

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri J. Sudhakar Reddy, AM and Shri A. T. Varkey, JM]

I.T.A. No.55/Kol/2020
Assessment Year:2014-15

JCIT(OSD), Circle-12(1), Kolkata	v.	M/s Wearit Global Ltd. (PAN:AABCR4997F)
Appellant		Respondent

I.T.A. No.20/Kol/2019
Assessment Year:2015-16

DCIT, Circle-12(1), Kolkata	v.	M/s Wearit Global Ltd. (PAN:AABCR4997F)
Appellant		Respondent

I.T.A. No.2191/Kol/2018
Assessment Year:2015-16

M/s Wearit Global Ltd. (PAN:AABCR4997F)	v.	DCIT, Circle-12(1), Kolkata
Appellant		Respondent

I.T.A. No.115/Kol/2020
Assessment Year:2016-17

JCIT(OSD), Circle-12(1), Kolkata	v.	M/s Wearit Global Ltd. (PAN:AABCR4997F)
Appellant		Respondent

Date of Hearing	02.03.2021
Date of Pronouncement	13.04.2021
For the Appellant	Shri Mithilesh Kr. Jha, CIT
For the Respondent	Ms. Priyanka Salarpuria CA, AR

ORDER

Per Shri A. T. Varkey, JM:

These are appeals preferred by the Revenue for AY 2014-15, AY 2015-16 & AY 2016-17 and the assessee has filed cross-appeal for AY 2015-16 against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata. We will deal with each appeal assessment year wise as under:

ITA 55/Kol/2020 [Revenue Appeal for (AY 2014-15)]

2. This is an appeal preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata dated 21.10.2019 for AY 2014-15. Though the Revenue has raised 17 grounds, the sole issue is against the action of Ld. CIT(A) in deleting the addition of Rs.7,69,71,990/- u/s 68 of the Income Tax Act, 1961 (*hereinafter* the 'Act').

3. Brief facts of the case as noted by the AO are that the assessee company is engaged in the business of manufacturing of cotton yarn and trading of synthetics yarn and cotton yarn. The A.O noted that the assessee company has raised share capital to the tune of Rs.2,79,34,200/- and share premium @Rs. 590 totalling Rs.16,48,11,780/- during the relevant assessment year (*herein after in short* A.Y). In order to verify the identity, creditworthiness and genuineness of shareholders, the AO issued notice u/s. 133(6) of the Act to the shareholders. The AO noted that notices u/s. 133(6) in case of following six (6) shareholders i.e. (i) M/s Pragati Complex Advisory Pvt. Ltd. at 70, Nalini Seth Road, 1st Floor, Kolkata-700007, (ii) M/s Richfield Vintrade Pvt. Ltd. at 8, Lyons Range, Kolkata-700001, (iii) M/s Laxmiputra Tradecomm Pvt. Ltd. at 77, N.S. Road, 5th Floor, Kolkata-700001, (iv) M/s Jintan Mercantile Pvt. Ltd. at 33/1, N. S. Road, Kolkata-70000 1, (v) M/s Newzone Vintrade Pvt. Ltd at 77, N.S. Road, 5th Floor, Kolkata-700001 and (vi) M/s Brijbhumi Commosale Pvt. Ltd. at 70, Nalini Seth Road, 1st Floor, Kolkata-700005 got returned [un-served] by postal authority. Further according to AO field enquiry to verify the genuineness of these companies didn't yield any result. Accordingly, the AO issued show-cause notice to the assessee company on 19.12.2016 stating the above facts and show-caused as to why share capital received from the aforesaid companies should not be added u/s. 68 of the Act in

the it's hand. According to the A.O, the reply given by the assessee pursuant to the show-cause notice was not acceptable, therefore according to him, the identity, creditworthiness and genuineness of the aforesaid six (6) shareholders could not be established and therefore he held as under:

“4.1 In view of the above discussions and findings, fund received in form of share capital from Pragati Complex Advisory Pvt. Ltd. of Rs.1,24,54,900/-, Richfield Vintrade Pvt. Ltd. of Rs.1,54,58,000/-, Laxmiputra Tradecomm Pvt. Ltd. of Rs.1,59,12,300/-, Jintan Mercantile Pvt. Ltd. of Rs.1,11,15,600/-, Newzone Vintrade Pvt. Ltd. of Rs.1,11,16,190/- and Brijbhumi Commosale Pvt. Ltd. of Rs.1,09,15,000/- totalling to Rs.7,69,71,990/- is added back to total income of the assessee u/s 68 for the A.Y 2014-15.”

4. Accordingly, the A.O made an addition of Rs.7,69,71,990/-.

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same. Aggrieved, the Revenue is before us.

6. Assailing the action of the Ld. CIT(A) in giving relief to the assessee company, the Ld. CIT-DR, Shri Mithilesh Kumar Jha submitted that the A.O issued notices u/s 133(6) of the Act to the aforesaid six (6) shareholders since the data of the Investigation Wing showed that these six (6) concerns out of the other companies which had applied for the allocation of shares of assessee company were shell/paper companies, therefore, he had issued notices to them specifically (*i.e. the above-named six companies*). And since the notices were returned back un-served by the postal authorities, the AO made another attempt to trace them, by conducting field enquiry at their respective addresses to verify the identity, genuineness of the shareholders, and since this action did not give any result about the existence of these companies in their given addresses, and since these share holders/subscribers could not place any credible evidence to prove that they were in genuine business activity by giving details of their establishment, the staff etc., he did not accept the share capital and premium supposed to have been given by them and made the addition of Rs.7,69,71,990/-. According to the Ld. CIT-DR, the Ld. CIT(A) has mistakenly drawn inferences in favour of assessee which impugned action according to the Ld. CIT-DR was not based on relevant materials; and the Ld. CIT-DR pointed out that though the Ld. CIT(A) during appellate proceedings had directed the A.O to carry out investigation by issuing section 133(6)

notice, pursuant to which, when the A.O had issued summons u/s 131 of the Act, instead of notices u/s 133(6) as directed by him, the Ld. CIT(A) found fault with the action of the A.O and has given relief even by taking note that the share applicant companies' directors had in fact presented themselves in the office of A.O pursuant to the summons, however the A.O was not present in the Office at that time when they came to AO's office and so they had to leave the office without their statement being recorded by the AO. This factual assertion of the Ld. CIT(A) has been questioned by the Ld. CIT-DR, who submitted that pursuant to the directions of Ld. CIT(A), during remand proceedings the AO had issued instead of notice u/s 133(6) summons u/s 131 of the Act to all the six (6) shareholders on 04.06.2019 directing them to produce their directors along with books of account. However according to Ld. CIT-DR, pursuant to the same, none appeared before the A.O. According to him, even though the directors did not appear at the AO's office, however they made a false averment through letter dated 25.07.2019 that they presented themselves (directors) at the office of A.O and since the A.O was absent in the office, so they had to return, which assertion according to A.O was false and this fact was conveyed by A.O to Ld.CIT(A) on 26.07.2019 itself, however according to Ld. DR, the Ld. CIT(A) did not bother to consider this fact conveyed by AO. According to the Ld. CIT-DR, the action of the Ld. CIT(A) in giving relief to the assessee were based only on the documents filed by the assessee and that too on irrelevant considerations like the share subscribers are being controlled by well known business houses etc. is on wrong assumption of facts and therefore the share capital & premium from these six companies ought not to have been accepted by the Ld. CIT(A) and according to him, the pernicious practice of laundering back their own black-money through shell companies have been frowned upon by the Hon'ble Apex Court in several cases viz. Principal CIT vs. NRA Iron & Steel (P) Ltd reported in 103 taxmann.com 48 (SC) and the Jurisdictional High Court in several cases, and therefore, he prayed that the Ld. CIT(A)'s impugned order may be reversed and the AO's action may be upheld or in the alternative, this issue may be set aside back to the A.O for fresh verification.

7. Per contra, the Ld. AR of the assessee, Ms. Priyanka Salarpuria CA pointed out that the assessee had duly filed before the A.O during assessment proceedings all the documents to prima facie prove the share applicants' identity, creditworthiness and genuineness and in that process, discharged the onus on it to prove the nature and source of the credit of share capital & premium collected by it in this assessment year. However, according to her, the A.O at the fag end when the assessment was going to get time barred, hurriedly issued notices u/s 133(6) of the Act only to fourteen (14) companies out of twenty two (22) share applicant companies from whom all the assessee had collected share capital & premium; and out of which nine (9) notices could be served and since six (6) parties could not be served because of change of address, and the AO has drawn adverse inference against these six (6) share subscribers, without awaiting for their response from them. Moreover, according to the Ld. AR, the A.O while making the addition of Rs.7.69 crores u/s 68 of the Act has not made any addition of the share capital received by the assessee from these six (6) companies [*details will be discussed (infra) with the aid of charts*] which means according to the Ld. AR, the A.O on one hand has accepted the share capital subscribed by these companies, however he did not accept the share premium subscribed by them and made addition u/s 68 of the Act, which action of AO according to the Ld. AR, is erroneous. According to Ld AR, the AO by accepting the share capital from these six (6) share subscribers' the AO has conveyed his satisfaction in respect of their [*six (6) share subscribers'*] respective identity and creditworthiness and also the AO has accepted the genuineness of the share capital transaction from these companies with the assessee company. So, according to the Ld. AR, the AO's action in not accepting the share premium collected by the assessee from the very same *six (6) share subscribers'* is erroneous, and further when the fact was that the AO has accepted the very same premium amount collected from other sixteen (16) share subscribers, he could not have drawn adverse view against this *six (6) share subscribers'* only for non-service of notice in the first round and when the fact was that during the remand proceedings the summons issued by the AO to these six (6) companies were served upon them. And thereafter drew our attention to page-52 of the

paper-book wherein the details of the share application money received by the assessee during the A.Y 2014-15 is given as under:

Sl No.	Name of the Party	Face Value @ 100	Premium @ 590	Share Capital with Premium in AY 2014-15
1	Nicholsons Vanijya Pvt Ltd	7,30,000	43,07,000	50,37,000
2	GMB Finvest Pvt Ltd	4,30,000	25,37,000	29,67,000
3	Alliance Vintrade Pvt Ltd	3,10,000	18,29,000	21,39,000
4	Effervescent Commercial Pvt Ltd	7,30,000	43,07,000	50,37,000
5	Bhagwat Kripa Trading Pvt Ltd	8,20,000	48,38,000	56,58,000
6	Seaview Vincom Pvt Ltd	2,20,000	12,98,000	15,18,000
7	Dhanidhar Trading Pvt Ltd	5,85,000	34,51,500	40,36,500
8	Dreamvalley Merchants Pvt Ltd	7,80,000	46,02,000	53,82,000
9	Pragati Complex Advisory Pvt Ltd	21,11,000	1,24,54,900	1,45,65,900
10	Richfield Vintrade Pvt Ltd	26,20,000	1,54,58,000	1,80,78,000
11	Laxmiputra Tradecomm Pvt Ltd	26,97,000	1,59,12,300	1,86,09,300
12	Ramdot Suppliers Pvt Ltd	22,42,100	1,32,28,390	1,54,70,490
13	Jintan Mercantile Pvt Ltd	18,84,000	1,11,15,600	1,29,99,600
14	Needful Projects Advisory Pvt Ltd	21,84,000	1,28,85,600	1,50,69,600
15	Mangalkamana Merchants Pvt Ltd	22,67,000	1,33,75,300	1,56,42,300
16	Newzone Vintrade Pvt Ltd	18,84,100	1,11,16,190	1,30,00,290
17	Brijbhumi Commosale Pvt Ltd	18,50,000	1,09,15,000	1,27,65,000
18	Kothsons Finance & Consultancy Pvt Ltd	4,70,000	27,73,000	32,43,000
19	Bor Securities Ltd	7,50,000	44,25,000	51,75,000
20	Aarkay Tie Up Pvt Ltd	7,50,000	44,25,000	51,75,000
21	Waltaz Commodities Pvt Ltd	3,60,000	21,24,000	24,84,000
22	Ojaswini Retailers Pvt Ltd	12,60,000	74,34,000	86,94,000
	TOTAL	2,79,34,200	16,48,11,780	19,27,45,980

8. According to the Ld. AR, as discussed supra, the assessee has received share capital money aggregating to Rs.19,27,45,980/- from twenty two (22) private limited companies comprising share capital of Rs.2,79,34,200/- and share premium of Rs.16,48,11,780/- by issuing shares of face value of Rs.100/- at a premium of Rs.590/- According to the Ld. AR, the A.O had issued notices u/s 133(6) to fourteen (14) companies which were served upon nine (9) companies, however it could not be served up on five (5) companies. However, he drew adverse inference against six (6) share applicant companies [later on referred to as companies under **Serial C**] which are as under:

Sl. no.	Name of the Party	Application	Premium
1	Pragati Complex Advisory Pvt. Ltd	21,11,000	1,24,54,900
2	Richfield Vintrade Pvt. Ltd	26,20,000	1,54,58,000
3	Laxmiputra Tradecomm Pvt. Ltd	26,97,000	1,59,12,300

4	<i>Jintan Mercantile Pvt. Ltd</i>	18,84,000	1,11,15,600
5	<i>Newzone Vintrade Pvt. Ltd</i>	18,84,100	1,11,16,190
6	<i>Brijbhumi Commosale Pvt. Ltd</i>	18,50,000	1,09,15,000
	TOTAL	1,11,46,100	7,69,71,990

9. According to the Ld. AR, during appellate proceedings, the Ld. CIT(A) has called for a remand report from the AO. And the AO during the remand proceedings, had issued summons u/s 131 of the Act to principal officers of the aforesaid six companies on 04.06.2019 directing them to appear before him with books of accounts, bank statement for A.Y 2014-15. According to the Ld. AR in the remand report, the A.O had observed that none appeared before him pursuant to even the summons being served upon them. [*However, according to assessee, the directors of these companies went to AO office, but AO was not present, so they returned*] Therefore, the AO reiterated his earlier stand and treated the share premium from these six (6) companies as undisclosed cash credit of the assessee company. The Ld. AR further drew our attention to the Ld. CIT(A)'s findings that in respect of the following eight (8) companies, the A.O has accepted the allotment of shares at a premium of Rs.590/- without any verification which is hereinafter referred to as companies in **Serial A**:

Companies under (Serial A)

- i) Nicholson Vanijya Pvt. Ltd.*
- ii) Alliance Vintrade Pvt. Ltd,*
- iii) Eitervescent Commercial Pvt. Ltd,*
- iv) Bor Securities Pvt. Ltd,*
- v) Seaview Vincom Pvt. Ltd,*
- vi) Kothsons Finance & Consultancy Pvt. Ltd*
- vii) Aarkay Tie Up Pvt. Ltd,*
- viii) Dream Valley Merchants Pvt. Ltd.*

10. According to the Ld. AR, the Ld. CIT(A) has observed that in respect of the aforesaid eight (8) companies, no notice u/s 133(6) was issued by the AO or any other enquiry was conducted by him and the share allotment by the assessee company was confirmed to be genuine by the A.O and the Ld. CIT(A) noted that the A.O did not even issue summons u/s 131 to these companies before accepting their share transaction with the assessee company.

11. Further the Ld. AR drew our attention to the fact that the Ld. CIT(A) has noted that in respect of following companies, the A.O had accepted the allotment of shares at a premium of Rs.590/- as these companies has submitted the following documents and these companies are hereinafter referred to as companies under **Serial B**:

- i) Balance Sheet and Audited Accounts,*
- ii) Income Tax Return,*
- iii) Bank Statement.*

Companies under (Serial B) -

- i) Mangalkamna Merchants Pvt. Ltd,*
- ii) Needful Projects Advisory Pvt. Ltd,*
- iii) Ramdot Suppliers Pvt. Ltd,*
- iv) BhagwatKripa Trading Pvt. Ltd*
- v) Ojawswani Realtors Pvt. Ltd,*
- vi) Waltaz Commodities Pvt. Ltd,*
- vii) GMB Finvest Pvt. Ltd,*
- viii) Dharnidhar Trading Pvt. Ltd.*

12. According to the Ld. AR, in the light of the above facts, the Ld. CIT(A) wondered as to when the assessee has filed all these details like balance sheet and audited account, income-tax return and bank statement of these share applicant companies also (i.e. six companies), then why the A.O after having accepted their identity, creditworthiness and genuineness in respect of share capital from these following six companies, didn't accept the premium from them and made the addition. These six companies are hereinafter referred to as companies under **Serial C**:

Companies under (Serial C)

- i) Brijbhumi Commosale Pvt. Ltd*
- ii) Newzone Vintrade Pvt. Ltd*
- iii) Jintan Mercantile Pvt. Ltd*
- iv) Laxmiputra Tradecomm Pvt. Ltd*
- v) Richfield Vintrade Pvt. Ltd*
- vi) Pragati Complex Advisory Pvt. Ltd.*

13. According to Ld. A.R, the Ld. CIT(A) after perusal of the remand report from the A.O noted that the only fault which the A.O could find against these companies under **Serial C** was that the field enquiry made by the Department could not trace out these companies at their respective addresses. According to the Ld. AR, other than simply saying that field enquiry could not trace out these companies, the AO has not spelled out what enquiry was conducted by him. And on the other hand, the Ld. CIT(A) has taken note that no field enquiry report was found in the assessment

folder/records. Therefore, the Ld. CIT(A) concluded that the A.O has not conducted any field enquiry in respect of these six companies under Serial 'C' against whom he made addition. And since the assessee brought to the notice of the Ld. CIT(A) that during the original proceedings, the AO could not serve notice u/s 133(6) of the Act was due to the fact that these six companies had changed their respective addresses and this fact was brought to the notice of AO during remand proceedings. However the AO despite direction from Ld. CIT(A) did not issue notice u/s 133(6) through postal authorities and instead issued summons u/s 131 of the Act which were served upon them. Therefore, according to Ld. A.R, the AO's action of selectively choosing six (6) companies out of twenty two (22) share applicants and without conducting any field enquiry [*in the absence of field enquiry report in the assessment folder as found by the Ld. CIT(A)*] and when the assessee had presented the same documents as furnished for share subscribing companies at Serial 'B', the AO erred in not accepting the share transaction from these six (6) companies at Serial 'C' which action of A.O, according to Ld. A.R smacks of arbitrariness and action is bad being whimsical. Therefore, according to Ld. A.R, the Ld. CIT(A) rightly deleted the addition after distinguishing the case laws relied upon by the AO, so she does not want us to interfere in the impugned order of Ld. CIT(A).

14. We have heard both the parties and perused the records. We note that the assessee company is engaged in the business of manufacturing of cotton yarn and trading of synthetics yarn and cotton yarn. In this assessment year, the assessee has received total share application money aggregating to Rs.19,27,45,980/- from twenty two (22) companies comprising of share capital of Rs.2,79,34,200/- and share premium of Rs.16,48,11,780/- by issuing shares of face value of Rs.100/- at a premium of Rs.590/. During the assessment proceedings, the A.O asked the assessee to prove the identity, creditworthiness and genuineness of the share applicants. And the A.O issued notices u/s 133(6) of the Act to six (6) companies shown under Serial 'C' (supra) namely (i) M/s Pragati Complex Advisory Pvt. Ltd., (ii) M/s Richfield Vintrade Pvt. Ltd., (iii) M/s Laxmiputra Tradecomm Pvt. Ltd., (iv) M/s Jintan Mercantile Pvt. Ltd., (v) M/s Newzone Vintrade Pvt. Ltd. and (vi) M/s Brijbhumi Commosale Pvt. Ltd.

According to the A.O, the notices were returned back by the postal authorities since it could not be served upon them. Further, according to the A.O, the field enquiry by the A.O to verify the genuineness of the company did not yield any result. So he show-caused the assessee as to why the share capital & premium received from the aforesaid six(6) companies should not be added u/s 68 of the Act. Further according to the A.O, the certificate of incorporation of the company, document of bank channel etc. cannot be in all cases tantamount to satisfactorily discharge of onus of the assessee to prove the identity, creditworthiness and genuineness of the transactions, since in this case, neither notices u/s 133(6) of the Act could be served upon them nor the field enquiry could trace these companies in the given addresses, therefore, he drew adverse inference in respect of these aforesaid six (6) share subscribing companies at Serial 'C' (supra) and made the addition u/s 68 of the Act in respect of share premium of Rs.7,69,71,990/-.

15. On appeal the Ld. CIT(A) has deleted the addition and the issue before us is whether the action of Ld. CIT(A) is legally tenable or not. In this regard we note that the AO has made the addition u/s 68 of the Act in respect of share premium subscribed by six (6) share applicant companies shown under Serial "C". So, first of all we have to see how the Ld. CIT(A) has dealt with the adverse view taken against the six companies at Serial C. The AO's case is that notice & field inquiry could not trace out these share subscribers in their given addresses. However, it has been brought to our notice that notice u/s 133(6) was issued by the AO at the fag end when the limitation period for passing the assessment order was getting barred and the AO issued notices to fourteen (14) share subscribing companies and out of which nine (9) notices could be served, so the AO has drawn adverse inference against the six (6) companies which could not be served. The reasons for non-service of notice was brought to the notice of Ld. CIT(A) i.e. these six (6) share subscribers have changed the addresses and the Ld. CIT(A) has taken note of this fact, so, we concur with the Ld CIT(A) that mere non-service of notice by the postal authorities cannot be the sole basis to draw adverse inference against these six (6) companies. Moreover, the assertion of the AO that field enquiry could not trace out these companies also cannot be given much weight because

once these six (6) companies had changed the address, and when postal authorities cannot find them in the old address, the field enquiry to trace them in the old address will also yield the same result. Further it is noted that the Ld. CIT(A) at page 26 of his impugned order has given a finding of fact that neither he could find any order/direction given by AO to conduct any field enquiry at the address of these companies nor any field report in the assessment folder, which discovery led the Ld CIT(A) to conclude that AO made no such enquiry. In the light of the aforesaid discussion, we are of the considered opinion that only on the basis that notices/field enquiry could not find the share subscribers [at serial C] at their respective old address cannot be the sole basis to draw adverse inference against them, when the assessee was able to bring material/evidence on record that these companies had changed to a new address and when they are able to adduce evidence to establish their existence by other evidences. Further we note that the Ld. CIT(A) had given direction to AO to issue notices u/s 133(6) to these companies at their new addresses while calling for remand report and the AO had issued summons u/s 131 to these companies in their new address to produce their respective Principal Officers, and pursuant to which (after summons being served upon them) they claim to have been produced, when the AO was not present in his office, which fact also the Ld. CIT(A) has taken note of in his order at page 16 & 27. *[Though this averment of assessee has been contested by the AO, however the AO has not placed any material/evidence/affidavit to support his assertion, so we cannot discount the Ld CIT(A) observation on this. And AO has not commented adversely about serving of summons to these six (6) companies]* so the inference drawn is that the summons u/s 131 of the Act were served upon these share subscribers. So in the light of the facts and circumstances discussed, the AO's action to have drawn adverse inference against these six (6) companies only on the basis of non-service /field enquiry at the fag end of assessment proceedings cannot be countenanced and therefore we agree with the Ld CIT(A) on this observation of his and for this we rely on the decision of Hon'ble Supreme Court in Orissa Corporation Pvt Ltd [159 ITR 78(SC)].

16. We note that in the present case, the assessee had submitted the following relevant details as called for and the evidence which were filed before the AO included the following details.

- (a) Income Tax Return of the share holders*
- (b) Audited Accounts of the share holders*
- (c) Share Application Forms*
- (d) Share Allotment Letters*
- (e) Copy of the bank account of the share holders*
- (f) Transaction with the assessee was duly highlighted in the bank statement*
- (g) Evidences of source of source of the share holders.*

17. Taking note of the aforesaid documents and for other reasons stated in the impugned order, the Ld. CIT(A) was of the opinion that assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share subscribers and deleted the addition made u/s. 68 of the Act. Before we adjudicate as to whether the Ld. CIT(A)'s action is right or erroneous, let us look at section 68 of the Act [*without the proviso inserted by Finance Act 2012, w.e.f. 01.04.2013 which we will deal infra*] and the judicial precedents on the issue before the proviso was inserted by the Parliament, which *provisois* applicable in the assessment years before us and is in respect of cases wherein the assessee's receive Share application/capital/premium, then additional burden is casted upon it to show the *source of source* to the satisfaction of AO or deeming provision will come into play which we will deal later (*infra*).

18. Section 68 of the Act [*without the proviso inserted by Finance Act 2012, which we will deal infra*] under which the addition has been made by the Assessing Officer reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. "

19. The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be

charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words 'shall' be charged to income-tax as the income of the assessee of that previous year". The Hon'ble Supreme Court while interpreting similar phraseology used in section 68 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570.

20. The main plank on which the AO made the addition in the assessment proceedings was non-service of notice and in the remand proceedings was because the directors of the share subscribers did not turn up before him. In such a case the Hon'ble Apex Court in the case of Orissa Corpn. (P) Ltd. (supra) 159 ITR 78 and following the same, the Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523, has held that onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the Assessing Officer is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from such creditor). In arriving at this conclusion, the Hon'ble Court has further stressed the presence of word "may" in section 68. Relevant observations at pages 369 and 370 of this report are reproduced hereunder:-

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and

whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

21. In the case of Nemi Chand Kothari 136 Taxman 213, (supra), the Hon'ble Guahati High Court has thrown light on another aspect touching the issue of *onus* on assessee under section 68, by holding that the same should be decided by taking into consideration the provision of section 106 of the Evidence Act which says that a person can be required to prove only such facts which are in his knowledge. The Hon'ble Court in the said case held that, once it is found that an assessee has actually taken money from depositor/lender who has been fully identified, the assessee/borrower cannot be called upon to explain, much less prove the affairs of such third party, which he is not even supposed to know or about which he cannot be held to be accredited with any knowledge. In this view, the Hon'ble Court has laid down that section 68 of Income-tax Act, should be read along with section 106 of Evidence Act. The relevant observations at page 260 to 262, 264 and 265 of the report are reproduced herein below:-

"While interpreting the meaning and scope of section 68, one has to bear in mind that normally, interpretation of a statute shall be general, in nature, subject only to such exceptions as may be logically permitted by the statute itself or by some other law connected therewith or relevant thereto. Keeping in view these fundamentals of interpretation of statutes, when we read carefully the provisions of section 68, we notice nothing in section 68 to show that the scope of the inquiry under section 68 by the Revenue Department shall remain confined to the transactions, which have taken place between the assessee and the creditor nor does the wording of section 68 indicate that section 68 does not authorize the Revenue Department to make inquiry into the source(s) of the credit and/or sub-creditor. The language employed by section 68 cannot be read to impose such limitations on the powers of the Assessing Officer. The logical conclusion, therefore, has to be, and we hold that an inquiry under section 68 need not necessarily be kept confined by the Assessing Officer within the transactions, which took place between the assessee and his creditor, but that the same may be extended to the transactions, which have taken place between the creditor and his sub-creditor. Thus, while the Assessing Officer is under section 68, free to look into the source(s) of the creditor and/or of the sub-creditor, the burden on the assessee under section 68 is definitely limited. This limit has been imposed by section 106 of the Evidence Act which reads as follows:

"Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. "

What, thus, transpires from the above discussion is that while section 106 of the Evidence Act limits the onus of the assessee to the extent of his proving the source from which he has received the cash credit, section 68 gives ample freedom to the Assessing Officer to make inquiry not only into the source(s) of the creditor but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the assessee himself. In other words, while section 68 gives the liberty to the Assessing Officer to enquire into the source/source from where the creditor has received the money, section 106 makes the assessee liable to disclose only the source(s) from where he has himself received the credit and it is not the burden of the assessee to prove the creditworthiness of the source(s) of the sub-creditors. If section 106 and section 68 are to stand together, which they must, then, the interpretation of section 68 are to stand together, which they must, then the interpretation of section 68 has to be in such a way that it does not make section 106 redundant. Hence, the harmonious construction of section 106 of the Evidence Act and section 68 of the Income- tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been. eventually, received by the assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be Judged vis-a-vis the transactions, which have taken place between the assessee and the creditor, and it is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the assessee. "

" ... If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep the same in the bank, the said amount cannot be treated as income of the assessee from undisclosed source. In other words, the genuineness as well as the creditworthiness of a creditor have to be adjudged vis-a-vis the transactions, which he has with the assessee. The reason why we have formed the opinion that it is not the business of the assessee to find out the actual source or sources from where the creditor has accumulated the amount, which

he advances, as loan, to the assessee is that so far as an assessee is concerned, he has to prove the genuineness of the transaction and the creditworthiness of the creditor vis-a-vis the transactions which had taken place between the assessee and the creditor and not between the creditor and the sub-creditors, for, it is not even required under the law for the assessee to try to find out as to what sources from where the creditor had received the amount, his special knowledge under section 106 of the Evidence Act may very well remain confined only to the transactions, which he had' with the creditor and he may not know what transaction(s) had taken place between his creditor and the sub-creditor... "

"In other words, though under section 68 an Assessing Officer is free to show, with the help of the inquiry conducted by him into the transactions, which have taken place between the creditor and the sub-creditor, that the transaction between the two were not genuine and that the sub-creditor had no creditworthiness, it will not necessarily mean that the loan advanced by the sub-creditor to the creditor was income of the assessee from undisclosed source unless there is evidence, direct or circumstantial, to show that the amount which has been advanced by the sub-creditor to the creditor, had actually been received by the sub-creditor from the assessee"

"Keeping in view the above position of law, when we turn to the factual matrix of the present case, we find that so far as the appellant is concerned, he has established the identity of the creditors, namely, Nemichand Nahata and Sons (HUF) and Pawan Kumar Agarwalla. The appellant had also shown, in accordance with the burden, which rested on him under section 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors aforementioned. In fact the fact that the assessee had received the said amounts by way of cheques was not in dispute. Once the assessee had established that he had received the said amounts from the creditors aforementioned by way of cheques, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter the burden had shifted to the Assessing Officer to prove the contrary. On mere failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, such failure, as a corollary, could not have been and ought not to have been, under the law, treated as the income from the undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. Viewed from this angle, we have no hesitation in holding that in the case at hand, the Assessing Officer had failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. In the absence of any such evidence on record, the Assessing Officer could not have treated the said amounts as income derived by the appellant from undisclosed sources. The learned Tribunal seriously fell into error in treating the said amounts as income derived by the appellant from undisclosed sources merely on the failure of the sub-creditors to prove their creditworthiness."

22. Further, in the case of CITv. S. Kamaljeet Singh [2005] 147 Taxman 18(All.) their lordships, on the issue of discharge of assessee's onus in relation to a cash credit appearing in his books of account, has observed and held as under:-

"4. The Tribunal has recorded a finding that the assessee has discharged the onus which was on him to explain the nature and source of cash credit in question. The assessee discharged the onus by placing (i) confirmation letters of the cash creditors; (ii) their affidavits; (iii) their full addresses and GIR numbers and permanent account numbers. It has found that the assessee's burden stood discharged and so, no addition to his total income on account of cash credit was called for. In view of this finding, we find that the Tribunal was right in reversing the order of the AA C, setting aside the assessment order."

23. We also take note of the decision of the Hon'ble High Court, Calcutta in the case of S.K. Bothra & Sons, HUF v. Income-tax Officer, Ward- 46(3), Kolkata 347 ITR 347 wherein the Court held as follows:

"15. It is now a settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no explanation is given or the explanation given by the appellant is not satisfactory, the Assessing Officer can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to assessee."

16. In the case before us, the appellant by producing the loan-confirmation-certificates signed by the creditors, disclosing their permanent account numbers and address and further indicating that the loan was taken by account payee cheques, no doubt, prima facie, discharged the initial burden and those materials disclosed by the assessee prompted the Assessing Officer to enquire through the Inspector to verify the statements."

24. In a case where the issue was whether the assessee availed cash credit as against future sale of product, the AO issued summons to the creditors who did not turn up before him, so AO disbelieved the existence of creditors and saddled the addition, which was overturned by Ld. CIT(A). However, the Tribunal reversed the decision of the Ld. CIT(A) and upheld the AO's decision, which action of Tribunal was challenged before the Hon'ble High Court, Calcutta in the case of Crystal Networks (P.) Ltd. v. Commissioner of Income-tax 353 ITR 171 wherein the Tribunal's decision was overturned and decision of Ld. CIT(A) upheld and the Hon'ble High Court has held that when the basic evidences are on record the mere

failure of the creditor to appear cannot be basis to make addition. The Hon'ble High Court held as follows:

8. *Assailing the said judgment of the learned Tribunal learned counsel for the appellant submits that Income-tax Officer did not consider the material evidence showing the creditworthiness and also other documents, viz., confirmatory statements of the persons, of having advanced cash amount as against the supply of bidis. These evidence were duly considered by the Commissioner of Income-tax (Appeals). Therefore, the failure of the person to turn up pursuant to the summons issued to any witness is immaterial when the material documents made available, should have been accepted and indeed in subsequent year the same explanation was accepted by the Income-tax Officer. He further contended that when the Tribunal has relied on the entire judgment of the Commissioner of Income-tax (Appeals), therefore, it was not proper to take up some portion of the judgment of the Commissioner of Income-tax (Appeals) and to ignore the other portion of the same. The judicial propriety and fairness demands that the entire judgment both favourable and unfavourable should have been considered. By not doing so the Tribunal committed grave error in law in upsetting the judgment in the order of the Commissioner of Income-tax (Appeals).*

9. *In this connection he has drawn our attention to a decision of the Supreme Court in the case of Udhavdas Kewalram v. CIT [1967] 66 ITR 462. In this judgment it is noticed that the Supreme Court as proposition of law held that the Tribunal must In deciding an appeal, consider with due care, all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law.*

10. *We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore, it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter the creditworthiness. As rightly pointed out by the learned counsel that the Commissioner of Income-tax (Appeals) has taken the trouble of examining of all other materials and documents, viz., confirmatory statements, invoices, challans and vouchers showing supply of bidis as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued, in our view, is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or not. When it was found by the Commissioner of Income-tax (Appeals) on facts having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this -fact finding. Indeed the Tribunal did not really touch the aforesaid fact finding of the Commissioner of Income-tax (Appeals) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 464, the Supreme Court has observed as follows:*

"The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act; it is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. "

11. *The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.*

12. *Taking inspiration from the Supreme Court observations we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Commissioner of Income-tax (Appeals). We also found no single word has been spared to up set the fact finding of the Commissioner of Income-tax (Appeals) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.*

13. *Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Commissioner of Income-tax (Appeals). The appeal is allowed.*

25. When a question as to the creditworthiness of a creditor is to be adjudicated and if the creditor is an Income Tax assessee, it is now well settled by the decision of the Calcutta High Court that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regards our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the CIT, Kolkata-III Versus DATAWARE Pvt Ltd ITAT No. 263 of 2011 Date: 21st September, 2011 wherein the Hon'ble High Court held as follows:

“In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness” of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness” of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities.”

26. Our attention was also drawn to the decision of the Hon'ble Supreme Court while dismissing SLP in the case of Lovely Exports as has been reported as judgment delivered by the CTR at 216 CTR 295:

"Can the amount of share money be regarded as undisclosed income under section 68 of the Income tax Act, 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee- company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

27. Our attention was also drawn to the decision of the Hon'ble Calcutta High Court while relying on the case of Lovely Exports, in the appeal of CIT, Kolkata-IV Vs ROSEBERRY MERCANTILE (P) LTD., ITAT No. 241 of 2010 dated 10- 01- 2011 has held:

"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT (A) ought to have held that the assessee had not established the genuineness of the transaction. "

It appears from the record that in the assessment proceedings it was noticed that the assessee company during the year under consideration had brought Rs. 4, 00, 000/- and Rs.20,00,000/- towards share capital and share premium respectively amounting to Rs.24,00, 000/- from four shareholders being private limited companies. The Assessing Officer on his part called for the details from the assessee and also from the share applicants and analyzed the facts and ultimately observed certain abnormal features, which were mentioned in the assessment order. The Assessing Officer, therefore, concluded that nature and source of such money was questionable and evidence produced was unsatisfactory. Consequently, the Assessing Officer invoked the provisions under Section 68/69 of the Income Tax Act and made addition of Rs.24,00,000/-.

On appeal the Learned CIT (A) by following the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd., reported in (2008) 216 CTR 195 allowed the appeal by holding -that share capital/premium of Rs. 24,00,000/- received from the investors was not liable to be treated under Section 68 as unexplained credits and it should not be taxed in the hands of the appellant company.

As indicated earlier, the Tribunal below dismissed the appeal filed by the Revenue.

After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd. [supra], we are at one with the Tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

28. Our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the case of Commissioner Of Income Tax vs M/s. Nishan Indo Commerce Ltd

dated 2 December, 2013 in INCOME TAX APPEAL NO.52 OF 2001 wherein the Court held as follows:

“The Assessing Officer was of the view that the increase in share capital by RS.52,03,500/- was nothing but the introduction of the assessee's own undisclosed funds/income into the books of accounts of the assessee company. The Assessing Officer accordingly treated the investment as unexplained credit under Section 68 of the Income Tax Act and added the same to the income of the assessee.

Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) being the First Appellate Authority and contended that the Assessing Officer had no material to show that the share capital was the income of the assessee company and as such the addition made by the Assessing Officer under Section 68 of the Act was wrong.

The learned Commissioner of Income Tax (Appeals) after hearing the department and the Assessee Company deleted the addition of Rs. 52, 03,500/- to the income of the assessee company during the Assessment Year in question. The learned Commissioner of Income Tax Appeals found that there were as many as 2155 allottees, whose names, addresses and respective shares allocation had been disclosed.

The Commissioner of Income Tax Appeals, further found that the Assessee Company received the applications through bankers to the issue, who had been appointed under the guidelines of the Stock Exchange and the Assessee Company had been allotted shares on the basis of allotment approved by the Stock Exchange. The Assessee Company had duly filed the return of allotment with the Registrar of Companies, giving complete particulars of the allottees.

The Commissioner of Income Tax (Appeals) found that inquires had confirmed the existence of most of the shareholders at the addresses intimated to the Assessing Officer, but the Assessing Officer took the view that their investment in the Assessee Company was not genuine, on the basis of some extraneous reasons. The Commissioner of Income Tax (Appeals) took note of the observation of the Assessing Officer that enquiry conducted by the Income Tax Inspector had revealed that nine persons making applications for 900 shares were not available at the given address and rightly concluded that the total share capital issued by the Assessee Company could not be added as unexplained cash credit under 'Section 68 of the Income Tax Act. Moreover, if the nature and source of investment by any shareholder, in shares of the Assessee Company remained unexplained, liability could not be foisted on the company. The concerned shareholders would have to explain the source of their fund.

The learned Commissioner on considering the submissions of the, respective parties and considering the materials, found that the Assessing Officer had applied the provisions of Section 68 of the Income Tax Act arbitrarily and illegally and in any case without giving the assessee adequate opportunity of representation and/or hearing.

Learned Tribunal agreed with the factual findings of the learned Commissioner and accordingly the learned Tribunal dismissed the appeal of the Revenue and affirmed the decision of the learned Commissioner.

Mr. Dutta appearing on behalf of the petitioners cited judgment of the Division Bench of this Court in Commissioner of Income Tax Vs. Ruby Traders and Exporters Limited reported in 236 (2003) ITR 3000 where a Division Bench of this Court held that when

Section 68 is resorted to, it is incumbent on the assessee company to prove and establish the identity of the subscribers, their credit worthiness and the genuineness of the transaction.

The aforesaid judgment was rendered in the context of the factual background of the aforesaid case where, despite several opportunities being given to the assessee, nothing was disclosed about the identity of the shareholders. In the instant case, the assessee disclosed the identity and address and particulars of share allocation of the shareholders. It was also found on the facts that all the shareholders were in existence. Only nine shareholders subscribing to about 900 shares out of 6, 12,000 shares were not found available at their addresses, and that too, in course of assessment proceedings in the year 1994, i.e., almost 3 years after the allotment.

By an order dated 2nd May, 2001, this Court admitted the appeal on three questions which essentially centre around the question of whether the Appellate Commissioner erred in law in deleting the addition of Rs. 52, 03, 500/- to the income of the assessee as made by the Assessing Officer. We are of the view that there is no question of law involved in this appeal far less any substantial question of law.

The learned Tribunal has concurred with the learned Commissioner on facts and found that there were materials to show that the assessee had disclosed the particulars of the shareholders. The factual findings cannot be interfered with, in appeal. We are of the view that once the identity and other relevant particulars of shareholders are disclosed, it is for those shareholders to explain the source of their funds and not for the assessee company to show wherefrom these shareholders obtained funds.”

29. Further, our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the case of Commissioner of Income Tax vs M/s. Leonard Commercial (P) Ltd on 13 June, 2011 in ITAT NO 114 of 2011 wherein the Court held as follows:

“The only question raised in this appeal is whether the Commissioner of Income-tax (Appeals) and the Tribunal below erred in law in deleting the addition of Rs.8,52,000/-, Rs. 91,50,000/- and Rs. 13,00,000/- made by the Assessing Officer on account of share capital, share application money and investment in HTCCCL respectively.

After hearing Md. Nizamuddin, learned Advocate appearing on behalf of the appellant and after going through the materials on record, we find that all such application money were received by the assessee by way of account payee cheques and the assessee also disclosed the complete list of shareholders with their complete addresses and GIR Numbers for the relevant assessment years in which share application was contributed. It further appears that all the payments were made by the applicants by account payee cheques.

It appears from the Assessing Officers order that his grievance was that the assessee was not willing to produce the parties who had allegedly advanced the fund.

In our opinion, both the Commissioner of Income-tax (Appeals) and the Tribunal below were justified in holding that after disclosure of the full particulars indicated above, the initial onus of the assessee was shifted and it was the duty of the Assessing Officer to enquire whether those particulars were correct or not and if the Assessing Officer was

of the view that the particulars supplied were insufficient to detect the real share applicants, to ask for further particulars.

The Assessing Officer has not adopted either of the aforesaid courses but has simply blamed the assessee for not producing those share applicants.

In our view, in the case before us so long the Assessing Officer was unable to arrive at a finding that the particulars given by the assessee were false, there was no scope of adding those money under section 68 of the Income- tax Act and the Tribunal below rightly held that the onus was validly discharged.

We, thus, find that both the authorities below, on consideration of the materials on record, rightly applied the correct law which are required to be applied in the facts of the present case and, thus, we do not find any reason to interfere with the concurrent findings of fact based on materials on record.

The appeal is, thus, devoid of any substance and is dismissed summarily as it does not involve any substantial question of law.

30. So, in the light of the case laws discussed, let us see whether the assessee has been able to discharge the primary onus on it to prove the nature and source of the credit found in the books of the assessee by proving the identity, creditworthiness and genuineness of the parties and the share transaction. In this respect it was brought to our notice that these share subscribing companies were regularly assessed to tax and the payments in questions were made through the bank accounts; and when called upon by the AO during assessment proceedings and also during remand proceedings, the assessee had furnished the requisite documentary evidences to prove the identity, creditworthiness and genuineness of the transaction i.e, the assessee had filed the share applicants' Audited Financial Statements and Income-tax Acknowledgement for filing of return for A.Y 2014-15 along with the PAN details and the jurisdiction of AO under whom they are assessed and the intimation by the department accepting their respective return of income u/s 143(1) of the Act. Thus, the assessee states that it had discharged its onus to prove the identity of the share subscribers. According to assessee from a perusal of the bank statements filed it is discernible that the transactions i.e. share capital and premium were transferred through proper banking channel and according to assessee it was not the case of the A.O that there was any cash deposit prior to the issue of cheques to the assessee company. Thus the assessee claims that the genuineness of the transaction cannot be disputed. And in order to

prove the creditworthiness of the share subscribers, the Ld. A.R drew our attention to audited balance sheet of the share subscribing companies and contended that shareholders possess sufficient capital and reserves out of which share subscription amounts were paid through account payee cheques. So according to assessee, it has discharged the burden of proof casted by section 68 of the Act in respect of share capital & premium it collected. And according to assessee, without finding any infirmity in the documents produced by the assessee in respect of identity, creditworthiness and genuineness of the transaction, no addition u/s 68 of the Act was warranted and the Ld CIT(A) after considering and appreciating inter-alia these facts have deleted the addition.

31. Further we note that the A.O had accepted the share capital subscribed by the six corporate entities at Serial C. The Ld. A.R in this context had drawn our attention to page 52 of the paper-book (supra) wherein the details of the share capital and premium received during this assessment year i.e. AY 2014-15 from twenty two (22) parties are given and the A.O had made only addition in respect of six (6) companies, so the implied inference is that he had accepted the share capital and premium from the rest of the share subscribers i.e. sixteen (16) companies itself, when the assessee has filed the very same documents of other share-subscribers. So according to Ld. A.R, this action of AO in drawing adverse inference against six(6) companies at Serial 'C' is per-se is bad being arbitrary and irrational in nature when on the same set of documents, the AO accepted their share capital & premium and did not accept that of companies at Serial C which according to Ld. A.R is bad. Be that as it may be, the main submission of the assessee is that the A.O had on one hand accepted the share capital from these six (6) companies at Serial 'C' however did not accept the share premium of Rs.590/- per share and had added only the share premium from them to the total of Rs.7,69,71,900/- which action is erroneous because the AO by accepting share capital of Rs.1,11,46,100/- from these six (6) share applicant companies at Serial 'C' have accepted their respective identities, creditworthiness and genuineness of the transaction. So the question before us is whether the AO could have made the addition of share premium of Rs.590/- per share u/s 68 of the Act. In this respect we note an

important fact that the AO has accepted the valuation of share premium of Rs.590/- per share because he (AO) has accepted the share premium of Rs. 590/- per share from the rest of sixteen (16) share subscribers. So the action of AO to tax only the share premium of Rs. 590/- per share from the very same six (6) companies [shown under serial "C"] when the share capital from them has been accepted by him cannot be countenanced. Therefore in this facts and circumstances the share premium of Rs. 590/- per share from six (6) companies at serial 'C' could not have been added u/s 68 of the Act. However we will deal with it elaborately. We note that the assessee had filed documents before the AO & Ld. CIT(A) and before us to discharge the primary onus upon it to prove the identity, creditworthiness and genuineness of all the six (6) share applicants at Serial 'C', viz. (i) copy of ITR acknowledgement for A.Y 2014-15, (ii) copy of bank statement depicting transaction, (iii) copy of share application form, (iv) copy of share allotment letter. Despite that the A.O has drawn adverse inference against these companies because the notice u/s 133(6) could not be served upon them and the field enquiry also could not yield any result, which we have already dealt with (supra) wherein we disapproved the action of AO and upheld the action of Ld CIT(A).

32. As we noted (supra) the AO has made addition of Rs. 7,69,71,990/- i.e. share premium collected by assessee during this AY 2014-15 whereas he has accepted the share capital of Rs. 1,11,46,100/- collected by them and on appeal the Ld. CIT(A) has deleted the same and when we have to adjudicate the legality of the action of Ld. CIT(A), first of all, let us have a look at section 68 of the Act. And we note that the relevant assessment year [A.Y] before us is A.Y 2014-15 wherein we note that a Proviso has been inserted by Finance Act 2012 w.e.f. 01.04.2013 in section 68 of the Act which is applicable for this relevant AY and for ready reference relevant and applicable in this case of section 68 of the Act with the aforesaid proviso is reproduced as under:

Cash Credits

Section 68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or

the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

"[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless -

(a) The person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:"

33. We note that even though the Parliament has inserted by the Finance Act, 2012, w.e.f. 01.04.2013 the proviso to section 68 of the Act, we must bear in mind that there is no change or amendment in the substantive provision of section 68 of the Act wherein if any sum is found by the AO to have been credited in the books of an assessee in the relevant financial year, then when called upon by him (AO) to the assessee to explain the nature and source of the credit; and pursuant to which if the assessee fails to explain to the satisfaction of AO the nature and source of the credit, then the AO may treat the credit as income chargeable to tax. In other words, if the assessee is able to explain the nature and source of the credit to the satisfaction of AO, then AO cannot use this provision to charge the credit appearing in the books of the assessee as income for the purpose of taxation under the Act. It is settled position of law that 'satisfaction' contemplated in section 68 of the Act is that of a reasonable prudent person (AO) and not that of an unreasonable person. So, when the AO calls upon the assessee to explain the nature and source of the credit found in assessee's book, then initial burden is on the assessee to bring material on record to show the nature and source of the credit i.e. *identity, creditworthiness and genuineness* of the transaction in question. And once an assessee is able to discharge the initial burden which lies upon it, then the onus shifts to the AO to disprove/rebut the material adduced by the assessee to substantiate the nature and source of the credit transaction. And if the AO is not able to disprove/rebut the evidence brought on record by the assessee to prove the nature and source of the credit entry, then section 68 of the Act cannot be

used by the AO to charge the credit appearing in the books of the assessee as income for taxation. This position of law we note remains the same even after the insertion of Finance Act 2012, wherein additional requirement/burden is brought in by the Parliament in the cases of an assessee which is a corporate entity (*not being a company in which the public are substantially interested*) claims to have received share application money, share capital, share premium or any such amount, *then with effect from 01.04.2013*, while giving the explanation to the AO regarding the nature and source of such sum credited in its books, the share subscribers has to offer the proof of 'source of source' of the *share application money, share capital, share premium*. So, we note that till AY 2012-13, the requirement of law as per section 68 of the Act was that when there is a credit entry in the books, then assessee was required to satisfy the AO in respect of the nature and source (i.e. First source from which it received) and that position of law remains in force till now also, except that after 01.04.2013 (i.e. AY 2013-14) onwards when an assessee company (*not public company*) if they collect share application money, share capital, share premium then an additional burden is imposed by the first proviso to bring to the notice of AO the "source of source" of the credit entry i.e. source of the share applicant which had been invested in the assessee company. In other words from AY 2013-14 onwards, in the event if an assessee company when called upon by the AO to explain the nature of the credit in its books claims that the credit entry is share application money, share capital and share premium, then the additional requirement of law as per the proviso to section 68 of the Act kicks in and share subscriber should be able to show the source from which it was able to invest in the assessee company. And if the 'source of source' of share application/capital/premium is shown to AO and if he is satisfied with the explanation, then the deeming provision will not apply.

34. So, in this relevant assessment year, as noted the assessee company had issued share capital to twenty two (22) share holding companies, shares at a face value of Rs.100/- each with a premium of Rs.590/- wherein the A.O has accepted the share capital of all twenty two (22) share holding companies including the share

capitalraised from these six (6) companies at Serial C. However the AO has not accepted the share premium received from these six (6) companies at Serial C i.e. six (6) companies only out of the total twenty two (22) share subscribing companies. It has been pointed out by the Ld. AR that the documents of the share subscribers which established their identity, creditworthiness along with the genuineness of the transaction were filed before the AO, which would reveal especially the “*source of source*” of the share subscribers’ to invest in the assessee’s share capital and premium i.e. the bank statement of the share subscribers were filed which clearly shows the source of money from where those share subscribers could subscribe in assessee company is clearly discernible. Thus the *source of source* was evident since all the six (6) share subscribing companies at Serial C could demonstrate their *source of source* which is flowing through regular banking channel from various remittance by corporate entities in the course of their business dealings and since all the transactions happened through banking channel, and since these relevant facts are clearly discernable and which will be discussed (infra) in detail while discussing about each share subscriber. And since the *source of source* of the sum of money credited in the assessee’s books for share subscribing (capital and premium) has been shown to the A.O, the proviso to section 68 stands satisfied. Therefore, in the peculiar facts and circumstances of the case as discussed, it cannot be held that the assessee had not discharged its onus of proving the *source of source* of the share capital and premium. Here it has to be taken note that the share premium of Rs.590/- per share the A.O has accepted, because he has accepted that from the other sixteen (16) companies, therefore, valuation of the share (*premium*) of the assessee i.e, Rs 590/- per share is not in dispute. In such a scenario, when the A.O is satisfied with the identity, creditworthiness and genuineness of the six companies at Serial C by his action of accepting the total share capital of Rs.1,11,46,100/- subscribed by them, his action of not accepting the share premium from these very same six (6) companies of Rs.7,69,71,900/-, is not tenable/un-reasonable/irrational and on this score we concur with the view of the Ld. CIT(A). Therefore, we find no infirmity in the impugned order of the Ld. CIT(A) in giving relief to the assessee on this issue. However, for completeness, we would like to examine the identity, creditworthiness of the six (6)

share subscribers shown at Serial C and genuineness of their share premium transaction against whom the AO has drawn adverse view and made addition u/s 68 of the Act to the tune of Rs Rs.7,69,71,900/-

35. We also note that all the six (6) share subscribers/share holders shown at Serial C are regular income tax assessee's. It is noted that the assessee had filed documents to discharge onus upon it to prove the identity, creditworthiness and genuineness of all the six (6) share applicants at Serial 'C', viz. (i) copy of ITR acknowledgement for A.Y 2014-15, (ii) copy of bank statement depicting transaction, (iii) copy of share application form, (iv) copy of share allotment letter. The following chart will reveal the identity of the assessee wherein the PAN number, CIN number and whether ITR filed or nor are given which will give a bird's eye view about the identity of the these share subscribers;-

Sl No	Name of the Party	CIN No	PAN	ITR filed for AY 2014-15
1	Pragati Complex Advisory Pvt Ltd	U74140WB2011PTC162259	AAGCP0516K	yes
2	BrijbhumiCommosale Pvt Ltd	U51909WB2011PTC163205	AAECB5701C	yes
3	Jintan Mercantile Pvt Ltd	U51909WB2011PTC164209	AACCJ6360P	yes
4	LaxmipurtraTradecomm Pvt Ltd	U51909WB2011PTC158663	AACCL0187C	yes
5	RichifieldVintrade Pvt Ltd	U51909WB2011PTC163139	AAFRCR3199H	yes
6	NewzoneVintrade Pvt Ltd	U51909WB2011PTC163187	AADCN6885G	yes

36. Therefore in the light of the aforesaid documents discussed their identity cannot be disbelieved and the Ld CIT(A) action is right to this extend.

37. Coming to the creditworthiness of the shareholders, our attention was drawn to the balance sheet of the shareholders (Paper Book pages given infra) which was filed before the AO and the Ld. CIT(A) and we note that their source of investment and net worth as per balance sheet as on 31.03.2014 as well as the sum invested by them in the assessee is discernible as under:

Sl No	Name of the Party	Source of Investment	Capital & Reserves	Sum invested in assessee's business
1	Pragati Complex Advisory Pvt Ltd	66-70 of PB	Rs.7,57,92,433 (Page 58 of PB)	Rs.1,45,65,000
2	Brijbhumi Commosale Pvt Ltd	84-87 of PB	Rs.10,20,58,974 (Page 78 of PB)	Rs.1,27,65,000
3	Jintan Mercantile Pvt Ltd	103-106 of PB	Rs.15,78,77,331 (Page 95 of PB)	Rs.1,29,99,600
4	Laxmipurtra Tradecomm Pvt Ltd	123-126 of PB	Rs.13,30,11,167 (Page 115 of PB)	Rs.1,86,09,300
5	Richifield Vintrade Pvt Ltd	142-144 of PB	Rs.14,44,31,804 (Page 134 of PB)	Rs.1,80,78,000
6	Newzone Vintrade Pvt Ltd	159-162 of PB	Rs.7,87,90,688 (Page 152 of PB)	Rs.1,30,00,290

38. So, from a perusal of the above chart, we note that the assessee and the shareholders have brought to the notice of AO&CIT(A) that they (share subscribers) have enough net worth to invest in the assessee company and moreover the share subscribers have also filed the source from which they subscribed to shares of assessee (*bank statement, audited balance sheet etc*). Thus the assessee had discharged the onus on it about the creditworthiness of the share-holders. So we note that the source of the investments i.e, source of source of share subscribers to subscribe for share premium in assessee's company as required by proviso to section 68 of the Act stands satisfied since it is clearly discernible from the bank statement & confirmation filed in the PB filed. These bank statements revealed that the share capital and premium have been subscribed by them through banking channel (NEFT or cheque) which goes on to show that the assessee has discharged the onus in respect of genuineness of the transaction. And we note that revenue has not brought on record any material to challenge the veracity of the documents or the findings of fact recorded by Ld. CIT(A) as discussed supra. Moreover, before the AO could have branded these share subscribers as un-worthy of credit, the AO ought to have conducted the exercise as mandated by the Jurisdictional Hon'ble High Court in the case of Data ware Ltd, which the AO in this case has not done, so no adverse view in respect of creditworthiness could have been taken against them. So the Ld. CIT(A)'s view to overturn the decision of AO is based on the documents filed before him which he has asserted at page 26 to have been cross-checked and verified and therefore his action to delete the addition is a plausible view and it cannot be termed a

perverse view and is in consonance with judicial precedents on this issue and before we part we would like to discuss/ examine each share subscribers totalling Six (6) especially taking note of the source of source as required as per the proviso to section 68 of the Act as follows;-

(i) On perusal of the paper book, it reveals that the documents are placed at page 53 to 72 of share applicant M/s. Pragati Complex Advisory Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AAGCP0516K and CIN U74140WB2011PTC162259 and its Net-worth as on 31.03.2014 (in total)- share capital & reserve is to the tune of Rs.7,57,92,433/- (PB page 58) and the investment made in the assessee-company including the share premium comes to Rs. 1,45,65,900/-. There is Share Application Form, Bank statement, ITR acknowledgement and financial statement available in the PB-page 53-72. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2014-15, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s Pragati Complex Advisory Pvt Ltd enclosed as page no 66-70 of paper book it is clear that the share subscriber has invested Rs. 1,45,65,000/-in the assessee company on various dates as follows: on 20.12.2012 Rs. 25 lakhs, on 21.12.2013 Rs. 25 lakhs, on 26.12.2013 Rs. 20 lakhs, on 01.02.2014 Rs. 25 lakhs, on 14.02.2014 Rs. 25 lakhs, on 20.02.2014 Rs. 10.10 lakhs and on 26.02.2014 Rs. 14.55 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Thus the company has furnished the details of source of Funds and has duly filed its financial statements, so the requirement of source of source is satisfied and no adverse view against this share subscriber especially in respect of share premium is warranted.

(ii) On perusal of the paper book, it reveals that the documents are placed at page 73 to 89 of share applicant M/s. Brijbhumi Commosale Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AAECB5701C and CIN U51909WB2011PTC163205 and its Net-worth as on 31.03.2014 (in total)- share capital & reserve is to the tune of Rs. 10,20,58,974/- (PB page 78) and the investment made in the assessee-company including the share premium comes to Rs. 1,27,65,000/-. There is Share Application Form, Bank statement, ITR acknowledgement and financial statement available in the PB-page 73-89. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2014-15, the share subscribers has to show the source of its fluid for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s Brijbhumi Commosale Pvt Ltd enclosed as page no 84-87 of paper book it is clear that file share subscriber has invested Rs. 1,27,65,000/- in the assessee company on various dates as follows : on 13.12.2013 Rs. 25 lakhs, on 19.12.2013 Rs. 25 lakhs, on 23.12.2013 Rs. 25 lakhs, on 27.01.2014 Rs. 15 lakhs, on 29.01.2014 Rs. 15 lakhs and on 21.02.2014 Rs. 22.65 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit . Thus the company has furnished the details of source of Fluids and has duly filed its financial statements, so the requirement of source of source is satisfied and no adverse view against this share subscriber especially in respect of share premium is warranted.

(iii) On perusal of the paper book, it reveals that the documents are placed at page 90 to 108 of share applicant M/s. Jintan Mercantile Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AACCCJ6360P and CIN U51909WB2011PTC164209 and its Net-worth as on 31.03.2014 (in total)- share capital & reserve is to the tune of Rs. 15,78,77,331/- (PB page 95) and the investment made in the assessee-company including the share premium comes to Rs.

1,29,99,600/-. There is Share Application Form, Bank statement, ITR acknowledgement and financial statement available in the PB-page 90-108. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2014-15, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Jintan Mercantile Pvt Ltd enclosed as page no 103-106 of paper book it is clear that the share subscriber has invested Rs.1,29,99,600/- in the assessee company on various dates as follows : on 10.12.2013 Rs. 15 lakhs, on 14.12.2013 Rs. 25 lakhs, on 13.01.2014 Rs. 20 lakhs, on 14.01.2014 Rs. 5 lakhs, on 17.01.2014 Rs. 20 lakhs, on 21.01.2014 Rs. 20 lakhs and on 24.01.2014 Rs. 24.996 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Thus the company has furnished the details of source of Funds and has duly filed its financial statements, so the requirement of source of source is satisfied and no adverse view against this share subscriber especially in respect of share premium is warranted.

(iv) On perusal of the paper book, it reveals that the documents are placed at page 109 to 128 of share applicant M/s. Laxmipurtra Tradecornm Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AACCL0187C and ON U51909WB2011 PTC 158663 and its Net-worth as on 31.03.2014 (in total)-share capital & reserve is to the tune of Rs. 13,30,11,167/- (PB page 115) and the investment made in the assessee-company including the share premium comes to Rs. 1,86,09,300/-. There is Share Application Form, Bank statement, ITR acknowledgement and financial statement available in the PB-page 109-128. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The

financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2014-15, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Laxmiputra Tradecomm Pvt Ltd enclosed as page no 123-126 of paper book it is clear that the share subscriber has invested Rs. 1,86,09,300/- in the assessee company on various dates as follows : on 27.02.2014 Rs. 25 lakhs, on 28.02.2014 Rs. 25 lakhs, on 03.03.2014 Rs. 65 lakhs, on 04.03.2014 Rs. 30 lakhs, on 05.03.2014 Rs. 15 lakhs, on 07.03.2014 Rs. 15 lakhs and on 11.03.2014 Rs. 11.093 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Thus the company has furnished the details of source of Funds and has duly filed its financial statements, so the requirement of source of source is satisfied and no adverse view against this share subscriber especially in respect of share premium is warranted.

(v) On perusal of the paper book, it reveals that the documents are placed at page 129 to 146 of share applicant M/s. Richifield Vintrade Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AAFCR3199H and ON U51909WB2011PTC163139 and its Net-worth as on 31.03.2014 (in total)- share capital & reserve is to the tune of Rs. 14,44,31,804/- (PB page 134) and the investment made in the assessee-company including the share premium comes to Rs. 1,80,78,000/-. There is Share Application Form, Bank statement, ITR acknowledgement and financial statement available in the PB-page 129-146. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2014-15, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Richifield Vintrade Pvt Ltd enclosed as page no 142-144 of

paper book it is clear that the share subscriber has invested Rs. 1,80,78,000/- in the assessee company on various dates as follows : on 23.12.2013 Rs. 25 lakhs, on 21.02.2014 Rs. 44 lakhs, on 26.02.2014 Rs. 51.75 lakhs, on 27.02.2014 Rs. 30 lakhs and on 05.03.2014 Rs. 30 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit . Thus the company has furnished the details of source of Funds and has duly filed its financial statements, so the requirement of source of source is satisfied and no adverse view against this share subscriber especially in respect of share premium is warranted.

(vi) On perusal of the paper book, it reveals that the documents are placed at page 147 to 164 of share applicant M/s. Newzone Vin trade Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AADCN6885G and ON U51909WB2011PTC163187 and its Net-worth as on 31.03.2014 (in total)- share capital & reserve is to the tune of Rs.7,87,90,688/- (PB page 152) and the investment made in the assessee-company including the share premium comes to Rs. 1,30,00,090/-. There is Share Application Form, Bank statement, ITR acknowledgement and financial statement available in the PB-page 147-164. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2014-15, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Newzone Vintrade Pvt Ltd enclosed as page no 159-162 of paper book it is clear that the share subscriber has invested Rs. 1,30,00,290/- in the assessee company on various dates as follows : on 03.01.2014 Rs. 25 lakhs, on 06.01.2014 Rs. 25 lakhs, on 07.01.2014 Rs. 20 lakhs, on 09.01.2014 Rs. 25 lakhs, on 10.01.2014 Rs. 20 lakhs and on 15.01.2014 Rs. 15 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Thus the company has furnished the details of source of Funds and has duly filed its

financial statements, so the requirement of source of source is satisfied and no adverse view against this share subscriber especially in respect of share premium is warranted.

39. Thus from the aforesaid discussions and in the light of the facts and circumstances discussed and since there is no other material to negate or find any infirmity in the documents filed, we find that the Ld. CIT(A)'s action to delete the addition of Rs. 7,69,71,990/- cannot be faulted and is in consonance with the judicial precedents on the issue and therefore we confirm the action of Ld. CIT(A) and dismiss the appeal of the Revenue.

40. Before we part, we note that the AO had raised many grounds of appeal, however the issue is only one, that is deletion of Rs. 7,69,71,990/- and a perusal of grounds shows that AO has assailed the faults pointed out by the Ld. CIT(A) in respect of the enquiry conducted by AO during assessment proceedings as well as in the remand proceedings. However the Ld. CITDR could not place any material or even an affidavit of the AO so as to appreciate the same. If an affidavit was at least filed by the AO, we could have deliberated on it. In the absence of any material / affidavit from AO, we are unable to look into the grounds, which is in defence of his enquiry, and is argumentative in nature i.e. whether the Ld. CIT(A) is correct in finding fault about sufficient opportunity to assessee? And whether the Ld. CIT(A) on the basis of a letter from the A.R of the assessee can observe in the impugned order that Principal Officers of share subscribing companies at serial C had appeared at the office of AO during the remand proceeding, however the AO says they didn't. This also is taken as a ground of appeal by Revenue. However, we note that these questions of fact can be ascertained only if the AO produces some evidences/material in his support or the AO should have at least filed an affidavit which he didn't and the Ld. CITDR fairly accepts that other than the averments in the grounds of appeal, there is no material to substantiate these facts. So we decline to enter into each grounds which in no way affect or pre-judice the outcome of our decision and anyway is ultimately against the deletion of Rs. 7.69 crores which we have dealt with

on merits supra, so nothing turns around on these assertions of AO. And the same observation is applicable for other years also.

ITA 20/Kol/2019[Revenue's Appeal for AY 2015-16]&

ITA 2191/Kol/2019[Assessee's Appeal for AY2015-16]

41. These are cross-appeals preferred by the Revenue and assessee respectively against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata dated 16.08.2018 for A.Y 2015-16.

42. First of all we will take up the Revenue's appeal. At the outset the Ld. D.R. submitted that though the Revenue has raised eighteen (18) grounds of appeal in the Departmental appeal, however, it pertains to only four issues.

43. Ground No.1 and 2 of the Revenue is against the action of the Ld. CIT(A) in deleting the disallowance of Rs.5,65,461/- u/s 56(2)(viib) of the Income Tax Act, 1961 (hereinafter the 'Act').

44. In respect of this ground, the A.O held as under:

"Disallowance u/s. 56(2) (viib)

7.1. On perusal of the Audited Accounts for the year ended 31/03/2015 submitted by the Assessee Company, it is found that during the year under consideration, it has issued 4,95,800 Nos of Class A Equity Shares of Rs. 10- each and premium Rs. 62/- which translate to Rs. 72 per equity share. The assessee has also issued 6,65,566 Nos of Class B Equity shares of Rs.100/- face value and premium Rs.620/-. The assessee was requested to submit the FMV as per Rule 11UA w.r.t. regarding issues of shares during the year.

*7.2 In response to the same, the assessee company filed copy of valuation of its Shares of A & Class B. Ongoing through the same, it is noted that the assessee company had shown book value of Class A & Class B shares of Rs. 71.92/- & Rs.719.21 respectively
Therefore the excess amount received by the assessee company per share comes to Rs. 0.08/- (Rs.72.00 - Rs. 71.92) & Rs.0.79/-(Rs.720/- Rs.719.21) respectively. Therefore, as per Section 56(2)(viib) as mentioned above, the excess consideration on the issue of the shares as exceeds the book value comes to Rs.39,664/- [4,95,800 x Rs.0.08/-] & Rs.5,25,797/- [6,65,566 x Rs.0.79/-] totalling to Rs.5,65,461/- as explained above.*

7.3 In view of the above, the total disallowance u/s. 56 (2)(viib) comes to Rs.5,65,461/-. The same is accordingly disallowed & added back to the total income u/s. 56(2)(viib) of the Income Tax Act, 1961 for the A.Y. 2015-16."

45. On appeal by the assessee the Ld. CIT(A) has deleted the addition by holding as under:

“I have perused the Submissions of the Assessee and the Assessment Order. The Assessee has issued shares at a price of Rs. 72/- and Rs. 720/- as against the book value of shares of Rs. 71.92/- and Rs. 719.21/- respectively. The difference between the book value and issue value is negligible, therefore, the plea of the assessee had it had approximated the issue price to the nearest rupee is acceptable, in view of the fact that to issue shares at a discount, permission of Government is required. Even in the case of purchase of immovable property at rates below the stamp duty value courts have held that variation of 5 per cent average stamp value is allowable. The Hon'ble Supreme Court in the case of G.B. Gautam v. UOI (1993) 199 ITR 530 had recognized a tolerance limit for pre-emptive purchase of property under chapter XXC at 15% of variation, even though no such band was prescribed in the statute.

This ratio of The Apex Court had been followed in Rahul Construction vs. DCIT (2010) 38 DTR 19 (Pune-trib). The Hon'ble ITAT, Hyderabad took the same view in the case of ACIT vs. S. Suvarna Rekha in ITA No. 743/Hyd/2009, dated 29.10.2010, in Smt. Pravati Ramani vs. DCIT, ITA No.46/Hyd/2015, dated 13.5.2016, in DCIT vs. S. Venkat reddy, ITA No. 974/Hyd/2010, dated 9.11.2012 and many other cases.

The Hon 'ble Kolkata bench of ITAT in the case of ITO vs. LGW Ltd., dated 7.10.2015 had followed the above view of the Hyderabad bench and held that section 50C should not be invoked if difference between stamp duty value and declared consideration is nominal.

Again, the Jaipur bench of ITAT in the case of Sita Bai Khetan vs. ITO (2016) 181 TTD 549 (JP), dated 27.7.2016 has held that since the difference was within tolerable limits, which is 15% of valuation, as recognized by the Hon'ble Supreme Court in G. E. Gautam u. UOI (1993) 199 ITR 530, no addition should be made.

The decision of Sita Bai Khetan has been followed by the Delhi bench of ITAT in the case of Manoj Singhal Us. DCIT, ITA NO.6023/De l/2015, dated 17.10.2016.

Taking the same logic in this case where valuation price and transaction price difference is negligible, no addition can be made. In view of the above discussion the ground is Allowed.”

46. Aggrieved the Revenue is before us.

47. We have heard both the parties and perused the records. We note that during the year, the assessee had issued Class-A equity shares of Rs.10/- each face value with a premium of Rs.62/- each amounting to Rs.72/- per equity share. The assessee company had also issued 6,65,566 number of Class-B equity shares of Rs.100/- face value at a premium of Rs.620/- which amounts to Rs.5,65,461/-. The A.O noted that the difference in the price of the shares and the fair market value as per certificate issued by the Chartered Accountant. It was pointed out by the Ld. AR that from a perusal of the certificate issued by the Chartered Accountant, it can be seen that book value of

Class-A equity share is Rs.71.92/- and for Class-B is Rs.719.21/- and as the assessee had issued the share prices at round figure of Rs.72/- per share for Class-A equity shares, of Rs.720/- for Class-B equity share because the assessee company could not have issued shares at a fraction of rupees, so it issued the shares at round figure. This explanation of the assessee was not accepted by the A.O who has taken the difference of Rs.0.08/- per share multiplied by 495800 number of equity share of Class-A and Rs.0.79/- per share multiplying by 665566 number of equity shares of Class-B and made the disallowance of Rs.5,65,461/-.

48. From the aforesaid discussion we note that the difference of the book value and issue value is meagre/negligible, therefore, we do not find any infirmity in the action of the Ld. CIT(A) in deleting the addition, so we confirm the same.

49. Ground Nos.3 to 6 is against the action of the Ld. CIT(A) in deleting the disallowance of excess depreciation of electrical installation of Rs.68,87,393/-. The A.O has disallowed the excess depreciation of Rs.68,87,393/- by observing as under:

“8.1. On perusal of the fixed assets schedule reported in the Tax Audit Report of the assessee company, it is seen that the assessee company had calculated total depreciation of Rs. 13,71,47,711/- (including additional depreciation) as per I.T. Act. 1961. During the assessment proceedings, the assessee was asked to file the details of calculation sheet of depreciation as per I.T. Act. In response to this, the assessee company filed copy of calculation sheet of depreciation on the fixed assets as per Income Tax Act, 1961. On going through the calculation of depreciation of fixed assets having depreciation rate 15%, it is seen that that the assessee had claimed depreciation on electrical installation @ 15% instead @ 10% and also claimed additional depreciation on Electrical Installation. Additional depreciation is provided only to Plant & Machinery which is engaged in manufacturing and production and not on electrical installation. Further, it is seen that, the rate of depreciation on electrical installation is 10% as per I.T. Rules, 1962. Hence, the assessee company had made excess claim of depreciation and additional depreciation of Rs. 68,87,393/- on electrical installation. The detail working of excess claim of depreciation on electrical installation is as under:

SI. No.	Details of assets	Written down value on the first day of the previous year	Additions 180 days or more (A)	Additions less than 180 days (B)	Total Depreciation
1	Electrical installation (10%)				
Depreciation at the prescribed rate	Electrical installation(10%)	8,33,82,144/-	-	10,87,31,419/-	Rs.1,37,74,785/-

<i>as per Income Tax Act</i>					
<i>Assessee's claim</i>	<i>Electrical installation (15%)</i>				<i>Rs. 2,06,62,178/-</i>
<i>Excess claim of depreciation</i>					<i>Rs. 68,87,393/-</i>

As per above working notes, it is seen that the assessee had made excess claim of depreciation of Rs. 68,87,393/-

8.2 During the assessment proceedings, the assessee was asked to explain as to why the excess claim of depreciation on electrical installation of Rs.68,87,393/- should not be disallowed. In response to the same, the A/R of the assessee company stated that the aforesaid electrical installation were categorised under the Plant & Machinery and accordingly claimed depreciation at the rate prescribed for Plant & Machinery. The contention of the A/R of the assessee is not acceptable. As per I.T. Rules, 1962 Electrical Installation has been categorised under the head Furniture & Fixture and prescribed rate of depreciation is 10%. In the I.T. Rules, 1962 assets has been categorised under the head Plant Machinery, Furniture & Fixture, Building etc. In every head, the name of the assets along with rate of depreciation is mentioned. In the head Plant & Machinery, there is no mentioning asset Electrical Installation. As Electrical Installation is categorised under the head Furniture & Fixture, the assessee company is not eligible for claiming the same under the head Plant & Machinery with rate of depreciation @15%. Moreover, additional depreciation cannot be claimed on Electrical Installation as the aforesaid assets is not utilised for Manufacturing and production of article or things.

8.3 In view of the facts above, the excess depreciation of Rs.68,87,393/- claimed by the assessee on electrical installation is now being disallowed and added back to the total income of the assessee company for the A.Y 2015-16.”

50. The Ld. CIT(A) has deleted the addition by observing as under:

“The Schedule related to electrical installation given in Tax audit report is reproduced below

Sl. No.	Particulars	Date of put to use	On or before 30.09.220	After 30.09.2014	Total	Modvat Claimed	Net Addition
b)	Electrical Installations		-				
	Eledrive & Autoation(M/C)-K	15.12.2014	-	10,16,25,303	10,16,25,303	22,81,088	9,93,44,215
	Power Supply System - K	15.12.2014		44,21,570	44,21,570	2,41,720	41,79, 850
	Lighting Plant-K 15	25.03.2015		5,90,854	5,90,854	-	5,90,854
	Electrical Install-G	21.10.2014		45,14,543	45,14,543	-	45,14,543
	Transformer	21.10.2014		1,01,957	1,01,957	-	1,01,957
	Total (b)	-	-	11,12,54,227	11,12,54,227	25,22,808	10,87,31,419

From the schedule it is seen that the Electrical Installations made by the assessee are all related to plant and machinery of the assessee. Therefore, I agree with the contention of the

AR that electrical installation has been made in the factory premises of the assessee and would form part of plant and machinery. Therefore, the assessee has rightly claimed depreciation of 25 per cent. Therefore, the ground is allowed.”

51. Before us, the Revenue is in appeal. We note that the assessee has claimed depreciation on electrical installation @15% applicable for plant and machinery whereas the A.O has considered the rate of depreciation of electrical installation at 10% each and disallowed 5% on depreciation claimed by the assessee. We note from the items mentioned in the Ld. CIT(A)'s order which goes on to show that these are electrical installations which are integral part of the plant and machinery, without which the plant and machinery cannot operate. And since the assessee is engaged in manufacturing of cotton yarn and the electrical installation for which the assessee has claimed depreciation @ 15% are integral part of plant and machinery without which plant and machinery in the unit cannot operate, therefore the depreciation is allowable for the items claimed by the assessee @ 15% by treating the same as electrical installations which forms part of the plant and machinery. Therefore the order of the Ld. CIT(A) is confirmed.

52. Ground Nos.7 to 9 is against the action of the Ld. CIT(A) deleting the addition of Rs.8,99,406/- under the head employee's contribution to 'Provident fund and ESIC' by invoking section 36(1)(va) r.w.s 2(24)(x) of the Act.

53. We note that even though the figure reflected by the Revenue in respect of this ground of appeal is shown as Rs.43,24,753/- it was brought to our notice that is incorrect and the correct figure as per the assessment order is Rs.8,99,406/-. It is noted that the A.O disallowed the deduction claimed by the assessee in respect of employee's contribution to Provident Fund and ESIC to the tune of Rs.8,99,406/- on the ground that the same was not remitted within the due date prescribed in the PF & ESI Act. It is noted that the Ld. CIT(A) vacated the disallowance by following the decision of Hon'ble Calcutta High Court in the case of Commissioner of Income Tax, Circle - 1, Kolkata Vs Vijayashree Ltd. reported in (2014) (43 taxmann.com 396) (Cal) wherein it was held that no disallowance for employees contribution to PF & ESI should be made under section 36(1)(va) read with section 2(24)(x) of the Act where

the same is deposited within the time allowed for filing Income Tax return under section 139(1) of the Act.

54. We find that the assessee has deposited the PF & ESIC amount within the time allowed for filing Income Tax return under section 139(1) of the Act, therefore the Ld. CIT(A) has followed the order of the Hon'ble jurisdictional High Court in the case of Vijayashree Ltd.(supra), therefore, no infirmity can be attributed to his impugned action and so we confirm the order and dismiss these grounds of appeal of the Revenue.

55. Ground Nos.10 to 12 of the appeal is directed against the order of the Ld. CIT(A) in deleting the addition made u/s 68 of the Act of loan liability of Rs.12.95 crores and Rs.4.50 crores and interest disallowance of Rs. 1,10,22,382/-.

56. We will first discuss the facts pertaining to addition/deletion of Rs. 12.95 crores. Brief facts of the case are that during the year under consideration, the assessee has taken unsecured loan of Rs. 12,95,00,000/- from twenty two (22) lender companies/Parties. On a show cause notice received from the Assessing Officer to prove the loans taken, the assessee explained that the payments (loans) were received through Bank and the interest outgoing was paid to the lenders by deducting TDS and in support of the identity, creditworthiness and genuineness of the loan lenders of the unsecured loans, the assessee filed the following documents (i) copy of acknowledgement of income tax return, (ii) copy of bank statement and (iii) copy of audited financial statement of the loan creditors. The Assessing Officer taking note of statements recorded by Investigation Wing on oath of Shri Arun Nangalia on 17.09.2015, Shri Ashok Jha recorded on 02.03.2015 and Shri Vijay Kumar Gupta on 03.08.2015 noted that these were entry operators who had admitted to be providing the same through their companies viz M/s Banka Enterprise, M/s Ritman commodities, & M/s Sanwaria Marketing respectively. [AO has reproduced their respective statements in the assessment order from pages 3 to 18] So, according to the Assessing Officer, these lender companies were paper concerns and genuineness of the loan transactions were doubtful, and he issued summons under section 131, which could not be served

upon some of the lender Companies; in the above back ground, the AO insisted that the assessee should ensure physical presence of the loan creditors before him; and since the assessee failed to furnish the new addresses, (*if there were was any change*); and since he (Assessing Officer) has given sufficient time of 21 days to the assessee to produce the loan creditors before him and they failed to appear, he treated the unsecured loan of Rs.12.95 crores as undisclosed cash credit under section 68 of the Act and added the same to the total income of the assessee. Aggrieved by the aforesaid action of AO, the assessee preferred an appeal before the Ld CIT(A) who took note of the following facts as under:

“15.1. The reasons for making the addition by the AO are summarized as under:

- i) The nexus of three entry operators with three of such loan creditors, namely Mr. Manohar Lai Nangalia/ Mr. Arun Nangalia with BankaEnterrprises Pvt Ltd; Mr. Ashok Jha with Pitman Commodities Pvt Ltd and lastly Mr. Vijay Kumar Gupta with Sanwaria Marketing Pvt Ltd.*
- ii) Reliance was placed on the statement(s) of entry operators obtained by the income tax department. The statement of Mr. Ashok Jha taken under oath on 02.03.2015, Mr. Vijay Kumar Gupta on 03.08.2015 and Mr. Arun Nangalia on 17.09.2015.*
- iii) Non- appearance of directors of 32 of such loan creditors in response to summons issued during the assessment proceedings/ s 131 of the Act.*
- iv) Some of the summonses sent by post were returned unserved.*
- v) The loan creditors are having apparent signage of a JamaKharchi concerns that of no/negligible payment of taxes, no actual assets, having fake addresses and having dummy directors.*

57. And the Ld CIT(A) deleted the addition of Rs. 12.95 crores & Rs. 4.5 crores by holding as under:

“I have perused the Submissions of the AR, the Assessment Order and the case laws on this issue. An analysis of Balance Sheet and Profit and Loss Account of all these companies does show that these companies are not shell companies and have substantial assets in their balance sheets and most of these companies are now controlled by one or the other reputed group of Kolkata. The assessee was asked to give evidence in support of the fact that the Jehder companies have substantial genuine .asset and other evidence of genuineness. In reply the AR downloaded the data relating to lender companies from ROC website . The gist given by the AR was cross checked by undersigned and was found to be correct.

15.4 The same is summarized below :

1. *Ritman commodities Pvt Ltd (1) - The Company is having investment of Rs.42,87 lakhs, in Quoted shares. The company has a bank deposit of Rs.245.56 lakhs with banks. The company; pays tax regularly, in this year (FY 14-15) it paid tax of Rs. 4.09 Lac and in next year, it paid tax of Rs. 30.68 lac. The company is regularly lending monies to large and established corporate house. During the year FY 14.-15, it gave: ICD to Usha Breco Ltd., Kirloskar Electric Co, Ltd., TIL Ltd. Williamson Magor & Co. Ltd, Bengal Topis Ltd, Mukand Ltd. and so on. The company belongs to Bhaskar Rungta Group a renowned group of Kolkata. The ICD for the assessee was., arranged by renowned corporate finance broker. Apparently this, company, can't be said, to be a paper company,*

2. *Nirmaldeep Resources Ltd (2) - The Company is having investment in Quoted shares of Rs.39.97 lakhs. Company keeps substantial balance in bank, at the end of year it is carrying balance of Rs. 123 lacs and of Opening balance of Rs.57 lac during the year., it also traded in units of MF of over 3 Crore, during the year. The company pays tax regularly, in FY 14-15, it paid tax of Rs.7.20 Lac and in next year, it paid tax of Rs.4.4 Lac. The company is regularly lending monies to large and established corporate house. The company belongs to ARCH Group(in construction business). The ICD for the assessee was arranged by renowned corporate finance broker. Apparently this company' can't be said to be a paper company during the assessment year.*

3. *Amexo Investment Pvt Ltd (3) - The Company is having investment in Quoted shares of Rs.8.68 Lakhs. The company is lending loans to large and established corporate house, such as its loan and advance to Shree Guru Carbide & Chemicals Pvt Ltd., Orissa Air Products Pvt Ltd. , Rishi Gases Pvt. Ltd. The company belongs to Asiatic Oxygen Group (Surajmull Nagarmull), The ICD for the assessee was arranged by renowned corporate finance broker. Apparently this company can't be said to be a paper company during the assessment year.*

4. *R D Fans Ltd (4) - the Company is having investment in Quoted shares of Rs.24 lakhs, interest in joint venture in real estate and immovable properties of Rs.7.5 crore . During the year it gave loan, to Parekh. Aluminex Ltd another reputed Company. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs. 21.29 Lac and in next year, it paid tax of Rs. 19.57 lac. The company belongs to Dhandania RD. Group. The ICD for the assessee was arranged by renowned corporate finance broker. In view of the above this company can't be said to be a paper company during the assessment year.*

5. *Park Complex Pvt Ltd (5) - The Company is having investment in Quoted shares and land. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs. 3.65 Lac and in next year, it paid tax of Rs. 3,57 Lac. The company is regularly lending monies to large and established corporate house. The company is having Fixed deposit of Rs. 40 Lac with Bank. The company belongs to Agarwal group a leading Pulse 'and Agro Products trade house. The ICD for the assessee was arranged by renowned corporate finance broker. . In view of the above this company can't be said to be a paper company during the assessment year.*

6. *Kuku Mercantile Pvt Ltd (6) - The Company is having investment in Land & Building. The company is 'having.' Fixed deposit of Rs. 100 Lac with Bank. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs. 16.53 Lac and in next year, it paid tax of Rs.5.19 Lac. The company is regularly lending monies to large and established corporate house, such as Mani Square Ltd and Sunshine Niwas Pvt Ltd and so on .The company belongs to NPE Jalan Group.' The ICD for the assessee*

was arranged by' renowned, corporate finance broker. . In view of the above this Company can't be said to be a paper company during the assessment year.

7. *Banka. Enterprises. Pvt Ltd- (7) - The company is having Tangible Fixed Assets. The company pays-tax regularly in this year (FY 14-15) it paid tax of Rs.36.48 Lac and in next year, it paid tax of Rs.51.16 Lac. The company belongs to Rawalwasia Group. The ICD for the assessee was arranged by renowned corporate finance broker. In view of the above this company can't be said to be a paper company during the assessment year.*

8. *Best Luck Securities Pvt Ltd (8) -- It is a small-company with networth of Rs. 1.25 crore. The Company is having Fixed Deposit with bank of Rs.-7.63 lakhs.. The; company is regularly lending monies to large and established corporate house it gave ICD to Winsome International Ltd, K L Jute Product Pvt. Ltd, Srigopal Company, Aluedecor Lamination Pvt Ltd and so on. The company belongs to Sarada ' Group, having interest in jute trading and manufacturing. The ICD for the assessee was arranged by renowned corporate finance broker. In view of the above this company cant be said to be a paper company during the assessment year.*

9. *Blackcherry Commosale Pvt Ltd (9) - The company pays tax regularly in next year 2015-16, it paid tax. of Rs.66,19 . The company is regularly lending monies to large and established corporate house. The Company is Trading in Jute having turn over of around 13 Cr. company keep balance of Rs. 107 lac in bank. The company belongs to Sarda Group having interest in jute trading and manufacturing.. The ICD for the assessee was arranged by renowned corporate finance broker. In view of the above this company can't be said to be a paper company during the assessment year.*

10. *Cresenthemum Vypaar Pvt.Ltd (10) - The Company is having Tangible Fixed Assets (Rs. 10.40 lakhs) and fixed deposits with bank.. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs. 11,23 Lac and in next year, it paid tax of Rs, 10.191ac. The company is regularly lending monies to large and established corporate house. The company belongs to Bohra Group Mumbai 85 Gujarat (Textile). Bohra group is a renowned group of Kolkata which run a charitable institution which runs a girls hostel in Kolkata. The ICD for the assessee was arranged by renowned corporate finance broker. In view of the above this company pant be said to be a paper company during the assessment year.*

11. *Disha Paints Pvt ltd (11) - The Company is having Fixed Deposits with bank(18.52 lakhs) and given substantial advance of Rs 110 Lac to acquire properties. 'The' company pays tax regularly in this year (FY 14-15) it paid tax of Rs. 10.09 Lac anddn next year, it paid tax of Rs.22.08 Lac. During the year FY 14-15, it gave ICD to Anmol Homes Pvt Ltd, Arcvac Forgecast Ltd, BMA Stainless Ltd, Balaji Electrosteels ,Ltd Mayuri Ply Industries Pvt Ltd, ,T&T Projects Ltd, Vedic Projects Pvt Ltd and so, on, The company belongs to... BMA. Bteei- Gupta Group (Metal, Plywood). The ICD for, the assessee was arranged by renowned corporate finance broker.*

12. *Girdhar Tracom Pvt Ltd (12) - The Company is haring Fixed Assets 85Properties.The Company is haring investment in Quoted Shares and Mutual funds of Rs.96 lakhs. The company pays tax regularly in this year (FY 14-15) it paid-tax of Rs. 10.88 Lac and in next year, it paid tax of Rs.4.54 Lac. The company is regularly tendering monies to large and established corporate house. The company belongs to Primac Pansari Group. The. ICD for the assessee was arranged by renowned corporate finance broker.*

13. *Gulmohar Mercantiles Pvt Ltd (13) - The Company is having Fixed Assets (Rs.31.11 lakhs) & Properties. The company, pays tax regularly in. this year (FY 14-15) it paid tax of Rs.22.88Lac and in next year, it paid tax of. Rs.49.81 Lac, The company belongs to JAYA Biscuits Group. The ICD for the assessee was arranged by renowned corporate finance broker.*

14. *Jagadhatri Foods Pvt Ltd (14) - The Company is having Fixed Assets. The Company is having fixed deposits with bank. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs.5.99Lac and in next year, it paid tax of Rs.7.32lac. The company belongs to JAYA Biscuits Group. The ICD for the assessee was arranged by renowned corporate finance broker.*

15. *Jainco Projects (India)Ltd (15) - The Company; is having Fixed Assets of Rs.416 lakhs. Land holding is of Rs.75.30 lakhs. The Company is having investment in Quoted shares(Rs.56.56 lakhs) and fixed deposits with bank of Rs. 17.95 lakhs. The company belongs to Bhansali group engaged in infrastructure. The ICD for the assessee was arranged by renowned corporate finance broker.*

16. *Mohit Bakers Pvt. Ltd (16) - The Company is having investment in properties amounting to Rs. 26-27 Crore and interest in development of properties of Rs. 6 Crore. The company also has fixed deposits with bank of Rs.43.2 lakhs . The company pays tax regularly. The company belongs to JAYA Biscuits Group. The ICD for the assessee was arranged by renowned corporate finance broker.*

17. *Monet Securities Pvt Ltd (17) - The Company is having investment in Quoted shares of 49.30 crores . During the year FY 14-15, it gave ICD to Kashipur Holding Ltd, Williamson Magor & Co Ltd, SKP Steel Industries Pvt Ltd, Bihanji Construction Ltd, Elder Healthcare Ltd and so on. The company belongs to Bubna Group. It is a share broking company. The ICD for the assessee was arranged by renowned corporate finance broker.*

18. *Narmada Trexim Pvt Ltd (18) - The company has merged with PingleCommotrade Pvt ltd. It has lent money to many business groups of Kolkata like Ajmer Mineral Grinding corporation, Vikram India Ltd,, Suiyaprabha Tea services pvt ltd. etc. The ICD for, the assessee-Was arranged by renowned corporate finance broker.*

19. *Navin;Constrüiction .& credit Pvt Ltd 1,(19) - The .Company is having investment in Quoted shares(Rs.67.19 lakhs) and Mutual funds (Rs.6 crores in next year); The company pays tax regularly in this year (FY 14-15) it paid tax of Rs.11.02 Lac and in next year, it paid tax of Rs.97.61 lac. The company is regularly lending monies to large and established corporate house. The company belongs to Diamond Group, having interest in construction activities . The ICD for the assessee was arranged by renowned corporate finance broker.*

20. *Olympia Credits & Mercantiles Pvt Ltd (20) - The Company is having Properties of around 330 Lac. The Company is having investment in Quoted shares of Rs. 167 lakhs. The company belongs to Paragon Group , a reputed group in vehicle financing. The ICD for the assessee was arranged by renowned corporate finance broker.*

21. *Padmawati Vinimay Pvt Ltd (21) - The Company is having investment in Quoted shares of Rs.18 lakhs and Mutual funds (Rs. 68 lakhs). The company belongs to Diamond Group, a reputed large builder of Kolkata. The ICD for the assessee was arranged by renowned corporate finance broker.*

22. *Park Complex Pvt. Ltd (22) - The company is having hold Fixed assets of over Rs. 500 lac. The Company is having investment in land and fixed deposit in bank of Rs.40 lakhs. The company belongs to -Agarwal group having interest in Pulse & Agro Products trading The ICD for the assessee was arranged by renowned corporate finance broker.*

23. *Pawanputra Securities Pvt Ltd (23) - the Company owns fixed assets of around 41 lac. The Company is having investment in Quoted shares(47 lakhs) and land(Rs.770 lakhs). The company pays tax regularly in this year (FY 14-15) it paid tax of Rs.23.87 Lac and in next year, it paid tax of Rs. 25.47 lac. The company belongs to Jaya Biscuits Group. The ICD for the assessee was arranged by renowned corporate finance broker.*

24. *PNR Complex Pvt Ltd (24) - The Company is having investment in Quoted shares and Bonds and Gold Coins. The' company pays tax regularly in this year (FY 14-15) it paid tax of Rs.2.5.43. Lac. The company belongs to Jute & Finance (Jain Group). The ICD for the assessee was arranged by renowned, corporate finance broker.*

25. *Rego Chemicals Pvt Ltd (25) - The Company is having investment in Quoted shares. The company is having inventories of Raw Jute of Rs.5.67 lac and trade receivable of Rs.484.83 Lac in F.Y.2014-15. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs.5.64 Lac and in next year, it paid tax of Rs.6.01 lac. The Company is having Interest in Fixed Assets of Over Rs. 88 lac. The company belongs to Sarda Jute Group. The ICD for the assessee was arranged by renomwend corporate finance broker.*

26. *Richimen Barter Pvt Ltd (26) - The Company is having investment in Quoted shares of 59 lakhs . The company is regularly lendering monies to large and established corporate house. The company belongs to Beekay Group. The ICD for the assessee was arranged by renowned corporate finance broker.*

27. *Ritesh Roadlinks Pvt. Ltd (27) - The Company is having fixed deposit with bank of Rs.42 lakhs. Fixed asset is of 23.75 lakhs. The company is engaged in Transport and logistic service industry. The ICD for the assessee was arranged by renowned corporate finance broker.*

28. *S K Dudhoria Holding Pvt. Ltd (28) - The Company is having investment in Mutual funds (Rs.30 lakhs) and FD of Rs.20 lakhs. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs.1.5 Lac and in next year, it paid tax of Rs. 67.051ac. During the year FY 14-15, it gave ICD to Videocon Industries Ltd, Uma Plastic Ltd, Uflex Ltd, Snowtex Investment Ltd, Shrimaa Polyfab Ltd, Sahul Finance Ltd, National Plasto Products Pvt Ltd, MBL Infrastructure Ltd, Mani Square Ltd, Madan Lal Ltd, Gourika India Ltd and so on. The company belongs to Rawalwasia Group. The ICD for the assessee was arranged by renowned corporate finance broker.*

29. *Sadhana Trade & Credit Pvt Ltd(29) - The Company has merged with Mortex Light India Pvt ltd. The amalgamated company is in textile business and has lent money to Barak Valley Cement Ltd., BP Poddar Hospital, S K Singhi & co etc. The ICD for the assessee was arranged by renowned corporate finance broker.*

30. *Sanwaria marketing Pvt Ltd(30) - The Company is having investment in Mutual funds and Bond and holding quoted shares as inventories.- The company pays*

tax regularly in this year (FY 14-15) it paid tax of Rs. 18.10 Lac and in next year, it paid tax of Rs. 37.22 lac. During the year FY 14-15, it gave LCD to Uma Plastic Ltd, Turtle Ltd, Suraj International, Shristi Infrastructure Development Corporation Ltd, The Otudh Sugar mill Ltd, Palm product Pvt Ltd, National plasto product pvt Ltd, Jayshree Chemical Ltd, Elpro International Ltd, Diamond Beverages Pvt Ltd, BMW Industries Ltd Babeock Borsing Ltd, aditi Oil Ltd and so on. The company belongs to Radhamani Group.

31. Shroff Chemicals Pvt Ltd (31) - The Company is having investment in land (Rs. 359.51 Lac) and fixed deposits with bank (Rs. 27.05 Lac). The company pays tax regularly in this year (FY 14-15) it paid tax of Rs. 46.14 Lac 'and in next year, it paid tax of Rs. 37.93 Lac. The company is regularly tendering monies to large and established corporate house. The company belongs to Rawalwasia Group. The ICD for the assessee was arranged by renowned corporate finance broker.

32. Sawaran Financial Pvt Ltd (32) - The Company is having investment in Quoted shares of Rs.41.24 crores. The company pays tax regularly in this year (FY 14-15) it paid tax of Rs. 7.3 Lac. The company is regularly tendering monies to large and established corporate house. The company belongs to Sanjay Jhunjhunwala group having interest in real estate development.

33. Tropex Suppliers Pvt Ltd (33) - The Company is having investment in fixed deposits with bank. The company is regularly tendering monies to large and established corporate house. During the year FY 14-15, it gave ICD to B P Poddar Hospital & Medical research Ltd, BKP Investments, Bengal Infra Builder Ltd, Bigjos Estate Ltd, Jayshree Chemical.Ltd, Kedia Castle Dellon industries Ltd, M.adura Wood" Craft & Engineering Industries Ltd-, Saifco India Co., Williamson Magor & Co Ltd, Willowood Chemicals Pvt Ltd, VOC International, Trade India Corporation and so on. The company belongs to industrial Group engaged in Civil Engineering and Construction . The ICD for the assesses was arranged by renowned corporate finance broker

15.5. Following salient features emerge on this issue of unsecured loan-

i) It can be seen that most of the lender companies have substantial assets lying with them.

ii) These companies are controlled by reputed business houses of Kolkata, therefore, it is difficult to level them as shell companies.

iii) Further, most of the lender companies have filed details before the AO in response to summons u/s. 131. Only the Directors did not appear before the AO but the AO should have issued personal summons to the Directors and could have enforced their attendance which he did not do. Therefore, the assessee cannot be blamed regarding origin of some of these companies from entry operators since all these companies are controlled by genuine business groups during A.Y. 2015-16, therefore, the assessee could not have been penalized.

iv) If these companies have dubious origin, the AO should have intimated the AO all the lender companies for taking appropriate action in the case of lender companies. The AO may- do so now- in appropriate cases.

v) It is seen that all the loans have been arranged through reputed finance brokers. If the-finance -broker arranges' money through dubious companies in that;

case the AO' should' have examined the finance broker to find out as to why and how he has arranged these loans the assessee cannot be penalized. if the finance broker arranges loans from some companies whose source of fund is dubious .

*15.6. **Identity** : In the instant case all the companies are registered with ROC, therefore, their identity cannot be doubted, further, all these companies have Directors from reputed business group. Therefore identify of the lender is not in doubt.*

***Capacity** : From the analysis of Balance Sheet of these companies it is evident that these companies have substantial asset in their hands, therefore, capacity of these companies to lend money cannot be doubted.*

***Genuineness** : Since loan has come through cheque further the companies belongs to reputed business houses, therefore, genuineness of the transaction is not in doubt.*

In view of the above analysis I am of the opinion that the loan amount procured by the assessee is, genuine.. The assessee has been able to prove. Identity capacity and genuineness of the transaction, therefore, addition of the same does not hold. Therefore, Ground nos. 5 & 6 are Allowed.”

58. Aggrieved by the aforesaid action of Ld. CIT(A) deleting the addition of Rs. 12.95 crores, the Revenue is before us.

59. Assailing the action of Ld. CIT(A), the Ld. CIT-DR contended that the Ld. CIT(A) erred in deleting addition of Rs.12.95 crores as undisclosed cash credit, since assessee failed to prove identity, creditworthiness and genuineness of the loan creditors before the A.O and the Ld. CIT(A) on irrelevant material and basis has given relief to the assessee. According to Ld DR, the Ld. CIT(A) has found fault with the A.O for not providing adequate opportunity to assessee, whereas according to Ld. CIT-DR despite giving adequate opportunity to assessee, they failed to produce cogent evidence to substantiate the identity, creditworthiness and genuineness of the twenty two (22) loan creditors, so the A.O had no option but to make the addition and the Ld. CIT(A) erred in deleting the same. According to Ld. CIT-DR, the statement of entry operators obtained by the department and who controlled these lender companies are part and parcel of the assessment order and since these companies (lender) are controlled by entry operators and have failed to bring cogent evidence to establish identity, creditworthiness & genuineness of the lender companies before A.O, the A.O has rightly drawn adverse inference against the assessee. The Ld. CIT-DR in this context pointed out the nexus of three (3) entry operators with three (3) such loan creditors

viz.(i) Mr. Arun Nangalia's statement which was recorded on oath on 17.09.2015 with M/s Banka Enterprises Pvt. Ltd; (ii) Mr. Ashok Jha's statement which was recorded on oath on 02.03.2015 in respect of M/s Ritman Commodities Pvt Ltd and (iii) Mr. Vijay Kumar Gupta's statement was recorded on oath on 03.08.2015 in respect of M/s Sanwaria Marketing Pvt Ltd.

60. The Ld. CIT-DR pointed out that despite giving opportunity and issuance of summons u/s 131 of the Act, none of the directors of twenty two (22) loan creditors did not bother to appear before the A.O. According to Ld. CIT-DR, some of the summons got returned un-served by post. According to Ld. CIT-DR, the A.O had observed that loan creditors are having apparent signage of a Jammakarchi concerns like no assets, having fake address, dummy directors etc. and the A.O having relied on some judicial precedents have drawn adverse inference against the loan creditors and so he prayed that the decision of the Ld. CIT(A) to be reversed and the A.O's order to be upheld.

61. Per contra, the Ld. AR of the assessee, vehemently opposed the submission of the Ld. CIT-DR and in respect of deletion of Rs. 12.95 cr, the Ld. A.R supporting the decision of Ld. CIT(A) and contended that all the twenty two (22) lender companies from which all assessee received this assessment year (AY 2015-16) loan of Rs. 12.95 crore are Income Tax assessee's and are regularly assessed by the Income Tax department and drew our attention to the paper-book wherein the assessee has filed the assessment/intimation order u/s 143(1) of the Act issued by the Revenue in respect of lenders. According to her, all their (lenders) respective PAN, ITR and order u/s 143(1) goes on to prove the identity of the lenders were filed; and according to her, their respective balance sheets reveal their respective creditworthiness which the Ld. CIT(A) has taken pains to bring out about each lender companies and details given therein goes on to show that they have more than sufficient capacity to give loans to assessee; and according to Ld AR, the finding of Ld. CIT(A) in this respect of each lender companies numbering thirty three (33) in total number has not been assailed by the Revenue. So according to Ld. A.R. their creditworthiness cannot be doubted. And according to Ld. A.R the genuineness of the loan transaction was proved by the fact

that loans were given to assessee by RTGS/account payee cheque i.e. through banking channel and this fact is proved by the relevant bank statement filed in the paper-book and moreover the fact that the assessee had paid interest to the lenders after deducting TDS and this fact is duly reflected in Form 26 which evidence was also produced before the A.O/CIT(A). And according to Ld. A.R, the statements of three entry operators which the AO relied upon has nothing incriminating against the assessee/lenders; and wondered as to how the AO connected their statement with three (3) lender companies (1) *M/s Banka Enterprises Pvt. Ltd*; (2) *M/s Ritman Commodities Pvt Ltd* and (3) *M/s Sanwaria Marketing Pvt Ltd*. The Ld. A.R. took pains by drawing our attention to pages 3 to 18 of assessment order [*where the AO has reproduced statements of three (3) entry operators with three (3) such loan creditors viz. (i) Mr. Arun Nangalia's statement recorded on 17.09.2015 with M/s Banka Enterprises Pvt. Ltd; (ii) Mr. Ashok Jha's statement recorded on 02.03.2015 in respect of M/s Ritman Commodities Pvt Ltd and (iii) Mr. Vijay Kumar Gupta's statement recorded on 03.08.2015 in respect of M/s Sanwaria Marketing Pvt Ltd.*] to bring out this fact of non-connection/nexus of these three (3) entry operators with the afore-said lender companies, which we find to be correct and will discuss in detail (infra). And according to Ld AR, the Ld.CIT(A) being satisfied with these facts has recorded finding of fact by dwelling upon each lender companies which has not been challenged by the Revenue. Thereafter the Ld. AR drew our attention to the impugned order of Ld. CIT(A) wherein the Ld. CIT(A) has discussed about all the twenty two (22) lenders and other eleven (11) lender companies which is given (supra). According to Ld. AR, the Ld. CIT(A) has given factual finding in respect of all the thirty three (33) lender companies based on the documents which are in the public domain also to prove the identity, creditworthiness and genuineness of each lender and loan transaction and therefore without bringing any infirmity in respect of the factual finding rendered by the Ld CIT(A), she prayed that the impugned order of Ld CIT(A) be up-held.

62. We have heard both the parties and perused the records. We note that in this assessment year, the assessee has taken loan of Rs.12.95 crores from twenty two (22)

parties and the Assessing Officer had asked the assessee to prove the identity, creditworthiness and genuineness of the loan transactions with these twenty two (22) parties. In pursuance of the show-cause notice, the assessee brought to the notice of the Assessing Officer that the loans have been received through banking channel and the interest outgoing was paid by the assessee after duly deducting TDS. In support of the identity, creditworthiness and genuineness of the lenders, the assessee had filed the following documents:-

- (i) Copy of income-tax return;
- (ii) Copy of bank statement; &
- (iii) Copy of audited financial statement of the loan creditors.

63. The Assessing Officer taking note of statements recorded by Investigation Wing on oath of Shri Arun Nangalia on 17.09.2015, Shri Ashok Jha recorded on 02.03.2015 and Shri Vijay Kumar Gupta on 03.08.2015 noted that these were entry operators who had admitted to be providing accommodation entries through their companies viz M/s Banka Enterprise, M/s Ritman commodities, & M/s Sanwaria Marketing respectively. So, according to the Assessing Officer, these lender companies were paper concerns and genuineness of the loan transactions were doubtful, and since summons under section 131 could not be served upon some of the lenders; the AO insisted that the assessee should ensure physical presence of the loan creditors before him; and since the assessee failed to furnish the new addresses, (*if there were was any change*); and since he (*Assessing Officer*) has given sufficient time of 21 days to the assessee to produce the loan creditors before him and they failed to appear, he treated the entire unsecured loan of Rs.12.95 crores as undisclosed cash credit under section 68 of the Act and added the same to the total income of the assessee. On appeal, the Ld. CIT(Appeals) while giving relief to the assessee, noted that the assessee in order to prove the genuineness of the loan transaction from these 22 Companies had filed bank statement which reflected that assessee received loan/advance through proper banking channel and these lenders had earned substantial interest income not only from assessee, but from other borrowers too and the interest on the loans were credited in the lenders account after

deduction of TDS and all these lender companies have filed their respective Income Tax Returns and that they were duly assessed by the department. And the Ld CIT(A) noted that the lender companies had substantial assets to grant loans. And the Loans have been eventually repaid also through banking channel, so he deleted the addition. Against this impugned action of the Ld. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal. So the action of the Ld. CIT(Appeals) in deleting the addition of Rs.12.95 crores needs to be examined.

64. We note that in the assessment year under consideration, the assessee has taken loan of Rs.12.95 crores from the following twenty-two (22) parties, which is evident from the chart given below.

S.No.	NAME OF THE PARTY	Amount (Rs.)
1	Ritman Commodities Pvt. Ltd	100,00,000
	R. D. Fans Ltd	50,00,000
3	Park Complex Pvt. Ltd	30,00,000
4	Pawan Putr Securities Pvt. Ltd	25,00,000
5	Mokhit Bakers Pvt. Ltd	25,00,000
6	Kuku Merchantile s Pvt. Ltd	30,00,000
7	Jagadhatri Food Ltd	50,00,000
8	Gulmohar Mercantile Pvt. Ltd	100,00,000
9	Crescemthemum Vyapaar Pvt. Ltd	30,00,000
10	Banka Enterprises Pvt. Ltd	50,00,000
11	Ritesh Roadlinks Pvt. Ltd	25,00,000
12	S.K. Dudhoria Holdings Pvt. Ltd	50,00,000
13	Shroff Chemicals Pvt. Ltd	50,00,000
14	Sanwaria Marketing Pvt. Ltd	200,00,000
15	Swaran Financial Pvt. Ltd	50,00,000
16	Rego Chemicals Pvt. Ltd	30,00,000
17	Navin Construction & Credit Pvt. Ltd	50,00,000
18	Jainco Projects (I) Ltd	100,00,000
19	Girdhar Tracomm Pvt. Ltd	100,00,000
20	Disha Point Pvt. Ltd	100,00,000
21	Blackcherry Commosale Pvt. Ltd	30,00,0000
22	Best Luck securities Pvt. Ltd	20,00,0000

TOTAL	12,95,00,000
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65. Further it was brought to our notice that in the subsequent assessment year i.e., AY 2016-17 the AO has accepted the loan taken by the assessee from the following thirteen (13) parties to be genuine out of total twenty two (22) parties not accepted by him in this AY 2015-16.

Sl No	Name of Company	Amount (Rs)	Accepted by AO in AY 2016-17
1	RITMAN COMMODITIES PVT LTD	1,00,00,000	Accepted by AO in AY 2016-17
2	PARK COMPLEX PVT.LTD	30,00,000	Accepted by AO in AY 2016-17
3	PAWAN PUTRA SECURITIES PVT.LTD	25,00,000	Accepted by AO in AY 2016-17
4	GULMOHAR MERCANTILE PVT. LTD.	1,00,00,000	Accepted by AO in AY 2016-17
5	CRESCENTHEMUM VYAPAAR PVT.LTD.	30,00,000	Accepted by AO in AY 2016-17
6	BANKA ENTERPRISES PVT.LTD.	50,00,000	Accepted by AO in AY 2016-17
7	S K DUDHORIA HOLDINGS PVT.LTD.	50,00,000	Accepted by AO in AY 2016-17
8	SHROFF CHEMICALS PVT.LTD.	50,00,000	Accepted by AO in AY 2016-17
9	SWARAN FINANCIAL PVT.LTD.	50,00,000	Accepted by AO in AY 2016-17
10	JAINCO PROJECTS (INDIA) LTD.	1,00,00,000	Accepted by AO in AY 2016-17
11	DISHA PAINT PVT.LTD.	1,00,00,000	Accepted by AO in AY 2016 -17
12	BLACKCHERRY COMMOSE PVT.LTD.	30,00,000	Accepted by AO in AY 2016 - 17
13	BEST LUCK SECURITIES PVT.LTD.	20,00,000	Accepted by AO in AY 2016 - 17
		7,35,00,000	

66. Additionally it was brought to our notice that Ld. CIT(A) has accepted the loan obtained from one (1) party i.e. M/s Sanwaria Marketing Pvt. Ltd. in AY 2016-17. From the balance 8 parties i.e. [22 parties less 13 parties accepted by AO and 1 party accepted by Ld. CIT(A)] no loan was accepted by AO in AY 2016-17.

67. Be that as it may be, we note that in order to **prove the identity** of these twenty two (22) lender companies, the assessee had produced the documents, from which the CIN and PAN details and the fact of them filing ITR's are discernable from the following chart and a perusal of the next chart will reveal *their creditworthiness* as under;-

Sl no.	Name of Company	CIN	PAN	ITR filed for AY 2015-16
1	RITMAN COMMODITIES PVT LTD	U74999WB2012PTC175248	AAFRCR7321D	Yes
2	R.D.FAN LTD	U29303WB1982PLC035578	AABCR6106L	Yes
3	PARK COMPLEX PVT LTD	U70109WB1994PTC065616	AABCP5291L	Yes
4	PAWAN PUTRA SECURITIES PVT LTD	U51109WB1993PTC060129	AABCK1563C	Yes
5	MOHIT BAKERS PVT.LTD.	U15410WB2009PTC134482	AAFRCM9864J	Yes
6	KUKU MERCANTILE PVT LTD.	U70109WB1995PTC071706	AABCK3311L	Yes
7	JAGADHATRI FOOD LTD	U51909WB1981PLC033866	AAACJ6899F	Yes
8	GULMOHAR MERCANTILE PVT. LTD	U51909WB2006PTC108134	AACCG5361R	Yes
9	CRESCENTHEMUM VYAPAAR PVT LTD	U51109WB2007PTC114264	AADCC0224E	Yes
10	BANKA ENTERPRISES PVT.LTD.	U70200WB1995PTC069399	AABCB2996A	Yes
11	RITESH ROAD LINKS PVT.LTD.	U63090WB1990PTC050172	AABCR2234H	Yes
12	S K DUDHORIA HOLDINGS PVT.LTD.	U17232WB1990PTC048372	AADCS7341A	Yes
13	SHROFF CHEMICALS PVT.LTD.	U29230WB1960PTC024890	AAECS5253N	Yes
14	SANWARIA MARKETING PVT.LTD	U51900WB2009PTC132938	AAMCS7944J	Yes
15	SWARAN FINANCIAL PVT.LTD	U67120WB1995PTC071950	AAECS4024R	Yes
16	REGO CHEMICALS PVT.LTD	U24231WB2000PTC092255	AACCR1945E	Yes
17	NAVIN CONSTRUCTION & CREDIT PVT.LTD	U70101WB1992PTC055374	AAACN9084E	Yes
18	JAINCO PROJECTS (INDIA) LTD	L40300WB1991PLC053444	AAACJ7110P	Yes
19	GIRDHAR TRACOM PVT.LTD.	U51909WB2004PTC097788	AACCG1735D	Yes
20	DISHA PAINT PVT.LTD.	U24222WB1993PTC059702	AABCD1812H	Yes

21	BLACKCHERRY COMMOSALE PVT.LTD.	U74999WB2011PTC169088	AAECB7488G	Yes
22	BEST LUCK SECURITIES PVT.LTD	U74140WB1993PTC061207	AABCB9026F	Yes

Creditworthiness

Sl no.	Name of Company	Capital & Reserves (Rs)	Loan Given to assessee in captioned year (Rs)	Interest (Rs)	TDS (Rs)
1	RITMAN COMMODITIES PVT LTD	30,76,00,807	1,00,00,000	83,288	8,329
2	R.D.FAN LTD	4,41,34,000	50,00,000	3,96,712	39,671
3	PARK COMPLEX PVT.LTD	12,64,39,000	30,00,000	2,83,068	28,307
4	PAWAN PUTRA SECURITIES PVT.LTD	29,18,29,000	25,00,000	14,384	1,438
5	MOHIT BAKERS PVT.LTD.	25,40,62,000	25,00,000	1,19,178	11,918
6	KUKU MERCANTILE PVT.LTD.	3,77,13,000	30,00,000	1,66,028	16,602
7	JAGADHATRI FOOD LTD.	4,09,90,000	50,00,000	4,20,549	42,056
8	GULMOHAR MERCANTILE PVT. LTD.	20,99,56,000	1,00,00,000	3,86,302	38,630
9	CRESCENTHEMUM VYAPAAR PVT.LTD.	6,43,78,000	30,00,000	18,904	1,890
10	BANKA ENTERPRISES PVT.LTD.	35,04,79,000	50,00,000	1,02,329	10,233
11	RITESH ROAD LINKS PVT.LTD.	2,43,50,000.00	25,00,000	55,479	5,548
12	S K DUDHORIA HOLDINGS PVT.LTD.	12,71,39,000	50,00,000	31,233	3123
13	SHROFF CHEMICALS PVT.LTD.	35,90,33,000	50,00,000	1,02,329	10,233
14	SANWARIA MARKETING PVT LTD.	11,25,00,000	2,00,00,000	-	-
15	SWARAN FINANCIAL PVT.LTD.	5,19,51,000.00	50,00,000	3,42,329	34,233
16	REGO CHEMICALS PVT.LTD.	4,74,81,156	30,00,000	62,137	6,214
17	NAVIN CONSTRUCTION & CREDIT PVT.LTD.	6,15,02,000	50,00,000	4,93,288	49,329
18	JAINCO PROJECTS (INDIA) LTD.	10,41,46,000	1,00,00,000	24,932	2,493

19	GIRDHAR TRACOM PVT.LTD.	15,05,87,000	1,00,00,000	8,08,768	80,877
20	DISHA PAINT PVT.LTD.	17,00,46,000	1,00,00,000	73,973	7,397
21	BLACKCHERRY COMMOSALE PVT.LTD.	23,86,25,000	30,00,000	2,18,959	21,896
22	BEST LUCK SECURITIES PVT.LTD.	1,11,42,000	20,00,000	1,88,712	18,871
			12,95,00,000		

68. We note that in order to prove their creditworthiness the lender companies have filed their audited financial statements. From a perusal of the same, it is noted that the capital & reserves of all these 22 companies are much more than the loan given to the assessee, which is visible from the facts noted in the form of chart given above under the heading “**creditworthiness**”. Moreover, it has also been brought to our notice that the Assessing Officer in the next assessment year i.e. A.Y. 2016-17 has accepted thirteen (13) parties out of this twenty-two (22) parties as genuine lender companies (supra) and thereafter it was brought to our notice that the Ld. CIT(Appeals) has accepted the loan obtained from one party, i.e. M/s. Sanwaria Marketing Pvt. Limited for A.Y. 2016-17 (*which we will examine separately*). We note that while adjudicating this issue, the Ld. CIT(Appeals) has gone through the Master Data relating to the lender companies, which were available in the ROC Websites and the Ld. CIT(Appeals) has acknowledged the fact that he has cross-checked the facts regarding the identity, creditworthiness and genuineness of the loan transaction, which fact is evident from his finding at para 15.3 (Page 18) of his impugned order; and it is noted that the Ld. CIT(Appeals) has not only discussed about the identity, creditworthiness and genuineness of the twenty-two (22) lender companies from whom the assessee had taken loans in this relevant assessment year of Rs.12.95 crores, the Ld. CIT(Appeals) have also discussed about the lenders (carry forward loans from earlier years) totalling thirty-three (33) in numbers which is evident from the Ld. CIT(Appeals)’s impugned order at page 18 to 23 (para 15.4) (supra). While discussing about each of the thirty-three (33) lender companies, we note that the Ld. CIT(Appeals) has *inter alia*, given the lender companies investment in quoted shares, its deposits with Banks, the fact of them having paid income tax in

this assessment year and in the next assessment year. The Ld. CIT(Appeals) has taken note of the fact that the lender companies are lending monies to several Corporate Houses etc. Thereafter, the Ld. CIT(Appeals) has given a finding of fact after analysis of Balance-sheet, Profit & Loss Account, Master data, and other documents produced by the assessee held that these lender companies cannot be termed as shell companies and have found that these companies have substantial assets in their balance-sheet and these companies are controlled by reputed genuine business Groups of Kolkata [refer page 24, Para 15.5 of Ld. CIT(A)'s Order] and therefore according to him, the assessee cannot be blamed for taking loans from them, which may have its origin from entry operators. According to Ld CIT(A), may be these companies might have been formed/incorporated by persons who had indulged in providing accommodation entries, however as per him what has to be seen is who is controlling these lender companies when the assessee got the loans in this assessment year and for that the Ld CIT(A) referred to the master data of all the lender companies for the AY 2015-16 and has found that they are managed by genuine, reputed business group and has deleted the addition by recording factual finding in respect of all thirty three (33) lender companies (supra).

69. We note that the Ld. CIT(A) has generally observed (supra) that may be some of these lender companies might have its origin by entry operators, however, the master data for the year under consideration i.e. AY 2015-16 shows that these companies are controlled by reputed business groups and, therefore, assessee cannot be faulted for taking loan from these companies. According to us, in the facts of this case, there was no necessity to make the aforesaid general observations. We find that the AO's case as per the assessment order for AY 2015-16 is concerned, the AO after taking note that the assessee has taken unsecured loan from so many lender companies, called for the details from the assessee; and from the list of the creditors/lender companies, he found that three (3) parties were controlled by entry operators. According to the AO, (1) M/s. Banka Enterprises Pvt. Ltd. was the concern of entry operator Shri Monoharlal Nangalia/Arun Nangalia. (2) M/s. Ritman Commodities Pvt. Ltd. was the concern of the entry operator Shri Ashok

Kumar Jha and (3) M/s. Sanwaria Marketing Pvt. Ltd. was the concern of entry operator Shri Vijay Kumar Gupta and thereafter he reproduced their respective statements which were recorded on oath u/s. 131 of the Act by Investigation Wing [Refer pages 3 to 18 of the assessment order]. According to AO, since these three (3) lender companies are the concerns of the entry operators, he issued summons and insisted on the personal appearance of the Directors of the lender companies and failure of which prompted him to make the additions as bogus loan credits in the assessee's books which the Ld. CIT(A) has deleted. In this context the Ld. AR took pains and took us through the statements recorded of all the three (3) entry operators from pages 3 to 18 and we find from their statements reproduced in the assessment order that they have no connection with the three (3) lender companies named along with them. However, for completeness, we would like to examine the statements of each purported entry operators.

70. First of all, we will go through the statement of Shri Ashok Kumar Jha which is reproduced from pages 3 to 6 of the assessment order. On perusal of which we note that the statement was taken on 02.03.2015 which was recorded by the DDIT, Investigation Wing Unit 2(3), Kolkata. According to AO, M/s. Ritman Commodities Pvt. Ltd. was the concern of the entry operator Shri Ashok Kumar Jha. From the statement recorded we note that the name of the maker of the statement is not Shri Ashok Kumar Jha but it is Shri Ashok Jha. From the statement it is noted that he controls four (4) companies with some dummy directors. Their names are given at page 4 and also he has given a list of 41 companies where Shri Ashok Kumar Jha is a director/designated partner of LLPs. From a perusal of the same, we could not find the names of lender company M/s. Ritman Commodities Pvt. Ltd., therefore, the AO's assumption that M/s. Ritman Commodities Pvt. Ltd. was the concern of the entry operator Mr. Ashok Jha/Ashok Kumar Jha is factually erroneous. We further note that M/s. Ritman Commodities Pvt. Ltd. (PAN: AAFCR 7321D) is regularly assessed to income tax and the copy of its ledger in the books of the assessee for AYs 2015-16 and 2016-17 & TDS certificate providing details of tax deducted at source on interest has been provided

at page nos. 35 to 38 of the paper book from which we note that M/s. Ritman Commodities Pvt. Ltd. had received loan of Rs. 1 crore in this assessment year and have repaid the same in the next assessment year i.e AY 2016-17 and in AY 2016-17 the AO has accepted the loan as genuine and allowed deduction for payment of interest on the said loan. Therefore, the AO erred in asserting that M/s. Ritman Commodities Pvt. Ltd. was the concern of an entry operator and the Ld. CIT(A) has rightly deleted the addition in respect of M/s. Ritman Commodities Pvt. Ltd.

71. Coming to the next statement of Shri Vijay Kumar Gupta recorded from page Nos. 7 to 10 of the assessment order, we note that his statement was recorded on 03.08.2015 by the DDIT, Investigation Wing Unit. In the assessment order the AO has alleged that the entry operator Mr. Vijay Kumar Gupta's concern is M/s. Sanwaria Marketing Pvt. Ltd. It is noted from the statement of Mr. Gupta that nowhere in the statement he has named M/s. Sanwaria Marketing Pvt. Ltd. as his company for providing accommodation entries. In answer to question no. 5, Mr. Gupta has enlisted the names of various persons who were his relatives and in answer to question no. 7 he had given the names of two (2) persons who were his employees. On perusal of the information pertaining to M/s. Sanwaria Marketing Pvt. Ltd. extracted from the master data it is noted that the registered office of the creditor company was situated at 176, Jamuna Lal Bajaj Street, Kolkata-700 007 and the said company also declared that the company's books of account and other papers were maintained at 10/3, Acropolis, 1858/1, Rajdanga Main Road, Kolkata-700107 and as per the company master data Shri Siddharth Kumar Podder, Shri Sanjib Kumar Podder and Shri Supradip Kumar Sharma are the directors of the creditor company since 26.07.2012. In contra-distinction to this information it is noted that Mr. Gupta had nowhere admitted that his office was located at Jamuna Lal Bajaj Street, Kolkata-700007 or at Acropolis, Rajdanga Main Road, Kolkata and in his statement Mr. Gupta has not made any reference or admission to the facts of any of the persons mentioned above were either his relatives, employees or they are working under his control. In fact, we note that the statement of Mr. Gupta reveals that DDIT, Investigation's enquiry was confined with Mr. Gupta's dealing

with the company called M/s. Venus Retail Trade Pvt. Ltd. and no other companies. In fact, we note that when questioned about the details of the companies maintained by him he did not provide any answer. Thus, from a perusal of the statement of Mr. Gupta as also the information about the company extracted from company master data it is evident that nowhere any material was brought on record in the assessment order by the AO which in any manner even suggest let alone prove that at the time when the assessee availed loans from M/s. Sanwaria Marketing Pvt. Ltd. the creditor company was controlled and managed by Mr. Gupta as alleged by him. So, we find that the AO erred in making a finding that the entry operator Shri Gupta's concern is M/s. Sanwaria Marketing Pvt. Ltd. And we note that this lender company has shown turnover of Rs 4,23,99,392/- and profit of Rs 59,38,492/- and income tax of Rs 18,10,000/-, therefore, the Ld. CIT(A) has rightly given relief to the assessee.

72. Coming to the next statement of Shri Arun Nangalia which is reproduced from pages 11 to 18 of the assessment order, we note that it is recorded by the DDIT, Investigation Unit-2(4) on 17.09.2015. From a careful perusal of the statement we find that there is no whisper about M/s. Banka Enterprises Pvt. Ltd. as his concern. In his statement he has stated he runs his business from 12, Lal Bazar, 4th floor, Room No. 16, Kolkata-700 001 whereas as per the company Master data of M/s. Banka Enterprises Pvt. Ltd. is concerned, their registered address is at Haute Street, 86A, Topsia Road (S), 9th floor, Kolkata-700046. From the company master data we note that M/s. Banka Enterprises Pvt. Ltd had two directors from its inception Shri Debraj Agarwal and Shri Alope Agarwal from 11.10.2010 onwards. These names also do not figure in the statement of Shri Nangalia. On perusal of the statement of Shri Nangalia it reveals that the Investigation Wing was questioning him in respect of the survey conducted on M/s. Happy Bengal Promoters Ltd. and M/s. Mangalthan Properties Pvt. Ltd. It is also noted that this was in continuation to the statement recorded during the survey of Shri Sushil Kumar Podder who has stated about fifteen (15) companies created by Mr. Pramod Agarwal which has been transferred to Mr. Arun Nangalia. However, Shri Arun Nangalia has stated that Mr.

Promod Agarwal has transferred only twelve (12) companies not fifteen (15) companies to him, details are given at page nos. 15 and 16 of the assessment order. From the statements of Shri Arun Nangalia, we note that nowhere the name of M/s. Banka Enterprises Pvt. Ltd. or its director's name or their relatives are found. Therefore, we wonder as to how the AO has connected Shri Nangalia with M/s. Banka Enterprises Pvt. Ltd., Therefore, the finding of the AO that M/s. Banka Enterprises Pvt. Ltd. was the concern of the entry operator Shri Monoharlal Nangalia/Shri Arun Nangalia are perverse and the Ld. CIT(A) has rightly deleted the addition. And since the assessee was able to show that the assessee received Rs. 50 lacs in this assessment year and the assessee had paid interest on it after deducting TDS and the assessee has squared up the loan by repaying it in the next AY 2016-17 and the AO was pleased accept the loan from this lender company and he allowed deduction of interest expenditure in respect of M/s. Banka Enterprises Pvt. Ltd. in AY 2016-17. Thus, the AO has accepted the genuineness of the loan transaction in AY 2016-17. And we note that M/s. Banka Enterprises Pvt. Ltd. in AY 2015-16, has shown turnover of Rs 1,46,63,807/- and profit of Rs 1,10,39,740/- and income tax of Rs 36,47,866/-. Therefore, the Ld. CIT(A) has rightly deleted the addition of Rs. 50 lakhs and interest of Rs.1,02,329/- and moreover, we note that the AO has not personally summoned these entry operators before him and has recorded their statements during the assessment proceedings. If the AO had information that these entry operators have some connection with the lender companies named hereinabove, then he should have summoned them and elicited the oral testimony and other materials against the lender companies and thereafter gave opportunity to the assessee to cross examine the makers of the incriminating statement against the assessee/lender companies which AO has not done, therefore, this statement could not have been relied upon by the AO for drawing adverse inference against the loan taken from the lender companies. For that we rely upon the decision of the Hon'ble Supreme Court in the case of Andaman Timer Industries Vs. CCE reported in (2015) 281 CTR 241 (SC) wherein it has been held that *"failure to give the assessee the opportunity to cross examine witness, whose statements are relied upon, results in breach of principles of Natural Justice. It is a*

serious flaw which renders the order a nullity”. Further, the Hon’ble Apex Court in the case of CIT Vs. Odeon Builders Pvt. Ltd. (Civil Appeal No. 9604-9605 of 2018) dated 21.08.2019 held that addition/disallowance cannot be made solely on third party information without subjecting it to further scrutiny and denying the opportunity of cross examination of the third party renders the addition/disallowance bad in law. Therefore, the statements with the legal infirmities as discussed could not have been relied by the AO for drawing adverse inference against the lender companies, therefore, the Ld. CIT(A) has rightly overturned the decision of AO on this issue. Further, before us, the details of the unsecured loans taken by the assessee; and the interest given to them by the assessee can be seen as well as the fact that assessee company has squared up/repaid the loan which facts are discernable from the chart below.

73. From a perusal of the chart (infra) we can see the list of lenders (total 33), their respective PAN, , loan amount, interest per annum, TDS deducted while interest is paid to lenders, loan repaid/closed F.Y, supporting documents filed etc:

Detail of Unsecured Loan and Interest Addition													
SN	Name	PAN	Opening Balance 01/4/14	Loan Received During Year	Loan Repaid to Party During Year	Interest during the Year	TDS	Closing Balance as on 31/03/15	Year of Repayment (F.Y)	Mode of payment	Interest during the Year	TDS	Supportings Enclosed
1	RITMAN COMMODITIES PVT.LTD.	AAFCR7321D	-	1,00,00,000	-	83,288	8,329	1,00,00,000	2015-16	Cheque/R TGS	9,46,849	94,685	Ledger, TDS Certificate, Assessment order
2	R.D.FANS LTD.	AABCR6106L	-	50,00,000	50,00,000	3,96,712	39,671	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
3	PARK COMPLEX PVT.LTD.	AABCF5291L	-	30,00,000	-	2,83,068	28,307	30,00,000	2017-18	Cheque/R TGS	7,36,473	73,649	Ledger, TDS Certificate, Assessment order
4	PAWAN PUTRA SECURITIES PVT.LTD.	AABCK1563C	-	25,00,000	-	14,384	1,438	25,00,000	2019-20	Cheque/R TGS	19,59,931	1,95,996	Ledger, TDS Certificate, Assessment order
5	MOHIT BAKERS PVT.LTD.	AAFCM9864J	-	25,00,000	25,00,000	1,19,178	11,918	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
6	KUKU MERCANTILES PVT.LTD.	AABCK3311L	-	30,00,000	30,00,000	1,66,028	16,602	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
7	JAGADHATRI FOOD LTD.	AAACJ6899F	-	50,00,000	50,00,000	4,20,549	42,056	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
8	GULMOHAR MERCANTILE PVT. LTD.	AACCG5361R	-	1,00,00,000	-	3,86,302	38,630	1,00,00,000	2015-2016	Cheque/R TGS	5,87,670	58,766	Ledger, TDS Certificate, Assessment order
9	CRESCENTHEMUM VYAPAAR PVT.LTD.	AADCC0224E	-	30,00,000	-	18,904	1,890	30,00,000	2017-2018	Cheque/R TGS	7,45,479	74,550	Ledger, TDS Certificate, Assessment order
10	BANKA ENTERPRISES PVT.LTD.	AABCB2996A	-	50,00,000	-	1,02,329	10,233	50,00,000	2015-2016	Cheque/R TGS	2,09,389	20,939	Ledger, TDS Certificate, Assessment order
11	RITESH ROADLINKS PVT.LTD.	AABCR2234H	-	25,00,000	25,00,000	55,479	5,548	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order

*I.T.A No. 55/Kol/2020, I.T.A. No.20/Kol/2019,
I.T.A. No.2191/Kol/2018 & I.T.A. No.115/Kol/2020
M/s Wearit Global Ltd. Assessment years:
2014-15, 2015-16 & 2016-17*

SN	Name	PAN	Opening Balance 01/4/14	Loan Received During Year	Loan Repaid to Party During Year	Interest during the Year	TDS	Closing Balance as on 31/03/15	Year of Repayment (F.Y)	Mode of payment	Interest during the Year	TDS	Supportings Enclosed
12	S.K.DUDHORIA HOLDINGS PVT.LTD.	AADCS7341A	-	50,00,000	-	31,233	2,123	50,00,000	2015-2016	Cheque/R TGS	3,64,931	36,493	Ledger, TDS Certificate, Assessment order
13	SHROFF CHEMICALS PVT.LTD.	AAECSS253N	-	50,00,000	-	1,02,329	10,233	50,00,000	2015-2016	Cheque/R TGS	2,09,589	20,959	Ledger, TDS Certificate, Assessment order
14	SANWARIA MARKETING PVT.LTD.	AAMCS7944J	2,00,00,000	2,00,00,000	3,00,00,000	-	-	1,00,00,000	2015-2016	Cheque/R TGS	5,02,740	50,275	Ledger, TDS Certificate, Assessment order
15	SWARAN FINANCIAL PVT.LTD.	AAECS4024R	-	50,00,000	-	3,42,329	34,233	50,00,000	2015-2016	Cheque/R TGS	76,949	7,685	Ledger, TDS Certificate, Assessment order
16	REGO CHEMICALS PVT.LTD.	AACCR1945E	-	30,00,000	30,00,000	62,137	6,214	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
17	NAVIN CONSTRUCTION & CREDIT PVT.LTD.	AAACN9084E	-	50,00,000	50,00,000	4,93,288	49,329	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
18	JAINCO PROJECTS (I) LTD.	AAACJ7110P	-	1,00,00,000	-	24,932	2,493	1,00,00,000	2019-2020, Part payment	Cheque/R TGS	35,48,713	3,54,872	Ledger, TDS Certificate, Assessment order
19	GIRDHAR TRACOMM PVT.LTD.	AACCG1735D	-	1,00,00,000	1,00,00,000	8,08,768	80,877	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
20	DISHA PAINT PVT.LTD.	AABCD1812H	-	1,00,00,000	-	73,973	7,397	1,00,00,000	2017-2018	Cheque/R TGS	22,46,575	2,24,659	Ledger, TDS Certificate, Assessment order
21	BLACKCHERRY COMMOSE PVT.LTD.	AAECB7488G	-	30,00,000	-	2,18,959	21,896	30,00,000	2016-2017	Cheque/R TGS	5,36,547	53,655	Ledger, TDS Certificate, Assessment order
22	BEST LUCK SECURITIES PVT.LTD.	AAACB9026F	-	20,00,000	-	1,88,712	18,871	20,00,000	2015-2016	Cheque/R TGS	2,11,069	21,107	Ledger, TDS Certificate, Assessment order
TOTAL (A)				12,95,00,000		43,92,881							
23	OLYMPIA CREDIT & MERCANTILE PVT.LTD.	AAACO2805J	50,00,000	-	-	6,00,000	6,000	50,00,000	2015-2016	Cheque/R TGS	4,80,000	48,000	Ledger, TDS Certificate, Assessment order

SN	Name	PAN	Opening Balance 01/4/14	Loan Received During Year	Loan Repaid to Party During Year	Interest during the Year	TDS	Closing Balance as on 31/03/15	Year of Repayment (F.Y)	Mode of payment	Interest during the Year	TDS	Supportings Enclosed
24	NIRMALDEEP RESOURCES LTD.	AABCN1077A	50,00,000	-	-	8,00,000	80,000	50,00,000	2016-2017	Cheque/R TGS	15,01,370	1,50,137	Ledger, TDS Certificate, Assessment order
25	AMEXCO INVESTMENTS PVT.LTD.	AAFCB8435P	2,00,00,000	-	-	31,99,999	3,20,000	2,00,00,000	2019-2020	Cheque/R TGS	1,07,28,324	10,72,837	Ledger, TDS Certificate
26	SANWARIA MARKETING PVT.LTD.	AAMCS7944J	2,00,00,000	2,00,00,000	3,00,00,000	-	-	1,00,00,000	2015-2016	Cheque/R TGS	5,02,740	50,275	Ledger, TDS Certificate, Assessment order
27	SADHNA TRADE & CREDIT PVT.LTD.	AADCS9461R	10,00,000	-	-	1,20,000	12,000	10,00,000	2015-2016	Cheque/R TGS	7,233	723	Ledger, TDS Certificate, Assessment order
28	TROPEX SUPPLIES PVT.LTD.	AABCT1459N	10,00,000	-	-	1,20,000	12,000	10,00,000	2015-2016	Cheque/R TGS	7,562	756	Ledger, TDS Certificate, Assessment order
29	RICHIMEN BARTER PVT.LTD.	AAACR2219Q	20,00,000	-	-	1,80,000	18,000	20,00,000	Interest being paid regularly	Cheque/R TGS	9,47,325	94,736	Ledger, TDS Certificate, Assessment order
30	NARMADA TREXIM PVT.LTD.	AABCN6495N	10,00,000	-	-	1,20,000	12,000	10,00,000	2015-2016	Cheque/R TGS	7,560	756	Ledger, TDS Certificate, Assessment order
TOTAL (B)			5,50,00,000			51,39,999		4,50,00,000			1,41,82,114	14,18,220	
31	PADWAVATI VINIMAY PVT LTD	AAECP5079M	1,00,00,000	-	1,00,00,000	7,123	712	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
32	PNR COMPLEX PVT LTD	AAECP2655D	50,00,000	-	50,00,000	4,70,137	47,014	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
33	MONET SECURITIES PVT LTD	AABCM7058A	1,00,00,000	-	1,00,00,000	10,12,602	1,01,261	-	2014-15	Cheque/R TGS	N.A	N.A	Ledger, TDS Certificate, Assessment order
TOTAL (c)						14,89,862	1,48,987						
GRAND TOTAL (A+B+C)						1,10,22,742					1,41,82,114		

74. From a perusal of the chart (supra) we note that out of the total thirty-three (33) lender companies, which had given loans to the assessee, other than the loan taken from M/s. Richmen Barter Limited shown at item number 29, all other loan amounts have been repaid which is evident from the chart. Thus we note that all the lender companies from which all the assessee has taken loan this year and also carry forwarded loan except Rs.20,00,000/- of M/s. Richmen Barter Pvt. Limited [*which does not pertain to this year and it is noted that it is the carry forwarded loan/opening loan of this year*], the assessee had repaid / squared up the entire loan taken through banking channel and moreover the interest given by the assessee to these lenders are also after deduction of TDS. And as discussed all these lender companies are income tax assesses and regularly filing their respective ITR's and in the aforesaid facts discussed, the identity and genuineness of the lenders as well as the loan cannot be doubted.

75. Coming to the creditworthiness, we note from the facts stated in the chart (regarding creditworthiness) that all the twenty-two (22) lender companies had enough capital & reserves and they have given only a fraction of their funds for lending. And the loans have been given to the assessee through banking channel and the lenders are all income-tax assesseees and the interest on the loan amount have been paid by the assessee after deduction of TDS through banking channel. Therefore, the creditworthiness cannot be doubted and as seen the entire transactions happened through banking channel and the assessee has brought to our notice (chart supra) that the loans have been repaid to the parties concerned. In such a scenario, the question of genuineness also cannot be doubted. We find that the Ld. CIT(Appeals) has discussed about all the thirty-three (33) lenders in detail and has stated in the impugned order at para 15.3 that he has cross verified the veracity of the claim in respect of identity, creditworthiness & genuineness of the lender companies.. This finding of fact, on the basis of documentary evidence we concur because Revenue could not present before us any adverse material warranting any other view. Therefore, we do not find any infirmity in the order of the Ld.

CIT(Appeals) and we confirm the action of Ld. CIT(Appeals) deleting the addition of Rs.12.95 crores.

76. Next, let us discuss the impugned action of Ld CIT(A) in deleting the addition of Rs 4.5 crores added by the AO. We note that AO had added separately loan amount of Rs. 4.5 crores and interest paid to following eight (8) parties in the assessment order for AY 2015-16. Their name, their respective CIN, PAN and the fact of them filing ITR can be seen from the chart below;

SI no.	Name of Company	CIN	PAN	ITR filed for AY 2015-16
1	OLYMPIA CREDIT & MERCANTIE PVT.LTD.	U65921WB1991PTC052054	AAACO2805J	Yes
2	NIRMAL DEEP RESOURCES LTD.	U67120WB1991PLC051266	AABCN1077A	Yes
3	AMEXCO INVESTMENTS PVT.LTD.	U65992WB1979PTC032021	AAFCA8435P	Yes
4	SANWARIA MARKETING PVT.LTD.	U51900WB2009PTC132938	AAMCS7944J	Yes
5	SADHANA TRADE & CREDIT PVT.LTD.	U51909WB1991PTC051307	AADCS9461R	Yes
6	TROPEX SUPPLIERS PVT.LTD.	U51109WB1994PTC061937	AABCT1459N	Yes
7	RICHIMEN BARTER PVT.LTD.	U51109WB1997PTC083978	AABCR2219Q	Yes
8	NARMADA TREXIM PVT.LTD.	U51109WB1994PTC061888	AABCN6495N	Yes

77 With respect to addition of Rs. 4.5 crores, the Ld AR brought to our notice that the loan amount was from the aforesaid eight (8) parties. And opening balance of these loan as on 01.04.2014 was Rs. 5.5 crores and Rs. 1 crores was repaid in this assessment year, so the AO added back the closing balance of these loan parties to the tune of Rs 4.5 crores. Further details of these lender companies can be seen from the chart below;

SI no	Name of Company	Net Worth (Rs)	Op balance of Loan as on 01.04.2014 (Rs)	Amt repaid	Closing balance of Loan as on 31.03.2015 (Rs)
1	OLYMPIA CREDIT & MERCANTIE PVT.LTD.	6,04,84,006	50,00,000	-	50,00,000
2	NIRMAL DEEP RESOURCES LTD.	8,49,18,000	50,00,000	-	50,00,000
3	AMEXCO INVESTMENTS P LTD.	3,33,60,728	2,00,00,000	-	2,00,00,000
4	SANWARIA MARKETING P.LTD.	11,25,00,000	2,00,00,000	1,00,00,000	1,00,00,000
5	SADHANA TRADE & CREDIT P	13,03,97,829	10,00,000	-	10,00,000

	LTD.				
6	TROPEX SUPPLIERS PVT.LTD.	57,69,35,250	10,00,000	-	10,00,000
7	RICHIMEN BARTER PVT.LTD.	3,17,09,108	20,00,000	-	20,00,000
8	NARMADA TREXIM PVT.LTD.	8,47,09,412	10,00,000	-	10,00,000
			5,50,00,000		4,50,00,000

78. According to Ld AR, the opening balance of loan as on 01.04.2014 except for Rs 1 crore repaid in this AY 2015-16 was through banking channel on 03.04.2014 (Refer Page 93 of Paperbook 2) , has been added back by AO. According to Ld AR, since the loan was accepted in previous year, no addition was made in this regard in previous AY 2014-15, so such addition of Rs 4.5 crores is legally un-tenable and is bad in law. Further according to Ld AR, it is evident from Paperbook 2, that said Companies have reflected the interest income from loan and the TDS in respect thereof was duly accounted for and deposited and the parties have filed Income Tax Returns and have been duly assessed, so no addition was warranted.

79. We have heard both the parties and we note that AO made an addition of Rs.4.5 crores and we note that the addition of Rs.4.5 crores was made for the loan taken by assessee from eight (8) parties (supra), which was admittedly the carry forwarded loans/opening loans of this assessment year, which means they were not pertaining to this assessment year. We note that the opening balance of unsecured loan as on 01.04.2014 was Rs.5.5 crores and since Rs.1,00,00,000/- was paid by the assessee in this assessment year through banking channel on 03.04.2014 (*copy placed at page 93 of the paper book*), the Assessing Officer has added the balance amount of Rs.4.5 crores, which is un-disputably loan of the previous year, which means this loan of Rs..5.5 crores itself has been accepted by the Assessing Officer in A.Y. 2014-15 as genuine. Therefore, the addition of Rs.4.5 crores which is admittedly loan taken by the assessee in the earlier year cannot be taxed, in this assessment year. So the action of the Assessing Officer is per-se bad in law and therefore, we confirm the decision of the Ld. CIT(Appeals) in deleting the addition of Rs.4.5 crores.

80. Next addition the AO resorted to was in respect of Interest expense claimed by assessee to the tune of Rs 1,10,22,742/- which was paid to the lender parties which consists of parties from which loan of Rs 12.95 crores was obtained, as well as from parties to whose opening/closing balance of loan was added back and following three (3) parties from whom no fresh loan was obtained and opening balance was repaid in full:

Sl. No.	Name of company	CIN	PAN	ITR filed for AY 2015-16
1.	PADMAVATI VINIMAY PVT. LTD.	U51109WB2008PTC121366	AAECP5079M	Yes
2.	PNR COMPLEX PVT LTD	U45400WB2007PTC115883	AAECP2655D	Yes
3.	MONET SECURITIES PVT LTD	UO1111WB1994PTC064149	AABCM7058A	Yes

Sl. No.	Name of company	Net worth (Rs.)	Op. balance of loan as on 01.04.2014 (Rs.)	Amount repaid	Closing balance of Loan as on 31.03.2015 (Rs.)
1.	PADMAVATI VINIMAY PVT. LTD.	5,59,78,767	1,00,00,000	1,00,00,000	-
2.	PNR COMPLEX PVT LTD	9,36,24,266	50,00,000	50,00,000	-
3.	MONET SECURITIES PVT LTD	55,24,81,000	1,00,00,000	₹ 1,00,00,000	-

81. According to Ld AR, it is evident from perusal of paper book 2 pages 178 to 188 that in this assessment year, no fresh loan was taken from these three (3) parties and opening loan along with interest was repaid in this assessment year through banking channel after deducting TDS on interest. It was brought to our notice that AO had added back interest of Rs. 1,10,22,742/- paid to following parties:

Sl. No.	Name of company	Interest (Rs.)	TDS (Rs.)
1	RITMAN COMMODITIES PVT LTD	83,288	8,329
2.	R.D.FANLTD	3,96,712	39,671
3.	PARK COMPLEX PVT.LTD.	2,83,068	28,307
4.	PAWAN PUTRA SECURITIES PVT.LTD	14,384	1,438
5.	MOHIT BAKERS PYT.LTD	1,19,178	11,918

6.	KUKU MERCANTILE PYT.LTD	1,66,028	16,602
7.	JAGADHATRI FOOD LTD.	4,20,549	42,056
8.	GULMOHAR MERCANTILE PVT. LTD.	3,86,302	38,630
9.	CRESCENTHEMUM VYAPAAR PVT.LTD.	18,904	1,890
10.	BANKA ENTERPRISES PVT.LTD	1,02,329	10,233
11.	RITESH ROAD LINKS PVT.LTD.	55,479	5,548
12.	S K DUDHORIA HOLDINGS PYT.LTD.	31233	3123
13.	SHROFF CHEMICALS PVT. LTD	1,02,329	10,233
14.	SWARAN FINANCIAL PVT.LTD.	3,42,329	34,233
15.	REGO CHEMICALS PVT. LTD	62,137	6,214
16.	NAVIN CONSTRUCTION & CREDIT PVT.LTD.	4,93,288	49,329
17.	JAINCO PROJECTS (INDIA) LTD.	24,932	2,493
18.	GIRDHAR TRACOM PVT.LTD.	8,08,768	80,877
19.	DISHA PAINT PVT. LTD.	73,973	7,397
20.	BLACKCHERRY COMMOSALE PVT. LTD.	2,18,959	21,890
21.	OLYMPIA CREDIT & MERCANTIE PYT.LTD.	6,00,000	6,000
22.	NIRMAL DEEP RESOURCES LTD.	8,00,000	80,000
23.	AMEXCO INVESTMENTS PVT.LTD.	31,99,999	3,20,000
24.	SADHANA TRADE & CREDIT PVT.LTD.	1,20,000	12,000
25.	TROPEX SUPPLIERS PVT.LTD,	1,20,000	12,000
26.	RICHMEN BARTER PVT.LTD.	1,80,000	18,000
27.	NARMADA TREXIM PVT.LTD.	1,20,000	12,000
28.	PADWAVATI VINIMAY PVT. LTD.	7,123	712
29.	PNR COMPLEXPVT. LTD.	4,70,137	47,014
30.	MONETSECURITIES PVT. LTD	10,12,602	1,01,261
31.	BEST LUCK SECURITIES PVT.LTD.	1,88,712	18,871
		1,10,22,742	

82. The Ld. A.R. further submitted that the loans taken from all the parties have been squared up/repaid. According to Ld. A.R, some loans have been paid during this year and others in subsequent assessment years and all the lenders are income-tax assessee's and the payments have been made through banking channel. And the interest for the loans have been paid after duly deducting TDS and all the lenders have shown interest income in their respective returns of income. Therefore according to the Ld. A.R., the question of the Assessing Officer making the addition under section 68 of the Act does not arise and the Ld. CIT(Appeals) has rightly deleted the addition, which does not require any interference.

83. We note that the Assessing Officer has added interest expenses claimed by the assessee on the un-secured loan it had taken to the tune of Rs.1,10,22,742/- from thirty-one (31) lender parties (supra). Since we have already taken note that the loans have been received by the assessee and later repaid to the parties concerned through banking channel, the loan transaction is to be presumed to be genuine unless the facts noted above are found to be wrong on the basis of evidence, which is not the case of Assessing Officer or the grounds of appeal of the Revenue raised before us does not assail the same. We have already taken note of the lenders identity and creditworthiness i.e. of the twenty-two (22) lenders of this assessment year and the other eleven (11) totalling thirty-three (33) lender companies details have been discussed by the Ld. CIT(Appeals), which action we have considered and upheld the action (supra). So the question of their identity and creditworthiness cannot be doubted. So the question of disallowing interest payment on such loans on which TDS has also been duly deducted cannot be countenanced. And coming to the three (3) more parties from whom no fresh loan was obtained, we note the three parties were (i) M/s. Padmavati Vinimay Pvt. Limited, (ii) M/s PNR Complex Pvt. Limited and (iii) M/s. Monet Securities Pvt. Limited from which lender companies the assessee has taken loans of Rs.1,00,00,000/-, Rs.50,00,000/- and Rs.1,00,00,000/- respectively and we find that these loans were brought forward loans as on 01.04.2014 and which has been squared up /repaid by the assessee in this assessment year itself, which fact is evident by perusal of pages 178 to 188 of the paper book and it is noted that there was no fresh loan from these three parties and we note that the opening loan with interest due to them were repaid in this year through banking channel after duly deducting TDS. So the question of disallowing the interest given by the assessee to these three (3) parties also cannot be accepted and we are of the opinion that the Ld. CIT(Appeals) rightly deleted the same.

84. Therefore, in the facts and circumstances discussed (supra) the Ld. CIT(Appeals) has rightly deleted the addition of interest expenditure of Rs.1,10,22,742/- which does not require any interference. Therefore, we confirm the action of the Ld. CIT(Appeals) and dismiss the appeal of the Revenue.

85. In the light of the aforesaid discussion, we dismiss the Revenue's appeal for AY 2015-16.

ITA 2191/Kol/2018(AY 2015-16) [Assessee's Appeal]

86. This is an appeal preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata dated 16.08.2018 for AY 2015-16. The sole issue raised by the assessee is against the action of the Ld. CIT(A) in confirming an addition of Rs.8,94,96,000/- u/s 68 of the Act.

87. The A.O noted on perusal of the balance sheet of the assessee company that the assessee had *shown receipt of share capital with premium of Rs.51,49,05,120/- during F.Y 2014-15*. Therefore, the A.O asked the assessee to furnish the details of the share allottees. The A.O acknowledged that pursuant to the same, the assessee company has filed Form-2 of ROC regarding receipt of share capital with premium. According to the A.O on going through the details of allottees, he noted that some of the allottee concerns were paper concerns managed and controlled by entry operators. According to the A.O while he went through the assessment record of the assessee company for A.Y 2014-15, he noted that some of the shares subscribing allottees are common for the A.Ys 2014-15 and AY 2015-16. According to him, a detailed enquiry was made during assessment proceedings for the A.Y 2014-15 wherein notices u/s 133(6) in the case of following shareholders i.e. (i) M/s Pragati Complex Advisory Pvt. Ltd., (ii) M/s Richfield Vintrade Pvt. Ltd., (iii) M/s Laxmiputra Tradecomm Pvt. Ltd., (iv) M/s Jintan Mercantile Pvt. Ltd., (v) M/s Vintrade Pvt. Ltd. and (vi) M/s Brijbhumi Commosalę Pvt. Ltd. were returned un-served by postal authority and field enquiry also yielded no result. Therefore, he noted that these companies were treated by the A.O as non-genuine for AY 2014-15. After reproducing the relevant portion of the assessment order in respect of A.Y.2014-15 on this issue and the assessee's reply in respect of it for AY 2014-15, the A.O issued Show Cause Notice to the assessee company, wherein AO observes that assessee has collected in this year (AY 2015-16) share capital with premium of Rs.51,49,05,120/- and from the details submitted, he

noted that same were paper companies. Therefore, he had issued summons u/s. 131 of the Act to the Directors of nineteen (19) parties directing them to appear before him and to prove the identity, creditworthiness and genuinity of the transaction. However, according to AO, only five (5) allottees complied with the summons and appeared before him. And since remaining fourteen (14) parties/directors did not comply, the AO issued the Show Cause Notice (herein after SCN). According to AO, the reply of the assessee to SCN was not satisfactory and since assessee failed to discharge the onus casted upon it u/s. 68 of the Act, the AO was of the opinion that the sum of Rs.8,94,96,000/- received from the aforesaid fourteen (14) share allottee concerns on account of share capital and premium needs to be treated as unexplained cash credit u/s 68 of the Act and he added the same.

88. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same. The Ld. CIT(A) while confirming the order of the A.O observed as under:

“17.1 Following facts emerges from the Order of the AO-

(a) The AO has made addition in respect of share capital raised from 14 entities.

(b) Most of these entities were appearing in the share subscriber list for A.Y. 2014-15 where the summons sent to these parties Return unserved,

(c) None of these parties were found to be existing at the addresses given in the field enquiry made by the Department.

(d) Even in A.Y. 2015-16 the AO had issued summons to these 14 allottees. However, these 14 allottees did not comply with the summons u/s. 131.

(e) The AO also asked the assessee to produce these Directors before the AO, but the Assessee did not produce them before the A.O.

(f) The AO has also noted that many of the summons u/s. 131 were returned back to office and this fact was also communicated to the AR of the Assessee, but till the date of passing of the order the assessee did not furnish explanation regarding the same. Even new addresses of these concerns were not provided.

17.2 The Ld. AR in his reply before the undersigned has emphasized that all these companies are filing Income Tax Return, the share application money has been received through cheque and source of fund for the investment made by the allottees was also provided thereafter. The AR also emphasized that even though these companies did not appear in response to 131 summons yet all the details of these companies were file with the AO. The Ld. AR has quoted various case laws.

17.3 I have perused the Submissions of the assessee and the Assessment Order. In this case -

i) There was no compliance with summons u/s. 131 of the Income Tax Act and the Directors of the applicant company failed to appear personally.

ii) The Inspector of the Department did not find these companies existing at the addresses.

iii) The assessee did not take any step to produce these parties before the AO.

iv) It is seen that the assessee has not paid any dividend to these investors even though the shares have been subscribed at huge premium. Nor are these investors belonging to any reputed business group. (unlike in case of loan taken by the assessee)

v) Amongst the list of 14 companies, 7 companies are appearing in the list of 16794 shell companies published by various Government agencies. These companies are-

a) Brijbhumi Commosale Pvt. Ltd

b) Waltaz Commodities Pvt. Ltd.

c) Pragati Complex Advisory Pvt. Ltd.

d) Newzone Vintrade Pvt. Ltd.

e) Mangalkamana Pvt. Ltd.

f) Jintan Mercantile Pvt. Ltd.

g) Needful Projects Advisory Pvt. Ltd.

It would be pertinent to mention that taking of share capital is different footing compared to taking of unsecured loan from possibly dubious sources. The burden of proof in case of Share capital is greater as in share capital case the assessee can't argue that some genuine Investor might have routed his unaccounted wealth to the assessee through shell company.

17.3 Analysis of case laws on the issue-

1. In the case of *Nova Promoters and Fin Lease Pvt. Ltd* 342 ITR 169 Delhi, The allottee company had availed entries from professional name lenders, there was no response to Summons issued to the subscribers. The addition made was upheld.

2. In the case of *Sophia Finance Ltd.* [1994] 205 ITR 98/70 Taxman 69 (Delhi), hon. Court opined that section 68 is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money. Mere fact that the payment was received by cheque or that the applicants were companies, borne on the file of Registrar of companies were held to be neutral facts and did not prove that the transaction was genuine.

3. Hon'ble Apex Court in the case of *Navodaya Castle (P) Ltd vs CIT* reported in (2015) 56 taxmann.com 18 (SC) has held that mere filing of certificate of incorporation, PAN were not sufficient for the purpose of identification of subscriber company especially when there was material to show that subscriber was a paper company and not a genuine investor.

4. Hon. Delhi High Court in the case of *CIT V Empire Builtech P Ltd* 361 ITR 258 (Del), has held that when Asst. Year 2009-10 assessee does not produce evidence or tries to avoid the

appearance before the Assessing authority it necessarily creates difficulties and prevents ascertainment of the truth and correct facts as the Assessing Officer is denied the advantage of the attendance or factual assertion by the assessee before him. If an assessee deliberately and intentionally fails to produce evidence before the Assessing Officer with the desire to prevent enquiry or investigation an adverse opinion should be drawn. The assessee had not discharged the initial onus to establish the identity, creditworthiness of the share applicants and the genuineness of the transactions. The additions made by the Assessing Officer were justified and sustainable.

5. In case of *Subhalakshmi Vanijya Pvt. Ltd. vs. CIT* (2015) 60 taxmann.com 60 (Kolkata-Trib). Hon tribunal has held that the burden of proof under section 68 can be no different in respect of issue of share capital by closely held companies vis-à-vis loans or gifts. The High Court in *CIT v. Maithan International* [2015] 375 ITR 123/231 Taxman 381/56 taxmann.com 283 (Cal.), *CIT v. Active Traders (P.) Ltd.* [1995] 214 ITR 583/[1993] 69 Taxman 281 (Cal.), *Mimec (India) (P.) Ltd. v. Dy. CIT* [2013] 353 ITR 284/216 Taxman 157 (Mag.)/35 taxmann.com 319 (Cal.) and *CIT v. Nivedan Vanijya Niyojan Ltd.* [2003] 263 ITR 623/130 Taxman 153 (Cal.) has specifically held that the three ingredients, viz. identity and capacity of creditor and genuineness of transaction are required to be satisfied even in case of issue of share capital by a closely held company. It shows that the intention of the legislature, as interpreted by the High Court, is always to cast duty on the assessee to prove the satisfaction of the three ingredients in case of transaction of issue of share capital by a closely held company in the same way as is in the case of transaction of loans.

6. In the case of *CIT v. N.R. Portfolio (P.) Ltd.* [2013] 214 Taxman 408/29 taxmann.com 291 (Delhi) wherein a similar addition under Section 68 in respect of receipt on account of share application money was set aside by the CIT and upheld by the Tribunal. The High Court restored the order of addition allowing the appeal of the revenue. The High court also held as follows:

"This court is conscious of a view taken in some of the previous decisions that the assessee cannot be faulted if the share applicants do not respond to summons, and that the state or revenue authorities have the wherewithal to compel anyone to attend legal proceedings. However, that is merely one aspect. An assessee's duty to establish that the amounts which the AO proposes to add back, under Section 68 are properly sourced, does not cease by merely furnishing the names, addresses and PAN particulars, or relying on entries in a Registrar of Companies website. One must remember that in all such cases, more often than not, the company is a private one, and share applicants are known to it, since they are issued on private placement, or even request basis. If the assessee has access to the share applicant's PAN particulars, or bank account statement, surely its relationship is closer than arm's length. Its request to such concerns to participate in income tax proceedings, would, viewed from a pragmatic perspective, be quite strong, because the next possible step for the tax administrators could well be re-opening or such investor's proceedings. That apart, the concept of "shifting onus" does not mean that once certain facts are provided, the assessee's duties are over. If on verification, or during proceedings, the AO cannot contact the share applicants, or that the information becomes unverifiable, or there are further doubts in the pursuit of such details, the onus shifts back to the assessee. At that stage, if it falters, the consequence may well be an addition under Section 68.

17.4 In the instant case the assessee has failed to prove the identity of these 14 share capital allottees as they were not found at the addresses given, further director of these companies did not attend. The assessee could not prove the capacity of these companies to subscribe to the share capital as it could not demonstrate that these companies have some substantial tangible asset in their balance sheet. Further the genuineness of the allottees also could not be

established. 7 of them are appearing in the list of shell companies. None of the companies are owned or controlled by any known business group.

17.5 Assessment proceedings are in the nature of civil proceedings and additions are made on the basis of preponderance of probability. Theory of preponderance of probability mean that it is more likely that the share capital has been raised from dubious sources and it is more likely that the assessee's own money has been routed through these dubious companies. Assessment proceedings are in the nature of civil proceedings and it does not require proof beyond doubt. It is not a case of dacoity or murder where proof beyond doubt is required. In view of the facts enumerated above and case laws discussed above, I am convinced that the AO has rightly added the share capital and share premium to the total income of the assessee. Therefore, addition made by the A.O. Rs.8,94,96,000/- on account of share capital money received from companies is hereby upheld.”

89. Aggrieved the assessee is before us.

90. We have heard both the parties and perused the records. It is noted that assessee company received Rs.51,49,05,120/- from nineteen (19) companies as share capital and premium in this assessment year i.e. AY 2015-16. The AO asked for the details and found that some of the companies which has subscribed for share capital are paper companies. So the AO issued summons u/s. 131 of the Act and he acknowledged that out of nineteen (19), five (5) companies responded to summons by appearing before him. But fourteen (14) companies directors did not appear. So, he made addition of Rs.8,94,96,000/- . It was brought to our notice that the assessee has filed before the A.O the following documents in respect of all these nineteen (19) companies (i) copies of acknowledgement of ITR, (ii) audited financial statement, (iii) bank statement, (iv) copy of return of share allotment filed to the ROC, (v) share application form and (vi) copy of Board Resolution of subscriber companies. However, according to the Ld. A.R, during the assessment proceeding for AY 2015-16, the AO could not find any fault or infirmity whatsoever in respect of the documents filed before him to establish the identity, creditworthiness and genuineness of the share capital and premium received from these concerns by the assessee company. However, the AO has simply toed the line of the predecessor AO for AY 2014-15 and has reproduced the order of his predecessor AO for AY 2014-15 in respect of share capital and premium collected from six (6) shareholders for AY 2014-15 and thereafter, AO issued summons u/s. 131 of the Act to all nineteen (19) companies to produce their directors and since only five (5) companies directors responded to it, he drew adverse inference against the fourteen

(14) companies. Before the Ld. CIT(A), the following facts were also brought to his notice that during the year (i.e. AY 2015-16), the addition made on account of share application and share premium received from fourteen(14) companies, six(6) companies were those from whom the assessee company received share application and share premium in the immediately preceding A.Y. 2014-15 and addition made by the Assessing Officer was deleted by the Ld. CIT(A). And while doing so for AY 2014-15, the Ld. CIT(A) has found that the assessee company had filed all the requisite details of the companies which all applied for investing in the share capital with premium of the assessee company. And it was pointed out that the Ld. CIT (A) also noted that the current address of the allottee Companies on whom letters u/s 133(6) could not be served was provided by the assessee and he also observed that in the remand proceeding the Assessing Officer had not issued notice u/s 133(6) of the Act to the companies at the new address provided by the assessee company and summons issued u/s 131 of the Act was served upon them. The said companies are as follows:

- i) Brijbhumi Commosale Pvt. Ltd
- ii) Pragati Complex Advisory Pvt. Ltd
- iii) Newzone Vintrade Pvt. Ltd
- iv) Jintan Mercantile Pvt. Ltd
- v) Richfield Vintrade Pvt. Ltd
- vi) Laxmiputra Tradecomm Pvt. Ltd

91. Further it was brought to our notice that in the case of the following five (5) companies in the Assessment Year 2014-15, the Assessing Officer himself accepted the share application money along with premium received by relying on the copies of the Acknowledgement of Income Tax Return, Audited Financial Statements, Bank Statements, copy of return of share allotment filed to the ROC, Share Application form, and copy of the Board resolution of the subscriber companies. And no defect in the above document whatsoever was found by the Assessing Officer in this

assessment year warranting any change in opinion of these companies. These companies are:

- 1) Waltaz Commodities Pvt. Ltd
- 2) Ojaswini Retailors Pvt. Ltd
- 3) Mangalkamana Merchants Pvt. Ltd
- 4) Needful Projects Advisory Pvt. Ltd
- 5) Ramdot Suppliers Pvt. Ltd

92. For the remaining three(3) companies from which the share capital and share premium was received are as follows:

Name of the Party	Face value @ 100/-	Premium @ 620/-	Total Amount received
1. KA Vanijya Pvt Ltd	3,57,500/-	22,16,500/-	25,74,000/-
2. Ontime Securities Pvt Ltd	1,07,100/-	6,64,020/-	7,71,120/-
3. Blue Sky Sales Pvt Ltd	5,35,700/-	33,21,340/-	38,57,040/-
Total	10,00,3000	62,01,860/-	72,02,160/-

93. According to Ld. AR, in respect of the above three (3) subscriber companies' addition was made by the assessing Officer solely on the ground that similar addition were made in respect of share capital receipt from these companies in the assessment Year 2014-15. And in the Assessment year 2014-15 since no addition was made in the assessment order in respect of the aforesaid three Companies, according to Ld AR, the addition was made merely on erroneous assumption of fact and therefore, such arbitrary addition cannot be sustained since assessee has discharged the burden of proof to prima facie prove the identity, creditworthiness and genuineness of the share transaction.

94. From the following chart it can be discerned that out of the fourteen (14) share subscribing entities, from which the assessee received share subscription the AO/CIT(A) has not accepted their identity, creditworthiness and genuineness of share transaction, whereas for AY 2014-15 the AO has accepted five (5) entities as genuine

share holders; And six (6) entities have been accepted by Ld CIT(A) and we have confirmed the action of Ld CIT(A) while deciding the Revenue Appeal for AY 2014-15, the action of the Ld CIT(A).

Detail of Share Application Money added u/s 68 of the Act

Sl No	Name of the Party	PAN	Net Worth as per Audited Accounts of March 2015	Face Value @ 100	Premium @ 620	Share Capital with Premium in AY 2015-16	In AY 2014-15	Supportings Enclosed
1	Brijbhumi Commosale Pvt Ltd	AAECB5701C	10,21,11,470	9,25,000	57,35,000	66,60,000	Accepted by CIT(A)	Extract of Balance Sheet, Assessment order
2	Waltaz Commodities Pvt Ltd	AABCW2145G	39,78,13,925	6,80,000	42,16,000	48,96,000	Accepted by AO	Extract of Balance Sheet, Assessment order
3	K A Vanijya Pvt Ltd	AADCK9958K	2,11,12,588	3,57,500	22,16,500	25,74,000	N.A	Extract of Balance Sheet, Assessment order
4	Pragati Complex Advisory Pvt Ltd	AAGCP0516K	7,58,63,413	10,55,500	65,44,100	75,99,600	Accepted by CIT(A)	Extract of Balance Sheet, Assessment order
5	Ojaswini Retailers Pvt Ltd	AABCO6308D	39,52,55,412	8,80,000	54,56,000	63,36,000	Accepted by AO	Extract of Balance Sheet, Assessment order
6	Richifield Vintrade Pvt Ltd	AAFRCR3199H	14,44,43,237	13,10,000	81,22,000	94,32,000	Accepted by CIT(A)	Extract of Balance Sheet, Assessment order
7	Ontime Securities Pvt Ltd	AABCO5525C	11,03,93,680	1,07,100	6,64,020	7,71,120	N.A	Extract of Balance Sheet, Assessment order
8	Newzone Vintrade Pvt Ltd	AADCN6885G	7,89,82,848	9,42,100	58,41,020	67,83,120	Accepted by CIT(A)	Extract of Balance Sheet, Assessment order
9	Mangalkamana Merchants Pvt Ltd	AAHCM2337E	14,84,65,406	11,33,500	70,27,700	81,61,200	Accepted by AO	Extract of Balance Sheet, Assessment order
10	Laxmipurtra Tradecommm Pvt Ltd	AACCL0187C	13,31,01,760	13,48,500	83,60,700	97,09,200	Accepted by CIT(A)	Extract of Balance Sheet, Assessment order
11	Jintan Mercantile Pvt Ltd	AACCJ6360P	15,78,80,606	9,42,000	58,40,400	67,82,400	Accepted by CIT(A)	Extract of Balance Sheet, Assessment order
12	Blue Sky Sales Pvt Ltd	AAECB1131C	18,36,69,993	5,35,700	33,21,340	38,57,040	N.A	Extract of Balance Sheet, Assessment order
13	Needful Projects Advisory Pvt Ltd	AADCN4461C	21,93,10,572	10,92,000	67,70,400	78,62,400	Accepted by AO	Extract of Balance Sheet, Assessment order
14	Ramdot Suppliers Pvt Ltd	AAFRCR1735B	13,29,43,509	11,21,100	69,50,820	80,71,920	Accepted by AO	Extract of Balance Sheet, Assessment order
TOTAL						8,94,96,000		

95. Even though, out of the aforesaid fourteen (14) share holding corporate entities for AY 2015-16, as discussed (supra), five (5) share holding corporate entities have been accepted by AO and six(6)share holding corporate entities have been accepted by Ld CIT(A) for AY 2014-15, which decision of Ld CIT(A) has got our imprimatur, i.e, out of total fourteen (14)share holding corporate entities, remaining share holding corporate entities are only three (3), still we will discuss about all the 14 share holders because we need to examine and satisfy the additional requirement of proviso to section 68 of the Act i.e, *source of source*.

96. The assessee before us produced the following documents to prove the identity from which we note the CIN, PAN and that they have filed their income tax return. The following chart will give these details of fourteen (14) share subscribers.

Sl No	Name of the Party	CIN	PAN	ITR filed for AY 2015-16
1	Brijbhumi Commosale Pvt Ltd	U51909WB2011PTC163205	AAECB5701C	yes
2	Pragati Complex Advisory Pvt Ltd	U74140WB2011PTC162259	AAGCP0516K	yes
3	Richifield Vintrade Pvt Ltd	U51909WB2011PTC163139	AAF3CR3199H	yes
4	Newzone Vintrade Pvt Ltd	U51909WB2011PTC163187	AADCN6885G	yes
5	Laxmipurtra Tradecomm Pvt Ltd	U51909WB2011PTC158663	AACCL0187C	yes
6	Jintan Mercantile Pvt Ltd	U51909WB2011PTC164209	AACCI6360P	yes
7	Waltaz Commodities Pvt Ltd	U74999WB2012PTC174119	AABCW2145G	yes
8	Ojaswini Retailers Pvt Ltd	U51909WB2012PTC175896	AABCO6308D	yes
9	Mangalkamna Merchants Pvt Ltd	U51909WB2011PTC163124	AAHCM2337E	yes
10	Needful Projects Advisory Pvt Ltd	U74999WB2010PTC153183	AADCN4461C	yes
11	Ramdot Suppliers Pvt Ltd	U51909WB2010PTC154877	AAF3CR1735B	yes
12	KA Vanijya Pvt Ltd	U52100WB2010PTC145646	AADCK9958K	yes
13	Ontime Securities Pvt Ltd	U67120WB2011PTC168760	AABCO5525C	yes
14	BlueSky Sales Pvt Ltd	U51909WB2010PTC148059	AAECB1131C	yes

97. From the aforesaid details, we note that all the share-holders are regular income tax assesseees and their respective CIN and PAN details are there. Therefore in the light of the aforesaid documents discussed, identity of share subscribers cannot be disbelieved. Coming to the creditworthiness of the shareholders, our attention was drawn to the balance sheet of the shareholders which was filed before the AO and the Ld. CIT(A). We note that their source of investment and net worth as per balance sheet as on 31.03.2015 as well as the sum invested by them in the assessee is discernible from the paperbook filed before Ld. CIT(A) which are as under:

Sl No	Name of the Party	Source of Investment (Pg No. of CIT(A) Paperbook)	Bank Statement (Pg No. of CIT(A) Paperbook)	Capital & Reserves (Pg No. of CIT(A) Paperbook)	Share Capital with Premium in AY 2015-16
1	Brijbhumi Commosale Pvt Ltd	189	186-188	10,21,11,470 (Page 180 of PB)	66,60,000
2	Pragati Complex Advisory Pvt Ltd	282	280-281	7,58,63,413 (Page 274 of PB)	75,99,600
3	Richifield Vintrade Pvt Ltd	331	328-330	14,44,43,237 (Page 322 of PB)	94,32,000
4	Newzone Vintrade Pvt Ltd	373	370-372	7,89,82,848 (Page 361 of PB)	67,83,120
5	Laxmipurtra Tradecomm Pvt Ltd	427	424-426	13,31,01,760 (Page 415 of PB)	97,09,200

6	Jintan Mercantile Pvt Ltd	448	445-447	15,78,80,606 (Page 437 of PB)	67,82,400
7	Waltaz Commodities Pvt Ltd	193	194-198	39,78,13,925 (Page 216 of PB)	48,96,000
8	Ojaswini Retailers Pvt Ltd	286	287-290	39,52,55,411 (Page 303 of PB)	63,36,000
9	Mangalkamna Merchants Pvt Ltd	403	400-402	14,84,65,406 (Page 392 of PB)	81,61,200
10	Needful Projects Advisory Pvt Ltd	487	486	21,93,10,572 (Page 478 of PB)	78,62,400
11	Ramdot Suppliers Pvt Ltd	503	502	13,29,43,509 (Page 494 of PB)	80,71,920
12	KA Vanijya Pvt Ltd	230	260-261	2,11,12,588 (Page 253 of PB)	25,74,000
13	Ontime Securities Pvt Ltd	333-334	335-336	11,03,93,680 (Page 341 of PB)	7,71,120
14	BlueSky Sales Pvt Ltd	450-451	452	18,36,69,993 (Page 459 of PB)	38,57,040

98. So, from perusal of the above chart, we note that the assessee have brought to the notice of AO & CIT(A) that share subscribers have enough net worth to invest in the assessee company. The assessee had produced the Audited accounts of the share subscribing companies from which the aforesaid facts are clearly discernible. Thus the assessee had discharged the onus about the creditworthiness of the share-holders. Further, we note that the bank statements of the shareholders as well as that of assessee were filed before the AO, a perusal of which revealed that the share capital and premium have been subscribed by them through banking channel (NEFT or cheque) which goes on to show that the assessee has discharged the onus in respect of genuineness of the transaction since no cash deposits can be seen from the bank statements. In such a scenario, the view of the lower authorities based on the documents referred to supra is not tenable and is not in consonance with judicial precedents (supra). However we would like to discuss/ examine about each share subscribers totalling Fourteen (14) as follows especially the *source of source*:

(i) On perusal of the paper book, it reveals that the documents are placed at page 170 to 190 of share applicant M/s. BrijbhumiCommosale Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AAECB5701C and CIN U51909WB2011PTC163205 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 10,21,11,470/- and the investment made in the assessee-company including the share premium comes to

Rs.66,60,000/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of BrijbhumiCommosale Pvt Ltd enclosed at page no 186-188 of paper book it is clear that the share subscriber has invested Rs. 66,60,000/- in the assessee company on various dates as follows : on 16.08.2014 Rs. 33.30 lakhs, on 29.01.2015 Rs. 4.30 lakhs, on 30.01.2015, Rs. 7.00 lakhs and on 03.02.2015 Rs. 22 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 189 of Paper book.

(ii) On perusal of the paper book, it reveals that the documents are placed at page 264 to 283 of share applicant **M/s. Pragati Complex Advisory Pvt Ltd** which is a Private Limited Company, and which has Permanent Account No. AAGCP0516K and CIN U74140WB2011PTC162259 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs.7,58,63,413/- and the investment made in the assessee-company including the share premium comes to Rs.75,99,600/-. The payment has been made through banking channel and this share applicant has made the transaction through banking channel through cheque. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee- company and the

transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers have to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of **Pragati Complex Advisory Pvt Ltd** enclosed at page no 280-281 of paper book it is clear that the share subscriber has invested Rs. 75,99,600/- in the assessee company as follows : on 16.08.2014 Rs. 37.998 lakhs and on 03.02.2015Rs. 37.998 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 282 of Paper book.

(iii) On perusal of the paper book, it reveals that the documents are placed at page 312 to 332 of share applicant **M/s. Richifiel Vintrade Pvt Ltd** which is a Private Limited Company, and which has Permanent Account No. AAFCR3199H and CIN U51909WB2011PTC163139 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 14,44,43,237/- and the investment made in the assessee-company including the share premium comes to Rs.94,32,000/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of **M/s. Richifiel Vintrade Pvt Ltd** enclosed as page no 328-330 of paper book it is clear that the share subscriber has invested Rs. 94,32,000/- in the assessee company on various dates as follows : on 21.08.2014 Rs. 47.16 lakhs and on 29.01.2015Rs. 47.16 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 331 of Paper book.

(iv) On perusal of the paper book, it reveals that the documents are placed at page 352 to 374 of share applicant M/s. NewzoneVintrade Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AADCN6885G and CIN U51909WB2011PTC163187 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs.7,89,82,848/- and the investment made in the assessee-company including the share premium comes to Rs.67,83,120/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers have to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. NewzoneVintrade Pvt. Ltd. enclosed as page no 370-372 of paper book it is clear that the share subscriber has invested Rs. 67,83,120/- in the assessee company on various dates as follows : on 21.08.2014 Rs. 33.9156 lakhs and on 11.03.2015 Rs. 33.9156 lakh through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 373 of Paper book.

(v) On perusal of the paper book, it reveals that the documents are placed at page 405 to 428 of share applicant M/s. LaxmipurtraTradecomm Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AACCL0187C and CIN U51909WB2011PTC158663 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 13,31,01,760/- and the investment made in the assessee-company including the share premium comes to Rs.97,09,200/-. There is Bank statement; ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share

applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Laxmipurtra Tradecomm Pvt Ltd enclosed as page no 424-426 of paper book it is clear that the share subscriber has invested Rs. 97,09,200/- in the assessee company on various dates as follows : on 21.08.2014 Rs. 48.54 lakhs, on 20.01.2015 Rs. 30.00 lakhs and on 21.01.2015Rs. 18.546 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 427 of Paper book.

(vi) On perusal of the paper book, it reveals that the documents are placed at page 429 to 449 of share applicant M/s. Jintan Mercantile Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AACCCJ6360P and CIN U51909WB2011PTC164209 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 15,78,80,606/- and the investment made in the assessee-company including the share premium comes to Rs.67,82,400/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Jintan Mercantile Pvt Ltd enclosed as page no 445-447 of paper book it is clear that the share subscriber has invested Rs. 67,82,400/- in the assessee company on various dates as follows : on 16.08.2014Rs. 33.912 lakhs, on 20.01.2015Rs. 20.00 lakhs and on 27.01.2015Rs. 13.912 lakhs through banking channel. From perusal of bank statement

it is evident that there was no cash deposit. Confirmation of its source is provided in Page 448 of Paper book.

(vii) On perusal of the paper book, it reveals that the documents are placed at page 191-224 of share applicant M/s. Waltaz Commodities Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AABCW2145G and CIN U74999WB2012PTC174119 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs.39,78,13,925/- and the investment made in the assessee-company including the share premium comes to Rs.48,96,000/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Waltaz Commodities Pvt Ltd enclosed as page no 194-198 of paper book it is clear that the share subscriber has invested Rs. 48,96,000/- in the assessee company on various dates as follows : on 22.08.2014 Rs. 6.48 lakhs, on 25.08.2014 Rs. 18.00 lakhs and on 19.01.2015 Rs. 24.48 lakh through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 193 of Paper book.

(viii) On perusal of the paper book, it reveals that the documents are placed at page 284 to 311 of share applicant M/s. Ojaswini Retailers Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AABCO6308D and CIN U51909WB2012PTC175896 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs.39,52,55,411/- and the investment made in the assessee-company including the share premium comes to Rs.63,36,000/-. There is

Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Ojaswini Retailers Pvt Ltd enclosed as page no 287-290 of paper book it is clear that the share subscriber has invested Rs. 63,36,000/- in the assessee company on various dates as follows : on 22.08.2014 Rs. 22.68 lakhs, on 25.08.2014 Rs. 9.00 lakhs , on 19.01.2015 Rs. 31.66 lakhs and on 05.02.2015 Rs. 0.02 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 286 of Paper book.

(ix) On perusal of the paper book, it reveals that the documents are placed at page 375 to 404 of share applicant M/s. Martgalkarnna Merchants Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AAHCM2337E and CIN U51909WB2011PTC163124 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 14,84,65,406/-and the investment made in the assessee-company including the share premium comes to Rs.81,61,200/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s.

Mangalkamna Merchants Pvt Ltd enclosed as page no 400-402 of paper book it is clear that the share subscriber has invested Rs. 81,61,200/- in the assessee company on various dates as follows : on 14.08.2014 Rs. 40.806 lakhs and on 29.01.2015 Rs. 40.806 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 403 of Paper book.

(x) On perusal of the paper book, it reveals that the documents are placed at page 469 to 488 of share applicant M/s. Needful Projects Advisory Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AADCN4461C and CIN U74999WB2010PTC153183 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs.21,93,10,572/-and the investment made in the assessee-company including the share premium comes to Rs.78,62,400/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of sWe subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Needful Projects Advisory Pvt Ltd enclosed as page no 486 of paper book it is clear that the share subscriber has invested Rs. 78,62,400/- in the assessee company on various dates as follows : on 16.08.2014 Rs. 39.312 lakhs, on 04.02.2015 Rs. 10.00 lakhs and on 07.02.2015 Rs. 29.312 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 487 of Paper book.

(xi) On perusal of the paper book, it reveals that the documents are placed at page 489 to 504 of share applicant M/s. Ramdot Suppliers Pvt Ltd which is a Private Limited

Company, and which has Permanent Account No. AAFCR1735B and CIN U51909WB2010PTC154877 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 13,29,43,509/- and the investment made in the assessee-company including the share premium comes to Rs. 80,71,920/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Ramdot Suppliers Pvt Ltd enclosed as page no 502 of paper book it is clear that the share subscriber has invested Rs. 80,71,920/- in the assessee company on various dates as follows : on 12.08.2014 Rs. 40.359 lakhs and on 09.02.2015 Rs. 40.359 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 503 of Paper book.

(xii) On perusal of the paper book, it reveals that the documents are placed at page 225 to 263 of share applicant M/s. KA Vanijya Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AADCK9958K and CIN U52100WB2010PTC145646 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs.2,11,12,588/- and the investment made in the assessee-company including the share premium comes to Rs.25,74,000/-. There is Bank statement, ITR acknowledgement and financial statement. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction

has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. KA Vanijya Pvt Ltd enclosed as page no 260-261 of paper book it is clear that the share subscriber has invested Rs. 25,74,000/- in the assessee company on various dates as follows : on 22.08.2014 Rs. 12.87 lakhs and on 17.01.2015 Rs. 12.87 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 230 of Paper book.

(xiii) On perusal of the paper book, it reveals that the documents are placed at page 333 to 351 of share applicant M/s. Ontime Securities Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AABC05525C and CIN U67120WB2011PTC168760 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 11,03,93,680/- and the investment made in the assessee-company including the share premium comes to Rs.7,71,120/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. Ontime Securities Pvt Ltd enclosed as page no 335-336 of paper book it is clear that the share subscriber has invested Rs. 7,71,120/- in the assessee company on various dates as follows : on 18.08.2014 Rs. 3.856 lakhs and on 10.03.2015 Rs. 3.856 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 333-334 of Paper book.

(xiv) On perusal of the paper book, it reveals that the documents are placed at page 450 to 468 of share applicant M/s. BlueSky Sales Pvt Ltd which is a Private Limited Company, and which has Permanent Account No. AAECB1131C and CIN U51909WB2010PTC148059 and its Net-worth as on 31.03.2015 (in total)- share capital & reserve is to the tune of Rs. 18,36,69,993/- and the investment made in the assessee-company including the share premium comes to Rs. 38,57,040/-. There is Bank statement, ITR acknowledgement and financial statement available. This share applicant regularly filed Income Tax Return (ITR) and it has filed its Bank statement. Financial statement and source of fund of share subscriber has been duly filed. Thus we note that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing PAN as well as income-tax returns. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. Since the case pertains to AY 2015-16, the share subscribers has to show the source of its fund for subscribing to the share capital/premium of the assessee company. From the bank statement of M/s. BlueSky Sales Pvt Ltd enclosed as page no 335-336 of paper book it is clear that the share subscriber has invested Rs. 38,57,040/- in the assessee company on various dates as follows : on 18.08.2014 Rs. 19.285 lakhs and on 10.03.2015 Rs. 19.285 lakhs through banking channel. From perusal of bank statement it is evident that there was no cash deposit. Confirmation of its source is provided in Page 333-334 of Paper book.

99. From the aforesaid facts discussed, we are of the view that assessee has discharged its onus casted upon it to prima facie prove the identity, creditworthiness and genuineness of the share-subscribers and the share capital and premium collected by it. And the additional requirement of *source of source* of the share capital and premium has also been brought to the notice of lower authorities, including the confirmation is there on record. Therefore, the addition u/s 68 of the Act was not warranted and therefore we direct deletion of addition of Rs. 8,94,96,000/-. In the result, the appeal of the assessee succeeds and is allowed.

ITA 115/Kol/2020 for (AY 2016-17) (Revenue's Appeal)

100. This is an appeal preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals)-4, Kolkata dated 18.11.2019 for A.Y 2016-17. Though the Revenue has raised 29 grounds of appeal, according to the Ld. CIT-DR, the main grievance of the Revenue is against the action of the Ld. CIT(A) in deleting the addition of Rs.11,40,00,000/- and disallowance of interest claimed to be paid by assessee to the lenders to the tune of Rs 31,99,351/-.

101. Brief facts as noted by the A.O on this issue are that the A.O on perusal of the balance sheet of the assessee noted that the assessee has taken short-term borrowings/unsecured loan of Rs.37,51,30,470/- as on 31.03.2016. Therefore, the A.O asked the assessee to give details. According to the A.O, the assessee company furnished details. However, on going through the details of loan creditors as submitted by the assessee, it was noted by him that some of the loan creditors concerns were paper concerns/jamakharchi concerns managed and controlled by entry operators. The details of eight (8) paper concerns and the respective entry operators according to the A.O are as under:

<i>Sl. No.</i>	<i>Name of the concern</i>	<i>Managed & controlled by the Entry operator</i>
1	<i>M/s Ujjwal Cloth Marketing Pvt. Ltd.</i>	<i>Ankit Bagri</i>
2	<i>M/s. Trimurti Vincom Pvt. Ltd.</i>	<i>Pranaw Kumar Modi</i>
3	<i>M/s. Top Class Logistic Pvt. Ltd.,</i>	<i>Akash Agarwal</i>
4	<i>M/s. Sanwaria Marketing Pvt. Ltd.</i>	<i>Vijay Kumar Gupta</i>
5	<i>M/s. Gonedawala Developers Pvt. Ltd.</i>	<i>Prawesh Beria</i>
6	<i>M/s. Dhanviradhi Suppliers Pvt. Ltd.,</i>	<i>Shankar Khetan</i>
7	<i>M/s. Brijwasi Vinimay Pvt. Ltd.</i>	<i>Jivendra Mishra</i>
8	<i>M/s. Anjani Tradelinks Pvt Ltd.</i>	<i>Pranaw Modi</i>

102. Thereafter, he extracted certain statement of the aforesaid entry operators namely, Shri Jivendra Mishra, Shri Pranaw Kumar Modi, Shri Ankit Bagri, Shri Akash Agarwal, and Shri Vijay Kumar Gupta. The AO issued notices u/s 131 on 06.12.2018 requiring the presence of ten (10) following lender companies/parties before him on 14.12.2018:

- 1) M/s. Ujjwal Cloth Marketing Pvt. Ltd.,
- 2) M/s. Trimurti Vincom Pvt. Ltd.,
- 3) M/s. Top Class Logistic Pvt. Ltd.,
- 4) M/s. Tigerhill Vanijya Pvt. Ltd.
- 5) M/s. Ritman Commodities Pvt. Ltd.,
- 6) M/s. Sanwaria Marketing Pvt. Ltd.,
- 7) M/s. Gonedawala Developers Pvt. Ltd.,
- 8) M/s. Dhaaviradni Suppliers Pvt. Ltd.,
- 9) M/s. Brijwasi Viniinay Pvt. Ltd. and
- 10) M/s. Anjani Tradelinks Pvt. Ltd.

103. However, according to the AO in response to the notices u/s 131 of the Act compliances were made only by two (2) companies and the loans received from these companies were accepted by the AO. In respect of the remaining eight (8) companies, the AO drew adverse inference primarily because the notices u/s 131 remained un-complied with. According to the AO the failure of the loan creditors/directors to appear before him and confirm the transactions was sufficient reason to hold that the amounts of ICDs received were not genuine and assessable as income u/s 68 of the Act. The alleged transactions of unsecured loan and interest expenses of the aforesaid parties on which the AO made the addition are as under:

Sl. No.	Name of the party	Amount of loan received during the year	Interest paid during F.Y.2015-16
1.	M/s. Ujjwal Cloth Marketing Pvt. Ltd.	Rs.50 lacs	Rs.60,109/-
2	M/s. Trimurti Vincom Pvt. Ltd.	Rs.15 lacs	Rs.38,852/-
3	M/s. Top Class Logistic Pvt. Ltd.,	Rs.25 lacs	Rs.68,306/-
4	M/s. Sanwaria Marketing Pvt. Ltd.	Rs.4.5Crore	Rs.5,02,740/-
5	M/s.Gonedawala Developers Pvt. Ltd.	Rs.50 lacs	Rs.5,95,068/-
6.	M/s. Dhanviradhi Suppliers Pvt. Ltd.	Rs.5 Crore	Rs.18,89,344/-
7	M/s. Brijwasi Viniinay Pvt. Ltd.	Rs.25 lacs	Rs.14,795/-
8	M/s. Anjani Tradelinks Pvt. Ltd.	Rs.25 lacs	Rs.30.137/-
	Total	Rs.11.40 Crores	Rs.31,99,351/-

104. The A.O taking note that since directors of the aforesaid companies didn't turn up before him, has drawn adverse inference against the lender companies and made an addition of Rs.11,40,00,000/- u/s 68 of the Act.

105. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who was pleased to give relief to the assessee after taking note of the following facts as under:

“As hardly any time was given by the AO to assessee to produce these parties before the AO therefore during the course of appellate proceedings the AO was requested vide letter dated 08/05/2019 to submit a report regarding these loan creditors. However, till 18/11/2019 no such report OR any objections have been received in this office and therefore the appeal is decided on the basis of material on record.

Paper Book

1. Copy of the audited accounts of the company for FY 2015-16
2. Statement giving particulars of ICDs Received from & Companies totaling Rs. 11.40 crs. Assessee u/s 68
3. Copy of the order of the Ld. CIT(A) for AY 2015-16
4. In respect of ICDs received from:-

A. Ujjwal Cloth Marketing Pvt. Ltd.

- i) Copy of I.T. Acknowledgement For AY 2016-17
- ii) Copy of the Audited Accounts for AY 2016-17
- iii) Copy of the Bank Statement Depicting ICD Transactions
- iv) Account confirmation for FY 2015-16, 2016-17 & 2017-18
- v) Company Master Data

B. Trimurti Vincom Pvt. Ltd.

- i) Copy of I.T. Acknowledgement For AY 2016-17
- ii) Copy of the Audited Accounts for AY 2016-17
- iii) Copy of the Bank Statement Depicting ICD Transactions
- iv) Account confirmation for FY 2015-16, 2016-17
- v) Company Master Data

C. Top Class Logistics Pvt. Ltd.

- i) Copy of I.T. Acknowledgement For AY 2016-17
- ii) Copy of the Audited Accounts for AY 2016-17
- iii) Copy of the Bank Statement Depicting ICD Transactions
- iv) Account confirmation for FY 2015-16, 2016-17 & 2017-18
- v) Company Master Data

D. Sanwaria Marketing Pvt. Ltd.

- i) Copy of letter dated 13.12.2018 submitted to IT Department Directly
- ii) Copy of the Audited Accounts for AY 2016-17
- iii) Account confirmation for FY 2015-16, 2016-17 & 2017-18
- iv) Company Master Data

E. Gonedawala Developers Pvt. Ltd.

- i) Copy of the Audited Accounts for AY 2016-17
- ii) Company Master Data

F. Dhanvirdhi Suppliers Pvt. Ltd.

- i) Copy of letter dated 27.12.2018 submitted to IT Department Directly
- ii) Copy of I.T. Acknowledgement For AY 2016-17
- iii) Copy of the Audited Accounts for AY 2016-17
- iv) Copy of the Bank Statement Depicting ICD Transactions

- v) *Account confirmation for FY 2015-16, 2016-17 & 2017-18*
- vi) *Company Master Data*
- vii) *Copy of Form 26AS*

G. *Brijwasi Vinimay Pvt. Ltd.*

- i) *Copy of letter dated 27.12.2018 submitted to IT Department Directly*
- ii) *Copy of I.T. Acknowledgement For AY 2016-17*
- iii) *Copy of the Audited Accounts for AY 2016-17*
- iv) *Copy of the Bank Statement Depicting ICD Transactions*
- v) *Account confirmation for FY 2015-16, 2016-17 & 2017-18*
- vi) *Company Master Data*
- vii) *Copy of Form 26AS*

H. *Anjani Tradelinks Pvt. Ltd.*

- i) *Copy of I.T. Acknowledgement For AY 2016-17*
- ii) *Copy of the Audited Accounts for AY 2016-17*
- iii) *Copy of the Bank Statement Depicting ICD Transactions*
- iv) *Account confirmation for FY 2015-16, 2016-17 & 2017-18*
- v) *Company Master Data*

5. *Details of foreign sales commission paid during FY 2015-16*

6. *Few samples copies of letters of appointment given to Foreign Agents namely:*

- a. *Cogetex S.A.*
- b. *Dante Manfredi*
- c. *Elite Global Ventures Pte Ltd.*
- d. *Inteks Tekstil Sanayi Disticaret Ltd.*
- e. *Interfil S.P.A*
- f. *Lomat International HV*
- g. *MGSGC&S & LLC, DBA Seven Hills Imports*
- h. *TAC IC Distic Ltd. STI*
- i. *Weber & Heusser GMBH & Co. KG*

7. *Few sample copies of tax residency certificate provided by foreign agents namely:*

- a. *COGETEX SA*
- b. *DANTE MANFREDI*
- c. *INTEKS TEKSTIL SANAYI DISTICARET LTD*
- d. *INTERFIL SPA*
- e. *MAGSGC&S LLC, DBA SEVEN HILLS IMPORTS*
- f. *TAC DIS TIC LTD, STI*
- g. *H.W.H. BIENZEISLER GMBH*
- h. *PT. SILVER LINE INTERNATIONAL*
- i. *RMV OVERSEAS LTD.*
- j. *TEXIENCE*

8. *Details of foreign sales commission paid in prior two years*

9. *Copy of the ITAT Kolkata's decision in the case of Lux Industries Ltd. in ITA Nos. 1144&1145/Kol/2015 dated 27.06.2018*

10. Copy of the ITAT Kolkata's decision in the case of on process technology India pvt. Ltd..in ITA NO. 1047/Kol/2016 dated 24.05.2018.

A copy of above mentioned documents was already forwarded to the AO while seeking remand report in this case. In this case there were 127 entities from whom loan amounting Rs. 37.51 crore was taken by the assessee during the year under consideration. Out of these 127 parties AO chose to verify the following eight (08) parties :

- i) M/s. Ujjwal Cloth Marketing Pvt. Ltd.,
- ii) M/s. Trimurti Vincom Pvt. Ltd.,
- iii) ' M/s. Top Class Logistic Pvt. Ltd.,
- iv) M/s. Sanwaria Marketing Pvt. Ltd.,
- v) M/s. Gonedawala Developers Pvt. Ltd.,
- vi) M/s. Dhanvridhi Suppliers Pvt. Ltd.,
- vii) M/s. Brijwasi Vinimay Pvt. Ltd.,
- viii) M/s. Anjani Tradelinks Pvt. Ltd.

The parties were selected alleging that the entities belong to a known entry operators of Kolkata and along with the name of the company, name of the entry operator was also given. The AO has also copied statement given by these entry operators to Investigation Wing, Kolkata. On verification, it is noted that:

i) The AO simply reproduced the contents of some statements recorded before the Investigation Wing Kolkata without disclosing the context and relevance.

The AO has not reproduced any part of the statement in which these eight companies have been named by any of these entry operators before the Investigation Wing. -

ii) The Statement copied by the AO in the Assessment Order are all pre dated to the loan transaction.

iii) The AO has not recorded statement of any single operator allegedly controlling the above mentioned eight entities during the Course of assessment or used any material whereby it can be inferred that during the relevant period these entities were controlled by the alleged entry operators.

iv) In case of Anjani Tradelinks Private Limited, the name in the list of jamakharchi companies/paper companies was Anjani Suppliers Private Limited however AO selected and treated Anjani Tradelinks Private Limited as jamakharchi company/paper company without assigning any reason.

v) The AO issued summons u/s. 131 at fag end of the financial year when the case was about to be get barred by limitation, thereby giving-hardly any time to the assessee or the parties to whom summons u/s. 131 were issued.

vi) The AO did not find any discrepancy in the documents filed before him either by the assessee or the concerned parties.

vii) The AO gave an opportunity to the assessee to produce these parties on 26.12.2018. However, after one day i.e on 28.12.2018 assessment was completed.

ix) Even during the course of appellate proceedings, an opportunity was given to the AO vide letter dated 07.05.2019 by the undersigned with a request to submit the remand report latest by 03.06.2019. However, no remand report was submitted by the AO even after six months and till the passing of this order. All the documents submitted by the assessee before the undersigned regarding these parties were already forwarded to the AO. These documents as per the claim made by the assessee were produced/available with the AO. However, till the date of passing of this order neither any defect was pointed by the AO in the documents filed by the assessee nor any verification was made. It is also noted that the AO ignored the material on record which was submitted before the AO. The response filed by the loan creditors were completely ignored and the assessment was completed on 28.12.2018. It is noted that in some of the cases the details were submitted between 17.12.2018 to 31.12.2018. In the details filed, it is noted that none of the company appears to be a shell company. For example, Dhanvridhi Suppliers Pvt. Ltd. is being assessed in, the same PCIT charge and duly assessed for Income taxes. Similarly, Sanwaria Marketing Pvt. Ltd. was found to be not a shell company by my predecessor while deciding the appeal of the assessee company for A.Y. 2015-16. The other six companies were also found to be having sufficient resources to provide loan to the assessee company. The details in this regard has already been in the appellate order.

In view of the above, it is seen that the only criteria adopted by the AO seems to be the physical presence of the Directors of these donor companies rather than the strength of their Financial Statements. It is to be mentioned that the section 68 requires assessee to furnish the explanation. As per various judicial pronouncements, this explanation must satisfy the three basic criteria of identity, genuineness and creditworthiness. Once assessee explains these three ingredients before the AO, it is for AO to specify as what is lacking in the explanation given by the assessee and make further enquiries and bring cogent material to brush aside the explanation given by the assessee and make an addition u/s. 68 of the I. T. Act, 1961. It is the prime duty of the AO to do so. In this case, verification of loan was not one of the criteria for selection of case by CASS. However, AO chose to verify the same. Even during verification, loans received from 117 parties were accepted without verifying whether these companies were having any creditworthiness or whether they are shell companies or whether transactions are genuine or not. Even the AO has not adhered to the principal of physical presence of the director in compliance to summons issued u/s. 131 of the Income Tax Act, 1961. AO had issued summons to nineteen parties u/s. 131 for verification. None of the directors of these nineteen companies barring two companies attended before the AO, however, the AO did not make any addition to the income of the assessee in respect of the nine parties as unverified debtors. In-fact in one case i.e. M/s. Laxman Suppliers Pvt. Ltd. no information whatsoever was submitted however, the AO accepted the same and no addition was made.

Coming back to these eight parties, out of the eight, five parties have submitted the desired information before the AO. The information provided by these parties is in time and absolutely same as provided by the Tigerhill Vanijya Pvt..Ltd. and Ritman Commodities Pvt. Ltd. (the two parties which have been accepted by the AO as genuine). However, these details have been completely ignored without pointing out any mistake. In respect of remaining three parties also, absolutely same information has been provided but the AO preferred to ignore the same. It is to be noted that these three parties were not given any opportunity to submit their confirmation at the time of assessment as the summons were not served on them due to wrong or inaccurate address mentioned on the summons issued by the AO u/s. 131. It is pertinent to note here that even during the course of remand proceedings, the AO has not made any efforts to issue summons on the correct address and collect desired information. It is also seen

that in one case the AO has not even opened the envelope in which the information was received.

From the above, it can be seen that the addition has been made in an ad-hoc manner without considering the circumstances, factual details and marshalling the available facts on record and coming to a logical conclusions. Therefore, the additions cannot be sustained.

As established above, it can be seen that addition has been made in a haphazard and in an ad hoc manner and without any basis. Therefore, the addition made by the AO are not on the basis of merit but in a whimsical manner. The assessing officer, has placed reliance on the decision of jurisdictional High Court in the case of CIT versus Precision Finance Private limited 208 ITR 463 wherein the honorable High Court has held that:

"it is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. The enquiry of the ITO revealed that either the assessee was not traceable or there was no such file...creditworthiness".

In this case however the facts are totally different. The assessee has submitted relevant documents however no field enquiry was conducted by the AO and therefore the AO could not have concluded that the companies was not traceable. Therefore, the ratio of above-mentioned case cannot be applied to the present appeal.

106. Thereafter the Ld. CIT(A) while giving relief to the assessee has made the following findings of fact in respect of each lender companies:

"An analysis of Balance sheet and profit and loss account of all these companies does show that these companies are not shell companies and have substantial assets in their balance sheets and most of these companies are now controlled by one or the other reputed group of Kolkata. The assessee was asked to give evidence in support of the fact that the lender companies have substantial genuine asset and other evidence of genuineness. In reply the AR downloaded the data relating to lender companies from ROC website. The submissions given by the AR was cross checked and found to be correct.

The same is summarized below:

1. **Ujjwal Cloth Marketing Pvt. Ltd:**

The appellant had taken loan of Rs.50,00,000/- from the said Company on 17th February 2016. The loan amount was paid by the said Company from its Current A/c with RBL Bank, J. L. Nehru Road, Kolkata by way of RTGS. Copy of the relevant Bank statement is enclosed. Copy of the Account Confirmation for the F.Ys. 2015-16, 2016-17 & 2017-18 is also enclosed. It will be noted that this loan was fully repaid on 07.08.2017. The Regd. Office of Ujjwal Cloth Marketing Pvt. Ltd is at 4th Floor, 23B, N. S. Road, Kolkata. The Company's registered office was earlier located at 21, Muktaram Babu Street, 2nd Floor, Kolkata 700007. As per the Company Master Data extracted from Website of Ministry of Corporate Affairs, status of the Company as of date is active. The said Company is regularly assessed under PAN: AABCU2641M and for the A.Y. 2016-17 Return of income was furnished electronically on 17.10.2016 declaring total income of Rs. 1,24,834/-. Copy of Acknowledgement is enclosed.

We also enclose herewith Copy of the Audited Balance Sheet of Ujjwal Cloth Marketing Pvt. Ltd for year ended 31.03.2016. It will be noted from the audited account that there was no increase in the paid up capital of the creditor-company during the relevant

year. The creditor company's net owned funds in the form of Capital 8s Reserves were Rs. 14,56,93,873/-. As per the Balance Sheet, M/s. Ujjwal Cloth Marketing Pvt. Ltd had granted loans 8s advances to the tune of Rs. 14,60,60,054/-. The said Company had also made investments in shares of other Companies having cost of Rs.5,25,10,511/-. It is also material to note that on the loans granted; M/s. Ujjwal Cloth Marketing Pvt Ltd earned interest income of Rs.92,20,817/- which inter-alia included interest of Rs.60,109/- which was payable by the assessee. Your goodself will therefore note that besides the interest income earned from the appellant Ujjwal Cloth Marketing Pvt Ltd had declared interest income in excess of Rs. 91 Lacs from the other loans as well. It is also evident that in respect of such interest income the taxes were deducted by the Payers and therefore the creditor company had claimed refund of Rs.8,57,130/- out of TDS.

2. **Trimurti Vincom Pvt. Ltd:**

The assessee had obtained loan of Rs. 15,00,000/- on 13.01.2016. This loan was repaid in October 2016. Copies of the loan confirmations are enclosed.

The said Company's Regd. Office is situated at 318, Hossainpur, Tiljala, IKolkata-700 107. As per the Company Master Data Company's current status is active. The said Company is assessed to tax under PAN: AADCT6881G. For the A.Y. 2016-17 it filed Return of income on 08.10.2016 and copy of the I.T Acknowledge is enclosed. The loan of Rs. 15,00,000/- was paid by the said Company from its Bank A/c No. 0262102000011972 by way of RTGS. Copy of the Bank Statement is enclosed. From the Balance Sheet of the said Company it will be noted that during the relevant year there was no increase in the paid up capital and the net owned funds as at 31.03.2016 were Rs. 15,39,44,741/-. The Company held bank balance of Rs.13.11 Lacs and Loans & Advances granted were Rs. 11,04,75,563/-. Besides it was also having investments in shares at cost of Rs.4,16,77,250/-. During the F.Y. 2015-16 the said Company earned interest income of Rs.75,44,100/- which inter-alia included interest of only Rs.38,852/- paid by the assessee. It will therefore be noted that besides the assessee it had derived interest in excess of Rs.75 Lacs from other Parties and therefore it was not a case that only the assessee had received the loans from Trimurti Vincom Pvt. Ltd.

3. **Top Class Logistics Pvt. Ltd:**

Inter-Corporate Deposit of Rs.25,00,000/- was received from this loan creditor on 23.12.2015. This loan was outstanding till 31.03.2018. from copies of the enclosed account confirmations it will be noted that the assessee regularly paid interest on this ICD; year-after-year and in the Account Confirmations the loan creditor acknowledged assessee's loan transaction as well as interest payments; made in each of the 3 Financial Years till 31.03.2018. As per the Company Master Data Regd. Office of the creditor is at Room No. 601, Narayani Building, 27, Brabourne Road, Kolkata. The loan of Rs.25,00,000/- was paid from A/c No. 6268831095 with Indian Bank, Strand Road Branch, Kolkata and copy of the Bank statement is enclosed. The said Company is regularly assessed to tax under PAN: AADCT5726C. For the A.Y. 2016-17 Return of income was furnished on 17.10.2016 declaring total income of Rs. 18,53,276/-. For your kind perusal and record, we enclose herewith copy of audited accounts for the year ended 31.03.2016. It will be observed that the said Company's paid up capital remained same at Rs.25,60,000/-. The Company's net owned funds in the form of Capital 6s Reserves was Rs. 12,48,19,072/-. The Loans 6s Advances granted by the Company as on 31.03.2016 were Rs.6,61,91,843/- and investments in shares was Rs.576 Lacs. The Company's Bank balance as on 31.03.2016 was Rs.8,14,129/-. During the F. Y. 2015-16 it had earned interest income of Rs. 62,00,121/- which inter-alia included interest of only Rs.68,306/- paid by the assessee. It will therefore be noted that besides the interest received from the assessee; M/s. Top Class Logistics Pvt. Ltd earned interest in excess of Rs.61 Lacs from other Parties and the same was accounted in the books of the creditor.

4. **Sanwaria Marketing Pvt. Ltd:**

M/s. Sanwaria Marketing Pvt. Ltd was a Company with whom the appellant had transactions in the earlier year as well. The opening outstanding balance due to M/s. Sanwaria Marketing Pvt. Ltd was Rs.1 Crore. M/s. Sanwaria Marketing Pvt. Ltd is having its Regd. Office at 176, Jamuna Lai Bajaj Street, Kolkata -700007. Besides it is having Administrative Office at 10/3, Acropolis, 1858/1, Rajdanga Main Road, Kolkata. Your goodself will note that the opening balance due to M/s. Sanwaria Marketing Pvt. Ltd was Rs. 1 Crore which was fully repaid on 02.04.2015. Thereafter the said Company granted following ICDs during F.Y. 2015-16:

Date	Amount
24.08.2015	Rs. 1,50,00,000/-
21.12.2015	Rs. 1,00,00,000/-
22.12.2015	Rs. 1,00,00,000/-
16.02.2016	Rs. 1,00,00,000/-

The loan of Rs.150 Lacs accepted on 24.08.2015 was fully repaid along with interest on 18.09.2015. The loan taken on 21.12.2015 was refunded on the same date and another Cheque for Rs.1 Crore was paid by the Party on 22.12.2015. As such the entries of Rs.1 Crore appearing in the books on 21.12.2015 are in fact contra-entries and the loan of Rs.1 Crore was actually taken on 22.12.2015. Loan of Rs.2 Crores taken in the month of December & February together with accrued interest of Rs.3,59,999/- remained outstanding as of 31.03.2016. The appellant submits that it has financial transactions with the said creditor even in the subsequent 2 financial years and account confirmations issued by the creditor are enclosed for your ready reference and record. It is pertinent to state that in response to Summons u/s 131 of the Act the said loan creditor had furnished the required information by sending a letter through Speed post on 13.12.2018 and copy thereof is enclosed for your ready reference and record. We also enclose herewith copy of the audited accounts of Sanwaria Marketing Pvt. Ltd for the year ended 31.03.2016. You will note there from that there was no increase in the Paid up capital of the creditor company; which remained unchanged at Rs.21,22,000/-. The Company's net owned funds in the form of Capital & Reserves were Rs. 12,05,79,254/-. You will also note that the Company's net profit for the F.Y. 2015-16 was Rs.80,78,899/-. The Loans & Advances granted by the Company were Rs.11,87,20,293/- as on 31.03.2016 from which the company derived interest income of Rs. 1,35,04,004/-. Such interest income inter-alia included interest paid by the assessee amounting to only Rs.5,02,750/-. Your goodself will thus note that besides the assessee M/s. Sanwaria Marketing Pvt. Ltd had earned interest of Rs.130 Lacs from various other Parties to whom it had advanced loans. Your goodself will also note that in respect of such interest income the Payers had deducted tax of Rs. 13,50,401/- which duly appeared in the Balance Sheet of the said Company. Your goodself will further note that besides the interest income the said company had also earned Long Term Capital Gain of Rs. 10,93,196/-. It may also be pertinent to submit that in the preceding year also the loan received from Sanwaria Marketing Pvt. Ltd was assessed as cash credit u/s 68. In fact in the immediately preceding year the AO had considered the Inter-corporate deposits received from 33 Companies to be unexplained cash credit and this inter-alia included Sanwaria Marketing Pvt. Ltd. The CIT (A) after appreciating the documents & evidences brought on record deleted the addition made u/s 68 vide his appellate order dated 16.08.2018 in Appeal No. 14/CIT(A)-14/2017-18. Copy of the said appellate order is enclosed. You will thus note that the identity and creditworthiness of M/s. Sanwaria Marketing Pvt. Ltd was accepted by the Ld. CIT(A) in the appellant's own case in the immediately preceding year. In the circumstances, there was no reason for the AO to doubt the Company's transaction with the same party in A.Y. 2016-17.

5. Gonedawala Developers Pvt. Ltd:

The appellant had taken loan of Rs.50,00,000/- from this creditor. Although the AO has alleged that the creditor was managed by an entry operator by the name Prawesh Beria, his statement was not quoted by the AO. The appellant submits that the AO's allegation that the creditor was controlled by entry operator is factually incorrect in as much as the said Company belongs to Diwansons Group which is one of the reputed Jewellers of Kolkata. For your kind perusal and record, we enclose herewith the information extracted from Ministry of Corporate Affairs Website from which it will be noted that the Regd. Office of the Company is at 101, Park Street, Kolkata - 700016 where jewellery showroom of Diwansons is located. It will also be noted from the said information that Sri Arun Diwan, Sri Bimal Diwan & Smt. Madhu Diwan are the Directors of the creditor Company. For your kind perusal, we also enclose herewith copy of the audited Balance Sheet for the year ended 31.03.2016 from which it will be noted that during the relevant year there was no change in the paid up capital of the Company which continued to remain at Rs. 1,66,31,200/- The net owned funds including credit balance of the Profit & Loss A/c and Capital was Rs.8,56,27,760/-. During the relevant year the gross revenue generated by the said Company from its operations was in excess of Rs. 1333.47 Lacs and profit before tax, depreciation & interest was Rs.81.18 Lacs. From the Balance Sheet it would be noted that loans, advances & receivable of the loan creditor as on 31.03.2016 were Rs.57,81,670/-. The loan accepted by the appellant was fully repaid by the appellant prior to 31.03.2016 & as such no amount was outstanding & due at the close of the previous year.

The appellant further submits that in response to AO's notice u/s 131 the loan creditor had directly submitted the documents requisitioned in AO's Office and therefore it was wholly inappropriate for the AO to draw adverse inference against the appellant on the ground of non compliance. The appellant submits that the addition made u/s 68 in respect of loan taken from Gonedawala Developers Pvt. Ltd was factually incorrect.

6. Dhanvridhi Suppliers Pvt. Ltd:

In this case the appellant had taken loan of Rs.5,00,00,000/- from the said Company on following dates:

Date	Amount
07.11.2015	Rs. 1,00,00,000/-
12.11.2015	Rs.2,00,00,000/-
12.11.2015	Rs.2,00,00,000/-

Entire loan taken by the assessee during the relevant year was fully repaid prior to 31.03.2016 along with interest of Rs. 18,89,344/-. Copy of the Account confirmation issued by the loan creditor is enclosed. We submit that the creditor M/s. Dhanvridhi Suppliers Pvt. Ltd is having its Regd. Office at 91, Amlangsu Sen Road, Kolkata-700 048 and it is regularly assessed to tax by ITO, Ward-10(1), Kolkata. For the A.Y. 2016-17 it had filed its return of income on 07.03.2017 under PAN: AADCD6306Q declaring total income of Rs.20,61,396/-. Although in the impugned order the AO claimed that the creditor was controlled by one Mr. Shankar Khaitan; no tangible material including statement of Mr. Khaitan was brought on record by the AO to prove his allegation that creditor Company was managed by the said Entry Operator. Be the same as it may, for your kind perusal and record, we enclose herewith copy of the information extracted from Ministry of Corporate Affairs Website from which it will be evident that the creditor company is managed by its Directors, Mr. Sourabh Mukherjee & Mr. Debashis Roy. For your kind perusal and record, we enclose herewith copy of the audited Balance Sheet of M/s. Dhanvridhi Suppliers Pvt. Ltd from which it will be noted that the capital of the creditor company remained same at Rs.2,15,65,750/-. Company's net owned funds in the form of Capital & Reserves as on 31.03.2016 were

Rs.31,58,92,818/-. During the relevant year the said Company had granted loans & advances to the tune of Rs. 13,17,73,025/- and this did not include loan to the appellant since it was fully refunded prior to 31.03.2016. Your goodself will also note that in respect of loans granted the creditor had accounted interest income of Rs.25,24,973/- which inter-alia included interest of Rs. 18,89,344/- paid by the appellant. For your kind perusal and record, we enclose Form-26AS of Dhanvridhi Suppliers Pvt. Ltd from which it will be noted that besides the appellant the said Company had granted loans / advances to 9 Other Parties from whom it had earned substantial interest income and the TDS in respect of thereof was duly accounted in the books. The appellant therefore submits that with reference to these documentary evidences, it was evident that the appellant had obtained short term inter-corporate deposits from M/s. Dhanvridhi Suppliers Pvt. Ltd which was fully repaid during the relevant year and therefore no addition whatsoever was necessary.

7. **Brijwasi Vinimay Pvt. Ltd :**

In this case loan of Rs.25,00,000/- was obtained on 14.03.2016. The interest on such loan up to 31.03.2016 was only Rs. 14,795/-. This loan along with interest was fully repaid by the appellant on 02.08.2016. Copies of the Account Confirmations for the F.Ys 2015-16 & 2016-17 are enclosed. In response to notice u/s 131 of the Act the creditor had furnished the requisite information vide its letter dated 13.12.2018 and copy thereof is enclosed. Along with the letter dated 13.12.2018 the loan creditor had also enclosed copy of its Bank statement in respect of its A/c No. 0152201011684 maintained with Canara Bank, Bow Bazar Branch, Kolkata. Copy thereof is enclosed. For your kind perusal and record, copy of the audited accounts for the year ended 31.03.2016 are also enclosed. It will be noted there from that the net owned funds of the creditor Company as on 31.03.2016 were Rs. 12,64,13,868/-. The long term loans & advances granted by the creditor company were Rs.2,88,20,000/- and short term loans & advances were Rs.4,10,65,116/-. It will further be noted that for the F.Y. 2015-16 the said Company had reported net profit of Rs. 12,29,470/-. During the relevant year the said assessee had reported interest income of Rs.32,73,318/- which inter-alia included interest of only Rs. 14,795/- paid by the assessee. Your goodself will thus note that besides the appellant M/s. Brijwasi Vinimay Pvt. Ltd had derived substantial interest income from various Other Parties totaling Rs.32,73,318/- and therefore it was not a case that the creditor had granted loan only to the appellant.

8. **Anjani Tradelinks Pvt. Ltd :**

In this case loan of Rs.25,00,000/- was obtained by the appellant on 17.02.2016 and interest paid for the F.Y.2015-16 was Rs.30,137/-. This loan together with accrued interest was fully paid by the assessee in F.Y. 2017-18. Copies of the Account Confirmations for the F.Ys 2015-16 to 2017-18 are enclosed. The said loan was paid from the A/c No. 0060102000103848 and the relevant Bank Statement of the creditor is enclosed for ready reference and record. The creditor company is regularly assessed to tax under PAN: AAJCA0590K. For the A.Y. 2016-17 it had filed its return of income on 08.10.2016. Although the Regd. Office of the assessee is presently located at 318, Hossainpur, Tiljala, Kolkata and Company's Office was earlier located at 52, Weston Street, Bow Bazar, Kolkata. For your kind perusal and record, we enclose herewith Audited Balance Sheet of the creditor company from which it will be observed that the paid up capital of the assessee during the relevant year continued to remain at Rs.21,22,000/-. The Reserves & Surplus of the creditor was Rs.20,01,71,694/-. It had granted loans & advances to the extent of Rs.11,13,46,716/- and in respect of such loan interest income of Rs.66,89,772/- was credited in its Profit & Loss A/c which inter-alia included interest of only Rs.30,137/- received from the appellant. The appellant therefore submits that the information available clearly proves that the creditor was having sufficient funds from which interest bearing ICD was granted.

From the assessment order it will be noted that the AO refused to accept the genuineness of the loans taken only because there was no compliance to the notices u/s 131 of the Act. Merely because there was no response to the Summons u/s 131 could not be the reason enough for the AO to make the addition u/s 68. This proposition is well laid down by the Hon'ble Supreme Court in its judgment in the case of CIT Vs Orissa Corporation Pvt. Ltd (159 ITR 78).

Particularly in the present case the additions of Rs.4,50,00,000/- 8b Rs.5,00,00,000/- were made in respect of loans taken from Sanwaria Marketing Pvt. Ltd 8b Dhanvridhi Suppliers Pvt. Ltd respectively. It will be noted that M/s. Sanwaria Marketing Pvt. Ltd was a Company with which the assessee had regular financial transactions. The loan of Rs.1 Crore was brought forward from earlier year which was repaid during the relevant year. Even though during the relevant year the assessee had made new borrowings of Rs.4.5 Crores; during the year itself the appellant repaid through proper banking channel sum of Rs.250 Lacs along with interest. In fact repayment of Rs.1 crore on 21.12.2016 was really in the nature of contra-entry. It is further material to submit that in response to notice u/s 131 required information was submitted by the Sanwaria Marketing Pvt. Ltd through Registered Speed Post and therefore it was wholly inappropriate for the AO to claim that the assessee had failed to establish the genuineness of the transaction. Similarly, in the case of Dhanvridhi Suppliers Pvt. Ltd the entire loan of Rs.5 Crores was fully repaid along with interest during F.Y. 2015-16 itself. Similarly, the loan of Rs.50 Lacs was fully repaid to Gonedawala Developers Pvt. Ltd along with interest. It was therefore wholly inappropriate for the AO to make the addition simply based on suspicion and conjecture. The appellant submits that if one scrutinizes the audited accounts of each of the loan creditor then it would be evident that each creditor possessed substantial resources of their own. Compared with the total investible funds available with each loan creditor, the loans advanced by them to the appellant during the year was not significant. For your perusal we are enumerating the fund position of each loan creditor and the loans advanced by them.

Name of Company	Investible own Funds available as per Financials	Fresh Loan during the year
Ujjwal Cloth Marketing P. Ltd	14,56,93,873	50,00,000
Trimurti Vincom Pvt. Ltd	15,39,44,741	15,00,000
Top Class Logistic Pvt. Ltd	12,48,19,072	25,00,000
Sanwaria Marketing Pvt. Ltd	12,05,79,254	4,50,00,000
Gonedawala Developers P. Ltd	8,56,27,760	50,00,000
Dhanvridhi Suppliers Pvt Ltd	31,58,92,818	5,00,00,000
Brijwasi Vinimay Pvt. Ltd	12,64,13,868	25,00,000
Anjani Tradelinks Pvt. Ltd	20,22,89,040	25,00,000
Total	127,52,60,426	11,40,00,000

The comparative data set out above will clearly establish that each of the bodies corporate had their own resources which were several times more than the loan advanced to the appellant company. It is also material to point out that each of the Company who had granted ICD to the appellant; reported in the respective P/L A/c substantial interest income from the business of granting loans. Interest income as accounted by the creditors clearly showed that their interest earnings from Loans granted to parties other than assessee were substantially more. These facts therefore showed that these Companies were actively engaged in business of granting loans & earned substantial interest income. In the circumstances none of the company could be said to be shell Company.

Following salient features emerge on this issue of unsecured loan-

- i) It can be seen that most of the lender companies have substantial assets lying with them.

- ii) *These companies are controlled by reputed business houses of Kolkata, therefore, it is difficult to level them as shell companies.*
- iii) *Further, most of the lender companies have filed details before the AO in response to summons-1. Only the Directors did not appear before the AO but the AO should have issued personal summons to the Directors and could have enforced their attendance which he did not do. Therefore, the assessee cannot be blamed regarding origin of some of these companies from entry operators since all these companies are controlled by genuine business groups during A.Y. 2016-17, therefore, the assessee could not have been penalized.*
- iv) *If these companies have dubious origin, the AO should have intimated the AO all the lender companies for taking appropriate action in the case of lender companies. The AO may do so now in appropriate cases)*
- v) *It is seen that all the loans have been arranged through reputed finance brokers. If the finance broker arranges money through dubious companies in that case the AO should have examined the finance broker to find out as to which how he has arranged these loans the assessee cannot be penalized if the finance broker arranges loans from some companies whose source of fund is dubious.*

Identity : In the instant case all the companies are registered with ROC, therefore, their identity cannot be doubted, further, all these companies have Directors from reputed business group. Therefore, identity of the lender is not in doubt.

Capacity : From the analysis of Balance Sheet of these companies it is evident that these companies have substantial asset in their hands, therefore, capacity of these companies to lend money cannot be doubted.

Genuineness : Since loan has come through cheque further the companies belongs to reputed business houses, therefore, genuineness of the transaction is not in doubt.

In view of the above analysis I am of the opinion that the loan amount procured by the assessee is genuine. The assessee has been able to prove Identity, capacity and genuineness of the transaction, therefore, addition of the same does not hold. Therefore, Ground Nos. 5 and 6 are allowed.”

107. Aggrieved the Revenue is before us.

108. We have heard both the parties and perused the records. We note that the ground no. (i), (ii), (iv) to (xiii) and (xv) to (xviii) of the appeal are directed against the Ld. CIT(A) deleting the addition made u/s 68 of the Act of Rs. 11.40 crores and disallowance of interest paid on these loans totaling to Rs. 31.99 Lakhs. We also note that during the year under consideration the assessee has taken loan from one hundred and twenty seven (127) parties and paid interest on the said loan. In the course of assessment proceedings the assessee was called upon to furnish details of

unsecured inter-corporate deposits (ICD) accepted by it during the year. In compliance, the assessee furnished the details in the format prescribed by the AO. However, the AO relied on the statements of alleged five (5) entry operators which were recorded by the Investigating Wing, Kolkata namely Mr. Jivendra Mishra, Mr. Pranav Kumar Modi, Mr. Ankit Bagreee, Mr. Vijay Kumar Gupta and Mr. Akash Agarwal and opined that some of the creditor companies were paper companies allegedly managed and controlled by these entry operators. The AO observed that in view of the statements of entry operators with certain lender companies, he had issued notices to ten (10) companies which had granted inter-corporate deposits (ICD) to the assessee. The AO issued notices u/s 131 on 06.12.2018 requiring the presence of the parties before him on 14.12.2018. According to the AO in response to the notices u/s 131 of the Act compliances were made only by two (2) companies and the loans received from these two companies were accepted by the AO. In respect of the remaining eight (8) companies, the AO drew adverse inference primarily because the notices u/s 131 remained un-complied with. According to the AO the failure of the loan creditors/directors to appear before him and confirm the transactions was sufficient reason to hold that the amounts of ICDs received were not genuine and assessable as income u/s 68 of the Act. According to the AO, the assessee was given more than twenty three(23) days and this time given was sufficient for producing the relevant evidence. According to AO, despite sufficient opportunity since the loan creditors as well as the assessee failed to produce the parties for his physical verification, he was entitled to draw adverse inference against the assessee. Accordingly, the addition of Rs. 11.40 crore was made as unexplained cash credit u/s 68 of the Act and disallowance of interest paid on these loan totalling to Rs. 31,99,351/-. The details of which are as under:

S/N	Name	Openning Balance 01/4/15	Loan Returned to Party During Year	Loan Received During Year	Interest during the Year	Closing Balance as on 31/03/16
1	ANJANI TRADELINKS PVT LTD	-	30,137	25,00,000	30,137	25,00,000
2	BRIJWASI VINIMAY PVT LTD	-	1,480	25,00,000	14,795	25,13,315
3	DHANVIRDHI SUPPLIERS PVT LTD	-	5,18,89,344	5,00,00,000	18,89,344	-
4	GONEDAWALA DEVELOPER PRIVATE LTD	-	55,95,068	50,00,000	5,95,068	-
5	SANWARIA MARKETING PVT LTD	1,00,00,000	3,51,42,741	4,50,00,000	5,02,740	2,03,59,999
6	TOP CLASS LOGISTICS PVT LTD	-	6,831	25,00,000	68,306	25,61,475
7	TRIMURTI VINCOM PVT LTD	-	38,852	15,00,000	38,852	15,00,000
8	UJJWAL CLOTH MARKETING PVT LTD	-	60,109	50,00,000	60,109	50,00,000
	Total	1,00,00,000	9,27,64,562	11,40,00,000	31,99,351	3,44,34,789

109. On appeal, the Ld CIT(A) has deleted the addition, against which the Revenue is before us. As we have noted the assessee in this case is a company engaged in the business of manufacturing and trading of textile products i.e. yarn & fabrics. During the relevant year (AY 2016-17) the assessee had substantially exported its products. According to Ld. A. R in order to partly finance its working capital needs, the assessee had made inter-corporate borrowings (ICB) from several parties and these were duly recorded in the assessee's regular books. According to Ld. A.R, in the course of assessment proceedings the assessee was called upon to furnish details of unsecured inter-corporate deposits accepted during the relevant year and in compliance, the requisite details were furnished in the format prescribed by the AO. However after perusing the details the AO was of the opinion that some of the creditor Companies were paper companies allegedly managed & controlled by certain entry operators and in Para 4.2 of the assessment order, the AO has set out the names of these purported Companies and corresponding names of the alleged entry operators and the said Chart is given below for ready reference :

S.NO.	NAME OF THE CONCERN	MANAGED & CONTROLLED BY THE ENTRY OPERATOR
1.	<i>M/s. Ujjwal Cloth Marketing Pvt. Ltd</i>	<i>Ankit Bagri</i>
2.	<i>M/s. Trimurti Vincom Pvt. Ltd</i>	<i>Pranaw Kumar Modi</i>
3.	<i>M/s. Top Class Logistic Pvt. Ltd</i>	<i>Akash Agarwal</i>
4.	<i>M/s. Sanwaria Marketing Pvt Ltd</i>	<i>Vijay Kumar Gupta</i>
5.	<i>M/s. Gonedawala Developers Pvt. Ltd</i>	<i>Prawesh Beria</i>
6.	<i>M/s. Dhanvridhi Suppliers Pvt. Ltd.</i>	<i>Shankar Khetan</i>
7.	<i>M/s. Brijwasi Vinimay Pvt. Ltd</i>	<i>Jivendra Mishra</i>
8.	<i>M/s. Anjani Tradelinks Pvt. Ltd</i>	<i>Pranaw Modi</i>

110. Thereafter on Pages 4 to 16 of the assessment order, the AO extracted statements of alleged (5) entry operators, namely Mr. Jivendra Mishra, Mr. Pranaw Kumar Modi, Mr. Ankit Bagri, Mr. Vijay Kumar Gupta & Mr. Akash Agarwal and thereafter having selectively extracted part of the statements of those five (5) persons, the AO proceeded to make additions of Rs. 11.40 crores being the Loans/ICDs received by the assessee from eight(8) Bodies Corporate named (supra) in the chart. According to Ld. A.R no person properly instructed in law would have drawn inferences against the assessee on the basis of the statements as appearing in the assessment order. According to Ld. A.R the material on record would go on to show that before the statements of these entry operators were used in as evidence against the assessee, the AO himself never examined any of these persons personally so as to verify the assessee's transactions with the loan creditor companies. According to Ld. A.R, the AO erred in relying on the statement (selective extracts) against the assessee without affording any opportunity of cross examination the maker of the statement and since the AO himself never examined any of the alleged entry operators, the statement could not have been used against the assessee.

111. Thereafter, the Ld. A.R drew our attention to Pages 4, 5 & 6 of the assessment order wherein the AO has extracted the statement of Mr. Jivendra Mishra, which was recorded on 26.09.2014 by the ADIT (Inv), Unit-II(2) Kolkata. According to AO M/s. Brijwasi Vinimay Pvt. Ltd, from whom the assessee borrowed Rs.25 Lacs in the month of March 2016 was a Company allegedly controlled

& managed by Mr. Jivendra Mishra. In this context, the Ld. A.R drew our attention to the copy of Account Confirmation of M/s Brijwasi Vinimay Pvt. Ltd which is found enclosed from which it is noted that assessee borrowed Rs.25 Lacs on 14.03.2016, whereas the statement of Mr. Mishra was recorded in the month of September 2014. So according to Ld. A.R, from this fact it is obvious that Mr. Mishra could not have made any allegation about the assessee being beneficiary of an accommodation entry arranged by him through M/s Brajwasi. According to Ld. A.R in fact the assessee does not know any person by the name Mr. Jivendra Mishra and it never availed accommodation entries provided by such person. It was further pointed out that from a perusal of Pages 4, 5 & 6 of the impugned order that though Mr. Mishra admitted of being engaged in earning commission income for providing accommodation entries, in the statement as appearing in the order, nowhere Mr. Mishra has admitted that M/s. Brijwasi Vinimay Pvt. Ltd was a company controlled and/or managed by him. Therefore, according to Ld. A.R, in the absence of any admission to the effect that the loan creditor was a Company controlled by Mr. Mishra it was wholly improper/illegal for the AO to claim that M/s Brijwasi Vinimay Pvt. Ltd was a Company controlled by the said entry operator. Thereafter he drew our attention to the copy of the Company Master Data in respect of M/s. Brijwasi Vinimay Pvt. Ltd. and from a perusal of the same it is noted that its Regd. Office is located at 26B, Park Lane, 2nd Floor, Kolkata - 700016 and since April 2010 Directors of the said Company were Shri Pawan Kumar Agarwal & Shri Punit Madhogaria. On the other hand Mr. Mishra had admitted that the Companies controlled by him were managed from Offices located at Room No. 311, 85, N. S. Road, Kolkata - 700001, 18A Rama Kanta Bose Street, Kolkata - 700003 and Room No. 757, 25, Strand Road, Kolkata. Thus according to Ld. A.R it can be noted that the Regd. Office of Brijwasi Vinimay Pvt. Ltd had no connection whatsoever with any of the places from where Companies controlled and managed by Mr. Mishra were having Offices. At page-6 of the assessment order Mr. Mishra has admitted that Mr. Murli Kumar Mishra, Mr. Gopal Maity, Mr. Mithilesh Kumar Mishra, Mr. Tara Kant Chowdhury, Mr. Rajesh Kumar Jha, Mr. Biswanath Jha, Mr. Bishwanath Maity were either related to him or his employees and acted as dummy Directors of various

paper companies controlled by him. The MCA Master Data of M/s Brijwasi Vinimay Pvt. Ltd however demonstrates that with effect from 16.04.2010 Mr. Pawan Kumar Agarwal & Mr. Punit Madhogaria were Directors of Brijwasi Vinimay Pvt. Ltd, and none of the persons enumerated in the Answer to Question No. 11 find mention as Directors of M/s Brijwasi Vinimay Pvt. Ltd. So in this back ground when one analyses the statement of Mr. Jivendra Mishra as extracted in the assessment order it is evident that nowhere he admits that M/s. Brijwasi Vinimay Pvt. Ltd was a Company controlled and managed by him nor any material was brought on record which shows that the said company was managed by him at the time when the loan was advanced to the assessee in March 2016. Therefore we note that apparently there was no material/oral evidence available in the statement of Mr. Mishra, on the basis of which any adverse inference could have been drawn against M/s. Brijwasi Vinimay Pvt. Ltd or the assessee, so the AO erred in relying on the statement of Mr. Jivendra Mishra to draw adverse inference against M/s. Brijwasi Vinimay Pvt. Ltd.

112. Coming next to statement of Mr. Pranaw Kumar Modi whose statement has been extracted by the AO at Pages-7 & 8 it is noted that AO alleges he is in control of M/s. Trimurti Vincom Pvt. Ltd, a Company having its Registered Office at 318, Hossainpur, Tiljala, Kolkata - 700107 and who had granted loan of Rs. 15,00,000/- on 13.01.2016. It is noted that the statement of Mr. Modi was recorded by the DDIT (Inv), Unit-II(3), Kolkata on 02.03.2015. This fact therefore shows that Mr. Modi could not have admitted that he had provided accommodation entry to the assessee. From the perusal of the order, it is evident that only part of his statement has been extracted and nowhere in the statement selectively extracted, Mr. Modi had admitted that M/s Trimurti Vincom Pvt. Ltd was controlled & managed by him and/or through which he had provided accommodation entry to the assessee. And from the information extracted from Company Master Data which shows that even today the said Company's status is shown to be "active" Company and it shows that the loan creditor was incorporated on 03.01.2011 and it is noted that since inception Directors of the loan creditor are Mr. Govind Haidar & Mr. Tanmoy Haidar and there has been no change in the Directors since inception. In contradistinction to the information

available in the Company Master Data, it is noted from the statement of Mr. Modi that he had admitted before investigation wing that he was a resident of 1/24, Gandhi Colony, Regent Park, Tollygunge, Kolkata and affairs of the Companies controlled by him were maintained from Office located at 1/24, Gandhi Colony, Regent Park, Tollygunge, Kolkata. Nowhere in his statement Mr. Modi had claimed that Mr. Govind Haidar & Mr. Tanmoy Haidar were working under his control and were engaged in providing accommodation entries. Thus we find having regard to the information as is available from the extracted statement of Mr Modi vis-a-vis the information available in the Company Master Data, the AO could have alleged that the assessee had availed accommodation entry in the form of ICD from M/s Trimurti Vincom Pvt. Ltd. Therefore we note that apparently there was no material/oral evidence available in the statement of Mr. Modi, on the basis of which any adverse inference could have been drawn against M/s Trimurti Vincom Pvt. Ltd. or the assessee, so the AO erred in relying on the statement of Mr. Modi to draw adverse inference against M/s Trimurti Vincom Pvt. Ltd.

113. Coming next to the statement of Mr. Ankit Bagri whose statement has been extracted by the AO at Pages 9 & 10 it is noted that AO has alleged that he was controlling & managing the affairs of M/s. Ujjwal Cloth Marketing Pvt. Ltd from whom the assessee had received loan of Rs.50,00,000/- in the month of February 2016. From a perusal of the Page-9 of the assessment order, it will be noted that statement of Mr. Bagri was recorded by DDIT (Inv), Unit-IV(2) Kolkata on 03.07.2014. Thus, it is noted that the statement of Mr. Bagri was recorded almost 2 years prior to the date of assessee's loan transaction with M/s Ujjwal Cloth Marketing Pvt. Ltd. And from a perusal of statement recorded on 03.07.2014, implicating the assessee of availing accommodation entry from Shri Ankit Bagri. On verification of Company Master Data, it is noted that the registered office of the creditor company is located at 4th Floor, 23B, Netaji Subhas Road, Kolkata-700 001 and Directors of the creditor company are Mr. Raj Kumar Patel & Mr. Alok Kumar Khatua whereas in his answer extracted on Page-10 of the assessment order, Mr. Bagri had admitted that he was engaged in providing accommodation entries along

with one Shri Sumit Kejriwal and the Companies formed by them were managed from the Office premises at 9/12, Netaji Subhas Road, 3rd Floor, Block-C, Kolkata-700001. Thus it is noted that nowhere in the statement of Mr. Bagri, he had ever admitted/stated that M/s. Ujjwal Cloth Marketing Pvt. Ltd was a Company controlled & managed by him for providing accommodation entries. It is noted that none of the statements or averments as reflected in the statement of Mr. Bagri in the assessment order can lead one to conclude that the assessee had availed benefit of accommodation entry when the loan of Rs.50,00,000/- was taken in the month of February 2016. Therefore no adverse inference against the assessee or M/s. Ujjwal Cloth Marketing Pvt. Ltd was warranted with reference to statement of Mr. Ankit Bagri as extracted in the assessment order so the AO erred in relying on the statement of Mr. Ankit Bagri to draw adverse inference against M/s. Ujjwal Cloth Marketing Pvt. Ltd.

114. Coming next to the statement recorded by Sri Vijay Kumar Gupta on 03.08.2015 which has been extracted at Pages 11, 12, 13 & 14 of the assessment order by the AO extracted part of before the DDIT (Inv), Unit-IV(l) Kolkata, we have already considered his statement supra, however for completeness, we will deal with it in respect of this year. In the assessment order, the AO has alleged that Mr. Vijay Kumar Gupta allegedly controlled & managed the affairs of M/s. Sawaria Marketing Pvt. Ltd which had granted ICDs to the tune of Rs.450 Lakhs. The Ld. A.R pointed out that the assessee had loan transactions with M/s Sawaria Marketing Pvt. Ltd in the F.Y. 2015-16 as well as in the F.Y. 2014-15 which was the preceding year. It is noted that the Statement of Mr. Gupta was recorded in August 2015 i.e. the same year in which the loans were availed by the assessee from M/s Sawaria Marketing Pvt. Ltd. On careful perusal of the statement of Mr. Gupta, it is evident that nowhere in the statement recorded before the DDIT (Inv) he had named M/ s. Sawaria Marketing Pvt. Ltd to be a Company controlled & managed by him for providing accommodation entries. In Answer to Question No. 5, Mr. Gupta had enlisted names of various persons who were his relatives and in Answer to Question No. 7, he had given names of 2 persons, who were his employees. On perusal of

information pertaining to M/s Sawaria Marketing Pvt. Ltd extracted from Master Company Data, it is noted that the Registered Office of the creditor company was situated at 176, Jamuna Lai Bajaj Street, Kolkata-700007. The said company also declared that the Company's books of account and other papers were maintained at 10/3, Acropolis, 1858/1, Rajdanga Main Road, Kolkata - 700107. As per Company Master Data, Sri Siddharth Kumar Poddar, Sri Sandip Kumar Poddar & Sri Supradip Kumar Sharma are the Directors of the creditor company since 26.07.2012. In contradistinction to this information it is noted that Mr. Gupta had nowhere admitted that his office was located either at 176, Jamuna Lai Bajaj Street, Kolkata-700007 or Acropolis, Rajdanga Main Road, Kolkata. In his statement, Mr. Gupta has not made any reference or admission to the fact that Mr. Siddharth Kumar Poddar or Sandip Kumar Poddar or Mr. Supradip Kumar Sharma were either his relatives, employees or were working under his control. In fact the statement of Mr. Gupta reveals that the DDIT(INV)'s enquiry was confined to Mr. Gupta's dealings with a Company called M/s Venus Deal Trade Pvt. Ltd and no other Company. In fact when questioned about details of Companies maintained by him he did not provide any answer. From a perusal of the statement of Mr. Gupta as also the Company information extracted from Company Master Data then it is evident that nowhere any material is brought on record in the assessment order by the AO which in any manner even suggests let alone proves that at the time when the assessee availed loans from M/s Sawaria Marketing Pvt. Ltd, the creditor company was controlled and managed by Mr. Gupta as alleged by him. Even though number of questions & answers were extracted, nowhere it is discernible that Mr. Gupta had admitted of providing accommodation entries to the assessee company through M/s. Sawaria Marketing Pvt. Ltd. Thus it is noted that based on the information as is made available in the assessment order there did not exist any material to draw any adverse inference against the assessee so as to justify AO's conclusion that the loan of Rs.450 Lakhs received by the assessee from M/s Sawaria Marketing Pvt. Ltd was unexplained cash credit, so the AO erred.

115. Coming next to statement of Mr. Akash Agarwal extracted at Pages 15 & 16 of the assessment order by the AO wherein he is alleged to be controlled & managed

the affairs of M/s. Top Class Logistics Pvt. Ltd from which the loan of Rs.25 Lakhs was obtained by the assessee in the month of December 2015. It is seen that the Statement of Mr. Agarwal was recorded in February 2015 by the DDIT (Inv), Kolkata and therefore there could not have been any admission on his part that he had provided accommodation entry to the assessee through M/s. Top Class Logistics Pvt. Ltd. From a perusal of the statement it is discernible that Mr. Akash Agarwal was resident of 4D/4E of ST Towers Kestopur, Kolkata and his office premises were at Room No. III, 1st Floor, 23B, Netaji Subhas Road, Kolkata. It is noted from a perusal of the assessment order that the AO has selectively extracted some of the Questions & Answers from Mr. Agarwal's statement at Pages 15 & 16 and in his answers to DDIT's question he had admitted of earning commission from accommodation entries provided by him. However from a perusal of the statement it is relevant to note that nowhere in the selective extracted statement he had neither admitted of providing accommodation entries to the assessee nor he had admitted AO's claim that M/s Top Class Logistics Pvt. Ltd was a Company controlled & managed by him. From the Company Master Data, it is noted that the Registered Office of the creditor Company is situated at Narayani Building, 27, Braboume Road, Kolkata-700001 and Directors of the Company are Mr. Suman Barasia & Mr. Sushil Kumar Agarwal with whom no relation of Mr. Akash Agarwal was brought out by the AO. So we note that the AO erred in relying on the statement of Mr. Akash Agarwal to draw adverse inference against M/s. Top Class Logistics Pvt. Ltd

116. Thus from the foregoing analysis of the statements of five (5) entry operators, it is noted that even though the AO had extracted these statements, in none of them, any of the Entry Operator had implicated the assessee of availing accommodation entries. And when one goes through the statements extracted by the AO in his assessment order as discussed (supra), it is evident that none of the entry operators had even admitted that any of the loan granting Companies to assessee were either managed or controlled by them or through these Companies they (entry providers) had provided loans to assessee company. On the other hand, the information available in Master Company Data showed that the Offices of the creditor companies

of the assessee company were located at places with which none of the Entry Operators had any connection and the Directors of these Companies did not function under the control or management of any of the entry operators named by the AO in the assessment order. Therefore the statements of these five (5) entry operators as extracted by the AO in the assessment order, is in no way support the action of the AO to draw adverse inference against the loans taken by assessee in respect of inter corporate deposits (ICDs) accepted during F.Y. 2015-16 i.e, AY 2016-17.

117. Now when we consider the merits of the case, we note that assessee had submitted relevant documentary evidence which goes to prove the identity of each of the loan creditor [CIN, PAN, ITR filed] and to prove that they had sufficient funds of their own from which the Inter corporate deposits were advanced to the assessee, is discernable from the chart below.

Sl no.	Name of Company	CIN	PAN	ITR filed for AY 2016-17
1	M/s AnjaniTradelinks Pvt Ltd	U51909WB2010PTC156263	AAJCA0590K	Yes
2	Brijwasi Vinimaypvt ltd	U51109WB2008PTC121881	AADCB6738J	Yes
3	Dhanvirdhi Suppliers pvt ltd	U51909WB2010PTC155207	AADCD6306Q	Yes
4	Gonedawala Developer Private Ltd	U70101WB1996PTC079446	AABCG1780H	Yes
5	Sanwaria Marketing Pvt Ltd	U51900WB2009PTC132938	AAMCS7944J	Yes
6	Top Class Logistics Pvt Ltd	U63090WB2010PTC152505	AADCT5726C	Yes
7	Trimurti Vincom Pvt Ltd	U51909WB2011PTC156557	AADCT6881G	Yes
8	Ujjwal Cloth Marketing Pvt Ltd	U74999WB2011PTC157662	AABCU2641M	Yes

Name of Company	Capital & Reserves (Rs)	Loan Given to assessee in captioned year (Rs)	Interest (Rs)	TDS (Rs)
M/s AnjaniTradelinks Pvt Ltd	20,22,93,694/-	25,00,000/-	30,137/-	3,014
Brijwasi Vinimay Pvt Ltd	12,64,13,868/-	25,00,000 /-	14,795/-	1,480
Dhanvirdhi Suppliers pvt ltd	31,58,92,818/-	5,00,00,000/-	18,89,344/-	1,88,935
Gonedawala Developer Private Ltd	8,56,27,760/-	50,00,000/-	5,95,068/-	59,507
Sanwaria Marketing Pvt Ltd	12,05,79,254/-	4,50,00,000/-	5,02,740/-	50,275
Top Class Logistics Pvt Ltd	12,48,19,071/-	25,00,000/-	68,306/-	6,831
Trimurti Vincom Pvt Ltd	15,39,44,741/-	15,00,000/-	38,852/-	3,885
Ujjwal Cloth Marketing Pvt Ltd	14,56,93,873/-	50,00,000/-	60,109/-	6,011

118. At Page-16 of the assessment order the AO observes that in view of the statements of the five (5) Entry Operators discussed (supra), he had issued notices to ten (10) creditor Companies which had granted inter-corporate deposits to the assessee. According to the AO, the notices u/s 131, were issued on 06.12.2018 requiring presence of the Parties before him on 14.12.2018. According to AO in response to notices u/s 131 of the Act compliances were made by two (2) Companies and the loans received from these two Companies were accepted by the AO. In

respect of remaining eight (8) Companies, the AO drew adverse inference primarily because the notices u/s 131 remained un-complied with. According to AO, the failure of the loan creditors to appear before him and their failure to confirm the transactions were sufficient reason to hold that the amounts of ICDs received were not genuine & assessable as income u/s 68 of the Act. According to AO the assessee was given more than twenty three (23) days & this was sufficient opportunity for producing the relevant evidence. Since the assessee failed to produce the Parties for AO's verification, drew adverse inference against the assessee company. In this regard, Ld. A.R drew our attention to the assessment order from which it is noted that the assessment proceedings were initiated by issue of notice u/s 143(2) in the month of July 2017. Thereafter notices u/s 142(1) were issued in May 2018, October 2018 & November 2018 respectively. And from the assessment order, it is noted that assessee complied with the notices & the hearing of the assessment was conducted by the AO on 04.08.2017, 10.08.2017, 12.06.2018, 12.10.2018, 20.11.2018 and lastly on 26.12.2018. It is noted that even though the assessment proceedings commenced in August 2017, the notices to unsecured loan creditors were issued for the first time on 06.12.2018 while the assessment was getting time barred on 31.12.2018. This action of AO according to Ld. A.R shows that the AO waited almost till the fag end of the proceedings to issue Summons to the loan creditors and therefore sufficient opportunity of being heard was not granted to the assessee before he (AO) drew adverse inferences against the assessee. The Ld. A.R. pointed out that by the time the AO had issued notices to the loan creditors, the assessee had already refunded most of the loans. And according to Ld. A.R, since the assessee at the relevant time did not have continuing business relations with the loan creditors after repaying the loan; it could not have exercised persuasive control to enforce their attendance before the AO. The following chart will reveal that except for one Lender Company, M/s Top Class Logistics(item 6 infra Rs 25 lakhs) the assessee have squared up/repaid all the loan.

Detail of Unsecured Loan and Interest Addition

SN	Name	PAN	Loan Received During Year	Loan Repaid to Party During Year	Interest during the Year	TDS	Closing Balance as on 31/03/16	Year of Repayment (F.Y)	Mode of Payment	Interest till repayment	TDS	Supportings Enclosed
1	ANJANI TRADELINKS PVT LTD	AAJCA0590K	25,00,000	-	30,137	3,014	25,00,000	2017-18	Cheque/ RTGS	4,78,492	47,853	Ledger, loan confirmation, TDS Certificate, Assessment order
2	BRIJWASI VINIMAY PVT LTD	AADCB6738J	25,00,000	-	14,795	1,480	25,00,000	2016-17	Cheque/ RTGS	1,01,096	10,110	Ledger, loan confirmation, TDS Certificate, Assessment order
3	DHANVIRDI SUPPLIERS PVT LTD	AADC6306Q	5,00,00,000	5,00,00,000	18,89,344	1,88,935	-	2015-16	Cheque/ RTGS	N.A	N.A	Ledger, loan confirmation, TDS Certificate
4	GONEDAWALA DEVELOPER PRIVATE LTD	AABCG1780H	50,00,000	50,00,000	5,95,068	59,507	-	2015-16	Cheque/ RTGS	N.A	N.A	Ledger, loan confirmation, TDS Certificate
5	SANWARIA MARKETING PVT LTD	AAMCS7944J	4,50,00,000	3,50,00,000	5,02,740	50,275	2,00,00,000	2016-17	Cheque/ RTGS	17,05,097	1,70,512	Ledger, TDS Certificate, Assessment order
6	TOP CLASS LOGISTICS PVT LTD	AADCT5726C	25,00,000	-	68,306	6,831	25,00,000	Interest being paid regularly	Cheque/ RTGS	6,00,276	60,031	Ledger, TDS Certificate, Assessment order
7	TRIMURTI VINCOM PVT LTD	AADCT6881G	15,00,000	-	38,852	3,885	15,00,000	2016-17	Cheque/ RTGS	1,00,110	10,013	Ledger, loan confirmation, TDS Certificate, Assessment order
8	UJJWAL CLOTH MARKETING PVT LTD	AABCU2641M	50,00,000	-	60,109	6,011	50,00,000	2017-18	Cheque/ RTGS	6,75,344	67,536	Ledger, loan confirmation, TDS Certificate, Assessment order
Total			11,40,00,000	9,00,00,000	31,99,351	3,19,938	3,40,00,000			36,60,415	3,66,055	

119. From the assessment order it is noted that the AO refused to accept the genuineness of the loans taken only because there was no compliance to the notices u/s 131 of the Act. According to us, merely because there was no response to the Sumpts u/s 131 could not be the reason enough for the AO to make the addition u/s 68 of the Act. This proposition is well laid down by the Hon'ble Supreme Court in its judgment in the case of CIT Vs Orissa Corporation Pvt. Ltd (159 ITR 78).

120. We note that in this relevant assessment year, the additions of Rs.4,50,00,000/- & Rs.5,00,00,000/-were made in respect of loans taken from M/s Sanwaria Marketing Pvt. Ltd &M/s Dhanvridhi Suppliers Pvt. Ltd respectively. It is noted that M/s. Sanwaria Marketing Pvt. Ltd was a Company with which the assessee had regular financial transactions. Our attention was drawn to the fact that the loan of Rs. 1 Crore was brought forward from earlier year which was repaid during the relevant year. And the fact that even though during the relevant year, the assessee had made new borrowings ofRs.4.5 Crores; during the year itself the assessee had paid through proper banking channel sum of Rs.250 Lacs along with interest. It was brought to our notice that repayment of Rs. 1 crore on 21.12.2016 was in the nature of contra-entry. According to Ld. A.R, in response to notice u/s 131 required information was submitted by M/s Sanwaria Marketing Pvt. Ltd through Registered Speed Post and therefore, it was unreasonable for the AO to claim that the assessee had failed to establish the genuineness of the transaction. Similarly, it is noted in respect of loan from M/s Dhanvridhi Suppliers Pvt. Ltd the entire loan ofRs.5 Crores was fully repaid along with interest during F.Y. 2015-16 itself. Similarly, the loan of Rs. 50 Lacs was fully repaid to M/s. Gonedawala Developers Pvt. Ltd along with interest. It was therefore according to Ld. A.R, the AO was un-justified to make the addition simply based on suspicion and conjecture. The Ld. A.R submits that if one scrutinizes the audited accounts of each of the loan creditor then it would be evident that each creditor possessed substantial resources of their own when compared with the total investible funds available with each loan creditor, and the loans advanced by them to the assessee company during the year was not significant. For our perusal the Ld. A.R enumerated the fund position of each loan creditor and the loans advanced by them which is reproduced as under:

<i>Name of Company</i>	<i>Investible own funds available as per Financials</i>	<i>Fresh Loan during the year</i>	<i>Interest (Rs)</i>	<i>TDS(Rs.)</i>
<i>Ujjwal Cloth Marketing Pvt. Ltd.</i>	<i>14,56,93,873</i>	<i>50,00,000</i>	<i>60,109</i>	<i>6,011</i>

<i>Trimurti Vincom Pvt. Ltd.</i>	<i>15,39,44,741</i>	<i>15,00,000</i>	<i>38,852</i>	<i>3,885</i>
<i>Top Class Logistics Pvt. Ltd.</i>	<i>12,48,19,072</i>	<i>25,00,000</i>	<i>68,306</i>	<i>6,831</i>
<i>Sanwaria Marketing Pvt. Ltd.</i>	<i>12,05,79,254</i>	<i>4,50,00,000</i>	<i>5,02,740</i>	<i>50,275</i>
<i>Gonedawala Developers Pvt. Ltd.</i>	<i>8,56,27,760/-</i>	<i>50,00,000</i>	<i>5,95,068</i>	<i>59,507</i>
<i>Dhanvridhi Suppliers Pvt. Ltd.</i>	<i>31,58,92,818</i>	<i>5,00,00,000</i>	<i>18,89,344</i>	<i>1,88,935</i>
<i>Brijwasi Vinimay Pvt. Ltd.</i>	<i>12,64,13,868</i>	<i>25,00,000</i>	<i>14,795</i>	<i>1,480</i>
<i>Anjani Tradelinks Pvt. Ltd.</i>	<i>20,22,89,040</i>	<i>25,00,000</i>	<i>30,137</i>	<i>3,014</i>
Total	127,52,60,426	11,40,00,000		

121. From a perusal of the aforesaid chart reveal that each of the bodies corporate had their own resources which were several times more than the loan advanced to the assessee company. It is also noted that each of the Company which all had granted ICD to the assessee; they had duly reported the same in their respective Profit & Loss Account and they had shown substantial interest income from the business of granting loans. The interest income as accounted by the creditors clearly showed that their interest earnings from Loans granted to parties other than assessee were substantially more. These facts, therefore, shows that these Lender Companies were actively engaged in business of granting loans & earned substantial interest income. In the aforesaid factual circumstances the Ld. CIT(A) opines that none of the lender companies(supra) could be said to be shell Company.

122. We note that out of the loans of Rs. 11,40,00,000/- assessed u/s 68 of the Act, the loan of Rs.4,50 Crores was obtained from pre-existing loan creditor viz. M/s Sanwaria Marketing Pvt. Ltd. We note that the outstanding balance brought forward was of Rs.1 Crores. And it is noted that in the assessment order for the immediate preceding year i.e. AY 2015-16, the AO had assessed the loan received from the said party u/s 68 of the Act and on appeal, the Ld. CIT (A)-4 by his order dated 16.08.2018 had deleted the AO's additions on being satisfied that the assessee had

established identity and creditworthiness of the said loan creditor, which action of Ld CIT(A) has received our imprimatur (supra).

123. However, it is noted that in the proceedings u/s 143(3) of the Act the assessee had placed before the AO documents to prima-facie discharge the onus of the nature & source of the loan it took from the lender companies [i.e. fresh loans received during the year]. It is noted that all the loan creditors were regularly assessed to tax. The net owned funds of each loan creditor was several times more than the loans advanced by them to the assessee. The assessee had therefore discharged the primary onus to prove the identity of the shareholders, creditworthiness of the shareholders & genuineness of the transactions as contemplated by Section 68 of the Act. In the circumstances the AO could not have arbitrarily and in a whimsical manner could not have drawn adverse inference against eight (8) loan creditors.

124. It is noted that the AO has made sweeping and generalized imputations while justifying addition which is not borne out from the documents and evidences on record. The AO has alleged that the assessee had failed to establish the identity of the loan creditors & genuineness of the transactions. According to AO furnishing of corporate information pertaining to loan creditors, bank statements, annual accounts and other documents cannot be treated as justifiable evidence, and hence the assessee was alleged to have failed in its endeavour to discharge its onus to establish the three ingredients of Section 68 of the Act. The adverse conclusion against the eight loan creditors by the AO in the assessment order has no legs to stand since it was based on unverified hear-say and on conjectures and surmises. And non-application of mind is writ large on the assessment order and non consideration of the relevant facts and materials on record makes the order of AO erroneous. The AO without pointing out any specific lacuna, infirmity, falsity or defect in the documents and evidences on record, has imputed unsubstantiated allegation that assessee's undisclosed income was routed through these eight (8) loan creditors. In none of the cases the AO could bring out any material to even raise a grave suspicion that any cash deposits were made by the assessee which were ultimately layered/routed through the loan

creditors. Apart from making unfounded and unsubstantiated allegations in the assessment order; the AO did not bring on record any material to justify the addition made u/s 68 of the Act.

125. In view of the foregoing judicial precedents, we note that the assessee had furnished the details of payments through which loans had been obtained. The assessee had also filed the name, complete address, PAN details, confirmation, audited financial statements and bank statements of the lender corporate entities. Genuineness of the transaction was proved since evidences furnished prove that the loans were transacted through bank accounts of the creditors. All the loan creditors are regularly assessed to tax and for AY 2016-17 each of the loan creditor had filed their tax returns. Each loan creditor had furnished their financial statements for the financial year 2015-16 in which transaction with the assessee was properly reflected. The assessee had paid interest to each loan creditor and taxes were deducted u/s 194A in respect of such interest. The assessee had also complied with provisions concerning filing of TDS returns. Loan creditors had disclosed interest income in their respective tax returns. The AO was neither able to controvert the documentary evidences filed by the assessee nor prove that the loan monies received were not genuine and that the loan creditors were non-creditworthy by carrying out the exercise as directed by the Hon'ble High Court in the case of M/s Data Ware (supra). Therefore in the facts and circumstances the Ld CIT(A) rightly deleted the addition of Rs. 11,40,00,000/- and further, the disallowance of interest of Rs.31,99,351/- was also unjustified, since the assessee had paid interest to each loan creditor after duly deducting taxes u/s 194A in respect of such interest and the loan creditors had disclosed interest income in their respective tax returns, therefore in the facts and circumstances the Ld CIT(A) rightly deleted the addition of Rs.31,99,351/- and we confirm the same. The Revenue appeal on this issue fails.

126. In ground nos. (iii) & (iv) the Revenue is aggrieved against the deletion of addition of Rs. 2,57,56,247/- made u/s 40a(i) on account of payment of sales commission.

127. The AO from perusal of the Tax audit Report found that the assessee has paid sales commission of Rs.2,57,56,247/- from which no deduction of TDS was made and therefore disallowance of sales commission was made by him. On Appeal the Ld CIT(A) deleted the disallowance by finding that sales commission was paid by assessee to the non-resident agents in foreign currency for the services rendered outside India; and the assessee has provided latest tax residency certificate of the foreign agents to prove that they were residing outside India, and also the assessee had filed their letter of appointment. Since the sales commission paid by assessee was not chargeable to Income Tax in India, the Ld CIT(A) relying on judicial precedents have allowed the claim of expenditure. Against the relief given by Ld CIT(A), the Revenue is before us.

128. Before us, the Ld DR, vehemently opposed the action of Ld CIT(A) and relied on the action of AO on this issue. Per Contra, the assessee has made the following written submission in support of the action of Ld CIT(A):-

“The second major issue in this appeal relates to disallowance of Rs.2,57,56,247/- being Foreign Sales Commission paid to Non-resident Agents. In Para-7.1 the AO notes that from Note-28 of audited Balance Sheet he found that assessee had incurred expenditure in foreign currency on account of sales commission and as per tax audit report no tax deduction u/s 195 was made. In view of the foregoing facts, the AO held that foreign commission paid was liable for disallowance in terms of Sec. 40(a)(i) of the Act.

At the outset the appellant submits that before the disallowance was made no opportunity of hearing was given by the AO. Even though AO resorted to such addition, the assessee was not given opportunity of furnishing its explanation nor the assessee was show caused as to why disallowance was factually and legally called for. Had such opportunity being given the appellant would have demonstrated before the AO that it had no liability to deduct tax u/s 195 because the commission paid to the foreign agents for procuring orders from outside India was not chargeable to tax in India as income and therefore Sec. 195 did not have any application.

For your kind perusal and record we enclose herewith details of foreign sales commission paid to 22 Parties who were all residing outside India. The names and addresses of the Parties and commission paid to each of them are stated in the statement. For your kind perusal, we also enclose sample copies of the letters of appointment in terms of which the foreign agents had rendered services to the assessee for procuring export orders. We also enclose herewith sample copies of the Tax Residency Certificates issued in favour of these Agents which prove that the

Payees were foreign tax residents and not tax residents of India. It is material to submit that the AO has not brought on record any material whatsoever to prove that any part of the services were rendered by the Agents in India so as to attract tax liability in their hands in India. It is settled legal proposition that before provisions of Sec. 195 are invoked by AO he has to demonstrate that the amount paid to the Nonresident is legally chargeable to tax in India. If however the amount is held to be not chargeable to tax in India, then the assessee has no liability to deduct tax and consequently therefore no disallowance under 40(a)(i) is called for. In the present case the commission was paid to foreign agents solely for obtaining export orders from Parties located outside India. The services in connection with marketing of the Company's products and to secure orders were entirely performed outside India. The marketing services rendered by the foreign agents did not have any connection with territory of India nor any part of the services were performed in or from India. As such, the commission income entirely accrued for the services performed outside India and the commission was also paid in foreign currency outside India. In the assessment order the AO did not bring on record any material to show or prove that any income accrued or paid to foreign agents in India so as to make the same chargeable to tax in India either u/s 5 or u/s 9(1)(i) of the Income Tax Act so as to require tax deduction.

In this regard your attention is drawn to recent decision of the ITAT Kolkata in the case of JCIT Vs Onprocess Technology India Pvt. Ltd. In this case the assessee, engaged in BPO services, had paid marketing support fees to U. S. Companies and the amount was disallowed on the ground that tax was not deducted at source. On appeal the CIT (A) upheld the disallowance which was deleted by the ITAT in its order dated 24.05.2018 in I.T.A. No. 1047/Kol/2016. In Para-12 the Tribunal held as follows:

12. From the foregoing discussion, we find that in the present case, the foreign payees to whom marketing support fees totaling Rs.2,96,05,045/- was paid were engaged only in rendering services for promoting and marketing of assessee's BPO service in USA. Save and except canvassing for customers in the foreign territories, these entities did not render any service in India nor the services performed were technical in nature. We are, therefore, of the opinion that no part of the income embedded in such payment was chargeable to tax in India so as to require deduction of tax u/s 195 of the Act. Our finding in this regard gets support from the decision of the Hon'ble Delhi High Court in the case of CIT Vs Eon Technology Pvt. Ltd 15taxman.com 391 and of the Hon'ble Madras High Court in the case of CIT Vs Faiezan Shoes Pvt. Ltd 48 taxman.com 48. We, therefore, hold that the fees of Rs.2,96,05,045/- paid by the assessee to US entities for rendering marketing and sale support services was not chargeable to tax in terms of Sec. 9(1)(i) of the Act.

Thereafter in Para-21 the ITAT held as follows:-

21. For the reasons discussed in the foregoing, we are in agreement with the assessee that the payment of Rs.2,96,05,045/- made by the assessee to foreign entities towards marketing and sale support services were not chargeable to tax in India and in that view of the matter the assessee was right in, law in not deducting any tax thereon under sec. 195 of the Act. Accordingly, we hold that the impugned disallowance of Rs.2,96,05,045/- made by the AO as well as confirmed by the Ld. CIT (A) u/s 40(a)(i) of the Act is unsustainable. Accordingly, it is directed to be deleted. This ground of appeal of assessee is allowed.

Similar issue was considered by the ITAT Kolkata in yet another case of M/s. Lux Industries Ltd in ITA No. 1144 & 1145/Kol/2018 dated 27.06.2018. In this case also the assessee paid foreign export commission in respect of export of its hosiery

products. In respect of export orders secured by the foreign agents outside India export sales commission @5% was paid on the value of export orders secured. The AO disallowed the export commission on the ground that no tax was deducted at source. The Jurisdictional ITAT relying on the decision of the Co-ordinate Bench at Ahmedabad in the case of DCIT Vs Welspun Corporation Ltd (I.T.A. No. 48/Ahd/2015) dated 31.03.2017 deleted the said disallowance. In the decided case of Ahmedabad Bench the Tribunal held as follows:

“In the instant case admittedly the non-resident agents were only procuring orders abroad and following up payments with the buyers. No other services are rendered other than above. Sourcing orders abroad, for which payments have been made directly to the non-residents abroad does not involve any technical assistance or other support in respect of any technical matters the commission payments to the non-resident agents are not taxable in India, as the agents are remaining outside, services are rendered abroad and payments are also made abroad. ”

In the appellant’s case also the only services provided by the foreign agents was to procure orders for the Company’s products from the Buyers located outside India. These services were performed outside India and the payments were also made to the foreign agents outside India in foreign currency. As such, in terms of the decisions of the ITAT Kolkata Benches (supra) no income chargeable to tax accrued in India and therefore assessee had no liability to deduct tax at source under 195. No disallowance u/s 40(a)(ia) was therefore called for. It may also be relevant to state that even in the preceding years the appellant had paid foreign sales commission and no disallowance was made in the assessment orders framed u/s 143(3). As such when the factual and legal position continued to be same AO was not justified in making the disallowance only in A.Y. 2016-17.

21. The Ld. CIT(A) vacated the disallowance stating that it was not in dispute that expenditure on sales commission was incurred in foreign currency for procuring orders from outside India. The only dispute is whether assessee was liable to deduct TDS from payments made u/s 195 of the Act or not. The Ld. CIT(A) noted that in support of the payments made assessee has provided letters of appoint, tax residency certificate of the agents and services were rendered overseas. The assessing Officer has brought no material on record to show that the services were rendered by these agencies in India and hence where chargeable to tax in India. The case law relied upon by the assessee in the case of JCIT Vs Omprocess Technology India Pvt Ltd ITA No. 1047/Kol/2016 Order dated 25.04.2018 wherein the Hon'ble ITAT Kolkata has held that if the income is not chargeable in India the assessee was right in law in not deducting any tax thereon u/s 195 of the I T Act 1951. The AO has failed to controvert this basic and was deleted.

22. It is submitted to your honours that the order of the Ld. CIT (A) was in conformity with the order of the Hon’ble Kolkata Bench of the ITAT and therefore there is no mistake in the order of the Ld. CIT (A). The same should be confirmed. It is prayed that the ground no. (iii) & (xiv) of the appeal of revenue be dismissed.

23. In view of the foregoing submissions it is prayed that the order of the Ld. CIT (A) be confirmed and the appeal of the Revenue be dismissed”

129. We have heard both the parties and perused the records. We note that AO on perusal of the tax audit report found that the assessee has paid sales commission of

Rs. 2,57,56,247/-; and further he noted that the assessee has not deducted TDS on the sales commission paid by it. Therefore, as per him, since the assessee has not deducted tax u/s 195 of the Act, he disallowed the said expense in terms of section 40(a)(i) of the Act. On appeal, the Ld. CIT(A) deleted the addition, by citing the decision of the Tribunal in JCIT vs. Omprocess Technology India Pvt. Ltd. (supra) as well as the Hon'ble Delhi High Court decision in the case of CIT vs. EON Technology (supra) and Hon'ble Madras High Court decision in the case of CIT vs. Faizen Shoes Pvt. Ltd. (supra). We note that in this case the assessee had incurred expenditure on account of sales commission it had paid in foreign currency to foreign agents for procuring orders from outside India. In order to prove that the agents were residing outside India, the assessee has provided their latest tax residency certificate and also filed their letter of appointment which shows that they were engaged by the assessee to procure orders from outside India. In this factual scenario, applying the case law cited supra the Ld. CIT(A) has deleted the addition. We note that the foreign agents were residing outside India and have earned income for their work outside India, therefore they need not pay any tax in India. In such a scenario there was no legal necessity for the assessee to deduct tax u/s 195 of the Act. We note that the Revenue other than raising this ground of appeal has not provided any material to show that services were rendered by these agents in India or even a part of the services were rendered in India, so as to attract any tax liability in their hands in India; and since the amount paid to non-residents were not legally chargeable to tax in India, then the assessee has no liability to deduct tax on the payment and consequently therefore no disallowance u/s 40(a)(i) was called for and for this proposition we rely on the decision of Hon'ble Supreme Court in GE India Technology Centre Private Ltd. vs. CIT in Civil Appeal Nos. 7541-7542 of 2010 dated 09.09.2010 and therefore we confirm the order of Ld. CIT(A) and dismiss the grounds of appeal of the Revenue.

130. In the result, the appeals of the Revenue are dismissed for AY 2014-15, AY 2015-16 and AY 2016-17. And the appeal of assessee for AY 2015-16 is allowed.

Order is pronounced in the open court on 13th April, 2021.

Sd/-

(J. Sudharkar Reddy)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 13.04.2021

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- (i) DCIT, Circle-12(1), Kolkata
(ii) JCIT(OSD), Circle-12(1), Kolkata
2. Respondent – M/s Wearit Global Ltd., Crescent Tower, 5th Floor, 229, AJC Bose Road, Kolkata – 700020.
3. The CIT(A)- , Kolkata (sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata