

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI S. RIFAUZ RAHMAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6051/MUM/2018
Assessment Year: 2012-13**

The Income Tax Officer – 15(2)(3), Room No. 360, 3 rd Floor, Aaykar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s MJD Financial Services Pvt. Ltd., A-324, Runwal Heights Commercial Complex, Opp. Nirmal Life Style LBS Marg, Mulund (W), Mumbai - 400080 PAN: AADCM6484G
(Appellant)		(Respondent)

Revenue by : Shri Michael (DR)
Assessee by : Shri J P Bairagra (AR)

Date of Hearing: 29/07/2020
Date of Pronouncement: 10/09/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 19.07.2018 passed by the Commissioner of Income Tax (for short 'the (CIT (A) 24, Mumbai, for the assessment year 2012-13, whereby the Ld. CIT A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s. 147 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee company filed its return of income for the assessment year under consideration declaring total income of Rs. 6,33,150/- under the normal provisions of the Act and Rs. 7,53,865/- under section 115JB of the Act. Subsequently, on the basis of information received from the DGIT (Inv.), Mumbai to the effect that the assessee company had obtained bogus entries from M/s Shipra Fabrics Pvt. Ltd. amounting to Rs. 26,37,951/- and from M/s Victory Sales Pvt. Ltd.

amounting to Rs. 51,82,213/-, the case was reopened after issuing notice u/s 148 of the Act. During the assessment proceedings, it was noticed that the assessee had received unsecured loans to the tune of Rs. 2,07,38,443/- from B.K. Dyeing and Printing Mills Pvt. Ltd., Dolex Commercial Pvt. Ltd., Hunger Real Estate Pvt. Ltd., Shipra Fabrics Pvt. Ltd. and Victory Sales Pvt. Ltd. Accordingly, the AO asked the assessee to establish the genuineness of transaction. In response thereof the authorized representative of the assessee submitted that the company had received the said loans for the purpose of business for a short term and the same has been repaid. The AR also furnished the confirmations to substantiate the claim of the assessee.

3. A search action was carried out in the case of M/s Shri Bipul Vidur Bhatt, M/s B.K. Dyeing and Printing Mills Pvt. Ltd., M/s Dolex Commercial Pvt. Ltd., M/s Hunger Real Estate Pvt. Ltd., M/s Shipra Fabrics Pvt. Ltd. and M/s Victory Sales Pvt. Ltd. On the basis of the documents seized from the premises of Shri Bipul Vidur Bhatt, it came to the light that Shri Bipul Vidur Bhatt managed and controlled the aforesaid companies and these companies used to give accommodation entries on commission basis and during the year relevant to the assessment year under consideration, the aforesaid companies owned and controlled by Sh. Bipul Vidur Bhatt provided accommodation entries in the form of unsecured loans amounting to Rs. 2,07,38,443/- to the assessee company. The AO rejecting the contention of the assessee, made addition of the said amount to the total income of the assessee and determined the total income of the assessee at Rs. 2,13,71,593/-. The assessee challenged the action of the AO before the Ld. CIT (A) on legal ground as well on merits. The Ld. CIT (A) after hearing the assessee deleted the addition made by the AO holding that the AO has not brought any fact on record that cash was introduced prior to advancing the loans to the assessee. There is no evidence on record to conclude that the assessee had paid cash to the loan creditors in lieu of loan received from them. Further, it is admitted that the unsecured loans under consideration have been repaid over a period of time and the assessee had paid interest

and deducted TDS as per the provisions of Act. Accordingly, the Ld. CIT (A) deleted the addition. Aggrieved by the decision of the Ld. CIT (A), the revenue is in appeal before the Tribunal.

4. The revenue has challenged the order of the Ld. CIT (A) on the following effective grounds:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing the Assessing Officer to delete the entire disallowance of Rs. 2,07,38,443/- made on account of alleged bogus unsecured loan, without appreciating the fact that the said creditors/parties were found to be accommodation entry provider/bogus entity as per findings given by the Investigation Wing, Income Tax Department, Mumbai.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in directing the Assessing Officer to delete the entire disallowance made on account of alleged unsecured loan, without appreciating the fact that the assessee had neither filed confirmation for loan nor produced any evidences/the ledger account & register during the course of assessment proceedings, to substantiate its claim that the loans from alleged parties were actually availed for the business purpose”.

5. Before us, the Ld. Departmental Representative (DR) submitted that the loans amounting to Rs. 2,07,38,443/- was mere accommodation entry provided against cash receipt by the M/s B.K. Dyeing and Printing Mills Pvt. Ltd., M/s Dolex Commercial Pvt. Ltd., M/s Hunger Real Estate Pvt. Ltd., M/s Shipra Fabrics Pvt. Ltd. and M/s Victory Sales Pvt. Ltd. from the assessee company. Since, there is no entry in the books of account of the assessee with regard to the said transactions, the provisions of section 69A of the Act are attracted. Hence, the Ld. CIT (A) has wrongly deleted the addition made by the AO. The Ld. DR further submitted that search and seizure action revealed that Sh. Bipul Vidur Bhatt and his family members were engaged in

the business of providing bogus entries against cash received from the concerned parties. During the search action Sh. Bipul Vidur Bhatt explained that his companies used to provide accommodation entries against cash of equal amount after taking commission in cash for facilitating these entries. Since, the assessee failed to establish the genuineness of the aforesaid transactions to the satisfaction of the AO, the AO has rightly made addition of the said amount to the income of the assessee. Hence, the decision of the Ld. CIT (A) is liable to be set aside.

6. On the other hand, the Ld. counsel for the assessee submitted that the AO had merely relied on the statement of Mr. Bipul Vidur Bhatt u/s 132(4) wherein he admitted that the aforesaid companies from whom, the assessee has taken loan were engaged in providing accommodation entries. The assessee has furnished loan confirmation, bank statements and further stated that these loans were taken for business purposes. The assessee has also filed return of income of the creditors for the relevant assessment years, copies of audited accounts of the creditors for the relevant assessment years and copies of bank statements to show that the transaction were carried out through banking channel. The Ld. counsel further pointed out that Sh. Bipul Vidur Bhatt has retracted his statement by filing an affidavit. The Ld. counsel further submitted that as per the settled law, no addition can be made solely on the basis of statement made u/s 132 (4), which is retracted. The Ld. counsel further placing reliance on the decisions of the Hon'ble Bombay High Court in the case of *Pr. CIT vs. Skylark Build ITA No. 616 of 2016 dated 24.10.2018*, wherein it has been held that when the amounts borrowed by the assessee which are alleged as unexplained cash credit to make addition by invoking section 68 of the Act, no addition can be made when such borrowings are repaid.

7. The Ld. counsel further submitted that this issue is covered by the decision of the Mumbai Bench of the Tribunal in group concern of assessee's company *M/s Manba Finance Ltd., ITA No. 1448, 1449 and 1467/Mum/2007*, wherein the Tribunal has decided the identical issue in

assessee's favour and dismissed the revenue's appeal. The Ld. counsel further relied on the decision of Mumbai Tribunal in the case of *ACIT vs. H.R. Pujara Builders*, ITA No. 5307/Mum/2017, *DCIT vs. Chetan R. Shah (HUF)* ITA No. 5781/Mum/2017, *DCIT vs. Marathon Fiscal Pvt. Ltd.* ITA No. 5783/Mum/2017, *ITO vs. M/s Mayuresh Logistics Pvt. Ltd.* (2019) TIOL 1421 ITAT, Mumbai and *ITO vs. Celebrity Lifespace Pvt. Ltd.* ITA No. 6301/Mum/2017 to substantiate his contention.

8. We have heard the rival submissions of the parties and perused the material on record including the cases relied upon by the parties. The Ld. CIT (A) has deleted the addition made by the AO holding that the AO has not brought any fact on record to established that cash was introduced prior to advancing the loan to the assessee and there is no evidence on record to show that the assessee had paid cash to the loan creditors in lieu of loan received from them. It is an admitted fact that the unsecured loans under consideration have been repaid over a period of time and the appellant has paid interest and deducted TDS thereon as per the provisions of the Act. Relying on the various decisions of the Courts and the Tribunal, the Ld. CIT (A) has held that the assessee has discharged its onus of proving genuineness of the transaction of furnishing the identity of the creditors and documents to prove the transactions. The Ld. CIT (A) has pointed out that no addition/disallowance can be made solely on the basis of statement made u/s 132 (4) of the Act without bringing any corroborative evidence on record. As pointed out by the Ld. counsel for the assessee, the "I" Bench of the Mumbai Tribunal has decided the identical issue in favour of the assessee in the case of *DCIT vs. M/s Manba Finance Ltd.* ITA Nos. 1448, 1449, 1467/Mum/2017 for the AY 2013-14, 2011-12 and 2010-11. In the said case, survey action u/s 133A of the Act was conducted by DGIT (Inv.) Mumbai. During the course of survey, the books of account of the assessee were examined which revealed that the assessee had received unsecured loan and share application money from the concerned companies operated and controlled by Sh. Pravin Kumar Jain to the tune of Rs. 7,75,00,000/-. A

survey was also conducted in the case of Mr. Rakesh Doshi, Proprietor Rakesh Doshi Associates. As per the revenue, Shri Doshi was the broker who arranged the loans and share capital money from the concerned company controlled by Pravin Kumar Jain. During the course of survey Mr. Rakesh Doshi in his statement admitted that he was an accommodation entry facilitator and he had arranged accommodation entry from various other companies which were not the part of company controlled Pravin Kumar Jain. The assessee had shown unsecured loans from such parties amounting to Rs. 1,25,00,000/-.

9. During the course of assessment proceedings, the assessee was asked to show cause as to why unsecured loan taken from the party should not be treated as unexplained cash credit u/s 68 of the Act. The assessee contended that it has submitted all the documents to prove the genuineness of the transaction. The assessee further requested that cross examination of Pravin Jain may be allowed. The assessee further submitted that Pravin Kumar Jain has retracted his earlier statement. So far as the loan amounting to Rs. 1,25,00,000/- from the other companies is concerned, the assessee submitted balance sheet of all the company to show that the lending companies has enough reserves and share capital. The assessee further submitted that it has furnished the confirmation from the parties. However, the AO rejecting the contention of the assessee made addition of the said amount to the income of the assessee. In the first appeal, the Ld. CIT (A) deleted the addition on legal ground as well as on merits. The revenue challenged the action of the Ld. CIT (A) before the ITAT. The coordinate Bench of the Tribunal upheld the findings of the Ld. CIT (A) holding as under:-

“33. We have carefully considered the submissions and perused the records. We find that the first issue in this case relates to the addition of unsecured loan taken from corporate entities u/s. 68 of the Act. In this regard, it is noted that it is the claim of the assessee which has been found correct by the ld. CIT(A) that the assessee has duly paid interest on

these loans, deducted TDS, filed the TDS return. The ld. CIT(A) has also found that these loans have been duly repaid.

34. The addition in this case has been made on the ground that some of the corporate entities were found to have been controlled and operated by Shri Pravin Kumar Jain, who was one of the leading entry operator. For the other corporate entities, it was found that the assessee has obtained loan from these companies which was arranged by Shri Rakesh Doshi, who on survey had admitted to be arranging bogus accommodation entries. These findings have come out as a result of survey against the assessee's premises. As regards Shri Pravin Kumar Jain, it was noted by the A.O. that in the Revenue's action against Shri Pravin Kumar Jain, he has admitted to have been arranged bogus accommodation entries. The A.O. has noted in detail his modus operandi. As regards Shri Rakesh Doshi, it was noted that survey action u/s. 133A was conducted in his case and he was found to have arranged the accommodation entries. The assessee has claimed Shri Pravin Kumar Jain has duly retracted and the assessee had requested to cross examine him that the same has been denied by the A.O.

35. As regards the statement of Shri Rakesh Doshi, the assessee's claim was that the assessee was never provided with the detail of statements given by Shri Rakesh Doshi despite request. On this issue of retraction of Shri Pravin Kumar Jain's and request by the assessee for cross examination of Shri Pravin Kumar Jain and Shri Rakesh Doshi, the ld. CIT(A) observed that there is a clear violation of natural justice. He noted that the copy of the statement of Shri Pravin Kumar Jain as well as his cross examination was not provided to the assessee during the course of assessment proceedings, although the assessee has specifically asked for the same. He noted that the copy of statement of Shri Rakesh Doshi was provided to which the assessee has submitted its rebuttal. He noted that the A.O. has not provided cross examination of Shri Rakesh Doshi. The ld. CIT(A) has placed reliance upon the several case laws in this regard for the proposition that where oral evidence of any party is sought to be used against an assessee, it is necessary that information relating to such statement or the copy of deposition should be furnished to

the assessee with opportunity to cross examine the deponent, if required by the assessee. In this regard, we note the submission that these amount to gross violation of natural justice and the assessment is vitiated as the assessment is bad in law and requires to be quashed in view of the following decisions:

1. Andaman Timber Industries v. C.C.E. (2015) 281 CTR 241 (SC) Wherein it is held:

Not allowing the assessee to cross examine the witnesses by the Adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullify in as much as it amounted to violation of principles of Natural Justice because of which the assessee was adversely affected. The order was vacated.

2. Kishinchand Chellaram v. C.I.T. (1980) 1251TR 0713 (SC)

3. Ponkunnam Traders v. Addl. I.T.O. & Anr. (1972)83ITR508(Ker)

4. ACIT v. Tristar Jewellery Exports Pvt. Ltd. ITA/7593/MUM/2011 (Mumbai ITAT)

36. As regards the merits of the addition, it is noted that the assessee had supplied the following in this regard:

(i) Confirmation of the party who gave the loan.

(ii) Copy of Return of Income filed by them alongwith PAN No. of the loanees.

(iii) Copy of Balance Sheet, P/L Account alongwith all Schedules,

(iv) Copy of Certificate of incorporation, original and the latest one.

(v) Copy of Bank Statement of the loanee from which the loan have been given to the assessee, as well as Repayment made if any by the assessee.

37. The A.O. has disregarded the evidences submitted by the assessee on the ground of a statement of Shri Pravin Kumar Jain and Shri Rakesh Doshi and the director of the assessee company. In this regard, as already referred hereinabove, the ld. CIT(A) has already found the issues of non submissions of the details obtained from Shri Pravin Kumar Jain and Shri Rakesh Doshi to the assessee, and not given an

opportunity to cross examine them to be gross violation of principles of natural justice. Furthermore, the A.O. has also drawn adverse inference on the statement from the Director of the assessee company obtained during survey. In this regard, the ld. CIT(A) has given a finding that the assessee had duly honored the admission on survey regarding the share capital and share premium and that as regards the unsecured loan, upon reference to the materials, the assessee has found that the same was in order and, therefore, the assessee has furnished the necessary materials to support the genuineness of the loan. In this regard, the ld. CIT(A) has rightly referred to the decision of the Hon'ble Apex Court in the case of Pullangode Rubber Produce Co. Ltd. (supra) that "an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made admission to show that it is incorrect." Similar observations were made by the Hon'ble Apex Court in the case of S. Kadar Khan 352 ITR 480 (SC) that the statements obtained in the course of survey de hors corroborative evidence cannot be conclusively proof for making the additions. Furthermore, the ld. CIT(A) by referring to the statements of Shri Rakesh Doshi has given a finding that his admission was not with relation to unsecured loans obtained by the assessee from the concerned companies. In this regard, we are of the considered opinion that these circumstances can give rise to a suspicion but they are not conclusive proof for addition without any proper enquiry by the A.O. rebutting the documentary evidences submitted by the assessee.

38. The A.O. in this regard has doubted the creditworthiness of the corporate entities on the ground that they have taken loans and share capital and share premium from other corporate entities. In this regard, it is also noted that the A.O. has referred to the provision of section 68 of the Act. Section 68 and proviso thereto reads as under:

Cash credits.

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 a company 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:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]

39. *In this regard, we note that by giving the confirmation, return of income, the detail of PAN, copy of balance sheet and P & L account and copy of its bank statement, the assessee has duly discharged its onus. The A.O. has not found default in these documents. It is also not the case that cash has been deposited in the bank statement before granting of loans by these companies as pointed out by the ld. CIT(A). The A.O.'s grouse is that the assessee has not produced the directors of these companies, and these corporate entities have acquired resources by getting share capital and share premium from other corporate entities. First of all, we note that this is a case of unsecured loan and not share capital and share premium. Further, we find that the above said proviso to section 68 was inserted by Finance Income Tax Act, 1961, 2012 w.e.f. 01.04.2013. The Hon'ble jurisdictional High Court in the case of CIT vs. Gagandeep Infrastructure (P.) Ltd. [2017] 394 ITR 680 has held that the said proviso is prospective and cannot be applied to assessment years preceding the same. We may gainfully refer to the decision of Hon'ble jurisdictional High Court which is also relevant in this case:*

During the previous relevant to the subject Assessment Year the assessee had increased its share capital from Rs.2,50,000/to Rs.83.75 lakhs. During the assessment proceedings, the Assessing Officer noticed that the respondent had collected share premium to the extent of Rs.6.69 crores. Consequently he called upon the respondent to justify the charging of share premium at Rs.190/per share. The respondent furnished the list of its shareholders, copy of the share application form, copy of share certificate and Form no.2 filed with the Registrar of Companies. The justification for charging share premium was on the basis of the future prospects of the business of the assessee. The Assessing Officer did not accept the explanation/justification of the respondent and invoked Section 68 of the Act to treat the amount of Rs.7.53 crores i.e. the aggregate of the issue price and the premium on the shares issued as unexplained cash credit within the meaning of Section 68 of the Act. This addition was deleted by the CIT(A) and the Tribunal. Before the High Court, the department contended that the proviso to Section 68 of the Act which was introduced with effect from 1st April, 2013 would apply in the facts of the present case even for A.Y. 2008-09. The basis of the above submission was that the de hors the proviso also the requirements as set out therein would have to be satisfied. HELD by the High Court dismissing the appeal:

(i) We find that the proviso to Section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced “for removal of doubts” or that it is “declaratory”. Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the

proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso. In any view of the matter the three essential tests while confirming the pre proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied.

(ii) Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in CIT v/s. Lovely Exports (P)Ltd. 317 ITR 218 in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit.

As noted in the ratio emanating from the decision of Hon'ble Jurisdictional High Court above, even if the source of funds of this corporate entities who have advanced loan to the company are considered suspicious in the context of pre-amended section 68, the addition can be considered in the hands of these companies and cannot be made in the hands of the assessee.

Even otherwise (as the proviso is applicable for A.Y. 2013-14) as rightly noted by the ld. CIT(A), the said proviso provides for an adverse inference if the assessee company providing those sums does not offer any explanation about the nature and source of sums. In this regard, it is noted that the A.O. has not made any enquiry from these corporate entities who have provided the loan, not even notice u/s. 133(6) has been issued. In these circumstances, without making any enquiry, the A.O. cannot presume that the funds obtained by these corporate entities are bogus or they are assessee's own funds being circulated. In this regard, we note that in the identical situation, this tribunal in the case of

Asst. CIT vs. Shri Dilip Chimanlal Gandhi (in I.T.A. No.7079/Mum/2016 vide order dated 01.08.2018) the ITAT has held as under:

“22. Upon careful consideration we note that in support of the explanation of the unsecured loans, the assessee has submitted following details before the assessing officer:

I. PAN details of creditors

II. Constitution and address of the creditors

III. Particulars of income-tax returns filed by the creditors. These show that the creditors are legitimate business entities, having the ability to advance the impugned loans to the appellant,]

IV. Confirmatory letters given by the creditors

V. Audited financial accounts (including balance sheets) of the creditors [These show that the loans are duly reflected in the books of account of the creditors.]

VI. Relevant bank statements of the creditors [These show that the loan amounts were paid through legitimate banking channels. Further these bank statements do not reflect any movement of cash, essential to hawala transactions.]

23. The assessing officer has made no enquiry with reference to the above. He did not seek any further explanation or detail from the assessee. He solely relied upon the investigation wing enquiry regarding the Bhanwarilal group. The ld. Commissioner of Income Tax (Appeals) in this regard has correctly made the observation that the assessee having given all the necessary details and has discharged its onus, it was incumbent upon the assessing officer to make further enquiry if he was not convinced by the submissions of the assessee. We find that assessing officer has displayed total lack of application of mind by not even issuing a notice to the loan creditors.

24. We find that it is settled law that while making any disallowance/addition, the Assessing Officer needs to make due enquiry. In this case, the Assessing Officer has not made any enquiry whatsoever. As noted hereinabove, the assessee has given all the documentary evidences including confirmatory letters, bank statements and financial statements of the creditors. The Assessing Officer

has not found any error therein. It has been held in number of cases that when the assessee has given all the necessary details of the loan creditors, including the identity, creditworthiness and genuineness of the transaction, the onus upon the assessee is discharged. In these circumstances, in our considered opinion, the assessee has discharged its onus. The Assessing Officer has not rebutted any of the submission of the assessee and the documentary evidence in this regard. Hence, in our considered opinion, there is no infirmity in the order of the ld. Commissioner of Income Tax (Appeals). The various case laws referred by the ld. Commissioner of Income Tax (Appeals) are germane and duly supports the case of the assessee. In the background of the aforesaid discussion and precedent, we uphold the order of the ld. Commissioner of Income Tax (Appeals).”

40. *The above case law duly supports the proposition that no adverse inference can be drawn by the A.O. without making any enquiry in this regard. Even the ld. DR has tacitly acknowledged this proposition when he submits that the ld. Counsel of the assessee has mentioned that the A.O. has not issued notice u/s. 133(6) and summons u/s. 131 and has quoted the Hon’ble Delhi High Court decision in the case of CIT v/s Gangeshwari Metal Pvt. Ltd. (2013) 96 DTR (Del) 200 and other decisions. In this connection, the ld. DR has relied upon the decision of the Hon’ble Karnataka High Court in the case of Fidelity Business Services India Pvt. Ltd. (in ITA No. 512/2017 dated 23/07/2018) for the proposition that if there is some lack of investigation, the ITAT is competent to set aside the matters.*

41. *We have carefully considered this proposition. We note that the ld. Counsel of the assessee has referred to several case laws in this regard that when the assessee has supplied all the documents the onus is discharged. In this regard, the ld. Counsel of the assessee has placed reliance upon the several case laws including that from Hon’ble Delhi High Court in the case of Gangeshwari Metal Pvt. Ltd. (supra), CIT v. Varinder Rawley (2014) 366 ITR 232 (P&H), Hon’ble Gujarat High Court decision in the case of CIT v. Sachitel Communications P. Ltd. (2014) 227 Taxman 219 (Mag) and others.*

42. In our considered opinion, these case laws duly support the proposition canvassed by the assessee. In our considered opinion, the A.O. has not brought on record any cogent, adverse material to rebut the credibility of the corporate entity from whom loan has been taken. As already pointed out by us as above, that these corporate entities were found by the A.O. to have acquired funds by borrowals and acceptance of share capital and share premium. This by itself cannot lead to presumption that these sources are bogus without any enquiry. In these circumstances, in our considered opinion, the ld. DR's request that this issue be again remitted to the file of the A.O. to make further necessary enquiries cannot be entertained. The decision of the Hon'ble Karnataka High Court referred by the ld. DR was on a different set of facts, wherein, the Hon'ble Karnataka High Court on the facts and circumstances of the case had upheld the certain direction of the ITAT. In the present case, as pointed out hereinabove, in our considered opinion, the assessee has discharged its onus. As noted above, the A.O. has not brought on required cogent material to rebut the documentary evidence submitted by the assessee nor made any enquiry. As noted above, the assessee has given all the necessary evidence including the confirmation letters, bank statement, financial statements of the corporate entities. Hence, in our considered opinion, the identity, creditworthiness, genuineness of the transaction has been proved by the assessee and the onus cast upon the assessee has been discharged. In the background of the aforesaid discussion and precedent, we find that the ld. CIT(A) has passed a well reasoned order supported by appropriate case laws duly rebutting all the findings of the A.O. Hence we uphold the order of the ld. CIT(A)."

10. As pointed out by the Ld. counsel for the assessee, the issue involved in the present case is fully covered in favour of the assessee by the decision of the "I" Bench of the Tribunal in the case of Dy. CIT vs. Manba Finance Ltd. (supra), for the AYs 2010-11, 2011-12 and 2013-14. In this case, the assessee has furnished documentary evidence including confirmation letters, bank statements, financial statements of the entities from whom, the

assessee had obtained loans in question etc. Hence, in our considered view, the assessee has discharged his onus of establishing the identity and creditworthiness of the entities from whom, it had obtained the loans in question. The assessee has also established the genuineness of the transaction by adducing necessary evidence. On the other hand the AO has not brought any material on record to rebut the contention of the assessee. In our considered opinion, the findings of the Ld. CIT (A) are based on the established principles of law and in accordance with the decision of the coordinate Bench rendered in the case of *DCIT vs. M/s Manba Finance Ltd.* (group concern of the assessee company) discussed above. The order passed by the Ld. CIT (A) is well reasoned and supported by the law laid down by the Hon'ble Bombay High Court and the decisions of the coordinate Benches including the decision in the case of *DCIT vs. M/s Manba Finance Ltd.* (supra) relied upon by the assessee. We therefore, uphold the decision of the Ld. CIT (A) and dismiss the appeal filed by the revenue. Accordingly, we direct the AO to delete the addition made by the AO on account of alleged bogus unsecured loans.

In the result, appeal filed by the revenue for assessment year 2012-2013 is dismissed.

Order pronounced on 10th September, 2020 under Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-

Sd/-

(S. RIFAUH RAHMAN)

(RAM LAL NEGI)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 10/09/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.

Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**