आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE JUSTICE P.P. BHATT, HON'BLE PRESIDENT
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.736/Ind/2019
Assessment Year: 2016-17

ACIT (Central), Ujjain	Vs.	M/s. Ariba Foods Pvt. Ltd, 101, Gold star Building, Opp. Treasure Island, 5767 M.G. Road, Indore
(Revenue)		(Appellant)
PAN No.AALCA7223M		

ITA No.737/Ind/2019
Assessment Year: 2015-16

ACIT (Central), Ujjain	Vs.	M/s. Vyanktesh Plastics and Packaging Pvt. Ltd, 75/7-B, Industrial Area, Maxi Road, Ujjain
(Revenue)		(Appellant)
PAN No.AAACV6547J		

ITA No.773/Ind/2019
Assessment Year: 2011-12

ACIT (Central), Ujjain	Vs.	M/s. Famous Vanijya Pvt. Ltd, 125, 2nd floor, Madhav Club Road, Dawa Bazar, Ujjain
(Revenue)		(Appellant)
PAN No.AABCF1483G		

Revenue by	Shri S.S. Mantri, CIT
Appellant by	Shri Anil Kumar Garg, CA

Date of Hearing	21.12.2020
Date of Pronouncement	11.01.2021

O R D E R

PER MANISH BORAD, AM.

The above captioned appeals filed at the instance of revenue pertaining to Assessment Year 2011-12, 2015-16 and 2016-17 are directed against the order of Commissioner of Income Tax (Appeals)-3 (in short 'Ld.CIT'], Bhopal dated 02.05.2019, 02.05.2019 and 04.04.2019 which are arising out of the order u/s 147 r.w.s. 143(3), u/s 143(3) r.w.s. 144C and u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 28.12.2018, 27.12.2018 and 26.12.2018 respectively framed by ACIT(Central), Ujjain.

2. Revenue has raised following grounds of appeal :-

(i) M/s Ariba Foods Pvt. Ltd

ITA No.736/Ind/2019 Assessment Year 2016-17

1.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,44,12,690/- made u/s 68 of the LT. Act, on the ground of cross examination, without appreciating the fact that the persons whose statements are relied upon in the assessment order are the very persons who own, control, manage, operate & run the assessee-group including the assessee-company; and therefore, in the name of natural justice, the assessee-group cannot claim to cross-examine itself.

2.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,44,12,690/- made uls 68 of the LT. Act, while insisting that since the lender parties were making some paper formalities, they are not dummy concerns. The Ld. CIT(A) has failed to appreciate that all the dummy/shell/bogus/paper/briefcase entities used to be perfect in papers; otherwise, how will they achieve their desired purposes. Therefore, genuineness of an entity cannot be judged by the heap of papers it has created, but only through its activities.

3.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,44,12,690/- made U/S 68 of the LT. Act, while stating that the addition was made on the basis of guess work, assumption and presumption and on mere suspicion. He actually ignored that the very content of the assessment order establishes beyond doubt that the lender companies were dummy/shell/bogus/paper/briefcase entities, and the assessee's claimed transactions with them were merely an eye-wash.

4.On the facts and in the circumstances of the case, the Ld, CIT(A) has erred in deleting the addition of Rs. 12,44,12,690/- made u/s 68 of the LT. Act, by making factually incorrect conclusion that the same AO has made assessment u/s 147/143(3) and u/s 143(3) in the cases of M/s Famous Vanijya Pvt. Ltd. and Mls Navyug Vyapaar Pvt. Ltd., and has drawn no negative inference. This conclusion of the Ld. CIT(A) is factually incorrect, since the said AO has made the similar observations/conclusion (i.e. negative inference) as made in the assessment order in the case of the assessee in the following assessments-

a)from para 2.0 to para 2.7 of the assessment order u/s 147/143(3) dated 28/12/2018 for

b)from para 4.0 to para 4.7 of the assessment order u/s 143(3) dated 25/12/2018 for AY 2016-17 in the case of M/s Navyug Vyapaar Pvt. Ltd.,

c)in para 3.0 of the assessment order u/s 143(3) dated 25/12/2018 for A.Y. 2016-17 in the case of M/s Famous Vanijya Pvt. Ltd., and

d)in para 2.0 of the assessment order u/s 147/143(3) dated 25/12/2018 for A.Y. 2011-12 in the case of M/s Navyug Vyapaar Pvt. Ltd.

5.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,44,12,690/- made u/s 68 of the LT. Act, while stating that nothing incriminating was found in the course of search and seizure and survey actions in the assessee-group, which could warrant such an addition. He has ignored that incriminating material information were indeed found during such actions, and the same are elaborately discussed in the body of the assessment order while making the addition.

6.*On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,44,12,6901- made u/s 68 of the LT. Act, while not appreciating that merely making transactions through banking channels, payment of interest on alleged loans, and repayment of the alleged loans cannot make the transactions as genuine, when the activities of the entire group had been carried out in such a fashion to route and rotate the unaccounted cash.*

7.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,44,12,690/- made u/s 68 of the LT. Act, in dismissing the reliance placed by the AO on various case-laws while ignoring the facts and circumstances of the case in its entirety.

(ii) M/s Vyanktesh Plastics and Packaging Pvt. Ltd

ITA No.737/Ind/2019 Assessment Year 2015-16

1.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 52,552/- made u/s 36(l)(va) of the LT. Act, while completely ignoring para-5 of the CBDT's Circular No. 2212015 dated 11th December 2015.

2.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 4,50,000/- out of total expenses claimed on account of power & fuel expenses, while completely ignoring the fact that with almost equal amount of claimed expenses, the production of corrugated boxes was much higher in the preceding year vis-a-vis the current year, and therefore, the quantum of expenses cannot be accepted on face value.

3.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,44,49,554/- made u/s 68 of the LT. Act, on the ground of cross examination, without appreciating the fact that the persons whose statements are relied upon in the assessment order are the very persons who own, control, manage, operate & run the assessee-group including the assessee-company; and therefore, in the name of natural justice, the assessee-group cannot claim to cross-examine itself.

4.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,44,49,554/- made u/s 68 of the LT. Act, while insisting that since the lender parties were making some paper formalities, they are not dummy concerns. The Ld. CIT(A) has failed to appreciate that all the dummy/shell/bogus/paper/briefcase entities used to be perfect in papers; otherwise, how will they achieve their desired purposes. Therefore, genuineness of an entity cannot be judged by the

heap of papers it has created, but only through its activities.

5.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,44,49,554/- made u/s 68 of the LT. Act, while stating that the addition was made on the basis of guess work, assumption and presumption and on mere suspicion. He actually ignored that the very content of the assessment order establishes beyond doubt that the lender companies were dummy/shell/bogus/paper/briefcase entities, and the assessee's claimed transactions with them were merely. an eye-wash.

6.On the facts and in the circumstances of the case, the Ld. ClT(A) has erred in deleting the addition of Rs. 3,44,49,554/- made u/s 68 of the l.T. Act, by making factually incorrect conclusion that the same AO has made assessment u/s 1471143(3) in the case of M/s Famous Vanijya Pvt. Ltd. (one of the lender companies) and has drawn no negative inference. Actually, from para 2.0 to para 2.7 of the assessment order u/s 1471143(3) dated 28112/2018 for A.Y. 2011-12 in the case of Mls Famous Vanijya Pvt. Ltd., the said AO has made the similar observations/conclusion (i.e. negative inference) as made in the assessment order in the case of the assessee.

7.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,44,49,554/- made u/s 68 of the I.T. Act, while stating that nothing incriminating was found in the course of search and seizure and survey actions in the assessee-group, which could warrant such an addition. He has ignored that incriminating material/information were indeed found during such actions, and the same are elaborately discussed in the body of the assessment order while making the addition :

8.On the facts and in the circumstances of the case, the Ld. CJT(A) has erred in deleting the addition of Rs. 3,44,49,554/- made u/s 68 of the LT. Act, while not appreciating that merely making transactions through banking channels, payment of interest on alleged loans, and repayment of the alleged loans cannot make the transactions as genuine, when the activities of the entire group had been carried out in such a fashion to route and rotate the unaccounted cash.

9.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,44,49,554/- made u/s 68 of the I.T. Act, in dismissing the reliance placed by the AO on various case-laws while ignoring the facts and circumstances of the case in its entirety.

(iii) M/s Famous Vanijya Pvt. Ltd,
ITA No.773/Ind/2019, Assessment Year 2011-12

1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.4,07,35,000/- (out of total addition of Rs.4,16,15,000/-) made u/s 68 of the I.T. Act ignoring the fact that the assessee failed to substantiate its contention of 'refunds received out of investment made in earlier years".

2. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid addition of Rs.4,07,35,000/- ignoring that the assessee has failed to establish the link between the said amount and its alleged source (share capital & share premium amount received earlier).

3. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid addition of Rs.4,07,35,000/- while not appreciating that the assessee has failed to show as to how the said share capital & share premium amount was liquidated, and how the same was translated to the refund of Rs.4,07,35,000/- allegedly received by the assessee.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid addition of Rs.4,07,35,000/- without appreciating that the assessee itself had filed appeal against the addition made on account of share capital & share premium amount. On the one hand, the assessee is contesting the said addition; and on the other hand, taking the basis of the said addition, the assessee is challenging the instant addition of Rs.4,07,35,000/-. The assessee cannot claim both the benefits; and the outcomes of legal proceedings cannot be accepted on a selective manner and on the sweet will of the assessee.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs.8,80,000/- (out of total addition of Rs.4,16,15,000/-) made u/s 68 of the I.T. Act while accepting the assessee's ground of cross examination, without appreciating the fact that the persons whose statements are relied upon in the assessment order are the very perons who own, control,manage, operate & run the assessee-group including the assessee-company; and therefore, in the name of natural justice, the assessee-group cannot claim to cross-examine itself.

6 On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid addition of Rs. 8,80,000/-, while insisting that since the lender party was making some paper formalities, it is not a dummy concern. The Ld. CIT(A) has failed to appreciate that all the dummy/shell/bogus/paper/briefcase entities used to be perfect in papers; otherwise, how will they achieve their desired purposes. Therefore, genuineness of an entity cannot be judged by the heap of papers it has created, but only through its activities.

7 On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid addition of Rs. 8,80,000/-, while stating that the addition was made on the basis of guess work, assumption and presumption and on mere suspicion. He actually ignored that the very

content of the assessment order establishes beyond doubt that the lender company was a dummy/shell/bogus/paper/briefcase entity, and the assessee's claimed transactions with it was merely an eye-wash.

8 On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid addition of Rs.8,80,000/-, by making factually incorrect conclusion that the same AO has made assessment u/s 147/143(3) in the case of M/s Etiam Emedia Ltd. (the lender company) and has drawn no negative inference. Actually, in para 2 of the assessment order u/s 147/143(3) dated 29/12/2018 for A.Y. 2011-12 in the case of M/s Etiam Emedia Ltd., the said AO has made the negative inference.

9 On the facts and in the circumstances of the case, the Ld. C[T(A) erred in deleting the aforesaid addition of Rs. 8,80,000/-, while not appreciating that merely making transactions through banking channels, payment of interest on alleged loans, and repayment of the alleged loans cannot make the transactions as genuine, when the activities of the entire group had been carried out in such a fashion to route and rotate the unaccounted cash.

10. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid additions, while stating that nothing incriminating was found in the course of search and seizure and survey actions in the assess^{ee}- group, which could warrant such additions. He has ignored that incriminating material/information were indeed found during such actions, and the same are elaborately discussed in the "body of the assessment order while making the addition.

11. On the facts and in the circumstances of the case, the Ld. CIT(A) erred m deleting the aforesaid additions, in dismissing the reliance placed by the AO on various case-laws while ignoring the facts and circumstances of

the case in its entirety.

12. The appellant reserves the right to add, amend or alter the ground of appeal on or before the date the appeal is finally heard for disposal.

3. As the instant appeals relates to the assessee(s) from same Group and the issues raised in various grounds and facts involved are mostly common, we have heard these appeals together. Since there is no objection by both the parties, all these appeals are being disposed off by this common order for the sake of convenience and brevity. As submitted by Ld. Counsel for the assessee and also by Ld. Departmental Representative M/s Ariba Foods Pvt. Ltd is the lead case.

4. First we take up Revenue's Appeal No.ITA/736/Ind/2019 for Assessment Year 2016-17 in the case of M/s Ariba Foods Pvt. Ltd.

5. Brief facts of the case as called out from the records are that the assessee is a company and stated to be a food processing concern, engaged in manufacturing of various food stuffs. The assessee is one of the various entities of Shriji Polymers (India) Ltd. Group in which search and seizure operations u/s. 132 were carried out by the DDIT(Inv.)-II, Indore on 27/07/2017. However, in

the case of the assessee, only survey proceedings u/s. 133A were initiated on the same day. The assessee filed its original return of income on 17/11/2016 declaring total income at Rs. Nil and claiming current year loss at Rs. 1,19,76,320/-. Subsequently, the assessee furnished a revised return on 22/08/2017 declaring total income at Rs. Nil and reducing the current year loss at Rs. 23,07,528/-. In pursuance of the revised return filed by the assessee, the case got selected for Limited scrutiny under CASS and accordingly, Notices u/s. 143(2) of the Act were issued by the ACIT – 1(1), Indore on 13.08.2018 and 25.09.2018. Thereafter, the case of the assessee got centralized u/s. 127 of the Act from the ACIT - 1(1), Indore to the ACIT (Central Circle) – Ujjain and then, the ACIT (Central Circle) – Ujjain issued a fresh notice u/s. 143(2) on 03.12.2018. The AO then issued a notice on 12.12.2018 u/s. 142(1) to the assessee. In terms of the Notice, the assessee was required to establish identity of the creditors, capacity of the creditors and genuineness of the transactions, in respect of fresh unsecured loans taken by it during the relevant previous year. In compliance to the notice the assessee vide its letter dated 20.12.2018 submitted

before the AO that during the relevant previous year it had accepted fresh loans from 8 parties. The assessee further submitted before the AO that all the transactions had been carried out through banking channels only and have duly been recorded in its regular books of account. In order to establish the genuineness of the loan transactions, the assessee furnished various documentary evidences before the AO. However, the AO formed a view that out of the 8 loan creditors loan taken from following three loan creditor companies remained unexplained as there are dummy paper companies namely;

Name of Company	Amount (Rs.)
i) M/s.Dwarkesh Finance Ltd.[(In short) 'DFL']	15,26,111/-
ii) M/s. Famous Vanijya Pvt. Ltd.[.[(In short) 'FVPL']	2,15,03,302/-
iii) M/s. Navyug Vyapar Pvt. Ltd. [(In short) 'NVPL']	10,13,83,277/-
Total	12,44,12,690/-

Accordingly, the AO, by invoking the provisions of s. 68 of the Act, made an addition of Rs. 12,44,12,690/- in the hands of assessee. Besides this, a further addition of Rs. 34,330/- was made by the AO on account of disallowance out of Pre Operative Expenses. The issue of disallowance of Pre Operative Expenses is not before us.

7. Aggrieved assessee preferred appeal before CIT(A) and filed detailed submissions along with necessary evidences to prove the identity, genuineness and creditworthiness of the three cash creditors M/s DFL, M/s FVPL and M/s NVPL. Ld. CIT(A) after examining the facts narrated by the Ld. Counsel for the assessee as well as in view of the fact that in preceding years the alleged cash creditors have been assessed U/s 143(3)/147 of the Act and the Ld. A.O has not taken any adverse view. Further Ld. CIT(A) deleted the impugned addition of Rs.12,44,12,690/- based on the following four reasons:-

(a) The AO erred in making additions merely on the basis of statements of third parties recorded by the Investigation Wing and without providing opportunity of their cross examination before making the impugned addition;

(b) The AO erred in converting case selected for limited scrutiny to complete scrutiny;

(c) The AO erred in making additions on suspicion, surmise and conjecture basis and without having any incriminating material on record found from the residential premises of the appellant relating to the year in which additions have been made;

(d) The AO erred in 'considering the documentary evidences filed in support of creditworthiness of the lender and genuineness of the transaction including explaining source of source.

8. Ld. CIT(A) after being satisfied by the documentary evidences filed by the Ld. Counsel for the assessee in order to prove the identity, genuineness and creditworthiness also placed reliance on various judgments and decisions including that of Co-ordinate Bench, Agra in the case of *M/s Umesh Electricals V/s ACIT 131 ITD 127,* the decision of this Tribunal in the case of *Aseem Singh V/s ACIT (2012) 19 ITJ 52* and also relying on the judgment of Hon'ble Jurisdictional High Court in the case of *CIT V/s Metachem Industries (2000) 245 ITR 0160 (M.P).*

9. Now, the Revenue is in appeal before the Tribunal.

10. Since, all the seven grounds taken by the Revenue are inter connected and directed against the action of the Ld. CIT(A) in deleting the addition of Rs. 12,44,12,690/- made by the AO u/s. 68 of the Act, we consider it appropriate to adjudicate all the grounds simultaneously.

11. Ld. CIT-DR for the Revenue vehemently argued at length. The main contention of the Ld. CIT-DR was that in this case, the Ld. AO has given a detailed finding in the body of the assessment order to establish that all the loan taken from three lender companies for which the additions have been made u/s. 68 are mere paper companies which have been formed by entry operator Mr. Amit Kedia of Kolkata. According to the Ld. CIT-DR, Mr. Amit Kedia in his statement taken on 26.08.2014 had categorically stated that he was engaged in providing bogus accommodation entry in lieu of commission through his various companies and Navyug Vyapar Pvt. Ltd., one of the three creditors, was also a company formed by him for providing accommodation entries. The CIT-DR argued that a commission u/s. 131(1)(d) of the Act was issued to DDIT (Inv.)-Kolkatta for conducting inquiry and report thereof and in response the DDIT (Inv.) vide his letter dated 05.09.2017 informed that the company is not in existence on the given address. The Ld. CIT-DR further buttressed his argument by pointing out that during the course of the simultaneous survey u/s. 133A in the premises of the creditor companies, statements of the directors of the creditor

companies were recorded and the directors of such companies expressed their inability to give details about the working of the companies in which they were directors and merely stated that they were acting on the instruction of Shri Anand Bangur, the key person of Shriji Group. The Ld. CIT-DR also pointed out that at page no. 18 of the assessment order, the AO has given the trail of the loans which establish that cash were being deposited in certain bank accounts and subsequently, those were layered in the lender companies and then to the assessee company. The Ld. CIT-DR also made reference of various tally screen shots which were reproduced by the AO in the body of the assessment order and contended that the screenshots of various vouchers and ledger accounts clearly proves that all the lender companies were paper companies indulged in providing the accommodation entries. As regard non providing of opportunity of cross-examination to the assessee of the persons whose statements were relied upon by the AO, the Ld. CIT vehemently argued that all the persons whose statements were relied upon by the AO were close associates of the assessee company and therefore, the assessee company was supposed to be

aware of the statements given by such persons and therefore, there was no necessity for giving any specific opportunity of cross examination. During the course of the hearing, the Ld. CIT-DR also filed one Paper Book vide letter dated 18.12.2020. Along with the Paper Book, the Ld. CIT-DR also furnished a copy of letter dated 17.12.2020 addressed by the present AO to the Ld. CIT(DR) which inter alias include the comments of the AO on the Ld. CIT (A)'s Order. In the Paper Book furnished by the Ld. CIT(DR), copies of the assessment orders passed in the cases of lender companies and as also the copy of the appeal memo filed before the ITAT have been furnished. By making a reference of the assessment orders passed in the cases of the lender companies, the Ld. CIT(DR) reiterated the contention of the AO that the Ld. CIT(A) was not correct in holding that while making the separate assessments in the hands of the lender companies, no adverse findings were given. In sum and substance, as per the Ld. CIT(DR), all the lender companies were paper companies and the directors of such companies were also dummy directors acting merely on the instruction of Shri Anand Bangur a key person of the Shriji Polymers Group.

12. Per Contra, Ld. Counsel for the assessee also made his arguments at length by making a reference of the various documentary evidences furnished by him in Paper Books in two volumes, running from Page No. 1 to 676. The Ld. Counsel also filed before us a copy of the written synopsis by making reference of various findings of the AO, the Ld. CIT(A) and various documentary evidences furnished in the Paper Book. The relevant abstract of the Synopsis filed by the Ld. Counsel of the assessee is reproduced as under:

"F. Key Points of Assessee's Submission and Relevant Pages of Paper Book:

S. No.	*Submission in Brief*	*Relevant Pages of Paper Book*	*Remarks*
1	*All the lender companies from whom the assessee accepted loans are the group companies of the Bangur Group itself to which the assessee belongs.*	*-*	*Para (6.0) on page no. 4 of the AO's Order*
2	*In respect of all the lender companies, simultaneous survey proceedings u/s. 133A were carried out. Further, the directors of the lender companies were found on given address and their statements were also recorded.*	*-*	*i) First sub-para of Para (6.1) on page no. 12 of the AO's Order for NVPL.* *ii) Para (6.2) on page no. 34 & 36 of the AO's Order for FVPL.* *iii) Last sub-para of Para (6.3) on page no. 42 of the AO's Order for DFL.*
3	*During the course of the search/ survey, in the*	*-*	*-*

	assessee company as well as lender companies, not a single incriminating material or document was found giving any iota of assessee's obtaining non-genuine loans.		
4	*In respect of all the lender companies, simultaneous assessment proceedings got completed for A.Y. 2011-12 u/s. 147/143(3) of the Act.*	*NVPL Order at 488 to 490;* *FVPL Order at 309 to 396;* *and* *DFL Order at 233 to 243*	*i) Assessment Order of FVPL for A.Y. 2011-12 is also a subject matter of separate Appeal before this Hon'ble Bench.* *ii) Framing of the Assessments in the hands of lender companies establish the identity of the lender companies.* *iii) Interest income shown by the lender companies from the assessee company and as also, corresponding credit for TDS claim has been granted. Thus, no adverse cognizance has been taken in the cases of the lender companies.*
5	*During the course of the assessment proceedings, the AO of the assessee had not whispered a single word regarding the so-called enquiries and statements recorded by the Investigation Wing. The opportunity of cross-examination of any of the witnesses of the AO was not given.*	*138 to 141 being the only Notice u/s. 142(1) dated 12-12-2018*	*On a perusal of the Page No. 139 of the Paper Book, it may be gathered that except asking certain documents, the AO had not uttered any single word regarding the alleged enquiries and other materials referred to by him in the body of the assessment order. Thus, the question of giving any cross-examination does not arise.* *The relevant findings of the ld. CIT(A) are at para (4.4.2)(a) on page no. 74 to 77 of his Order.*
6	*The assessee had specifically requested the AO for either giving the opportunity to*	*Sub-para (E) at Page No. 169 of*	*Despite making specific request, the AO did not conduct any independent*

	produce the creditors or to issue summons u/s. 131(1) or letters u/s. 133(6) to the lender companies.	*the assessee's submission for NVPL, 165 for FVPL AND 161 for DFL*	*enquiry by himself.*
7	*During the course of the assessment proceedings, the assessee had duly established the identity of the creditors, genuineness of the transactions, creditworthiness of the lenders and as also, the sources of availability of funds in the hands of the lender companies for making loans to the assessee company.*	*Written submission before AO dated 24-12-2018 – PB Page No. 151 to 169*	*-*
8	*Loan Transactions from two of the lenders viz. FVPL & NVPL have got completely repaid during the relevant previous year itself.*	*Page No. 400 for FVPL & 609 for NVPL*	*-*
9	*All the lender companies have duly shown interest income from the assessee company and have also claimed TDS*	*Page No. 265 for DFL; 431 for FVPL & 637 for NVPL*	*-*
10	*None of the findings given by the AO is relevant for making the impugned additions*	*-*	*The AO's findings and the assessee's rebuttal on each of the findings of the AO have been reproduced by the ld. CIT(A) at para (4.3.1) on page no. 70 to 73 of his Order.*
11	*During the course of the assessment proceedings, the assessee had furnished all the necessary documentary evidences for establishing (i) identity of the loan creditors; (ii) genuineness of the loan transactions; (iii)*	*Page No. 170 to 283 for DFL; 284 to 461 for FVPL and 462 to 676 for NVPL*	*None of the documentary evidences have been rebutted or contravened by the ld. AO.*

	creditworthiness of the loan creditors; (iv) sources of funds in the hands of the loan creditors; (v) relevant documentary evidences regarding the identity & creditworthiness of the sub-creditors		
12	*The share capital transactions carried out by all the lender companies with the assessee company during the relevant previous year have been accepted by the same AO while framing the impugned assessment.*	*PB 103 – copy of the audited Balance Sheet and PB 143 – assessee's submission before AO*	*During the relevant previous year, the assessee company had issued 1,29,90,000 equity shares of Rs.10/- each, at par, to various shareholders and out of which, equity shares numbering 23,40,000; 15,80,000; & 24,50,000; respectively to DFL, FVPL & NVPL were issued.* *The ld. AO has duly verified and accepted the genuineness of the share capital transactions. When the share capital transactions have been accepted, then, there was no justification to form an adverse view in respect of the loan transactions with the same companies.*
13	*In earlier years too, the assessee company had accepted the loans from lender companies and the same were duly accepted by the Revenue.*	*PB Page No. 244 – Copy of Account of DFL in books of assessee showing the opening balance*	*The ld. CIT(A) has also given a finding to this effect at page no. 82 of his Order.*

G. Manner of Discharging the Initial Onus by the Assessee:

S. No.	*Nature of Document*	*For Dwarkesh Finance Ltd. [DFL] Addition – Rs.15,26,111/-*		*For Famous Vanijya Pvt. Ltd. [FVPL] Addition – Rs.2,15,03,302/-*		*For Navyug Vyapaar Pvt. Ltd. [NVPL] Addition – Rs.10,13,83,277/-*	
		PB Page No.	*Remarks*	*PB Page No.*	*Remarks*	*PB Page No.*	*Remarks*
I. FOR IDENTITY:							
1	*Certificate of Incorporation*	*170*	*Originally Incorporated in the name of 'Richmore Finance & Leasing Ltd.' in the year 1992.*	*284*	*An old company incorporated on 25-10-2007*	*462*	*An old company incorporated on 09-11-2004*
2	*Memorandum and Articles of Association*	*171 to 224*	*Main object is Financing*	*285 to 300*	*Shri Amit Kedia was neither a promoter nor a director of FVPL as alleged by the AO.*	*463 to 476*	*Shri Amit Kedia was neither a promoter nor a director of NVPL as alleged by the AO.*
3	*Certificate for Commencement of Business*	*225*	*-*	*-*	*-*	*-*	*-*
4	*Certificate for Change of Name*	*226*	*Name got changed to Dwarkesh Finance Ltd.*	*-*	*-*	*-*	*-*
5	*Letter dated 23-02-2005 issued by the Vadodara Stock Exchange Limited*	*227*	*The lender company is a company in which the public is substantially interested and earlier it was listed on Stock Exchange. Such fact*	*-*	*-*	*-*	*-*

			speaks about the genuineness of the company.				
6	*Acknowledgement of Income-Tax Return for A.Y. 2016-17*	*228*	*Substantial Taxable Income of Rs.4.18 lakhs shown by DFL*	*301*	*Taxable Income of Rs.4.07 lakhs shown by FVPL*	*477*	*Taxable Income of Rs.5.46 lakhs shown by NVPL*
7	*Master Data downloaded from the official website of the MCA.*	*229*	*The company shown as an active company. The directors shown are associated with the group company of the assessee only. Thus, it is a group company of the assessee.*	*302*	*The company shown as an active company. The directors shown are associated with the group company of the assessee only. Thus, it is a group company of the assessee.*	*481*	*The company shown as an active company. The directors shown are associated with the group company of the assessee only. Thus, it is a group company of the assessee.*
8	*Statement showing details of directors of the company.*	*230*	*All the directors are income-tax payees and having DIN allotted by the Ministry of Corporate Affairs*	*303*	*All the directors are income-tax payees and having DIN allotted by the Ministry of Corporate Affairs*	*482*	*Both the directors are income-tax payees and having DIN allotted by the Ministry of Corporate Affairs*
	Assessment Orders for earlier years framed under scrutiny	*231 to 243*	*i) Scrutiny Assessment for A.Y.2014-15 u/s. 143(3) assessing the income at Rs.8,66,400/- establishes the identity and creditworthiness of DFL.* *ii) In*	*304 to 399*	*i) In the Order of Assessment of FVPL [PB Page No. 304], u/s. 143(3)/147, for A.Y. 2008-09, the then AO at last para at internal page no. 1 of the Order, has stated that the FVPL had raised share*	*483 to 584*	*i) In the Order of Assessment of NVPL [PB Page No. 483], u/s. 143(3), for A.Y. 2006-07, the then AO at last para at internal page no. 1 of the Order, has stated that the NVPL had raised fresh share capital and*

			simultaneous assessment proceedings in case of DFL for A.Y. 2011-12 u/s. 143(3)/147, transactions of DFL with the assessee have not been disputed and the genuine existence of the DFL has also not been disputed. The AO, at para (5), accepted the activities claimed by DFL.		*capital and share premium amounting to Rs.51.60 lakhs and Rs.961.40 lakhs respectively which automatically proves the creditworthiness of FVPL.* *ii) In the Order of Assessment of FVPL for A.Y. 2012-13 [PB Page No. 307], the genuineness of FVPL has not been doubted.* *iii) Simultaneous assessment proceedings u/s. 143(3)/147 by the same AO were carried out for A.Y. 2011-12 and the AO nowhere alleged that the FVPL is merely a paper company.*		*share premium amounting to Rs.48.02 lakhs and Rs.1152.48 lakhs respectively which automatically proves the creditworthiness of NVPL.* *ii) In the Order of Assessment of NVPL for A.Y. 2015-16 [PB Page No. 485], the returned income shown by NVPL has been accepted at Rs.10,78,290/- and thus, the genuineness of NVPL has not been doubted.*
10	*Order passed by the ld. CIT(A) on an earlier occasion in case of a group company wherein similar issue of unsecured loan from lender company was*	-	-	-	-	*585 to 606*	*In the case of one of the group entities namely M/s. Arpit Plastics Pvt. Ltd. for A.Y. 2010-11, an addition of Rs.46.62 lakhs was made in respect of unsecured loan*

	treated as unexplained cash credit u/s. 68						*received from NVPL. The ld. CIT(A), while adjudicating the appeal of aforesaid assessee, also required the AO to submit his remand report but the AO could not find any defect in the documentary evidences furnished by such assessee. Accordingly, the ld. CIT(A), at PB Page No. 599 to 606, held that the assessee had fully established the identity, creditworthiness of NVPL and genuineness of loan transactions.*
II. FOR GENUINENESS OF THE TRANSACTIONS:							
11	*Ledger account of lender in the books of assessee*	*244*	*All the transactions took place through banking channels. Opening balance is also getting reflected.*	*400*	*All the transactions took place through banking channels and the entire loan got completely repaid.*	*607*	*All the transactions took place through banking channels and the entire loan got completely repaid.*
12	*Ledger account of assessee in the books of lender.*	*245*	*--- do ---*	*401*	*--- do ---*	*608*	*--- do ---*
13	*Confirmation*	*246*	*-*	*402*	*-*	*609*	*-*

	letter duly signed by the authorized signatory of the lender						
14	*Relevant Bank Statement of the assessee*	*247 & 248*	*The entire transactions have taken place through banking channels only*	*403 to 411*	*Transactions through banking channels*	*610 to 616*	*Transactions through banking channels*
15	*Relevant Bank Statement of the lender*	*249 & 250*	*i) No cash deposit made by DFL before making loan to the assessee.* *ii) In the bank statement, the name of the assessee company is getting clearly reflected.* *iii) The loan has been given by the DFL by obtaining refunds of loans from two group entities namely M/s. Vyanktesh Plastics & Packaging Pvt. Ltd. and M/s. Shriniwas Polyfabrics & Packwell Pvt. Ltd.*	*412 to 415*	*All the payments have been made by the FVPL by obtaining refunds of loans from various entities given on earlier occasions.*	*617 to 622*	*All the payments have been made by the NVPL either by obtaining refunds of loans from various entities given on earlier occasions or by obtaining overdraft facility against FDR from bank or from issuing fresh share capital.*
III. FOR CREDITWORTHINESS:							
16	*Acknowledgement of Income-*	*228*	*-*	*301*	*-*	*477*	*-*

	Tax Return for A.Y. 2016-17						
17	*Audited Financial Statements of lender company for F.Y. 2015-16 [A.Y. 2016-17]*	*260 & 261*	*i) DFL is having huge owned funds of Rs.1438.77 lakhs which proves its creditworthiness* *ii) DFL has shown profit before tax at Rs.5.97 lakhs*	*425*	*As per the audited balance sheet, before making loan to the assessee, the FVPL was having substantial owned funds of Rs.1025.52 lakhs as on 31-03-2015.*	*632 & 633*	*i) As per the audited balance sheet, before making loan to the assessee, the NVPL was having substantial owned funds of Rs.1577.23 lakhs as on 31-03-2015.* *ii) NVPL has shown profit before tax at Rs.95.72 lakhs*
18	*Statement showing details of taxable income and tax paid for last 8 years.*	*272*	*DFL has paid substantial amount of tax*	*438*	*FVPL has paid substantial amount of tax*	*643*	*NVPL has paid substantial amount of tax. For A.Y. 2018-19, it has shown taxable income of Rs.2,25,20,162/- and paid the tax of Rs.47,09,735/- as per the CIT(A)'s findings at page no. 88 of his Order.*
19	*The lender companies were having sufficient funds by way of share capital and share premium raised by them in earlier years.*	*-*	*-*	*304 to 306*	*In the Order of Assessment of FVPL [PB Page No. 304], u/s. 143(3)/147, for A.Y. 2008-09, the then AO at last para at internal page no. 1 of the Order,*	*483 to 484*	*In the Order of Assessment of NVPL [PB Page No. 483], u/s. 143(3), for A.Y. 2006-07, the then AO at last para at internal page no. 1 of the Order, has*

					has clearly stated that the FVPL had raised share capital and share premium amounting to Rs.51.60 lakhs and Rs.961.40 lakhs respectively which automatically proves the creditworthiness of FVPL.		*clearly stated that the NVPL had raised fresh share capital and share premium amounting to Rs.48.02 lakhs and Rs.1152.48 lakhs respectively which automatically proves the creditworthiness of NVPL.*
20	*The creditworthiness of the lender companies accepted by the same AO in the same Order while accepting the genuineness of share capital received by the assessee from all the lender companies*	*PB 103 – copy of audited Balance Sheet and PB 143 – assessee's submission before AO*	*During the relevant previous year, the assessee company had received a sum of Rs.2,34,00,000/- from DFL by way of share capital and genuineness of such share capital receipt from DFL has not been doubted by the AO framing the subject assessment order.*	*PB 103 – copy of the audited Balance Sheet and PB 143 – assessee's submission before AO*	*During the relevant previous year, the assessee company had received a sum of Rs.1,58,00,000/- from FVPL by way of share capital and genuineness of such share capital receipt from FVPL has not been doubted by the AO framing the subject assessment order.*	*PB 103 – copy of the audited Balance Sheet and PB 143 – assessee's submission before AO*	*During the relevant previous year, the assessee company had received a sum of Rs.2,45,00,000/- from NVPL by way of share capital and genuineness of such share capital receipt from NVPL has not been doubted by the AO framing the subject assessment order.*
IV. FOR SOURCE OF THE SOURCE:							

21	*Statement showing details of Immediate Source of unsecured loan given by the lender company.*	*273*	*DFL had provided loan to the assessee company by taking the refund of loans given earlier to two other entities namely M/s. Vyanktesh Plastics & Packaging Pvt. Ltd. [AAACV6547J] and M/s. Shriniwas Polyfabrics & Packwell Pvt. Ltd. [AARCS5889F]*	*439*	*FVPL had provided loans to the assessee company by taking the refund of loans given earlier to four entites. Two of these entites namely M/s. Vyanktesh Corrugators Pvt. Ltd. and M/s. Shree Packers (MP) Pvt. Ltd. [aggregate sum of Rs.1,90,00,000/-] are group concerns of the assessee*	*644*	*i) A substantial sum of Rs.4.60 crores was received by the NVPL from the assessee company itself against the loan given on earlier occasions.* *ii) A substantial sum of Rs.6 crores was received by NVPL by way of issuance of share capital and genuineness of such share capital have duly been accepted in the assessment proceedings u/s. 143(3) of NVPL for A.Y. 2016-17 [PB Page No. 583].*
							iii) A sum of Rs.1 crore was received by NVPL from another group company namely M/s. Vyanktesh Plastics *iv) A sum of Rs.2.75 crores was received by NVPL by availing OD facility from their banker.*

22	*Copies of Bank Statements of the sub-creditors for the relevant period*	*274 to 276 AND 280*	*In the bank statements of the sub-creditors namely M/s. Vyanktesh Plastics & Packaging Pvt. Ltd. [PB 274 to 276] and M/s. Shriniwas Polyfabrics & Packwell Pvt. Ltd. [PB 280], repayment of loan by them on various dates to DFL are getting clearly reflected.* *Incidentally, even in the bank statements of both the sub-creditors, no cash deposits were made.*	*440 to 442; 446 & 447*	*On a perusal of the bank statements of two sub-creditors namely M/s. Vyanktesh Corrugators Pvt. Ltd. and M/s. Shree Packers (MP) Pvt. Ltd., it may be observed that repayment of loan by them on various dates to FVPL are getting clearly reflected.* *Incidentally, even in the bank statements of both the sub-creditors, no cash deposits were made.*	*645, 649, 653 to 655, 659 & 660, 664 & 665, 669, 673*	*On a perusal of the bank statements of sub-creditors, it may be observed that the transactions of share capital/ loans / refunds of loans by them with NVPL are getting clearly reflected.* *Incidentally, even in the bank statements of all the sub-creditors, no cash deposits were made.*
23	*Copies of Ledger Accounts of lender company in the books of the sub-creditors*	*277 & 281*	*The sub-creditors are confirming the refund of loans taken by them from DFL*	*443, 448*	*The sub-creditors are confirming the refund of loans taken by them from FVPL*	*646, 650, 656, 661, 666, 670*	-
24	*Copies of Confirmation Letters by the sub-creditors*	*278 & 282*	-	*444, 449, 451 A,*	-	*647, 651,*	-

	confirming their transactions with the lender company			*452 A*		*657, 662, 667, 671, 674*	
25	*Copies of Acknowledgments of Income-Tax Returns of sub-creditors for A.Y. 2016-17*	*279 & 283*	*The sub-creditor namely M/s. Vyanktesh Plastics & Packaging Pvt. Ltd. has shown substantial taxable income of Rs.22.60 lakhs in its return of income for A.Y. 2016-17.*	*445, 450, 451 B, 452 B*	*The sub-creditors have shown substantial taxable income in their return of income for A.Y. 2016-17*	*648, 652, 658, 663, 668, 672, 675*	*The sub-creditors have shown substantial taxable income in their return of income for A.Y. 2016-17. At page no. 658, 663, 668 & 672, Shri Govind Maheshwari, Shri Rajesh Maheshwari, Shri Naveen Maheshwari & Shri Brajesh Maheshwari (Share applicants of NVPL), have shown taxable income of more than Rs.20 crores in their respective ITRs for A.Y. 2016-17.*

13. The Ld. Counsel for the assessee also placed reliance on the following decisions;

i) ACIT vs. EI Dorado Biotech Pvt. Ltd. (2020) 60 CCH 233 (Ahd-Trib) Order dated 11-11-2020. [In this case, addition u/s. 68 deleted on the ground

that opportunity of cross examination was not given. In this case too, the assessee had furnished the similar documentary evidences]

ii) CIT vs. Metachem Industries (2000) 245 ITR 0160 (MP)

iii) Nemichand Kothari vs. CIT (2003) 264 ITR 254 (Gau.)

iii) CIT vs. Mehrotra Brothers (2004) 270 ITR 0157 (MP)

iv) Ashok Pal Daga vs. CIT (1996) 220 ITR 0452 (MP)

v) DCIT vs. Rohini Builders (2002) 256 ITR 360 (Guj)

vi) CIT vs. STL Extrusions Pvt. Ltd. (2011) 333 ITR 269 (MP)

vii) CIT vs. Devi Prasad Khandelwal & Company Ltd. (1971) 81 ITR 460 (Bom.)

viii) CIT vs. Orissa Corporation P. Ltd. (1986) 159 ITR 0078 (SC)

ix) Orient Trading Co. Ltd. vs. CIT (1963) 49 ITR 0723 (Bom)

x) CIT vs. Taj Borewell (2007) 291 ITR 0232 (Mad.)

xi) Addl. CIT vs. Bahri Brothers (P) Ltd. (1985) 154 ITR 0244 (Pat)

xii) CIT vs. Hanuman Agarwal (1985) 151 ITR 150 (Pat)

xiii) Jalan Timbers vs. CIT (1997) 223 ITR 11 (Gau)

xiv) CIT vs. Dalmia Resorts International (2007) 290 ITR 508 (Del)

xv) Lalitha Jewellery Mart P. Ltd. vs. DCIT (2017) 399 ITR 0425 (Mad)

xvi) CIT vs. Jai Kumar Bakliwal (2014) 366 ITR 217 (Raj)

xvii) CIT vs. Shri E.S. Jose (2014) 220 Taxman 0032 (Ker)

xviii) CIT vs. Kamdhenu Steel & Alloys Ltd. & Ors. (2014) 361 ITR 0220 (Del)

xix) Mr. Gaurav Triyugi Singh vs. ITO 2020 (1) TMI 1153 (BomHC)

xx) M/s. Kumar Nirman and Nivesh Pvt. Ltd. vs. ACIT 2020 (3) TMI 340 (KarHC)

xxi) ACIT vs. M/s. Jay Enterprise 2019 (4) TMI 1811 (ITAT Rajkot)

xxii) Pr.CIT vs. M/s. Jay Enterprise 2020 (1) TMI 657 (GujHC)

xxiii) ITO vs. M/s. Riddhi Siddhi Corporation 2017 (2) TMI 1129 (ITAT Ahd.)

xxiv) ITO vs. M/s. RE N Raga Media Pvt. Ltd. 2019 (6) TMI 651 (ITAT Mum.)

xxv) Mahipal Ishwarlal Sottany vs. ITO 2019 (10) TMI 1161 (ITAT Ahd.)

xxvi) ITO vs. M/s. Celebrity Lifespace Pvt. Ltd. 2019 (12) TMI 1157 (ITAT Mum.)

xxvii) DCIT vs. M/s. Chetan R. Shah (HUF) 2020 (1) TMI 1239 (ITAT Mum.)

xxviii) ITO vs. M/s. MJD Financial Services Pvt. Ltd. 2020 (10) TMI 651 (ITAT Mum.)

xxix) DCIT vs. M/s. Manba Finance Ltd. 2020 (1) TMI 645 (ITAT Mum.)

xxx) ACIT vs. Mittal Appliances Ltd. (2016) 27 ITJ 120 (Trib.-Indore)

xxxi) ACIT vs. Shree Sai Vihar (2016) 28 ITJ 158 (Trib.-Raipur)

xxxii) ITO vs. Vaibhav Cotton Pvt. Ltd. (2012) 19 ITJ 113 (Trib.-Indore)

xxxiii) Shri Sumati Kumar Kasliwal, Shri Parth Kasliwal, Smt. Sharda Kasliwal, M/s. Nishant Finance Pvt. Ltd., Shri Manoj Kasliwal and M/s. Pumarth Infrastructure Pvt. Ltd. vs. ACIT (Central)-1, Indore 2019 (5) TMI 338 (ITAT-Indore)"

14. The crux of the arguments of the Ld. Counsel for the assessee are that; (i) the AO framing the assessment had not conducted any independent inquiry and he had merely relied upon certain so called inquiries conducted by the Investigation Wing and during the course of the entire assessment proceedings, only one notice u/s. 142 (1) dated 12.12.2018 was issued and in such notice too, no reference of any inquiry conducted by the Investigation Wing or the statements recorded during the course of the survey/search was made and thus, the assessee was not confronted with any material gathered behind his back and in such circumstances, the opportunity of cross examination of the Revenue's witnesses were

not afforded to the assessee which was mandatory as per the settled legal position; (ii) all the three subject lender companies from whom the assessee had taken loans are the group companies of the Bangur Group itself to which the assessee belongs. In respect of which simultaneous survey proceedings u/s. 133A were carried out. Further, the directors of the lender companies were found on given address and their statements were also recorded; (iii) During the course of the search/ survey, in the assessee company as well as lender companies, not a single incriminating material or document was found giving any iota of assessee having obtained non-genuine loans; (iv) In respect of all the lender companies, simultaneous assessment proceedings got completed for A.Y. 2011-12 u/s. 147/143(3) of the Act; (v) During the course of the assessment proceedings, the AO of the assessee had not whispered a single word regarding the so-called enquiries and statements recorded by the Investigation Wing. The opportunity of cross-examination of any of the witnesses of the AO was not given; (vi) The assessee had specifically requested the AO for either giving the opportunity to produce the creditors or to issue summons u/s.

131(1) or letters u/s. 133(6) to the lender companies, but such request was not adhered to; (vii) During the course of the assessment proceedings, the assessee had duly established the identity of the creditors, genuineness of the transactions, creditworthiness of the lenders and as also, the sources of availability of funds in the hands of the lender companies for making loans to the assessee company; (viii) Loan Transactions from two of the lenders viz. FVPL & NVPL have got completely repaid during the relevant previous year itself; (ix) All the lender companies have duly shown interest income from the assessee company and have also claimed TDS; (x) None of the findings given by the AO is relevant for making the impugned additions; (xi) During the course of the assessment proceedings, the assessee had furnished all the necessary documentary evidences for establishing (a) identity of the loan creditors, (b) genuineness of the loan transactions, (c) creditworthiness of the loan creditors, (d) sources of funds in the hands of the loan creditors, (e) relevant documentary evidences regarding the identity & creditworthiness of the sub-creditors; (xxii) The share capital transactions carried out by all the

lender companies with the assessee company during the relevant previous year have been accepted by the same AO while framing the impugned assessment; (xxiii) In earlier years too, the assessee company had accepted the loans from lender companies and the same were duly accepted by the Revenue. Besides making the contentions as above, the Ld. Counsel for the assessee also relied upon the plethora of judicial pronouncements as noted down in the preceding para.

15. We have heard rival contentions and perused the records produced before us and carefully gone through the judgments referred to by both the parties. In the instant case of M/s. Ariba Foods Pvt. Ltd, Revenue has challenged the finding of Ld. CIT(A) by way of 7 grounds of appeal but the grievance challenging the finding of Ld. CIT(A) deleting the addition of Rs.12,44,12,690/- is on two grounds firstly Ld. CIT(A) erred in deleting the addition observing that assessee was not given the opportunity to cross examine which thus denied the opportunity of natural justice and secondly Ld. CIT(A) erred on merits in accepting the identity, genuineness and

creditworthiness of the three cash creditors namely M/s DFL, M/s FVPL and M/s NVPL.

16. We observe that the assessee was subjected to survey u/s 133A of the Act on 27.7.2017. In the assessment proceedings carried out through CASS assessee was directed to explain the fresh unsecured loan taken during the year. Detalied replies were filed by the assessee which could partly satisfied the Ld. A.O and he was of the view that unsecured loan taken from following 3 companies could not be explained by the Ld. A.O and thus provision of Section 68 of the Act are applicable.

Name of Company	Amount (Rs.)
i) M/s.Dwarkesh Finance Ltd.[(In short) 'DFL']	15,26,111/-
ii) M/s. Famous Vanijya Pvt. Ltd.[.[(In short) 'FVPL']	2,15,03,302/-
iii) M/s. Navyug Vyapar Pvt. Ltd. [(In short) 'NVPL']	10,13,83,277/-
Total	12,44,12,690/-

17. Against the addition assessee preferred appeal before Ld. CIT(A) and succeeded who deleted the addition on the basis of the following 4 observations:-

(a) The AO erred in making additions merely on the basis of

statements of third parties recorded by the Investigation Wing and without providing opportunity of their cross examination before making the impugned addition;

(b) The AO erred in converting case selected for limited scrutiny to complete scrutiny;

(c) The AO erred in making additions on suspicion, surmise and conjecture basis and without having any incriminating material on record found from the residential premises of the appellant relating to the year in which additions have been made;

(d) The AO erred in 'considering the documentary evidences filed in support of creditworthiness of the lender and genuineness of the transaction including explaining source of source.

18. Through Ground No. 1, the Revenue has challenged the finding of the Ld. CIT(A) in deleting the addition of Rs. 12,44,12,690/- made u/s. 68 of the Act on the ground of cross examination, without appreciating the fact that the persons whose statements were relied upon in the assessment order are the persons who own, control, manage, operate and run the assessee group, including the assessee company and therefore, in the name

of natural justice, the assessee group could not have claimed to cross examine itself.

19. We observe that the Ld. CIT(A) has dealt with the issue of cross examination at para 4.3.2 (a) of his order. We find that the Ld. CIT(A) has given a categorical finding that despite having on record the correct new address of one of the lender companies namely, M/s. Navyug Vyapar Pvt. Ltd. being at Shop No. 126, Dawa Bazar, Madhav Club Road, Ujjain, the AO had sent commission for the old address to DDIT(Inv.) – Kolkata. The Ld. CIT(A) further observed that the AO has made reference of the salaries drawn by the directors of the lender companies for adjudging the capacity of lending by the lender companies, but, the AO failed to appreciate that the loans were given by the lender companies and not by its directors in their individual capacity. The Ld. CIT(A) also observed that the AO has concentrated his findings on the basis of various statements given by Shri Amit Kumar Kedia, Shri Kailash Kumar Garg, Shri Amit Jhavar, Shri Rajesh Gupta, Shri Abizer Pithewan, Shri Amrish Parmar, Smt. Chhaya Parmar, Shri Avinash Parasram Bapuskar, but, the AO did not mention about these statements in

Notices or questionnaire issued time to time. The AO has completely drawn his findings on the basis of these statements which were recorded behind the back of the assessee and no opportunity of cross examination of these persons were provided to the assessee. Then the Ld. CIT(A) relied upon the decision of the Hon'ble Supreme Court in the case of *Andaman Timber Industries vs. Commission of Central Excise Kolkata, in Civil Appeal No. 248 of 2006* for the proposition that in absence of cross examination of parties, the assessment proceedings are required to be quashed. The Ld. CIT(A) further relied upon the decision of the Hon'ble High Court of Gujarat in the case of *Praful Chunnilal Patel vs. M.J. Makwana [236 ITR 832 (Guj.)] and JCIT & Ors. vs. George Williamson (Assam) Ltd. 258 ITR 126 (Guj.)* for holding that the statement of third party cannot be relied upon without having any corroborative evidence. The CIT(A) also relied upon the decision of the Hon'ble Supreme Court in the case of *Kishanchand Chellaram vs. CIT 125 ITR 713 (SC)* in which the Apex Court held that adverse inference cannot be drawn against the assessee from the statement of third parties. The Ld. CIT(A) further relied upon the decision of Hon'ble High Court of

Gujarat in the case of *CIT vs. Indrajeet Singh Suri (2013) 33 Taxmann 281 (Guj.)* in which the Hon'ble Court held that where additions have been made on the basis of statements of persons who are not allowed to be cross examined by the assessee, additions were not sustainable. The Ld. CIT(A) further held that non providing the opportunity of cross examination was a serious flaw on principles of natural justice which renders the order a nullity.

20. We find that during the course of the search/survey operations carried out in the various entities of the Shriji Polymer Group, including the case of the assessee company, no incriminating material or loose paper was found from which it could have been inferred that the loan transactions carried out by the appellant company with the subject three lender companies were not genuine and that the lender companies were merely paper companies. In the entire body of the assessment order, there is no mention of any independent inquiry conducted by the AO himself and the Ld. AO has made reference of some statements of various persons recorded either during the course of the search/survey in the Shriji Polymer Group or even prior to that. The Ld. AO has

made reference of some statement of Amit Kumar Kedia recorded by the DDIT (Inv.) – Kolkata, u/s. 131, on 26.08.2014. As the previous year relevant to the instant case is F.Y. 2015-16 and the statement of Shri Amit Kumar Kedia has no direct nexus with the loan transactions carried out by the assessee company during the year. Even from the statements of various persons recorded during the course of search/survey in the various business premises of Shriji Polymers Group, we could not find any adversity in the statements of Directors of the lender companies to support the assumption of the Ld. AO that the loan transactions carried out by the assessee company with them were not genuine. Rather the whole case of the Ld. AO is hinging upon the statement of various persons and during the entire course of the assessment proceedings, not even once in any notice or questionnaire, the Ld. AO whispered about recording of such statements or his proposal to rely upon such statements. In our considered view, merely because the persons whose statements were recorded were associates or employees of the assessee company, the statutory requirement of confronting the assessee with such statements could not have been dispensed with and the

Ld. AO was duty bound to provide an opportunity to the assessee to comment upon the statement of such persons and to cross examination of them, if requested by the assessee. We find that during the course of the assessment proceedings, the assessee had specifically requested the AO to issue summons/letters u/s. 131/133(6) to the loan creditor companies, but, the AO remained silent and did not even apprise the assessee that the statements of the directors of these companies had already been recorded by the Investigation Wing. Thus, the AO, placed absolute reliance upon the statements/ material gathered behind the back of the assessee without confronting the same to the assessee at any stage which is impermissible in view of the judicial pronouncements made by the Hon'ble Apex Court in the cases of *Kishanchand Chellaram vs. CIT (1980) 125 ITR 0713 (SC);* and again in the case of *Andaman Timber Industries vs. Commission of Central Excise Kolkata (2016) 15 SCC 785 (SC) and by* Hon'ble High Court of Rajasthan in the case of *CIT vs. Sunita Dhadda & Ors. (2018) 406 ITR 0220 (Raj.).*

21. We find that recently the Coordinate 'D' Bench of ITAT Ahmedabad in the case of *ACIT vs. E I Dorado Biotech Pvt. Ltd.*

(2020) 60 CCH 0233 (Ahm. Trib), at para (33) has held that if AO intends to rely, for the purpose of making addition to the total income of an assessee, on the basis of statement of third party as a witness, then he has to summon such witness, record his statement, offer that witness to the assessee for cross examination. The Coordinate Bench, Ahmedabad at para (36) has held as under:

> *" In other words where AO wants to rely on the statement of a witness (such as statement of entry operator recorded by investigation wing) to hold that share application money received by the assessee is not genuine but is only an accommodation entry then he has to provide copy of such statement to the assessee. Where the AO does not provide the copy of the statement of the witness then it is violation of principle of natural justice, and entire addition solely based on such statement is likely to be deleted."*

22. Respectfully relying upon the recent decision of the Coordinate Bench of Ahmedabad Tribunal in the case of *ACIT vs. E I Dorado Biotech Pvt. Ltd (supra)* and as also various judicial pronouncements, referred to hereinabove, we find no infirmity in the findings given by the Ld. CIT(A) on the issue of cross examination. However, from the appellate order, we find that the Ld. CIT(A) has not deleted the addition merely on the legal issue of

cross examination, but, the Ld.CIT(A) has also dealt with the entire addition on merits also which will be dealt by us in the subsequent paras while examining the facts of the case and the documentary evidences placed before us and also before the lower authorities in order to prove the identity and creditworthiness of the cash creditors and genuineness of the transaction. Thus we find no infirmity in the finding of Ld. CIT(A) deleting the addition for unexplained cash credit of Rs.12,44,12,690/- based on his observation that the Ld. A.O failed to follow the principles of natural justice as no opportunity to cross examination was provided to the assessee. Thus Ground No.1 of the Revenue's appeal stands dismissed.

23. Now we take up issues in Ground No.2 to 7 in respect M/s Ariba Foods Pvt. Ltd through which the Revenue has agitated the action of the Ld. CIT(A) in deleting the addition of Rs. 12,44,12,690/- made u/s. 68 of the IT Act, 1961, contending it that all the dummy/shell/bogus/paper/briefcase entities used to be perfect in papers and therefore, merely for the reason that such companies were making paper formalities or merely for the reason

that the transactions were made through banking channels, payment of interest was made on alleged loans and repayment of the alleged loans were also made, the genuineness of the transactions cannot be accepted. The Revenue also agitated that in the case of the lender companies, while framing assessment orders in their hands, negative inference was also drawn and has lastly agitated that the CIT(A) was not justified in dismissing the reliance placed by the AO on various case laws. The Ld. CIT(A) has dealt with this issue from para (4.3) on page no. 69 to para (4.3.5) at page nos. 96 of his appellate order. At para (4.3), the Ld. CIT(A) has narrated the background of the issue. At para (4.3.1), the Ld. CIT(A) has reproduced the chart containing the findings of the AO and rebuttal of the assessee thereon. The ld. CIT(A) has further acknowledged the filing of various documentary evidences by the assessee in support of identity of lenders, creditworthiness of lenders and genuineness of the transactions. At para (4.3.2), the ld. CIT(A) has stated that the assessee has challenged the arbitrary approach of the AO mainly on four major counts i.e. (a) the AO made additions merely on the basis of statements of third parties

recorded by Investigation Wing and without providing opportunity of cross examination; (b) the AO erred in converting the limited scrutiny case into complete; (c) the AO erred in making additions on suspicion, surmise and conjecture without having any incriminating material on record found from premises of the assessee; and (d) the AO erred in not considering the documentary evidences filed by the assessee. Further, from page no. 74 to 91, the ld. CIT(A) has discussed in detail the assessee's contentions made before him on the aforesaid four counts. At page nos. 81 to 91, the ld. CIT(A) has also discussed and described each and every documentary evidence filed by the assessee in support of establishing the identity of the loan creditor companies, creditworthiness of the lender companies and genuineness of the loan transactions. At page no. 91 & 92, the ld. CIT(A) has relied upon the decision of the ITAT Agra Bench in the case of *Umesh Electricals vs. ACIT (supra)* and the decision of the ITAT Indore Bench in the case of *Aseem Singh vs. ACIT (supra)*. Thereafter, on the same page, the ld. CIT(A) has stated that the assessee has furnished all the required details in order to provide the identity of

lenders, genuineness of transactions and creditworthiness of creditors. The ld. CIT(A) has also relied upon the decision of the Hon'ble MP High Court in the case of *Metachem Industries (supra)* to the effect that the law does not cast any obligation on the assessee to explain the source of the source for the amount borrowed. At para (4.3.3) on page no. 93 to 95, the ld. CIT(A) has referred to the case laws relied upon by the AO and has stated that none of these case laws are applicable to the case of the assessee. At para (4.3.4), the ld. CIT(A) has stated that the AO except relying upon the findings of Investigation Wing, could not bring any cogent material to establish that the lender companies were non-existent or bogus or paper companies. According to the ld. CIT(A), the assessee has fully discharged its onus of proving the genuineness of loan transactions and the identity & creditworthiness of the loan creditors have also been established beyond all doubts. The Ld. CIT(A) held that the identity of the lender companies is self proven from the fact the assessments in the case of the lender companies have been framed either by the AO himself or by some other officer. The Ld. CIT(A) observed that non compliance of the commission

issued at a wrong address cannot be viewed adversely for adjudging the identity of the lender companies specially in a situation where the statements of the directors of lender companies were duly recorded by the Investigation Wing itself. The Ld. CIT(A) also observed that the genuineness of the transactions also gets fully established as the transactions have taken place through banking channels and these have been confirmed by the lender companies. The Ld. CIT(A) held that the lender companies were having sufficient net owned funds for making advances to the appellant or anyone also. The Ld. CIT(A) further observed that the assessee had been able to establish even the source of the sources in the hands of the lender companies and all the lender companies are also assessed to Income Tax. Further, the ld. CIT(A) also stated that in none of the transaction, cash has been found deposited in bank account of lenders. Furthermore, during the survey proceeding, no incriminating material or any other evidence was found from which it could have been inferred that the assessee had provided any fund to the lender companies before obtaining loans. Finally, at para (4.3.5), the ld. CIT(A), keeping in view the facts of the case, the

documentary evidences filed and the case laws relied upon by the assessee, held that the AO was not justified in making addition of Rs.12,44,12,690/- on account of unsecured loans taken by the assessee from the lender companies.

24. We observe that Ld. CIT(A) has thoroughly examined various documentary evidences filed by the assessee to prove the identity and creditworthiness of the lenders and genuineness of the transaction. Relevant extract of Ld. CIT(A) finding examining the 3 cash creditors namely M/s DFL, M/s FVPL and M/s NVPL is mentioned below:-

> ***(****d) The AO erred in considering the documentary evidences filed in support of creditworthiness of the lender and genuineness of the transaction including explaining source of source:-*
>
> *Appellant before the AO as well as before me has filed copies of PAN, bank account statement of lenders, audited balance sheet, profit and loss statement, certificate of incorporation, copy of MOA, details collected from website of Ministry of Corporate Affairs, and confirmations of lenders. The brief details of these lender companies are as under :-*
>
> ***M/s Dwarkesh Finances Ltd PAN-AABCD7162N in short DFL :-***
>
> *Regarding the identity of the company the app e1l ant submitted that originally, the DFL was incorporated in the name of "Richmore Finance and*

*Leasing Limited", as a **public limited company,** duly registered under the erstwhile Companies Act, 1956, under the Certificate of Incorporation granted by the Registrar of Companies, Gujarat, on 09-06-1992 vide registration No.04-17790 of 1992-1993. Presently, the company is having Unique Corporate Identification Number i.e. CIN as U6910GJ1992PLC017790. The DFL was incorporated with the main object of carrying out the business of finance, hire purchasing and leasing as per the objects contained in its Memorandum of Association, under which it has got incorporated. The DFL was also granted Certificate for Commencement of Business by the concerning Registrar of Companies on 24-06-1992. The original name of company got subsequently changed to Dwarkesh Finance Limited vide Certificate of Change of Name granted by the concerning Registrar of Companies on 23-06-1995. Initially, the registered office of the DFL was situated at 201, Laxmi Gopal Building, 2nd Floor, Dandiya Bazar, Baroda, Gujarat-390001, but subsequently, w.e.f. 29-09-2017, the registered office of the company got shifted to a new place situated at 415-416, 4th Floor, pushpam Mall, Opp. Seema Ha1l, Anand Nagar Road, Satellite, Ahmedabad. Besides holding the registered office at Ahmedabad, the DFL is also holding one administrative office at 126, Dawa Bazar, Ujjain which was also confirmed by the AO. The DFL was listed with Vadodara stock Exchange Limited. The DFL is an active and functionary company as per the records and data of the Ministry of Corporate Affairs (MCA) , Government of India. Further, DFL for AY 2011-12 has been reassessed by the ITO-1(1)(2), Vadodara by determining the total income at Rs.16,20,690/-*

Regarding the genuineness of the transaction the appellant submitted that all the transactions by the appellant with DFL had taken place through account payee cheques/ banking channels only and none of the transactions had taken place in the form of cash. Appellant in

support has filed copy of bank account statement of DFL. Further, copy of ledger account of the appellant in the books of DFL and copy of loan confirmation has also been filed. The appellant had duly credited a sum of Rs.4,95,678/- in the unsecured loan account of DFL on account of interest and in respect of such interest, the appellant company has also paid TDS of Rs.49,567/-. Further, the DFL had duly offered the receipt of interest income of Rs.4,95,678/made by them from the appellant company, in respect of loan transactions, in their return of income for the year under consideration and in respect of such income, the DFL has not only got duly assessed but has also availed credit of TDS on such income. The appellant has also submitted that it has borrowed sum aggregating to Rs.83,00,000/- from DFL in earlier years and the genuineness of such borrowing have never been doubted in any of the assessment proceedings carried out in earlier years. In support of his claim appellant has placed reliance on the decision of Hon'ble ITAT, Lucknow Bench, in the case of Dwarikadhish Sugar Industries Vs. ITO (2012) 149 TTJ 0401 (Luk), wherein it has been held that part acceptance of loan indicates identity and genuineness of the creditors and, therefore, no adverse inference in respect of such creditor can be drawn.

In order to prove credit worthiness of the creditor, the appellant has filed copies of audited financial statements of DFL along with Auditors' Report, in respect of the financial year ended 31^{5t} March 2016. On perusal of the sane it was found that DFL has duly shown an amount of Rs. 83,00,000/- and Rs. 15,26,111/- in the name of appellant company as on 31.03.2015 and 31.03.2016 respectively. Further, DFL as on 31.03.2015 has net owned fund of Rs. 14.34 crores by way of share capital and reserves & surplus. Likewise, as on 31-03-2016, DFL have net owned funds to the tune of Rs.14.39 crores by way of share

capital and reserves. & surplus. The share capital of the company DFL were held from long back and therefore cannot be doubted on source of share capital as held by Hon'ble High Court of Delhi, in the case of CIT Vs. Gangaur Investment Ltd. (2011) 335 ITR 0359 (Del). On perusal of balance sheet of DFL it was observed that DFL has also made investment in the shares of the appellant company to the extent of Rs.2,34,OO,OOO/-- and the AO has already accepted the same. The AO cannot judge two similar things with different view. On one hand the AO is doubting the genuineness and source of unsecured loan and on other hand has accepted the share capital investment by the same company in same previous year. Further, DFL has surplus funds to advance the same to appellant company in relevant assessment year.

M/s Famous Vaniiya Pvt ltd (PAN-AABCF1483G) [in short FVPL]:Regarding the identity of FVPL the appellant submitted that the FVPL is a private limited company duly registered under the erstwhile Companies Act, 1956, under the Certificate of Incorporation granted by the Registrar of Companies, West Bengal, on 25-10-2007, vide registration No.U51109WB2007PTC120050 of 2007-2008. Presently, the company IS having Unique Corporate Identification Number i.e, CIN as U 511 09MP2007PTC031640. The FVPL was incorporated with the objects of carrying out the business of trading in various commodities, financing and investment as per the objects contained in its Memorandum of Association, under which it has got incorporated. Initially, the registered office of the F VPL was situated at 67-B, Metcalfe Street, Kolkata, W.B., but subsequently, w.e.f. 17-09-2013, the registered office of the- company got shifted to a new place situated at 125, Dawa Bazar, Madhav Club Road, Ujjain (M.P.) which is also accepted by the AO. The FVPL is an active and functionary company as per the records and data of the Ministry of Corporate Affairs (MCA), Government of India. In the case

of FVPL for AY 2011-12 and for AY 2016-17 order u/s 147 rws 143(3) and u/s 143(3) has been passed by the same as of the appellant. Thus, from the above it is very clear that identity of the company FVPL has been duly proved by the appellant with supportive evidences.

Regarding the genuineness of the transaction the appellant submitted that all the transactions have taken place through account payee cheques. Appellant in support has filed copies of bank account statement of FVPL. Appellant has also filed copy of ledger account of appellant in the books of FVPL showing each and every transaction relating to unsecured loan. A copy of confirmation letter duly signed by director of FVPL has also been filed by the appellant. The appellant further has brought some other facts to light and stated that the AO has made addition of Rs. 2,15,03,302/- on account of unsecured loan, however, the appellant has availed loan of Rs. 2,08,00,000/- only and balance amount represents interest i.e. of Rs. 7,03,302/-. The appellant has duly credited a sum of Rs.7,81,447/- in the unsecured loan account of FVPL on account of interest and in respect of such interest TDS of Rs. 78,145/- was also deducted. Apart from the above, the company FVPL had duly offered the receipt of interest income of Rs.7,81,447/- made by them from the appellant company, in respect of loan transactions, in their return of income for the year under consideration and in respect of such income and has also availed TDS credit on such income. The loan taken by the appellant has been fully repaid through banking channels.

From the above it is very clear that all the transactions have been executed through banking channels and the AO has simply doubted the genuineness of the transaction without having any incriminating material on record.

Regarding the creditworthiness of FVPL the appellant has filed copies of audited financial statements of FVPL along with Auditors' Report, for FY 2014-15 (AY 2015-16). On perusal of audited balance sheet it was observed that the company FVPL has owned funds of Rs. 10.26 crores by way of share capital and reserves & surplus and has net owned funds of Rs. 16.28 crores by way of share capital and reserves & surplus as on 31.03.2016 (AY 2016-17). FVPL is a regular income tax payer which can also seen from copies of return of income filed by the appellant. On perusal of balance sheet of FVPL it was further observed that FVPL has also made investment in the shares of the appellant company for Rs.1 ,58,00,000/- and the AO has already accepted the same. The AO cannot judge two similar things with different view. On one hand the AO is doubting the genuineness and source of unsecured loan and on other hand has accepted the share capital investment by the same company in same previous year.

Appellant has also explained source of source and submitted that a sum Rs.2,08,00,000/- was provided to the appellant company, through banking channel, immediately before providing the loan to the company, the FVPL had recovered loans aggregating to a sum of Rs.2,05,00,000/- from its four creditors (i) M/s. Vyanktesh Corrugators, (ii) M/s. Shree Packers (MP) Pvt. Ltd, (iii) Shri Sujit Lodha and (iv) Shri Nikhilesh G. Rathi, HOP. Further, FVPL long back has issued its 5,16,000 equity shares of face value of Rs.10/- each for a total consideration of Rs.51 ,60,0001- by charging total share premium of Rs.9,61,40,000/- during the financial year 2007-08 relevant to A.Y. 2008-09 which has also been accepted by the ITO Ward- 5(4), Kolkata who framed assessment order under s. 143(3)/147 of the Act in the case of FVPL for A.Y. 2008-09 on 30-04-2010. However, a fresh assessment was done in pursuant to order u/s 263 of the Act and a fresh assessment under s.

143(3)/263/143(3)/147 of the Act has been framed in the case of FVPL for A.Y. 2008-09 by the ITO-5(4), Kolkata on 26-03-2014 by making an addition of Rs.10,12,00,000/- in the hands of the FVPL, on account of acceptance of fresh share capital and share premium and thereby, framing the assessment at Rs.1 0, 12,22,570/-. Thus, FVPL has surplus funds to advance the same to appellant company in relevant assessment year.

•*M/s Navyug Vayapar Pvt* ***Ltd*** *PAN-AACCNl168M* ***in*** *short NVPL :- Regarding the identity of NVPL the appellant before AO as well as before me submitted that NVPL is a private limited company duly registered under the erstwhile Companies Act, 1956, under the Certificate of Incorporation granted by the Registrar of Companies, West Bengal, on 09-11-2004 vide registration No. U51909 WB2004PTC100365. Presently, the company is having Unique Corporate Identification Number i.e. CIN as U51909MP2004PTC031641. The NVPL was incorporated with the objects of carrying out the business of trading in various commodities, financing and investment as per the objects contained in its Memorandum of Association, under which it has got incorporated. Initially, the registered office of the NVPL was situated at B-18, Shanti Niketan, 8, Abanindra Nath Thakur Road, Sarani, Kolkata, W.B., but subsequently, w.e.f. 17-09-2013, the registered office of the company got shifted to a new place situated at 126, Dawa Bazar, Madhav Club Road, Ujjain (M.P.). The NVPL is an active and functionary company as per the records and data of the Ministry of Corporate Affairs (MCA), Government of India. The identity can also be proved by the fact that assessments order pertaining to the assessment year A.Y. 2011-12 and A.Y. 2016-17 have been passed by the same AO as of the appellant. Thus, from the above it is very clear that identity of the company NVPL has*

been duly proved by the appellant with supportive evidences.

Regarding the genuineness of the transaction the appellant submitted that all the transactions have taken place through account payee cheques. Appellant in support has filed copies of bank account statement of NVPL. Appellant has also filed copy of ledger account of appellant in the books of NVPL showing each and every transaction relating to unsecured loan. A copy of confirmation letter duly signed by directors of NVPL has also been filed by the appellant. The appellant further has brought some other facts to light and stated that the AO has made addition of Rs. 10,13,83,277/- on account of unsecured loan, however, the appellant has availed loan of Rs. 10,09,00,000/- only and balance amount represents interest i.e. of Rs. 4,83,277/-. The appellant has duly credited a sum of Rs, 5,36,975/- in the unsecured loan account of FVPL on account of interest and in respect of such interest TDS of Rs. 53,698/- was also deducted. Apart from the above, the company NVPL had duly offered the receipt of interest income of Rs.5,36,975/- made by them from the appellant company, in respect of loan transactions, in their return of income for the year under consideration and in respect of such income and has also availed TDS credit on such income. The loan taken by the appellant has been fully repaid through banking channels. From the above it is very clear that all the transactions have been executed through banking channels and the AO has simply doubted the genuineness of the transaction without having any incriminating material on record.

Regarding the creditworthiness of NVPL the appellant has filed copies of audited financial statements of NVPL along with Auditors' Report, for AY 2015-16 & 2016-17. On perusal of audited balance sheet for AY 2015- 16, it was observed that the company NVPL has owned funds of Rs. 15.77 crores by way of share capital and reserves & surplus and for AY 2016-17 has net owned funds of Rs. 25.56 crores by way of share capital and

reserves & surplus. NVPL is a regular income tax payer which can also be seen from copies of return of income filed by the appellant. The NVPL had shown taxable income, under s. 115JB of the Act at Rs.92,02,584/- and had paid tax amounting to Rs.17,78,752/-, for A.Y. 2016-17. Further, NVPL for the A.Y. 2018-19 has shown a taxable income of Rs.2,25,20,162/- and on such income has also paid a substantial amount of tax of Rs.47,09,735/-. On perusal of balance sheet of NVPL it was further observed that NVPL has also made investment in the shares of the appellant company to the extent of Rs.2,45,00,000/- and the AO has already accepted the same. The AO cannot judge two similar things with different view. On one hand the AO is doubting the genuineness and source of unsecured loan and on other hand has accepted the share capital investment by the same company in same previous year.

Appellant has also explained source of source and submitted that a sum Rs.10,09,00,000/- was provided to the appellant company, through banking channel, immediately before providing the loan to the company, NVPL had procured the funds by way of (i) receiving a dividend income of Rs.3,69,783/- from M/s. Shriji Polymers India Ltd., (ii) making recovery of unsecured loans of Rs.1,15,00,000/- given on earlier occasions to various group companies of the appellant, (iii) obtaining refund of loan of Rs.4,60,OO,OOO/- from the appellant company itself; and (iv) obtaining share capital money aggregating to Rs.6,00,00,000/- from various persons. It is also submitted that dividend income so received by the NVPL has duly been shown by it in its return of income for A.Y. 2016-17. Further, the genuineness of receipt of share capital money aggregating to Rs.6,00,00,000/- has duly been accepted by the AO who framed an assessment under s. 143(3) in the case of NVPL for A.Y. 2016-17.

Furthermore, the factum of refund of loan by the appellant to NVPL is evident from the copy of ledger account of NVPL in the books of account of

appellant for the relevant year. It was further submitted that receipt of refund of loan of Rs.1,15,00,000/-- from the various entities as made by the NVPL can be verified from Note-8 of the audited financial statements of NVPL for the financial year 2015-16 in which under the column of previous year, the making of loans and advances by NVPL to various persons at Rs.5,31,40,967/- has been clearly reflected. Thus, NVPL has surplus funds to advance the same to appellant company in relevant assessment year

Further, interest income earned by the lender companies on the loans given by them has been accepted and assessed by the same AO in their assessments. All the three lenders are sister associated companies of the appellant company taking loan from the company which is having surplus funds is one of the features of the group. The funds transfer is taking place from one company to other company.

26. After referring the relevant paper documents which included the loan confirmations, copy of bank accounts, proof of filing Income Tax Returns, financial statements, copies of the assessment orders of preceding years Ld. CIT(A) has held that the assessee had duly explained the source of cash credits from the alleged three companies in the books of account and the relevant observation of Ld. CIT(A) in this regard reads as follows:-

i. Identity of the creditors - the creditors are income tax payer and filed the loan confirmations and two of them are assessed by the same AO.

ii. Genuineness of the transaction- the appellant has taken the

loan through banking channel. The appellant is in the receipt of loan by cheque. Copies of bank statements of lender companies are placed on record and perused. There has been repayment of loan by the appellant to FVPL through banking channel. From perusing the bank statements of the lender companies as furnished in the paper book, it is found that no cash was deposited in the bank account prior to issuance of cheque to the assessee for the loan given. Moreover, there are few cash transactions of meager amount in the bank statements and it is found that all the amounts are received and paid through account payee cheques.

Appellant has made repayments of the loan taken per his convenience of fund availability as is evident from loan confirmation letters and ledger statements of the lender companies duly accompanied by bank statements.

Appellant has also paid interest to the lender companies on the loans borrowed and the same have been offered to tax by the respective lender companies in their regular income tax return and have been accepted as well as assessed by the same Assessing Officer in their assessment made under section 147 rws 143(3) and uls 143(3) w.r.t two lenders i.e. FVPL and NVPL. The appellant has also deducted TDS on interest and the TDS credit has also been availed by respective lender company.

iii. Creditworthiness of the creditors - the creditors are income tax payer and filing the income tax return. The companies have not only given the loan to the appellant but to other parties also. DFL is a Public Limited Company and has been duly registered with Ministry of Corporate Affairs. FVPL and NVPL are duly registered private limited company which can also be verified from web site of Ministry of

Corporate Affairs. The lender companies has sufficient surplus and share application money which was received far long back and has already been accepted by their concerned Assessing Officer. The AO on the contrary has held that these lender companies are non-existent, non-functional and a shell/paper/briefcase company. The AO has drawn his belief on the basis of investigation carried out by DDIT(Inv), Kolkata, who was unable to trace the lender companies. In the case of DFL it was explained that the company has been planning to shift its office to Ahmadabad and therefore, the said company was not traceable at Vadodara. In the case of FVPL and NVPL both the companies has changed their address from Kolkata to Ujjain and this fact is also duly addressed by the AO while framing the assessment order. Thus, there is no case for the AO to hold it as non-existent, non-functional and a shell/paper company.

From the above it is clear that the appellant has satisfied all the three conditions required for genuineness of the transaction. The same view has been upheld by Honb'le ITAT in the following cases:-

1.Umesh Electricals v/s Asst. CIT(2011) 18 ITJ 635 (Trib.Agra): (2011) 131 ITD 127 : (2011) 141 TTJ

Establishment of identity and credit-worthiness proved- Assessee produced the bank account of creditor in his bank account on the same day on which loan was given- Assessee furnished the cash flow statement of creditor-Based on inquiry, AO noted that creditor was engaged in providing accommodation entries-HELD- In group cases, it has been held that there was no evidence against the creditor to prove that he was providing accommodation entries-Further, mere deposit of money by the creditor on the same day, does not establish that the loan is not genuine-Assessee has proved the

source of credit and also the source of source -Addition cannot be made.

11.Aseem Singh v/s Asst. CIT (2012) 19 ITJ 52 (Trib.-Indore) Identity and credit-worthiness proved-Assessee took loan of Rs.1,00,0001-confirmation of creditor was filed-Lower authorities made addition uls 68 holding that amount was deposited in cash in the bank account of lender immediately prior to date of loan - HELD- Assessee has established the identity- The party has confirmed the transaction-If AO doubted the transaction, AO should have called creditor u/s 131-Addition cannot be made.

Thus, appellant has furnished all the required details in order to prove identity of lenders, genuineness of the transaction and creditworthiness of the creditor.

Hon'ble jurisdictional MP High Court in the case of Metachem Industries (2001) 245 ITR 160 (MP) has held that law does not cast any obligation on the assessee to explain the source of source for the amount borrowed. However, appellant has explained the source of source in the case of two major lenders FVPL and NVPL. It is most important to mention here that both the lender companies i.e. FVPL and NVPL were assessed with the same assessing officer under section 147 rws 143(3) and u/s 143(3). Even the directors of these lender companies were covered under the search operation and were assessed by the same AO under section 147 rws 143(3) and u/s 143(3). Hence, the AO had before him all the records and documents of the lender companies including those of the directors for verification of the facts and documents presented in support of his contention. Thus, the AO has erred totally, in overlooking the key facts and documents on record and in continuously stressing merely on the

statements of third parties recorded behind the back of the appellant.

27. We are also in conformity with the finding of Ld. CIT(A) dealing with various case laws relied by Ld. A.O and distinguishing the same being not applicable to the assessee on the basis of observation that the assessee has duly proved the genuineness of the transaction and creditworthiness of the cash creditors which support the evidence. The crux of the finding of Ld. CIT(A) after thoroughly examining the facts in the light of settled judicial position is mentioned in para 4.3.4 and 4.3.5 of the impugned order which reads as follows;

> *4.3.4 In my considered view, the AO except relying upon the findings of the Investigation Wing could not bring on record any cogent material to establish that the lender companies from whom appellant had claimed to have received loans were non-existent or bogus or paper companies. In my view, the appellant could be 'able to fully discharge its onus of proving the genuineness of the loan transaction beyond all doubts. The identity of the lender companies is self proven from the fact that the assessments in the case of the lender companies have been framed either by the AO himself or by some other assessing officer. Non compliance of the commission issued at a wrong address cannot be viewed adversely for adjudging the identity of such lender companies, especially in a situation when the statements of the directors of the lender companies was duly recorded by the Investigation . The genuineness of the transactions also gets fully*

established as the transactions have been taken place through banking channels and these have been confirmed by the lender companies. Also find that the lender companies were having sufficient net owned funds for making advances to the appellant or anyone also. The appellant has been able to establish even the source of the source in the hands of the lender companies. The lender_companies are assessed to Income Tax. In none of the loan transaction any cash has been found deposited in the bank account of the lenders. During the course of the search/survey no incriminating material or any other evidence was found from which it could have been inferred that the appellant had provided any fund to the lender companies before obtaining loans.

4.3.5 Therefore, in view of the above discussion, the AO was not justified m making addition of Rs. 12,44,12,690/- on account of unsecured loan from DFL, FVPL and NVPL. In fact the appellant has availed unsecured loan of Rs. 10,80,000/- from DFL, Rs.· 2,08,00,000/- from FVPL and Rs. 10,09,00,000/- from NVPL and the balance addition made the AO is on account of interest paid by the appellant. Thus, keeping in view facts of the case, the documentary evidences filed by the appellant and the case laws cited above, the addition made by the AO amounting to Rs.12,44,12,690/- is deleted. Therefore, appeal on these grounds are allowed.

28. We observe that in the instant case, the assessee had taken loans through banking channels from its own group entities in whose cases too, simultaneous survey proceedings were carried out u/s. 133A of the Act and during the course of such survey proceedings, the lender companies and their directors were duly

found in existence. During the course of the search/survey operations, no incriminating material or evidence was found. In the entire body of the assessment order, as also, in the paper book filed by the Revenue before us, there is no reference of any incriminating document. In the Paper Book filed before us, the Revenue has merely filed the copies of assessment orders passed in the cases of lender companies and in our considered view, such assessment orders on the contrary strengthen the case of the assessee inasmuch it establishes beyond all doubts that the lender companies were in existence and were assessed to Income-Tax.

29. We find that the entire assessment order is based upon some statements recorded by the Investigation Wing or by some other authorities on some earlier occasions, and the AO has not conducted any independent inquiry at his own from the lender companies, despite the assessee's making a specific request to him to issue summons u/s. 131 or letters u/s. 133(6) to the lender companies. Recently, the Coordinate Bench of Mumbai in the case of *Smt. Kalpana Mukesh Ruia vs. DCIT 2021 (1) TMI 93 – ITAT*

Mumbai in its order pronounced on 31/12/2020 has deleted the addition made u/s. 68 by holding as under:

> *"56. As regards the addition of unsecured loans is concerned, we note that assessing officer has accepted that assessee had submitted the confirmation, ITR, Bank Statement of parties. However, he rejected by simply observing that investigation wing at Kolkata has reported that some of the entry operators are providing bogus loans at Kolkata. The assessing officer did not make any enquiry of his own and only referred to the date of the confirmation of the unsecured loan and give adverse inference....*
>
> *57. We find that by simply referring to the general findings of the Investigation Wing at Kolkata entry operators providing bogus loans, the revenue authorities cannot fasten liability of unsecured loans upon the assessee, unless the assessing officer makes enquiries of his own and rebut the documentary evidences submitted by the assessee. The assessee has duly discharged its onus of submitting the loan confirmation, Income Tax Returns and Bank Statements and Financial Statements of the loan creditors. Without making inquiry of his own, the assessing officer has rejected them which is totally unsustainable."*

30. We observe that the Ld. AO issued the commission in respect of one of the lender companies at the old address whereas, in the body of the assessment order itself, he has brought on record the copy of the Notice of the Extra Ordinary General Meeting held by one of the lender companies for changing its address from Kolkata to Ujjain. In the similar circumstances, their lordships of the

Hon'ble Bombay High Court in the case of *PCIT vs. Shree Rajlaxmi Textile Park Pvt. Ltd. (2020) 268 TAXMAN 0405 (Bom.)* was pleased to upheld the order of the Tribunal deleting the addition u/s. 68 of the Act where the AO despite having correct address on his record sent notice to the creditor at a wrong address which came back unserved.

31. Further we observe that during the course of the assessment proceedings, the assessee had furnished all the necessary documentary evidences such as copy of certificate of incorporation, copy of Memorandum and Articles of Association, copy of Acknowledgement of Income Tax Return, copy of Master data downloaded from the official website of the MCA, particulars of directors of all the lender companies for establishing the identity of the lender companies. For establishing the genuineness of the transactions, the assessee had also furnished the copies of ledger accounts of the lender companies in the books of the assessee company and vice versa, copies of confirmation letters duly given by the lender companies, copies of the relevant bank statements of the lender companies and as also of the assessee company

demonstrating that all the transactions had taken place through banking channels only. Further, in order to establish the creditworthiness of the loan creditors before the AO, the assessee had furnished copies of the audited financial statements of the lender companies, copies of assessment orders passed in the cases of the lender companies and as also statement showing details of the taxable income and tax paid by the lender companies in the last eight years. Although, the transactions being loan transactions and not the transactions relating to the share capital, the assessee was not required to establish the source of the source as contemplated under proviso to Section 68 of the Act, but, despite such fact, the assessee had not only furnished the details regarding availability of funds in the hands of the lender companies immediately before providing loans to the assessee company but has also furnished the necessary documentary evidences such as the copies of bank accounts, financial statements and Income-Tax Returns of the sub-creditors. We find that all the aforesaid documentary evidences have also been furnished by the assessee before us in Paper Books

filed in two volumes and the relevant aforesaid documents are placed at Page No. 170 to 676 of the Paper Book.

32. We also observe that in the instant case, although the AO has disputed the identity and genuineness of the loan transaction carried out by the assessee with the Dwarkesh Finance Ltd., Famous Vanijya Pvt. Ltd. and Navyug Vyapar Pvt. Ltd., but, in respect of the share capital transactions aggregating to a sum of Rs. 6,37,00,000/- carried out by the same three companies with the assessee company in the same financial year, the same AO has accepted the genuineness of the transactions and as also the identity of these companies. Thus, the AO has adopted two different approaches for two different kind of transactions carried out by the assessee in the same companies in the same financial year which in our view is not permissible.

33. We further observe that one of the lender companies namely, Navyug Vyapar Pvt. Ltd. had provided loans to the assessee company for an aggregate sum of Rs. 10,13,83,277/- and before providing loan to the assessee company, the lender company had raised substantial amount of Rs. 9,00,45,000/- by way of issuance

of Share Capital and the Shareholders subscribing the shares in such lender companies were having taxable income of more than Rs. 20 Crores as per their personal income tax returns for A.Y. 2016-17 and this fact strongly goes in favour of the assessee and its cash creditor company about the source of funds received by the assessee.

34. It is also observed that Dwarkesh Finance Ltd. was a Public Limited Company duly listed on Vadodra Stock Exchange and therefore, its identity cannot be disputed. Further such company provided funds to the assessee company out of the funds received by it from other group companies namely, Vyankatesh Plastics and Packaging Pvt. Ltd. and Shree Niwas Polyfabrics and Packwell Pvt. Ltd.

35. We further observe that the other lender company namely, M/s. Famous Vanijya Pvt. Ltd. had also provided funds to the assessee company out of funds procured by it from other group companies namely, M/s. Vyankatesh Corrugators, Shree Packers M.P. Private Limited, etc. Thus, by any stretch of imagination, the trail of the funds in the hands of the assessee company emanated

from the lender companies cannot be disputed or doubted. The Ld. AO could not rebut the genuineness of the various documentary evidences furnished by the assessee before him for establishing the genuineness of the loan transactions. Thus, the assessee had discharged its onus of proving the genuineness of the sum credited in its books of accounts as contemplated u/s. 68 of the Act and since, no inquiry was conducted by the AO, the addition was not sustainable as held by the Hon'ble Karnataka High Court in the case of *M/s. Kumar Nirman and Nivesh Pvt. Ltd. vs. the Assistant Commissioner of Income Tax Bangalore 2020 (3) TMI 340 (Karn. HC)*. Their Lordships at para (7) of the Order were pleased to hold as under:

> "*In the background of aforesaid well settled legal principles, the facts of the case may be seen. In the instant case, the assessee in support of identity, genuineness of transaction and credit worthiness of M/s. Bhuawania Bros. Pvt. Ltd. had supplied a copy of the balance sheet and profit and loss account to the Assessing Officer. The appellant had also filed the copy of the return of income of M/s. Bhuwania Bros Pvt. Ltd. as well as copy of information letter. The appellant having proved the identity and creditworthiness of the party as well as the genuineness of the transaction had discharged its burden and it was for the revenue to conduct an enquiry and to prove that the transaction in question was not genuine and the identity of the creditor was not established and it had no*

credit worthiness. In the instant case, the revenue has not conducted any enquiry and has failed to discharge its burden. In view of preceding analysis, we answer the substantial question of law Nos. (i), (ii) and (iii) in the negative and in favour of the assessee and against the revenue."

36. We also observe that the various screenshots and cash trail pointed out by the CIT(DR), from the findings given by the AO in respect of one of the lenders namely, Navyug Vyapar Pvt. Ltd. pertain to the year 2010 only and therefore, they cannot be said to be having any nexus with the loan transactions carried out by the assessee during the year under consideration. From the Paper Book filed by the assessee, it is appearing that the case of aforesaid lender company, an assessment u/s. 143(3) r.w.s. 147 of the Act was framed post survey event in the assessee's group on 24.12.2018 for A.Y. 2011-12 and the AO framing such assessment has not found any irregularity or infirmity in the transactions pointed out by the present AO.

37. It is also not disputed that all the lender companies are assessed to tax and they have duly shown the interest income earned by them on the loans provided to the assessee company in their returns of income for the concerning assessment year and have also claimed the TDS made by the assessee company on such

interest payment which has duly been allowed. The assessee company has made substantial repayment of the loans again through banking channels. The Ld. CIT in his order has very elaborately dealt with loan transactions carried out by each of the lender companies with the assessee company. Before us, the ld. DR could not point out any discrepancy in the findings given by the ld. CIT(A) on the merits of the loan transactions.

38. Further we do not find any substance in the ground of the revenue that no consideration is required to be given to the various documentary evidences but the facts should be on the groups of the assessee and group companies working as dummy paper companies. It is a trite law that a suspicion howsoever strong it may be cannot substitute the legal proof especially when such legal proof remains uncontroverted. The addition made by the Ld. A.O are more on the basis of the theory adopted on the basis of some investigation carried out in the preceding years which either may had its fate by way of additions in the hands of the respective companies in those years. Had there been additions in the hands of those companies in the preceding years then there remains no

reason to make any additions in the hands of other assessee(s) in the subsequent years and in case in the preceding years if no addition could be made by the revenue authorities in other lender companies or assessee company that could not be a basis with the revenue authorities to tax such untaxed income in the hands of the in the subsequent assessment years because it is well established rule that each assessment year is to be treated separately and the assessee should be taxed for the income earned during the year to which it pertains.

39. We therefore in the given facts and circumstances of the case, respectfully following the judgments and decisions referred herein above and being satisfied with the documentary evidences filed before us are of the view that the assessee has successfully discharged its onus to prove the identity and creditworthiness of the three cash creditors i.e. M/s DFL, M/s FVPL and M/s NVPL and the genuineness of transaction of unsecured loan taken by the assessee company from these three companies. Thus there remains no reason to interfere in the detailed finding of Ld. CIT(A) deleting the impugned addition of Rs.12,44,12,690/- made by the Ld. A.O

invoking provisions of Section 68 of the Act for unexplained cash credit. Ground No.2 to 7 of the Revenue stands dismissed.

40. Accordingly appeal of the revenue in the case of M/s Ariba Foods Pvt. Ltd raised vide ITA No.736/Ind/2019 for Assessment Year 2016-17 stands dismissed.

41. Now we take up revenue's appeal No.ITA/737/Ind/2019 in the case of M/s Vyanktesh Plastics and Packaging Pvt. Ltd pertaining to Assessment Year 2015-16. In this appeal revenue has raised 9 grounds of appeal but the issues raised therein challenging the finding of Ld. CIT(A) can be summarized as follows:-

(i) Deletion of addition of Rs.52,552/- for delay in depositing employees contribution of PF and ESIC.

(ii) Adhoc disallowance of Rs.4,50,000/- on account of power and fuel expenses.

(iii) Addition for unexplained cash credit u/s 68 of the Act at Rs.3,44,49,554/- for the unsecured loan taken from following two companies:-

Name of Company	Amount (Rs.)
i) M/s DFL	3,39,01,393/-
ii) M/s. NVPL	5,78,161/-
Total	3,44,79,554/-

42. As regards the deletion of addition of Rs.52,552/- made by Ld. A.O u/s 36(1)(va) of the Act for delay in depositing the employees contribution, we find that the issue raised in this ground is squarely covered in favour of the assessee which has been rightly relied upon by the Ld. CIT(A). Recently this Tribunal in the case of *Bajrang Agrawal Pvt. Ltd ITA No.1346/Ind/2016 dated 31.01.2018* deleted such type of addition relying on the judgment of Hon'ble Rajasthan High Court in the case of *Central Office Mewara.....Organisation Pvt. Ltd V/s JCIT ITM 6777.* We thus find no reason to interfere in the finding of Ld. CIT(A) and accordingly dismiss revenue's Ground No.1.

43. As regards Ground No.2 relating to adhoc disallowance of Rs.4,50,000/- deleted by Ld. CIT(A), brief facts are that the assessee claimed power and fuel expenses at Rs.18,04,136/- are the corrugated boxes manufactured during the year are 2912200 whereas in the preceding year it manufactured 4065639 corrugated

boxes and expenses on power and fuel were incurred at Rs.18,02,721/-. Since the manufacturing was less but the expenses remained the same. Ld. A.O made an adhoc disallowance of Rs.4,50,000/-. However Ld. CIT(A) deleted this disallowance observing that the same has been made by the Ld. A.O purely on lump sum and presumption basis and without finding any incriminating material on record.

44. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions. We observe that the payment for power and fuel has been made through banking channel to Madhya Pradesh Kshetriya Power Vitaran Nigam (Government undertaking). The Ld. A.O has failed to find any defect in the books of accounts as the same has not been rejected and financial statement of company are duly audited. Ld. A.O has not made any efforts to examine the sizes of corrugated boxes manufactured and just focused on the number. Thus the addition made was merely on assumption and surmises which the Ld. CIT(A) has rightly deleted. Since there is no inconsistency in

the finding of Ld. CIT(A) Ground No.2 of Revenue's appeal stands dismissed.

45. As regards Ground No.3 to 9 the grievance of the revenue is with regard to deletion of addition made u/s 68 of the Act for unsecured loan of Rs.3,44,79,554/- taken from following two companies:-

Name of Company	Amount (Rs.)
i) M/s Dwarkesh Finance Ltd (DFL)	3,39,01,393/-
ii) M/s. Navyug Vyapar Pvt. Ltd (NVPL)	5,78,161/-
Total	3,44,79,554/-

46. Brief facts are that Ld. A.O was not satisfied with the identity, genuineness and creditworthiness of the above stated two cash creditors and accordingly made addition u/s 68 of the Act which was thereafter deleted by Ld. CIT(A) who on the basis of documentary evidence was satisfied with the identity and creditworthiness of the cash creditors and genuineness of the transaction. Now the revenue is in appeal before the Tribunal.

47. Ld. Departmental Representative vehemently argued supporting the finding of Ld. A.O and making same submission as

were made in the case of M/s Ariba Foods Pvt. Ltd in ITA No.736/Ind/2017 mentioned in the preceding paras, since similar type of addition made by the Ld. A.O in this case also for the unsecured loan taken from same lender companies.

48. Ld. Counsel for the assessee has also relied on the finding of Ld. CIT(A) as well as the submissions made for similar issue during the course of hearing of Revenue's appeal in the case of M/s Ariba Foods Pvt. Ltd ITA No.736/Ind/2017.

49. We have heard rival submissions and perused the records placed before us. Revenue's grievance through Ground No.3 to 9 revolves around the issue of addition of unexplained cash credit u/s 68 of the Act at Rs.3,44,79,554/- made by Ld. A.O u/s 68 of the Act but subsequently deleted by Ld. CIT(A). The alleged unsecured loans were taken from following two companies:-

Name of Company	Amount (Rs.)
i) M/s Dwarkesh Finance Ltd (DFL)	3,39,01,393/-
ii) M/s. Navyug Vyapar Pvt. Ltd (NVPL)	5,78,161/-
Total	3,44,79,554/-

50. We observe that while adjudicating the issues raised in the case of another group concern M/s Ariba Foods Pvt. Ltd for Assessment Year 2016-17 ITA No.736/Ind/2017, similar issue of unexplained cash credit from various cash creditors was under consideration. Some of the unsecured loans in the case of M/s Ariba Foods Pvt. Ltd were also taken from the alleged two cash creditors namely M/s Dwarkesh Finance Ltd (In Short 'DFL') and M/s. Navyug Vyapar Pvt. Ltd (In short'NVPL'). We after examining the records placed before us and the detailed finding of Ld. CIT(A) considering relevant judicial decisions were satisfied with the identity and creditworthiness of the cash creditors namely M/s DFL and M/s FVPL and also with regards to the creditworthiness of these two lender companies since they were having sufficient funds to provide loans including that to the assessee. We thus taking consistent view and applying our own decision taken in the case of M/s Ariba Foods Pvt. Ltd vide ITA No.736/Ind/2017 as held in para 22 of this order are of the considered view that Ld. A.O was not justified in making addition for unexplained cash credit u/s 68 of the Act at Rs. 3,44,79,554/- for the loans taken from M/s DFL and

M/s FVPL. Thus we find no infirmity in the finding of Ld. CIT(A) and same stands confirmed. We accordingly dismiss revenue's Ground No.3 to 9 raised in the case of M/s Vyanktesh Plastics and Packaging Pvt. Ltd vide ITA No.737/Ind/2017 for Assessment Year 2015-16.

51. In the result all the grounds raised by the revenue in appeal vide ITA No.737/Ind/2017 for Assessment Year 2015-16 stands dismissed.

52. Now we take up revenue's appeal in the case of M/s Famous Vanijya Pvt. Ltd vide ITA No.773/Ind/2017 for Assessment Year 2015-16.

53. Brief facts of the case as called out from the records are that the assessee is a company, duly incorporated on 25.10.2007 and stated to be engaged in investment and financing activities. The assessee is one of the various entities of Shriji Polymers (India) Ltd. Group in which search and seizure operations u/s. 132 were carried out by the DDIT(Inv.)-II, Indore on 27/07/2017. However, in the case of the assessee, only survey proceedings u/s. 133A were initiated on the same day. The assessee filed its original return of

income, u/s. 139(1), on 30.09.2011 declaring total income at Rs. 35,700/-. Thereafter, the then AO found that the assessee had bogus investment/transactions with Dummy/Bogus Concerns such as M/s. Etima Emedia Ltd. and therefore, notice u/s. 148 was issued on 30.03.2018. The assessee, in reply on 05.09.2018 has furnished return of income declaring total income at Rs. 35,700/-. The AO, while framing assessment u/s. 147 r.w.s. 143(3) made addition of Rs. 4,16,15,000/- on account of unexplained cash credit u/s. 68 of the Act. According to the AO, the assessee could not establish the genuineness of the refund received out of investments made in earlier years to the tune of Rs. 4,07,35,000/- and also, could not establish the genuineness of the loan transactions claimed to be carried out by it with one company namely, M/s. Etima Emedia Ltd. to the extent of Rs. 8,80,000/-.

54. Aggrieved assessee preferred appeal before CIT(A) and filed detailed submissions along with documentary evidences. After considering the same Ld. CIT(A) decided the issue in favour of the assessee and deleted the addition of Rs.4,16,15,000/- made by Ld.

A.O and the relevant extract of finding of Ld. CIT(A) is mentioned below:-

> ***4.2.4*** *In my considered view, the AO except relying upon the findings of the Investigation Wing could not bring on record any cogent material to establish that the lender company from whom appellant had claimed to have received loan was non-existent or bogus or paper company. In my view, the appellant could be able to fully discharge its onus of proving the genuineness of the loan transaction beyond all doubts. The identity of the lender company is self proven from the fact that the assessments in the case of the lender company have been framed by the AO himself. The genuineness of the transactions also gets fully established as the transactions have been taken place through banking channels and these have been confirmed by the lender company. Also find that the lender company was having sufficient net owned funds for making advances to the appellant or any one also. The lender company is assessed to Income Tax and by same AO. In none of the loan transaction any cash has been found deposited in the bank account of the lender company. During the course of the search/survey no incriminating material or any other evidence was found from which it could have been inferred that the appellant had provided any fund to the lender company before obtaining loans.*
>
> ***4.2.5*** *Therefore, in view of the above discussion, the AO was not justified in making addition of Rs. 4,16,15,000/- (Rs. 4,07,35,000/- (refund of investment) + 8,80,000/-(unsecured loans) on account of disallowance made u/s 68 of the Act. Thus, keeping in view facts of the case, the documentary evidences filed by the appellant and the case laws cited above, the addition made by the AO amounting to* ***Rs. 4,16,15,000/- is Deleted.*** *Therefore, appeal on these grounds are Allowed.*

55. Now, the Revenue is in appeal before the Tribunal.

56. Since, all the eleven grounds taken by the Revenue are inter connected and directed against the action of the Ld. CIT(A) in deleting the addition of Rs. 4,16,15,000/- made by the AO u/s. 68 of the Act, we consider it appropriate to adjudicate all the grounds simultaneously.

57. Ld. CIT-DR for the Revenue vehemently argued at length. The main contention of the Ld. CIT-DR was that the assessee, in its books of accounts, had shown to have received a refund aggregating to a sum of Rs. 4,07,35,000/- out of the alleged investments made in earlier years, but, the assessee failed to discharge its onus of establishing identity and creditworthiness of the creditor parties and genuineness of the transactions. The CIT(DR) also contended that during the relevant year, the assessee had taken unsecured loan of Rs. 8,80,000/- from yet another dummy entity namely, M/s. Etima Emedia Ltd. but, during the course of the survey action in the premises of the aforesaid company, it was found that such company was only a paper company and engaged in the practice of providing accommodation entries only. It was also contended that

all the director of the lender company are dummy and for the namesakes and they work only on the direction of Shri Anand Bangur, a key person of the Shriji Group. The CIT(DR) contended that the lender company has been formed to route its unaccounted income into other group concerns and it was not having any substantial assets available in its Balance Sheet. Finally, the CIT(DR) contended that the additions made by the AO, u/s. 68, at Rs. 4,16,15,000/- be confirmed and the Order of the CIT(A) be set-aside. During the course of the appellate proceeding before us, the Ld. CIT(DR) also filed one paper book containing the copy of the show cause notice issued by the AO to the assessee during the course of the assessment proceedings, the copy of the assessee's reply thereon, the copy of the assessment order u/s. 147/143(3) dated 29.12.2018 for A.Y. 2011-12 in the case of the lender company and Grounds of Appeal raised before us.

58. Per Contra, Ld. Counsel for the assessee also made his arguments at length by making a reference of the various documentary evidences furnished by him in a Paper Book, running from Page No. 1 to 170. The Ld. Counsel for the assessee also filed

before us a copy of the written synopsis by making reference of various findings of the AO, the Ld. CIT(A) and various documentary evidences furnished in the Paper Book. The relevant abstract of the Synopsis filed by the Counsel of the assessee is reproduced as under:

> " ***F. Key Points of Assessee's Submission and Relevant Pages of Paper Book :***
> **[in respect of addition of Rs. 4,07,35,000/- for Disinvestment]**

S. No.	*Submission in Brief*	*Relevant Pages of Paper Book*	*Remarks*
1	*The addition so made was not an issue for reopening the assessment as is evident from the copy of the statement of reasons*	*60 & 61*	*While recording the reasons, it was wrongly assumed that the assessee made investment amounting to Rs.10,12,02,256/- during the year under consideration whereas the factual position remained that such investment was made during earlier years which is evident from the copy of the audited balance sheet for F.Y. 2009-10 [A.Y. 2010-11] placed at page no. 105 of the Paper Book.*
2	*During the entire assessment proceedings, except calling for the information of fresh investments made and sources thereof vide the only notice dated 07-09-2018, no further information or evidences were called for.*	*87, 91 to 93, 94, 95 to 98*	*The assessee had made full compliance of the notice and had furnished the desired details vide its letter dated 21-12-2018 placed at page no. 91 to 93 of the Paper Book. The assessee had also furnished the complete details of the disinvestments made the proceeds wherefrom were utilized for making fresh*

			investments [kindly refer PB Page No. 94]. Further, in evidence of receipts of sale proceeds, the assessee had also produced the copy of relevant bank statements [kindly refer PB Page No. 95 to 98].
3	*The making of investments in shares in earlier years, which have been disinvested during the previous year under consideration, is evident from the copy of the audited balance sheet of the assessee for F.Y. 2009-10 [A.Y. 2010-11]*	*105*	*In such audited balance sheet, investment amounting to Rs.10,10,89,960/- as on 31-03-2010 and as also, as on 31-03-2009 is getting clearly reflected.*
4	*The assessee company had made investments aggregating to Rs.10,10,89,960/- in earlier years out of share capital and share premium received by it from various persons.*		
5	*The assessee company has already been taxed in respect of the share capital and share premium aggregating to Rs.10,12,00,000/- received by it during the financial year 2007-08 relevant to A.Y. 2008-09 in an assessment proceeding carried out under s.143(3)/263/143(3)/147 of the Act by the ITO, Ward-5(4), Kolkata, vide his Order dated 26-03-2014.*	*112 to 120*	*In the assessment order, at para (4) [PB Page No. 119], the fact of receipt of a sum of Rs.10,12,00,000/- by the assessee company by way of share capital and share premium is getting clearly reflected.*
6	*It is a settled law that the sources of funds emanating from realization of old debtors or disinvestments, shown in the audited balance sheets of*	*-*	*-*

	earlier years, cannot be disputed or doubted.		
7	*Double taxation is not permissible*	*-*	*Since in respect of the sources of original investments, the assessee has already been taxed in A.Y. 2008-09, then upon change of the spice of such investments, no further addition can be made.*

D. Key Points of Assessee's Submission and Relevant Pages of Paper Book :

[in respect of addition of Rs. 8,80,000/- for Loan from Etima Emedia Ltd.]

S. No.	*Submission in Brief*	*Relevant Pages of Paper Book*	*Remarks*
1	*The addition has been made on an issue which was not the subject matter of reopening u/s. 148*	*60 & 61*	*While recording the reasons, the AO had merely formed the belief qua the investments and loans given by the assessee and not in respect of any unsecured loan claimed to have been taken by the assessee.*
2	*The lender company from whom the assessee accepted loan is one of the group companies of the Bangur Group itself to which the assessee belongs.*	*-*	*Para (2.0) on page no. 18 of the AO's Order*
3	*In respect of the lender company, simultaneous survey proceedings u/s. 133A were carried out. Further, the directors of the lender company were found on given address and their statements were also recorded.*	*-*	*Para (2.6) on page no. 63 of the AO's Order.*

4	*In respect of the lender company, simultaneous assessment proceedings got completed for A.Y. 2011-12 u/s. 147/143(3) of the Act.*	*159 to 164*	*i) Framing of the Assessment in the hands of lender company establish the identity of the lender company.* *ii) Interest income shown by the lender company from the assessee company and as also, corresponding credit for TDS claim has been granted. Thus, no adverse cognizance has been taken in the cases of the lender company.*
5	*During the course of the assessment proceedings, the AO of the assessee had not whispered a single word regarding the so-called enquiries and statements recorded by the Investigation Wing. The opportunity of cross-examination of any of the witnesses of the AO was not given.*	*-*	*On a perusal of the only Notice issued u/s. 142(1) placed at page no. 87 & 88 of the Paper Book, it may be gathered that the AO had not uttered any single word regarding the alleged enquiries and other materials referred to by him in the body of the assessment order. Thus, the question of giving any cross-examination does not arise.*
6	*The assessee had established identity of the lender company by furnishing all the necessary documents before the ld. CIT(A).*	*121 to 170*	*All these documents establish the identity of the lender company, the genuineness of the loan transactions and as also, the creditworthiness of the lender company.*
7	*None of the findings given by the AO is relevant for making the impugned additions*	*-*	*The AO's findings and the assessee's rebuttal on each of the findings of the AO have been reproduced by the ld. CIT(A) at para (4.2.1) on page no. 53 to 55 of his Order.*

59. The Ld. Counsel for the assessee also placed reliance on the following decisions;

i) ACIT vs. EI Dorado Biotech Pvt. Ltd. (2020) 60 CCH 233 (AhdTrib) Order dated 11-11-2020.
ii) CIT vs. Metachem Industries (2000) 245 ITR 0160 (MP)
iii) Nemichand Kothari vs. CIT (2003) 264 ITR 254 (Gau.)
iii) CIT vs. Mehrotra Brothers (2004) 270 ITR 0157 (MP)
iv) Ashok Pal Daga vs. CIT (1996) 220 ITR 0452 (MP)
v) DCIT vs. Rohini Builders (2002) 256 ITR 360 (Guj)
vi) CIT vs. STL Extrusions Pvt. Ltd. (2011) 333 ITR 269 (MP)
vii) CIT vs. Devi Prasad Khandelwal & Company Ltd. (1971) 81 ITR 460 (Bom.)
viii) CIT vs. Orissa Corporation P. Ltd. (1986) 159 ITR 0078 (SC)
ix) Orient Trading Co. Ltd. vs. CIT (1963) 49 ITR 0723 (Bom)
x) CIT vs. Taj Borewell (2007) 291 ITR 0232 (Mad.)
xi) Addl. CIT vs. Bahri Brothers (P) Ltd. (1985) 154 ITR 0244 (Pat)
xii) CIT vs. Hanuman Agarwal (1985) 151 ITR 150 (Pat)
xiii) Jalan Timbers vs. CIT (1997) 223 ITR 11 (Gau)
xiv) CIT vs. Dalmia Resorts International (2007) 290 ITR 508 (Del)
xv) Lalitha Jewellery Mart P. Ltd. vs. DCIT (2017) 399 ITR 0425 (Mad)
xvi) CIT vs. Jai Kumar Bakliwal (2014) 366 ITR 217 (Raj)
xvii) CIT vs. Shri E.S. Jose (2014) 220 Taxman 0032 (Ker)
xviii) CIT vs. Kamdhenu Steel & Alloys Ltd. & Ors. (2014) 361 ITR 0220 (Del)
xix) Mr. Gaurav Triyugi Singh vs. ITO 2020 (1) TMI 1153 (BomHC)
xx) M/s. Kumar Nirman and Nivesh Pvt. Ltd. vs. ACIT 2020 (3) TMI 340 (KarHC)
xxi) ACIT vs. M/s. Jay Enterprise 2019 (4) TMI 1811 (ITAT Rajkot)
xxii) Pr.CIT vs. M/s. Jay Enterprise 2020 (1) TMI 657 (GujHC)
xxiii) ITO vs. M/s. Riddhi Siddhi Corporation 2017 (2) TMI 1129 (ITAT Ahd.)
xxiv) ITO vs. M/s. RE N Raga Media Pvt. Ltd. 2019 (6) TMI 651 (ITAT Mum.)
xxv) Mahipal Ishwarlal Sottany vs. ITO 2019 (10) TMI 1161 (ITAT Ahd.)
xxvi) ITO vs. M/s. Celebrity Lifespace Pvt. Ltd. 2019 (12) TMI 1157 (ITAT Mum.)
xxvii) DCIT vs. M/s. Chetan R. Shah (HUF) 2020 (1) TMI 1239 (ITAT Mum.)
xxviii) ITO vs. M/s. MJD Financial Services Pvt. Ltd. 2020 (10) TMI 651 (ITAT Mum.)
xxix) DCIT vs. M/s. Manba Finance Ltd. 2020 (1) TMI 645 (ITAT Mum.)
xxx) ACIT vs. Mittal Appliances Ltd. (2016) 27 ITJ 120 (Trib.-Indore)
xxxi) ACIT vs. Shree Sai Vihar (2016) 28 ITJ 158 (Trib.-Raipur)
xxxii) ITO vs. Vaibhav Cotton Pvt. Ltd. (2012) 19 ITJ 113 (Trib.-Indore)

xxxiii) Shri Sumati Kumar Kasliwal, Shri Parth Kasliwal, Smt. Sharda Kasliwal, M/s. Nishant Finance Pvt. Ltd., Shri Manoj Kasliwal and M/s. Pumarth Infrastructure Pvt. Ltd. vs. ACIT (Central)-1, Indore 2019 (5) TMI 338 (ITAT-Indore)

60. The crux of the arguments of the Ld. Counsel of the assessee on the issue of Disinvestment, for which the addition amounting to Rs. 4,07,35,000/- was made by the AO, are that; (i) the addition so made was not an issue for reopening the assessment as is evident from the copy of the statement of reasons; (ii) during the entire assessment proceedings, except calling for the information of fresh investments made and sources thereof vide the only notice dated 07.09.2018, no further information or evidences were called for and in reply the assessee had furnished complete details and copy of the relevant bank statement in which the proceeds of disinvestment were credited; (iii) The making of investments in shares in earlier years, which have been disinvested during the previous year under consideration, is evident from the copy of the audited balance sheet of the assessee for F.Y. 2009-10 [A.Y. 2010-11] in which the investment aggregating to Rs.10,10,89,960/- is getting clearly reflected ; (iv) The assessee company had made investments aggregating to Rs.10,10,89,960/- in earlier years out of share capital and share premium received by it from various persons; (v)

The assessee company has already been taxed in respect of the share capital and share premium aggregating to Rs.10,12,00,000/- received by it during the financial year 2007-08 relevant to A.Y. 2008-09 in an assessment proceeding carried out under s.143(3)/263/143(3)/147 of the Act by the ITO, Ward-5(4), Kolkata, vide his Order dated 26-03-2014; (vi) It is a settled law that the sources of funds emanating from realization of old debtors or disinvestments, shown in the audited balance sheets of earlier years, cannot be disputed or doubted; (vii) Double taxation is not permissible as the sources of funds for making investment by the assessee company have already been taxed in the F.Y. 2007-08, again the addition in respect of the proceeds of disinvestment of such investments cannot be made.

61. Further, in respect of addition of Rs. 8,80,000/- made on account of unsecured loan taken by it from M/s. Etima Emedia Ltd., the Ld. Counsel for the assessee argued that: (i) The addition has been made on an issue which was not the subject matter of reopening u/s. 148; (ii) The lender company from whom the assessee accepted loan is one of the group companies of the Bangur

Group itself to which the assessee belongs; (iii) In respect of the lender company, simultaneous survey proceedings u/s. 133A were carried out. Further, the directors of the lender company were found on given address and their statements were also recorded; (iv) In respect of the lender company, simultaneous assessment proceedings got completed for A.Y. 2011-12 u/s. 147/143(3) of the Act; (v) During the course of the assessment proceedings, the AO of the assessee had not whispered a single word regarding the so-called enquiries and statements recorded by the Investigation Wing. The opportunity of cross-examination of any of the witnesses of the AO was not given; (vi) The assessee had established identity of the lender company by furnishing all the necessary documents before the ld. CIT(A); (vii) None of the findings given by the AO is relevant for making the impugned additions. Besides making the contentions as above, the Ld. Counsel for the assessee also relied upon the plethora of judicial pronouncements as noted down in the preceding para.

62. We have heard rival contentions and perused the records produced before us and carefully gone through the judgments referred to by both the parties.

63. Through Ground Nos. 1 to 4, the Revenue has challenged the finding of the Ld. CIT(A) in deleting the addition of Rs. 4,07,35,000/- made by the AO u/s. 68 of the Act by disbelieving the assessee's claim that during the relevant previous year, the appellant had received refunds out of genuine investment made in earlier years. The Revenue agitated that the CIT(A) completely ignored that the assessee had failed to establish the link between the said amount of disinvestment and share capital and share premium amount received in earlier years and also did not appreciate that the assessee had failed to show as to how the share capital and share premium amount was liquidated and translated to the refund of Rs. 4,07,35,000/- . The Revenue also agitated that when the assessee itself had filed appeal against the addition made on account of share capital and share premium amount, then assessee was not eligible to take the basis of addition for explaining the sources of investments.

64. We observe that during the course of the search/survey proceedings in the Shriji Group to which the assessee belongs, no incriminating material or document was found or recovered from which it could have been inferred that the transactions of receipt of refund shown by the assessee out of the liquidation of the investments made in earlier years was not genuine. In the entire body of the assessment order, the AO has not made reference of any incriminating material. Even in the paper book filed before us, there is no mentioning of any incriminating material or document.

65. **F**rom the copy of the audited balance sheet of the assessee filed at page no. 49A of the Paper Book, we observe that as on 31.03.2011 and 31.03.2010, the assessee company has shown investments amounting to Rs. 7,53,89,960/- and Rs. 10,10,89,960/- respectively. During the course of the assessment proceedings, the AO vide his questionnaire annexed to the notice u/s. 142(1) dated 07.09.2018, placed at page no. 87 of the Paper Book filed by the assessee, had only required the assessee to furnish information regarding all kinds of investments made during the year with sources of funds. In response, the assessee had

furnished the details of investments/disinvestments made during the year and had duly demonstrated that how the amount of investments as on 01.04.2010 at Rs. 10,10,89,960/- reduced to Rs. 7,53,89,960/- on 31.03.2011. The assessee also demonstrated that during the relevant previous year, it had made some fresh investments and had also received refund aggregating to a sum of Rs. 4,07,35,000/- out of the investments made in the earlier years. The assessee had furnished the complete details of the amount realized from sale of investments made in earlier years before the AO and the same is also placed in its paper book at page no. 94. In order to establish its claim that the entire sale proceeds had been received through banking channels, the assessee has also furnished copies of its relevant bank statements at page no. 95 to 98 of its paper book. Various documentary evidences furnished by the assessee have not been contravened either by the AO or by the Ld. CIT(DR).

66. It is observed that the AO has discarded the claim of the assessee as regard to the liquidation of the investment made in earlier years without properly appreciating the facts of the case and

merely on extraneous considerations. The assessee company in its audited balance sheet had shown making of investment to the extent of Rs. 10,10,89,960/- as on 31.03.2010 and such fact has not been disputed or doubted by the AO. The assessee company in its audited financial statements as of 31.03.2010 has shown its own funds amounting to Rs. 51,60,000/- and Rs. 9,61,40,000/- respectively by way of Equity Share Capital and Share Premium. Thus, the sources of making the investments in the earlier years cannot be disbelieved or doubted. The assessee company had raised such share capital and share premium aggregating to a sum of Rs. 10,12,00,000/- during the F.Y. 2007-08 relevant to A.Y. 2008-09 and such receipt of money had already been subjected to assessment in the concerned year.

67. In respect of the funds received by way of share capital and share premium, the assessee company has already been subjected to tax u/s. 68 of the Act in pursuance to an order of assessment passed for A.Y. 2008-09, u/s. 143(3)/263/143(3)/147 of the Act by the ITO Ward – 5(4), Kolkata (copy of the assessment order placed at page no. 112 to 120 of the paper book filed by the assessee). We

have been apprised by the Ld. Counsel for the assessee that against such taxation, the assessee company has already preferred a separate appeal which is pending for adjudication. Irrespective of the outcome of the aforesaid appeal for A.Y. 2008-09, we are of the considered view that the assessee company was having sufficient funds to make various investments and therefore, any subsequent realization of such investments cannot again be subjected to tax under the garb of Section 68 of the Act.

68. We are in full agreement with the findings of the Ld. CIT(A) that in view of the ratio laid down by the Hon'ble Supreme Court in the case of *CIT vs. Laxmipat Singhania 72 ITR 291 (SC)* double taxation is not permissible in Law. Ld. AO took an adverse view solely on the basis of his assumptions and presumptions that the investment made by the appellant is bogus. We also concur with the findings of the CIT(A) that additions made in the absence of incriminating material are unjustified and since, during the course of the survey/search proceedings in the case of the assessee and other group concerns, no incriminating material was found, no addition could have been made.

69. In our considered view, when the assessee is in a position to demonstrate making of the investment in earlier years out of the explained/already taxed sources viz. share capital and share premium claimed to have been received during the F.Y. 2007-08 relevant to A.Y. 2008-09, and has also demonstrated that the sales proceeds were received through banking channels, then without any cogent material on record, the explanation of the assessee cannot be disbelieved.

70. We find no substance in the ground taken by the Revenue that since the assessee has agitated the addition *qua* the share capital and share premium shown to have been received by it during the F.Y. 2007-08 relevant to A.Y. 2008-09, by filing an appeal, the assessee cannot claim the availability of such funds for making the investments. In our view, once, it is found that the assessee company had received some funds, whether through explained sources or unexplained sources, the same has to be regarded as available with it for making further investments. In our view, merely because the assessee has agitated the addition made u/s.68 of the Act against the addition made for A.Y. 2008-09, its claim regarding

availability of funds raised in the aforesaid year cannot be denied.

71. We therefore in the given facts and circumstances of the case and the factual matrix are of the considered view that the source of alleged amount was from liquidation of investment made in the earlier years. The dispute about the source of fund utilized for making the investment in earlier years before the tax authorities in itself cannot be the sole basis to make the addition in the hands of the assessee as unexplained cash credit for the amount received from liquidating the investments made in the shares of unlisted companies which were invested in the earlier years and were duly appearing in the audited balance sheet. The alleged sum is received from sale of shares appearing as opening balance in the investment account. There is no dispute about the identity, genuineness and creditworthiness of these companies, the equity shares of which were sold by the assessee during the year and the funds were thereafter utilized to make the fresh investments. It is a simple case of switch over of investments from one company to another and is not the case of fresh loan received during the year. We thus find no substance in the ground that since the assessee has

agitated the addition *qua* the share capital and share premium shown to have been received by it during assessment year 2008-09 by filing an appeal the assessee cannot claim the availability of such fund for making the investments. It is not in dispute that the matter for Assessment Year 2008-09 is open and the fate of the issue of the addition for that year will have its own process. We thus find no justification in the action of Ld. A.O making the addition for unexplained cash credit of Rs.4,07,35,000/- and thus find no inconsistency in the finding of Ld. CIT(A) deleting the addition. Accordingly 1,2,3 & 4 of revenue's appeal in the case of Famous Vanijya Pvt. Ltd vide ITA No.725/Ind/2017 stands dismissed.

72. As regards Ground No. 5 to 11 which relate to the deletion of addition of Rs. 8,80,000/- made by the AO u/s. 68 of the Act in respect of unsecured loan claimed to have been received by it from M/s. Etima Emedia Ltd., we observe that the assessee had furnished before the AO, copy of PAN, bank account statement of the lender company, audited financial statement, profit and loss account statement, certificate of incorporation, copy of MOA and

AOA, details collected from website of Ministry of Corporate Affairs and confirmation of lender. All these documents have also been furnished by the assessee in its paper book from page nos. 121 to 170. We find that the Ld. CIT(A) has dealt in depth with the various documentary evidences furnished by the appellant and reached to the conclusion that the appellant had been able to satisfy all the three condition required for genuineness of transactions u/s. 68 of the Act. We find that the Ld. CIT(A) has rightly placed reliance upon the decision of *Umesh Electricals vs. ACIT (2011) 18 ITJ 635 (Trib. Agra)* and as also on the decision of *Aseem Singh vs. ACIT (2012) 19 ITJ 52 (Trib. Indore)* and Ld. CIT(A) has rightly distinguished the various decision relied upon by the Revenue.

73. We thus find that the assessee had discharged its onus of proving the genuineness of the sum credited in its books of accounts as contemplated u/s. 68 of the Act and since, no inquiry was conducted by the AO, the addition was not sustainable as held in similar case by the Hon'ble Karnataka High Court in the case of *M/s. Kumar Nirman and Nivesh Pvt. Ltd. vs. the Assistant Commissioner of Income Tax Bangalore 2020 (3) TMI 340 (Karn. HC).*

Their Lordships at para (7) of the Order were pleased to hold as under:

> "*In the background of aforesaid well settled legal principles, the facts of the case may be seen. In the instant case, the assessee in support of identity, genuineness of transaction and credit worthiness of M/s. Bhuawania Bros. Pvt. Ltd. had supplied a copy of the balance sheet and profit and loss account to the Assessing Officer. The appellant had also filed the copy of the return of income of M/s. Bhuwania Bros Pvt. Ltd. as well as copy of information letter. The appellant having proved the identity and creditworthiness of the party as well as the genuineness of the transaction had discharged its burden and it was for the revenue to conduct an enquiry and to prove that the transaction in question was not genuine and the identity of the creditor was not established and it had no credit worthiness. In the instant case, the revenue has not conducted any enquiry and has failed to discharge its burden. In view of preceding analysis, we answer the substantial question of law Nos. (i), (ii) and (iii) in the negative and in favour of the assessee and against the revenue.*"

74. In view of the facts and circumstances of the case and as also the various judicial authorities relied upon by the assessee and as referred hereinabove, we are satisfied with the identity and creditworthiness of the cash creditor M/s Etima Emedia Ltd and also satisfied with the creditworthiness of the cash creditor. Thus we find no infirmity in the findings of Ld. CIT(A) deleting the

addition of Rs.8,80,000/- made u/s 68 of the Act by Ld. A.O. We accordingly dismiss Ground No.5 to 11 raised by the revenue.

75. In the result appeal of the revenue in case of M/s Famous Vanijya Pvt. Ltd is dismissed.

76. In the result all the appeals raised by the revenue in the case of (i) M/s Ariba Foods Pvt. Ltd for Assessment Year 2016-19 (ITA No.736/Ind/2019), (ii) M/s Vyanktesh Plastics and Packaging Pvt. Ltd for Assessment Year 2015-16 (ITA No.737/Ind/2019) and (iii) M/s Famous Vanijya Pvt. Ltd for Assessment Year 2011-12 (ITA No.773/Ind/2017) are dismissed.

The order pronounced in the open Court on 11.01.2021.

Sd/-	Sd/-
(JUSTICE P.P. BHATT)	**(MANISH BORAD)**
PRESIDENT	**ACCOUNTANT MEMBER**

Dated : 11 January, 2021
/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt. Registrar, I.T.A.T., Indore