

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH  
MUMBAI**

**BEFORE: SHRI MAHAVIR SINGH, VP  
&  
SHRI M.BALAGANESH, AM**

**ITA No.1690/Mum/2018  
(Assessment Year :2014-15)**

Income Tax Officer – 15(1)(1), Room No.456, 4 <sup>th</sup> Floor Aayakar Bhavan M.K.Road, Mumbai-40002	Vs.	M/s. Agripure Tradeware Private Limited Off. M.G. Complex Sector – 14, Vashi, Navi Mumbai-400705
<b>PAN/GIR No.AAKCA8811A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Brajendra Kumar
Assessee by	Shri Prakash Junjhunwala
<b>Date of Hearing</b>	<b>12/04/2021</b>
<b>Date of Pronouncement</b>	<b>20/04/2021</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.1690/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-24/ITP-15(1)(1)/IT-434/2016-17 dated 21/12/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/12/2016 by the Id. Income Tax Officer 15(1)(1), Mumbai (hereinafter referred to as Id. AO).

2. Though the revenue had raised several grounds of appeal before us, we find that the effective issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the addition made u/s 68 of the Act on account of unsecured loans received in the sum of Rs 1,90,00,000/- in the facts and circumstances of the case. The interconnected issue involved therein is whether the Id CITA was justified in deleting the disallowance of interest paid on such unsecured loans in the sum of Rs 13,08,903/- in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee is a private limited company engaged in the business of trading of agricultural commodities like wheat, pulses etc. It had filed its return of income for the Asst Year 2014-15 on 29.9.2014 declaring total income at Rs 1,46,880/-. We find that the Id AO observed that on perusal of the financial statements of the assessee, it had received unsecured loans from the following parties and paid interest thereon as under:-

Name and address of the lenders	Loan amt	Interest
Shresth Builders Pvt Ltd, 9/12, Lal Bazar Street, Mercantile Building , 1 <sup>st</sup> Floor, Block – D, Kolkata	95,00,000	8,01,020
Haridarshan Pvt Ltd, 28, Strand Road, 2 <sup>nd</sup> Floor, Kolkata – 700001	25,00,000	54,658
Withal Commercial Pvt Ltd, 27, Brabourne Road, 3 <sup>rd</sup> Floor, Room No. 305, Kolkata – 700001	20,00,000	1,84,685
Mahasati Investment Pvt Ltd, 298, Rabindra Sarani, 3 <sup>rd</sup> Floor, Kolkata – 700073	50,00,000	2,68,540

3.1. We find that the assessee filed all the necessary documents with regard to the aforesaid loans including confirmation of loans from the respective lenders before the Id AO, which were sought to be cross verified by the Id AO by issuing notices u/s 133(6) of the Act. Notices sent u/s 133(6) of the Act to 2 parties viz Shresth Builders Pvt Ltd and Shri Mahasati Investment Pvt Ltd were returned unserved by the postal authorities. This was confronted by the Id AO the authorised representative of the assessee. Later the replies were filed by the assessee from all the 4 parties in response to notices issued u/s 133(6) of the Act. We find that the Id AO not satisfied with the same, proceeded to make further enquiries by issuing Commission u/s 131(1)(d) of the Act to Learned Joint Director of Income Tax (Inv.) Kolkata on 25.11.2016, to cause necessary enquiries with regard to aforesaid 4 parties. In response to the same, the learned DDIT (Inv.) Kolkata vide letter dated 7.12.2016 forwarded the enquiry report stating that during the course of enquiry, it was seen that aforesaid 4 companies did not exist on the aforesaid addresses which were provided by the assessee and relevant enquiries made with the local people in the vicinity of the company also revealed that they had not heard about the said companies.

3.2. Thereafter, we find that the Id AO proceeded to examine the various documentary evidences submitted by the assessee earlier. We find that the Id AO had examined each of the parties independently from its financials and concluded that there were few people who were common directors in various companies and all the aforesaid 4 companies did not carry on any genuine business. Some of the common observations made by the Id AO with regard to aforesaid 4 companies on examining their income tax returns, financial statements , bank statements etc are as under:-

- a) Each company had claimed huge refunds in their income tax returns filed with the income tax department.
- b) Each company is having huge share capital, huge reserves and surplus, had given huge loans and advances and having huge turnover but had shown negligible income in their respective returns.
- c) Each company is not doing any genuine business and is mere a paper company.
- d) From the bank statements of the lenders that before each loan entry , there were immediate credit entries received from some parties giving an impression of circular transactions.
- e) Information is not found anywhere on the website of Registrar of Companies for Shresth Builders Pvt Ltd
- f) The directors were also directors in several other companies.

3.3. We find that the Id AO further recorded a statement on oath u/s 131 of the Act from the Director of the assessee company on 2.12.2016 wherein the director denied initially having any knowledge about the aforesaid 4 lender companies. However, the said director stated that one Shri Amulya Baheti and his father had introduced the aforesaid 4 companies to the assessee company vide reply to Question No. 22 in the statement on oath recorded on 2.12.2016. Later the Id AO issued a show cause notice to the assessee on 15.12.2016 fixing the case on 19.12.2016 stating as to why the aforesaid loans should not be treated as unexplained cash credit u/s 68 of the Act by treating them as non-genuine transactions. We find that the assessee vide reply dated 20.12.2016 filed before the Id AO to prove the genuineness of inter corporate deposits (ICDs) and creditworthiness of lenders as under:-

- a) Status of ROC compliance
- b) Copy of ledger accounts

- c) Copy of bank statement
- d) Copy of ITR
- e) Confirmation of accounts
- f) Copy of PAN
- g) Ledger copies of transactions in the subsequent years

3.4. It was also specifically brought to the notice of the Id AO that all the loans were duly repaid by the assessee by account payee cheques in subsequent years with interest upto the date of repayment of loans and interest has been duly subjected to deduction of tax at source at the applicable rates thereon. We find that the assessee had filed the bank statements of both the sides and ledger copies before the Id AO. It was also submitted that all the queries raised by the Id AO on the director of the assessee company while examining him on oath u/s 131 of the Act had been duly responded by him within the allotted time. We find that the Id AO not satisfied with this reply observed that the assessee had not produced the directors of the lending company before him for his examination and accordingly, the assessee had failed to prove the three ingredients of section 68 of the Act viz, identity, creditworthiness and genuineness of transactions. In view of aforesaid observations, the Id AO proceeded to treat the entire receipt of unsecured loans from 4 parties as unexplained cash credit u/s 68 of the Act stating that the genuineness of the transactions and creditworthiness of lenders were not proved by the assessee company. We find that the Id AO also observed that the new address of the lender companies were not provided by the assessee company for verification. Since the loans were added u/s 68 of the Act, the corresponding interest expenditure thereon in the sum of Rs 13,08,903/- was also disallowed by the Id AO u/s 69C of the Act.

4. We find that the Id CITA deleted the additions / disallowance made by the Id AO by observing as under:-

*(DECISION)*

*2 4 I have given my Careful consideration to the rival submissions perused the material on record and duly considered the factual matrix of the case as also the Applicable legal position.*

*2 4 1 Grounds No 1 is raised against the AUS action in treating the unsecured loan of Rs 1,90,00 000/- received from M/s Shresth Builders Ltd , M/S Haridarshan Pvt Ltd , M/S: Withal Commercial Pvt Ltd and MIS, Mahasati Investment Pvt Ltd as cash credit u/s 68 of the IT Act.*

*2 4 2 The Ld AO has mentioned that the identity and creditworthiness Of M/s Shresth Builders Ltd (Rs.95,00,000/-) Haridarshan Pvt Ltd (Rs.25,00,000/-) M/s Withal commercial Ltd (Rs.20,00,000/-) and M/S Mahasatj Investment Pvt Ltd (Rs 50,00,000) being the benami concerns are not proved by the company nor the genuineness of the transactions in the form of unsecured loan raised by the company from the respective entities The entire gamut shows that the total funds Of Rs 1,90,00,000/- have been brought by of unsecured Loans in the name Of respective entities, whose very existence could not be established nor the sources of these funds by the assessee company.*

*2 4 3 Accordingly, the AO has treated the amount brought in by assessee in its books as unsecured loan Of Rs 1,90,00,000/- as unexplained credit within the meaning of sec 68 of the Act and added to the total income of the assessee.*

*2 4 4 The AR has vehemently argued that the AO has erred on the facts and circumstances of the case The ld. AR, has submitted in the grounds that the appellant company submitted that it has discharged its onus and submitted complete details / documents in support of unsecured loans The Appellant company has submitted details like:*

- a. Loan confirmation*
- b. Income Tax return of the party*
- c. Bank Statements of the party*
- d. Balance sheet of the party*

*In order to prove the identity, capacity and genuineness of the loan transaction. Further, it is the case of the appellant company that loans were squared off during the subsequent year and the appellant company had also*

*paid interest on the said loans. Accordingly, it was submitted that the appellant company has proved all the three ingredients viz., identity of the lender, credit worthiness of the creditor and the genuineness of the transactions to discharge its onus u/s.68.*

*2. The appellant submitted that all the three ingredients were satisfied in the following manner:-*

- a. The appellant has established the identity of the party by providing its name, address, PAN and copy of Return of income for A.Y. 2014-15.*
- b. The appellant has established the creditworthiness of the parties by filing the Financials of all the parties as on 31.3.2014 and the Bank statement of the parties reflecting payment made to the appellant.*
- c. Genuineness of the transaction has been established by the appellant by explaining the business of the appellant, requirement of the loans in the business of the appellant, loan confirmation from the parties and the ledger account of the parties wherefrom it was substantiated that the loans had been squared off during the year under consideration.*

*3. That apart, it is the contention of the Appellant company that during the assessment proceedings, the AO had issued summons to the lender parties. The lender parties have in fact replied to the summons and submitted the relevant details to the AO. This, in submission of the Appellant company should dispel all doubts.*

*4. The appellant started to have received all the unsecured loans through banking channels.*

*5. Further, the Ld. AO has relied upon the enquiry report of the DDIT(Investigation) Kolkata vide letter dated 07.12.2016 about the non-existence of the companies on the said addresses.*

*2.4.5. I have carefully considered the facts of the case and the submissions of the ld. AR. I have also gone through the decisions relied on by the AO and the ld. AR. During the course of assessment proceedings the appellant has filed several details required to prove the identity and creditworthiness of the persons, and the genuineness of the transaction in the form of PAN cards, IT return copies, bank statements, confirmation, audited accounts etc. as is evident from the records and claimed that it has discharged its onus. The ld. AR has further argued that the transaction has taken place through banking channels, therefore the genuineness of loan need not be doubted. The excessive reliance was placed on the enquiry report of DDIT (Investigation), Kolkata stating that the companies did not exist on the said addresses and the relevant enquiries with the local people in the vicinity of the companies.*

2.4.6. *In the instant case, however, as seen from the details filed before the AO, a set of which were also filed before me, I do not find any inconsistency or incoherence in the receipt of loans from the parties. In such circumstances, to allege that the unsecured loans of the appellant company are not genuine would require strong evidences. The impugned transactions are of Rs.1,90,00,000/- and the same has routed through the banking channels and the source cannot be doubted. Further, the said transactions are squared off in the subsequent year, interest has been paid and even tax has been deducted at source on such interest payment. Thus, taking into consideration the entire factum of the case, it would be indispensable on the party of the AO to produce compelling evidences to distort the picture shown by the appellant company.*

2.4.7. *Considering the above, now it would be pertinent to analyze the evidences relied upon by the AO. The AO has primarily relied upon the enquiry report of DDIT(Investigation), Kolkata and the enquiries made with the local people. Such statements are definitely a good starting point and can also be used to initiate a proceeding, however, such statement cannot be taken as concluding evidence to nail any person especially in the facts of the present case. M/s. Shresth Builders Pvt. Ltd., M/s. Haridarshan Pvt. Ltd., M/s. Withal Commercial Pvt. Ltd. And M/s. Mahasati Investment Pvt. Ltd. had given Rs.1,90,00,000/- as unsecured loan to the Appellant Company. All the four companies has independent identity at the different addresses and being controlled by different persons and the Ld. AO has not proved any connection between the said companies. As a result, such evidents and statement becomes null and void on the principles of natural justice. The AO has not gathered any additional / independent evidence to show that the transaction with the appellant company was sham, fictitious or artificial except believing the enquiry report of DDIT (Investigation), Kolkata about the non-existence of the companies on the said addresses.*

2.4.8. *Coming to the other facts of the case, the Appellant, u/s.68 is required to establish the identity, creditworthiness of the parties and the genuineness of the transaction to demonstrate that the cash credit is genuine and that the same cannot be added u/s.68. In the present case, from the records, it can be seen that the Appellant has established the identity of the parties by giving its name, address, PAN and copy of Return of income for A.Y.2014-15. Further, the appellant has established the creditworthiness of the parties by filing the Financials of all the parties as on 31/03/2014 and the Bank statement of the parties reflecting payment made to the appellant. From the said Financials of the parties, it can be seen that the parties had sufficient creditworthiness to lend Rs.1,90,00,000/- to the appellant company. Next genuineness of the transaction was demonstrated by the appellant by explaining the business of the appellant, requirement of the loans in the*

*business of the appellant, details of deduction of TDS on interest payment, loan confirmation from the parties and the ledger account of the parties wherefrom it was substantiated that the loans had been squared off in the subsequent year. More over, the parties have confirmed the transaction to the AO, in reply to summons issued. The AO has not answered several valid points raised by the appellant nor proved how the details like PAN, the IT reruns, confirmation letters, bank statements of the creditors, audited balance sheet of the creditors cannot be taken note of. Thus, from the above discussion, I consider that the Appellant company had produced enough evidences to discharge the onus laid upon it under the Act.*

*2.4.9. If the said statements and the evidences are kept in juxtaposition with the documents, details and records produced by the Appellant company it can be seen that the Appellant company has discharged, as stated above, that the onus laid upon it. It is also held in several cases that whatever may be the strength of presumption it cannot replace evidence and in the present case the Appellant has produced overwhelming evidences to prove its case.*

*2.4.10. The ITAT Mumbai in the case of Anant Shelters P Ltd. (2012) 2 taxmann.com 153 has laid down certain principles with regard to section 68 which the AO is bound to follow. They are reproduced as under (para-7)*

*\*(i) Section 68 can be invoked when following three conditions are satisfied:-*

- (a) When there is credit of amounts in the books maintained by the assessee*
- (b) such credit has to be a sum of money during the previous year*
- (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*
- (b) The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. The opinion of the AO is required to be formed objectively with reference to the material on record file. Once the explanation of the assessee is found unbelievable or false the AO is not required to bring positive evidence on record to treat amount in question as income of the assessee. While considering the explanation of the assessee, the AO has to act reasonably-application of mind is the sine qua non for forming the opinion.*

(iii) *Phrase appearing in the section-nature and sources of such credits – should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner. Assessee cannot be asked to prove impossible. Explanation about ‘source of source’ or ‘origins of the origin’ cannot and should not be called for while making inquiry under section.*

(iv) *In the matters related to section 68 burden of proof cannot be discharged to the hilt-such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the maternity of evidences, is the basis for deciding the cases falling under section 68.*

(v) *Confirmatory letters or A/c. payee cheques do not prove that the amount in question is properly explained for the purpose of Section 68. Assessee has to establish identity and creditworthiness of the creditor as well as the genuineness of the transaction. All the three ingredients are cumulative and not exclusive.*

(vi) *In matters regarding cash credit the onus of proof is not a static one. As per the provisions of section the initial burden of proof lies on the assessee. Amount appearing in the books of a/cs. Of the assessee is considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of the transaction can be proved by showing that the money was received by an account payee cheque or by draft. Credit worthiness of the lender can be established by attending circumstances. Once the assessee produces evidences about identity, genuineness and credit worthiness of the lender onus of proof shifts to the Revenue.”*

*Also, the Hon’ble Supreme Court in the case of Lovely Exports Private limited (2008) 216 CTR 195 (SC), has stated that the AO is at liberty to bring to tax the amounts in their respective hands of the creditors if their identity, genuineness and creditworthiness is not proved. The AO should have made efforts to assessee the amounts in the hands of the creditors at least on protective basis. On the other hand the appellant has filed the following details in the case of the creditors to prove the identity, genuineness and creditworthiness of the creditors.*

1. *Confirmation of A/c. by the parties.*
2. *Income Tax returns of the parties for A.Y.2014-15.*
3. *Bank Statements of the parties showing the loan transactions.*

4. *Audited Balance sheet & P & L A/c. of the creditors along with the schedule wherein credit in the name of the appellant is outstanding in their books.*
5. *Payment of interest to creditors after subjecting the amount to TDS.*
6. *Confirmation from the loan creditors.*

*2.4.11. As seen from the above, the appellant has furnished all the details proving conclusively the three ingredients of identity and creditworthiness of the creditors and genuineness of the transaction. The amount was paid by the creditors from their running bank accounts which was accounted in the books of the appellant as well as the creditors as seen from the audited accounts filed. The transactions were also confirmed by the creditor who is assessed to tax. Further, the appellant has paid interest through banks to the creditors by duly subjecting the interest amount to TDS. Nowhere the AO has challenged the identity, creditworthiness of the lenders and the genuineness of the transactions with any tangible material. I find that the AO was in possession of good information in the form of Enquiry report, to being with, but he could neither succeed to repudiate the evidences filed by the appellant nor he could gather independent evidence even to establish the surrounding circumstances not to speak of leading evidence to prove his hypothesis. In view of the above discussion, I hold that the loan taken by the appellant from the said concern M/s. Shresth Builders Pvt. Ltd., M/s. Haridarshan Pvt. Ltd., M/s. Withal Commercial Pvt. Ltd., and M/s. Mahasati Investment Pvt. Ltd., cannot be doubted and the addition made by the AO u/s.68 of the Act cannot survive the test of appeal. I, therefore, direct the AO to withdraw the addition. This ground is allowed.*

*2.4.12. Ground No.2 is on account of disallowance of interest paid on unsecured loan taken.*

*The AO has disallowed the interest expenditure amounting to Rs.13,08,903/- incurred on unsecured loan from the above mentioned four parties under section 69C of the Act. Since, I have allowed Ground No.2, this Ground is in favour of the Appellant. I, therefore, direct the AO to withdraw the addition. The ground is allowed.*

5. We find that the following documents were submitted by the assessee before the Id AO which are not in dispute :-
  - a) Copy of Income Tax Returns (ITRs) of all the lenders
  - b) Copy of Balance Sheet & Profit and Loss Account of all the lenders
  - c) Copy of relevant extracts of the bank statements of all the lenders including the details of immediate source of credit

d) Copy of ledger account for the entire period evidencing the loan obtained by the assessee, interest paid and loan repaid to the lenders in subsequent years.

e) Copy of ledger confirmation for all the loans obtained from lenders

f) Covering letter of reply filed by all the lenders in response to notice issued u/s 133(6) of the Act before the Id AO

5.1. We find that the Id AO had observed that the notice issued u/s 133(6) of the Act was returned unserved by the postal authorities in respect of two lenders. But it is not in dispute that the said fact was fully confronted by the Id AO before the authorized representative of the assessee company which fact is mentioned in the assessment order itself. Hence the assessee company in order to comply with the due process of law, had filed all the details that were called for by the Id AO in respect of all the lenders by duly answering all the requisite questions thereon. No fault could be attributed on the part of the assessee. It is not in dispute that the assessee had repaid all the loans to the aforesaid 4 lenders in Feb 2016 relevant to Asst Year 2016-17 and that admittedly the enquiries were carried out by the Id AO in Asst Year 2017-18. The assessee cannot be expected to have all the latest address of all the lenders with whom the transactions have already been completed by the assessee. It is not the case of the revenue that the assessee has continuous transactions with those lenders even after Asst Year 2016-17. Hence merely because the Id AO was not able to serve the notice u/s 133(6) of the Act on those lenders at the last available address with given by the assessee, no fault could be attributed on the assessee for the same.

5.2. We find from the bank statements of the lender companies, that all the lender companies had sufficient sources in the form of available bank

balances and cheque credits in their respective bank accounts and admittedly those funds were utilised by them to advance inter corporate deposits to the assessee company. It is not in dispute that the inter corporate deposits advanced by the lender companies were duly reflected in their regular books of accounts and in their final balance sheet which are already forming part of records. It is not in dispute that all the transactions have been routed through regular banking channels. It is not in dispute that the said inter corporate deposits did carry interest and assessee had duly paid the same after deduction of due tax at source at the applicable rates thereon. It is not in dispute that the loans were fully repaid by the assessee company to all the lenders in Feb 2016.

5.3. It is not in dispute that all the 4 lenders had sufficient net worth with adequate sources to advance inter corporate deposits to the assessee company which is evident from the table below:-

Sr. No.	Particulars	Net Worth (Rs. (As on 31/03/2013))	Amount of ICDs given during the year to the company
1.	Haridarshan Sales Pvt. Ltd.,	75,89,81,917.00	25,00,000.00
2.	Shresth Builders Private Limited	22,30,74,892.00	95,00,000.00
3.	Shri Mahasati Investment Limited	13,47,94,370.00	50,00,000.00
4.	Withal Commercial Private Limited	35,34,65,022.00	20,00,000.00

We find that the Id AO had observed that these lenders had shown negligible income in their ITRs. This is absolutely irrelevant as there is no requirement in the statute that inter corporate deposits should be advanced only out of income of the lender companies. It can also be done out of their borrowings or share capital or reserves and surplus or

any other source. We find that the Id AO himself had admitted in his assessment order that all the 4 lender companies had disclosed huge turnover in their profit and loss account. Hence the creditworthiness of the lenders is proved beyond doubt in the instant case.

5.4. We find that all the 4 lender companies have duly filed their income tax returns for the relevant assessment year. We find that the assessee had furnished their PAN, income tax return acknowledgements, copy of ROC returns, etc to prove their identity beyond doubt in the instant case.

5.5. We find that the receipt of loans from 4 lender companies, payment of interest thereon and repayment of loans were made through regular banking channels by account payee cheques which is evident from the bank statements enclosed in the paper book filed before us, which are already forming part of records. We also find that the lender companies had also duly disclosed the fact of advancing inter corporate deposits in their balance sheets and had also duly confirmed the loan transactions with the assessee company by signing the ledger copy of confirmation which is also enclosed in paper book filed before us. The replies to notice u/s 133(6) of the Act duly confirming the loan transactions were also duly submitted before the Id AO which is also acknowledged by the Id AO in his assessment order. Hence the genuineness of transactions had been duly proved by the assessee beyond doubt in the instant case.

5.6. We find that the Hon'ble Jurisdictional High Court in the case of CIT vs Orchid Industries P Ltd reported in 88 taxmann.com 502 had held that the assessee had produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application

money. The assessee had also produced the entire record regarding issuance of shares, *i.e.*, allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance-sheet and profit and loss account of those persons disclosed that they had sufficient funds in their accounts for investing in the shares of the assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the assessee. Therefore, the addition was liable to be deleted. We find that the case of the assessee before us is even better in as much as the parties had directly responded to the summons issued u/s 131 of the Act before the Id AO by furnishing the requisite details.

5.7. We find that the entire addition has been made by the Id AO out of mere suspicion, surmise and conjecture and by ignoring completely all the relevant statutory documents filed by the assessee before him. We find that the Id AO had not found any deficiencies/ defects in the documentary evidences submitted by the assessee in the instant case. We also find that the Id CITA in page 12 of his order had stated that the Id AO had issued summons to the lender companies in the course of assessment proceedings to verify the loan transactions and that all the lender parties had duly replied to the summons by submitting the relevant details before the Id AO . This factual finding given by the Id CITA had not been controverted by the Id DR before us. We find that the Id AO had not appreciated the fact that when the loans received by the assessee were bogus, then there is no question of repayment of the same to them by the assessee. In the instant case, admittedly, the assessee had duly repaid the loans to 4 lender companies. If the loans received by assessee are its own income, then there is no need to make repayment of the

same to lender companies. This clinching factual evidence had apparently missed the attention of the Id AO while framing the assessment. Hence it could be safely concluded that the assessee had duly discharged its onus by proving the three necessary ingredients of section 68 of the Act i.e. Identity of the lenders, creditworthiness of the lenders and genuineness of transactions in the instant case. Hence in view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we hold that the addition made by the Id AO had been rightly deleted by the Id CITA u/s 68 of the Act.

5.8. Since the loan amount has been held by us as genuine, the corresponding interest payment made thereon after subjecting the same to TDS compliances, deserves to be allowed. It is not the case of the revenue that the inter corporate deposits received by the assessee from aforesaid 4 companies were not utilized for the purpose of business of the assessee company. Hence the interest paid on such borrowings are allowed as deduction.

5.9. Accordingly, the grounds raised by the revenue are dismissed.

**6. In the result, the appeal of the revenue is dismissed.**

Order pronounced on 20/04/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(MAHAVIR SINGH)**  
VICE PRESIDENT

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 20/04/2021  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**