

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 5857/Del/2017 : Asstt. Year : 2008-09**

**ITA No. 5858/Del/2017 : Asstt. Year : 2009-10**

ACIT, Central Circle-5, New Delhi	Vs	Sh. Harvansh P. Chawla, 707, Kailash Building, 26, K.G. Marg, New Delhi-110001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. ADDPC7559G</b>		

**Assessee by : Sh. Rohit Tiwari, Adv.**

**Revenue by : Ms. Sunita Singh, CIT DR**

**Date of Hearing: 21.01.2021**

**Date of Pronouncement: 26.04.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the revenue against the orders of the Id. CIT(A)-25, New Delhi dated 31.05.2017.

2. In the ITA No.5857/Del/2017, following grounds have been raised by the revenue:

*"1. That the order of the Id. CIT (A) is not correct in law and on facts.*

*2. On the facts and circumstances of the case, the Id. CIT (A) has erred in deleting the addition of Rs.28,00,00,000/- made on account of undisclosed income and has failed to appreciate the fact that the addition was made on the basis of the documentary evidence.*

*3. On the facts and circumstances of the case, the Id. CIT (A) has erred in allowing deduction u/s 24 of Rs.37,59,156/-.*

*4. On the facts and circumstances of the case, the Id. CIT (A) has erred in deleting the addition of Rs.10,91,67,051/- made on account of unexplained unsecured loans."*

3. In the ITA No.5858/Del/2017, following grounds have been raised by the revenue:

*"1. That the order of the Id. CIT (A) is not correct in law and on facts.*

*2. On the facts and circumstances of the case, the Id. CIT (A) has erred in deleting the addition of Rs.46,00,17,516/- made on account of unexplained credits in the books.*

*3. On the facts and circumstances of the case, the Id. CIT (A) has erred in deleting the addition of Rs.4,15,141/- made u/s 14A r.w. Rule 8D."*

4. The Appellant is a practicing Lawyer running a Law Firm by the name of M/s K.R. Chawla and Co. As against the returned Income of Rs.89,58,460/- as per the return for A.Y. 08-09 filed on 29.09.08, the income was assessed u/s 143(3) at Rs.40,36,11,984/-.

5. Information has been received by the Assessing Officer from the Deputy Director of Income tax (Inv.) Unit-II(3) New Delhi containing the details pertaining to RC-21 & 22/2008/SVPS/365 dated 17.08.2009 from the office of the Director-Cum-Commissioner, Vigilance Gangtok Sikkim.

6. Among the documents seized was a printout of e-mail conversations between the assessee. Sh. Harvansh Chawla (e-

mail hchawla@krcco.com), Michael Boettcher of Storm International. Narinder Grover (e-mail: ngrover@krcco.eom) and one Sh. Ivo Muijser. The subject of these e-mails is "payment for 2 licenses" and they seem to be related to getting licenses for casino in Sikkim. The e-mails have been exchanged in the month of November and December 2007. In the e-mail conversation there is a mention of remittance of \$7,000,000. Sh. Narinder Grover also acknowledges the receipt of this money in his e-mail, further Mr. Michael in his e-mail to Sh. Harvansh Chawla mentions about the refund of the money paid to Sh. Chawla in the situation that the licenses for casino are withdrawn.

7. During the course of assessment proceedings for assessment year 2008-09 summons n/s 131 were issued to the following parties on 12.07.2010:

<i>Sr. No.</i>	<i>Name of the Party</i>	<i>Address</i>
1.	<i>Harvansh P. Chawla (assessee)</i>	<i>C-17, Nizamuddin East, New Delhi</i>
2.	<i>Sh. Narinder Grover</i>	<i>C/O K. R. Chawla &amp; Co. 707, Kailash Building, 28, K.G. Marg, New Delhi-110001</i>
3.	<i>Sh. Kunwar Omkar Singh</i>	<i>H-3, Sector-41, Noida, U.P</i>

8. Sh. Kunwar Omkar Singh did not comply and no response was received in. this office. The summons in the case of Sh. Narinder Grover were sent to the address of M/s K.R. Chawla & Co. as he was using an e-mail address owned by the said firm. This was apparent from the e-mail conversation seized from Sh. Kunwar Omkar Singh. The summon was sent back by M/s K.R. Chawla & Co. with the comments that Sh. Narinder Grover was

no longer available there. Sh. Harvansh P. Chawla appeared before the undersigned on 17.08.2010 and gave his statement on oath.

9. During the course of statement Sh. Harvansh P. Chawla has admitted that he knew Sh. Kunwar Omkar Singh and elaborated on his dealings with Sh. Kunwar Omkar Singh. The relevant portion of the statement is reproduced below:

*"Q.2 Do you know Shri Kunwar Omkar Singh?"*

*Ans. Yes, I know Shri Kunwar Omkar Singh. He was the Managing Director of Sikkim Distillers. He was introduced to us by a law firm called Norton Rose of London. I was in touch him in the following contexts:-*

*(a) He was interested in purchasing a Nursing Home situated a Noida. He had given a Cheque of Rs.55 Crores (seized during the course of search from my residence on 28.02.2007) as an expression of his serious interest in the deal. This deal did not materialized and the Cheque was never presented. The Nursing Home is still in the name of the original owner.*

*(b) He introduced me in M/s Storm International. I acted as a legal consultation to M/s. Storm International while they were in the process of obtaining a license for casino in India.*

*3.5 A perusal of the e-mail dated 19.12.2007 from Mr. Michael Boettcher (mpb@stormby.com) to Sh. Harvansh P. Chawla shows that money was received by Sh. Harvansh P. Chawla. However, Shri Harvansh P. Chawla has denied having received*

*this money. The relevant portion of his statement in this regard is reproduced below:*

*"Q9. In the e-mail dated 19.12.2007 from Mr. Shri Michael Boettcher (mpb@stormby.com) addressed to you Mr. Michael Boettcher written as below:-*

*"Mr. Chawla,*

*Mr. Singh the minister from Sikkim called me today and advised me that you told him you had not received any payment from Storm for the casino license(s). I tried to reach you by telephone without success. I do not have to tell you how disappointed I am especially you have had the opportunity in build something unique and special that would have put Sikkim firmly on the map as well as creating increased employment and visions in the region based on the investments by Storm as well as the possibility of a very positive future business together.*

*I am also advising you on behalf of Mr. Singh to send \$2.5 m to Mr. Singh tomorrow. If you not he will (quite correctly in my opinion) to withdraw the casino licence.*

*In the case of the casino license being withdrawn you will be required to return to Storm the full amount of the sum we paid to you plus any interest incurred.*

*Yours sincerely,*

*Michael Boettcher  
PRESIDENT & CEO  
Storm International B.V.  
[www.stormbv.com](http://www.stormbv.com)*

*From the above e-mail, it appears that the money has been received with your knowledge and has been entrusted to you by M/s. Storm International. Please comment?*

*Ans. I affirm that neither me, my family or any of my associates concern have received any money from M/s Storm International nor was I entrusted with any money by M/s Strom International or Micheal Boettcher. The above email was sent erroneously or in mistaken belief. The fact that neither I nor my family or associates firms have received this money can be verified from our bank statements.*

*A detailed show-cause notice was issued to Sh. Harvansh P. Chawla vide letter dated 13.12.2010. The above observations were brought to the notice of the assessee and he was given a final opportunity to furnish his explanation in this regard. The assessee vide letter dated 20.12.2010 submitted his detailed explanation. The main points are reproduced below:*

*"In the light of facts and circumstances of the case, legal provision and case laws including the decisions of Delhi ITAT Jurisdictional High court and Hon'ble Supreme cited above, the assessee submission are summarized below:*

*A. That the email referred in your show cause noticed dated 13.12.2010 is not written by the assessee and contents of the said email are denied.*

*B. That the aforesaid print of email was not seized from the premises of the assessee during the course of search but it was forwarded by Sikkim Police after more than one year than the*

*search was over. Hence, the presumption u/s 132(4A) of the IT Act, 1961 is not applicable.*

*C. That the aforesaid print of email is a kind of Dumb Document which cannot be used against the assessee.*

*D. That in the email there is no indication of receipt of any money or accrual of any income in favour of the assessee.*

*E. That even in your show cause notice dated 13.12.2010 nothing is mentioned about receipt of any money or accrual of any income by the assessee.*

*F. That in Para 2 of show cause notice dated 13.12.2010, you have mentioned 'In the email conversation there is mention of remittance of \$7,000,000 on the instruction of Sh. Narender Grover. Sh. Narender Grover also acknowledges the receipt of this money. This suggests that the assessee did not receive any money and he was also not responsible for the receipt of \$ 7,000,000 by Sh. Narender Grover as both are independent persons.*

*G. That in Para 4 of show cause notice it is mentioned that the money was received with the knowledge of Shri Harvansh P. Chawla (assessee). Though there was no evidence about the knowledge of the assessee yet mere keeping the knowledge of receiving the money by some independent person (not an agent) does not make the assessee responsible for any taxation."*

10. The explanation of the assessee is not accepted by the AO. He held that the assessee has merely denied that the money

was received in his bank accounts or in the accounts of any of his concerns. The AO held that no sane person would receive unaccounted income in his accounts or in the accounts of any of the concerns related to him.

11. The AO held that,

- The email clearly fixes the liability to pay back on Shri Chawla in the event of licenses being cancelled.
- There is also a mention of the repayment alongwith interest.
- Thus, Shri Chawla is directly or indirectly the beneficiary of the amount of USD 7,000,000 mentioned in the email.
- It is a settled legal principal that in a situation where the evidence and preponderance of probability points against the assessee, the onus is on the assessee to disprove the evidence.
- The submission of Shri Chawla that his firm has no records of Sh Narinder Grover is not acceptable.
- The relevant portion of the statement of the is as under:

*"Q6. Please clarify on the status of Sh. Narinder Grover and the use of your firms e-mail id by him?"*

*Ans. He was working on behalf of M/s Storm International M/s. Storm International was my client. It is customary among the law firms to provide table space and communications facilities on temporary basis to clients still they have their own setup. In a similar arrangement, Shri Narinder Grover was allowed to use the office facilities and the e-mail address. We billed the use of these facilities to our client M/s. Storm International. Sh. Narinder Grover used to continuously work from our office for the period starting a few days before Diwali, 2007 till December,*

*2007. After January 2008 he stopped coming to office and I have no information about his or his where about after that."*

- The assessee has clearly admitted that Sh. Narinder Grover was using the office premises and infrastructure at his law firm M/s. K.R. Chawla and Co. He had even been allotted an email id on the internal server of the assessee's law firm. The email ids and other communication equipment are instruments that can be misused to an unimaginable extent. It is unlikely that a responsible lawyer like the assessee would let anyone use his office space and facilities without having the details regarding the background of the person. Thus Shri Chawla has not been telling the truth.
- The assessee admitted the fact that the email from Mr. Micheal Boettcher was received by him. He has further accepted his association with M/s. Storm International.
- The email clearly mentions that money has been received by the assessee and fixes the liability on him to pay back alongwith interest in the event of Casino license being cancelled.
- In view of the circumstances listed above, it is clear that the evidence points to the assessee having received USD 7,000,000/- through undisclosed sources. Hence, these USD 7,000,000 are treated as his undisclosed income. The rupee equivalent at the prevailing rate of USD on 31.03.2008 is Rs.28,00,00,000/-. An addition of Rs.28,00,00,000/- is made under the head income from other sources.

12. The Id. CIT (A) deleted the addition.

13. Before us, the respective parties relied on the submissions and information available on record.

14. The submissions of the assessee with regard to this issue before the Id. CIT (A) are as under:

- On going through the assessment order dated 28.12.2010 para 3, it is evident that certain documents were seized from the residence of one Shri Kunwar Omkar Singh by the Sikkim Vigilance Police which was forwarded to the Investigation wing, New Delhi, and in turn, the DDIT (Inv.) Unit II (3), New Delhi vide letter dated 17.08.2009 forwarded the same to the Id. A.O. The Ld. AO observed that it was a printout of email conversation between Shri Harvansh P. Chawla, Shri Micheal Bochcer of M/s Strom International, Shri Narender Grover and one Shri Ivo Mujjiser. The subject matter of the emails were, pertaining to licences for casino in Sikkim and remittance of USD 70,00,000. Shri Narender Grover has also acknowledged the receipt of money in his email. With reference to said exchange of email held in November & December 2007. The Ld. A.O issued summon u/s 131 to Shri Harvansh P. Chawla (Assessee), Shri Narender Grover and Shri Kunwar Omkar Singh. In response to said summon, Shri Harvansh P Chawla (Assessee) appeared before the Ld. A.O, whose statement was recorded on oath on 17.08.2010. The Ld. A.O issued show cause notice dated 13.12.2010 and in response, the appellant has submitted his reply dated 20.12.2010. Thus, after considering the assessee reply and

statement, recorded on oath, the Ld. A.O held that the assessee received USD 70,00,000 through undisclosed sources, hence, the same was treated as assessee's undisclosed income in Indian Rupees at Rs.28,00,00,000/-. Consequently, the Ld. A.O, made an addition of Rs.28,00,00,000/- in the case of appellant.

- That on going through the email as reproduced in the assessment order and also enclosed with the assessment order, it is evident that the appellant has neither written /sent any email nor has acknowledged the contents of the email (under dispute). Since the printout of email was not/seized from the premises of the appellant, the presumption of Section 132(4A) of the Income Tax Act, 1961 is not applicable against the appellant. The Ld. A.O. Income Tax Department were under obligation to make necessary enquiry against the persons from whom it was seized. Further, it can be enquired who has either sent the email or has admitted the contents of the email. Since the appellant is not involved in emails exchange, no action can be taken against the appellant.
- That in response to summon u/s 131 of the Income Tax Act 1961, the appellant appeared before the Ld. A.O. and his statement was recorded on oath. The appellant in his statement categorically denied about the receipt of any money as mentioned in the email (under dispute) either by himself or by anybody else on his behalf. Since the appellant has complied the summon issued u/s 131 he should not be punished by making the addition of

Rs.28,00,000/- without having any evidence. Those who did not comply the summons, no action have been taken against them. The appellant being law abiding person should not be penalized by making the addition of Rs.28,00,00,000/- without having any evidence. Hence, the addition is unjustified and the same is liable to be deleted.

- That in response to show cause notice issued during course of assessment proceeding, the appellant filed a written submission dated 20.12.2010 before the Ld. A.O explaining the factual and legal position in respect of alleged receipt of Rs.28,00,00,000/- as mentioned in the disputed email. However, the Ld. A.O without appreciating the factual position and legality of the issue, wrongly added Rs.28,00,00,000/- in the impugned assessment order. Hence, the addition of Rs.28,00,00,000/- is liable to be deleted. The copy of submission dated 20.12.2010 is enclosed as Annexure -1.
- That on going through the emails either incorporated in the assessment order or attached with the assessment order, your goodself will find that nowhere it was mentioned that the appellant had received USD 70,00,000 equivalent to Rs.28,00,00,000/-. Further, on going through the email dated 22.11.2007 written by Shri Ivo Mujjser to Shri Narinder Grover, it is evident that Shri Ivo Mujjser has instructed to his banker to transfer the amount of USD 70,00,000. In response, Shri Narender Grover replied on 26.11.2007 confirming the receipt of said money. Thus on

the basis of email exchange, it appears that Shri Ivo Mujjser has transfer USD 70,000,000 to the bank instructed by Sh. Grover and later on Shri Grover confirmed the receipt of said money. On going through the email exchange, it is evident that Shri Harvansh P Chawla (appellant) is not in picture at all. Hence, the addition of Rs.28,00,00,000/- in the case of appellant is without any evidence. Thus, the addition made in the case of appellant is unjustified and the same is liable to be deleted.

- That now a question arises, how Shri Narender Grover was connected with the appellant? Second question is, whether Shri Grover was an agent of the appellant or he was working on behalf of the appellant? These questions are explained by Shri Harvansh P Chawla (appellant) in his statement recorded on oath. In response to question No. 6 which have been reproduced by the Ld. A.O in para of the assessment order, the appellant explained that M/s Storm International was a client of the appellant and Shri Narender Grover was working on behalf of said Storm International. In the light of customary practice Shri Narinder Grover was allowed to use his office as well as the communication facilities of the appellant on behalf of said M/s Storm International till Dec 2007. Since the work of M/s Storm International was over, he stopped coming to the appellant office thereafter. In the light of facts mentioned above, it is evident that Shri Narender Grover was neither the staff of the appellant nor he was an agent nor he was working on behalf of the appellant. In this situation, the appellant is not responsible for the work and

conduct of Shri Narender Grover and no addition can be made in the case of the appellant, only on the reason that he (Shri Grover) sent the email by using the official server of the appellant.

- That since Shri Narender Grover was working in the office of the appellant on temporary basis in connection with work of M/s Storm International (appellant's client). He was allowed the office facilities including the email addresses in order to professional practice and requirement. Accordingly, he might have sent the emails to Shri Ivo Muggiser through the appellant office server by misusing the facilities provided by the appellant. However, this may not be basis for holding that the said USD 70,00,000 was received either by the appellant or by anybody else on behalf of the appellant. Thus, the addition made merely on the reason of sending the email by Shri Narender Grover from the office server of the appellant is unjustified. Hence, the same is liable to be deleted.
- That though the sending of email by Shri Narender Grover through the office server of the appellant may be a basis for enquiry, yet, it cannot be a basis for the addition in the case of appellant without having supporting evidences. No doubt, the Ld. A.O has correctly enquired the matter from the appellant by issuing the show cause notices and recording the statement on oath and also by examining the books of accounts and bank pass book etc. Since the Ld. A.O did not find any evidence of receipt of USD 70,00,000, he was required to gracefully accept the appellant

submission and not to make any addition on presumption basis. In absence of any supporting evidence, the Ld. A.O was not justified by holding in para 3.8 of the assessment order, "thus Shri Chawla is directly or indirectly the beneficiary of the amount of USD 70,00,000 mentioned in the email." However, the Ld. A.O failed to mention as to how Shri Harvansh Chawla was beneficiary of the said amount. The observation of the Ld. A.O is purely based on presumption, conjecture and surmises and the addition made on such presumption basis is not permissible in the eye of law. The relevant case laws are discussed in Para 1.2 of this submission.

- That in email dated 19.12.2007 addressed to Mr. Chawla sent by Shri Michael P Boettcher, there is no reference of USD 70,00,000 but it was mentioned in the email dated 22.11.2007 sent by Shri Ivo Mujjiser to Shri Narinder Grover. Further, the appellant has no connection either with Shri Ivo Mujjiser or with Shri Narinder Grover (except Shri Narender Grover used the appellant's official server for professional requirement in connection with appellant's client M/s Storm International work). Hence, the appellant should not be punished by making the addition of Rs.28,00,00,000/- only because of allowing the official server to Shri Narender Grover. Hence, the addition of Rs.28,00,00,000/- made in appellant case is highly unjustified and the same is liable to be deleted.
- That in the email dated 22.11.2007, it is mentioned, "the total have been wired in 6 different amounts to the three

bank accounts as you have instructed." As per email, the aforesaid amount has been stated to be deposited in three bank accounts. In fact, it was matter of enquiry in which Bank accounts the said sum have gone. The Ld. A.O instead of making a detailed enquiry and ascertaining in whose Bank accounts the said sum was actually deposited, he chose to make the addition in appellant case, though the appellant bank account was examined by the Ld. A.O and the said sum was not found to be deposited. The Ld. A.O made his job over by making the addition of Rs.28,00,00,000/- in the ease of appellant, though, there was no evidence against the appellant In substance, the appellant did not receive the said sum USD 70,00,000 equivalent to Rs. 28,00,00,000/-. Thus, the addition of Rs.28,00,00,000/- is not justified. Hence your goodself is requested to kindly delete the said addition.

- That in response to show cause notice dated 13.12.2010 para 2 & 4 the appellant had submitted following explanations before the Ld. A.O:

"That in para 2 of show cause notice dated 13.12.2010, you have mentioned "In the email conversation there is mention of remittance of \$70,00,000 on the instruction of Sh. Narender Grover. Sh. Narender Grover also acknowledges the receipt of this money." This suggest that the assessee did not receive any money and he was also not responsible for the receipt of \$70,00,000

by Sh. Narender Grover as both are independent persons.

That in para 4 of show cause notice it is mentioned that the money was received with the knowledge of Sh. Harvash P Chawla (assessee)- Though there was no evidence about the knowledge of the assessee yet mere keeping the knowledge of receiving the money by some independent person (not an agent) does not make the assessee responsible for any taxation.

- That in respect of aforesaid reply, the Ld. A.O in para 3.7 mentioned, "the explanation of assessee is not acceptable. The assessee has merely denied that the money was received in his bank accounts or in the accounts of any of his concerns. It is given fact that no sane person would receive unaccounted income in his accounts or in the accounts of any of the concern related to him On going through the Ld. A.O observation, it is evident that the appellant, has all along denied the receipt of Rs. 28,00,00,000/- either by him directly or by anybody else on his behalf The Ld. A.O has also admitted that the said amount has neither gone to his bank account nor in his related concern. Since the amount of Rs.28,00,00,000/- was neither received by the appellant nor by his related concerns, it was onus on the Ld. A.O to prove that where such amount had gone and how the appellant became the owner of that amount. Further, there is no evidence to prove that the said sum of Rs. 28,00,00.000/- have been

deposited to the account of any benami person of the appellant. Further, the Ld. A.O failed to prove that the income of Rs. 28,00,00,000/- was accrued in favour of the appellant. Since, the income of Rs.28,00,00,000/- was neither received nor accrued in favour of the appellant, no addition can be made in appellant case. In this situation, the addition of Rs.28,00,00,000/- was not justified and the same is liable to be deleted.

15. It was further explained as under:

### **Legal Position of the printout of the E-mails**

“(a) That as mentioned in earlier para that the disputed printout of the emails was not found and seized from the premises of the appellant but it was forwarded by the Sikkim Vigilance Police to the Investigation Wing. In turn, it was forwarded to the Ld. A.O. Hence, the legal presumption as prescribed under section 132(4A) is not applicable against the appellant. Further, it is already explained in the earlier para of this submission that out of aforesaid disputed emails, no email was sent by the appellant. Now, the question arises about the legal status of the email printouts forwarded by Sikkim Vigilance Police. In this regard, the appellant during the course of assessment proceeding has submitted detailed explanation dated 20.12.2010 and the Ld. A.O has also quoted the certain portion of the said explanation in the assessment order. In the said explanation dated 20.12.2010, certain case laws (including the cases decided by the Delhi ITAT. Hon'ble Delhi High Court and also by Hon'ble Supreme Court) have been quoted explaining the; legal position of the disputed printouts of the

email. However, the Ld. A.O did not consider the case laws under reference as he neither accepted the ratio of these cases nor rejected the same in the assessment order. In fact, the Ld. A.O kept mum with reference to the case laws mentioned in the explanation dated 20.12,2010. Hence, the Ld. A.O being quasi judicial authority was not justified ignoring the case laws as quoted in the written submission and making the addition of Rs.28,00,00,000/-. The addition made by Ld. A.O was against the principle laid by the Delhi ITAT, Jurisdictional High Court and by the Hon'ble Apex Court, which were binding in nature. Hence, the addition of Rs.28,00,00,000/- is liable to be deleted.

(b) That in the light of copy of explanation dated 20.12.2010 enclosed as Annexure-1 submitted before the Ld. A.O., it is brought to your kind notice that the disputed printout of email was neither signed nor acknowledged by the appellant. Hence, it was a dumb document and in the light of judicial pronouncements, no addition can be made merely and exclusively on the basis of such dumb document without having any supporting evidence. Since in the letter dated 20.12.2010 the detailed description about the case laws have already been given and such letter is enclosed with this submission, there is no need to repeat the same. The appellant rely on following case laws:

- a. Atul Kumar Jain Vs. DCIT (1999) 64 TTJ 768
- a. Ramli Dayawal & Sons Pvt. Ltd. Vs. Invert Import AIR 1981 SC 2085
- b. Mohamad Yusuf Vs. D & Others AIR 1968 BOB 112
- c. CBI Vs. V.C. Shukla & Other JT (1998) 2 SC 172;
- b. Dy. CIT Vs. Krorilal Aggarwal (1994) SOM (Jab) 393

- c. Ashwani Kumar vs. ITO (1992) 42 TTJ Delhi 644
- d. CIT Vs. Girish Chaudhary (2008) 296ITR 619 (Delhi)
- e. Amarjit Singh Bakshi (HUF) vs. ACIT (2003) 263 ITR 75 Delhi
- f. Bansal Strips Pvt. Ltd. v. ACIT (2006) 100 TTJ (Del) 665
- g. Swadeshi Cotton Mills Co. Ltd. vs. ITO 1976 CTR (All) 6
- h. Dhakeshwari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 SC
- i. CIT vs. Ravi Kant Jain (2001) 167 CTR (Del) 566
- j. CIT vs. P V Kalyan Sundram (2006) 203 CTR (Mad) 449
- k. CIT vs. Kailash Chand Sharma (2005) 198 CTR (Raj) 201
- l. S.R. Koshti vs. CIT (2005) 193 CTR (Guj) 518

### **No addition on the basis of presumption**

(a) That in the case of appellant, there is neither any direct evidence for the receipt of Rs.28,00,00,000/- nor any circumstantial evidence suggesting the appellant as beneficiary of that amount. In fact, the addition in appellant case was made on the basis presumption, surmises and conjecture, which is not permissible in the eye of law. The Ld IT AT, Delhi "A" Bench, Bansal Strips Pvt. Ltd. v. ACJT (2006) 100 TTJ (Del) 665 relying on the decisions of Swadeshi Cotton Mills Co. Ltd. vs. [TO 1976 CTR (All) 6 and Dhakeshwari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 SC held that the AO cannot draw his inference on the basis of suspicion, conjectures and surmises. The AO should act in the judicial manner, proceed with the judicial spirit and come to a judicial conclusion. For the sake of convenience of your kind perusal, the relevant portion of the finding is reproduced below:-

"While completing an assessment the AO is not a Court He is also not hound by technical rules of evidence. He may consider material which would be wholly inadmissible in a Court of law. He may draw his conclusion and inferences on the cumulative effect of various circumstances based upon the test of human probability. At the same time though technical rules of evidence do not apply, the AO is bound by the principles of natural justice. He cannot draw his inferences on the basis of suspicion, conjectures and surmises. Suspicion howsoever strong, cannot take place of the material in support of findings of the AO. The AO should art in the judicial manner, proceed with the judicial spirit and come to a judicial conclusion. Swadeshi Cotton Mills Co. Ltd. vs. ITO 1976 CTR [All] 6: (1978) 112 ITR 1038 (All) and Dhakeshwari Cotton Mills Ltd. Vs. CIT (1954) 26 ITR 775 (SC) applied.

In the light of facts and circumstances of the case, legal provision and judicial pronouncements, it is brought to your kind notice that the addition of Rs.28,00,00,000/- was made only on the basis of printout of emails exchange which was seized from the premises of one Shri Kunwar Omkar Singh and not from the appellant premises. The said printout of email was forwarded by the Sikkim Vigilance Police to the DIT(Inv), New Delhi who forwarded the same to the Ld. A.O Further, the disputed email exchange was held between Shri Michael Boccoher and Shri Narender Grover, who were neither appellant's agent nor working on behalf of the appellant. Shri Narender Grover has sent the email by misusing the official server of the appellant, when he was working in appellant office

in order to professional practice and requirement in connection with M/s Storm International case (appellant's client). Thus, the appellant neither sent any email nor he admitted the contents of any email. Moreover, sending the email by Shri Grover by misusing the official server of appellant may not be basis for the addition in appellant case, particularly when the appellant books of accounts including the bank account was examined and appellant's statement was recorded on oath and no adverse evidence was found by the Ld. A.O. Since, the appellant neither received the disputed amount of Rs.28,00,00,000/- nor it was accrued in appellant favour, no addition can be made merely on the basis of printout of email seized from the residence of a third person and forwarded by the Sikkim Vigilance Police. In the light of judicial pronouncements, which have been discussed in the written explanation dated 20.12.2010 enclosed with this submission, the said printout of email was a dumb document and no addition can be made on the basis of such dumb document without having any supporting evidences. Since in appellant's case there is no evidence either for the receipt of Rs.28,00,00,000/- or for the accrual of income, thus, the addition for such amount was neither legal nor justified. Hence, your goodself is requested to kindly delete the addition of Rs.28,00,00,000/-.

16. The assessee further argued that,

(a) The print out of the email (under dispute) was not seized under section 132 from the assessee's premises. Hence, no presumption under section 132 (4A) is applicable against the assessee.

(b) The assessee's statement was recorded on oath u/s 131(1) with reference to such print out of email who denied either to receipt of money or sending of email. The statement on oath has evidentiary are rebutted with the help of supporting evidences.

(c) The person from whom such print out of email was seized, was liable to explain and not the assessee.

(d) The assessee is not involved in email exchange; no action is required to be taken against the assessee.

(e) The assessee being law abiding person appeared before the Ld. AO and his statement on oath was recorded and thereafter the addition of Rs.28,00,00,000/- was made. The persons who did not comply the summons, no action have been taken against them.

(f) In email no where it is mentioned that he assessee has received USD 70,00,000. On the contrary, through email dated 22.11.2007 it is evident that Sh. IVO Mujjser transferred USD 70,00,000 in six different amounts in three banks.

(g) Further, through email dated 26.11.2007 Sh. Narendra Grover confirmed the receipt of said amount.

(h) These two emails in which the transaction of USD 70,00,000 has been, mentioned, was neither sent nor received by the assessee but the sender is Mr. IVO Mujjser and the receiver is Mr. Narendra Grover both are persons and they are neither agent of the assessee nor they were working for and on the behalf of the assessee.

(i) In third and last email dated 19.12,2007 addressed to Mr. Chawla (specific name of the assessee is not mentioned), there is denial by Mr. Chawla about the receipt of any payment. Though the print out of the email is not a primary evidence, yet in case, it is treated as primary evidence, it is in favor of the assessee as it suggested that Mr. Chawla did not receive any money and both the payer and the payee are the independent persons.

(j) The assessee in response to Question no. 6, explained that M/s Storm International was assessee's client and Sh. Narendra Grover was using his office on behalf of said client for certain period.

(k) During that period Sh. Narendra Grover might have sent the email misusing the assessee's email id. However, no addition can be made merely on the reason of sending the email assessee's email id.

(l) In email dated 19.12.2007 addressed to Mr. Chawla, there is no inference of USD 70,00,000.

(m) The Ld. AO observed that no sane person would receive unaccounted money in bank account but he forgot that in email dated 22.11.2007 it is specifically mentioned that the amount was wired in three different bank accounts. Thus, there is contradiction in Ld. AO's observation and content of email.

(n) In show cause notice, the Ld. AO pointed out that money was transferred with the knowledge of the assessee. First of all, there is no evidence about the knowledge of the assessee;

secondly, no addition can be made merely on the basis of keeping the knowledge of transfer of money.

I. In legal term, the printout of email is neither the books of accounts nor a document as mentioned u/s 132(4A) of the Income Tax Act, 1961.

J. The said print out of email is neither on pad of the assessee nor written nor signed by him. In other words, it is head less and leg less and it is not self speaking. In this situation, it is a dumb document.

K. In the light of judicial pronouncements, cited in the written submission, no addition can be made merely and exclusively on the basis of dumb document without having supporting evidence.

L. The said dumb document (print out of email) was seized from the premises of the third person and in the light of number of judicial pronouncements, cited in the written submission; no addition can be made on the basis of the documents seized from third person.

M. There is no legal provision for making the addition of Rs.28,00,00,000/- merely on the basis of email print out seized from a third person on following reasons:

(a) Section 4 is a charging section which speaks about the 'Total Income'. The term 'Total Income' has been defined under section 2(45) which refer to Section 5 of the Income Tax Act, 1961.

(b) Section 5 refers about either receipt of income or accrual of income. In the instant case of the assessee, there is no evidence that the assessee has received the money. On the contrary, in email dated 19.12.2007 Mr. Chawla has denied the receipt of the money.

(c) Further there is no evidence that there was accrual of any income in favor of the assessee. In absence of any receipt or accrual of income, no addition can be made in case of the assessee.

(d) Without prejudice, if it is presumed that the amount was received by the assessee even then, no addition can be made of the gross amount as there is description of payment in email for sake of licenses of two casinos. Once the amount is presumed to be received, it can also be presumed to have been paid. Thus, the incoming and the outgoing is the same and there is zero income in this transaction. Hence, no addition is called for.

(e) Further, the provision of Section 68 is not applicable in this case as there is no cash credit.

(f) The provision of Section 69 is not applicable as there is no unexplained investment.

(g) Similarly, the provision of Section 69A is not applicable as the assessee is not found to be owner of any money, etc.

(h) The provision of Section 69B is not applicable as there is no unexplained investment; hence there is no question of not fully recording in the books of accounts.

(i) The provision of Section 69C is not applicable as there is no unexplained expenditure.

(j) The provision of Section 69D is not applicable as there is no question of borrowed amount or repaid on hundi.”

17. We find from the records, the Commissioner of Income Tax (Appeals)-XXVIII, New Delhi vide F.No. CIT(A)-XXVIII/2013-14/341 dated 24.02.2014, sent a letter to the Additional Commissioner of Income Tax, Range -37, New Delhi, stating as under:

"Kindly refer to your letter F. No. Addl.CIT/Range-37/2013-14/965 dated 24.02.2014 vide which you have forwarded the remand report of the Assessing Officer in the above referred appeals. The remand report has been forwarded without any comments on your part. Keeping in view the fact that substantial revenue is involved in the case you are directed to give detailed comments on the followings:-

1. Evidence other than the e-mails in respect of receipt of USD 70 lacs allegedly received by Shri H.P. Chawla.
2. Authenticity and the evidentiary value of the e-mails seized by Sikkim Vigilance Police from the residence of Shri Kunwar Qnkar Singh.
3. Copy of the letter issued to the assessee for producing Shri Narinder Grover.
4. Efforts if any made to confirm the transaction from Michael Boettcher of Storm International and Shri Ivo Muijser.

5. Copy of the documents regarding details of US Dollars 7,59,485 from SBI Gantok and other documents including statement of account relating to Kanchan Distilleries Pvt. Ltd. forwarded later by Director cum Commissioner of Vigilance Department, Sikkim reference to which is contained in the Commissioner of Income Tax (A) Order for Assessment Year 2007-08 (letter No. RC-21 & 22/2008/SVPS/365 dated 17.08.2009).

6. Evidence that the above documents have been confronted to the appellant.

7. Comments in detail on the identity, genuineness and credit worthiness of each person who have allegedly advanced loan to Shri Harvansh P. Chawla and addition regarding which have been made by the Assessing Officer under section 68 and whether you are satisfied or not regarding the source of the unsecured loans claimed by the appellant as per the bank account furnished by the appellant and forwarded by you.

8. How have share application money been received from abroad in case of Pvt. Ltd. Company i.e. M/s. Karina Hotels Pvt. Ltd., M/s. Storm Hotels Pvt. Ltd. and M/s. K R Chawla Consulting Pvt. Ltd, You are also required to specify that if the amount received in foreign currency is not share application money then what is the nature of the foreign currency receipt and whether these are in any way connected to the amount referred to in the e-mails, addition in respect of which has been made in assessment year 2008-09 in the case of the appellant.

9. Whether there is any amount paid by Storm International to Shri Harvansh P. Chawla for providing legal consultancy, if so, the evidence produced by the assessee in this regard.

10. In the assessment order it has been claimed time and again against addition made in respect of unsecured loans that the party did not have the capacity to finance the loan and the loan has been financed through unaccounted money of the appellant by creating layer of intermediaries. Kindly give your comments on these statements of the Assessing Officer.

The detailed report should be received without fail by 26.02.2014 in view of the fact that it is a high demand case which has been pending for a long time.”

18. We find that, a report was sent to the Learned Commissioner of Income Tax (Appeals)- XXVIII, New Delhi by the Assessing Officer, i.e. Asstt. Commissioner of Income Tax, Circle-37(1), New Delhi vide F. No. ACIT/Cir-37(1)/2013-14/1884 dated 26.02.2014, in response to the above mentioned letter dated 24.02.14 of the Learned Commissioner of Income Tax (Appeals), stating as under:

“Kindly refer to your letter no. CIT (A)-XXVIII/2013-14/341 dated 24.02.2014 on the above mentioned subject.

2. In this connection, at the outset, it is submitted that the Remand Report sent vide this office letter dated 24.02.2014 as well as the present report has been prepared under the continuous guidance and supervision of the Addl. C.I.T., Range-37.

3. In addition to the comments already forwarded vide the above referred Remand Report dated 24.02.2014, following para-wise comments in response to the queries raised are being submitted:

3.1 As regards evidence related to the e-mail in respect of receipt of US\$ 7 million, it is stated that as per law, the onus is on the assessee to rebut the presumptions u/s 132 (4A) of the Act. As the assessee has failed to discharge his onus on this issue, the conclusion that the assessee himself is beneficiary of the amount specified in the e-mail is inescapable.

3.2 It has been the stand of Revenue that the e-mails seized by Sikkim Vigilance Police are authentic and genuine source of information, and in absence of any evidence to the contrary, it may not be appropriate to doubt the veracity of information received from an independent, law enforcing agency. In any case, the onus is on the assessee to disprove the presumption in this regard;

3.3 As per para 3.3 of the assessment order for A.Y. 2008-09, summons were issued to Sh. Narinder Grover to the address of M/s. K.R. Chawla & Co.- a law firm owned by the assessee. These summons were returned by the assessee's law firm with the comments that Sh. Narinder Grover was no longer available there, and they did not have any contact with him or his forwarding address. Thus, it is clear that the assessee was given sufficient opportunity to produce Sh. Narinder Grover, if he desired to do so.

3.4 As regards efforts made to confirm the transaction from Michael Boettcher and Ivo Mujjser, it is stated that the assessee was confronted, with the documents and seized material during the assessment proceedings, and no plausible explanation could, be given by him to rebut the presumption of being the beneficiary of the amount in question. No further confirmation was required in the circumstances of the case.

3.5 In connection to the documents regarding details of US\$ 759,485 from SBI Gangtok and other documents including statement of account relating to Kanchan Distilleries Pvt. Ltd. forwarded later by Director cum Commissioner of Vigilance Department, Sikkim reference to which is contained in the Commissioner of Income Tax (A) order for A.Y. 2007-08. (Letter No. RC-21 & 22/2008/SVPS/365 dated, 17.08.2009 it is submitted that no such letter is found in the assessment file forwarded by the Central Circle and available with this office. It may be pertinent to mention here that this case was completed in Central Circle and the assessment folder was later transferred to the present jurisdiction, but the seized record has still not been transferred from the Central Circle. Efforts are being made to get the seized material also transferred. It is plausible that the desired letter may be a part of seized material. It may not be out of place to mention that a copy of the same letter (As mentioned, in the CIT(A)'s order in the case of the assessee himself for A.Y. 2007-08) was forwarded to the office of CIT'(A) by the AC IT, Central Circle-13 during the appellate proceedings in case of the assessee for the A. Y. 2007-08.

3.6 It is reiterated that during the assessment proceedings, the assessee was confronted with all the documentary evidences, including the seized material, available. A detailed statement of the assessee was also recorded on oath during the assessment proceedings. As far as any evidence regarding the fact that the above documents have been confronted to the appellant is concerned, it is relevant mention that in the CIT(A)'s order in the case of the assessee himself for A.Y. 2007-08 in para no. 16 it is mentioned that the ACIT Central Circle-13 submitted his report to the CIT(A). The point 5 of the report of the ACIT mentions about such letter. The CIT(A) in para 17 mentions that "the AR of the appellant was given reports of the A.O. for rejoinder". A bare perusal of this order of CIT(A) leads to the conclusion that the assessee may would have been confronted with these documents. Since, all these records must be available in the office of the CIT(A) a conclusive inference can only be drawn after going through the same.

3.7 As regards the unsecured loans claimed to have been raised by the assessee, it may be recalled that in the assessment order, it is pointed out that the lenders in question did not have enough means to justify such high level of lending to the assessee. Nothing has so far come to the notice to alter the stand of Revenue on this account.

3.8 It is submitted that the query regarding receipt of Share Application Money from abroad appears to be not much related to the present case. The contention of Revenue has been that the lenders which advanced unsecured, loans to the assessee

did not have sufficient means, and as such, it was assessee's own money which was being routed through. Nature of entry in the hands of Pvt. Ltd. Companies (the lenders) does not, in any way affect the above proposition. However, in case any new line of investigation is contemplated, the undersigned, would be most willing to carry out further investigation to the extent possible. It may not be out of place to mention that the undersigned does not have jurisdiction of the companies mentioned above.

3.9 As regards any amount paid to M/s Strom International, it is stated that even if some amount was paid by the assessee to M/s Strom International, it does not affect the Revenue's case in any way. The question whether M/s Storm International was a client of the assessee or not is not related to the Revenue's case brought out in para 3.10, 3.11 and 3.12 of the assessment order for A. Y. 2008-09. However, in case any new line of investigation is contemplated, the undersigned would be most willing to carry out further investigation to the extent possible.

3.10 The issue of creditworthiness of the lenders has already been dealt with in para 3.7 and 3.8 above.

4. It is also submitted that the issue raised in the letter of CIT (A) dated 24.02.2014 have been discussed at length in the assessment order, and the same is relied upon once again. However, if CIT (A) so desires, the entire assessment record can be made available in support of various averments made in the assessment orders, for perusal and necessary verification. Further, if CIT (A) desires to pursue a fresh line of

investigation, in connection with the Unsecured Loans, not yet explored by Revenue the undersigned would be most willing to carry out further investigation to the extent possible. Issuing specific instructions to the relevant Assessing Officers might also be considered.

5. It is also humbly, submitted that only one day time was given to prepare the remand report. It may be appreciated that at this state of the financial year, with a large number of time banning matters pending for disposal and this being a. high demand case, the time given was grossly inadequate.”

19. Having gone through the submissions of the assessee after getting the various reports from the AO, the Id. CIT (A) held as under:

*"8.41 Perusal of the entire facts of the case shows that the Assessing Officer has relied upon the email sent by Sh. Michael Boettcher, President and CEO, M/s Storm International B.V. to Sh. Harvansh P Chawla, the Appellant, the fact that the printouts of emails were found from the premises of Sh. Kunwar Onkar Singh, Managing Director of M/s Sikkim Distilleries Ltd. and that Sh. Narinder Grover has acknowledged the receipt of the payments. Though other than the fact that an email was sent by Sh. Michael Boettcher to Sh. Harvansh P Chawla, the other two aspects do not involve Sh. Harvansh P Chawla, the Assessing Officer has linked each of the three aspects to the Appellant on the basis that the Appellant i.e. Sh. Harvansh P Chawla was associated with M/s Storm International B.V., Sh. Kunwar Onkar Singh and with Sh. Narinder Grover in different ways.*

8.42 Each aspect of the case was examined. No doubt, Sh. Michael Boettcher sent an email to the Appellant in which there was discussion about some payments. However, even from the email, it is not clear as to what payment was even alleged to be paid to the Appellant. The contents of the email from Sh. Michael Boettcher to Sh. Harvansh P Chawla dated 19.12.07, as reproduced in Para 3.5 of the Assessment Order 28.12.10 are as under:

"Mr. Chawla,

Mr. Singh the minister from Sikkim called me today and advised me that you told him you had not received any payment from Storm for the casino license(s).

I tried to reach you by telephone without success. I do not have to tell you how disappointed I am especially you have had the opportunity in build something unique and special that would have put Sikkim firmly on the map as well as creating increased, employment and visions in the region based on the investments by Storm as well as the possibility of a very positive future business together.

I am also advising you on behalf of Mr. Singh to sent \$2.5 m to Mr. Singh tomorrow. If you not he will (quite correctly in my opinion) to withdraw the casino licence.

In the case of the casino license being withdrawn you will be required to return to Storm the full amount of the sum we paid to you plus any interest incurred.

Yours sincerely,

Michael Boettcher  
PRESIDENT & CEO  
Storm International B.V.  
[www.stornbv.com](http://www.stornbv.com)

*8.43 A careful perusal of the above email, which is the most crucial document relied upon by the Assessing Officer to conclude that the amount of 7 Million US Dollars was received by the Appellant shows that:*

*a. The email mentions that Mr. Singh, who is stated to be a Minister in Sikkim has told the author of the email i.e. Sh. Michael Boettcher that the recipient of the email i.e. Sh. Harvansh P Chawla told the Minister that he had not received any payment from Storm.*

*b. The email does not specifically mention the amount of \$ 7 Million or even indirectly indicate as to what was the specific amount alleged to be paid.*

*c. The email does allege that some payment had been made by M/s Storm, as it states that the recipient of the email will have to return the full amount of the sum paid plus Interest, but such 'full amount' is not specified.*

*d. The email advises the recipient to send \$ 2.5 m to Mr. Singh, who is stated to be a Minister in Sikkim.*

*8.44 From the above it is seen that rather than proving that any payment was received by Sh. Harvansh P Chawla, the email rather informs about the denial by him, regarding having received any payment at all. Further, the email does not specifically mention as to what exactly was the specific or full amount alleged by M/s Storm to be paid and denied to have been received by Sh. Harvansh P Chawla. The email does advise the recipient to send an amount of \$ 2.5 m, which apparently*

*stands for US Dollars 25,00,000/-, but such payment is to be made to Mr. Singh, who is a Minister in Sikkim.*

*8.45 The Appellant, during the assessment proceedings was summoned u/s 131 of the Income Tax Act, 1961, in response to which, he appeared before the Assessing Officer on 17.08.10 and his Statement on Oath was recorded. In question number 9 of the Statement, the Appellant was confronted regarding the email and the Assessing Officer enquired that from the email, it appears that the money had been received with the knowledge of the Appellant and had been entrusted to him by M/s Storm International and required him to comment. In his response, the Appellant stated that neither he nor his family nor any of his associate concerns had received any money from M/s Storm International nor he was entrusted with any money by M/s Storm International or Michael Boettcher. The Appellant further stated that the email in question was sent erroneously or in mistaken belief. He further, averred that neither he nor his family or associates Firms had received the money could be verified from there Bank Statements.*

*8.46 Perusal of the Assessment Order shows that the Assessing Officer rejected the contentions of the Appellant and has solely relied upon the abovementioned email from Sh. Michael Boettcher to hold that Appellant had received the amount of \$ 7 Million. Such conclusion has been drawn on the basis of his logic in Para 3.7 and 3.8 on Page 6 of the Assessment Order as under:*

- i. *"no sane person would receive unaccounted income in his account or in the accounts of any of the concerns related to him", (observation in Para 3.7 of the Assessment Order)*
- ii. *"the email clearly fixes the liability to pay back on Sh. Chawla in the event of licenses been cancelled" (observation in Para 3 .8 of the Assessment Order)*
- iii. *"there is also a mention of the repayment alongwith Interest" (observation in Para 3.8 of the Assessment Order)*

*8.47 On the basis of the above observations, the Learned Assessing Officer has concluded in Para 3.8 of the Assessment Order that "Thus, Sh. Chawla is directly or indirectly the beneficiary of the amount of USD 7,000,000 mentioned in the email."*

*8.48 An analysis of each of the above three observations and the conclusion by the Assessing Officer shows that there was absolutely no justification at all for such conclusion. No doubt, it is unlikely that an intelligent person would receive Unaccounted Income in his account s or in the accounts of any of the concerns related to him, but it is a fact that every year numerous cases are detected by the Income Tax Department where Unaccounted Income is received in the accounts of a person and in accounts of related concerns. The receipt of such Unaccounted Income in the Bank Account of the person concerned or in the Bank Accounts of his related concerns would rather be compulsory where the payment was being received through Banking Channels. In the present case, the allegation is that the payments in question amounting to \$ 70,00,000/- ( US Dollars 7 Million) was sent in 6 different amounts to 3 different*

*Bank Accounts. In such a situation, it is obvious that the payments would be received in some Bank Accounts, if the payment had actually been sent. The documents in question only show that there was an allegation or claim that the amount of US Dollars 7 Million was sent to 3 different Bank Accounts. In view of the nature of the allegations, it is obvious that it is only some Bank Accounts in which the amounts paid, if any, would be received. In such a situation, if there is an allegation against the Appellant that he received the amounts paid, the onus definitely lies upon the person claiming so, to show the link between the amounts received in the Bank Accounts with the Appellant, or the link of the Bank Accounts with some family member or associated concern or firm of the Appellant. If there is no linkage between the Appellant or any of his family members or any associated concern or firm etc. with any specific amount received in any specific Bank Account, then it would be illogical to presume that the amount sent through a Bank Account reached the Appellant.*

*8.49 The Learned Assessing Officer has observed in Para 3.8 of page 6 of the Assessment Order that "the email clearly fixes the liability to pay back on Sh. Chawla in the event of licenses been cancelled" and that "there is also a mention of the repayment alongwith Interest". However, these are claims or allegations made by the email sent to the Appellant. There is no confirmation from the Appellant regarding the claim that any payment was received by him. Further, the Assessing Officer has ignored a very relevant aspect of the email that the opening lines of the email very clearly record that the Appellant had denied having receipt any payment at all from M/s Storm for the*

*Casino Licenses. It is stated in the opening part of the email as under:*

*"Mr. Singh the minister from Sikkim called me today and advised me that you told him you had not received any payment from Storm for the casino license(s)".*

*8.50 Thus the email itself clearly records the denial of the Appellant of having received any payment from M/s Storm for the Casino Licenses. Thus we have a situation where rather than having a confirmation from the Appellant of having received any payment, we have a clear denial from the Appellant recorded in the email itself. In such a situation, merely because the email required the Appellant to pay back the 'full amount' and to pay it back 'alongwith Interest', or advised the Appellant to pay \$ 2.5 m to a certain Minister in Sikkim by the name of Mr. Singh, the email by itself does not establish any allegation, and rather it is only an allegation on the Appellant. In the absence of any corroboration, it is only an 'Unsubstantiated Allegation'.*

*8.51 The Learned Assessing Officer on the basis of the above observations in Para 3.7 and 3.8 of the Assessment Order has gone on to draw the conclusion that:*

*"Thus, Sh. Chawla is directly or indirectly the beneficiary of the amount of USD 7,000,000 mentioned in the email."*

*8.52 It is seen that the above conclusion is not at all justified in view of the discussion in Para 8.43 to 8.45 above, as each of the 3 grounds (mentioned in Para 8.41) on the basis of which the Assessing Officer has drawn such a conclusion have been shown to be baseless. Whether any such amount was actually*

*sent or merely a claim was made through email, without the amount having been actually sent, is a matter of investigation to prove as to what exactly was the amount and as to who received the amount.*

*8.53 Further, a careful perusal of the email in question shows that there is no mention at all of any specific amount having been directly or indirectly been given to Sh. Chawla, as clearly pointed out above in Para 8.38 and Para 8.39. In such a situation, the claim of the Assessing Officer that the Appellant was "...directly or indirectly the beneficiary of the amount of USD 7,000,000 mentioned in the email, is not only baseless, but is rather a claim which is totally contrary to the facts, as what to say of USD 7 Million, there is no mention of any specific amount having been given in the email, as clearly evident from the email reproduced in Para 3.5 of the Assessment Order which has been re-reproduced above in Para 8.37 above and as discussed in Para 8.38 and 8.39 above. Thus the Assessing Officer has clearly failed to appreciate the true facts of the case.*

*8.54 Another aspect of the conclusion drawn by the Assessing Officer in Para 3.8 of the Assessment Order is that the Assessing Officer has held that "...Sh. Chawla is directly or indirectly the beneficiary..." . From such conclusion by the Assessing Officer, it is obvious that the Assessing Officer himself is not sure whether the Appellant was a beneficiary directly or indirectly. Once the Assessing Officer desires to hold that an Assessee was a beneficiary, then there should be clarity as to whether the Assessee was a direct beneficiary or any*

*indirect beneficiary. In the present case, the Assessing Officer could not show that the Assessee was a direct beneficiary or an indirect beneficiary and has still given the finding that the Assessee was a beneficiary. The doubt of the Assessing Officer is well recorded in the finding that the Appellant was "directly or indirectly the beneficiary", and it goes on to further show that the Assessing Officer has failed to appreciate the facts of the case.*

*8.55 In fact, the above findings and conclusion of the Assessing Officer show that once the allegation had been put upon the Assessee that he had received some Unaccounted Money, the Assessing Officer rushed to conclude that the Assessee had indeed received that money, and in that process, ignored the basic facts of the case. If there is no evidence that any such amount was actually sent, then drawing conclusions merely on the basis of emails that such amount was sent, and that once it was sent, it would have been received by someone, and that someone could have been the Appellant, is certainly a very farfetched logic, and rather it goes beyond the realm of logic towards irrationality and speculation.*

*8.56 It is noteworthy that the documents in question, i.e. the printouts of the emails were seized by the Sikkim Vigilance Police from the residence of Sh. Kunwar Onkar Singh, the Managing Director of M/s Sikkim Distilleries Ltd. The Assessing Officer has observed in the Assessment Order that Sh. Kunwar Onkar Singh did not comply to Summons u/s 131 issued to him. It has been further observed by the Assessing Officer in Para 3.4 of the Assessment Order that Sh. Harvansh P Chawla, the*

*Appellant, in his Statement recorded by the Assessing Officer on 17.08.10 admitted that he knew Sh. Kunwar Onkar Singh, who was the Managing Director of M/s Sikkim Distilleries Ltd. and was interested in purchasing a Nursing Home at Noida and that he had given a Cheque of Rs.55 Crores which was seized during the course of Search at the residence of the Appellant on 28.02.07, as an expression of his serious interest in the deal, but the deal did not materialize and the Cheque was never presented and that the Nursing Home was still in the name of the Original Owner. Perusal of the Statement shows that Sh. Kunwar Onkar Singh was introduced to the Appellant through a law firm called M/s Norton Rose of London and that he i.e. Sh. Kunwar Onkar Singh further introduced the Appellant to M/s Storm International B.V., and that the Appellant acted as a legal consultant to them while they were in the process of obtaining licences for Casinos India. Thus the Appellant has been able to show how and why he was in contact with the Parties involved in the emails. In fact, it was Sh. Kunwar Onkar Singh himself who introduced the Appellant to M/s Storm International B.V. In such a situation, the exchange of emails between those Parties and reference to the Appellant was not an extraordinary event. However, what was extraordinary was the claim by Sh. Michael Boettcher, President & CEO of M/s Storm International B.V. that "Mr. Singh, the Minister from Sikkim" had told Sh. Michael Boettcher that the Appellant, i.e. Sh. Harvansh P. Chawla had not received any payment from M/s Storm International B.V., and that Sh. Harvansh P. Chawla should "send \$ 2.5 m to Mr. Singh" and that if the Casino License was withdrawn, the Appellant should "return to Storm*

*the full amount of the sum we paid to you plus any interest incurred”.*

*8.57 An analysis of the letter dated 17.08.09, No. RC-21&22/2008/S VPS/365 from the Senior Superintendent of Police, Sikkim Vigilance Police, Gangtok from the office of the Director-cum-Commissioner, Vigilance, Gangtok shows that it has been clearly stated that in the said email one Mr. Singh has been mentioned as a Minister from Sikkim. However, the letter dated 17.08.09 itself makes it very clear that “there was no minister in Sikkim with the Surname Singh.”*

*8.58 From the above, it is clear that once there was no Minister in Sikkim with the Surname Singh, the claim by the above mentioned email from Sh. Michael Boettcher that Mr. Singh, the Minister from Sikkim had called Sh. Michael Boettcher was false or was the result of fraud or mistake, and also that there was no valid person to whom the Appellant or any other person could have given \$ 2.5 m, i.e. 2.5 Million US Dollars.*

*8.59 In fact, the above mentioned letter dated 17.08.09 itself again makes it very clear that the above mentioned Sh. Kunwar Onkar Singh could have committed fraud or misrepresentation, as the letter states that “In all probability Shri Kunwar Onkar Singh might have posed himself as a Minister while contacting M/s Storm International, Russia”.*

*8.60 In view of the above opinion expressed in the primary letter, i.e. the letter dated 17.08.09 from the Sikkim Vigilance Police to the Director General of Income Tax (Vigilance), Delhi, it is clear that the Sikkim Vigilance Police itself was of the*

*opinion that Sh. Kunwar Onkar Singh was committing fraud upon M/s Storm International, or at least that his conduct was dubious. In such a situation, it was quite likely that the persons coming in contact with the said person could be accused of wrongdoings, or having knowledge of things about which they knew nothing or of having possession of money or things about which they had no idea.*

*8.61 There is absolutely no doubt that there was no Minister Singh in Sikkim at that time, and whosoever discussed with M/s Storm International posing as 'Minister Singh from Sikkim' was committing fraud and misrepresentation. The letter dated 17.08.9 indicates that the Sikkim Vigilance Police was of the opinion that it was Sh. Kunwar Onkar Singh who was the suspect. Whether such fraud and misrepresentation was committed by Sh. Kunwar Onkar Singh (as strongly suspected by Sikkim Vigilance Police) or any other person is not relevant for deciding the issue in hand, as once it is clear that the person claiming to be 'Minister Singh from Sikkim' was committing fraud and misrepresentation, it is obvious that he would be making false claims, and any further claim made by M/s Storm International (either as victim of such false claims or as a co-conspirator) on the basis of such false claims cannot be relied upon.*

*8.62 In view of the above discussion, it is clear that the email sent by Sh. Michael Boettcher, President & CEO of M/s Storm International B.V., to the Appellant, on which the entire case has been built up is not at all reliable. Further, in view of the absence of any confirmation by the recipient (the Appellant)*

*and of any corroborative evidence, there was no justification at all for the conclusion that the Appellant had received the amount of 7 Million US Dollars. However, as pointed out above, even the Assessing Officer was not sure whether the amount had been received by the Appellant, as the conclusion was that the Appellant was "directly or indirectly the beneficiary of the amount of USD 7,000,000 mentioned in the email, which was a totally unjustified conclusion as discussed in Para 8.54 and 8.55 above.*

*8.63 The Assessing Officer has also stated in Para 3.8 that "If is a settled legal principal that in a situation where the evidence and preponderance of probability points against the assessee, the onus is on the assessee to disprove the evidence. The only way the assessee could have discharged the onus is by furnishing the names and other details of the beneficiaries." However, as discussed above neither the evidence nor any preponderance of probability points against the Assessee and hence the Onus was not upon the Appellant, tut was rather upon the Assessing Officer, who in the absence of any direct evidence or material, money trail or Statement or any other factor against the Appellant has sought to conclude that an amount of \$ 7 Million was received by the Appellant. The Assessing Officer has failed to discharge that onus.*

*8.64 The Assessing Officer has further mentioned that the Appellant has admitted that Sh. Narinder Grover was using the office premises and infrastructure at his Law Firm M/s K.R. Chawla and Co. and that he had even been allotted an email id on the internal server of the Assessee's Law Firm. The*

*Assessing Officer has stated that "It is unlikely that a responsible lawyer like the assessee would let anyone use his office space and facilities without having the details regarding the background of that person". However, it had been clarified by the Appellant at the assessment proceedings itself that Sh. Narinder Grover was working on behalf of M/s Storm International, who was Client of the Appellant, and that it was customary among the Law Firms to provide table space and communications facilities on temporary basis to Clients still they have their own setup, and that in a similar arrangement, Sh. Narinder Grover was allowed to use the office facilities and the e-mail address. It was also stated by the Appellant that the use of these facilities was billed to the Client M/s. Storm International. The Appellant also informed that Sh. Narinder Grover used to continuously work from the office of M/s K.R. Chawla and Co. for the period starting a few days before Diwali, 2007 till December, 2007, and that after January 2008 he stopped coming to office. These facts were stated by the Appellant in reply to question 6 of his Statement, which has also been reproduced in the Assessment Order in Para 3.9. Though the Assessing Officer has reproduced the information given by the Appellant, no further inquiry on the same has been conducted, nor any justification or reasoning for rejection has been given and the claims of the Appellant have been rejected outright stating that it was "unlikely that a responsible lawyer like the Assessee would let anyone use...". Here again, the claim of the Appellant has been rejected by the Assessing Officer, merely because in the opinion of the Assessing Officer, the allowing of use of office space and facilities was 'unlikely', thus making it clear that there was nothing definite, but only an*

*'opinion' that allowing of the use was 'unlikely'. Even for such a conclusion, the Assessing Officer refers to the Appellant as a 'responsible lawyer', which is a contradictory comment, as on one hand in the opinion of the Assessing Officer, the Appellant is 'responsible', but on the other hand the Assessing Officer suspects him of irresponsible acts, and that too without any proper justification. It is seen that the use of the facilities of M/s K.R. Chawla & Co. by Sh. Narinder Grover was on behalf of M/s Storm International B.V. and that the use of these facilities was billed to the Client M/s Storm International B.V. Hence, the; drawing of any adverse inference against the Appellant was not at all justified.*

*8.65 In Para 3.11 of the Assessment Order the Assessing Officer has made the following observations, on the basis of which he has drawn final conclusions:*

- 1. The Assessee admitted the fact that the email from Mr. Michael Boettcher was received by him.*
- 2. The Assessee accepted his association with M/s. Storm International B.V.*
- 3. The email clearly mentions that money has been received by the Assessee and fixes the liability on him to pay back alongwith Interest in the event of Casino license being cancelled.*

*8.66 As discussed above, none of the above points can lead to the conclusion that the Appellant received any money. The Appellant was a legal consultant to M/s Storm International*

*B.V., which he has openly admitted, and was fully justified in view of his being a practicing Lawyer, and hence no adverse inference can be drawn on the basis of such association with M/s. Storm International B.Y. Further, Sh. Michael Boettcher being the President & CEO of M/s. Storm International B.V. could be in communication with the Appellant and receiving an email from him was not at all extraordinary. The only extraordinary or suspicious issue amongst the above three observations of the Assessing Officer in Para 3.11 of the Assessment Order was the content of the email as per which there was an allegation that the Appellant had received some money (without specifying the amount received, when and how received), which has already been discussed above in detail from Para 8.43 to 8.62 above and the clear conclusion has been drawn that there was no reason to hold that the Appellant had received any money.*

*8.67 The Assessing Officer on the basis of the above observations in Para 3.11 of the Assessment Order has held that the evidence points to the Assessee having received US Dollars 7 Million through Undisclosed sources, the Rupee equivalent of which being Rs.28,00,00,000/- was treated as his Undisclosed Income. As already discussed above, neither there was any evidence against the Assessee nor there was any other material to show that the Assessee had received the alleged amount of 7 Million US Dollars, nor any of the 3 observations prove any allegation against the Appellant.*

*8.68 Further, the Remand. Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner*

*heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. It has been mentioned in the Remand Report dated 26.02.14 that it has been the stand of Revenue that the emails seized by Sikkim Vigilance Police: are authentic and genuine source of information, and in the absence of any evidence to contrary, it may not be: appropriate to doubt the veracity of information received from an Independent Law Enforcing Agency. However, as discussed above, there is no evidence that any such amount was actually sent, and drawing conclusions merely on the basis of emails (which were neither confirmed by the Appellant, nor any corroborative evidence was found), that such amount was sent, and that once it was sent, it would have been received by someone, and that someone could have been the Appellant, is certainly in the realm, of irrationality and speculation. As already mentioned above, the Sikkim Vigilance Police itself has stated in the letter dated 17.08.9 itself makes it very clear that "there was no minister in Sikkim with the Surname Singh.", and hence it is obvious that, the claim by the above mentioned email from Sh. Michael Boettcher that Mr. Singh, the Minister from Sikkim had called Sh. Michael Boettcher was false or was the result of fraud or mistake, and also that there was no valid person to whom the Appellant or any other person could have given \$ 2.5 m, i.e. 2.5 Million US Dollars. The above mentioned letter dated 17.08.09 itself again makes it very clear that the above mentioned Sh. Kunwar Onkar Singh could have committed fraud or misrepresentation, as the letter states that "In all probability Shri Kunwar Onkar Singh might have posed himself as a Minister while contacting M/s Storm International, Russia", from*

*which it is clear that the Sikkim Vigilance Police itself was of the opinion that Sh. Kunwar Onkar Singh was committing fraud upon M/s Storm International, or at least that his conduct was dubious, and hence the allegation of M/s Storm International on the basis of information / claims / allegations by Sh Kunwar Onkar Singh cannot at all taken to be authentic and genuine . The Remand Report also states that the Onus was on the Assessee to disprove the presumption against him. However, the emails were not found from the premise of the Appellant hence there was no presumption u/s 132(4) of the Income Tax Act, 1961 against the Appellant, nor there was any other evidence or material which indicated presumption against the Appellant. In fact, the Onus was upon the Assessing Officer, as mentioned in Para 8.63 above, and he has failed to discharge the same.*

*8.69 In view of the above discussion, it is held that there is no justification for the claim that the Appellant received \$ 7 Million. Accordingly, the addition of Rs.28,00,00,000/- as Undisclosed Income Hinder the head 'Income from Other Sources' is hereby deleted. Ground No. 2 of the appeal is hereby allowed."*

20. We find that the Id. CIT (A) has analyzed each and every aspect of the allegations made the AO called for reports, gone through the contents of the information received, the evidences before the revenue, the explanation of the assessee and the remand reports and came to a conclusion that there is no liabilities on the part of the assessee and the revenue could not

bring about any cogent material to prove the allegations. Hence, we decline to interfere with the order of the Id. CIT (A).

### **Unsecured Loans:**

21. During the year, the assessee received unsecured loans from various parties as mentioned under:

<i>Loans received from</i>	<i>Received</i>
<i>M/s. Karina Hotels Pvt. Ltd.</i>	<i>Rs.1,01,60,000/-</i>
<i>M/s. Karina Hospitality Pvt. Ltd.</i>	<i>Rs.1,03,34,000/-</i>
<i>M/s. Navya Securities Pvt. Ltd.</i>	<i>Rs.7,01,49,880/-</i>
<i>M/s. K.P. &amp; Associates</i>	<i>Rs.98,80,000/-</i>
<i>M/s. Storm Hotels Pvt. Ltd.</i>	<i>Rs.46,50,000/-</i>
<i>M/s. H.N. Consultants Pvt. Ltd.</i>	<i>Rs. 9,93,171/-</i>
<i>Shri N.K. Ahuja</i>	<i>Rs.30,00,000/-</i>
	<i>Rs.10,91,67,051/-</i>

22. Further, addition have been made on the basis that the assessee has received the following unsecured loans during the relevant year and in the next assessment year.

Sr. No.	Loan received	Amount
1.	M/s. Karina Hotels Pvt. Ltd.	Rs.1,01,60,000
2.	M/s. Karina Hospitality Pvt. Ltd.	Rs.1,03,34,000/-
3.	M/s. Navya Securities Pvt. Ltd.	Rs.7,01,49,880/-
4.	M/s. KP & Associates	Rs.98,80,000/-
5.	M/s. Strom Hotels Pvt. Ltd.	Rs.46,50,000/-
6.	M/s. HN Consultant Pvt. Ltd.	Rs.9,93,171/-
7.	Shri NK Ahuja	Rs.30,00,000/-
8.	M/s. Karina Hotels Pvt. Ltd.	Rs.28,00,000/-
9.	M/s. Navya Securitie	Rs.1,79,201/-
10.	M/s. KR Chawla Consulting Pvt. Ltd.	Rs.9,16,42,740/-
11.	M/s. K.R. Chawla Infra & Aviation Academy Pvt. Ltd.	Rs.32,88,93,299/-
12.	M/s. Mansion Hotels Pvt. Ltd.	Rs.2,80,00,000/-
13.	H T Recon Construction Pvt. Ltd.	Rs.85,02,276/-
	Total	Rs.56,91,84,,567/

23. During course of Assessment proceedings the assessee filed the confirmation, copy of ITR, copy of Balance Sheet, Bank Statement and other relevant evidences in respect of all the parties except from Sh. NK Ahuja who was no more at that time.

24. The AO mentioned the evidences filed in the Assessment Order and made the addition holding that "the assessee appears to be bringing in unaccounted money in to his books after creating the layers of intermediaries. Hence the credit worthiness of the lender and the genuineness of the transaction are not established".

25. The A.O. treated the aforesaid loans from the parties as bogus and made the addition thereof on following reasons:

"a. The creditors gave the loan to the appellant either after borrowing the fund or by obtaining the share application money (in case of corporate creditors only). Hence, he held that the creditors had no sufficient money of their own for giving the loan to the appellant.

b. The assessee has created a layer of intermediaries to bring the unaccounted money in his books of accounts by way of unsecured loan."

26. Before the Id. CIT (A), the assessee filed a petition dated 16.09.2011 under Rule 46A enclosing the confirmation from the legal heir of Late Sh. NK Ahuja, affidavit, copy of acknowledgement of ITR and bank statement of the creditor and

also the death certificate, in respect of the loan amounting to Rs.30,00,000/-.

27. The AO filed the remand report dated 16.12.2012 objecting the admission of new evidences and on merit he raised an objection that creditor's return income was only for Rs. 6,71,750/-, it was not possible for him to advance Rs. 30,00,000/- to the assessee.

28. The assessee filed the rejoinder dated 14.03.2012 against the remand report dated 16.02.2012 explaining the reason of death of the creditor which prevented the assessee to file the confirmation. Since the assessee's case is covered under Clause (b) of Rule 46A, the new evidences were admitted by the Id. CIT (A).

29. Before the Id. CIT (A), it was also explained that on the basis of bank , the fact was evident that the creditor was having regular transaction of deposit or withdrawals of the funds. The assessee received Rs.63,00,000/- and repaid Rs.33,00,000/- during the year. Thus, the balance amount of Rs.30,00,000/- was appearing at the end of the year. During subsequent year, the assessee not only refunded the balance amount of Rs.30,00,000/- but he made the excess payment of Rs.20,00,000/- to Late Sh. NK Ahuja.

30. The Id. CIT (A) held that the on basis of evidences furnished with petition under Rule 46A, it is evident that the creditor was in existence and assessed to income tax. The loan was obtained through banking channel and the creditor had capacity to advance such loan. The loan was also refunded in

subsequent years through banking channel. Hence, the identity of the creditor, genuineness of the loan and creditworthiness of the creditor is proved. Hence, the addition of Rs.30,00,000/- was deleted. We have gone through the contents and find no infarction of law. Hence, we decline to interfere with the order of the Id. CIT (A).

**31. Before the Id. CIT (A), the assessee has submitted as under:**

**"I. Legal Provisions in case of Cash Credit**

(i) That in respect of genuineness of loan, it is necessary to examine the legal provision of Section 68 of the Income Tax Act, 1961. which is reproduced as below:-

"Where any sum is found credited in the book 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 assessee of that previous year".

That going through the provision of Section 68, it is evident that following ingredients are required for the application of provision of Section 68 of the I.T Act, 1961 and also for proving the genuineness of loans/deposits:

- a. Any sum found to be credited in the books of accounts of the assessee,
- b. Books maintained for any previous year,

c. Explanation of the assessee is required about the nature and source of the said sum so credited to the satisfaction of the A.O.

## II. Assessee's explanation not to be rejected arbitrarily

(i) That on going through the assessment order, your goodself will find that there is no dispute about the first two ingredients of Section 68, i.e. first, the loan amounts credited in the books of account of the appellant and secondly, the loan was obtained during the previous year (under consideration). In respect of third condition, i.e. "explanation of the assessee about the nature and source of the sum so credited to the satisfaction of the A.O", it is brought to your kind notice that the appellant had submitted explanation enclosing the supporting evidences before the Ld. A.O. during course of assessment proceedings. The Ld. A.O. neither rejected the appellant explanation nor gave any observation showing the deficiency in the evidences. He further did not give any observation about the insufficiency of the evidences in support of the loans obtained by the appellant. In sum and substance, it is evident from the assessment order that the Ld. A.O. was satisfied with the appellant explanation and the supporting evidences enclosed with Written submission. However, he made addition on the ground that the creditor gave the loan to the appellant after borrowing the fund from third person. Thus, the reason for addition is neither legal nor justified and the same is liable to be deleted.

(ii) That farther in respect of third requirement, i.e. "explanation of the assessee should be to the satisfaction of the A.O." the courts are of the view that the A.O cannot reject the

assessee's explanation arbitrarily. Hon'ble Bombay High Court of Nagpur Bench in very old case of Naidu (RBNJ) vs CIT (1956) 29 ITR 194 (Nag) held that where the explanation furnished by an assessee about the amount credited is prima facie reasonable, the said explanation cannot be rejected on capricious and arbitrary grounds.

(iii) That Hon'ble Supreme Court in the case of CIT vs K.S Kannan Kunhi (1973) 87 ITR 395 (SC) in para 6 of the judgment expressed its displeasure explanation furnished by the assessee and for rejecting the same arbitrarily and without assigning any reason for the same. The ratio of the judgment in this case is that the assessee's explanation must, be examined carefully and if it is found not to be acceptable, the proper reason for rejecting the explanation should be given in the order. The relevant portion of the judgment is reproduced for your kind perusal.

"The ITO did not examine the merits of those explanations. He rejected them by merely observing that they were not satisfactory. The explanations offered by the assessee are not prima facie absurd. They were capable of being examined by the ITO. It was possible for the ITO to go into the extent of the immovable property owned by the HUF and its income. He did not care to do so. It was also possible for the ITO to go into the question of remittances made by Kannan Kunhi from Ceylon. Here again the ITO did not choose to do so. It was not even suggested by the ITO that the assessee was having any business activity in India prior to 17th Aug., 1950, or any other source of income taxable under the Act if the explanation given

by the assessee that part of the initial business capital was supplied by Kannan Kunhi is correct then the same is a good explanation. That explanation has not been examined at all. Similarly, the assessee's explanation that he was having income from the agricultural property has not been examined. The AAC also did not choose to examine the explanation given nor did the Tribunal care to go into that explanation. It just brushed aside that explanation with the observation "that the assessee had no proper or satisfactory explanation for the sources of these amounts. In our opinion, the Departmental authorities as well as the Tribunal had arbitrarily rejected the explanation given by the assessee. Under these circumstances we do not think that we will be justified in going into the niceties of the law, whether the High Court was justified in going into, the merits of the findings reached by the Tribunal. All that we need say is that this is not a fit and proper case where we should exercise our discretionary jurisdiction.

That on going through the assessment order your goodself will find that the Ld. A.O did not pass any comment in respect of the evidences furnished in support of the aforesaid cash credit In other words, he neither accepted the assessee's explanation nor rejected the same. On the contrary, the Ld. A.O made addition of Rs.10,91,67,0517- on altogether different reasons, which are not required under Section 68 of the Income Tax Act, 1961. The Ld. A.O. made the aforesaid addition by observing that the creditors had given the loan to the appellant either by taking the loan/share application money (in the ease of corporate creditors) or they had no sufficient their own source of funds. In substance, the Ld. A.O. has made the addition under Section

68 in the case of appellant by examining the source of sources which is not permissible in the eye of law. Hence, the addition of Rs.10,91,67,051/- made by Ld. A.O. by examining the source of sources is not justified and the same is liable to be deleted. The relevant case laws on the issue of examining the source of sources are given in this submission itself.

### III. Ingredients for genuineness of the loan

That in the land mark decision in the case of Shanker Industries Vs. CIT (1978) 114 ITR 689 (Cat), Hon'ble Calcutta High Court laid down following three conditions to prove prima facie the cash credit as genuine.

- a. The identity of the creditor,
- b. The capacity of such creditor to advance the loan, and
- c. The genuineness of the transaction,

(ii) That Hon'ble Calcutta: High Court in C. Kant and Co. vs. CIT (1980) 126 ITR 63(Cal) held that in case above three ingredients have been proved by adducing the evidences, it will be presumed that the assessee has discharged his onus in proving the genuineness of the loan and no addition u/s 68 can be made.

(iii) That Hon'ble Gujarat High Court in the case OF CTT VS Rohini Builders (2002) 256 ITR 360 (Guj) held that where the assessee has proved the identity of the creditors, and the amounts were received by account payee cheques, the initial burden on the assessee is discharged. The finding of the

tribunal that cash credit should be treated as proved in absence of any further material to discredit the same has to be upheld.

(iv) That Hon'ble Guahati High Court in the case of Kundanmal Kothari(HUF) vs. CIT (1997) 93 Taxmann 620 (Goa) found that the loan of Rs. 1,25,000/- was entered in the books of account and the creditor was also identified. The creditor himself was an assessee under the Act. In spite of that the AO did not accept the entries made in the book of account as well as in the returns and required further proof. Confirmatory letters were produced and the creditor himself appeared before the ITO to give his statement confirming the fact that the amount had been paid by him to the assessee. In the light of these evidences the Hon'ble Guahati High Court held that the addition u/s 68 was not justified. Consequently, the deletion of said addition was upheld.

(v) That Hon'ble Bombay High Court in the case of CIT vs Tania Investments Pvt. Ltd. (2010)322 ITR 394 (Bom) observed that the cash credits to the extent of Rs.7,41,17,495/- was entered in the books of account of the assessee. The assessee was required to establish, (i) the identity of the party, (ii) capacity and (iii) the genuineness of the transaction. So far as identity is concerned the parties have been identified and similarly in the books of account produced by them corresponding entries were found. Books of account itself would indicate the capacity of the party to advance loan. There was no further need on the part of the assessee to prove the capacity of the creditors. In the light of facts and evidences available, the Hon'ble High Court upheld the deletion of addition made u/s 68.

That Hon'ble Gujarat High Court in the case of CIT vs Micro Melt Pvt. Ltd. (2010) 327 ITR 70 (Guj) that assessee having established the genuineness of the deposits and the identity of the depositors by producing their affidavits and bank statements and the Tribunal having upheld the order of the CIT(A) deleting the addition under Sec. 68 on the basis of appreciation of evidence, no question of law, much less a substantial question of law, arises.

That Hon'ble Patna High Court in the case of CIT vs Ansari Cloth Merchant (1990) 90 CTR (Pat) 172 found that the cash credit of Rs.17000/- was satisfactorily explained by the assessee and this finding has been upheld by the Tribunal. The counsel for the Revenue contended that the assessment of creditor was reopened and was' subject matter of further enquiry. That enquiry, however, cannot affect the finding of the Tribunal that the assessee had satisfactorily, explained the cash credit of Rs.17000/-. Therefore, the Tribunal was right in holding that the AAC was justified in deleting the addition of Rs. 17,000/-.

That ITAT Delhi Bench in the case of Pankaj Sawhney vs. Income Tax Officer (2004) 3 SOT 1 (Del) held that assessee having furnished considerable material in support of identity of donors and having established all of them to be income tax assessee, addition was liable to be deleted.

That ITAT, Amritsar Bench in the case of ITO vs Parveen Kumar (2004) 2 SOT 77 (Asr) held that the identity of the creditor was disclosed and also source of the creditor was disclosed through an affidavit, the creditworthiness of the creditor was proved by

giving the source as the creditors received money from Lucky Draw. In this regard, before the AO relevant certificate was also produced, there was no violation of Rule 46A by the CIT(A). Considering the totality of the facts and in the absence of any new evidence/material, against the order of the learned CIT(A), the CIT(A) rightly deleted the addition and no interference is required in the order of the CIT(A). The same is hereby upheld.

The assessee should not be asked to prove the source of sources.

That on going through the provision of Section 68 of the Income Tax Act, 1961, it is evident that the assessee is required to offer the explanation about the nature and source of the sum credited in his books of accounts. In other words, the assessee cannot be asked to prove the source of sources, i.e. from where the creditor has brought the money is not required to be proved by the assessee. Hon'ble Madras High Court in the case of *Hastimal Vs. CIT* (1963) 49 ITR 273 (Mad) held that an assessee should not be placed upon the rack and called upon to explain not merely the origin and source of a capital contribution but the origin of origin and source of source as well.

That Hon'ble High Court of Assam in *Tolaram Daga vs. CIT* (1966) 59 ITR 632 (Assam) in para 6 of the judgment observed, the mere fact that the creditor happens to be wife of the partner of the assessee firm does not ipso facto make the assessee come into the knowledge of (he sources from which the money was realized. It was further observed in para 7 of the judgment, 'to require the firm or partner thereof to adduce

proof of the sources from which the deposit was made would be placing a burden on the firm which is not required or justified by law. Thus, the addition made treating the loan given by the wife of the partner of the assessee firm was deleted with the assessee firm being source of sources cannot be examined.

That Hon'ble Bombay High Court in the case of Orient Trading Co. Ltd. vs. CIT (1963) 49 ITR 723 (BOM) held that in case of cash, credit, the initial, burden lies on the assessee to prove the identity of the creditor and produced the evidences showing that the amount credited was not fictitious. In case, the initial burden is discharged, the burden shifted on the revenue to show that the entry represented assessee suppressed income. In case, the revenue failed to discharge its burden, the cash credit appearing in the books of the assessee shall be treated as genuine. The assessee shall not be asked to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of the same which the assessee. In substance, Hon'ble High Court held that the revenue is not entitled to examine the source of sources of the amount deposited.

That Hon'ble Patna High Court in the case of Sarogi Credit Corporation vs. CIT (1976) 103 ITR 344 (Pat) held that once the identity of the third party is established before the ITO and other such evidence are prima facie placed before him pointing to the fact that the entry is not fictitious, the initial burden lying on the assessee can be said to have been duly discharged by him. It will not, therefore, be for the assessee to explain further as to how or in what circumstances the third party

obtained the money and how or why he came to make an advance of the money as a loan to the assessee.

That Hon'ble Guahati High Court in the case of Nemi Chand Kothari vs CIT(2003) 264 ITR 254 (Gua) relying on the judgment of Assam High Court in the case of Tola Ram Dhaga vs CIT (supra) held that once the assessee discloses the source(s) from which he has received, the loans, his burden under Sec. 106 of the Indian Evidence Act stands discharged and the onus, then, shifts to the AO to show, if he wants to treat the, loan as an income of the assessee from undisclosed source. The Hon'ble High Court further observed that the harmonious construction of Section 106 of the Evidence Act and. Section 68 of the IT 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. 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. In the instant case, the assessee has proved the identity of the creditors and the amounts were received through cheques. Hon'ble High Court held that the loan amount could not, be treated as income of the assessee from undisclosed source on mere failure on the part of the creditors to show that the sub creditors had Credit worthiness to advance the said loan amounts.

(vi) That the Ld. Delhi ITAT in the case of United Cores. (P) Ltd. vs. ACIT, (1998) 62 TTJ (Del) 83 held that the assessee has discharged the burden of proving the identity and capacity of Smt. S. The assessee has also produced adequate material to prove that Smt. S was a man of means. Her creditworthiness has also been fully established. Even assuming that two petty loans taken by Smt. S from Smt. G and Smt. K have not been fully established, any addition of that amount can be considered only in the hand of Smt. S, who is an existing income-tax assessee. The assessee cannot be required to prove the source of source, particularly in a case where the person who gave the loan is an existing income-tax assessee. The assessed further rely on following case laws:

- a. Prakash Industries Ltd. vs ACIT (2008) 16 DTR (Del)
- b. S.K Jain vs Income Tax Officer (2004) 2 SOT 579 (Agra)

(vii) Further, different High Courts in following cases observed, where the Appellate Tribunal accepted that money represented by the cash credit in the account books of partnership was brought in to the firm by the financing partner, no part of that amount could be held to be revenue income of the partnership and the incorrectness of the explanation offered as regards the source from which the partner obtained money would be immaterial. The reliance is placed on following case laws:

- a. Balbhadra Chand Munna Lai vs CIT (1958) 33 ITR 781 (All)
- b. CIT(Addl.) vs Precision Metal Works (1985) 156 ITR 693 (Del)

V Addition in the case of creditor and not in the case of assessee.

(i) That the Ld. Calcutta ITAT in the case of Addl. CIT vs Unique Builders held that in case the creditors is assessed to tax and his identity is proved but the source of loan amount is disbelieved, in such, circumstances no addition can be made in the assessee case but the said amount shall be treated as unexplained in the case of the creditor only."

**32. In respect of the loan of Rs.10,61,67,051/-, the evidences relating to each party are summarized below:**

- i. Loan of Rs.1,01,60,000/- from Kareena Hotel Pvt. Ltd.
- ii. Loan of Rs.1,03,34,000/-from Kareena Hospitality Pvt. Ltd.
- iii. Loan of Rs.7,01,49,880/- from Navya Securities Pvt. Ltd.
- iv. Loan of Rs.46,50,000/- from Storm Hotel Pvt. Ltd.

All the aforesaid parties are the legal entities registered with ROC. There details are verifiable from MCA21 website. They are regularly assessed to Income Tax in Delhi itself. The creditors have filed their confirmation showing their PAN, their copy of acknowledgement of ITR, copy of Balance Sheet and Profit & Loss account, copy of their Bank Statement. All the loans were received through banking channels and the same have also been repaid in subsequent years through banking channel.

In respect of loan of Rs.98,80,000/- from M/s KP and Associates, the relevant evidences have been filed from page 92 to page 99 of the paper book dated 16.03.2012. It is a proprietary concern of Sh. Kishan Prasad Sharma. The confirmation and copy of acknowledgement of ITR have been

filed. The loan was received through banking channel and the same was repaid during AY 2012-13 through banking channel for which the copy of account is placed on Page 98 of the Paper Book.

The Ld. CIT (A) - VI vide letter dated 18.02.2013, Para 2 observed that the copy of ITR for AY 2006-07 was filed but he directed to file the copy of acknowledgement of ITR of Sh. Kishan Prasad Sharma for AY 2008-09, 2009-10 and 2010-11. In compliance, the copy of ITR with computation and Balance Sheet of Sh. Krishan Prasad Sharma for AY 2008-09, 2009-10, 2010 -11, 2011-12 & 2012-13 were filed.

In respect of loan of Rs.9,93,171/- from M/s HN Consultants Pvt. Ltd., the evidences, i.e. copy of MCA21 confirmation, copy of acknowledgement of ITR, copy of Balance. Sheet and Profit & Loss account, copy of Bank Statement of M/s Kareena Human Resources formerly known as HN Consultants (P) Ltd. & copy of account for AY 2008-09, 2009-10, 2010-11 & 2011-12 showing the repayment of loan were filed.

Vide letter dated 18.12.2012 Para 3, it was explained that the loan pertaining to all the seven parties have been repaid during the subsequent years and the relevant evidences in this respect has been placed on the paper book. Argued that which indicates the genuineness of the loan and no addition could have been made treating the said loan of Rs.10,91,67,051/- as unexplained and bogus loan. Thus, the addition made under section 68 is liable to be deleted."

**Evaluation of evidences Creditor wise:**

33. The decision of the Id. CIT (A) while dealing with the issue of creditors is as under:

“That in the light of legal provision of Section 68 and judicial pronouncements discussed in the submission, it is necessary to evaluate the evidences already furnished before the Ld. A.0 for which the copies are enclosed and thereafter to ascertain the genuineness of each loans. Thus, the status of each loans are as under:

Loan of Rs.1,01,60,000/- received from M/s Karina Hotels Pvt. Ltd.

That the M/s. Karina Hotels Pvt. Ltd. was incorporated on 03.09.2007 and its last AGM was held on 23.05.2011 and Balance Sheet as on 31.03.2011 was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with ITO, Ward 5(1), New Delhi. The appellant received the unsecured loan of Rs. 1,01,60,000/- on 18.03.2008 through banking channel. Confirmatory letter showing the (PAN AADCK7127) of the creditor, copy of bank statement of the creditor, copy of the balance sheet as on 31.03.2009 showing the previous year figures has been filed.

On going through the Balance Sheet of M/s. Karina Hotel Pvt. Ltd. as on 31.03.2008, it is evident that the said loan amount of Rs. 1,01,60,000/- is appearing in Schedule - 3. The creditor Balance Sheet tallies to the extent of Rs.5,55,95,520/- with

suggest that the creditor had capacity to give the loan to the extent of Rs.1,01,60,000/-.

That enclosing the aforesaid evidences pertaining to the creditor M/s Karina Hotel Pvt. Ltd. as Annexure -3, it is brought to your kind notice that the identity of the creditor, being legal entity having PAN and assessed to tax is proved. Since the loan has been received through banking channel, its genuineness cannot be denied. The creditor Balance Sheet for the relevant period tallies to the extent of Rs.5,55,95,520/-, hence, there is no scope to deny the capacity of the creditor to advance the loan to the extent of Rs.1,01,60,000/-. In the light of these evidences, your goodself will appreciate that all the conditions required proving the genuineness of the loan is fulfilled in this case. Hence, the Ld. A.O was not justified to treat, the unsecured loan as unexplained and made the addition of Rs. 1,01,60,000/-.

Loan of Rs.1,03,34,000/- received from M/s. Karina Hospitality Pvt. Ltd.

That the M/s. Karina Hospitality Pvt. Ltd. was incorporated on 22.08.2006 and its last AGM was held on 25.05.2011 and Balance Sheet as on 31.03.2011 was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with ITO, Ward 5(1), New Delhi. The appellant received the unsecured loan of Rs.1,03,34,000/- on 18.03.2008 through banking channel. Confirmatory letter showing the PAN-AACCK9642H of the creditor, copy of bank statement of the creditor, copy of the balance sheet as on 31.03.2009 showing

the previous year figures has been filed. On going through the Balance Sheet of M/s Karina Hospitality Pvt. Ltd. as on 31.03.2008, it is evident that the said loan amount of Rs.1,03,34,000/- is appearing in Schedule - 3. The creditor Balance Sheet tallies to the extent of Rs.5,78,34,000/- which suggest that the creditor had capacity to give the loan to the extent of Rs.1,03,34,000/-.

(b)That enclosing the aforesaid evidences pertaining to the creditor M/s Karina Hospitality Pvt. Ltd., as Annexure -4, it is brought to your kind notice that the entity of the creditor, being legal entity having-PAN and assessed to tax is proved. Since the loan has been received through banking channel, its genuineness cannot be denied. The creditor Balance Sheet for the relevant period tallies to the extent of Rs. 5,78,34,000/-, hence, there is no scope to deny the capacity of the creditor to advance the loan to the extent of Rs. 1,03,34,000/. In the light of these evidences, your goodself will appreciate that all the conditions required proving the genuineness of the loan is fulfilled in this case. Hence, the Ld. A.O was not justified to treat the unsecured loan as unexplained and made the addition of Rs.1,03,34,000/-.

Loan of Rs.7,01,49,880/- received from M/s. Navya Securities Pvt. Ltd.

That the M/s. Navya Securities Pvt. Ltd. was incorporated on 05.05.1995 and its last AGM was held on 30.09.2010 and Balance Sheet as on 31.03.2010 was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with

ITO, Ward 13(1), New Delhi. The appellant received the unsecured loan of Rs.7,01,49,880/- during the year through banking channel. Confirmatory letter showing the PAN-AAACN3106H of the creditor, copy of bank statement of the creditor, copy of the balance sheet as on 31.03.2008 was filed before the A.O. and the same are against enclosed. On going through the Balance Sheet of M/s. Navya Securities Pvt. Ltd. as on 31.03.2008, it is evident that the said loan amount of Rs.5,92,32,577+1,09,17,303 = Rs.7,01,49,880/- is appearing in Schedule - 5. The creditor Balance Sheet tallies to the extent of Rs.8,93,60,445/- which suggest that the creditor had capacity to give the loan to the extent of Rs.7,01,49,880/-.

(b) That enclosing the aforesaid evidences pertaining to the creditor M/s. Navya Securities Pvt. Ltd. as Annexure -5, it is brought to your kind notice that the entity of the creditor, being legal entity having-PAN and assessed to tax is proved. Since the loan has been received through banking channel, its genuineness cannot be denied. The creditor Balance Sheet for the relevant period tallies to the extent of Rs.8,93,60,445/- hence, there is no scope to deny the capacity of the creditor to advance the loan to the extent of Rs.7,01,49,880/-. In the light of these evidences, your goodself will appreciate that all the conditions required proving the genuineness of the loan is fulfilled in this case. Hence, the Ld. A.O was not justified to treat the unsecured loan as unexplained and made the addition of Rs.7,01,49,880/-.

(D) Loan of Rs.98,80,000/- received from M/s. K.P. & Associates

That M/s. KP & Associates Pvt. Ltd. is assessed to tax- with ITO, Ward 31 (4), New Delhi. The appellant received the unsecured loan of Rs.98,80,000/- on 26.02.2008 through banking channel. Confirmatory letter showing the PAN-AVZPS4928D of the creditor; copy of bank statement of the creditor, copy of the creditor account for the year ending on 31.03.2009; 31.03.2010 & 31.03.2011 has been filed. On going through the copy of Account of the creditor as on 31.03.2011, it is evident that the said loan amount of Rs, 98,80,000/- was repaid on 30.03.2011 Rs. 90,00,000/- on 31.01.2011 Rs.8.80.000/- from Allahabad Bank A/c No. 50037413129.

(b) That enclosing the aforesaid evidences pertaining to the creditor M/s KP & Associates Pvt. Ltd. as Annexure - 6, it is brought to your kind notice that the identity of the creditor, being legal entity having PAN and assessed to tax is proved. Since the loan has been received through banking channel, its genuineness cannot be denied. Further the said loan amount has already been repaid through Banking channel in A.Y. 2011-12. Hence, there is no scope, to deny the capacity of the creditor to advance the loan to the extent of Rs.98,80,000/-. In the light of these evidences, your goodself will appreciate that all the conditions required proving the genuineness of the loan is fulfilled in this case. Hence, the Ld. A.O. was not justified to treat the unsecured loan as unexplained and made the addition of Rs. 98,80,000/-.

(E) Loan of Rs.46.50,000/- received from M/s Storm Hotels Pvt. Ltd.

[a] That the M/s Storm Hotels Pvt. Ltd. was incorporated on 01.01.2008 and its last AGM was held on 30.09.2010 and Balance Sheet as on 31.03.2010 was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with, in Delhi. The appellant received the unsecured loan of Rs.46,50,000/- on 17.03.2008 through banking channel. Confirmatory letter showing the PAN- AAMCS0343K of the creditor, copy of bank statement of the creditor, copy of the balance sheet as on 31.03.2009 has been filed. On going through the Balance Sheet of M/s Storm Hotels Pvt. Ltd. as on 31.03.2009, it is evident, that the said loan amount of Rs.46,50,000/- is appearing in Asset Side. The creditor Balance Sheet tallies to the extent of Rs.99,46,918/- which suggest that the creditor had capacity to give the loan to the extent of Rs.46,50,000/-.

(b) That enclosing the aforesaid evidences pertaining to the creditor M/s Storm Hotels Pvt. Ltd, as Annexure - 7, it is brought to your kind notice that the identity of the creditor, being legal entity having PAN and assessed to tax is proved. Since the loan has been received through banking channel, its genuineness cannot be denied. The creditor Balance Sheet for A.Y. 2009- 10 tallies to the extent of Rs.99,46,918/-, Hence, there is no scope to deny the capacity of the creditor to advance the loan to the extent of Rs.46,50,000/-. In. the light of these evidences, your goodself will appreciate that all the conditions required proving the genuineness of the loan is fulfilled in this case. Hence, the Ld. A.O. was not justified to

treat the unsecured loan as unexplained and made the addition of Rs.46,50,000/-.

VII Addition on presumption, surmises and conjecture-Not permissible

(i) That in the light of facts of the case, legal provision and judicial pronouncement discussed above, it is brought to your kind notice that the Ld. A.O made the addition of Rs.10,61,67,051/- (Rs. 10,91,67,051(-)Rs. 30,00,000) u/s 68 of the I.T. Act, 1961 (though the Section is not mentioned in the Assessment order), presuming that the appellant has brought his own unaccounted money in his books of accounts by creating the layer of intermediaries by way of creditors. Further, the Ld. A.O was not sure about his presumption, which is evident from the term "appears" as used while giving his finding for bringing the unaccounted money into books of accounts, the relevant sentence is, "the assessee appears to be bringing in unaccounted money in to his books after creating layers of intermediaries" The sentence used in the assessment order suggests that the Ld. A.O was not confident about his presumption for bringing the unaccounted money in the shape of unsecured loan.

That in the light of aforesaid judicial pronouncement, it is further brought to your kind notice that the appellant has proved the identity of the creditor by filing the copy of confirmation letters, copy of their PAN and their ITRs. The appellant has further proved the genuineness of the by filing the bank statements of the creditors as all the loans were received through banking channels. In the last, the appellant

had also proved the credit worthiness of the creditors as all the creditors are assessed to income tax and all the creditors had sufficient funds in their bank accounts to give the loan to the appellant. Further, there is no evidence on the part of Ld. A.O. to prove that the appellant had deposited the funds in the bank account of the creditors and thereafter he received the same by obtaining the cheque from such creditors. In this situation, the creditworthiness of the creditors and source of loan amounts have also been proved.

In the light facts and circumstances of the base, your goodself will find that all the loans have been received through banking channel. The creditors are assessed to tax. All the creditors except M/s KP & Associates are the legal entities and their status are verifiable from the website of the ROC. M/s KP & Associates is also a firm. All the creditors have filed their confirmatory letters with supporting evidences. In the situation, the identity of the creditors, genuineness of the loans & credit worthiness of the creditors are proved. Hence all the ingredients required U/S 68 of the IT Act, 1961 are fulfilled. The Ld. A.O. have made addition of Rs. 10,61,67,051/- (10,91,67,051-30,00,000), on the reason that the creditors have given the loan, after borrowing the fund from third person which was not a valid ground for making the addition. The Ld. A.O. was not entitled to make the addition on enquiring the source of sources. All the creditors are assessed to tax and the source of loan amount can be enquired only in creditor's case and not in appellant case. Hence, your goodself is requested to kindly delete the addition of Rs.10,61,67,051/-."

34. The order of the Id. CIT (A) on the issue of creditors is as under:

"8.70 In Ground No. 3 of the Appeal, the Appellant has challenged the addition of Rs.10,91,67,051/- on account of Unexplained Unsecured Loans. It is seen that for the Unsecured Loans received by the Appellant, this Assessing Officer has made common comments that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries' and on such basis has concluded that "the creditworthiness of the lender and genuineness of the transaction are not established', without actually showing as to how the Assessee was bringing Unaccounted Money into his Books and as to how was the Appellant creating layers of Intermediaries, though neither the existence of any Unaccounted Money with the Assessee nor the creation of layers of Intermediaries could be established. Such opinion of the Assessing Officer was only based on suspicion without any evidence or material in support. The additions towards each of the Unsecured Loans have been discussed below. The Unsecured Loans were received by the Appellant from the following 7 Parties:

1.	M/s Karina Hotels Pvt. Ltd.	Rs. 1,01,60,000/-
2.	M/s Karina Hospitality Pvt. Ltd.	Rs. 1,03,34,000/-
3.	M/s Navya Securities Pvt. Ltd.	Rs. 7,01,49,880/-
4.	M/s K.P. & Associates	Rs. 98,80,000/-
5.	Ms Storm Hotels Pvt. Ltd.	Rs. 46,50,000/-
6.	Ms H.N. Consultants Pvt. Ltd.	Rs. 9,93,171/-

**M/s Karina Hotels Pvt. Ltd.**

8.71 The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs. 1,01,60,000/- from M/s Karina Hotels Pvt. Ltd. during the F.Y. 07-08 and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a confirmation from M/s Karina Hotels Pvt. Ltd. and filed a copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet. It has been observed by the Assessing Officer that the Lender Company has shown an Income of only Rs. 13,497/- and that the Loan given to the Appellant has been financed through borrowing and the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries'", and on such basis has concluded in Para 5.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established'. Thus, despite the fact that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the

creditworthiness of the lender and genuineness of the transaction are not established.

8.72 The Appellant has mentioned that "That the M/s. Karina Hotels Pvt. Ltd. was incorporated on 03.09.2007 and its last ACM was held on 23.05.2011 and Balance Sheet as on 31.03.2011 was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with ITO, Ward 5(1], New Delhi. The appellant received the unsecured loan of Rs. 1,01,60,000/- on 18.03.2008 through banking channel. Confirmatory letter showing the PAN AADCK7127J of the creditor, copy of bank statement of the creditor, copy of the balance sheet as on 31.03.2009 showing the previous year figures has been filed. On going through the Balance Sheet of M/s. Karina Hotel Pvt. Ltd. as on 31.03.2008, it is evident that the said loan amount of Rs. 1,01,60,000/- is appearing in Schedule - 3. The creditor Balance Sheet tallies to the extent of Rs.5,55,95,520/- with suggest that the creditor had capacity to give the loan to the extent of Rs.1,01,60,000/-". It is seen that merely because the Lender Company had substantial funds through borrowings, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion, without giving any finding regarding the claim and the documents submitted in support of the claim regarding availability of funds with the Lender and the flow of funds from the Lender to the Assessee. No doubt, the Assessing Officer can

have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs. 1,01,60,000/- from M/s Karina Hotels Pvt. Ltd., as Unexplained, and hence the addition of Rs.1,01,60,000/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

#### **Karina Hospitality Pvt. Ltd.**

The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs. 1,03,34,000/- from M/s Karina Hospitality Pvt. Ltd. during the F.Y. 07-08 and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a confirmation from M/s Karina Hospitality Pvt. Ltd. and filed a copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet. It has been observed by the Assessing Officer that the Lender Company has shown a Loss of Rs.33,80,530/- and that the Loan given to the Appellant has been financed through borrowings

and Share application money and that the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries", and on such basis has concluded in Para 6.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established". Thus, despite the fact that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.74 The Appellant has mentioned that "That the M/s. Karina Hospitality Pvt. Ltd. was incorporated on 22.08.2006 and its last AGM was held on 25.05.2011 and Balance Sheet as on 31.03.2011 was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with ITO, Ward 5(1), New Delhi. The appellant received the unsecured loan of Rs.1,03,34,000/- on 18.03.2008 through banking channel. Confirmatory letter showing the PAN-AACCK9642H of the creditor, copy of bank statement of the creditor, copy of the balance sheet as on 31.03.2009 showing the previous year figures has been filed. On going through the Balance Sheet of M/s Karina Hospitality

Pvt. Ltd. as on 31.03.2008, it is evident that the said loan amount of Rs.1,03,34,000/- is appearing in Schedule - 3. The creditor Balance Sheet tallies to the extent of Rs.5,78,34,000/- which suggest that the creditor had capacity to give the loan to the extent of Rs.1,03,34,000/-." It is seen that merely because the Lender Company had substantial funds through borrowings and Share Application Money, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion, without giving any finding regarding the claim and the documents submitted in support of the claim regarding availability of funds with the Lender and the flow of funds from the Lender to the Assessee. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs.1,03,34,000/- from M/s Karina Hospitality Pvt. Ltd. as Unexplained, and hence the addition of Rs. 1,03,34,000/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

**Navya Securities Pvt. Ltd.**

The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs. 7,01,49,880/- from M/s Navya Securities Pvt. Ltd. during the F.Y. 07-08 and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a confirmation from M/s Navya Securities Pvt. Ltd. and filed a copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet. It has been observed by the Assessing Officer that the Lender Company has shown an Income of only Rs.25,06,760/- and that the Loan given to the Appellant has been financed through Sundry Creditors and that the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries and on such basis has concluded in Para 7.1 of the Assessment Order that "the creditworthiness of the lender and, genuineness of the transaction are not established!". Thus, despite the fact that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the

creditworthiness of the lender and genuineness of the transaction are not established.

8.76 The Appellant has mentioned that "That the M/s. Navya Securities Pvt. Ltd. was incorporated on 05.05.1995 and its last AGM was held on 30.09.2010 and Balance Sheet as on 31.03.2010 was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with ITO, Ward 13(1), New Delhi. The appellant received the unsecured loan of Rs.7,01,49,880/- during the year through banking channel. Confirmatory letter showing the PAN-AAACN3106H of the creditor, copy of bank statement of the creditor, copy of the balance sheet as on 31.03.2008 was filed before the A.O. and the same are against enclosed. On going through the Balance Sheet of M/s. Navya Securities Pvt. Ltd. as on 31.03.2008, it is evident that the said loan amount of Rs.5,92,32,577+1,09,17,303 = Rs.7,01,49,880/- is appearing in Schedule - 5. The creditor Balance Sheet tallies to the extent of Rs.8,93,60,445/- which suggest that the creditor had capacity to give the loan to the extent of Rs.7,01,49,880/-." It is seen that merely because the Lender Company had substantial funds through borrowings, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion, without giving any finding regarding the claim and the documents submitted in support of the claim regarding availability of funds with the Lender and the flow of funds from

the Lender to the Assessee. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs.7,01,49,880/- from M/s Navya Securities Pvt. Ltd. as Unexplained, and hence the addition of Rs.7,01,49,880/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

**M/s H.N. Consultants Pvt. Ltd.**

The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs. 9,93,171/- from M/s H.N. Consultants Pvt. Ltd. during the F.Y. 07-08 and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a confirmation from M/s H.N. Consultants Pvt. Ltd. and filed a copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet. It has been observed by the Assessing Officer that the Lender Company has shown a Loss of Rs.7,08,776/- and that the Loan given to the Appellant has

been financed through Share application money of Rs.22,50,000/- and Liabilities of Rs.63,97,000/- and that the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries", and on such basis has concluded in Para 10.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established". Thus, despite the fact that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.78 It is seen that merely because the Lender Company had substantial funds through borrowings, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion, without giving any finding regarding the claim and the documents submitted in support of the claim regarding availability of funds with the Lender and the flow of funds from the Lender to the Assessee. No doubt, the Assessing

Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs. 9,93,171/- from M/s H.N. Consultants Pvt. Ltd as Unexplained, and hence the addition of Rs. 9,93,171/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

#### **M/s Storm Hotels Pvt. Ltd.**

The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs.46,50,000/- from M/s Storm Hotels Pvt. Ltd. during the F.Y. 07-08 and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a confirmation from M/s Storm Hotels Pvt. Ltd. and filed copy of Bank Statement and Balance Sheet. It has been observed by the Assessing Officer that the Income Tax Assessment particulars of the Lender Company were not placed on record and hence identity of the Lender is not established. The Assessing Officer has stated that the main source of funds for the Lender

Company is Share application money of Rs.98,00,000/- as on 31.03.09 and that no proof was submitted to establish that the Lender Company had the Income / Capital on 31.03.08 to be able to give Loan of Rs.46,50,000/- to the Assessee. On such basis, the Assessing Officer has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.80 During the appellate proceedings, it was stated that the Lender Company i.e. Storm Hotels Pvt. Ltd. was incorporated on 10.01.08 as was evident from the company master details downloaded from RoC website and placed at page no 157 of the Paper Book submitted, and that the same was also submitted before the Assessing Officer. It was further stated that as the Company was incorporated on 10.01.08, the first sets of Books of Account were prepared for the period from 28.12.07 to 31.03.09, i.e. for a period of 15 months and hence the first Income Tax Return of the Company was due and filed for the A.Y.2009-2010 and not for A.Y. 2008-2009. It was stated that the copy of Profit & Loss account of the M/s Storm International PM. Ltd. evidencing that Books were prepared for 15 months had already been submitted before the Assessing Officer and that it was again submitted as page no 162 along with copy of Income Tax Return for A.Y.2009-10 at page no 156 of the Paper Book. During the appellate proceedings, the Learned Counsel of the Appellant relied upon the Section 2(17) of the Companies Act which defines 'Financial Year' in relation to any Body Corporate and upon the Section 210(4) of the Companies Act which permits the Body Corporate to made accounts for a period of more than an year.

8.81 It is seen that the Lender Company from which the amount of Rs.46,50,000/- was received was a genuine Company and its Identity could not be rejected merely because the Lender Company did not file Income Tax Return for the first year of operation. In any case, the Assessee had placed before the Learned Assessing Officer, the documents evidencing the making of accounts for more than an year, but rather than Investigating further, the Assessing Officer merely took the non filing of Income Tax Return for A.Y. 08-09 by the Lender Company as an excuse to deny its Identity, Creditworthiness and Genuineness of the transactions. Once the accounts for the extended year had been placed before the Assessing Officer, alongwith Bank Statement, Confirmation from the Lender Company, documents from RoC etc., then the non filing of Income Tax Return for A.Y. 08-09 and the source of funds being primarily from Share application money could have been cause for suspicion and led to further Investigation by the Assessing Officer, but it cannot be a ground for adverse conclusion against the Assessee, particularly when the accounts had been made for extended period for A.Y. 09-10. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs.46,50,000/- from M/s Storm Hotels Pvt. Ltd. as Unexplained, and hence the addition of Rs.46,50,000/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

**M/s K.P. & Associates**

The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs. 98,80,000/- from M/s K.P. & Associates during the F.Y. 07-08 and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the 'Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a confirmation from M/s K.P. & Associates and also filed a copy of Income Tax Return Acknowledgment and Bank Statement. It has been observed by the Assessing Officer that the Assessee has submitted the ITR Acknowledgment of one Sh. Krishan Prasad Sharma in support of the Loan from M/s K.P. & Associates and that the relationship of with Sh. Krishan Prasad Sharma with the Lender has not been clarified and also that Sh. Krishan Prasad Sharma has shown an Income of only Rs.57,467/- from Salary and Rs.45,980/- as Income from other sources for A.Y. 06-07. The Assessing Officer has also pointed out that there are just two transactions in the Bunk Account of M/s K.P. & Associates. It has been concluded by the Assessing Officer that the "identity of the Lender is not established as the relationship of Sh. Krishan Prasad Sharma and the Lender M/s K.P. & Associates is not furnished ' and that "it is appears that the Loans shown from M/s K.P. & Associates is just an accommodation entry."

8.90 Merely because the Lender had meager returned Income and had substantial hands through borrowings, the Assessing Officer suspected the Assessee to have created layers of

intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range have not brought to light anything against the Appellant, despite specific directions for inquiry by Commissioner (Appeals).

8.91 The most notable aspect for this addition is that the Assessing Officer, in addition to observing that the Loan appeared to be an accommodation entry, was of the opinion that the "identity of the Lender is not established as the relationship of Sh. Krishan Prasad Sharma and the Lender M/s K.P. & Associates is not furnished'. The Assessing Officer has doubted whether Sh. Krishan Prasad Sharma was the proprietor of M/s K.P. & Associates and has stated that the relationship of this person with the Lendor is not established. However, as mentioned above, perusal of the Returns filed by Sh. Krishan Prasad Sharma for A.Y. 08-09 does not specifically mention the same, but the Returns for A.Y. 09-10 and 10-11 specifically mention that Sh. Krishan Prasad Sharma was proprietor of M/s K.P. & Associates. It can be argued that the Returns for the subsequent years i.e. AY 09-10 and AY 10-11 were not before the Assessing Officer and hence they cannot be used to give

relief to the Appellant. In this regard, it is noteworthy that as per the provisions of Rule 46A(4) of the Income Tax Rules, 1962, the Commissioner (Appeals) has the power to direct the production of any document, and the above documents i.e. the Returns for subsequent years were produced in compliance to directions by the Learned Commissioner of Income Tax (Appeals)-VI, New Delhi.

8.92 It is seen that though there are sufficient documents to show that Sh. Krishan Prasad Sharma was the proprietor of M/s K.P. & Associates, but the question can arise that those documents were not before the Assessing Officer in the assessment proceedings, and whether in those circumstances, the observations of the Assessing Officer were correct or not. In this regard, it is seen that the Assessee had filed a Confirmation from M/s K.P. & Associates during the assessment proceeding, which has been acknowledged by the Assessing Officer in Para 8 on Page 12 of the Assessment Order. A perusal of the Confirmation filed from M/s K.P. & Associates, which has been signed by both M/s K.P. & Associates (the Lendor) and M/s K.R. Chawla & Co. (of which, the Appellant is the Proprietor), shows that the PAN of both M/s K.P. & Associates and M/s K.R. Chawla & Co. have been clearly mentioned. The PAN of the Creditor i.e. M/s K.P. & Associates is mentioned as AVZPS4928D and the PAN of Debtor i.e. M/s K.R. Chawla & Co. is mentioned as ADDPC7559G on the Confirmation. It is seen that the PAN for the Creditor i.e. M/s K.P. & Associates shown as AVZPS4928D in the Confirmation is the same as in the ITR Acknowledgment for AY 08-09 for Sh. Krishan Prasad Sharma (which was filed in the assessment proceedings), being AVZPS4928D. Thus, there was

no reason for the Assessing Officer to suspect that the concern M/s K.P. & Associates, which had given Confirmation and copy of Bank: Statement etc. did not belong to Sh. Krishan Prasad Sharma, as the PAN was the same, and both these documents were present before the Assessing Officer in the assessment proceedings. Hence, the doubts of the Assessing Officer regarding the identity of the Lender and the relationship of the Sh. Krishan Prasad Sharma with the Lender, M/s K.P. & Associates was totally unfounded. As already discussed above, there was no cogent reason with the Assessing Officer to hold that the Loans from M/s K.P. & Associates 'appeared' to be an 'accommodation entry'.

8.93 In view of the entire facts of the case, as discussed above, there is no justification to treat the Unsecured Loan amounting to Rs.98,80,000/- from M/s K.P. & Associates as Unexplained, and hence the addition of Rs.98,80,000/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.”

### **A.Y. 2009-10**

#### **Karina Hotels Pvt. Ltd.**

The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs.28,00,000/- from M/s Karina Hotels Pvt. Ltd. during the F.Y. 08-09 (relevant to A.Y. 09-10) and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response

the Assessee submitted a Confirmation from M/s Karina Hotels Pvt. Ltd. and filed a copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet. It has been observed by the Assessing Officer that the Lender Company has shown an Income of only Rs.13,500/- and that the main source of funds for the Company is Unsecured Loans of Rs.4,54,25,000/- on 31.03.09. It has been held by the Assessing Officer that the Loan given to the Appellant has been financed through borrowings and the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries", and on such basis has concluded in Para 5.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established'. Thus, despite the fact that, there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.27 The Appellant has mentioned that "That the issue relating to unsecured loan from M/s Karina Hotels Pvt. Ltd. was involved in last year, i.e. A.Y. 2008-09 also. In that year, a detail reply has been furnished vide written submission dated 16.03.2012 &

28.12.2012. In that year, it was explained that the loan taken in A.Y. 2008-09 & 2009-10 were fully repaid during 2010- 11 & 2011-12. However, it is further summarized in this year that said Karina Hotels Pvt. Ltd. was incorporated on 03.09.2007 and its last AGM was held on 23.05.2011 and Balance Sheet as on was filed to the Registrar of Companies. These facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with ITO, Ward 5(1), New Delhi. The appellant received the unsecured loan of Rs.28,00,000/- during the relevant year through banking channel. The following evidences which were filed before the Ld. A.O. are again enclosed as Annexure-4:

- (a) The Copy of Confirmatory letter showing the PAN-AADCK7127J of the creditor,
- (b) The copy of Bank Statement of the creditor,
- (c) The copy of the Balance Sheet as on 31.03.2009 of the Creditor. On going through the Balance Sheet of M/s Karina Hotel Pvt. Ltd. as on 31.03.2009, it is evident that the balance loan amount of 'Rs.1,17,92,000/ which includes Rs.28,00,000/- is appearing in Schedule - "3" in the name of K.R. Chawla & Co. The creditor's Balance Sheet tallies to the extent of Rs.5,84,96,104/- which suggest that the creditor had capacity to give the loan to the extent of Rs. 28,00,000/-.
- (d) The copy of Acknowledgment of ITR of Karina Hotel Pvt. Ltd for AY 2009-10 is also enclosed."

8.28 It is seen that merely because the Lender Company had substantial funds through borrowings, the Assessing Officer suspected the Assessee to have created layers of intermediaries

to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion, without giving any finding regarding the claim and the documents submitted in support of the claim regarding availability of funds with the Lender and the flow of funds from the Lender to the Assessee. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl., Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs.28,00,000/- from M/s Karina Hotels PH. Ltd. as Unexplained, and hence the addition of Rs.28,00,000/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

### **Navya Securities Pvt. Ltd.**

8.29 The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs. 1,79,201/- from M/s Navya Securities Pvt. Ltd. during the F.Y. 08-09 (relevant to A.Y. 09-10) and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the

transactions. The Assessment Order mentions that the Assessee did not submit any Confirmation or other documents. The Assessing Officer has observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries'", and on such basis has concluded in Para 6.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established".

8.30 The Appellant, in the Written Submissions dated 03.12.13 has inter alia stated on this issue as under:

"7. That the Ld. A.O. made an addition of Rs.1,79,201/- on account of the loan of Rs.7,01,49,880/- in the name of M/s Navya Securities Pvt. Ltd. with the observation that the assessee did not file the confirmation, copy of ITR, Bank Statement and the balance sheet of that party. In absence of these evidences, the Ld. A.O. held that the credit worthiness and genuineness of the loan was not proved. In this regard, it is brought to your' kind notice that the appellant in A.Y. 2008-09 had received the loan from the said party against which there was a opening credit balance of Rs.7,01,49,880/- in this year. During the year the appellant has repaid Rs.1,52,25,846/- against such opening balance of Rs,7,01,49,880/-.

II. That in respect of receipt of Rs.1,79,201/- during the year, it is brought to your kind notice that the said sum of Rs.1,79,201/- included the credit of library expenses of Rs.29,201/-. It means, the net receipt is only for Rs.1,50,000/- during the year. In this regard, it is explained that due to certain reason M/s Navya Securities Pvt. Ltd. refunded

Rs.1,50,000/- out of repayment of Rs.1,52,25,846/-. Hence, the Ld. A.O. was not justified to treat the said amount of Rs.1,50,000/- being receipt out of refunded amount and expenditure of Rs.29,201/- totaling to Rs.1,79,201/- as unexplained cash credit u/s 68 of the IT Act, 1961.

III. That it is further brought to your kind notice that the appellant had received new loan in AY 2008-09 from M/s Navya Securities Pvt. Ltd. and out of that the opening credit balance of Rs.7,01,49,880/- was shown in this year. In respect of loan taken in AY 2008-09, the assessee had already filed the written submission dated 16.03.2012 and 18.12.2012 during course of assessment proceeding for that year. Since the loan was taken in AY 2008-09 and not in this year and the detail explanation and evidences were filed during that year, the assessee did not file the confirmation and other evidences during the year, as observed by the Ld. A.O."

8.31 The Appellant admittedly did not file any separate Confirmation from M/s Navya Securities Pvt. Ltd. for A.Y. 09-10. However, the entire facts and circumstances have to be taken into consideration. The same party i.e. M/s Navya Securities Pvt. Ltd. had given a Loan of Rs.7,01,49,880/- in the A.Y. 08-09 (i.e. the immediately preceding year), and it had also submitted Confirmation for the same alongwith ITR, Bank Statement etc. not only for the period 01.04.07 to 31.03.08 (i.e. relating to A.Y. 08-09) but also for the period 01.04.08 to 31.03.09 (i.e. relating to A.Y. 09-10, the year under consideration) and also for subsequent years being the period 01.04.09 to 31.03.10 (i.e. relating to A.Y. 10-11) and for the period 01.04,10 to

31.03.11 (i.e. relating to A.Y. 11- 12). It is also seen from the copy of the Bank Statement, that for the year under consideration, it was not as if a fresh amount of Rs.1,79,201/- was received from M/s Navya Securities Pvt. Ltd., but rather substantial payments were given by the Appellant, running into several Lakhs, with the first payment itself being of Rs.2,20,000/- far exceeding the amounts received (i.e. Rs.1,50,000/- and Rs.29,201/-), and thereafter the amounts were received from that party. Thus, despite the fact that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that separate Confirmation for A.Y, 09- 10 for the amount of Rs.1,79,201/- was not received and on this basis has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.32 It is seen that merely because the Lender Company did not give any separate Confirmation for A.Y. 09-10 and other documents separately in the assessment proceedings for A.Y. 09-10, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the amount of Rs.1,79,201/- received during the year from that party and treated it as Unexplained merely on the basis of such suspicion. However,

the transactions with the party, i.e. M/s Navya Securities Pvt. Ltd. have to be looked into in totality, particularly with reference to the Unsecured Loan of Rs.7,01,49,880/- given by that party in the A.Y. 08-09 (i.e. the immediately preceding year), and it having also submitted Confirmation for the same alongwith ITR, Bank Statements etc. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be the only ground for adverse conclusion against the Assessee. Once the Appellant did not file any separate Confirmation for A.Y. 09-10, the Assessing Officer should have looked into the other documents available, and particularly the file for the preceding year of the same Appellant, in his own office i.e. office of ACIT, Central Circle-13, New Delhi. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the amount of Rs. 1,79,201/- received from M/s Navya Securities Pvt. Ltd. as Unexplained, particularly when substantial payments amounting to more than several times this amount were given by the Appellant to that party, and also in view of the acceptance of the Unsecured Loan of Rs.7,01,49,880/- received from that party in the preceding year as genuine, as per the separate Order of date in the case of the Appellant in the appeal for the A.Y. 08-09. Accordingly, the addition of Rs.1,79,201/- made by the Assessing Officer treating this amount as Unexplained is hereby deleted.

**K.R. Chawla Consulting Pvt. Ltd.**

8.33 The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs.9,16,42,740/- from M/s K. R. Chawla Consulting Pvt. Ltd. during the F.Y. 08-09 (relevant to A.Y. 09-10) and that the Assessee was required to furnish the details of the amount received and evidence in support: of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a Confirmation from M/s K. R. Chawla Consulting Pvt. Ltd. and filed a copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet. It has been observed by the Assessing Officer that the Lender Company has shown a Loss of Rs. 1,84,52,982/- for the A.Y. 09-10 and that the main source of funds for the Company is Loans Funds of Rs.51,44,72,327/- as on 31.03.09. It has been held by the Assessing Officer that the Loan given to the Appellant has been financed through borrowings and the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries", and on such basis has concluded in Para 7.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established". Thus, despite the fact that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the

Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.34 The Appellant has mentioned that "That M/s K.R. Chawla Consulting Pvt. Ltd. was incorporated 11/02/2003. These facts are verifiable from the Master Details of the MCA 21 website. The company is assessed to tax with ITO, W3 5(1), New Delhi. The appellant received the unsecured loan of Rs.9,16,42,740/- during the year through banking channel. The copy Confirmatory letter showing the PAN-AACCK2723P of the Credit copy of bank statement of the creditor, copy of Balance Sheet as 31.03.2009 was filed before the A.O. and the same are again enclosed as Annexure-8. On going through the Balance Sheet of M/s K. Chawla Consulting Pvt. Ltd. as on 31.03.2009, it is evident that said loan amount of Rs.9,16,42,740/- is appearing in Schedule-4, creditor Balance Sheet tallies to the extent of Rs.60,83,51,695/-which suggests that the creditor had capacity to give the loan to the extent of Rs.9,16,42,740/-."

8.35 It is seen that merely because the Lender Company had substantial funds through borrowings, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion, without giving any finding regarding the

claim and the documents submitted in support of the claim regarding availability of funds with the Lender and the flow of funds from the Lender to the Assessee. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs.9,16,42,740/- from M/s K.R. Chawla Consulting Pvt. Ltd. as unexplained, and hence the addition of Rs.9,16,42,740/- made by the Assessing Officer treating this Loan as unexplained is hereby deleted.

**K.R. Chawla Infra & Aviation Academy Pvt. Ltd.**

8.36 The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs.32,88,93,299/- from M/s K. R. Chawla Infra & Aviation Academy Pvt. Ltd. during the F.Y. 08-09 (relevant to A.Y. 09-10) and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet of M/s K. R. Chawla Infra & Aviation Academy

Pvt. Ltd. It has been observed by the Assessing Officer that the Lender Company has shown a Loss of Rs.2,27,02,134/- for the A.Y. 09-10 and that the main source of funds for the Company is Unsecured Loans of Rs.58,82,13,608/- as on 31.03.09. It has been held by the Assessing Officer that the Loan given to the Appellant has been financed through borrowings and the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries", and on such basis has concluded in Para 8.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established. Thus, despite the fact that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.37 It has been stated by the Appellant that "That M/s K.R. Chawla Infra & Aviation Academy Pvt. Ltd. now, the name is changed as Karina Airlines International Ltd. is assessed to tax with ITO, Ward-5(3), New Delhi. The appellant received the unsecured loan of Rs.32,88,93,299/- through banking channel. The confirmatory letter showing the PAN- AADCK1912D of the

creditor, copy of bank statement of the creditor, copy of Acknowledgment of the ITR for AY 2009-10 and final a/c of the creditor for this year which was filed before the Ld. A.O. and the same are again enclosed as Annexure-10 & 11. Further, the copy of a/c for AY 2010-11 and 2011-12 are enclosed as Annexure-12. On going through the copy of the account of the creditor, it is evident that the maximum amount out of the said loan amount of Rs.32,88,93,299/- was repaid on 31.03.2011."

8.38 It is seen that merely because the Lender Company had substantial funds through borrowings, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion, without giving any finding regarding the claim and the documents submitted in support of the claim regarding availability of funds with the Lender and the flow of funds from the Lender to the Assessee. In fact, though the Confirmation from that party was filed, the Assessment Order has not acknowledged the same. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts

of the case, there is no justification to treat the Unsecured Loan amounting to Rs.32,88,93,299/- from M/s K. R. Chawla Infra & Aviation Academy Pvt. Ltd. as Unexplained, and hence the addition of Rs. 32,88,93,299/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

### **Mansion Hotels Pvt. Ltd.**

8.39 The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs.2,80,00,000/- from M/s Mansion Hotels Pvt. Ltd. during the F.Y. 08-09 (relevant to A.Y. 09-10) and that the Assessee was required to furnish the details of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted copy of Income Tax Return Acknowledgment, Bank Statement and Balance Sheet of M/s Mansion Hotels Pvt. Ltd. It has been observed by the Assessing Officer that the Lender Company has shown an Income of only Nil for the A.Y. 09-10 and that the main source of funds for the Company is Unsecured Loans of Rs.8,29,50,000/- as on 31.03.09. It has been held by the Assessing Officer that the Loan given to the Appellant has been financed through borrowings and the Company does not have any significant funds of its own. The Assessing Officer has further observed that "The assessee appears to be bringing in unaccounted money into his books after creating layers of intermediaries", and on such basis has concluded in Para 9.1 of the Assessment Order that the creditworthiness of the lender and genuineness of the transaction are not established. Thus, despite the fact

that there was no doubt about the Identity of the Lender and the availability of funds with the Lender and the fact that the funds were actually given to the Appellant, the Assessing Officer has drawn adverse conclusion merely on the basis that the Lender Company had itself borrowed funds and has got the suspicion that the "Assessee appears to" be bringing in unaccounted money into his books having created layers of intermediaries, and on basis of such suspicion has concluded that the creditworthiness of the lender and genuineness of the transaction are not established.

8.40 It has been stated by the Appellant that "That M/s Mansion Hotels Pvt. Ltd. was incorporated on 10.06.2008 and these facts are verifiable from the Master Details from the MCA 21 website. The company is assessed to tax with ITO Ward-6(2), New Delhi. The appellant received the unsecured loan of Rs.2,80,00,000/- through banking channel. The copy of Confirmatory letter showing the PAN of the creditor, copy of bank statement of the creditor, the copy of Acknowledgment of the ITR for AY 2009-10, copy of the Balance Sheet as on 31.03.2009 has been filed before the Ld. A.O. and the same are again enclosed as Annexure-16. On going through the Balance Sheet of M/s Mansion Hotels Pvt. Ltd. as on 31.03.2009, it is evident that the said loan amount of Rs.2,80,00,000/- is appearing in the head of Loan and Advances. The creditor Balance Sheet tallies to the extent of Rs.11,18,45,945/- which suggest that the creditor had capacity to give the loan to the extent of Rs.2,80,00,000/-.

8.41 It is seen that merely because the Lender Company had substantial funds through borrowings, the Assessing Officer suspected the Assessee to have created layers of intermediaries to bring in Unaccounted money, and on the basis of such suspicion, drew adverse conclusion against the genuineness of the Unsecured Loan and treated it as Unexplained merely on the basis of such suspicion. In fact, though the Confirmation from that party was filed, the Assessment Order has not acknowledged the same. No doubt, the Assessing Officer can have suspicion regarding a particular transaction or group of transactions, but such suspicion can only be a ground for further Investigation to determine the true facts, but it cannot be a ground for adverse conclusion against the Assessee. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Unsecured Loan amounting to Rs.2,80,00,000/- from M/s Mansion Hotels Pvt. Ltd. as Unexplained, and hence the addition of Rs. 2,80,00,000/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

**M/s H.T. Recon Constructions Pvt. Ltd.**

The Assessing Officer has stated that the Assessee received Unsecured Loan of Rs.85,02,276/- from M/s H.T. Recon Constructions Pvt. Ltd. during the F.Y. 8-09 (relevant to A.Y. 09-10) and that the Assessee was required to furnish the details

of the amount received and evidence in support of identity and creditworthiness of the Lender and also the genuineness of the transactions. The Assessment Order mentions that in response the Assessee submitted a Confirmation from M/s H.T. Recon Constructions Pvt. Ltd. It has been observed by the Assessing Officer in Para 10.1 of the Assessment Order that "the creditworthiness of the lender and genuineness of the transaction are not established", in the absence of the Income level and the Bank Account Statement of the Lender.

8.43 It has been stated by the Appellant that "That M/s H.T. Recon Constructions Pvt. Ltd. was incorporated on 13.02.2004 and these facts are verifiable from the Master-Details from the MCA 21 website. The company is assessed to tax with ITO Ward-12(4), New Delhi, Out of unsecured loan of Rs.85,02,276/- as shown in the name of Appellant, the sum of Rs.47,02,276/- is an opening balance. Hence there was new loan of Rs.38,00,000/- only which was received through banking channel. The confirmatory letter showing PAN of the creditor, copy of bank statement of the creditor, the copy of Acknowledgment of ITR for AY 2009-10 & copy of Balance Sheet as on 31.03.2009 which had been filed before the Ld. A.O. are again enclosed as Annexure-17. On going through the Balance Sheet of M/s H.T. Recon Constructions Pvt. Ltd. as on 31.03.2009, it is evident that the said loan amount of Rs.82,02,276/- is appearing in Schedule-9. The creditor Balance Sheet tallies to the extent of Rs.6,51,63,869/- under the head other current asset which suggest that the creditor had capacity to give the loan to the extent of Rs.82,02,276/-."

8.44 It is seen that the Appellant had filed Confirmation from the Lender Company i.e. M/s H.T. Recon Constructions Pvt. Ltd., alongwith copy of Bank Statement, Acknowledgment of Income Tax Return for A.Y. 09-10 and copy of Balance Sheet as on 31.03.09, but the Assessment Order acknowledges the receipt of the only the Confirmation and is silent about the other documents, particularly the Balance Sheet of the Lender Company as on 31.03.09 and also the ITR for A.Y. 09-10. The Assessment Order mentions that there was absence of Income level and that Bank Account Statement of the Lender was absent, but has failed to explain as to how there was absence of Income level and Bank Account Statement, particularly when the Appellant has clearly stated that all the documents required by the Assessing Officer were filed during assessment proceedings. It is seen that the Assessing Officer has given the cryptic finding in Para 10.1 of the Assessment Order regarding the Unsecured Loans of Rs.85,02,276/- being Unexplained only on the basis of his observation (without any justification) regarding "absence of the income level and the bank account statement of the lender. " It is noteworthy that the Appellant has stated that as in the case of others Creditors (other than Navya Securities Pvt. Ltd. for which the documents were submitted in preceding year, i.e. AY 08-09), the documents being Confirmation from that Party alongwith copy of Bank Statement, Acknowledgment of Income Tax Return for A.Y. 09-10 and copy of Balance Sheet as on 31.03.09, were filed in the case of M/s H.T. Recon Constructions Pvt. Ltd.. However, the Assessing Officer has mentioned about the receipt of Confirmation only and is silent about the other documents, but in Para 10.1 has claimed that there was absence of Bank

Account Statement of the Lendor, without specifically stating that it was not filed. Thus the Appellant claims that the 4 documents being Confirmation, Bank Statement, Acknowledgement of ITR and Balance Sheet were filed, but the Assessing Officer Confirms the filing of only the Confirmation and a silent about the other 3 documents, though the absence of one of the documents, being Bank Statement has subsequently been mentioned, though there is no specific allegation that the Appellant did not file Acknowledgement of ITR and Balance Sheet, nor any direct allegation about none filing of Bank Statement has been made, though absence has been claimed without specifying as to who was responsible for the absence of such Bank Statements.

8.45 It has been further stated by the Appellant in the Written Submissions dated 03.12.13 that:

"...Since, the loan of Rs.47,02,276/- was an opening balance as on 01.04.2008, the same cannot be considered for the addition in this year. The new loan of Rs.38,00,000/- has been received through banking channel, its genuineness cannot be denied. The creditor Balance Sheet for the A.Y. 2009-10 tallies to the extent of Rs.6,51,63,869/-. Hence, there is no scope to deny the capacity of the creditor to advance the loan to the extent of Rs.85,02,276/-.

III. That on going through the confirmatory letter fled by the creditor, it is evident that there was an opening credit balance of Rs.47,02,276/- as on 01.04.2008 for which the addition is patently wrong/illegal. The said creditor advanced Rs.38,00,000/- on 02.07.2008 through banking channel during

the year. On going through the bank statement of creditor it is evident that the creditor had brought forward amount Rs.3,70,29,950/- and further received Rs.4-1,00,000/- through cheque as on 2108.2008. The said amount of Rs.38,00,000/- was advanced to the assessee out of the credit balance brought forward from earlier period. Thus, it is evident that the creditor has advanced the new loan of Rs.38,00,000/- out of its credit balance brought forward from earlier period."

8.46 It is seen that out of the Credit Balance of Rs.85,02,276/- as on 31.03.09 from M/s H. T. Recon Constructions Pvt. Ltd., there was an Opening Credit Balance of Rs.47,02,276/- as on 01.04.08, and that the Creditor advanced a further amount of only Rs.38,00,000/- during the year. Thus, the Assessing Officer has not properly appreciated the facts of the case at all. It appears as if having added the Credits from other parties, the Assessing Officer was of the view that the Credit from M/s H. T. Recon Constructions Pvt. Ltd. should also be added, and proceeded to add the Credit from that party, ignoring the documents filed and the full facts of the case. The Remand Reports from the Assessing Officer and the comments/Reports from the Joint/Addl. Commissioner heading the Range only reiterate the stand of the Assessing Officer and there is nothing to add to the contentions and conclusions of the Assessing Officer. In view of the entire facts of the case, there is no justification to treat the Credit as on 31.03.9 amounting to Rs.85,02,276/- from M/s H.T. Recon Constructions Pvt. Ltd. as Unexplained, and hence the addition of Rs.85,02,276/- made by the Assessing Officer treating this Loan as Unexplained is hereby deleted.

35. We have gone through the complete factum, the submission of both the parties, arguments, evidences and find that the Id. CIT (A) has given very cogent reason going through each and every creditors, the copy of ITRs, bank statement, balance sheet, receipt and repayment. No perversity or factual inaccuracies or legal incongruencies could be established. Hence, we decline to interfere with the order of the Id. CIT (A).

**Disallowance of Interest amounting to Rs. 37,34,407/-**

36. The Appellant had disclosed the amount of Rs.1,25,59,001/- as Income from Miscellaneous Receipts in the Profit & Loss Account. It was claimed in the assessment proceedings that the Miscellaneous Receipts of Rs.1,25,59,001/- included Rental Receipt of Rs.1,25,30,519/- from M/s HHG Global Pte. Ltd. and revised Computation of Total Income was filed disclosing the Annual Lettable Value u/s 23 for the Property at DLF Phase II, Gurgaon at Rs.1,25,30,519/- and after deducting the Deduction u/s 24(a) at Rs.37,59,156/- @ 30% of the Annual Value.

37. A perusal of the Ledger Account for Miscellaneous Receipts as per the Books of M/s K.R. Chawla & Co., a copy of which was filed in the Paper Book in the appellate proceedings shows that there are the following Credits in this account shown as receipts from M/s HHG Global Pte. Ltd.:

S. No.	Date	Narration	Amount (in Rs.)
1.	11.07.07	Being the amount of Euro 25000 @ 54.30 received from HHG Global Pte. Ltd. against Rent	Rs. 13,57,500/-

2.	07.09.07	Being the amount of Euro 48380 @ 55.10 received from HHG Global Pte. Ltd. against Rent	Rs.26,65,738/-
3.	08.11.07	Euro 49980 @ 57.50 received from HHG Global Pte. Ltd.	Rs.28,73,850/-
4.	03.03.08	USD 70000 @ 40.20 received from HHG Global through Axis Bank against Rent	Rs.28,13,831/-
5.	12.03.08	USD 70000 @ 40.28 received from HHG Global through ABN Amro Bank against Rent	Rs.28,19,600/-
		Total	Rs.1,25,30,519/-

38. A perusal of the facts of the case and the legal position shows that there was no challenge to the fact that the amount of Rs. 1,25,30,519/- was received from M/s HHG Global Pte. Ltd. as Rent, and that the appellate authorities had the jurisdiction to entertain additional claims made before them. In the instant case, the claim for Deduction u/s 24(a) had been made before the Assessing Officer during the assessment proceedings (though not by revised Return), but by revised Computation of Income, and in view of the fact that the amount in question i.e. Rs.1,25,30,519/- was basically Rental Receipt, it had to be taxed as Income from House Property and hence the Deduction allowable had to be given to the Appellant. Reliance is being placed on order of the Hon'ble Apex Court in the case of Goetze India Ltd. Vs CIT 284 ITR 323. Hence, we decline to interfere with the order of the Id. CIT (A).

#### **Dividend u/s 14A:**

39. The Assessing Officer disallowed Rs.4,15,141/- u/s 14A. We find that the assessee has not earned any exempt income and hence we direct that no disallowance is called for, as the

Section 14A will not apply if no exempt income is received or receivable during the relevant previous year.

40. As a result, the appeals of the revenue are dismissed.

Order Pronounced in the Open Court on 26/04/2021.

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 26/04/2021**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**