

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA. Nos.1170/DEL/2020
Assessment Year 2017-18

Jindal Fittings Ltd. 28, Najafgarh Road, New Delhi.	v.	DCIT Circe-13(2), New Delhi.
PAN: AACCCJ5987E		
(Appellant)		(Respondent)

ITA. Nos.1171/DEL/2020
Assessment Year 2017-18

Jindal Quality Tubular Ltd. 28, Najafgarh Road, New Delhi.	v.	DCIT Circe-13(2), New Delhi.
PAN: AADCJ6035G		
(Appellant)		(Respondent)

ITA. Nos.1172/DEL/2020
Assessment Year 2017-18

Jindal ITF Ltd. 28, Najafgarh Road, New Delhi.	v.	DCIT Circe-13(2), New Delhi.
PAN: AABCJ9263C		
(Appellant)		(Respondent)

&

ITA. Nos.1173/DEL/2020
Assessment Year 2017-18

JITF Urban Infrastructure Services Ltd. 28, Shivaji Marg, West Delhi, P.O. Ramesh Nagar, Delhi.	v.	DCIT Circe-13(2), New Delhi.	
PAN: AACCCJ4785G			
(Appellant)		(Respondent)	
Appellant by:	Shri V.K. Bindal, CA Ms. Rinki Sharma, CA		
Respondent by:	Ms. Sunita Singh, CIT DR		
Date of hearing:	05	08	2020
Date of pronouncement:	28	09	2020

ORDER**PER AMIT SHUKLA, J.M.:**

1. The aforesaid appeals have been filed by the above named four assesseees against separate appellate orders of even date, 18.05.2020, passed by Ld. Commissioner of Income Tax (Appeals)-V, New Delhi for the quantum of assessment passed u/s 143(3) of the Act for the Assessment Year 2017-18.

2. In all the appeals, common grounds and issues are involved with similar set of facts; hence they were heard together and are being disposed-off by way of this consolidated order. These appeals pertain to Jindal group of companies wherein the assesseees have challenged the additions made u/s 68 of the Act by the Assessing Officer and disallowance of the interest paid on the said loans made by the CIT (A) by way of enhancement. The chart of additions made in the hands of the respective assesseees are as under:

Particulars and appeal no.	Amount of addition for loans(Rs)	Loan taken from Glebe Trading (P) Ltd. (Rs)	Loan taken from Danta Enterprises (P) Ltd.(Rs)	Disallowance of Interest (Rs)
Jindal ITF Ltd. ITA/1172/D/2020	167,98,00,000	151,83,70,000	16,15,00,000	9,96,04,252
Jindal Fittings Ltd. ITA/1170/D/2020	103,89,25,000	103,89,25,000	NIL	2,43,24,560
Jindal Quality Tubular Ltd ITA/1171/D/2020	20,52,00,000		20,52,00,000	3,37,315
JITF Urban Infrastructure Services Ltd. ITA/1173/D/2020	196,50,00,000	196,50,00,000	NIL	11,03,15,540

3. Since these appeals involve common issue of additions u/s 68 of the Act and that to be loans taken from the same lender NBFC Companies belonging to same group of the assesseees, i.e., Jindal Group; and since the loans were taken by Jindal ITF Ltd.(ITA/ 1172/D/2020) from both the lenders; therefore, this appeal is being taken up as a lead case and the findings given therein will apply mutatis mutandis in the other appeals also.

Jindal ITF Ltd. Appeal no. ITA/1172/D/2020**Grounds no. 1 to 3**

4. Ground nos. 1 to 3 pertain to the addition of Rs. 167,98,70,000/- made in respect of the loans taken as above from the two group lender companies u/s 68 r.w.s 115BBE of the Act.

5. The facts in brief are that the assessee company belongs to the Jindal group of companies engaged in the business of coal handling through waterways. It had filed its return of income u/s 139(1) at a loss of Rs. 309,97,01,721/- for the AY 2017-18. The assessee company took loans from the following two group / associate companies of the Jindal group only during the year under consideration:

- a) Glebe Trading (P) Ltd. (hereinafter referred to as 'Glebe')- Rs. 151,83,70,000/-;
- b) Danta Enterprises (P) Ltd. (hereinafter referred to as 'Danta')-Rs. 16,15,00,000/- and called together as lender companies.

Both the lender companies are having their registered office at 'H. No. C-2, Staff Colony, Machinery Division, 13 KM Stone, Mandir Hasaud, GE Road, Raipur, Chattisgarh' and their principal place of business is at the same address at '28, Najafgarh Road,(called Shivaji Road also) New Delhi 110015' (referred to as 'New Delhi address') where the books of accounts of the lender companies are kept and the loan transaction was executed during the relevant period. The assessee company was also carrying on its business and

maintaining its books of account at the same New Delhi address.

6. Another pertinent fact is that, the assessing officer of the assessee company is also the assessing officer of 'Jindal Saw Ltd.' another group company which also had taken loans from these two lender companies during the period relevant to the preceding A.Y. 2016-17. In that case due to Transfer Pricing proceedings, the limitation in the said case got extended by one year. The Assessing officer issued a commission u/s 131(1)(d) of the Act to the ADIT (Inv.), Unit - 2, Raipur vide email dated 21/12/2019 to make certain enquiries on the above-mentioned registered office address of the two lender companies. The commission has been reproduced at page nos. 3-5 of the assessment order where the assessing officer specifically mentioned the enquiries to be made. The ADIT Inv. Unit -2 Raipur sent his report on the said commission vide his email dated 24/12/2019 which is also reproduced at page nos. 5-6 of the assessment order. The assessing officer stated that the physical spot enquiries conducted at the said registered office address revealed that the premises are actually a staff colony and there is no sign board/ name plate/ letter box found in the name of the lender companies on the given address. The watchman at the said premises was unaware of the existence of these two lender companies who stated that the premises were used only for the residence of staff. Thus, the assessing officer alleged that the lender companies were not found to be existing at said registered office address.

7. The assessing officer, thereafter, issued a show-cause notice on 24/12/2019 to the assessee asking for various details regarding the said lenders which were submitted by the assessee as reproduced at pages 11 to 20 of the assessment order. The assessing officer stated that the assessee provided the registered office address of the lenders but no proof of the lenders having actually existed at the said address was provided. No documents such as electricity / water bills / registered rent agreement with those companies at the said address were produced. The assessing officer stated that the assessee also failed to produce any evidence of the lender companies having commenced their businesses as per their main objects and no income was generated by the lender companies from pursuing their main objects. The assessing officer also stated that Glebe and Danta have given loans of Rs. 557.66 crores and 185.86 Crores to various group companies (chart on the pages nos. 26-27 of the assessment order), whereas the income and share capital and reserves and surplus declared by the lender companies are significantly lower than the amounts of loans given by the lender companies. Thus, the AO held that the lender companies were just used as conduits in availing the unsecured loans. The NBFCs provided loans to the two sham bogus entities, who had nothing to show as actual business activity, had no physical existence on any of their addresses, no paid director and no employees, owned no fixed assets. Thus, the identity and creditworthiness of the lenders and genuineness of the transaction of unsecured loans are not established. Thereafter, the assessing officer made addition of

the amounts of loans taken by the assessee from the said two lender companies' u/s 68 of the Act r.w.s. 115BBE of the Act.

8. In the appellate proceedings before the Ld. CIT(A), all the evidences and submissions of the assessee were sent by him to the assessing officer for a remand report and his comments. The AO negated the contention of the appellant and stated that the sanction letters of loans issued by various NBFCs were submitted during the assessment proceedings vide letter dated 28/12/2019 and denied the receipt of the said letter and therefore, stated the same to be additional evidences. However, the AO filed comments on merits on the said loans sanction letters. The AO also stated that no details regarding the exact number, value, distinctive number, state of encumbrance of the listed shares of JSW Steel Ltd. and JSW Energy Ltd. pledged as security with those NBFCs was provided. He also stated that the assessee also did not provide any evidence to show that the lender companies actually owned those shares as the investment in those shares was shown at nil value in their balance sheets. The AO also stated that the NBFCs did not consider the financial parameters before granting huge loans to the lender companies like submission of any project report, adequacy of security etc. The purpose of the loans borrowed by lender companies did not include providing unsecured loans to the appellant. The AO also refused to accept the New Delhi address of the lender companies mentioned in the PAN database of the income-tax department on the plea that it is self-serving information.

9. The Ld. CIT (A) has mainly reiterated the averments in the assessment order, submissions of the appellant, the

remand report and rejoinder in his order. The Ld. CIT(A) observed that the assessee contended that the letter dated 28/12/2019 and its enclosures being the sanction letters were uploaded on the ITBA in e-proceedings whereas the AO denied that the same were never uploaded and therefore, it was appropriate to consider the same as additional evidence because the AO had no occasion to examine these documents while passing the order. However, he admitted the additional evidence as prima facie there was sufficient cause which prevented the appellant from producing this letter before the AO when similar letters of the similar date were considered by the AO in two other cases of the appellant's group and these were crucial and relevant for the purpose of disposal of the appeals. The AO without objecting to the admission of the additional evidences offered his comments on merits on the sanction letters of loans given to the lenders of the assessee by the financial institutions in his remand report.

10. The CIT(A) noted that the assessee had pledged the equity shares of JSW Steel Ltd. and JSW Energy Ltd. but did not furnish the details like number of shares pledged, value of each share, unique serial numbers or the identification numbers, of these securities pledged for such loans. He also stated that there was no indication as to whether the Demat accounts of the lending companies submitted by the appellant vide its rejoinder were filed before the AO as there was no reference of these documents either in the assessment order or in the appellate submissions or the remand report. Therefore, he did not consider the said Demat accounts while adjudicating the issue. The Ld. CIT(A) held that on perusal of

the financial statements of the lending companies, it is evident that the lending companies were not having adequate securities or funds available to meet the various exigencies like top-up / drop of security cover /dip in the market price of securities pledged to fulfill the conditions stipulated in the sanction letters which showed that there was no due diligence by the NBFC in this regard. Even the purpose of some of these loans as per the sanction letters did not include the purpose for providing unsecured loans to the assessee company. Further, the amount of unsecured loan provided by the lender companies is much higher than their net worth / reserves and surplus. The returned income of the lender companies is significantly lower than the loans furnished by them. Thus, the lender companies do not have sufficient internal resources to provide such huge loans.

11. The Ld. CIT(A) stated that the investment of both the lending companies in the equity shares of JSW Steel Ltd. and JSW Energy Ltd. is nil value as per their audited financial statements and the assessee has not furnished any documentary evidence to establish that these two entities owned the listed equity shares of these two companies. In the absence of evidence of the ownership of the securities by the two lender companies, the identity of the actual providers of the security is not established. Thus, the two lender companies have not received loans on account of their internal resources or own assets / net worth.

12. In view of the above findings, the Ld. CIT(A) held that the appellant failed to prove the identity and

creditworthiness of the alleged lending companies and the genuineness of the transactions of unsecured loans and therefore, upheld the action of the assessing officer.

Arguments on behalf of the assessee

13. The Ld. Counsel of the assessee first of all submitted that the questionnaire dated 24/12/2019 issued by the AO and the date fixed for the hearing was on 26/12/2019 asking a long list of details regarding the lender companies since the date of their incorporation, like Electricity bills, ROC filing, rent agreement, employee details, copies of ITRs and auditors reports on the basis of a commission issued in case of Jindal Saw Ltd. The assessee submitted that firstly, the AO could call for the said information for a period not exceedingly more than 3 years preceding the previous year as per the proviso to the section 142(1) of the Act, though the AO sought information that too of the lender companies since their existence which was not lawful. Secondly, even though the assessee submitted all the desired information to the AO but the assessee was not allowed sufficient and adequate opportunity of hearing for filing a very large list of details and principles of natural justice were ignored.

14. He further submitted that the following documents to prove the identity, creditworthiness and genuineness of the lenders were filed before the authorities below and have also been placed in the paper books before us:

- a) Confirmations from the lenders;
- b) Bank statements of the lenders from where the loans were given to the assessee.

- c) PAN and acknowledgments for filing the returns of income by the lender companies from the AYs 2011-12 to 2017-18 wherever applicable.
- d) Audited financial statements for the years ended 31/03/2015 to 31/03/2017 filed by the lenders to show that both the companies had annual income of approximately Rs 30 crores each in each of the last three years including the exempt income from dividends.
- e) Incorporation certificates of the lenders;
- f) Documents regarding the registered office address and change therein along with board resolutions;
- g) Details of directors;
- h) NOC from the owner of the premises used as Registered office;
- i) Board resolution and relevant form AOC-5 filed with ROC for notice of the address at which books of accounts (effectively the business premises) were to be maintained by the lenders;
- j) Form no. Inc 22A filed with ROC (active company tagging identities and verification alongwith photos of their directors)
- k) Various other forms like AOC-4, DIR -12, Inc 22, MGT -7 filed with ROC by the lenders for filing of the audited financial statements, annual returns, details of directors;
- l) Photocopies of the **assessment orders passed u/s 143(3) of the Act for the AYs 2015-16, 2016-17 and 2017-18** in the case of both the lender companies
- m) Photocopies of the **loans sanction letters of the NBFCs** granting loans to both the lenders.

- n)** Master data of the lender companies from the official website of MCA which clearly show that the books of account of the lenders were maintained at 28, Najafgarh Road, New Delhi. It also clearly shows that the list of listed equity shares pledged by them for taking loans since each charge on the borrowings has to be statutorily registered with the ROC by a company.
- o)** Photocopies of the envelopes in which the notices were sent by the NCLT to those two lender companies as late as on **09/12/2019** (just less than two weeks earlier than the date of the alleged and impugned enquiry by the inspector of the ADIT (Inv.) at Raipur) on the registered office address and received by the lender companies to show that the registered office of the companies situated at the Raipur address was properly functional.
- p)** Tax audit reports of the lenders;
- q)** Cheque book counterfoils to show that the bank accounts were maintained at New Delhi Address by the lenders;
- r)** Registration certificate under service tax, GST and DVAT issued to lenders;
- s)** TAN and PAN allotment letters issued to lenders;
- t)** Notices issued by the income-tax department, CIT(A), ITAT and by CPC to the lender companies for various proceedings undertaken from time to time.

15. The Ld. Counsel of the assessee submitted that both the lenders had huge holding by way of investments in the equity shares of some listed companies of the group and

the market value of such investment was Rs. 1600 Crores in the case of Glebe and Rs. 2800 Crores in the case of Danta as on 31/03/2017 as properly disclosed as per statutory requirements in their audited annual financial statements. The lender companies pledged some of its investment as security and borrowed loans from some reputed and well-known NBFCs. Thus, the source of the source was very well explained and substantiated with the documents. He further submitted that one important fact is that the Revenue has accepted in the assessment proceedings of the lenders u/s 143(3) of the Act, the authenticity of the loans taken by them from the NBFCs and argued that the same cannot at all be assessed as unexplained cash credit in the hands of the assessee who not only proved its source by meeting all the necessary three ingredients stipulated u/s 68 of the Act, but also the source of source of the lenders. Thus, all evidences necessary to discharge the onus u/s 68 of the Act have been placed on record to prove the identity, creditworthiness of the lenders and genuineness of the transactions and the onus cast on it has been fully discharged.

16. The Ld. Counsel further argued that payment of the rent or electricity expenses or owning fixed assets are not the criterion which proves the physical existence of a company. Even the assessee also did not pay any rent or electricity as the lender companies for the New Delhi. The assessee also submitted that some of the directors of Danta, a lender company are the directors of the assessee. Even Glebe was a shareholder of the assessee company since this year. The fact that the lender companies are associated companies is very

much disclosed in the audited annual accounts of the assessee as well as of the lender companies as this disclosure is statutorily required under the Companies Act 2013.

17. The Ld. Counsel also submitted that all these documentary evidences prove beyond doubt not only the physical existence of the businesses of the lender companies but also prove that they had bank accounts, actually carried on business activities, received actual income in crores of rupees, had investment base at cost with substantial higher market value of those assets to secure loans by pledging some of the said investments and then advance for their businesses of money lending as per their objects and incurred expenses, earned and paid interest on the loans, got their accounts audited under Companies Act as well as Income-tax Act, filed their returns of income where those were assessed u/s 143(3) of the Act, complied various provisions of Companies Act by filing statutory forms, received notices from government authorities, complied them, assessed under various tax laws. They also properly disclosed their business address with the ROC which was the same as in the PAN database of the Revenue and at which all the income-tax proceedings were conducted from the last many years. He placed reliance on the decision in the case of **Satyam Smertex (P) Ltd. Vs DCIT 2020-TIOL-722-ITAT-Kol** in support of his contention that an entity which is duly assessed by the Income-tax department cannot be presumed as non-existing in other assessment and argued that, since both the lenders were duly assessed u/s 143(3) of the Act wherein huge additions were

also made in their assessable incomes, those companies cannot be considered as non-existent in any manner.

18. It was further submitted that the fact that the lenders were having their principal place of business at New Delhi was within the knowledge of the assessing officer as the same was very much mentioned in all the details submitted by the assessee to the assessing officer, e.g. on the bank statements, acknowledgment for filing their income-tax returns and assessment orders passed u/s 143(3) of the Act of the lenders and the website of MCA which was visited and verified by the AO. No enquiry was conducted from the lenders at the said address during the assessment proceedings or even during the remand proceedings even though the AO was required to make inquiries on the New Delhi address of the lenders as per the **mandatory Rule 127 of the Income-tax Rules 1962** which provides that service of the notice, summons, requisition, order and other communication should be made first of all at the address available in the PAN database or at the address available with the bank where the assessee maintains account. In support he relied upon the judgments in the case of **PCIT vs I-Ven Interactive Ltd. Civil Appeal No. 8132 of 2019 arising out of SLP (C) No. 3530/2019 date of judgment 18/10/2019 and Harjeet Surajprakash Girotravs UOI 2019-TIOL-1561-HC-MUM-IT.**

19. Ld. Counsel submitted that the assessing officer merely relied upon the flawed enquiry report sent by a Commissioner appointed u/s 131(1)(d) of the Act in the case

of Jindal Saw Ltd. and did not make any enquiry u/s 133(6) or 131 of the Act regarding the said loans either from the lenders at their actual registered offices at Raipur or at their New Delhi address or from the assessing officer of lender companies situated in the same CR building. He argued that otherwise also the Commissioner was required to investigate on the specific issues regarding the H. No. C-2, Staff Colony, its area, present status, sign boards, name plates etc. of Danta and Glebe and to take photographs of the location and surrounding and make enquiries from the locals in the vicinity of H.No. C-2. However, on perusal of the contents of the alleged report it is clear that the Inspector of the ADIT (Inv.) Raipur never visited the H. No. C-2 but had only visited to the main gate of the residential colony and met the watchman outside the colony gate. No enquiries were made from any locals in the vicinity of the flat no. C-2 as to the existence of the said two entities in the premises, though specifically desired by the AO in his reference. This proves that nobody ever visited the said flat which had desired name plate etc. and other information as submitted to the ROC. The inspector did not take photograph on baseless reasons mentioned in the report. Thus, the Commissioner did not at all make enquiries as per the commission issued to him. Further, a watchman employed at the gate of residential colony cannot at all know the names of the all the companies having offices in the colony. Moreover, the name of the watchman who was asked is not mentioned in the alleged report. Thus, no cognizance of this flawed report sent in the case of another assessee can be taken against the appellant in any manner. The common surname 'Jindal' mentioned by

the watchman for the said colony as belonging to should have alerted the inspector who was making an inquiry in the case of Jindal Saw Ltd. and he should have made further enquiries as has been held in the case of **DCIT Vs M/s GDA Finvest and Trade (P) Ltd. 2014-TIOL-1485-ITAT-DEL.**

20. Ld. Counsel also submitted that the Civil Procedure Code or the Income-tax Act has no provision authorizing the Commissioner to sub delegate his functions. The Commissioner appointed u/s 131(1)(d) of the Act was required to conduct investigations himself whereas in this case, the investigation was made by some unnamed Inspector. Thus, the procedure laid down for such enquiries through the Commission was not followed. Further, the copy of the Inspector's report was not provided to the appellant. It was also argued that the report of the Commissioner is a piece of evidence which can be rebutted by other evidence and the report of the Commissioner has not greater sanctity than any other evidence. The appellant has placed on record many evidences to prove that the report of the Commissioner or the inference drawn thereon is not at all correct. However, no verification of the said documentary evidences was carried at all by the AO during the assessment proceedings or in the remand proceedings.

21. The Ld. Counsel of the appellant further argued that the report of the Commissioner cannot be used as evidence without allowing an opportunity to cross-examine him in view of the Order XXVI Rule 10(2) of the CPC and placed reliance on the undernoted authorities:

- i) **Vij Kamagar Sahakari Patsanstha Ltd. vs Ramkrushna Dhondiram** in Writ Petition no. 4974 of 2008 (Bombay High court)
- ii) **Smt. Vadda Rajeswaramma Vs Dr. V.L. Narrasmiha Charyulu AIR 1998 AP 202**
- iii) **Tima Menghre and Others Vs The collector in Writ Petition no. 808 of 2018 (Bombay High Court)**
- iv) **Sketch @Palanichamy Vs Azhagu Mali in CRP (NPD)(MD) Nos. 1607 and 1608 of 2015 (Madras High Court)**
- v) **A Narayani Vs Kittan @ Krishnan (Original Petition no. 10521 of 1996 in High Court of Kerela)**
- vi) **Amiya Bala Paul vs CIT (2003) 262 ITR 407 (SC)**

22. He further submitted that assessee was not allowed any opportunity to confront and cross-examine the Commissioner appointed u/s 131(1)(d) of the Act and his inspector who prepared the report was allowed though the appellant specifically requested for the same before the CIT(A) and thus, the said report loses its evidentiary value and cannot be relied in any manner even as per the law in view of the Apex Court's judgment in the case **Andaman Timber Industries vs. Commissioner of Central Excise (2015) 281 CTR 241 (SC) / 2015-TIOL-255-SC-CX** and **CIT Vs Sunita Dhadha 2018-TIOL-212-SC-IT**.

23. As regards the allegations made in the remand report, he submitted that the loans sanction letters of the NBFC were placed on record vide letter dated 28/12/2019. A copy of the letter and acknowledgement for uploading the

same during assessment proceedings was placed on record. The terms and conditions between the lenders and the NBFCs were to be decided by them on the basis of their prudence and cannot be questioned by the Revenue in the case of the assessee and are irrelevant for the matter under consideration. The assessee referred to the loans sanction letters where the purpose of loan was mentioned as 'extending any financial assistance to one or more entities belonging to the Promoter group' (Page 288 of the PB) or 'normal business operations and loans and advances' (Page 298E of the PB). As regards the shares pledged with the NBFCs, it was submitted that the audited financial statements of the lenders clearly show that these companies have investments in the listed equity shares of the group companies whose market value was thousands of crores of rupees and some of which only were pledged as security for borrowing the loans. The number of shares pledged for taking the loans are clearly mentioned in the balance sheets itself in the notes therein. The investments were shown as nil value in the balance sheet since the cost of acquisition of the shares was nil for the lender companies but it does not mean that said shares were not held by the lender companies or did not carry any value. These investments and borrowing of the loans by pledging the said equity shares have already been accepted in the assessments of the lender companies made u/s 143(3) of the Act by the revenue from the earlier assessment years.

24. The Ld. Counsel submitted that the equity shares of the listed companies now do not have unique identification numbers as all are compulsorily in the digital form in a demat

account. When the shares are kept as security against loan, a lien is marked on the number of pledged shares in the demat account. The loans sanction letters issued by the NBFCs clearly show that the lender companies had pledged the listed equity shares held by them in group companies to avail loans and a proper lien was marked in the demat accounts of the lender companies. Photocopies of the Demat account showing lien marked were also placed on record. He further placed photocopies of the ledger accounts of the lenders in its books of account from 01/04/2016 till date to show that the entire loan was repaid by the assessee to Glebe as well as Danta in the FY 2018-19. Rather some loan was given by the appellant to both Glebe and Danta in the FY 2019-20 and argued that no addition u/s 68 of the Act can be made for the loans which have been repaid in view of **Pr.CIT Vs Skylark Build 2018-TIOL-2323-HC-MUM-IT** as the onus under the said section stands discharged. The identity and creditworthiness of the lenders and genuineness of the loan transaction stands proved beyond doubt. The assessing officer neither made enquiries nor issued summons nor brought any evidence on record to controvert the evidences placed on record by the assessee. Thus, the addition so made should be deleted.

Arguments of DR

25. The Ld. DR vehemently relied on the orders of the lower authorities and submitted that, here in this case the AO on the basis of report did found that the lender companies were not found at their registered office hence the genuineness and identity of the lender companies could not

be established. Further, the Ld. CIT (A) has discussed in detail that how the creditworthiness of the parties and the source of funds could not be established hence the loan credited in the books of the assessee companies could not be established. It is well settled that the source of the creditor and the creditworthiness has to be established by the assessee with cogent materials and substantiate the same. If not then entire loan has to be added u/s 68.

Decision

26. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as the material placed and referred to before us. On going through the said orders as well as the documents and evidences filed before the assessing officer and CIT (A), it is seen that assessee company had taken loans of Rs. 167,98,70,000/- from its two associated concerns namely, Glebe Trading (P) Ltd. and Danta Enterprises (P) Ltd. during the year for which the addition has been made u/s 68 of the Act.

27. Undisputedly, all these three companies, i.e., the assessee and the two lender companies belong to the same Jindal group and the lender companies have lent the money to the assessee, some out of their own funds and remaining out of the loans borrowed from other reputed NBFCs. The deeming fiction under Section 68 of the Act casts an onus on the assessee to prove the nature and source of credit. The source of the credit can be established by prima facie establishing the identity and creditworthiness of the lender

and genuineness of the transactions. If assessee is able to explain the nature and source with evidences then onus shifts upon the Assessing Officer to rebut the explanation with some material or inquiry on record. The assessee placed on record:

- i) the confirmed copies of accounts of both the lenders;
- ii) acknowledgments for filing their returns of income from the AYs 2014-15 to 2017-18;
- iii) assessment orders passed u/s 143(3) of the Act for the AYs 2015-16 to 2017-18;
- iv) audited financial statements for the years ending on 31/03/2015 to 31/03/2017;
- v) copies of their bank accounts;
- vi) incorporation certificates;
- vii) copies of the forms filed by them before ROC, their master data on the website of ROC;
- viii) notices served by the Income-tax department on these companies for various assessment proceedings;
- ix) their GST and VAT registration certificate;
- x) their PAN and TAN allotment letters and various other evidences.

Thus, these evidences clearly shows that these companies are registered under the Companies Act and have been regular in filing all the statutory forms before the ROC. Even the securities pledged with the NBFCs have been duly declared to the ROC by filing relevant forms creating statutory charges in favour of the NBFCs and is very much visible on the master data / card of the companies itself maintained by the ROC. The lender companies are registered under various statutes like VAT and GST. The financial statements of these companies are audited under the Income-tax as well as Companies Act. These companies have been regularly filing their returns of income and are being assessed u/s 143(3) of the Act. PAN database of the assessee with the income-tax department is also sufficient to accept the existence of the assessee at the said address

unless proved contrary by the revenue by making proper enquiries. Here in this case, the revenue failed to prove that the lender companies did not physically exist at their PAN addresses in terms of Rule 127 of the Income-tax Rules, 1962. Moreover, the said address was very much officially communicated to the ROC also. All these evidences clearly prove the identity of the lender companies.

28. Further, on perusal of the audited balance sheets of the lender companies, it was observed that these lender companies have shown equity shares of some listed companies of the Jindal group as their investments. Though the cost of these shares has been declared as nil but the market value of the same has been declared at Rs. 1600 Crores and Rs. 2800 Crores in case of Glebe and Danta respectively (as appearing at pages 158 and 244 of the PB). This clearly shows that the intrinsic value of both the lenders ran into thousand crores of Rupees.

29. We agree with the contention of the Ld. Counsel that showing the investment in the shares of listed companies at 'nil' does not mean that those shares were not held by the lender companies, albeit it means that the cost of acquisition of the said shares is nil which may be due to various reasons, for e.g., shares received as bonus or gift etc., but the intrinsic value or the market value of the investment has to be considered for assessing the creditworthiness of the company, particularly when those were pledged as security to borrow loans for advancing further as loans. It is well known that the loans are given on the basis of market value of the security and not on the basis of their cost. Thus, the market value /

intrinsic value of the assets is a decisive factor of the determining the creditworthiness.

30. On perusal of the loans sanction letters of the NBFCs placed on record at page nos. 281-307 of the PB, it is seen that purpose of these loans was normal business or to give loans and advances to associated concerns. The lender companies took the loans by pledging the listed equity shares of some Jindal group companies and then lent the same to their associated concerns at higher rate of interest and thus, earned differential interest income as its financing business. Further, the said loans were sanctioned against the security of the listed equity shares pledged by the lender companies with the NBFCs. The demat accounts placed at pages 457 - 460 of the PB clearly show that the said shares were duly recorded in it and a proper lien has been marked on the equity shares pledged as security towards the funds borrowed from the NBFCs. The shares pledged as security has also been mentioned in the 'Notes to account' attached to audited balance sheet where the details of loans and securities are also properly disclosed. Thus, the sanction letters, audited balance sheets as well as the demat accounts placed on record clearly show that these shares were owned by the lender companies in their own name, had huge intrinsic value and were pledged as security for borrowing the loans from the NBFCs. In view of the above facts and evidences, it is established beyond doubt that that these companies owned shares of the listed companies worth thousand crores of Rupees and had huge net worth.

31. The creditworthiness of a company is proved by its intrinsic value. It is not necessary that a company should give loan out of own funds. There is no bar that a company cannot give loan by borrowing loans. However, even for borrowing loan, creditworthiness of the company has to be seen as to whether the company has received loan on the basis of its own value or just as a pass-through entity. A company can be creditworthy even if a company gives a loan out of the loans taken from others if the said loans have been obtained on the basis of its creditworthiness / value. It is not a case where the lender companies have obtained loans without any basis from unknown lenders but it is a case where the lender companies have obtained loans from reputed NBFCs by pledging their own valuable securities and intimated to the ROC in time and disclosed in the audited annual accounts. Thus, the creditworthiness of the lenders to grant loans to the appellant stands established.

32. Further, Glebe declared a net profit of Rs. 31.22 Crores and Danta declared a net profit of Rs. 30.27 Crores for the year ended 31/03/2017 and filed their returns of income at Rs. 84.74 lacs and Rs. 6.30 Crores respectively due to high exempt income by way of dividends received by them on their investments. These lender companies were assessed u/s 143(3) of the Act for the AY 2017-18 and their assessment orders were placed at pages 311-324 and 328-338 of the PB. A perusal of the same clearly shows that huge addition u/s 14A was made in these cases which means that the investments were held by the lender companies and accepted by the department and the source of loans taken from the

NBFCs were also accepted in their hands. Since, the genuineness of the loans taken from NBFCs has been accepted therein, the loans given by the lender companies out of the said NBFC loans cannot be treated as unexplained cash credit in the hands of the assessee.

33. The AO has drawn out a chart which has been reproduced by the CIT (A) also at page 92 of his order which is reiterated as under. As per the said chart, Glebe has granted loans of Rs. 557.66 crores and Danta has given loans of Rs. 185.86 crores during the year which is far more than their income and reserves and surplus:

Sr. No.	Name of Company	Unsecured loan received from Glebe Trading Pvt. Ltd. (in Rs.)	Unsecured loan received from Danta Enterprise Pvt. Ltd. (in Rs.)
1.	Jindal Saw Ltd.	105,44,00,000	149,19,00,000
2.	Jindal ITF Ltd.	151,83,70,000	16,15,00,000
3.	JITF Urban Infrastructure Services Ltd.	196,50,00,000	NA
4.	Jindal Quality Tubular Ltd.	NA	20,52,00,000
5.	Jindal Fittings Ltd.	103,89,25,000	NA
	Total	557,66,95,000	185,86,00,000

34. In respect of the same, the Ld. Counsel of the assessee clarified that this chart is not correct because; firstly, as in the case of Jindal Saw Ltd., it mentions the gross amount of loans relevant for the AY 2016-17 and in case of other parties being the 4 appellants here, the gross amounts of loans relevant for the AY 2017-18; and secondly, this chart shows the amount of loans given by the lenders but did not consider the amounts refunded by the borrower which became available for lending again in the next year to the appellants here and also some amounts refunded by some of the appellants which were given to other appellants here. Thus, in absence of a telescoping the gross amounts have been mentioned which undisputedly becomes double as compared to the actual amounts lent at a particular time.

35. On perusal of the relevant evidences and reconciliation placed on record, the contention of the Ld. Counsel is found to be correct, because the figures of loans mentioned against Jindal Saw Ltd. were for the preceding financial year i.e. AY 2016-17. Further, only the figure of loans given has been mentioned therein and the figure of loans refunded during the year have not at all been mentioned therein. Thus, this list is misleading and does not give a correct picture of the amounts of loans given by the lender companies and cannot be relied upon at all.

36. As regards the genuineness of the loan transactions, all the transactions have been undertaken through proper banking channel. The lender companies borrowed loans from the NBFCs and then further advanced

loans to the assessee. The purpose of the loan taken from NBFCs has been clearly mentioned in the loans sanction letters as for normal business or to advance further loans and advances. The assessee was running into huge losses during the relevant period and therefore, needed funds to meet its business exigencies and thus, borrowed funds from the lender group companies. A perusal of the ledger accounts of the lender companies in the books of account of the assessee for the subsequent years also show that the entire loan has been repaid with interest and now the loan has been given by the appellant to the lender companies. All these facts clearly prove the genuineness of the transactions.

37. Thus, the assessee has placed sufficient evidences to prove the identity, creditworthiness of the lenders and genuineness of the loan transactions and now the onus shifted on the assessing officer to bring evidences on record to prove otherwise. The assessing officer alleged that the appellant failed to prove the physical existence of the lender companies merely on the basis of commission report collected at the back of the appellant that too in the case of some other assessee.

38. Further, the Ld. Counsel has pointed out various flaws in the Commissioner's report. The commission was issued to make enquiries at H. No. C-2, Staff Colony, Machinery Division, 13 KM Stone, MandirHasaud, GE Road, Raipur, Chattisgarh, being the registered office of the lender companies. The Commissioner stated in the first para that H. No. C-2, Staff Colony, Machinery Division, 13 KM Stone,

Mandir Hasaud, GE Road, Raipur, Chattisgarh is a residential colony. He further stated that watchman employed at the given address stated that these are staff quarters of Jindal Company and the said colony is only residence of the staff of Jindal Company. On perusal of the Commissioner's report, it is clear that the inspector never visited House no. C-2 but just visited the main gate of the staff colony. Thus, the enquiry is incomplete and unreliable. The name of the watchman from whom enquiries were made, name of the inspector who visited the premises, premises actually visited etc. have not been mentioned in the Commissioner's report which creates doubt about the authenticity of the said report. Even when the appellant pointed out many flaws, neither the AO nor the CIT (A) tried to substantiate the findings of the said report in any manner. The appellant also asked for the cross-examination of the Inspector as well as the ADIT (Inv.) who made the enquiries and gave report. However, no opportunity was granted to the appellant despite specifically requested for. In view of the Order XXVI Rule 10(2) of the Civil Procedure Code, such commission cannot be admitted as evidence in the court of law without providing cross-examination of person preparing the report. In view of the settled position of law in this regard, the commission report cannot be used against the assessee in any manner, since no cross-examination of the person who prepared the commission has been allowed to the appellant.

39. Even if the commissioner's report is to be admitted as evidence, then in that case, the assessee placed various evidences on record during the assessment proceedings vide

letters dated 26/12/2019 and 28/12/2019 in order to rebut the findings of the commissioner's report, but the AO has ignored those all. Thereafter, the assessee placed various additional evidences during the appellate proceedings to prove the physical existence of the lender companies which were also sent to the assessing officer for verification. The assessee also submitted many evidences to show that the lender companies were in physical existence having registered offices at Raipur and principal place of business of the lenders at 28, Najafgarh Road, New Delhi where the assessee is also located. However, neither the AO nor the CIT(A) made any enquiry u/s 133(6) or 131 of the Act either during the assessment proceedings or during the remand proceedings to collect any evidence or to controvert the evidences placed on record by the assessee to prove physical existence of the lender companies. Thus, the assessing officer failed to discharge the burden shifted on him and failed to controvert the evidences placed on record by the assessee.

40. As regards the physical existence of the lender companies, the appellant brought on record the certificate of incorporation and various forms filed with ROC. One of such forms was Form no. Inc 22A filed with ROC which is an active company tagging identities and verification form in which photograph of the registered office showing external building and inside office also showing therein at least one director are to be uploaded on the MCA website. This form was also filed by the lender companies placed at pages 81-86 and 167-173. On perusal of the said pages, it was observed

even the longitude and latitude of the said premises was mentioned on the photograph.

41. Further, it is not necessary that a company undertakes its activities from the registered office which as per the section 12 of the Companies Act 2013 is just an address where necessary notices, communication and correspondence sent to the company is received and acknowledged. Even u/s 12(3) of the Companies Act 2013, a company can undertake its activities from any other address. In fact even the form no. 49A, being the application for allotment of PAN under the Income-tax Rules, does not require that the address of a company in PAN data with the revenue should be the registered office of the company. It just mentions the same as office address. There is no provision under the Income-tax Act for an assessee to have any such registered office and the company can opt any address under the Income-tax Act for communication by the revenue with the assessee as is specifically mentioned in the Rule 127 of the Income-tax Rules where the revenue is barred to issue any communication on any address mentioned in the sub rule (2) therein when the assessee has given a specific address in writing other than the address mentioned in the said sub rule (2). Here the lender companies have specifically mentioned their New Delhi addresses to the Revenue through their PAN applications. Only under the Companies Act, it is statutorily required. Thus, it means that under the Income-tax Act, the same should be the business address of the company where the income-tax department can quickly access under the provisions of the Act and there only the AO

should have made enquiries and not at the far off place in Raipur, knowing well that same is not the business address as is very much mentioned in the Master data in the records of ROC of the said lender companies.

42. The appellant also received a letter from the NCLT at its registered office address on 9/12/2019, a photocopy is placed at pages 124A and 216A of the PB. This correspondence was received from a Tribunal under the Companies Act and therefore, proves beyond doubt that the registered office of the lender companies was functional where they received correspondence which is the main function of a registered office of any company. This fact could have been confirmed by the assessing officer by making verification u/s 133(6) or 131 of the Act on the said address from the lenders. However, the AO did not make any enquiry or verification from the lenders or any other person. It is a settled law that suspicion cannot take place of proof. If the assessing officer got suspicious about the physical existence of the lender companies due to the commissioner's report, then he should have carried out necessary verification to convert his suspicion into proof but he could not merely rely on the said report and ignore all the evidences placed on record by the assessee.

43. Further, these lender companies owned listed equity shares worth market value of thousands of Crores of Rupees, had bank as well as demat accounts, have taken loans from the NBFCs, filed their returns of income declaring huge income in tens of crores of Rupees for the last 3 years

and paid necessary applicable and due income-tax thereon, got their books audited under Companies as well as Income-tax Acts. Further some of the directors of the assessee and one of the lenders are common. These two lenders were assessed u/s 143(3) of the Act not only for the AY 2017-18 but also for the earlier 2 assessment years wherein substantial addition u/s 14A of the Act was made for the AY 2017-18. Thus, if an entity which is duly assessed by the Income-tax department cannot be presumed as non-existing in other assessment. In view of the all these evidences, the physical existence of the lender companies stands proved beyond doubt.

44. Further, on perusal of the impugned order of Ld. CIT (A), it is seen that the CIT (A) has only reiterated the averments in the assessment order, submissions of the appellant, remand report, rejoinder, synopsis, case laws etc. Even while drawing conclusion, these things have been reiterated again. The Ld. CIT (A) has not brought on record his any findings to rebut the evidences placed on record by the assessee. The Ld. CIT (A) has not given any finding regarding the authenticity of the commissioner's report, its admission as evidence, why the onus cast on the appellant was not discharged in view of the evidences placed on record. Any appellate authority cannot reject the evidences without any discussion or reason. The CIT (A) has not mentioned as to what more evidence were needed to be produced by the assessee to substantiate its contention or what are the material or information to rebut the assessee's explanation and evidences as discussed above. Thus, the AO as well as

the CIT(A) failed to appreciate or consider the more than sufficient evidences placed on record by the assessee to discharge the onus u/s 68 of the Act.

45. In view of the all the evidences placed on record by the appellant and in the absence of any contrary evidence brought on record by the Revenue to substantiate its allegation, not only the physical existence but also the identities and creditworthiness of the lenders and genuineness of the loan transactions stand proved. Thus, the addition of Rs. 167,98,70,000/-made u/s 68 of the Act is hereby deleted.

Ground no. 4 - Disallowance of interest of Rs. 9,96,04,252/- on loans taken from group companies

46. The assessing officer merely made the addition u/s 68 of the Act for the amounts of loans received from the two lender companies but interest paid on these loans was allowed as a deduction by him. However, the CIT (A) issued an enhancement notice during the appellate proceedings and after allowing opportunity of hearing, disallowed the interest paid on the these loans as he considered these loans unproved u/s 68 of the Act.

47. The assessee submitted that the loans taken from the associated concerns were genuine which has been proved by placing all these evidences on record. The said loans were used for the purpose of business and not diverted for any non-business purpose. Even the AO has accepted the usage of loan and the CIT(A) did not bring any evidence on record to

prove otherwise. The appellant paid the said interest through proper banking channel and also deducted and deposited due income-tax at source on the said interest. The said interest was declared as income by the lenders in their returns of income and offered the same for taxation which has been accepted in their assessment orders framed u/s 143(3) of the Act.

48. Since we have held that the loans taken from the said two lender companies are genuine in the above grounds of appeal, the interest on these loans has to be held as genuine payment. Undisputedly, these loans were used for the purpose of business, due income-tax has been deducted at source on the said interest, which has also been declared as income by the lenders, the amount of interest cannot be disallowed. The loans were also used only for the purpose of its business by the assessee. In fact the authorities below have not adverted that the said loans for not used for its business by the assessee. Thus, since the loans were used by the assessee for its business, the disallowance of interest is hereby deleted.

Ground no. 5 - Disallowance of Education cess as a deduction while computing the assessable income

49. The assessee submitted that Education Cess is an allowable expenditure and therefore the Education Cess paid should be allowed as deduction. The appellant placed reliance on the decision in the case of **Voltas Limited vs ACIT in ITA no. 6612/ Mum/2018** wherein relying upon the

Bombay High Court judgment in the case of **Sesa Goa Ltd. Vs JCIT (2020) 107 CCH 375 (Bom)** it was held that **Education cess is not disallowable u/s 40(a)(ii) of the Act.**

50. We have heard the rival contention. In view of the above judicial position, we are of the view that the education cess has to be allowed as deduction. **The ITAT, Indore Bench, in a recent decision in the case of M/s Agrawal Coal Corporation (P) Ltd. Vs ACIT in ITA no. 776/Ind/2019 vide its order dated 24/08/2020 has also held that education cess is an allowable expenditure.** However, the same is not allowable to the assessee during this year as the assessee has not paid any education cess on the income-tax for this assessment year as the returned income under the normal as well MAT provisions was at loss.

Ground no. 6

51. The appellant also raised a legal issue in ground no. 6 that the limited scrutiny was converted into full scrutiny without prior permission from the PCIT. However, since the addition has been deleted on merits, this ground needs no adjudication.

Ground no. 7

52. The appellant also raised a legal issue in ground no. 7 that the assessment has been completed on revised return of income without issuance of a notice u/s 143(2) of the Act on the revised return as the earlier return had become non est. However, since the addition has been deleted on merits, this ground needs no adjudication.

Jindal Fittings Ltd. - Appeal no. ITA/1170/D/2020

53. In this case also, a loan was taken by the assessee from Glebe Trading (P) Ltd. The addition has been made on identical issues by raising identical averments as raised in the case of Jindal ITF Ltd. in Appeal no. ITA/1172/D/2020.

54. It has been held in the said appeal that the identity and creditworthiness of the lender, its physical existence and genuineness of the loan transaction stands proved beyond doubt and thus, the onus cast on the assessee u/s 68 of the Act stands discharged and no addition u/s 68 could be made. Thus, following the same, the addition of Rs. 103,89,25,000/- made u/s 68 of the Act for the full amount of loan taken from Glebe and disallowance of interest of Rs. 2,43,24,560/- paid on this loan are hereby deleted as the entire amount of loan was used for the business purpose by the assessee. Thus, the Ground nos. 1-4 are decided in favour of the appellant.

55. It has also been held in the above appeal that education cess paid is allowable as deduction. However, the same is not allowable to the assessee during this year as the assessee has not paid any education cess on the income-tax for this assessment year as the returned income under the normal as well MAT provisions was at loss.

56. Since the appeal has been decided on merits, the legal grounds raised by the appellant do not need adjudication. Thus, ground no. 6 is dismissed.

Jindal Quality Tubular Ltd. - Appeal no. ITA/1171/D/2020

57. In this case, the loan was taken by the assessee company from Danta Enterprises (P) Ltd. The addition has been made on identical issues by raising the identical averments raised in the case of Jindal ITF Ltd. in Appeal no. ITA/1172/D/2020.

58. It has been held in the said appeal that the identity and creditworthiness of the lender, its physical existence and genuineness of the loan transaction stands proved beyond doubt and thus, the onus cast on the assessee u/s 68 of the Act stands discharged and no addition u/s 68 could be made. Thus, following the same, the addition of Rs. 20,52,00,000/- u/s 68 for the loan taken from Danta and disallowance of interest of Rs. 3,37,315/- paid on this loan are hereby deleted. Thus, Ground nos. 1-3 are decided in favour of the appellant.

59. It has also been held in the above appeal that education cess paid is allowable as deduction. However, the same is not allowable to the assessee during this year as the assessee has not paid any education cess on the income-tax for this assessment year as the returned income under the normal as well MAT provisions was at loss.

60. Since the appeal has been decided on merits, the legal grounds raised by the appellant do not need adjudication. Thus, ground no. 5 is dismissed.

JITF Urban Infrastructure Services Ltd. Appeal no. ITA/1173/D/2020

61. In this case, the loan has been taken by the appellant company from Glebe Trading (P) Ltd. The addition has been made on identical issues by raising identical averments as raised in the case of Jindal ITF Ltd. in Appeal no. ITA/1172/D/2020.

62. It has been held in the said appeal that the identity and creditworthiness of the lender, its physical existence and genuineness of the loan transaction stands proved beyond doubt and thus, the onus cast on the assessee u/s 68 of the Act stands discharged and no addition u/s 68 could be made. Thus, following the same, the addition of Rs.196,50,00,000/- u/s 68 for loan taken and disallowance of interest of Rs. 11,03,15,540/- paid on this loan are hereby deleted. Thus, Ground nos. 1-4 are decided in favour of the appellant.

63. It has also been held in the above appeal that education cess paid is allowable as deduction. However, the same is not allowable to the assessee during this year as the assessee has not paid any education cess on the income-tax for this assessment year as the returned income under the normal as well MAT provisions was at loss.

64. In view of our finding given above all the above appeals are partly allowed.

Order pronounced in the open Court on 28th September, 2020

Sd/-

Sd/-

**[B.R.R. KUMAR]
ACCOUNTANT MEMBER**

**[AMIT SHUKLA]
JUDICIAL MEMBER**

DATED: 28.09.2020

Kavita Arora, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar