

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : D : NEW DELHI
(Through Virtual Hearing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.5204/Del/2015
Assessment Year: 2011-12

DCIT,
Circle-25(1),
CR Building, IP Estate,
New Delhi.

Vs Technico Industries Pvt. Ltd.,
103, Pratap Bhawan,
Bahadur Shah Zafar Marg,
Near Indian Express Building,
New Delhi.

PAN: AAAC4445P

(Appellant)

(Respondent)

Assessee by	:	Shri Aditya Kumar, CA & Shri Ashwani Kumar, CA
Revenue by	:	Mrs Aashna Paul, CIT-DR
Date of Hearing	:	17.12.2020
Date of Pronouncement	:	09.03.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against order dated 31st March, 2015 of the CIT(A)-9, New Delhi relating to assessment year 2011-12.

2. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of sheet metal components and tools & dies. It filed its

return of income on 29th September, 2011 declaring nil income. The said return was revised on 14th September, 2012 declaring a loss of Rs.3,61,68,075/-. During the course of assessment proceedings, the AO, on perusal of the balance sheet filed by the assessee, noted that the assessee company has issued 14,72,000 equity shares at a premium of Rs.115. From the various details furnished by the assessee, the AO noted that the assessee has issued shares to the following persons/parties:-

Share Capital

Shareholder	Opening	Preferential Allotment	Bonus Shares Closing	
Mr. Arun Gupta	1239162	80000	1978743	3297905
Mr. Arun Gupta HUF 80300		-	120450	200750
Mr. Amit Gupta	687661	-	1031417	1719028
Mrs. Rekha Gupta	575983	-	863974	1439957
Mrs. Navita Gupta	575983	-	863974	1439957
ARG Udyog P Ltd.	719150	360000	1618725	2697875
Mrs. Aditi Garg	110	-	165	275
Mr. Achin Garg	110	-	165	275
Shiroki Corporation	1098000	736000	2751000	4585000
ARG Auto Components P Ltd	220000	96000	474000	790000
ARG Auto Systems Limited	32000	200000	348000	580000
	5228409	1472000	10050613	16751022

Date of Allotment

Shareholders	Units of Rs. 10 each	Premium @ Rs. 115	Total	Address
Mr. Arun Gupta	80000	9200000	10000000	Gurgaon
ARG Udyog P Ltd	360000	41400000	45000000	New Delhi
Shiroki Corporation	736000	84640000	92000000	Japan
ARG Auto Components P Ltd	96000	11040000	12000000	New Delhi
ARG Autosystems Limited	200000	23000000	25000000	New Delhi
	1472000	169280000	184000000	

3. Similarly, he also noted that the assessee has taken unsecured loan of Rs.16,07,58,797/- from the following persons:-

S. No.	Name	Amount Taken
1	Arun Gupta	67575579
2	Rekha Gupta	346716
3	Navita Gupta	455402
4	Amit Gupta	1816961
5	ARG Auto Component	43663403
6	ARG Udyog P Ltd	43315223
7	ARG Autosystem	3585513

4. The AO asked the assessee to substantiate the identity and credit worthiness of the share applicants and genuineness of the transactions and to file the details like name, address, PAN, ITR computation and complete bank statements and also to provide calculation of share premium. He also asked the assessee to justify the issue of shares at a premium of Rs.115/- whereas the NAV of such shares comes to Rs.52.50.

5. From the various details furnished by the assessee, the AO noted that as per the income-tax return of M/s ARG Udyog P. Ltd., the returned income is only Rs.1,78,101/- and the assessee did not furnish the bank statements or the computation of income. According to the AO, the income-tax return of M/s ARG Udyog P. Ltd. does not support the fact that it has purchased the shares at a premium of Rs.4.5 crores and further granted loan to the assessee company of Rs.4.33 crores. Similarly, in the case of ARG Auto Components P. Ltd., the income returned by the said company as per the income-tax return is only Rs.7,03,554/-. A perusal of the bank statement shows that before debit funds were being transferred to M/s ARG Auto Components through entities like M/s Sankat

Mochan, Gurukul Commosale, Well Wisher Vanijya, Matrix Commosale, Balagopal Software, etc.

6. In order to verify these transactions with these entities, the AO issued notice u/s 133(6) of the Act. After receipt of information from the above companies commission was issued to Kolkata to verify the genuineness of these transactions. However, he noted that none of these entities were found at their given addresses as per bank accounts. The AO further noted that M/s Sankat Mochak Management P Ltd. and M/s Well Wisher Vanijya P. Ltd. have the common address of 16A, Shakespeare Sarani, New BK Marg, M/s Bal Gopal Software Marketing P. Ltd. as at 27, Weston Street and the address of M/s Godhuli Commodeal P. Ltd., M/s Goldsmith Vinimay P Ltd. are at 9, Mangoe Lan and Careful Tradecom P. Ltd., Madam Street, Kolkata. From the perusal of the bank statement, the AO noted that each debit entry is preceded by a credit entry/credit entries of same amount. Further, all figures are rounded off figures and unlike regularly operated accounts where it can be seen transactions of different amounts with varying figures.

7. In the case of M/s ARG Autosystems P. Ltd., he observed that as per income-tax return, the income declared is only Rs.10,921/-. From the bank statement, he noted that funds were first deposited into its accounts and, thereafter, transferred to the assessee company. The entire bank statement has debits and credits of equal amounts and no other transactions except intercity transaction charges. He, therefore, doubted the capacity of the above concern to invest such

amount in the assessee company. Similarly, in the case of Mr. Arun Gupta, he noted that the income declared is only Rs.1,11,40,185/-. From the bank statement, he noted that each debit entry is preceded by a credit entry of same or similar amount. He, therefore, was of the opinion that the credit worthiness of Mr. Arun Gupta could not be ascertained towards the share capital and share premium as well as unsecured loans amounting to a total of Rs.6,75,75,579/-.

8. So far as Shiroki Corporation is concerned, the AO noted that this company is Japan based and a related party of the assessee company. It has contributed to the share capital and securities premium of the company amounting to Rs.9,20,00,000/-. Despite being asked by him to submit the financials of the said company for its credit appraisal, the assessee failed to submit the same. He, therefore, doubted the credit worthiness of Shiroki Corporation.

9. In view of the above discrepancies the AO doubted the credit worthiness of the above companies and asked the assessee to substantiate source of source of the funds. The assessee submitted that it has already submitted the bank statements and income-tax return copies and argued that the entire amount was received through banking channels. Relying on various decisions, it was argued that the assessee has discharged the onus cast on it by providing all necessary evidences and, therefore, no addition u/s 68 is called for.

10. However, the AO was not satisfied with the arguments advanced by the assessee. He referred to the amended provisions of section 68 of the IT Act and

concluded that merely because the transactions have been made through banking channels it does not legitimize a transaction where the transacting parties are suspect. According to the AO, the assessee is not only required to prove the source, but, also the source of the source. Further, according to the AO, the amendment to the provisions of section 56(2)(viiia) and (viiib) are applicable to the facts of the present case. The AO further noted that introduction of proviso to section 68 w.e.f. 01.04.2013 though added w.e.f. 01.04.2013 yet the same being procedural will apply to all pending proceedings. In view of the above, the AO rejected the various explanations given by the assessee and invoking the amended provisions of section 68, made addition of Rs.34,21,39,718/- to the total income of the assessee.

11. Before CIT(A), the assessee strongly challenged the addition made by the AO u/s 68 of the Act. It was argued that the assessee has filed all the requisite details such as confirmations, copies of income-tax returns, copies of balance sheet, bank statement reflecting the relevant entries which were filed before the AO to substantiate the identity and credit worthiness of the share applicants/loan creditors and the genuineness of the transactions. It was argued that the investor companies cannot be considered as non-existent since these companies were incorporated following the due process of law as prescribed under the Companies Act, 1956. All are assessed to income-tax and their copies of tax return along with audited balance sheets were filed before the AO. So far as the credit worthiness of

the parties are concerned, the assessee filed details to substantiate their credit worthiness. The assessee explained item-wise the credit worthiness of the parties.

11.1 So far as share capital and unsecured loan obtained from Arun Gupta is concerned, it was argued that income of Arun Gupta is Rs.1,11,40,185/-. A chart showing the source of various deposits made by him in the assessee company was enclosed and it was submitted that an amount of Rs.1,05,00,000/- being cancelled cheques in respect of which no funds were actually received and the amount was specifically reversed was added by the AO while passing the order. Similarly, an amount of Rs.1 crore was transferred by means of journal entry to the share application money account which has been added by the AO under the head -unsecured loan as well as -share application money resulting in double addition of the like amount. It was argued that the cumulative effect of the same results in excess addition of Rs.2,05,00,000/- u/s 68 of the Act in the case of Arun Gupta. It was further submitted that the income of Arun Gupta of Rs.1,12,55,185/- includes gross salary of Rs.96,02,170/- and interest income of Rs.25,17,015/-. It was further submitted that the loan given by Shri Arun Gupta was reflected in his balance sheet and the balance sheet shows a capital of about Rs.52.62 crores and loans from ICICI of about Rs.3.46 crores. It was submitted that Shri Arun Gupta had received proceeds from provident fund, leave encashment, salary arrears, premature encashment of FDR and sales of shares of Technico Kongsberg Automotive India Ltd. It was stated that vide agreement dated 31.11.2010, Shri

Arun Gupta had sold his 29,90,000/- shares in Technico Kongsberg Automotive India Ltd. to M/s Kongsberg Automotive Holding ASA and the sales proceeds were utilized to give loan to the assessee company. It was stated that Technico Kongsberg Automotive India Ltd., was a joint venture and M/s Kongsberg Automotive Holding ASA was an internationally renowned manufacturer of auto components. It was argued that all these transactions had taken place by cheque through bank account. Referring to the income-tax returns filed regularly and the balance sheet and bank statements evidencing the capacity of Arun Gupta which were filed before the AO, it was argued that the assessee has sufficiently discharged its burden by proving identity and capacity of the creditor/share applicant and the genuineness of the transaction. It was argued that even though the assessee is not obliged in law to explain the source of source, however, in the instant case, the assessee has duly explained the source of the loan and the share application money received from the creditor and the AO in the assessment order has not brought any material on record to controvert the evidence filed by the assessee. There is no allegation of any enquiry by the Investigation Wing finding receipt of bogus accommodation entries in this case. Relying on various decisions, it was argued that the assessee has proved the identity, credit worthiness and the genuineness of the transaction with Mr. Arun Gupta.

12. So far as the amount of Rs.4,50,00,000/- towards share application money and Rs.4,33,15,223/- towards unsecured loan from M/s ARG Udyog Pvt. Ltd. is

concerned, it was argued that the assessee in the instant case has proved the source of the source and, consequently, the onus cast even after the amended provisions of section 68 by the Finance Act, 2012 has been comprehensively discharged by producing the confirmation, income-tax computation, balance sheet, etc. It was submitted that the net addition in the accounts of M/s ARG Udyog Pvt. Ltd. on account of unsecured loan would come to Rs.nil and not Rs.4,33,15,223/- which is evidenced from the following facts:-

- (a) A sum of Rs. 30,00,000/- represents cheques cancelled i.e. in respect of which no funds were actually received and the amount was subsequently reversed which has also been added back while passing the order.
- (b) A sum of Rs. 4,50,00,000/- was transferred by means of journal entry to the Share Application Money Account which has been added both under the head Unsecured Loans as well as Share Application Money resulting in double addition of the like amount.
- (c) The cumulative effect, again without prejudice to the Appellant Company's stand with regard to the discharge of onus u/s 68, has resulted in an excess addition of Rs. 4,33,15,223/- in this account.

13. So far as the allegation of the AO that the bank statement could not be furnished, it was argued that the same was due to the reasons beyond the control of the assessee company during the assessment proceedings but has been procured subsequently and it was accordingly requested to admit the same as an additional

evidence under Rule 46A of the Income-tax Rules, 1962. In addition a copy of the annual accounts as at March 31, 2011 reflecting the amounts paid to the Appellant Company and the Computation of Income for A/Y 2011-12 of the said company was also filed before the CIT(A).

14. It was stated that the total credits in the loan account of M/s ARG Udyog Pvt. Ltd. were Rs.4,33,15,223/- and the entire amount has been added by the A.O. as unexplained loans u/s 68. It was stated that the A.O. has further added Rs.4.5 Cr. Towards unexplained share application money even though this amount had been transferred from the loan account of M/s ARG Ugyog Pvt. Ltd. by debiting the loan a/c and crediting the share application money a/c. The assessee stated that when all the credits in the loan account have already been added u/s 68, there can be no possible reason for again adding an amount which has been debited to the loan account and credited to the share application account. It was further stated that Rs.30,00,000/- credited in this account represented a cheque which was cancelled and there was no receipt of funds, and therefore, no question of adding this u/s 68.

15. It was argued that M/s ARG Ugyog Pvt. Ltd. was regularly filling its income tax returns and a copy of its return, balance sheet and bank statement evidencing the capacity and source of credits received, had been filed before the A. O. The assessee stated that the balance sheet of M/s ARG Udyog Pvt. Ltd. reflected the investment made in the assessee company and the balance sheet shows share capital and reserves of more than Rs.8.9 Cr. It was argued that M/s ARG Udyog

Pvt. Ltd. had received loans from M/s ADI Automotive Pvt Ltd. which were repaid next year, and had also received proceeds from sale of shares of M/s Technico Kongsberg Automotive India Ltd. It was argued that M/s ADI Automotive Pvt. Ltd. was a well-known automotive company with sales of more than Rs.125 Cr. It was argued that vide agreement dated 31.11.10, M/s ARG Udyog Pvt. Ltd. had sold its 10,97,548 preference shares in Technico Kongsberg Automotive India Ltd. to M/s Kongsberg Automotive Holding ASA, an internationally renowned manufacturer of auto components, and the sale proceeds were utilized to give loan to the assessee company. It was stated that the transactions involved well known manufacturing companies, that all transactions were by cheque through bank account and M/s ARG Udyog Pvt. Ltd. was regularly filing its income tax returns.

16. So far as ARG Auto Components Pvt. Ltd. is concerned, a chart showing the source of the various deposits made by it in the assessee Company was filed. It was argued that even a cursory review of the same would reveal that even the source of source stands duly proved in his case and consequently the onus cast even after the amendment of Section 68 by the Finance Act, 2012 has been comprehensively discharged. It was argued that the net addition in the accounts of M/s ARG Auto Components Pvt Ltd on account of Unsecured Loans stand only at Rs. 3,16,63,403/- and not Rs. 4,33,15,223/- which is evident from the following facts: -

(a) A sum of Rs.1,20,00,000/- was transferred by means of journal entry to the Share Application Money Account which has been added both under the head "Unsecured Loans" as well as "Share Application Money" resulting in double addition of the like amount.

(b) The cumulative effect again without prejudice to the Appellant Company's stand with regard to the discharge of onus u/s 68, has resulted in an excess addition of Rs. 1,20,00,000/- in this account.

16.1 The assessee also filed a copy of the Annual Accounts of the said Company as at March 31, 2011 and its Computation of Income for A/Y 2011-12 are being enclosed herewith.

16.2 So far as ARG Autosystems Ltd. is concerned, it was submitted that the AO made the addition of Rs.35,85,513/- on the ground that the above amount represents the money received by the assessee company during the year from the above party. It was argued that there was an opening credit balance in the account of M/s ARG Autosystems Ltd., amounting to Rs.2,51,14,095/-. The copy of confirmation, bank statement, ITR along with computation and balance sheet of the above party was filed before the AO. It was accordingly argued that the source of the source in this case was also proved before the AO by filing a chart showing the source of various deposits made by the assessee company. It was further submitted that the net addition in the accounts of M/s ARG Autosystems Ltd. on account of

unsecured loans would come to Rs.nil and not Rs.35,85,513/- which is evident from the following facts:-

- ö(a) A sum of Rs. 2,50,00,000/- was transferred by means of journal entry to the Share Application Money Account whereby a sum of Rs. 35,85,513/- has been added both under the head öUnsecured Loansö as well as öShare Application Moneyö resulting in double addition of the like amount.
- (b) The cumulative effect, again without prejudice to the Appellant Company's stand with regard to the discharge of onus u/s 68 as resulted in an excess addition of Rs. 35,85,513/-in this account.ö

16.3 However, the AO has not applied his mind properly. It was accordingly argued that no addition is called for on this account.

16.4 So far as the addition of Rs.9,20,00,000/- in respect of Shiroki Corporation is concerned, it was argued that the above company is a Japan based related party of the assessee company. During the year under consideration, the assessee had received a sum of Rs.9,20,00,000/- from the above company against which 73600 shares of the face value of Rs.10/- per share were allotted at a premium of Rs.115/- per share aggregating to Rs.9,20,00,000/-. It was submitted that the entire process of allotment of shares was fully compliant with the regulator and statutory provisions in force at the relevant point of time including the Foreign Exchange Management Act, 1999, the policy relating to overseas direct investment formulated thereunder and the Companies Act, 1956. It was emphasized that the

investment made by M/s Shiroki Corporation was duly approved by the RBI vide letter dated 16th March, 2011 wherein the Registration No. NDT 07071005372 was allotted to it. The assessee submitted that the investment made in the assessee company by M/s Shiroki Corporation was pursuant to an arrangement duly approved by the RBI and the confirmations thereto was duly filed before the AO. So far as the bank statement is concerned, it was submitted that obtaining the bank certificate of a third party specifically of a foreign investor is beyond the control of the assessee. The bank statement contains the entire financial transactions of the investor and not related to the assessee is the personal property of the investor which he may not be willing to disclose to the third party. Therefore, in absence thereof cannot be the sole determinant to arrive at an adverse conclusion and the issue needs to be judged objectively by considering the entire gamut of facts surrounding the case.

17. The assessee also filed an application for admission of additional evidence under Rule 46A in respect of unsecured loans obtained from parties including M/s ARG Auto Components Pvt. Ltd. It was submitted in the said application that the assessee could not produce various documents relating to the Kolkata based companies during the course of assessment proceedings on account of paucity of time and on account of reasons beyond the control of the assessee company which were subsequently obtained after the completion of the assessment. It was accordingly requested to admit the additional evidences.

18. The Id. CIT(A) forwarded the submissions made by the assessee and the application filed under Rule 46A to the AO for her comments. The AO, in her comments, objected to the admission of additional evidences. Further, the remand report which was given by the AO was confronted by the CIT(A) to the assessee. After considering the remand report of the AO and the rejoinder of the assessee to such remand report, the Id.CIT(A) discussed para-wise and item-wise the reasons for additions made by the AO, the submissions of the assessee and his findings and sustained the additions made by the AO u/s 68 in respect of M/s ARG Auto Components Pvt. Ltd. amounting to Rs.4,36,63,403/- and deleted the balance addition made by the AO.

18.1 So far as the deletion of Rs.1 crore on account of share capital/share premium and Rs.6,75,75,529/- as unsecured loan in respect of Shri Arun Gupta is concerned, the Id. CIT(A) deleted the addition by observing as under:-

3.3 The submissions of the appellant and the facts have been carefully considered. In its submissions, the appellant has argued that it is not obliged under law to explain the source of source but had filed evidence before the A.O. in support of credits received from various persons including Shri Arun Gupta. The appellant has filed a chart giving details of various replies/submissions made before the A.O. during assessment proceedings. Regarding Shri Arun Gupta, the appellant has stated that it filed a copy of confirmation, bank statement, income tax return and balance sheet before the A.O. vide replies dated 11.12.13, 24.1.14 and 14.3.14. The appellant stated that it is clear from the bank statement of Shri Gupta that he has the capacity to make investment in share application money and loans.

3.4 The appellant stated that the A.O. has added the entire credits in the loan account of Shri Arun Gupta amounting to Rs. 6,75,75,579/-, and then again added Rs.1,00,00,000/- u/s 68 towards share application money, even though this 1,00,00,000/- has been transferred from his loan account to the share application account, by debiting loan account and crediting share application

money account. The appellant stated that this was a double addition of the same amount. The appellant further stated that the credit of Rs.1,05,00,000/- is actually a credit towards cheque issued to Shri Arun Gupta which was later cancelled. Therefore, this does not represent any inflow of funds which could possibly be added u/s 68.

3.5 The appellant stated that it had filed a copy of the income tax return and balance sheet of Shri Arun Gupta before the A.O. and as per his income tax return, Shri Arun Gupta had total income of Rs.1,12,55,185/-, including gross salary of Rs.96,02,170/- and interest income of Rs.25,17,015/-. The appellant stated that the loan given by Shri Arun Gupta was reflected in his balance sheet and the balance sheet showed capital of about Rs.52.62 Cr. and a loan from ICICI Ltd. for about Rs.3.46 Cr. The appellant stated that Shri Arun Gupta had received proceeds from provident fund, leave encashment, salary arrears, premature encashment of FDR, and sale of shares of Technico.Kongshera.Automotive India Ltd. The appellant stated that vide agreement dated 31.11.10, Shri Arun Gupta had sold his 29,90,000 shares in Technico Kongsberg Automotive India Ltd. to M/s Kongsberg Automotive Holding ASA, and the sale proceeds were utilized to give loan to the appellant company. The appellant stated that Technico Kongsberg Automotive India Ltd. was a Joint Venture and M/s Kongsberg Automotive Holding ASA was an internationally renowned manufacturer of auto components. The appellant stated that all these transactions had taken place by cheque through the bank account. It was stated that Shri Arun Gupta was regularly filing his income tax returns and a copy of his return, balance sheet and bank statement evidencing "the capacity of Shri Arun Gupta had been filed before the A.O. The appellant contended that it has given a satisfactory explanation of credits in the account of Shri Arun Gupta and the A.O. had not pointed out any shortcomings in the evidence filed regarding Shri Arun Gupta.

3.6 Considering the facts, it is clear that the appellant had discharged its burden of proving the identity and capacity of the creditor and the genuineness of the transaction. The appellant has argued that even though it was not obliged in law to explain the source of source, it has duly explained the source of the loan and share application money received from this creditor. In the assessment order, the A.O. has not brought any material on record to controvert the evidence filed by the appellant. In the asstt. order, there is no allegation of any inquiries by the Investigation Wing finding receipt of bogus accommodation entries in this case. If this was a case of bogus accommodation entries unearthed through enquiries by the Investigation Wing, then the appellant could be expected to furnish a higher degree of proof, but when no such allegation is made in the assessment order, the appellant has clearly discharged its burden of proof by filing the confirmation and copy of income tax return and bank statement of this creditor. In the asstt. order, the A.O. has observed that the bank account shows that investments have been made out of amounts received immediately before, but this observation is

hardly sufficient to make such an addition, particularly considering the evidence filed by the appellant. In view of the evidence filed by the appellant, the onus had clearly shifted to the A.O. however, the A.O. has not brought any material on record to controvert the evidence filed by the appellant. Such an addition is not legally sustainable merely on the basis of general observations. The appellant contended that it has furnished details of the source of credits received from the creditor even though it was not required to specify the source of source. The creditor has unequivocally confirmed the investment made by him and the appellant has submitted substantial evidence during asstt. proceedings.

3.7 It is clear from the above that the appellant has given a satisfactory explanation in respect of credits in the account of Shri Arun Gupta and has discharged its onus of proving the identity and capacity of Shri Arun Gupta and the genuineness of the transactions. Considering these facts, if the A.O. still had any doubts about the source from which the creditor has made investment in loans/share capital of the appellant, then this information could have been passed to the A.O. of the creditor, and he could have afterwards considered taking necessary action, if there were any adverse findings warranting action in the case of the appellant. The appellant has pointed out that in this case, the A.O. has made the addition only on the basis of her observation that in the bank statement of Shri Arun Gupta, each debit entry is preceded by a credit of a similar account, and the amounts are in round figures. The appellant argued that the A.O. has made the addition only on the basis of surmises and conjectures. The appellant contended that anybody wanting to effectively utilize his funds through banking channels would naturally transfer money in and out of bank account in this manner, and this does not lead to any adverse conclusion, in the assessment order, the A.O. has not brought any material on record to controvert the evidence filed by the appellant and justify the addition made. Considering the facts and judicial decisions on this subject, the appellant has clearly discharged its burden of proving the identity and capacity of the creditor and the genuineness of the transactions. In view of these facts, the addition made by the A.O. in respect of credits from Shri Arun Gupta is not sustainable in law and is deleted.ö

18.2 Similarly, in the case of ARG Udyog Pvt. Ltd., the CIT(A) deleted Rs.450 lakhs being share capital/share premium and an amount of Rs.4,33,15,233/- as unsecured loan by observing as under:

ö4.3 The submissions of the appellant and the facts have been carefully considered. The appellant has stated that regarding receipts from this company, it had filed a confirmation and copy of income tax return and balance sheet, vide replies filed before the A.O. dated 11.12.13, 24.1.14 and

14.3.14. The appellant stated that it was not obliged to explain the source of credits, however, it had without prejudice to its position, still filed a detailed explanation in respect of the credits received and this was supported by the copy of bank statement and balance sheet filed before the A.O.

4.4 The appellant stated that the total credits in the loan account of M/s ARG Udyog Pvt. Ltd. were Rs.4,33,15,223/- and the entire amount has been added by the A.O. as unexplained loans u/s 68. The appellant stated that the A.O. has further added Rs.4.5 Cr. towards unexplained share application money even though, this amount had been transferred from the loan account of M/s ARG Udyog Pvt. Ltd., by debiting the loan a/c and crediting the share application money a/c. The appellant stated that when all the credits in the loan account have already been, added u/s 68, there can be no possible reason for again adding an amount, which has been debited to the loan account and credited to the share application account. The appellant further stated that Rs.30,00,000/- credited in this account represented a cheque which was cancelled and there was no receipt of funds, and therefore, no question of adding this u/s 68.

4.5 The appellant stated that M/s ARG Udyog Pvt. Ltd. was regularly filing its income tax returns and a copy of its return, balance sheet and bank statement evidencing the capacity and source of credits received, had been filed before the A.O. The appellant stated that the balance sheet of M/s ARG Udyog Pvt. Ltd. reflected the investment made in the appellant company and the balance sheet shows share capital and profits of more than Rs.8.9 Cr. The appellant stated that M/s ARG Udyog Pvt. Ltd. had received loans from M/s ADI Automotive Pvt Ltd. which were repaid next year, and had also received proceeds from sales of shares of M/s Technico Kongsberg Automotive India Ltd. The appellant stated that M/s ADI Automotive Pvt. Ltd. was a well-known automotive company with sales of more than Rs.125 Cr. The appellant stated that vide agreement dated 31.11.10, M/s ARG Udyog Pvt. Ltd. had sold its 10,97,548 preference shares in Technico Kongsberg Automotive India Ltd. to M/s Kongsberg Automotive Holding ASA, an internationally renowned manufacturer of auto components, and the sale proceeds were utilized to give loan to the appellant company. The appellant stated that the transactions involved well known manufacturing companies. The appellant stated that all transactions were by cheque through bank account and M/s ARG Udyog Pvt. Ltd. was regularly filing its income tax returns.

4.6 The appellant contended that it had filed a detailed explanation in respect of credits along with a copy of the bank statement evidencing these credits, and the A.O. had not pointed out any shortcomings in the evidence filed. The appellant stated that in the assessment order, the A.O. has made the addition only on the basis that the returned income of M/s ARG Udyog Pvt. Ltd. is only Rs.1,78,101/- and the income tax return does not support the capacity of this company to give such credits. The appellant stated that a copy of the income tax return, balance sheet and bank statement evidencing the

capacity and source of credits received, had been filed before the A.O. The appellant contended that the A.O. had erred in only considering the returned income of this company but ignoring the balance sheet, and the funds available with this company. The appellant stated that as per its balance sheet, M/s ARG Udyog Pvt. Ltd. has substantial funds from which these credits have been received. The appellant has stated that it had filed a detailed explanation in respect of the credits received from this company. The appellant stated that in any case, it was not required to prove the source of source and it was for the creditor to explain the source of funds. The appellant raised other arguments as were raised in respect of the credits from Shri Arun Gupta, which have been discussed above

4.6 It is clear from the above that the appellant has discharged its onus of proving the identity and capacity of this company and the genuineness of the transactions. Considering these facts, if the A.O. still had any doubts about the source from which the creditor has made investment in loans/share capital of the appellant, then this information could have been passed to the A.O. of the creditor, and he could have afterwards considered taking necessary action, if there were any adverse findings warranting action in the case of the appellant. In the assessment order, the A.O. has not brought any material on record to controvert the evidence filed by the appellant. The A.O. has based her decision only on the income shown in the return but has not considered the funds available with the creditor. Considering the facts and judicial decisions on this subject, the appellant has clearly discharged its burden of proving the identity and capacity of the creditor and the genuineness of the transactions. In view of these facts, the addition made by the A.O. in respect of this company is not sustainable in law and is deleted.

18.3 So far as ARG Auto Components Pvt. Ltd., the ld.CIT(A), while sustaining the addition of Rs.4,36,63,403/- as unsecured loans, however, deleted the addition of Rs.1,20,00,000/- by observing as under:-

5.12 Regarding the addition u/s 68 towards unexplained share application money from M/s ARG Auto Components Pvt. Ltd., the appellant has pointed out that this amount has been transferred from the unsecured loan account of M/s ARG Auto Components Pvt. Ltd. where all the credits have already been added u/s 68. The appellant has stated that when all the credits in the account have already been added u/s 68, the amount transferred by debiting this account, and crediting the share application money account, cannot be added again. In the remand reports, the A.O. has not controverted these contentions. In the asstt. order and the remand reports, the A.O. has failed to justify this addition and show how this is not a double addition. In view of these facts, the addition towards share application money from this concern, being a double

addition, is unsustainable in law, when all the credits have already been added u/s 68 and also upheld in appeal. Thus, while the addition u/s 68 towards unexplained loans amounting to Rs.4,36,63,403/- is justified and is upheld, the addition u/s 68 of Rs. 1,20,00,000/- towards unexplained share application money is deleted as it is only a repetition of the addition already made u/s 68 of credits in the loans account.ö

18.4 So far as the deletion of Rs.2,50,00,000/- on account of share capital/share premium and an amount of Rs.35,85,513/- towards unsecured loan in respect of ARG Autosystems Pvt. Ltd., is concerned, the Id. CIT(A) deleted the same by observing as under:-

ö6.3 The submissions of the appellant and the facts have been carefully considered. The appellant has stated that it had filed a confirmation and a copy of the bank statement, income tax return and balance sheet before the A.O., vide replies filed dated 11.12.13, 24.1.14 and 14.3.14. The appellant stated that it was not obliged to explain the 'source of sourceø of the creditor, however, it had still explained the source of credits received from this company and filed a bank statement and balance sheet before the A.O. in support of these credits.

6.4 The appellant stated that the loan account of M/s ARG Autosystems Ltd. (formerly known as Kwang Jin Technico Engineering Ltd.) had an opening credit balance of Rs.2,51,14,095/-. The appellant stated that the total credits in the loan account were Rs 35.85.513/- and the entire amount has been added by the A.O. as unexplained credits u/s 68. The appellant staged that the A.O. has further added Rs 2.5 Or. towards unexplained share application money even though, this amount had been transferred from the loan account of M/s ARG Autosystems Ltd., by debiting the loan a/c and crediting the share application money a/c. The appellant stated that when all the credits in the loan account have already been added u/s 68, there can be no possible reason for again adding an amount, which has been debited to the loan account and credited to the share application account.

6.5 The appellant stated that M/s ARG Autosystems Ltd. was regularly filing its income tax returns and a copy of its return, balance sheet and bank statement evidencing the capacity and source of credits received, had been filed before the A.O. The appellant stated that the balance sheet of M/s ARG Autosystems Ltd. reflected the investment made in the appellant company and the balance sheet shows share capital and reserves of more than Rs.3.77 Cr. The appellant stated that M/s ARG Autosystems Ltd. had also received share application money from related parties. The appellant stated that all the

transactions were by cheque through bank account and M/s ARG Autosystems Ltd. was regularly filing its income tax returns.

6.6 The appellant contended that it had filed a detailed explanation in respect of credits along with a copy of the bank statement evidencing these credits, and the A.O. had not pointed out any shortcomings in the evidence filed. The appellant stated that in the assessment order, the A.O. has made the addition only on the basis that the returned income of M/s ARG Autosystems. Ltd. is less than the loan given. The appellant stated that a copy of the income tax return, balance sheet and bank statement evidencing the capacity and source of credits received, had been filed before the A.O. The appellant contended that the A.O. had erred in only considering the returned income of this company but ignoring the balance sheet, and the funds available with this company. The appellant stated that as per its balance sheet, M/s ARG Autosystems Ltd, has substantial funds from which these credits have been received. The appellant has stated that it had filed a detailed explanation in respect of the credits received from this company. The appellant stated that in any case, it was not required to prove the source of funds and it was for the creditor to explain the source of funds. The appellant raised other arguments as were raised in respect of the credits from Shri Arun Gupta, which have been discussed above.

6.6 It is clear from the above that the appellant has discharged its onus of proving the identity and capacity of this company and the genuineness of the transactions. In the assessment order, the A.O. has not brought any material on record to controvert the evidence filed by the appellant. The A.O. has based her decision only on the income shown in the return but has not considered the funds available with the creditor. Considering the facts and judicial decisions on this subject, the appellant has clearly discharged its burden of proving the identity and capacity of the creditor and the genuineness of the transactions. In view of these facts, the addition made by the A.O. in respect of this company is not sustainable in law and is deleted.

18.5 So far as the deletion of Rs.9,20,00,000/- being the share application money received from Shiroki Corporation is concerned, the Id.CIT(A) deleted the same by observing as under:-

7.2 The submissions of the appellant and the facts have been carefully considered. The appellant stated that the appellant company is an affiliate of M/s Shiroki Corporation, Japan, and this amount had been received as foreign direct investment by sale of shares to M/s Shiroki Corporation, Japan. The appellant has stated that M/s Shiroki Corporation was one of the largest Japanese companies in the field of auto components and the FDI from this company had been approved by the RBI. The appellant stated that during asstt.

proceedings, it had filed a copy of the documents filed before the Reserve Bank of India in regard to this FDI by Shiroki Corporation. The appellant stated that these documents included a copy of form FC-GPR giving details of the investment from this company. The appellant has stated that when the FDI has been provided by the RBI, there is no reason for doubting the genuineness of the transaction and the A.O. has made the addition without considering the facts of the case. The appellant has stated that this investment has been made with the approval of the RBI. The appellant raised other arguments as were raised in respect of the credits from Shri Arun Gupta, which have been discussed above.

7.3 It is clear from the above discussion that the appellant has discharged its burden of proving the identity and capacity of this company and the genuineness of the transactions. In the assessment order, the A.O. has not brought any material on record to controvert the evidence filed by the appellant. Considering the facts and judicial decisions on this subject, the addition made u/s 68 in respect of share application money from this company is not sustainable in law and is deleted.

8. To summarize the above discussion, the addition u/s 68 of Rs.4,36,63,403/- being unexplained loans from M/s ARG Auto Components Pvt. Ltd. is justified and is upheld. The remaining additions u/s 68 are not sustainable in law and are deleted. The Grounds are accordingly partly allowed.ö

19. Aggrieved with such order of the Id.CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

ö1. öThe impugned order of the CIT(A) is bad in law as well as on facts of the case."

2. Revised ground of appeal are as follow.

- (a) The Ld. CIT(A) has erred in deleting the addition of Rs. 18,40,00,000/- made by the assessing officer on account of treating share capital received during the year as unexplained cash credits u/s 68 of the I.T, Act, 1961.
- (b) The Ld. CIT(A) has erred in deleting the addition of Rs. 11,70,95,394/- made by the AO on account of treating unsecured loans received during the year as unexplained case credit u/s 68 of the I.T. Act, 1961.
- (c) The Ld. CIT(A) has erred in law and on the facts of the case in deleting the addition made by the assessing officer under section 68

of the I.T, Act, 1961 violation of the provisions of Rule 46A of the Income Tax Rules, 1961."

3. "The appellant craves, leave or revising the right to amend, modify, alter add or forego any of the Ground(s) of appeal at any time before or during the hearing of this appeal."

20. The ld. DR strongly objected to the order of the CIT(A) in deleting the addition made by the AO. She submitted that the AO had given categorical finding as to how and why the assessee could not discharge the onus cast on it by proving the identity and credit worthiness of the loan creditor/share applicants and the genuineness of the transactions.

21. The ld. DR submitted that the ld. CIT(A) has admitted additional evidence and has adjudicated the matter on the basis of those documents in complete violation of the provisions of Rule 46A. She submitted that the AO has categorically given a finding that the shares were issued at a premium of Rs.Rs.115 per share as against the NAV of Rs.52.50. Further, the AO had also given a categorical finding that the returned incomes of the investors are very meager and each debit entry was preceded by equal amount of credit entry and the remaining balance in the account is very small. Since the assessee could not substantiate with evidence to the satisfaction of the AO, therefore, the ld.CIT(A) was not justified in deleting the addition.

22. So far as the amount deleted in the case of Shri Arun Gupta is concerned, the ld. DR submitted that the bank account of Shri Arun Gupta reveals that every

debit entry is preceded by a credit entry of same or similar amount. The shares were issued at a premium of Rs.115/- as against the NAV of Rs.52.50. Further, the assessee did not furnish bank statement or computation of income of the investor. Therefore, considering the surrounding circumstances, the matter may be decided on merit. So far as the investment by ARG Udyog Ltd. is concerned, the Id. DR submitted that the above creditor was showing returned income of Rs.1,78,101/- whereas it has invested an amount of Rs.450 lakhs towards share capital/share application money and given unsecured loan of Rs.4,33,15,223/-. The computation of income and the bank statement of the above party was never produced before the AO, therefore, the credit worthiness of the said party remained unsubstantiated. She submitted that the bank statement of the above party was never filed before the AO and it was filed for the first time before the CIT(A) with an application for acceptance of additional evidence. Referring to the order of the CIT(A), he submitted that the Id.CIT(A) has proceeded to erroneously observe in para 4.5 on page 28 of his order that the bank statement of the above creditor was filed before the AO evidencing the source of the creditor. Even in para 4.6 at page 28 of his order, the Id.CIT(A) has again mentioned that the bank statement was filed before the AO and that the AO could not point out any discrepancy in the same. The submission of the assessee before the CIT(A) that there was an agreement dated 31.11.2010 between ARG Udyog Ltd. and M/s Technico Kongsberg Automotive India Ltd. in respect of sale of shares of M/s Technico Kongsberg Automotive India Ltd., was not filed before the AO, therefore, the Id.CIT(A) accepted the fresh

plea and the documents without any request by the assessee to admit additional evidence. She submitted that the Id.CIT(A) has never passed any order regarding admissibility of additional evidence in terms of Rule 46A. Relying on various decisions, Id. DR submitted that the order of the CIT(A) accepting the additional evidences in violation of Rule 46A(2) and (3) is not justified.

23. So far as ARG Autosystems Ltd. is concerned, the Id. DR submitted that here also every debit entry is preceded by a credit entry of same or similar amount and, therefore, this issue should be considered on the basis of material available on record. So far as Shiroki Corporation is concerned, the Id. DR submitted that the assessee failed to furnish the financials of the above creditor or its credit appraisal. Referring to the order of the CIT(A), she submitted that the Id.CIT(A) has deleted the addition based on the documents filed by the assessee which are in the nature of intimation issued by the RBI regarding foreign investment received from the said corporation and the acknowledgement of the said intimation by RBI. The RBI has never examined the financials of the above creditor. She submitted that the proceedings under the Income-tax Act are separate proceedings and the assessee has to discharge the onus as regards the identity, credit worthiness and genuineness of the transaction.

24. Relying on the following decisions, the Id. DR submitted that the additions made by the AO should be sustained:-

1 PCIT Vs NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (SC)

2. CIT Vs NDR PROMOTERS PVT LTD (2019-TIQL-172-HC-DEL-IT)
3. ITO Vs Synergy Finlease Pvt. Ltd (ITA No.4778/Del/2013)
4. Prem Castings (P.) Ltd. Vs CIT [2017] 88 taxmann.com 189 (Allahabad)
- 4A. Prem Castings (P.) Ltd. Vs CIT 2018-TIQL-274-SC-IT
5. CIT Vs MAF Academy (P.) Ltd (361 ITR 258)
6. CIT Vs Navodava Castle Pvt Ltd [2014] 367 ITR 306 (Del)
7. Konark Structural Engineering (P.) Ltd. Vs DCIT [2018] 96 taxmann.com 255 (SC)
- 7A. Konark Structural Engineering (P.) Ltd. Vs DCIT [2018] 90 taxmann.com 56 (Bombay)
8. Pratham Telecom India Pvt Ltd Vs DCIT (2018-T1OL-1983-HC-MUM-IT)
9. J J Development Pvt Ltd Vs CIT (2018-TIQL-395-SC-IT)
- 10 DRB Exports (P.) Ltd. Vs CIT [2018] 93 taxmann.com 490 (Calcutta)
11. CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34)
12. CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187)
- 13 CIT Vs Ultra Modern Exports (P.) Ltd (40 taxmann.com 458, 220 Taxman 165)
14. CIT Vs Frostair (P.) Ltd (26 taxmann.com 11, 210 Taxman 221)
15. CIT Vs N R Portfolio Pvt Ltd [2014] 42 taxmann.com 339 (Delhi)/[2014] 222 Taxman 157 (Delhi)(MAG)/[2014] 264 CTR 258 (Delhi)
- 16 CIT Vs Empire Builtech (P.) Ltd (366 ITR 110)
17. CIT Vs Focus Exports (P.) Ltd (51 taxmann.com 46 (Delhi)/[2015] 228 Taxman 88)
- 18 PCIT Vs Bikram Singh [2017] 85 taxmann.com 104 (Delhi)/[2017] 250 Taxman 273 (Delhi)/[2017] 399 ITR 407 (Delhi)
- 19 Rick Lunsford Trade & Investment Ltd Vs CIT [2016] 385 ITR 399 (Cal)
- 20 Rick Lunsford Trade & Investment Ltd Vs CIT [2016-TIOL-207-SC-IT] (Supreme Court)

21. CIT vs. Durga Prasad More, 82 ITR 540.

25. The Id. Counsel, on the other hand, heavily relied on the order of the CIT(A) deleting the addition. He submitted that so far as the order of the CIT(A) in sustaining the addition made by the AO u/s 68 of the Act in the case of ARG Auto Components Pvt. Ltd. is concerned, the assessee has gone under the Vivad Se Viswas Scheme 2020 and, therefore, has withdrawn the appeal filed by it. So far as the additions deleted by the CIT(A) is concerned, he submitted that the Id.CIT(A) has rightly deleted the addition made by the AO after thoroughly going through the various documents filed before him and after obtaining a remand report from the AO. He submitted that the assessee by producing the various documents before the AO has discharged the onus cast on it by proving the three ingredients of the provisions of section 68, i.e., the identity and credit worthiness of the loan creditors and genuineness of the transaction. He submitted that the assessment year involved in the instant case is 2011-12 and, therefore, the assessee is not required to prove the source of the source. However, in most of the cases the assessee has not only proved the source, but, has also proved the source of the source. He submitted that based on the various documents filed by the assessee, the Id.CIT(A) has obtained a remand report from the AO by giving him an opportunity to go through the same and only after considering the remand report the Id.CIT(A) has deleted the addition.

25.1 The Id. Counsel for the assessee drew the attention of the Bench to the following chart and drew the attention of the Bench as to how the AO has made double addition of Rs.7,94,00,736/- in the case of Shri Arun Gupta, M/s ARG Udyog Private Ltd., M/s ARG Auto Components Private Ltd. and M/s ARG Autosystems Ltd.:-

S.No	Name of the party	Nature of addition	Amount of addition	Double/Excess Addition	Net Addition	Reference to Paper Book
1	Arun Gupta	Share Capital and Securities Premium	Rs 1,00,00,000/-	-	Rs 1,00,00,000/-	(a) Page no 39 to 40 of the Paper Book
		Unsecured Loan	Rs 6,75,75,579/-	Rs 2,05,00,000/- (See Note 1)	Rs 4,70,75,579/-	(b) Page no 90-105 of the Paper Book
2	Arg Udyog Private Limited	Share Capital and Securities Premium	Rs 4,50,00,000/-	-	Rs 4,50,00,000/-	(a) Page no 40 to 42 of the Paper Book
		Unsecured Loan	Rs 4,33,15,223/-	Rs 4,33,15,223/- (See Note 2)	Rs Nil /-	(b) Page no 107-130 of the Paper Book
3.	Arg Auto Components Private limited	Share Capital and Securities Premium	Rs 1,20,00,000/-	Rs 1,20,00,000/- (See Note 3)	Rs Nil /-	(a) Page no 42 to 43 of the Paper Book
			Rs 4,36,63,403/-	-	Rs 4,35,63,403/-	(b) Page no 131-147 of the Paper Book
4.	Arg Autosystem Limited	Share Capital and Securities Premium	Rs 2,50,00,000/-	-	Rs 2,50,00,000/-	(a) Page no 43 to 44 of the PB
		Unsecured Loan	Rs 35,85,513/-	Rs 35,85,513/- (See Note 4)	Rs Nil /-	(b) Page no 148-166 of the PB
5	Shiroki Corporation	Share Capital and Securities Premium	Rs 9,20,00,000/-		Rs 9,20,00,000/-	(a) Page no 44 to 47 of the PB (b) Page no 167-175 of the PB
		Total	Rs 34,21,33,718/-	Rs 7,94,00,736/-	Rs 26,27,38,982/-	

Note 1

(a) A sum of Rs. 1,05,00,000/- represents cheques cancelled i.e. in respect of which no funds were actually received.

(b) A sum of Rs. 1,00,00,000/- was transferred by means of journal entry to the Share Application Money Account which has been added both under the head "Unsecured Loans" as well as "Share Application Money" resulting in double addition of the like amount.

(c) The cumulative effect of the above is an excess addition of Rs. 2,05,00,000/-.

Note 2

(a) A sum of Rs. 30,00,000/- represents cheques cancelled i.e. in respect of which no funds were actually received.

(b) A sum of Rs. 4,50,00,000/- was transferred by means of journal entry to the Share Application Money Account which has been added both under the head "Unsecured Loans" as well as "Share Application Money" resulting in double addition of the like amount.

(c) The cumulative effect of the above is in excess addition of Rs. 4,33,15,223/-

Note 3

a) A sum of Rs. 1,20,00,000/- was transferred by means of journal entry to the Share Application Money Account which has been added both under the head "Unsecured Loans" as well as "Share Application Money" resulting in double addition of the like amount.

(b) The Appellant Company is in appeal with respect to the addition of Rs. 4,36,63,403/- in respect of unsecured loan received and for which it has filed a declaration under Vivaad se Vishwas Scheme 2020.

Note 4

(a) A sum of Rs. 2,50,00,000/- was transferred by means of journal entry to the Share Application Money Account whereby a sum of Rs. 35,85,513/- has been added both under the head "Unsecured Loans" as well as "Share Application Money" resulting in double addition of the like amount.

(b) The cumulative effect of the above is an excess addition of Rs. 35,85,513/-.

26. The ld. Counsel submitted that the ld.CIT(A), after due verification of facts and within due limits of the powers vested in him under the Act, has deleted the addition. Therefore, it is not proper on the part of the ld. DR to say that the ld.CIT(A) has not adjudicated the issue properly.

27. So far as the argument of the ld. DR that there is violation of provisions of section 46A of the IT Rules, 1962 is concerned, the ld. AR submitted that there was no violation of Rule 46A provisions since the application for admission of additional evidence was duly forwarded by the ld.CIT(A) to the AO and her replies/comments were taken into consideration. So far as the statement of the ld. DR that the computation of income and bank statement of ARG Udyog Ltd. were never produced before the AO is concerned, the ld. Counsel for the assessee submitted that the income-tax return and computation of income were duly filed before the AO vide letter dated 14th March, 2014. So far as the bank statement is concerned, it was submitted that the bank statement of the above party was not

filed before the AO and this fact was duly brought to the notice of the CIT(A) vide submission dated 15th July, 2014 which is evident from page 42 of the paper book. A request was made to the CIT(A) to treat this as an additional evidence under Rule 46A of the IT Rules, 1962. There was complete compliance and due disclosure by the assessee company. He submitted that the application under Rule 46A along with submissions were duly sent by him to the AO for her comments vide letter dated 21st July, 2014 which is evident from para 5.4 at page 34 of the order of the CIT(A). As such, in this respect also there was no deviation from the procedure laid down in Rule 46A which was complied with. He submitted that the complete documentary evidence with regard to share capital/share premium and unsecured loan was duly filed before the AO vide letters dated 11th December, 2013, 24th November, 2014 and 14th March, 2014, respectively. This fact was also reiterated vide letter dated 29th March, 2014 filed before the AO in response to the show cause notice issued by her and it was the assessee company's bona fide and firm belief that the bank statement of ARG Udyog Ltd. was also filed as part of the said replies. However, only after the assessment order was passed that the assessee came to know that the bank statement was mistakenly left out of file and which was duly filed before the CIT(A) vide submissions dated 15th July, 2014 and a prayer was made simultaneously for the same to be treated as an additional evidence under Rule 46A of the IT Rules, 1962. So far as the amount received as loan from M/s ADI Automotive Pvt. Ltd. by M/s ARG Udyog Ltd. is concerned, he submitted that this is evidently clear from the bank statement of ARG Udyog

Ltd. which is filed at pages 110 and 112 to 116 of the paper book. He submitted that the amount of unsecured loans had been substantially repaid in the subsequent year which is evident from the copy of accounts filed subsequently. He submitted that the fact of M/s ARG Udyog having received a loan from M/s ADI Automotive together with sale of shares of M/s Kongsberg Automotive Holding ASA was only discussed with and informed to the CIT(A) during proceedings before him and no additional evidence/document was filed. As such, there was no non-compliance with the provisions of Rule 46A in this regard. Therefore, the submission of the Id. DR that there is violation of Rule 46A is incorrect. Further, the assessee company has discharged the onus cast u/s 68 of the Act by providing not only the source, but, source of the source.

28. So far as the amount received from Shiroki Corporation is concerned, the Id. Counsel for the assessee submitted that during the period under consideration, the assessee company had entered into an agreement for technical-cum-financial collaboration with M/s Shiroki Corporation, a Japanese conglomeration having extensive experience in the area of manufacture of auto components with a view to benefit from its experience and expertise as a part of which it had received an investment of Rs.9,20,00,000/-in 7,36,000 equity shares of the face value of Rs.10 per share at a premium of Rs.115 per share. He submitted that the above investment was fully compliant with the existing policy and guidelines relating to FDI and duly approved/registered with the RBI. Moreover, the said money had

been transferred to the assessee company through regular banking channels. He submitted that when FDI has been approved by the RBI, there is no reason for doubting the genuineness of the underlying transaction. He submitted that merely for non-submission of the bank statement of the foreign investor, the transaction cannot be doubted since the said investment was duly approved by the RBI and was fully compliant with the existing policy and guidelines relating to FDI. He submitted that CIT(A) has given justifiable reasons while deleting the addition on this account. The Id. Counsel, referring to the order of the CIT(A) submitted that the Id.CIT(A) has discussed party-wise details and has given justifiable reasons for deleting the addition of share application money/share premium and the unsecured loans. He accordingly submitted that the order of the Id.CIT(A) be upheld and the grounds raised by the Revenue be dismissed.

29. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made an addition of Rs.34,21,39,718/- being the amount of share capital and share premium and unsecured loan received by the assessee from the following parties/persons on the ground that the assessee could not substantiate the ingredients of section 68 of the IT Act:-

Share capital/premium:

S No.	Name & Address of the Party	Amount (in Rs.)
(a)	Arun Gupta	1,00,00,000
(b)	ARG Udyog Pvt Ltd	4,50,00,000
(c)	Shiroki Corporation	9,20,00,000
(d)	ARG Auto Components Pvt Ltd	1,20,00,000
(e)	ARG Autosystem Limited	2,50,00,000
	TOTAL	18,40,00,000

Unsecured Loans:

S No.	Name & Address of the Party	Amount (in Rs.)
(a)	Sh Arun Gupta	6,75,75,579
(b)	ARG Auto Components Pvt. Ltd,	4,36,63,403
(c)	ARG Udyog Pvt Ltd	4,33,15,223
(d)	ARG Autosystem Limited	35,85,513
	TOTAL	15,81,39,718

30. While doing so, he further observed that the assessee has to not only prove the source, but, also the source of the source. The AO further noted that amendment to the section 56(2)(viia) and (viib) was made to prevent flow of unaccounted money into regular business channel by using dubious mechanism by routing funds through various means like issue of securities over and above the authorized capital without first enhancing the authorised share capital issuing securities at a premium which does not justify as the companies don't have assets to back such premium or through unsecured loans through various paper companies and purchase and sale of shares below or above the fair market value of

the shares. We find, the Id.CIT(A) in a detailed order passed by him, sustained the addition of Rs.4,36,63,403/- being unsecured loan from ARG Auto Components Pvt. Ltd. and deleted the balance addition of Rs.18.40 crores on account of share capital/share premium and Rs.11,44,76,315/- on account of unsecured loan. It is the submission of the Id. DR that the CIT(A) has admitted additional evidence without complying with the provisions of Rule 46A of the IT Rules in respect of ARG Udyog Ltd. Further, he has not given justifiable reasons for the acceptance of share premium of Rs.115/- per share as against the NAV of Rs.52.50. It is also her submission that the case of the assessee should have been decided on merit considering the surrounding circumstances in which the assessee has accepted huge share capital and share premium without any substantial business or net worth. It is the submission of the Id. Counsel for the assessee that it has substantiated with evidence regarding the identity and credit worthiness of the loan creditors/share applicants and the genuineness of the transactions. It is also his submission that the Id.CIT(A) after considering the details filed by the assessee has passed a speaking order while deleting each of the addition and, therefore, the same should be upheld.

31. We have given our careful consideration to the rival arguments made by both the sides. So far as the addition of Rs.6,75,75,529/- being unsecured loan and addition of Rs.1 Crore on account of share capital and share premium made by the AO in respect of Shri Arun Gupta is concerned, we find, the assessee before the

AO has filed the confirmation statement, bank statement, ITR along with computation and balance sheet of the said party. The assessee has filed a chart showing the source of various deposits made by him. The submission of the assessee before the Id.CIT(A) that the net addition on account of Shri Arun Gupta on account of unsecured loans stands only at Rs. 4,70,75,579/- and not Rs.6,75,75,579/- due to cancellation of cheque of Rs.1.05 crore and transfer by means of journal entry of Rs.1 Cr. To share application money which was added both under the head "Unsecured loans/share application money" and, therefore, there is an excess addition of Rs.2.05 lakhs in this account could not be controverted by the Id. DR. We further find, the Id.CIT(A) while accepting the source of Shri Arun Gupta has given a finding that Shri Arun Gupta has total income at Rs.1,12,59,185/- which includes salary of Rs.96,02,170/- and interest income of Rs.25,17,015/-. Further, the balance sheet of Shri Arun Gupta shows capital of Rs.52.62 crores and loan from ICICI of Rs.3.46 crores. He has also received amounts from Provident Fund, leave encashment, salary arrears, premature encashment of FDR and sale of shares of Technico Kongsberg Automotive India Ltd. The factual findings given by the Id.CIT(A) could not be controverted by the Id. DR. Even in his written synopsis, the Id. DR has stated that the case may be decided on merits considering the surrounding circumstances. Since the Id.CIT(A) has given valid reasons while deleting the addition of Rs.1 crore on account of share capital/share premium and Rs.6,75,75,579/- on account of unsecured loan in case of Shri Arun Gupta, therefore, we do not find any

infirmity in the same. Accordingly, the order of the CIT(A) deleting the addition of Rs.7,75,75,579/- in respect of Shri Arun Gupta is deleted.

32. So far as ARG Auto Components Pvt. Ltd. is concerned, we find the AO, in this case, made an addition of Rs.4,36,63,403/- towards unexplained unsecured loan and Rs.120 lakhs towards unexplained share application money. We find, in appeal, the Id.CIT(A) has sustained the addition of Rs.4,36,63,403/-, but, has deleted the addition of Rs.120 lakhs towards unexplained share application money. From the details furnished by the assessee, it is noted that the share application money was transferred from the unsecured loan account of M/s ARG Auto Components Pvt. Ltd. Since the Id.CIT(A) has sustained the unsecured loan of Rs.4,36,63,403/- and the assessee has accepted the same by withdrawing the appeal by going under Vivad Se Vishwas Scheme 2020 and since the amount of Rs.120 lakhs has been transferred from the loan amount of Rs.4,36,63,403/-, therefore, making addition of the same would amount to double addition. The Id.CIT(A), after considering the totality of the facts of the case, has deleted the addition, which, in our opinion, is just and proper under the facts and circumstances of the case. Accordingly, the order of the CIT(A) deleting the addition of Rs.120 lakhs in respect of unexplained share application money is upheld.

33. So far as ARG Autosystems Ltd. is concerned, we find, the AO made addition of Rs.250 lakhs being share capital and security premium and unsecured loan of Rs.35,85,513/- on the ground that assessee failed to explain the source of

the same from the above party in terms of section 68 of the IT Act, 1961. It was demonstrated by the assessee that a sum of Rs.250 lakhs was transferred by means of journal entry to the share application money amount whereby a sum of Rs.35,85,513/- has been added both under the head "unsecured loans" as well as "share application money" resulting in double addition of the like amount. The assessee before the AO has also filed the bank statement, income-tax return, copy of balance sheet, etc., vide its reply dated 11.12.2015, 24.01.2014 and 14th March, 2014. The assessee has demonstrated that the loan account of M/s ARG Autosystems Ltd. had an opening credit balance of Rs.2,51,14,095/-. Similarly, the total credit in the loan account were Rs.35,85,513/- and the entire amount was added by the AO as unexplained credit u/s 68 of the IT Act. Since the amount of Rs.250 lakhs was transferred from the loan account of M/s ARG Autosystems Ltd., by debiting the loan account and crediting the share application money, therefore, there is no requirement of addition u/s 68 of the Act. We find, the Id.CIT(A), after considering the totality of the facts of the case, has deleted the addition, which, in our opinion, is just and proper under the facts and circumstances of the case. Accordingly, the order of the CIT(A) deleting the addition on account of share capital and unsecured loan in respect of ARG Autosystem Ltd. is upheld.

34. So far as the amount of Rs.920 lakhs deleted by the CIT(A) in respect of Shiroki Corporation is concerned, we find from the details furnished by the

assessee that Shiroki Corporation is a Japan based related party of the assessee. During the year under consideration, the assessee has received a sum of Rs.920 lakhs from the above party on account of issue of 73600 shares of face value of Rs.10 per share at a premium of Rs.115 per share. The entire proceeds of allotment of shares has been received as foreign direct investment. The FDI from this company has been approved by the RBI. The assessee, during the course of assessment proceedings, had also filed copy of the documents filed before the RBI. These documents include copy of Form FC-GPR giving details of the investment from this company. The FDI was approved by the RBI. So far as the bank statement of the said company is concerned, no doubt, the assessee had not filed the same, but, it was pleaded that since the bank statement contains the entire bank transactions of M/s Shiroki Corporation which is one of the largest Japanese companies in the field of auto components, the above party did not want to part with its bank statement which contains its entire transaction including that with the assessee. However, in the instant case, as mentioned earlier, the FDI from this company had been approved by RBI and the allotment of shares was fully in compliance with the regulatory and statutory provisions in force at the relevant point of time including the Foreign Exchange Management Act, 1999, the policy relating to overseas direct investment formulated thereunder and the Companies Act, 1956. In view of the above and in view of the detailed discussion by the Id.CIT(A) on this issue deleting the addition, we find no infirmity in the same and accordingly the order of the CIT(A) on this issue is upheld.

35. Now, coming to the addition of Rs.450 lakhs on account of share capital and share premium and unsecured loan of Rs.4,33,15,223/- in respect of ARG Udyog Pvt. Ltd. is concerned, it is the submission of the ld. Counsel for the assessee that a sum of Rs.30 lakhs represents cheques cancelled in respect of which no funds were received and a sum of Rs.450 lakhs was transferred by means of journal entry to share application money account which has been added both under the head 'unsecured loans' as well as 'share application money' and the cumulative effect of the above is an excess addition of Rs.4,33,15,223/-. A perusal of the assessment order shows that the assessee has not filed the bank statement of M/s ARG Udyog Pvt. Ltd. before the AO although the same was filed before the CIT(A) as an additional evidence. However, a request was made to the ld.CIT(A) for admission of additional evidence in respect of ARG Udyog Pvt. Ltd. The written submissions filed by the ld. Counsel as a rejoinder to the submissions filed by the ld. DR show that the assessee has, in fact, made an application for admission of additional evidence under Rule 46A of the Income-tax Rules, 1962 in respect of ARG Udyog Pvt. Ltd. Therefore, the submission of the ld. DR that no such application was made is incorrect.

36. In our opinion, the ld.CIT(A), after considering the various evidences filed before him and after considering the remand report of the AO, has deleted the addition which, in our opinion, is justified under the facts and circumstances of the case.

37. So far as the submission of the Id. DR that the Id.CIT(A) at para 4.5 and 4.6 of his order has mentioned that the assessee has filed the copy of the bank account before the AO although the same, in our opinion, can be considered as a typographical error since, in the preceding paragraph, the Id.CIT(A) has reproduced the submission of the assessee regarding the non-submission of the bank statement before the AO for which an application under Rule 46A of the IT Rules, 1962 was made before him. Since, in the instant case, the assessee has filed the bank statement before the CIT(A) with a request to admit the same as an additional evidence giving reasons for non-submission of the same before the AO and since the Id.CIT(A) has called for a remand report from the AO before deleting the addition, therefore, in our opinion, the order of the CIT(A) deleting the addition in the instant case does not call for any interference. It is not a case where the Id.CIT(A) has not given an opportunity to the AO to rebut the submissions made before him. In this view of the matter and in view of the detailed discussion made by the Id.CIT(A) while deleting the addition on account of share application money and unsecured loan in respect of different investors as mentioned earlier, the same, in our opinion, does not call for any interference and, accordingly, the same is upheld. The grounds raised by the Revenue are accordingly dismissed.

38. In the result, the appeal filed by the Revenue is dismissed.

The decision was pronounced in the open court on 09.03.2021.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 09th March, 2021.

dk

Copy forwarded to

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

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi