

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.177/M/2020  
Assessment Year: 2011-12**

|   |     |  |
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| The Income Tax Officer-<br>14(3)(4),<br>4 <sup>th</sup> Floor,<br>Room No.482(1),<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai - 400020 | Vs. | M/s. Supergold<br>Properties Pvt. Ltd.,<br>(Successor of M/s.<br>Advaya Tex Trading Pvt.<br>Ltd.),<br>Shop No.1,<br>Bldg. No.2, A Wing,<br>Shramik CHS Ltd.,<br>Tilak Nagar,<br>Chembur,<br>Mumbai - 400 089<br><b>PAN: AACCK2900N</b> |
| (Appellant)   |     | (Respondent)   |

**ITA No.178/M/2020  
Assessment Year: 2011-12**

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| The Income Tax Officer-<br>14(3)(4),<br>4 <sup>th</sup> Floor,<br>Room No.482(1),<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai - 400020 | Vs. | M/s. Supergold<br>Properties Pvt. Ltd.,<br>Shop No.1,<br>Bldg. No.2, A Wing,<br>Shramik CHS Ltd.,<br>Tilak Nagar,<br>Chembur,<br>Mumbai - 400 089<br><b>PAN: AAHCS 9942F</b> |
| (Appellant)   |     | (Respondent)   |

**ITA No.179/M/2020  
Assessment Year: 2011-12**

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|---|-----|---|
| The Income Tax Officer-<br>14(3)(4),<br>4 <sup>th</sup> Floor,<br>Room No.482(1),<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai - 400020 | Vs. | M/s. Supergold<br>Properties Pvt. Ltd.,<br>Shop No.1,<br>Bldg. No.2, A Wing,<br>Shramik CHS Ltd.,<br>Tilak Nagar,<br>Chembur,<br>Mumbai - 400 089<br><b>PAN: AAICS2665J</b> |
| (Appellant)   |     | (Respondent)  |

**ITA No.180/M/2020**  
**Assessment Year: 2011-12**

|   |     |   |
|---|-----|---|
| The Income Tax Officer-<br>14(3)(4),<br>4 <sup>th</sup> Floor,<br>Room No.482(1),<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai - 400020 | Vs. | M/s. Supergold<br>Properties Pvt. Ltd.,<br>Shop No.1,<br>Bldg. No.2, A Wing,<br>Shramik CHS Ltd.,<br>Tilak Nagar,<br>Chembur,<br>Mumbai - 400 089<br><b>PAN: AAACZ1962B</b> |
| (Appellant)   |     | (Respondent)  |

**ITA No.1233/M/2020**  
**Assessment Year: 2011-12**

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| The Income Tax Officer-<br>12(3)(2),<br>Room No.145,<br>1 <sup>ST</sup> Floor,<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai - 400020 | Vs. | M/s. Kaalkaa Real Estate<br>(Formerly known as M/s.<br>Superline Constructions<br>Pvt. Ltd.)<br>Plot No.394, 2 <sup>nd</sup> Floor,<br>14 <sup>th</sup> Road,<br>Linking Road,<br>Khar Sant Niwas CHS<br>Ltd.,<br>Khar (W),<br>Mumbai - 400 052<br><b>PAN: AABCK3571A</b> |
| (Appellant)  |     | (Respondent)  |

**ITA No.1234/M/2020**  
**Assessment Year: 2011-12**

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| The Income Tax Officer-<br>12(3)(2),<br>Room No.145,<br>1 <sup>ST</sup> Floor,<br>Aayakar Bhavan,<br>M.K. Road,<br>Mumbai - 400020 | Vs. | M/s. Artline Properties<br>Pvt. Ltd.,<br>(Now M/s. Kaalkaa Real<br>Estate Pvt. Ltd.)<br>Plot No.394, 2 <sup>nd</sup> Floor,<br>14 <sup>th</sup> Road,<br>Linking Road,<br>Khar Sant Niwas CHS<br>Ltd.,<br>Khar (W),<br>Mumbai - 400 052<br><b>PAN: AAECA 6525B</b> |
| (Appellant)  |     | (Respondent)   |

**Present for:**

Revenue by : Shri V. Vinod Kumar, Sr. A.R.  
Shri Sandeep Raj, D.R.  
Assessee by : Dr. P. Daniel, A.R.

Date of Hearing : 24.09.2020

Date of Pronouncement : 19.10.2020

**ORDER****Per Rajesh Kumar, Accountant Member:**

The above titled six appeals have been preferred by the Revenue against the orders dated 27.12.2018, 28.12.2018, 27.12.2018 & 12.12.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] and all relevant to assessment year 2011-12.

**ITA No.178/M/2020**

2. The grounds raised by the Revenue are as under:

"1. Whether on the facts of the instant case and in law, the Ld. CIT(A) erred in deleting the unexplained cash credit received from bogus entities as established by the AO and duly supported by the enquiries conducted by the Income Tax Authorities.

2. Whether on the facts of the instant case the Ld. CIT(A) was correct in deleting the addition made by the AO, when the assessee had failed to discharge its primary onus under section. 68 of the I.T. Act.

3. The appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of appeal.

4. The appellant prays that the order of CIT(A) on the above ground be set-aside and that of the assessing officer be restored."

3. The only issue raised by the Revenue is against the deletion of addition of Rs.9,85,00,000/- by Ld. CIT(A) as made by the AO under section 68 of the Act.

4. At the outset, the Ld. Counsel of the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench of the Tribunal in assessee's sister concern case in ITA No.3593/M/2019 AY.

2011-12 & ors. vide order dated 25.06.2020 wherein the case of the assessee under similar facts have been decided in favour of the assessee by the coordinate bench. The Ld. A.R., therefore, prayed that the present appeal filed by the Revenue may kindly be dismissed following the said decision of the co-ordinate bench of the Tribunal.

5. The facts in brief are that the assessee filed return of income on 22.09.2011 declaring an income of Rs.48,790/- which was processed under section 143(1) of the Act. Thereafter, the case of the assessee was reopened after the AO received information from DDIT (Inv.), Unit 2(1) Kolkata that the assessee has received Rs.9,85,00,000/- from Minaxi Suppliers Pvt. Ltd. The investigation wing also informed the AO that the said money was raised bthrough non existent and shell companies which was deposited into several bank accounts maintained with ICICI Bank Ltd. and thereafter the said money was transferred to other bank accounts through RTGS/TRF. The modus operandi was that these bank accounts were closed in a very short span of time after making huge cash transactions. The cash deposited in layer-1 accounts were immediately transferred to another entities which were maintaining the bank accounts with the different banks. The layer-1 account funds were transferred into the bank accounts of Maxworth Vinimay Pvt. Ltd. which was opened on 06.10.2010 and closed on 16.01.2012 . Later on funds were transferred of funds to Dolphin Vintrade Pvt. Ltd., GPM Portfolio Management Pvt. Ltd., Impression Suppliers Pvt. Ltd., Avon Vanijya Pvt. Ltd., Dolphin Vintrade Pvt. Ltd. Ratnakar Vincom

Pvt. Ltd. From these companies the funds were remitted to Minaxi Suppliers Pvt. Ltd. and then from Minaxi Suppliers Pvt. Ltd. the funds were transferred to present assessee. Thus the assessee had brought back the unaccounted money in their books of accounts using the banking channels after layering the funds through non existent entities and shell companies. Accordingly, a notice was issued under section 148 on 29.03.2018 to the assessee which was complied with by the assessee by filing a return of income on 26.04.2018 declaring income of Rs.48,790/-. Thereafter, assessee sought the reasons for reopening the assessment which was duly supplied to the assessee. During the course of assessment proceedings voluminous details were called for from the assessee to prove the identity, creditworthiness of the lender and genuineness of the transactions. The assessee filed the said details from time to time. Besides the AO also issued notice under section 133(6) to Minaxi Suppliers Pvt. Ltd. calling for various details as narrated in para 10 of the assessment order. The said company has also furnished the various details before the AO beside submitting that Rs. 9,85,00,000/- were funded to the assessee under Joint Venture Agreement. The details of bank statements and details of collaterals etc were also supplied. The AO came to the conclusion that the assessee has routed its own money through non existent and shell companies and thus not satisfying the three ingredients as envisaged by the provisions of section 68 of the Act. The AO finally added the said loan of Rs.9,85,00,000/- under section 68 by noting that assessee has failed to provide that even the basic details as called for vide notice issued under section 142(1) of the Act on various occasions and even the

entity from whom the assessee had received money has not submitted any authentic details and information as sought from the said entity under section 133(6) excepting the confirmation and undated affidavit. According to the AO the assessee has failed to controvert the findings of investigation wing that Minaxi Suppliers Pvt. Ltd. is one of the paper companies and the assessee is one of the beneficiaries as huge funds were found to be transferred to the account of the assessee through Minaxi Suppliers Pvt. Ltd. The assessment was framed under section 143(3) read with section 147 of the Act vide order dated 28.12.2018.

6. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee on merit by observing and holding as under:

"5.3 I have considered the facts of the case and submissions made by the assessee. The brief facts of the case are that the information was received from the DDIT (Inv.) Unit 2(1), Kolkata that large value of cash was deposited into several bank accounts maintained with ICICI Bank followed by immediate transfer to other bank accounts. It was further unearthed that there were several other bank accounts maintained with ICICI Bank where cash was deposited regularly (just below Rs.10,00,000/-) and then these amounts were transferred to other bank accounts through RTGS/TRF. There were also several additional bank accounts in different banks where large amounts of cash were also deposited regularly and from where the funds were diverted to the above mentioned accounts (herein after referred as Layer 1). A noticeable trait about these accounts was that these bank accounts were closed in very short span of time after making huge value cash transactions. Perusal of the bank account revealed that the cash deposited in the Layer I Accounts were immediately transferred to other bank accounts (Layer II) of other entities maintained with five different banks. From Layer I Accounts funds were transferred into" bank accounts of Maxworth Vinimay Private Limited (opened the account on 06.10.2010 and closed on 16.01.2012), which was followed by transfer to funds to Dolphin Vintrade Pvt. Ltd., G P M Portfolio Management Pvt. Ltd., Impression Suppliers Pvt. Ltd., Avon Vanijya Pvt. Ltd., Dolphin Vintrade Pvt. Ltd., Ratnakar Vincom Pvt. Ltd. (hereafter referred as Layer AI). From these accounts the funds were routed to Minaxi Suppliers Private Limited and from Minaxi Suppliers Pvt. Ltd. the funds were transferred to the assessee company. Thus the assessee had brought back unaccounted money into their books of accounts using banking channel after layering the funds through bank account of existent

entities and shell companies. As per the information, the unaccounted money re-routed into the books of accounts of the assessee after layering funds through banking channels of various nonexistent and shell companies is Rs.9.85,00.000/-.

In this context it is pertinent to peruse the provisions of section 68 of the I f Act The provisions of section 68 of the ST Act, 1961 before amendment (i.e. prior to AY 2013-14) are as under:

*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.*

Perusal of these provisions divulges that there is an obligation on the part of the assessee to prove the identity genuineness and creditworthtness of the person from where the money is actually received. The above three ingredients -have been taken as basic parameters to be satisfied by the appellant.

Further, under what circumstances the invocation of section 68 of the IT Act, 1961 can be resorted to

a) When the assessee fails to prove the genuineness of the transaction that has entered into his books of account.

b) When there is no satisfactory explanation provided on the part of the Assessee to the Assessing Officer with respect to the amount credited into the accounts.

c) When there are documentary evidences requested to support the validity of the amount credited but there are no such documents furnished by the assessee.

Thus, from the above, it is understood that the provisions of section 68 of the Act place the initial burden of proof upon the assessee.

It is seen from the record that the assessee has produced the details to prove the nature and source and identity, creditworthiness of the lender and the genuineness of the transaction. The details submitted by the assessee before the AO and also during the appellate proceedings are as under:-

- i. Incorporation certificate of MSPL.
- ii. Copy of PAN of MSPL.
- iii. Memorandum of Articles of MSPL
- iv. Association of Articles of MSPL.
- v. Income Tax Return filed Acknowledgment for A.Y.2011-12 of MSPL.
- vi. Balance Sheet, Profit & Loss Account with schedule for A.Y.2011-12. The company's shareholder fund as on 31/03/2011 is Rs.79,45,77,290/- as per Audited Balance Sheet of MSPL.
- vii. Directors Report of MSPL.
- viii. Auditors Report of MSPL.
- ix. Assessment Order for A Y.2010 -11 of .MSPL.
- x. Assessment Order for A.Y.2012-13 of MSPL.
- xi. Copy of Affidavit dated 18/12/2018 from Minaxi Suppliers Pvt. Ltd, towards joint venture contribution with Supergold Properties Pvt. Ltd. for the period .- 01/04/2010 to 31/03/2011 towards genuineness of the transaction.

xii. Copy of bank statement of Supergold Properties Pvt. Ltd (having PAN: AAHCS9942F) reflecting the contribution received from M/s Minaxi Suppliers Pvt. Ltd. during the period under consideration.

xiii. Copy of confirmation relating to the amount of contribution received from Minaxi Suppliers Pvt. Ltd.

xiv. The Appellant also submitted on 19/12/2018, the copy of Affidavit submitted by MS PL- during the course of Assessment. The contents of the Affidavit is as under:

**AFFIDAVIT**

*"I, Navin Jain, an adult, an Indian inhabitant, and having office address at Damayanti Apartment, Ghosh Para Jyangra, Ground Floor Near Jangra High School, Baguihati, Kolkata : 700059 do hereby for and on behalf of the MINAXI SUPPLIERS PVT. LTD. do hereby declare on solemn affirmation as under-*

1. *That I was the director of the MINAXI SUPPLIERS PVT LTD. (CIN: U51909WB1996PTC078940, PAN: AACCM0476B) in Financial Year 2010-11. I know the entire facts of Joint ventures with ZIMITH PROPERTIES PVT. LTD.*

4. *Minaxi Suppliers Pvt. Ltd have given a sum of 9,85,00,000/- (Rupees Nine Crore Eighty Five Lakhs Only) toward the Joint ventures for purchase of land.*

5. *That our company MINAXI SUPPLIERS PVT. LTD. has funded the sum of 9,85,00,000/- (Rupees Eight Crore Twenty Lakhs Only) under Joint Venture with M/s. Supergold Properties Pvt. Ltd. having their address at Room No. 2, Munir Bashir Colony, Near Ghatkoper Police Station, Ghatkoper (West).. Mumbai: 400086 for acquiring the immovable property in Sindhurg District Maharashtra.*

6. *That during the period 1/04/2010 to 31/03/2011 MINAXI SUPPLIERS PVT LTD given sum of 9,85,00,000/- (Rupees Eight Crore Eighty. Five Lakhs Only) through RTGS to Supergold Properties Pvt. Ltd. Minaxi Suppliers Pvt. Ltd. had transferred the money in IDBI Bank, Ghatkoper (East) Branch, Mumbai: 400077 vide their Current Account No.033102000005784 through RTGS. The details Cheque which are utilized for RTGS are as under:*

| <i>Name of the Bank &amp; Branch</i> | <i>Date</i>                        | <i>Cheque Details</i> | <i>Amount ( )</i>    |
|--------------------------------------|------------------------------------|-----------------------|----------------------|
| <i>Karnatka Bank</i>                 | <i>24<sup>th</sup> April, 2010</i> | <i>145978</i>         | <i>1,00,00,000/-</i> |
| <i>Karnatka Bank</i>                 | <i>30<sup>th</sup> April, 2010</i> | <i>145978</i>         | <i>30,00,000/-</i>   |
| <i>Karnatka Bank</i>                 | <i>3<sup>rd</sup> May, 2010</i>    | <i>145982</i>         | <i>70,00,000/-</i>   |
| <i>Karnatka Bank</i>                 | <i>26<sup>th</sup> July, 2010</i>  | <i>430917</i>         | <i>1,65,00,000/-</i> |

|                     |                            |        |                      |
|---------------------|----------------------------|--------|----------------------|
| Union Bank of India | 9 <sup>th</sup> Aug, 2010  | 430917 | 1,65,00,000/-        |
| Karnatka Bank       | 14 <sup>th</sup> Aug, 2010 | 430924 | 1,00,00,000/-        |
| Karnatka Bank       | 19 <sup>th</sup> Aug, 2010 | 430927 | 50.00.000/-          |
| Karnatka Bank       | 24 <sup>th</sup> Aug, 2010 | 430932 | 75,00,000/-          |
| Karnatka Bank       | 24 <sup>th</sup> Aug, 2010 | 430931 | 1,00,00,000/-        |
| Karnatka Bank       | 15 <sup>th</sup> Sep, 2010 | 430953 | 1,00,00,000/-        |
| Karnatka Bank       | 16 <sup>th</sup> Sep, 2010 | 430954 | 45,00,000/-          |
|                     | <b>Total</b>               |        | <b>9,85,00,000/-</b> |

6. The above fund was given for Joint venture and for the purpose of motive of earning profit/gains in business, thus company was not charged any interest on funded amount with the agreed terms.

7. That PAN of our company is **AACCM0476B** and addressed to income tax Kolkata, India.

8. That our company's shareholder's fund was 79,31,57,250/- as on 31.03.2010 as per the Audited Balance Sheet of the Company with is filed Income tax as well as Register of Companies.

9. That above investment of 9,85,00,000/- (Rupees Nine Crore Eighty Five Lakhs Only) was from our own fund and not from borrowed fund.

10. The company has filed Return of Income voluntarily every year time to time. Whatever stated above is true and correct to the best my knowledge and belief Verified Day of Kolkata"

The assessee during the assessment proceedings and also during the appellate proceedings, submitted its financial statements, Confirmation letter from the investor, Company master data of the investor, and financial statements of the investor and copies of various judgements it relied upon in support of its contention and claimed that it complied with the provisions of Sec 68. During the course of appellate proceedings, the appellant filed name, address and PAN of the investor, loan confirmation., ledger account and financial statements of the investor, it is seen from the facts available on record that the AO has disputed and added the fund received for failure of the assessee to prove the ingredients enshrined for complying the provisions Sec 68 of the Act It is to be mentioned here that the existence of the transaction in the books of the assessee is a condition

precedent before any addition u/s 68 of Income-tax Act, 1961 is contemplated. The amount is duly reflected in the books of accounts of the assessee for the year under consideration. Therefore, the A.O has rightly invoked Sec 68 of the Act in the instant case. Provisions of Sec 68 of the Act in the assessee to satisfy three ingredients namely, the proof regarding identity of the loan creditors, their creditworthiness to give the loan and the genuineness of the transaction as a whole. Initial burden of proof lies on the assessee. The basic precondition for Sec 68 of Income-tax Act, 1961 is that the assessee should file a valid confirmation. The confirmation must contain clear identity of the creditor and indicate complete details of transactions. As far as creditworthiness or financial strength and genuineness of the transaction of the creditor is concerned that can be proved by producing the bank statement of the creditor or copy of return of income and balance sheet, showing it had sufficient balance in its accounts to enable it to offer the loan. Once these documents are produced, "the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the A.O. to scrutinise the same and in case he nurtures any doubt about the veracity of these documents, to probe the matter further.

Reference is invited to the decision of Hon'ble Delhi High Court in the case of CIT vs Himalaya International Ltd, 214 CTR Del 437 (2008) in which Hon'ble Court has held vide its order dated 30.07.2007 that if the Assessing officer harbours doubt of the legitimacy of any loan, he is empowered, and duty bound to carry out thorough investigation u/s 68 of Income-tax Act, 1961. The assessee has to prima facie prove (1) the identity of the creditor (2) the genuineness of the transaction (3) Financial capacity of the person, i.e. the credit worthiness of the creditor.

Further, reference is also invited to the decision of Hon'ble Calcutta High Court in the case of CIT Vs M/s Precision Finance Pvt Ltd (208 ITR 465). In this case the appellant has produced a valid confirmation letter proving the identity of the creditor. Similarly, ledger account and bank statements prove the genuineness of the transaction. The balance sheet submitted by the appellant proves that the investor had sufficient own money to invest proving creditworthiness of the party. For enhancing the evidentiary value, the appellant produced assessment orders passed u/s 143(3) of the Act in the case of MSPL for AY 2010-11 and AY 2012-13. (AY 2011-12 was not under scrutiny as stated by AR. Therefore, the material produced on record are adequate to comply with the provisions of Sec 68 of the Act.

The AO has rejected the -submissions on the ground that the assessee failed" to explain the nature and genuineness of the receipt of the funds from MSPL on the basis of report of Investigation Wing. The assessment order reveals that the addition is "entirely based on the report received from Investigation Wing, The AO did not bring any corroborative evidence or supporting material to prove that the money has been routed from various hawala parties as alleged in the Investigation .wing report. Similarly, concluding a transaction as non-genuine does not pass the test of legal scrutiny without proper enquiry to establish that the funds were either bogus or not utilised for business purpose. As explained in the previous paragraphs, the assessee is considered to have discharged its onus after submitting the documents like confirmation letter, financial statements of the creditor/investor and bank statements. The onus then shifts to the AO to initiate a proper enquiry and bring sufficient material on record against the appellant's submissions, if he does not accept the same. It is apparent that the AO did not initiate any

independent enquiry by issuing statutory notices/summons to the co-venture to verify the genuineness of the transactions. The reason may be that the assessee produced all the documents to the satisfaction of the AO and there is nothing that can be gathered by issuing notice u/s 133(6) or summons u/s 131 of the Act. It is the settled law that no assessee can be cast upon with tax liability on the basis of presumption^ surmise and conjecture.

The AO had a finding that the assessee did not produce copy of MOU or agreement undertaken by the assessee with MSPL. The addition has been made on the ground of genuineness and it is an undisputed fact that the assessee produced the documents which comply all the three ingredients of Sec 68 of the Act. When confirmation letter, financial statements and bank statements have been produced to prove the three ingredients of Sec 68 of the Act, no evidentiary value is attached to the copy of Joint venture agreement undertaken between the assessee and MSPL. The AO has also brought on record that the appellant failed to produce the Director of MSPL as his witness to prove the genuineness of the unsecured loan transaction. However, when an assessee submits all the documents, and if the AO rejects those documents, the next course of action for the AO is to put in efforts to gather evidences by conducting enquiry to examine the truth in respect of the cash credit which has not been done. As explained earlier, Hon'ble Delhi High Court in the case of CIT vs Himalaya International Ltd. 214 CTR Del 437 (2008) held vide its order dated 30.07.2007 that if the Assessing officer harbours doubt of the legitimacy of any loan, he is empowered and duty bound to carry .out thorough investigation u/s 68 of Income-tax Act, 1961.

The AO has analysed the financial strength of the appellant company and also the creditor M/s. MSPL to disprove the genuineness of the transaction and has presumed that the transaction was not as per business prudence. It is already mentioned that addition cannot be made on the basis of presumption, surmise and conjecture.

The AO has also doubted the source of funds of the coventurer. The provisions of Sec 68 as stood during the year under consideration do not entail the assessee to prove the source of source of funds. The assessee further informed that the lender M/s. MSPL's bank account for the relevant period did not show any cash deposits; on this count also the assessee has explained that the source of funds, when there were no cash deposits in the bank account of either the assessee or the lender, merely on suspicion the inference cannot be drawn. The above contention of the assessee has got force, hence, the same is considered. Further, the AO had a finding that MSPL liquidated its investments in unquoted shares to give non-interest bearing advances to the assessee company. On the other hand the assessee submitted that the disputed fund is not an unsecured loan advanced by MSPL to the appellant company but an investment in the joint venture and an investor cannot be questioned to utilise its funds in a particular manner. Similarly, there is no case for the additions made to the total income of the assessee on the basis of dubious transactions of third parties like Lalit Sharma.

With regard to funds brought back to the assessee through non existent and shell companies the assessee stated that Minaxi Suppliers Pvt Ltd. was in existent and carrying out business activities during the relevant period. Further, the assessee also submitted that there were no cash deposits in the bank account of lender or in the bank account of the assessee during the relevant period, therefore, the allegation of funds brought back to the assessee through shell companies was

not correct. It is also submitted there have been scrutiny assessment made in the case of MSPL for the assessment years 2010-11 & 2012-13 (AY 2011-12 was not under scrutiny as stated by the AR.)

With regard to the interest not charged by the lender M/s. MSPL the assessee submitted that the lender in its affidavit has mentioned that the funds are given for pursuing the joint venture activity as mentioned in the submissions made by the assessee during the appellate proceedings. In view of this the charging of interest by the lender does not arise.

As regards the findings of the AO that the affidavit filed by M/s. MSPL was undated, the assessee submitted that in reply to notice u/s. 133(6) of I. T. Act MSPL has filed duly executed affidavit confirming the transaction with the assessee, was correctly verified by the Notary and dated. The above submission made by the assessee has been verified and found to be correct.

With regard to proving identity, genuineness and creditworthiness of the lender M/s. MSPL the assessee submitted that, for identity, PAN of MSPL, certificate of incorporation, Memorandum of Articles Memorandum of Associations and Income Tax Return filing status of the creditor were submitted. To prove the genuineness of the transaction, copy of the bank account of the assessee, audited financial statements of the assessee and also of the lender and copy of the Affidavit of the creditor were submitted. To prove the creditworthiness the assessee submitted copy of the audited financial statements of the lender of M/s MSPL were submitted wherein the MSPL had a networth of Rs.79,31,57,250/- as on 31,03.2011 which proves the creditworthiness of the lender. It is also submitted by the assessee that the lender affirmed in the Affidavit that it had advanced the amount to the assessee from their own fund but not from borrowed fund. This categorically proves the creditworthiness of the lender. This also proves that there were no cash deposits in the Bank account of the lender during the relevant period.

From the above, it can be said that the assessee has done everything in its control to establish the bonafides of the transaction. **After considering relevant facts and various judicial precedents it is to be held that, once assessee files necessary evidences to prove identity, genuineness of transactions and also files necessary documents to prove capacity of the investor, then the AO cannot make additions.** The appellant- has also relied on the following case laws wherein the facts are similar to the assessee's facts.

**"i. Hon'ble Bombay High Court in the case of Orient Trading Co. Ltd. V/s. (1963) 49 ITR 723 (Bom.).:** Where any credits are found in the books of the assessee, the onus is on the assessee to prove the genuineness of the same and on failure of the assessee, the presumption u/s. 68 becomes absolute and the credits are treated as 'income' of the assessee. The assessee can discharge the onus by producing confirmation from the creditor and proving the source of the credits. When the creditor accepts/owns the loan, the assessee is deemed to have discharged his onus and no further responsibility lies on the assessee to prove the source from where the creditor has acquired the amounts advanced to the assessee. ii. Hon'ble Patna High Court in the case of Sarogi Credit Corporation V/s. CIT{1976 }103 ITR 344 (Pat) and Bombay High Court in the case of Shantilal Jain ITXA/687/2004 decided on 31.7.2007: When loan is accepted through normal banking channels, the identity of the creditor stands proved. However, merely because amounts have been received through banking

channels, it is not sufficient to prove the genuineness of the credits. But the existence of a bank account of the creditor itself proves the existence of the creditor. The reason is very simple. Where the amounts are owned by the creditors, then even if it be presumed that the creditor had advanced the amounts from his undisclosed sources, still it would become the income of the said creditor and not that of the debtor (the assessee)

iii. Hon'ble Gauhati High Court in the case of Nemi Chand Kothari V/s. CIT {2003} 264 ITR 254 (Gau.):The assessee cannot be called upon to prove the source-of-source.

iv. Hon'ble Karnataka High Court in the case of CIT V/s. Arunanda Textiles P. Ltd. (2011) 333 ITR 116 (Kar.): Where the assessee has submitted confirmations & affidavits from the creditors, the onus is not on the assessee to prove the creditworthiness of the creditors.

v. Hon. Gujarat High Court in the case of DCIT v. Rohini Builders (2002) 256 ITR 360 (Gui): When all the requirements such as complete addresses of all the Creditors along with GIR Nos / PAN as well as Confirmations along with Copies of Returns filed by the Creditors and all loans were received and repaid by account payee cheques nothing more is required were to be filed.

vi. In the case of Prin. Commissioner of Income Tax, Mumbai v. Veedhata Tower Pvt. Ltd., the question of law raised was raised before Hon'ble Bombay High Court was "Whether on the facts and in the circumstances of the case and in law the Tribunal is correct in interpreting Sec. 68 to hold that the A.O. was not entitled to enquire into the source of the source to come to a finding that a particular credit was not genuine in terms of Sec. 68."

After detailed discussion, the Hon. Court held that the assessee has submitted all the required details, the assessee is not supposed to explain the Source of Source of Receipts. Besides, the Statute by an amendment to Sec 68 of the Act w.e.f. 1.<sup>st</sup>April, 2013, effective from asstt.year 2013-14. Therefore during the subject asstt.year there was no requirement to explain the Source, of the Source. Be that as it may, the impugned order of the Tribunal held that the respondent assessee had discharged the onus placed upon it under Sec. 68 of the Act by filing confirmation letter, the Affidavits, the full address and PAN Numbers of the Creditors Therefore, the Revenue had all the details available with it to proceed against the persons whose source of funds were alleged to be not genuine as held by the Apex Court in CIT v. Lovely Exports (P) Ltd. (2009) 319 ITR (ST) 5 (SC). Hence the Court held that the Department cannot ask the Source of the Source for years prior to 2013-14.

vii. Bombay High Court in the case of Gangadeep Infrastructure 394 ITR 680 (Bom.):This proposition can be had from the proviso inserted in sec.68 by Finance Act, 2012 from AY 2013-14. Under this proviso, where the assessee receives share application monies/premium, the assessee is expected to prove source-of-source as well. Firstly in the case in hand, the amounts received are not share investment and further this proviso would apply only from A.Y. 2013-14. However, the said proviso was inserted because, sec.68 (Unamended) was incapable of obliging the assessee to prove the source-of-source and hence the proviso was required to be inserted. It follows that

where the proviso doesn't apply, the sec.68 does not put the burden on the assessee to prove the source-of-source.

viii. Hon'ble Supreme Court in the case of CIT V/s. Daulat Ram Rawalmull 87 ITR 349 (SC): It is not the business of the assessee to find out the source of the money of his creditors.

ix. Hon'ble Apex Court in the case of CIT vs Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC): It is also possible that a creditor may have advanced funds from out of his exempted income. For eg. If the creditor has agricultural income which is exempt, then merely because the creditor is not assessed to tax, it does not follow that the credits are assessee's income."

During the course of appellate proceedings, the assessee has given further submissions relying on and citing the case laws decided by Hon'ble Courts which are applicable to the facts of the assessee's case. The gist of certain cases submitted by the assessee is as under:

1. Dy. CIT-CC7{2}, Mumbai vs. Manba Finance Ltd, (ITA: 1448, 1449 & 1467/Mum/2017) 'I' Bench, Order dated 05.10.2018 for A.Y.2013 -14, 2011-12 & 2010-11:

In the above case the Hon'ble Members of ITAT 'I<sup>1</sup> Bench, Mumbai has decided the issue vide order dated 05 10.2018 on page no.33 para no.42 which is as under "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 Id. 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 Id. 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 he 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 Id, 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 Id. CIT(A)".

2 M/S. Reliance Corporation Vs. ITO Ward 32 (3) (2), Mumbai, (ITA : 1069 to 1071/Mum/2017) 'D' Bench, Mumbai vide order dated 12.04.2017 for A.Y.2008-09, 2009-10 & 2010-11 & (ITA :4946/Mum/2016) for A.Y.2012-13;

In the above case the Hon'ble Members of ITAT 'D' Bench, Mumbai has decided the issue vide order dated 12.04.2017 on page no. 16 para no. 9 & page no. 17 & 18 para no. 10 which is as under.

In our considered view the facts of the assessee case are squarely covered by the ratio (aid down in the decisions referred to above. We, therefore, in view of our observations and the ratio laid down by the various decisions are inclined to set aside the order of CIT(A) and direct the A.O. to delete the additions of Rs.1,29,04,231/-. Since we have decided the issue of addition u/s 68 in favour of the assessee, the addition as sustained by the Id CIT(A) u/s 69C of the Act of Rs. 3, 45,0007- is also ordered to be deleted. In result the appeal of the assessee is allowed.

In remaining appeals of the assessee for the assessment years 2008-09 and 2009-10 the grounds taken by the assessee are same excepts figures and the loan creditors and hence the decision taken in ITA No.1071/Mum/2017 would, mutatis mutandis, apply to these appeals as well and hence these appeals are allowed as indicated above.

ITA No.4946/Mum/2016 for A.Y.2012-13

Since, we have decided the appeals of the assessee for the assessment year 2008-09 to 2010-11 in favour of the assessee and the grounds taken by the revenue in A.Y.2012-13 are same with respect to accommodation entries from the same group. Since we have already decided the issue in favour of assessee in ITA No.1071/Mum/2017. Therefore in view of our decision in ITA No.1071/Mum/2017 the appeal of the revenue stands dismissed.

3. ITO - 3(3)(4), Mumbai vs Harsh Dalmia (ITA No. 7460/Mum/2016) order dated 26.06.2019 for A.Y.2009-10 & (ITA No. 6807/Mum/2018) order dated 26.06.2019 for A.Y.2010-11:

In the case of Harsh Dalmia, Honourable Mumbai Tribunal has decided as under while deleting the addition of Rs.58,20,0000/- made under section 68 by the Assessing officer in respect of Loan borrowed from a company subject to investigation by the Kolkata Investigation Wing and the information of which is forwarded to the Assessing officer in the order passed vide ITA No.7460/Mum/2016 of Assessment Year 2009-10 and ITA No. 6807/Mum/2018 of Assessment Year 2010-11 vide order dated 26 June, 2019:

We find that the identity, credit worthiness and genuineness of the M/s Basant Marketing Private Ltd is not in dispute. Sufficient evidence has been given in these cases to prove the identity, genuineness and creditworthiness of the M/s Basant Marketing Private Ltd. The CIT(A) has specifically pointed out this fact that no evidence is on record to which identity, creditworthiness and genuineness of the claim of the loan can be doubted, Taking into account was all these facts and circumstances, we are of the view that CIT(A) has decided the matter of the controversy judiciously in correctly which is not liable to be interfere with at this appellate stage Accordingly, these issues are decided in favour of the assessee and against the revenue.

4. ITO -4 (1) (3), Mumbai vs Agarwal Cloth Agency Pvt Ltd (ITA : 2969/Mum/2017) order dated 23.08.2019 for A.Y.2007-08:

In the case of Agarwal Cloth Agency Private Limited, Honourable Mumbai Tribunal has decided as under while deleting the addition of Rs. 1,25,00,000/-made under

section 68 by the Assessing officer in respect of Loan borrowed from a concern of Pravinkumar Jain & Group was subject to investigation by Mumbai investigation Wing and the information of which is forwarded to the Assessing officer in the order passed vide ITA No. 2969/Mum/2017 of Assessment Year 2007-08 vide order dated 23 August, 2019:

5. ACIT vs Sridham Builders ITAT, Mumbai in ITA No. 5589/Mum/2017

In this case the Tribunal has considered an identical issue of additions made u/s 68, in respect of share capital received from companies controlled and operated by Shri Praveen Kumar Jain, and after considering relevant facts and also by relied upon various judicial precedents held that once, assessee filed necessary evidences to prove identity, genuineness of transactions and also filed necessary documents to prove capacity of the investors, then the AO cannot make additions only on the basis of information received from third parties. The relevant findings of the Tribunal are as under-Coming to the case laws relied upon by the Ld DR. The Ld. DR has relied upon the decision of Hon'ble Gujarat High Court in the case of Pawan Kumar M Sanghvi vs ITO (supra). We find that the Hon'ble Gujarat high Court, while affirming, the findings of the ITAT, came to the conclusion that when, the AO was specifically asked the assessee to produce the parties for verification, the assessee has failed to produce said parties for verification. Therefore, impugned amount was rightly brought to tax u/s 68 of the Act. We further noted that the Ld. DR has relied upon the decision ITA No.2969/Mum/2017 Agarwal Cloth Agency Pvt .Ltd. transactions and creditworthiness of the parties In this case, on perusal of facts available on . record, we find that Ld. CIT(A) had recorded categorical findings in light of various evidences filed by the assessee to come to conclusion that the assessee has discharged its onus, but the Ld.AO has not reached to a logic conclusion by carryout, further verification in light evidence filed by the assessee.

Therefore, we are of the considered view that, the case laws relied upon by the Ld- DR are not applicable to the facts of present case.

In this view of the matter and considering the case laws discussed hereinabove, we are .of the considered view that the Ld. CIT(A) has rightly deleted additions made by the AO towards share capital received from three companies, on the basis of various evidences filed by the assessee, including confirmation letter from ITA No.2969/Mum/2017 Agarwal Cloth Agency Pvt. Ltd. the shareholders. We do not find any error or informative in the findings of Ld. CIT(A) and hence, we are inclined to uphold order of the Ld. CIT(A) and dismissed appeal filed by the revenue.

6. Income tax Officer 20(2)(5), Mumbai v.Smt. Pratima Ashar, reported in (2019) 107 taxmann.com 135 (Mum Tribunal), 11 dated 6th June, 2019.

We have given a thoughtful consideration to the facts of the case, and are unable to persuade ourselves to subscribe to the view taken by the A.O. As per Sec. 68 of the I-T Act, the assessee remains under a statutory obligation to substantiate both the "Nature" and "Source" of a 'sum' found credited in his books of accounts maintained for any previous year. In case, the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the A.O, satisfactory, then the sum so credited may be charged to income tax as the income of

the assessee for that previous year. Accordingly, as per the mandate of the aforesaid statutory provision, the assessee is obligated to substantiate on the basis of a plausible explanation the nature and source of a sum found credited in his books of accounts. In the case before us, we find, that as is discernible from the records, the assessee in discharge of the "onus" that was cast upon him as regards proving the "Nature" and "Source" of the amount aggregating to Rs.1,05,00,000/- which was claimed by him to have been raised as loans from the aforementioned six companies, had therein placed on record supporting documentary evidence viz. (i) copies of the returns of the lender companies; (ii) copies of their audited financial statements; (iii) copies of the bank accounts of the lender companies; and (iv) the 'affidavits' of the principle officers of the lender companies, wherein they had confirmed the loan transactions. Further, on a perusal of the bank accounts of the aforementioned lender companies, all of which we find were being assessed to income tax therein revealed that there was no immediate cash deposits in their respective bank accounts in order to facilitate advancing of the loans to the assessee. In nutshell it is neither the case of the revenue, nor a fact borne from the records, that the assessee had routed his own money in the garb of the unsecured loans raised from the aforementioned parties. As observed by the CIT(A), the assessee had also deducted tax at source at the time of payment/crediting of the interest on the loans raised from the aforementioned companies. Accordingly, in the backdrop of the aforesaid facts, we are of a strong conviction that the assessee had sufficiently discharged the 'onus' that was cast upon him as regards proving the authenticity of the loan transactions under consideration. As per the settled position of law, once the assessee had proved the genuineness of the transactions, identity of the creditors and the creditworthiness, the "onus" was thereafter shifted on the A.O to prove otherwise. In fact, in the case before us, as the loans had been raised by the assessee from certain companies which on the basis of information received by the A.O from the office of the DDIT (Inv-II), Mumbai, were stated by the A.O to be the companies which were controlled by Shri. Praveen Kumar Jain, an infamous accommodation entry provider, therefore, it was all the more onerous on the part of 'the A.O. to have demonstrated on the basis of supporting 'material' that accommodation entries in the garb of loans was provided by the said six companies by adopting the modus operandi of Sh. Praveen Kumar Jain and his group entities. However, we find, that as observed by us hereinabove, the A.O except for harping on the fact that the assessee had raised the loans from the companies which were controlled by Shri Praveen Kumar Jain, had absolutely done nothing which would conclusively prove that no genuine loans were raised by the assessee from the aforesaid companies. On the contrary, the notices which were issued by the AO under Sec.133(6) to the aforementioned companies, wherein they were called to share certain information viz. nature of activities of the lender companies, source for giving the loans etc., were duly complied with by the said concerns and the requisite documents were placed on the record of the A.O by the aforementioned companies. We find that the A.O who ought to have made necessary verifications as regards the authenticity

of the loan transactions by summoning the principal officers of the aforementioned companies under Sec. 131 of the I-T Act, and also carrying out field inquiries/investigations as regards the identity and creditworthiness of the investor companies, and also the genuineness of the transactions, had however, not even done the bare minimum. Rather, only on the basis of his observations that the search proceedings conducted on Shri Praveen Kumar Jain group revealed that he was engaged in the business of providing accommodation entries, that the A.O had hushed to the view that the loan raised by the assessee from the aforementioned companies were to be dubbed as accommodation entries. We are unable to persuade ourselves to subscribe to the aforesaid view so arrived at by the A.O. In fact, a perusal of the assessment order reveals as if the A.O was framing the assessment in the case of Shri Praveen Kumar Jain, and not in the case of the assessee. It is in the backdrop of the aforesaid factual position, we find, that the CIT(A) observing that as the assessee had duly discharged the „onus" that was cast upon him under Sec. 68 for proving the authenticity of the loan transactions, therefore, in the absence of any 'material' placed on record by the A.O to dislodge the said duly substantiated claim of the assessee, there was no occasion for him to have to re-characterised the loans raised by the assessee as accommodation entries.

7. Assistant Commissioner of Income-tax, Central Circle-17, Jhandewalan, New Delhi v. Shyam Indus Power Solutions (P.) Ltd., [2018] 90 taxmann.com 424 (Delhi - Trib.).

Assessee had furnished names and addresses of share applicants, their PAN and confirmation with their bank account and Income-tax returns - Moreover, Assessing Officer had not at all carried out any investigation to show that those companies did not exist but were paper company; they were not having worth of investing and transaction lacked genuinity - Further investigation wing report was not shown to assessee - Whether, thus, assessee had discharged initial onus cast upon him under section 68 and no addition was called for - Held, yes [Para 35] [In favour of assessee].

The relevant portion of the judgement is as under:

34. From the above discussion it is apparent that on furnishing of information by the assessee of all these companies from whom the assessee has taken unsecured loan as well as share application money, the Id Assessing Officer has not at all carried out any investigation to show that:

- a. those companies do not exist but are paper company,
- b. they are not having worth of investing in the company and the transaction lacks genuinity despite having their income tax details and annual accounts.
- c. Despite specific request, no details are called for either from the assessee or form the investor/lender companies or from bankers.
- d. Despite specific request by assessee, no summons u/s. 131 or inquire letter u/s. 133 (6) of the act were issued.

- e. No inspector report with respect to the investor/lender company was obtained or available with AO.
- f. Investigation wing report was not mentioned or shown about the assessee.

35. In fact, Id Assessing Officer should have either obtained the complete details from the MCA Website or should have issued 133(6) query letter to the Registrar of Companies for obtaining the annual reports, annual returns under the Companies Act and share holders & director's details since beginning of those companies. He should have further obtained the DIN (Director's Identification no) of the directors of the companies which is linked with the Permanent Account No or any identification details of the directors. The details from bankers should also have been obtained with respect to the unusual transactions in the account of the investors as per F & U Ind wing as Id AO has alleged that the investors have high value transactions. The Directors, persons operating the accounts of those companies should have been examined by vast powers with the Assessing Officer under the Income Tax Act as well as under the other acts. The Id AO should have also intimated and coordinated with the assessing officer of those companies about the business activity or their assessment history. The similar information should have been obtained from the bankers of the company with respect to the beneficiaries, the account operating instructions, and authorities of those accounts along with copies of the bank account of these parties since the date of opening of accounts. The details from bankers should also have been obtained with respect to the unusual transactions in the account of the investors as per F & U Ind wing as Id AO has alleged that the investors have high value transactions. The above information so collected and on examination of director or major shareholder of the investor/lenders company, the Id Assessing Officer should have formed his opinion about the existence of those companies and motive behind such companies. After framing the prima facie opinion, he must exercise vast powers available with him under the Income Tax Act with the Assessing Officer of those companies to investigate the correct facts then should have placed before the assessee to rebut it. Strangely, none of the above exercise has been carried out by the Assessing Officer. The inspector's report relied upon the by the Id AO was not related to the companies who have invested money in the company loan or share capital. Even though such information not obtained/collected during the assessment proceedings, even such information could also have been collected in subsequent proceedings of penalty etc and placed before either the CIT (A) or coordinate bench as additional evidences. Even that is not being done. Even otherwise, it is not for us to say that what options are available with the Id AO and in what manner and up to what extent he must do the investigation and inquiry, but we are of the view that he is bestowed up on with immense power under the income tax act as well as other acts. None of them has been looked at leave aside the exercise of such powers. In such .circumstances,- it is apparent that Id AO does not have any evidence to allege that share application money as well as such loans taken by the assessee is bogus. Hence, we are of the view that assessee has discharged

initial onus cast-up on him u/s. 68 of the act with respect to loan as well as share application money.

**36.** The Id CIT DR relied upon plethora of decisions to support the case of the revenue, but in absence of any evidence collected by the Id AO, they do not advance the case of the revenue, still, we deal with them as under:—

(a) Ld. CIT DR heavily relied up on the decision of Hon'ble Delhi High Court in CIT V. Nipun builders & Developers (P.) Ltd. [20131 350 1TR 407/214 Taxman 429/30 taxmann.com 292 (Delhi) wherein addition under section 68 was made with respect to the share capital received from several companies. The assessing officer issued summons to the subscriber companies which were returned unserved with remark that no such company exist. The inspectors were also sent for verification of the address of the above companies who also confirmed the same. Moreover, the assessee failed to produce principal officers of the subscribers of the company who could explain the source of such shares of the subscription in that circumstances the addition was confirmed. In the present case there is no enquiry made by the Ld. Assessing officer by issue summons under section 131 of the Income Tax Act or issuing enquiry letter under section 133 (6) of the Income Tax Act. In view of this, the reliance on this decision does not help the case of the revenue.

(b) The decision of the Hon'ble Delhi High Court in case of CIT v. Nova promoters and Finlease (p.) Ltd. (Supra) relied upon by the Ld. Assessing officer, Id CIT DR as well as by the assessee. We have already decided the issue in the present appeal relying on the para Nos. 34 -39 of that particular decision. In that particular case before the Hon'ble Delhi High Court, there was a letter from the director of Income Tax (Investigation), which furnished detailed information regarding entry operators and accommodation providers According to that letter, the Ld. AO noted that there were 16 entry operators who had given accommodation entries to several persons of which the assessee was also one of them. The Ld Assessing Officer also issued summons two persons and the AO also issued summons to some other companies. There was no response to those summons, which were served and many of them had been returned unserved. The Ld. Assessing Officer further sent an inspector who reported that no such person or company was available or existing at the address to which summons were issued In that particular case, the Ld. assessing officer asked assessee to produce the persons and companies from whom it had received share application money which was also not complied with by the assessee. In these facts and circumstances the addition under section 68 was confirmed. However, in the present case there is no statement of any of the persons who have stated that the entries of loan and share application money taken by the assessee are bogus. There does not exist any enquiry made by the Ld. Assessing Officer by issue of summons under section 131 of the income tax act, either to the assessee or to the any of the Directors of those companies. The Ld

assessing officer has also sent the Inspector who went to examine some other companies but not the companies from which the assessee has taken unsecured loan or has received share application money. No direction has also been given to the assessee to produce the directors of the companies for examination. The case before us is complete lack of any enquiry by the assessing officer. Further, in that decision itself 'Hon'ble Delhi High Court has held that if the assessee furnishes the requisite information available with him and assessing officer does not make any enquiry on such information, then in such cases no addition u/s. 68 can be made.

(c) The next decision relied upon by the Ld. CIT DR is of NR Portfolio (P.) Ltd (Supra) wherein case of a private ltd company where specific summons were issued to- the shareholders of the company who did not attend investigation proceedings before the Ld. Assessing Officer and the notices were received unserved. The Hon'ble Delhi High Court has held that the duties of assessee in case of receipt of cash from investor when the assessee submits the complete details with respect to those investors then onus are discharged. It was further held that if on verification or during the proceedings the AO cannot contact the share applicants or information becomes unverifiable or there are further doubts then onus shifts back to the assessee at that stage assessee falters then, the consequence would be an addition u/s. 68 of the Act. In fact, in the present case no enquiry has been conducted by the assessing officer with respect to the above sum of loan as well as investment by the companies in share application money.

(d) In the case of CIT V. Empire Builder (P.) Ltd. [2014] 43 taxmann.com 269/[2015] 228 Taxman 346 (Mag.)/[2014] 366 ITR 110 (Delhi), which was relied upon by the Ld. CIT DR the fact showing that the summons or the enquiry letters were issued under section 133 (6) to the investors. The investor did not respond to the notice and confirmation was also not submitted. In that particular case also the addition is required to be made only in case of investor whose particulars could not be verified and who did not respond to notices. In the present case no such information was collected by the assessing officer and no such enquiry letters were sent.

(e) The next decision relied upon is Focus Exports Pvt. Ltd (Supra) wherein, the additions were upheld even the address and PAN no were not provided and in some of the depositors there is immediate withdrawal of money was found- In that particular the Hon'ble High Court drew obvious inference that the assessee had intentionally tried to block and obstruct inquiries knowing the nature of the transactions. In that particular case summons were also issued which remain uncomplied with. The present case is complete lack of inquiry/investigation on the investment made.

(f) The next decision relied upon was in case of CIT V. MAF Academy (P.) Ltd. [2014] 42 taxmann.com 377/244 Taxman 212 (Maq.)/361 ITR 258 where the assessee a private limited company sold shares at a huge premium to an unrelated party and purchased back at less

than face value where it was held that even despite production of details such as PAN no ' and income tax returns may not be sufficient to cross the threshold of satisfaction u/s. 68 of the Act and addition can be made on the basis of surrounding circumstances. In that particular decision in para No. 8 modus operandi adopted by the entry operator was also noted. However, in the present case there is no allegation of any entry operator involved as well as the shares are not at all allotted during the year but remained share application money only. Therefore, the facts of the above case are different.

(g) The Ld. CIT DR further relied upon the decision of the Hon'ble Supreme Court in case of Novadaya Castles (P.) Ltd V- CIT , f20151 56 taxmann.com 18/230 Taxman 268 (SC) wherein the special leave petition filed by the assessee against the decision of the Hon'ble Delhi High Court Navodaya Castles (P.) Ltd. (Supra) has been dismissed. In that particular decision the facts were that summons were issued to the alleged shareholders and they were required to personally come and depose. The summons remained unserved therefore, the assessee was asked to produce the share holder. Further, huge cash deposits were also deposited regularly in the accounts of the share holders and then cheques were issued to the assessee. The assessee also expressed its inability to produce the share holders stating that they were not share holders later on. There was also an allegation that the company was under the control one Mr. Mahesh Garg who was an entry operator. In those circumstances the addition were made. In the present case before us neither summons were issued nor was assessee asked to produce anybody, There was no allegation about any entry operator also. Therefore, reliance on the decision of Hon'ble Delhi High Court is misplaced.

37. Further, the Hon'ble Delhi High Court in case of Laxman Industrial Resources (Supra) after discussing the several decisions of the Hon'ble Delhi High Court has held that when assessee has provided several documents that could have showed light into whether truly transactions are genuine. That was not the case where the share applicant have merely provided the confirmation but have also provided their assessment particulars, mode of payment, bank statement showing cheque no and transfer of funds to the assessee as well as copies of the balance sheet etc. Therefore, the Hon'ble High Court noted that the AO has strangely failed to conduct any scrutiny of documents rest contended by placing merely reliance on the report of Investigation Wing which Hon'ble High Court remarked as spectacular disregard to an AO's duties which revenue seeks to inflict upon the assessee. Similarly in the case before us even there is no report of Investigation Wing and assessee has furnished complete information as could have been submitted by it the Id Assessing Officer has failed to conduct any scrutiny of such documents or further inquiry from external source in any manner, the issue is squarely covered in favour of the assessee We also draw support from another decision of the Hon'ble Delhi High Court in case of Pr. CIT V. Oriental International Co (P ) Ltd IT Appeal

No. 9 of 2018 dated 08/01/2018 wherein, the High Court has held that if the AO were to conduct his task diligently he ought to have at least sought the material by way of inquiry to discern the fact about the source of the money. In the absence of any such inquiry the Hon'ble Court was of opinion that the findings holding that assessee had not discharged the onus placed upon it by law cannot be considered unreasonable. Thus, Hon'ble High Court stressed the need that AO must have made definite inquiries on the information submitted by the assessee to sustain the addition u/s 68 of the act.

**Nextgen Construction Pvt. Ltd. CIT(A)-22 order 28.02.2019**

We hereby submit before your honor the case of our amalgamating company i.e. AETIUS Constructions Pvt. Ltd. previously known as Nextgen Construction Pvt. Ltd. wherein similar issue related to receipt under Joint Venture Arrangement from Minaxi Suppliers Pvt. Ltd. as has been decided in favour of Amalgamating Company M/s. Nextgen Construction Pvt. Ltd. by CIT (A) v- 22 vide order dated 28/02/2019.

In nutshell the AO's findings and submissions of the Appellant are as under: -

Section 68 casts the initial onus on the assessee to establish the identity and credit worthiness of the investor and to prove the genuineness of the transaction. In the instant case it is observed that the Appellant has discharged the initial onus by furnishing the Name, Address, PAN, Copy of ITR, Copy of Bank Statement and Confirmation from the Investor/Creditor. Details of assessment completed for the A.Y. 2010-11 & 2012-13 of lender also have been filed. Further, the assessee also explained that it was not a shell company.

The amount of loan from the company had come through account payee cheques/bank transfers. The same had not come through cash. As per the affidavit submitted by the lender no cash was deposited in the investor company's bank account on dates immediately preceding the dates on the said cheques were issued.

Further, the assessee has also submitted that the amount received was under joint venture activity hence, interest was not charged.

The statutory requirement u/s. 68 till A.Y. 2012-13 was that the assessee was duty bound to explain the "source". From A.Y. 2013-14 the scope of sec.68 was widened and the Appellant was made liable to explain the source of source. In the year under appeal it is submitted that the assessee had not only explained the source but had also explained the source of source. The assessee has also explained that the observation of the AO stating that the assessee brought back it's own money through shell companies was not based on any evidence but only presumption.

The lender is a corporate entity. It is maintaining proper Books of accounts. These books of accounts are subjected to Statutory Audit by Independent Auditors. The Audited Balance Sheet and Profit and Loss accounts are duty filed with Income Tax Department and Registrar of

Companies and are available In public domain. The above, as submitted by the assessee goes to prove the financial strength of the lender company.

It is also explained that "It is not necessary for any investor to maintain very high bank balance. In the case of companies, they are required to maintain current accounts that yield no interest, it will therefore be imprudent for any company to keep large balances in their bank accounts."

In view of the above discussion and material available on record. I am of the considered opinion that the appellant has fully discharged the onus cast upon him u/s. 68 of the Act. The following decisions of the Hon'ble ITAT and High Courts and Hon'ble Supreme Court are relied:

Nextgen Construction Pvt. Ltd. CIT(A)-22/ACIT-14(2)(3)/IT-302/2016-17 of dated 28/02/2019 in case of Goldcity Properties Pvt. Ltd. ITAT Mumbai ref. no. ITA No.2179/ Mum/ 2019, Decision of Hon'ble ITAT Mumbai in the case of Manba Finance Ltd ITA No. 1448, 1449, 1447, dated 05.10.2018, M/s. Reliance Corporation vs. ITO-ITA no. 1069 to 1071 dated 12.04.2017 ITO vs. Harsh Dalmia. ITA No.7460 dated 26.06.2019 ITO vs. Agarwal Cloth Agency Pvt Ltd. ITA No. 2969 dated 23.08.2019, ITO vs. Smt. Pratima Ashar 107 taxman.com 135 dated 06.06.2019, ACIT vs. Shaym Indus power solution (P) Ltd 90 Taxman.com 424. ITAT Delhi, Sarogi Credit Corporation V/s. CIT [1976] 103 ITR 344 (Pat) Shantilal Jain ITXA/687/2004(Bombay High Court). Rushabh Enterprises vs ACIT 60 Taxman com 134 (Bom.): CIT VS. Gagandeep infrastructure ITA No. 1613 of 2014 (Bom.) CIT vs. Daulat Ram Rawaltnuil 87 ITR 349 (SC), CIT vs Onssa Corpn (P) Ltd. 159 ITR78, (SC), CIT vs. Stellar Investment Ltd 251 ITR 263 and M/s Lovely Exports Private Limited v. CIT [2008] 216 CTR 195 SC.

Gist of some of the cases are as under:-

**1. No, CIT(A)-22/ACIT- 14{2}{3}/iIT-302/2016-17 of Nextgen Construction Pvt Ltd. dated 28/02/2019**

Nextgen Construction Pvt. Ltd. Wherein, similar issue related to receipt under Joint Venture Arrangement from Minaxi Suppliers Pvt. Ltd. as has been decided in favour of Amalgamating Companies by CIT (A) - 22 vide order dated 28/02/2019.

**2. Hon'ble ITAT Mumbai ref. no. ITA No.2179/ Mum/ 2019 in case of Goldcity Properties Pvt. Ltd.**

In the above case, the LD. AO has carefully considered the facts and the evidences and passed re opened assessment order by accepting the returned income of an assessee without making any addition. The said assessment order passed u/s. 143(3) read with section 147 was revised by passing Order u/s. 263 Ld. PCIT -14 against the Goldcity Properties Pvt. Ltd.

However, after considering the entire facts, the Hon'ble ITAT in the above, SET ASIDE the Order u/s 263 of Ld. PCIT 14, as the assessment order of Ld. AO was not erroneous and also not prejudicial to the revenue by ITAT Order dated 21/6/2019.

Similarly, in this present case, the Ld. AO ought to have accepted the returned income declared by the appellant in the return of income

**3. Assistant Commissioner of Income-tax, Central Circle-17, Jhandewalan, New Delhi v. Shyam Indus Power Solutions (P.) Ltd., [2018] 90 taxmann.com 424 (Delhi - Trib.).**

Assessee had furnished names and addresses of share applicants, their PAN and confirmation with their bank account and Income-tax returns - Moreover, Assessing Officer had not at all carried out any investigation to show that those companies did not exist but were paper company; they were not having worth of investing and transaction lacked genuinity - Further investigation wing report was not shown to assessee - Whether, thus, assessee had discharged initial onus cast upon him under section 68 and no addition was called for - Held, yes [Para 35] [In favour of assessee].

**4. CIT VS. Gagandeep Infrastructure ITA No. 1613 of 2014 (Bom.)**

Hon'ble Bombay High Court in the case of CIT vs Gagandeep Infrastructure Ltd (2017) 394 ITR 680 (Bom) the Hon'ble Court observed that Proviso inserted to section 68 w.e.f. 01-04-2013 is considered to be prospective in nature and applicable from A. Y. 2013-14 onwards. Therefore, we are of the view that no addition can be made u/s 68 of the Income-tax Act, 1961 in respect of share capital and share application money or share premium before insertion of Proviso to section 68 if the source of source is not explained by the assessee.

**5. Hon'ble Apex Court in the case of CIT vs Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC):**

It is also possible that a creditor may have advanced funds from out of his exempted income. For eg. If the creditor has agricultural income which is exempt, then merely because the creditor is not assessed to tax, it does not follow that the credits are assessee's income."

**6. Hon'ble Apex Court in the case of CIT vs. Daulat Ram Rawaltnull 87 ITR 349 (SC);** held as "it is not the business of the assessee to find out the source of the money of his creditors."

**7. Hon'ble Bombay High Court in the case of Orient Trading Co. Ltd. V/s. [1963] 49 ITR 723 (Bom.):** Where any credits are found in the books of the assessee, the onus is on the assessee to prove the genuineness of the same and on failure of the assessee, the presumption u/s. 68 becomes absolute and the credits are treated as income of the assessee. The assessee can discharge the onus by producing confirmation from the creditor and proving the source of the credits. When the creditor accepts/owns the loan, the assessee is deemed to have discharged his onus and no further 'responsibility lies on the assessee to prove the source from where the creditor has acquired the amounts advanced to the assessee.

**8. Hon'ble Patna High Court in the case of Sarogi Credit Corporation V/s. CIT [1976] 103 ITR 344 (Pat) and (Bombay High Court) in the case of Shantilal Jain ITXA/687/2004 decided on 31.07.2007:** When loan is accepted through normal banking channels, the identity of the creditor stands proved. However, merely because amounts have been received

through banking channels, it is not sufficient to prove the genuineness of the credits. But the existence of a bank account of the creditor itself proves the existence of the creditor. The reason is very simple. Where the amounts are owned by the creditors, then even if it be presumed that the creditor had advanced the amounts from his undisclosed sources, still would, be become the income of the said creditor and not that of the debtor (the assessee).

**9. Hon'ble Apex Court in the case of CIT vs. Lovely Exports Ltd. 216 CTR 195 (SC).**

The Apex Court in CIT v/s. Lovely Exports (P)Ltd. 317 ITR 218 in the context to the preamended 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.

From the above factual position and the decisions of the Hon'ble Courts and Hon'ble ITAT, on this subject it is concluded that a transaction which is supported by documentary evidences could not be treated as bogus or non-genuine merely on the basis of doubts raised regarding the same. There is no evidence brought on record and mentioned in the assessment order to prove the conclusions drawn by the AO. The outcome of enquiry carried out in the case of Kolkata based entities and the conclusions drawn therein cannot be applied *ipso facto* and in a sweeping manner to all other cases who have entered into transactions during that period without making any enquiry or investigation to examine the genuineness of the particular transaction which is under suspicion. In view of the facts and circumstances mentioned above, in my opinion, the 'appellant has submitted sufficient evidences to prove the identity and creditworthiness of the lender and also the genuineness of the transactions during the year under consideration. In these circumstances, in my considered opinion, the assessee's contention has considerable cogency and accordingly the AO is directed to delete the addition of Rs.9,85,00,000/- made to the total income of the assessee u/s68 of the Act. Therefore, this ground of appeal is allowed."

7. The Ld. D.R., on the other hand, strongly opposed the arguments of the Ld. A.R. that this is a covered issue by the order of co-ordinate bench of the Tribunal in assessee's sister concern's case as stated supra. The Ld. D.R. relied heavily on the order of AO by submitting that assessee has brought back its own unaccounted money into the books of accounts through layering in non existent and shell companies as brought out by the investigation wing, Kolkata. The Ld. D.R. submitted that

this is a big racket of hawala operators who are receiving cash from various parties and by depositing into bank accounts of one entity and thereafter transferring into various other shell and non existent entities which have no creditworthiness and genuinity and finally giving the money back to the same persons from whom the money was received. The Ld. D.R., therefore, prayed that the order of co-ordinate bench of the Tribunal may not be followed in this case though the facts are similar. The Ld. D.R. also submitted that though the assessee filed necessary evidences as noted by the Ld. CIT(A) on page No.42 of the appellate order but that itself does not prove that the money raised was genuine which was allegedly paid to the assessee towards the joint venture. The Ld. D.R., therefore, prayed that the order of Ld. CIT(A) may kindly be reversed and that of AO may be restored.

8. After hearing both the parties and perusing the material on record particularly the decision of the co-ordinate bench of the Tribunal in ITA No.3593/M/2019 A.Y. 2010-11 dated 25.06.2020 of sister concern of the assessee, we observe that the issue on similar facts has been decided by the co-ordinate bench of the Tribunal in the said case namely ITO Vs Nextgen Construction Pvt. Ltd. Briefly in that case the facts are that the money was raised towards joint venture under similar facts and the co-ordinate bench of the Tribunal upheld order of Ld. CIT(A) on the ground that Ld. CIT(A) has correctly recorded the findings of facts that assessee has filed all the necessary evidences before the authorities below thereby proving all the three ingredients of section 68 of the Act and thus upheld the order of Ld. CIT(A) as

being speaking, reasoned and correct one. The said operative part of the order is reproduced as under for the sake of ready reference:

“5.1 Upon due consideration of rival submissions and material on record, we find that as per the provisions of [Section 68](#) of the Income Tax Act, 1961, where any sum is found credited in the assessee's books and assessee offers no explanation about the nature and source thereof or the explanation furnished is found to be unsatisfactory, the sum so credited may be charged to Income-Tax as the income of the assessee of that previous year. A proviso has been inserted to the said section by [Finance Act](#), 2012 w.e.f. 01/04/2013 to provide that where the assessee is a company and the sum so credited consists of share application money, share capital, share premium etc., the explanation furnished by the assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded also offers an explanation about nature and source of sum so credited and such explanation is found to be satisfactory. However, this proviso is applicable only from AY 2013-14 and the same is not retrospective in nature as held by Hon'ble Bombay High Court in the case of CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]. The said position has also been reiterated by Hon'ble Bombay High Court in its recent decision titled as Gaurav Triyugi Singh V/s ITO (ITA No.1750 of 207, dated 22/01/2020) which also consider its earlier decision of Pr.CIT V/s Veedhata Towers Pvt. Ltd. (2018 403 ITR 415). More pertinently, the said proviso is not, at all, applicable in case of unsecured loans or deposits, which is the case of the assessee.

5.2 It is settled position of law that to avoid the rigors of [Section 68](#), the assessee must prove the identity, creditworthiness of the lenders / investors to advance such monies and genuineness of the transactions. Once these three ingredients are fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of Lovely Exports P. Ltd. [319 ITR 5], dismissing revenue's appeal, observed as under: -

“2. Can the amount of share money be regarded as undisclosed income under [section 68](#) of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272] & subsequently in CIT Vs.

Orchid Industries Private Limited [88 Taxmann.com 502]. The Hon'ble Delhi High Court followed the said decision in Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84] against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72] against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47] against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020] which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161].

5.3 Keeping in mind the aforesaid legal position, we find that the assessee, in support of the stated transactions, furnished following documentary evidences with respect to M/s MSPL during assessment proceedings: -

- (i) Copy of ITR for A.Y.2011-12 showing returned income at NIL, filed on 30-09-2011;
- (ii) Copy of Directors Report, Auditors Report, Balance Sheet as at 31-03-2011; Profit and Loss Account for the year ending 31-03-2011 alongwith few schedules;
- (iii) Confirmation of ledger account of the assessee as appearing in the books of Minaxi Suppliers Pvt. Ltd. for the year ending 31-03-2011 showing payments on various dates between May and October 2010 and amount outstanding as at 31-03-2011 at Rs.10,20,00,000.
- (iv) Copy of assessment orders u/s.143(3) a. dated 26-03-2013 for A.Y.2010-11 assessing total income at Rs.8,23,220 and b. dated 11 -02-2015 for A.Y.2012-13 assessing total income at Rs.1,32,500.
- (v) Company master Data showing details of Minaxi Suppliers P. Ltd., showing Jashmin Ramesh Bhayani and Sagar Pankaj Bhayani as its directors.

The Ld. AO, in its findings, has accepted the fact that the source of extending the loan by M/s MSPL was liquidation of investment in unquoted shares. Therefore, upon perusal of these documents, it could be said that the assessee had discharged the stated primary onus of Sec.68. It is pertinent to note that the assessee has produced copy of assessment order passed by revenue in the case of M/s MSPL in scrutiny assessment u/s 143(3) for AYs 2010-11 & 2012-13 which would lead to inevitable conclusion that the said entity was a taxable entity and regularly assessed to tax. In both the years, returned income of M/s MSPL has substantially been accepted by the revenue.

5.4 The perusal of assessee's financial statements, for the year, would show that the assessee has received unsecured loans not only from M/s MSPL but also from various other entities. The aggregate of such loans accepted by the assessee is 26.26 Crores at year-end which would show that impugned transactions are not

isolated transactions but regularly carried out by the assessee during the course of its business and a part of which has already been accepted by the revenue.

5.5 Undisputedly, the amount received from M/s MSPL was through banking channels. There is no allegation of immediate cash deposit in the bank account of M/s MSPL before granting loans to the assessee. In fact, it is admitted position by Ld.AO that the unsecured loans were sourced by M/s MSPL by liquidating the investment in unquote shares. The said fact has already been noted by us in preceding para 3.8 of the order.

5.6 The Ld.CIT-DR cited the decision of Hon'ble High Court of Delhi in CIT V/s Navodaya Castles Pvt. Ltd. (367 ITR 306 25/08/2014). However, we find the same to be factually distinguishable since in that case, the assessment order specifically records that there were huge regular cash deposits and thereafter pay order / cheques were issued to the respondent assessee. The same is not the case here since Ld. AO records a fact that loans were sourced by liquidating the unquoted investments.

5.7 The case law of Hon'ble Delhi High Court in the case of CIT V/s Jansampark Advertising & Marketing Pvt. Ltd. [2015 56 Taxmann.com 286], would also not apply since upon perusal of para-41 of the judgment, it is quite discernible that the assessee had come up with the proof of identity of some of the entities in question but failed to establish the genuineness and creditworthiness of the transactions. Therefore, the matter was set aside by Hon'ble Court to the file of Ld. CIT(A) for fresh consideration / adjudication. The same is not the case here since the assessee has filed sufficient documentary evidences to establish the fulfillment of three primary ingredients of Sec. 68. 5.8 The case law of Hon'ble Supreme Court in Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161] has already been considered by Hon'ble Bombay High Court in its recent decision titled as Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020) and after considering the same, Hon'ble Court has taken the view favorable to the assessee. The relevant observations were as under: -

10. Mr. Suresh Kumar, learned standing counsel, revenue has taken us through the assessment order and submits therefrom that it cannot be said that assessee had discharged the burden to prove credit worthiness of the creditors. His further contention is that the assessee is also required to prove the source of the source. In this connection, he has placed reliance on a decision of the Supreme Court in Pr. CIT Vs. NRA Iron & Steel Pvt Ltd. He, therefore, submits that the finding returned by the Tribunal is wholly erroneous and requires to be interfered with by this Court.

11. Per contra, Mr. Padvekar, learned counsel for the respondent submits that from the facts and circumstances of the case, it is quite evident that assessee had discharged its burden to prove identity of the creditors, genuineness of the transactions and credit worthiness of the creditors. He submits that the legal position is very clear in as much as assessee is only required to explain the source and not source of the source. Decision of the Supreme Court in NRA Iron & Steel P Ltd (supra) is not the case law for the

aforesaid proposition. In fact, the said decision nowhere states that assessee is required to prove source of the source.

11.1. Referring to the orders passed by the authorities below, Mr. Padvekar submits that in the present case, the investigation wing of the department had carried out detailed investigation at Kolkata and found the source of the credit to be genuine. This report of the investigation wing was not taken into consideration by the Assessing Officer. Therefore, lower appellate authorities were justified in deleting the additions made by the Assessing Officer. Being a finding of fact, no substantial question of law arises in the appeal. Therefore, the appeal should be dismissed.

12. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

13. [Section 68](#) of the Act deals with cash credits. As per [Section 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. Simply put, the section provides that if there is any cash credit disclosed by the assessee in his return of income for the previous year under consideration and the assessee offers no explanation for the same or if the assessee offers explanation which the Assessing Officer finds to be not satisfactory, then the said amount is to be added to the income of the assessee to be charged to income tax for the corresponding assessment year.

14. [Section 68](#) of the Act has received considerable judicial attention through various pronouncements of the Courts. It is now well settled that under [Section 68](#) of the Act, the assessee is required to prove identity of the creditor; genuineness of the transaction; and credit worthiness of the creditor. In fact, in NRA Iron & Steel (P) Ltd (supra), Supreme Court surveyed the relevant judgments and culled out the following principles:

"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

- i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.
- ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor / subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.
- iii. If the inquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by [Section 68](#) of the Act."

15. It is also a settled proposition that assessee is not required to prove source of source. In fact, this position has been clarified by us in the recent decision in Gaurav Triyugi Singh Vs. Income Tax Officer-24(3)(1).

16. Having noted the above, we may now advert to the orders passed by the authorities below.

17. In so far order passed by the Assessing Officer is concerned, he came to the conclusion that the three companies who provided share application money to the assessee were mere entities on paper without proper addresses. The three companies had no funds of their own and that the companies had not responded to the letters written to them which could have established their credit worthiness. In that view of the matter, Assessing Officer took the view that funds aggregating Rs. 34 Crores introduced in the return of income in the garb of share application money was money from unexplained source and added the same to the income of the assessee as unexplained cash credit under [Section 68](#) of the Act.

18. In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under [Section 68](#) of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that nonresponding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the transaction and creditworthiness of the creditors were available, without any infirmity in such evidence and the explanation required under [Section 68](#) of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted.

19. In appeal, Tribunal noted that before the Assessing Officer, assessee had submitted the following documents of the three creditors:

- a) PAN number of the companies;
- b) Copies of Income Tax return filed by these three companies for assessment year 2010- 11;
- c) Confirmation Letter in respect of share application money paid by them; and
- d) Copy of Bank Statement through which cheques were issued.

20. Tribunal noted that Assessing Officer had referred the matter to the investigation wing of the department at Kolkata for making inquiries into

the three creditors from whom share application money was received. Though report from the investigation wing was received, Tribunal noted that the same was not considered by the Assessing Officer despite mentioning of the same in the assessment order, besides not providing a copy of the same to the assessee. In the report by the investigation wing, it was mentioned that the companies were in existence and had filed income tax returns for the previous year under consideration but the Assessing Officer recorded that these creditors had very meager income as disclosed in their returns of income and therefore, doubted credit worthiness of the three creditors. Finally, Tribunal held as under:

"5.7 As per the provisions of [Section 68](#) of the Act, for any cash credit appearing in the books of assessee, the assessee is required to prove the following(a) Identity of the creditor (b) Genuineness of the transaction (c) Credit-worthiness of the party

(i) In this case, the assessee has already proved the identity of the share applicant by furnishing their PAN, copy of IT return filed for asst. year 2010-11.

(ii) Regarding the genuineness of the transaction, assessee has already filed the copy of the bank account of these three share applicants from which the share application money was paid and the copy of account of the assessee in which the said amount was deposited, which was received by RTGS.

(iii) Regarding credit-worthiness of the party, it has been proved from the bank account of these three companies that they had the funds to make payment for share application money and copy of resolution passed in the meeting of their Board of Directors.

(iv) Regarding source of the source, Assessing Officer has already made enquiries through the DDI (Investigation), Kolkata and collected all the materials required which proved the source of the source, though as per settled legal position on this issue, assessee need not to prove the source of the source.

(v) Assessing Officer has not brought any cogent material or evidence on record to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represent company's own income from undisclosed sources. Accordingly, no addition can be made u/s.68 of the Act. In view of above reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same."

21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that

Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

22. In NRA Iron & Steel (P) Ltd (supra), the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

21. Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and credit-worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.

22. Under these circumstances, we find no error or infirmity in the view taken by the Tribunal. No question of law, much less any substantial question of law, arises from the order of the Tribunal. Consequently, the appeal is dismissed. However, there shall be no order as to cost.

5.9 Considering the entirety of facts and circumstances, we are of the considered opinion that the assessee has discharged the primary onus to demonstrate fulfilment of primary ingredients of Sec.68 and it was incumbent upon revenue to dislodge the assessee's claim by bringing on record, cogent material to establish that the assessee's unaccounted money was routed in its books of account in the garb of unsecured loans. However, we are unable to find any such material except for the fact that additions were made merely on suspicious, conjectures and surmises. Therefore, no infirmity could be found, in the impugned order, in this regard. We confirm the appellate order. Resultantly, the revenue's appeal stands dismissed."

9. Since the facts of the instant assessee before us are materially same to the one as decided by the co-ordinate bench of the Tribunal in ITA No.3593/M/2019 (supra), we are, therefore, inclined to uphold the order of Ld. CIT(A) by dismissing the appeal of the Revenue.

10. In the result, the appeal of the Revenue is dismissed.

11. The issue raised in ITA Nos.177, 179, 180 ,1233 & 1234/M/2020 are same as decided by us in ITA No.178/M/2020 (supra) wherein we have dismissed the appeal of the Revenue by upholding the order of Ld. CIT(A). Therefore, our decision in ITA No. 178/Mum/2020 would, mutatis mutandis, apply to these appeals as well and consequently these appeals of the Revenue are dismissed.

**Order pronounced in the open court on 19.10.2020.**

**Sd/-  
(Amarjit Singh)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 19.10.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.