthiness as well as the genuineness of the transaction.

5.2.7 Having regard to the facts of the case and judicial precedents, I am of the view that the AO has rightly added the loan borrowed of Rs.1,23,00,000 as unexplained cash credit u/s 68 of the Act. This ground of appeal is dismissed.

5.3 Ground 2-Addition of Rs.15,00,000 u/s 68

5.3.1. Of the parties from whom the loan was taken by the appellant, as detailed in the above ground, M/s Garware Finance Corporation Limited filed the copies of return of income and financials along with the bank statement in response to the notice issued u/s 133(6) of the Act. No loan confirmation was filed. The AO perused the bank statement and noted that loan of Rs.1,20,00,000 was advanced by this party to the appellant, however, the appellant reflected the same at Rs.1,35,00,000. Accordingly, the AO made an addition of Rs.15,00,000 as unexplained cash credited u/s 68 of the Act.

5.3.2 I have perused the facts of the case and submissions filed by the appellant. There appears to be discrepancy in the opening and the closing balance of the loan confirmations filed by the Garware Finance and the appellant. It is worthy to note here that both these are part of the same group entities and hence, the discrepancy, if any, in the loan balance ought to have been reconciled or explained for during the course of the assessment as well as appellate proceedings. The appellant has failed to discharge its duty of providing the correctness of the loan amount and the veracity in the ledger confirmation filed vis-a-vis the amounts appearing in the books of the appellant. In these circumstances, I agree with the addition made by the AO and uphold the same. This ground of appeal is dismissed.

5.4 Ground 3-Disallowance of interest expenditure of Rs. 1,3,83,200

*5.4.1 Having held in Ground 2 above that the loan taken by the appellant is an accommodation entry and disallowable u/s 68 it is consequently implied that the interest thereon also takes the colour of the accommodation entry and hence, the same is rightly disallowed by the Ld. AO. I find no infirmity in this addition and accordingly, uphold the same. This ground of appeal is **dismissed**.*

6. The Ld. AR for the assessee submitted that the Ld.CIT(A) has erred in confirmed additions made by the Ld. AO towards unsecured loans and consequent interest u/s 68 of the I.T.Act,1961, ignoring all evidences filed by the assessee, including confirmation letters from the creditors only for the reasons that certain parties were not responded to notices issued by the Ld. AO u/s 133(6) of the I.T.Act, 1961. The Ld. AR, further, submitted that the assessee has discharged its onus by the filing necessary evidences, including confirmation letters from the parties to prove identity of the parties. The assessee has also filed details of loans taken through proper banking channels along with interest payment. The Ld.CIT(A) has disbelieved all evidences filed by the assessee, only on the ground that the parties have not responded to the notices, ignoring legal position that non appearance of the parties cannot be attributed to the assessee to draw an adverse inference, when the assessee has discharged its onus. In support of his arguments, he has relied upon following judicial precedents.

1. *Sanghvi Relaty Pvt.Ltd. vs Deputy Commissioner of Income Tax Bombay Tribunal ITA No.3018Mum/2017, 3019/Mum/2014m 2020-/Mum/2017 (2017) 51 CCH 0041 Mum Trib(2017) 60 ITR (Trib) 0150 (Mumbai)*
2. *Assistant Commissioner of Inocme Tax vs Shreedham Builders Bombay Triubnal ITA no.5589/Mum/2017(2018) 53 CCH 0212 Mum Trib.*
3. *Kishnchand Chellaram vs Commissioner of Income tax Supreme Court of India (1980) 125 ITR 0713 (1980) 4 TAXMAN 0029*
4. *Deputy Commissioner of Income tax Vs Rohini Builders High court of Gujrat Tax Appeal No.65 of 2001 (2001) 69 CCH 0287 Guj HC (2003) 182 CTR 0373, (2002) 256 ITR 0360 (2003) 127 TAXMAN 0523*
5. *H.R.Mehta vs Assistant Commissioner of Income tax High court Bombay ITA No.58 of 2001 Jun 30, 2016 96 CCH 0049 Mum HC (2006) 289 CTR 0561 (Bom)*
6. *Commissioner of Income Tax vs Ashwani Gupta High court of Delhi IT Appeal No.1264 of 2008 Feb 16, 2010 (2010) 78 CCH 0179 DelHC 322 ITR 0396 (2010) 191 TAXMAN 0051*

7. *Commissioner of Income tax vs K. Buvaendraan & Ors. High Court of Madras Tax case (Appeals) Nos. 26633k to 2665 of 2006 Dc 14, 2006(2006) 74 CCH 1028 Chen HC (2008) 303 ITR 0235*
8. *Deputy Commissioner of Income tax vs Bairagra Builders Pvt.Ltd. (2017) 51 CCH 0107 Mum Trib.*
9. *Commissioner of Income tax vs Sahibgnj Electric Cables P. Ltd. (1978) 46 CCH 0212 KolHC (1978) 115 ITR 0408*

7. The Ld. DR, on the other hand strongly supporting order of the Ld.CIT(A) submitted that it is a clear case of taking accommodation entries from entry providers, which is proved from the fact that the investigation wing of Income tax department has brought out *modus operandi* of entry providers as per which, M/s Arya Global Shares & Securities Pvt.Ltd. is a shell company which is engaged in providing accommodation entries. The Ld. DR, further submitted that the Ld. AO, as well as, the Ld.CIT(A) have appraised facts in right prospective, in light of provisions of section 68 of the Act, and came to the conclusion that purported unsecured loans taken from above parties are non genuine transactions within ambit of section 68 of the I.T.Act, 1961.

8. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We have also carefully considered case laws relied upon by both the parties. The Ld. AO has made additions towards unsecured loans taken from four parties amounting to Rs.1.38 crores, on the ground that purported loans have failed the test of genuineness as enumerated under the provisions of section 68 of the I.T.Act, 1961. The Ld. AO had also added consequent interest payment amounting to Rs.13,83,200/- to above four parties, on the ground that when, loan itself is bogus in nature, then consequent interest payment cannot be considered as genuine expenditure. The Ld. AO has

invoked provisions of section 68 of the I.T.Act, 1961 to draw an adverse inference against the assessee to make additions towards said unsecured loans. As per provisions of section 68 of the I.T.Act, 1961, where any sum found credited in the books of accounts of the assessee in any financial year, for which the assessee offers no explanation or explanation offered by the assessee, in the opinion of the Ld. AO is not satisfactory, then sum found credited may be treated as income of that previous year. As per provisions of section 68 of the Act, the initial onus is on the assessee to prove the credit found in his books of accounts to the satisfaction of the Ld. AO. In order to come out of the clutches of said provisions, the assessee shall produce necessary evidences to prove identity of the creditors, genuineness of transactions and creditworthiness of the creditors. Once, the initial burden is discharged by the assessee, then the burden shifts to the revenue to prove that credit found in the books of accounts of the assessee is income of the assessee derived from undisclosed source of income.

9. In this legal back ground, if you examine the case of the assessee, in light of provisions of section 68 of the I.T. Act, 1961, one has to examine, whether the assessee has discharged its initial onus cast upon in the relevant provisions of the Act or not. In this case, on perusal of details available on record, there is no dispute with regard to the fact that the assessee has filed primary evidences relating to unsecured loans taken from four parties, including name and address of the parties and PAN numbers and also it has filed confirmation letters from the creditors. The assessee has also filed necessary evidences to prove that said loans have been taken through proper banking channels and also, necessary interest

payment has been made after deducting applicable TDS as per law. Further, insofar as, additions made by the Ld. AO towards M/s.Garware Finance Corporation Pvt.Ltd. amounting to Rs.15 Lacs, the Ld. AO has drawn adverse inference, only on the basis of bank statement filed by the assessee for the relevant financial year to come to the conclusion that the assessee has taken loan to the tune of Rs.1.20 crores, whereas as per the letter of confirmation, the loan has been shown at Rs.1.35 crores. But, fact remains that on perusal of confirmation letter filed by the assessee, we find that the assessee having a running account with Garware Finance Corporation Pvt.Ltd., which includes opening balance and transactions during the year. Further, all the transactions have been made through proper banking channels. Therefore, we are of the considered view that the Ld. AO has arrived at wrong conclusions, on the basis of bank statement, ignoring other evidences filed by the assessee, including confirmation letter from the parties. As regards, loans taken from M/s Arya Global Shares & Securities Pvt.Ltd., we find that as per confirmation letter of the creditor, the loan has been paid by cheque on 23/10/2015. Similarly, the assessee has obtained confirmation letter from M/s Kyra Landscapes Ltd., as per which the loan has been taken through cheques starting from 26/10/2015 to 08/12/2015. Likewise, loan taken from M/s Venus Portfolio & Finance Pvt. Ltd, the assessee has taken loan in the previous financial year and during the current financial year, the loan has been repaid through cheques along with interest payment of Rs. 7 Lacs. All these evidences are part of documents filed before the Ld. AO, as well as the Ld.CIT(A). The assessee has also filed other details, including company master data downloaded from Ministry of Corporate Affairs, as per which all the companies are having active

status, and companies have filed their financial statements up to 31/03/2017. From the above, it is very clear that the assessee has filed necessary evidences, in order to prove the identity of the creditors, the genuineness of transactions and creditworthiness of the parties.

10. In light of above legal and factual back ground, if you see the facts of present case, it is undoubtedly clear that the assessee has discharged its initial burden cast upon, it under the provisions of 68 of the I.T. Act, 1961. Once, initial burden cast upon on the assessee has been discharged by filing necessary evidences, then the burden shifts to the revenue to prove that the credits found in the books of accounts of the assessee is income earned from undisclosed source of income. In this case, the Ld. AO has primarily relied upon the fact that the parties have not responded to notice issued u/s 133(6) of the I.T.Act, 1961 to draw a conclusion against the assessee that the purported loans taken from those parties are non genuine in nature, ignoring legal position that non appearance of the parties to the proceedings before the Ld. AO cannot be a sole ground for taking adverse inference against the assessee, more particularly, when the assessee has filed necessary evidences to prove loans taken from above parties. This legal position is supported by the decision of Hon'ble Supreme Court, in the case of CIT vs Lovely Exports Pvt.Ltd. (2008) (2016 CTR 195) (SC), where the Hon'ble Supreme Court clearly held that if, the share application money is received by the assessee company from alleged bogus shareholders, the names are given to the Ld. AO, then the department is free to proceed to reopen their individual assessment in accordance with law, but the sum found credited in its books cannot be regarded as undisclosed

income of the assessee. This legal proposition is further strengthened by the decision of Hon'ble Bombay High Court, in the case of CIT vs Goa sponge & Power Ltd.(supra), where the Hon'ble High court by following the decision of Hon'ble Supreme court, in the case of CIT vs Lovely Exports Pvt.Ltd (supra) held that once, the authorities have got all the details, including name and address of the shareholders, their PAN / GIR number, so also, the name of the bank from which the alleged investors received money as share application money, then it cannot be turned as bogus. The ITAT, Mumbai, in the case of Sangvi Realtors Pvt.Ltd. vs DCIT(2017) (60 ITR (Trib.) 150 held that when, the assessee has furnished all relevant details in order to discharge burden of proof placed upon it u/s 68 of the Act, then additions made u/s 68 is not justified. In yet another decision of ITAT, Mumbai ACIT vs Sreedham Builders (2018) 53 CCH 2012 it was held that additions on account of unsecured loans cannot be made, where the assessee has discharged its primary onus of providing complete details, in respect of loan transactions. The ITAT, Mumbai in the case of DCIT vs Bairagra Builders Pvt.Ltd.(2017) 51 CCH 107 has held that the Ld. AO has proceeded to make additions, merely on the basis of investigation done by the office of DG Investigation, without conducting any independent enquiries to ascertain nature of transaction and also without challenging the claims of the assessee that loans taken from above parties were genuine, in contraventions of settled legal position of law. From the ratios of above cases, it is very clear that once, the initial burden was discharged by filing necessary evidences, then the additions cannot be made u/s 68 of the Act, merely for the reasons that the parties have not responded to notices issued by the Ld. AO u/s 133(6) of the I.T.Act, 1961. If the

Ld. AO is not satisfied with details filed by the assessee, then he is free to proceed against creditors in accordance with law, but sum so found credited in the books of accounts of the assessee cannot be recorded as unexplained cash credit u/s 68 of the I.T.Act, 1961.

11. In this view of the matter and respectfully following the judicial precedents discussed hereinabove, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in making additions towards unsecured loans taken from four parties, along with consequent interest payment u/s 68 of the I.T. Act, 1961. Hence, we direct the Ld. AO to delete additions made towards unsecured loans amounting to Rs.1.38 crores and consequent interest payment of Rs.13,83,200/-.

12. In the result, appeal filed by the assessee is allowed.

13. Before parting, we shall deal with procedural aspect of pronouncement of order as prescribed under rule 34(4) of Income Tax (Appellate Tribunal) Rules 1963. As per rule 34(4), no order shall be pronounced after expiry of 90 days from the date of hearing. This appeal was heard on 24/02/2020 and ordinarily, the order shall be pronounced on or before 22/05/2020. But, this order could not be pronounced on or before 22/05/2020, due to the fact that the Govt. of India has imposed nationwide lockdown from 25/03/2020 and the same has been extended time to time up to 31/05/2020 and because of this the office was closed up to 21/05/2020. Further, if the above lockdown period is excluded for the purpose of limitation, then the order can be pronounced on or before 17/07/2020. Further, whether lockdown period can be excluded or not has been exhaustively dealt

by the co-ordinate bench of ITAT, Mumbai, in the case of DCIT vs JSW Limited, in ITA No. 6264/Mum/2018, dated 14/05/2020, where it was held that due to corona virus pandemic, the period of limitation automatically gets extends till such period the lockdown is in force. We, therefore, are of the opinion that considering the prevailing situation and also, by respectfully following the decision of co-ordinate bench in the case of DCIT vs. JSW Limited (Supra), the order pronounced in the month of June 2020, is well within the time allowed under rule 34(4) of Income Tax (Appellate Tribunal) Rules 1963.

This order is pronounced as per Rule 34(4) of Income Tax (Appellate) Tribunal Rules, 1963, by notice to parties on this 24/06/2020

**Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER**

**Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER**

Mumbai; Dated 24/06/2020
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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai