

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1985/CHNY/2017**
निर्धारण वर्ष / Assessment Year: 2011-12

**The Asst. Commissioner of
Income Tax,**
Central Circle – 3(2),
Chennai – 34.

(अपीलार्थी/Appellant)

M/s. CMG Steels Pvt. Ltd.,
v. No.8, Elanthanur,
Ponneri High Road,
Chennai – 600 103.

PAN: AADCC 7579C
(प्रत्यर्थी/Respondent)

&

CO No.: 155/CHNY/2017
(in ITA No.1985/Chny/2017)
निर्धारण वर्ष / Assessment Year: 2011-12

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**The Asst. Commissioner of
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(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by : Shri S. Bharath, CIT
निर्धारिती की ओर से/Assessee by : Shri T. Banusekar, Advocate

सुनवाई की तारीख/Date of Hearing : 25.03.2021
घोषणा की तारीख/Date of Pronouncement : 09.06.2021

आदेश / O R D E R**Per G. MANJUNATHA, AM:**

This appeal filed by the Revenue and cross objection filed by the assessee are directed against order of learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 18.05.2017 and pertains to assessment year 2011-12. Since, facts are identical and issues are common, for the sake of convenience appeal filed by the Revenue and cross objection filed by the assessee are heard together and are being disposed of by this consolidated order.

2. The Revenue has raised the following grounds of appeal:-

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
2. The learned CIT(A) erred in deleting the addition of Rs.3,24,00,050/- made by the Assessing Officer towards unexplained cash credit u/s 68 of the Income Tax Act, 1961, in the assessment for A.Y 2011-12 passed u/s 153C r.w.s 153A of the IT Act, 1961 in the case of the assessee.
 - 2.1 The learned CIT(A) erred in deleting the disallowance of Rs.22,35,023/- made by the Assessing Officer, towards interest claimed by the assessee on the sum of Rs.3,24,00,050/- treated as unexplained cash credit u/s 68 of the IT Act, 1961, in the assessment for A.Y 2011-12 passed u/s 153C r.w.s 153A of the IT Act, 1961 in the case of the assessee.
 - 2.2 The ld. CIT(A) ought to have appreciated that from the enquiry conducted by the Assessing Officer at Kolkata and the searches

conducted by the Investigation Wing of the Income Tax Department at Kolkata and the documentary evidence brought on record by the Assessing Officer during the assessment proceedings clearly showed that the alleged lenders were only paper companies whose credit worthiness and the genuineness of the transactions were not established by the assessee.

2.3 Having regard to the documentary evidences gathered during the assessment proceedings indicating that the alleged shareholder companies were only paper companies having no credit worthiness, the ld.CIT(A) is not justified in allowing relief to the assessee solely on the ground that the transactions were carried out through banking channels.

2.4 The Ld. CIT(A) ought to have appreciated that mere production of documents such as PAN, Income Tax assessment particulars, financial statements and Annual returns filed before ROC is not sufficient to establish credit worthiness and genuineness of the transactions under consideration when surrounding and attending facts which were brought on record indicated a cover up and that the documents produced by the assessee at best reflect proper paper work and documentation but genuineness and credit worthiness are deeper and obtrusive aspects.

2.5 The ld.CIT(A) ought to have appreciated that the decision of Hon'ble High Court of Delhi in the in the case of M/s Navodaya Castle (P) Ltd. reported as (2014) 367 ITR 306, that certificate of incorporation, PAN etc., were not sufficient for the purpose of identification of subscriber company, when there was material to show that subscriber was a paper company and not a genuine investor was upheld by the Hon'ble Supreme Court in (2015) 56 taxmann.com 18 (SC) and since the facts are identical in the assessee's case, the ld.CIT(A) ought to have confirmed the addition.

2.6 Having regard to the documentary evidence gathered during search and assessment proceedings establishing that the alleged lenders were only paper companies whose credit worthiness and the genuineness of the transactions were not established, the ld.CIT(A) ought to have confirmed the addition made by the Assessing Officer u/s 68 of the IT Act, towards unproved loans and the disallowance of interest thereon, in the assessment passed u/s 153C r.w.s 153A of the IT Act, 1961 in the case of the assessee, for A.Y 2011-12.

3 For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

3. The assessee has raised the following grounds of cross objection:-

1. For that the assessment completed u/s.143(3) r.w.s. 153C is bad in law.
2. For that the provisions of section 153C are not invocable in the facts and circumstances of the case.
3. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessment was completed without complying with the statutory requirements of law.

4. Since, assessee has taken a legal ground challenging validity of assessment passed u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961 (hereinafter the 'Act') in light of certain judicial precedents that in absence of incriminating material found as a result of search, no addition could be made in the assessment which are unabated / concluded as on date of search, we deem it appropriate to first decide cross objection filed by the assessee.

5. The brief facts of the case are that a search action u/s.132 of the Act was conducted in the residential premises of Shri Pawan Kumar Goel, Director of assessee company. During the

course of search, documents belonging to the assessee were seized. Thereafter, notice u/s.153C of the Act was issued calling for return of income for six assessment years immediately preceding assessment year in which search conducted. In response to notice u/s.153C of the Act, the assessee has filed a letter dated 18.09.2014 and stated that return filed on 03.06.2011 admitting income of Rs.25,23,010/- may be treated as return filed in response to notice issued u/s.153C of the Act. The case has been taken up for scrutiny and notice u/s.143(2) & 142(1) of the Act along with questionnaire was issued. In response to notice, authorized representative for the assessee appeared from time to time and filed various details called for. During the course of assessment proceedings, the AO has made addition towards unsecured loans taken from various companies u/s.68 of the Act, on the ground that the assessee has failed to prove identity, genuineness of transactions and creditworthiness of the parties. The AO has discussed the issues in light of investigation carried out by the Investigation Wing of Income Tax Department, Kolkata, where it was noticed that certain companies were indulged in providing accommodation entries and assessee company being one of beneficiary of accommodation

entries provided by various companies, loans said to have been received from said companies have been treated as unexplained credit under Section 68 of the Act and made additions to total income. Similarly, the AO has made addition towards interest paid on said loans u/s.37 of the Act.

6. Being aggrieved by the assessment order, assessee preferred an appeal before the Id.CIT(A). Before the Id.CIT(A), the assessee has challenged assessment framed u/s.143(3) r.w.s. 153C of the Act, on the ground that the AO has made addition towards unsecured loans without reference to any incriminating material found as a result of search. The assessee has also challenged assessment order on the ground of satisfaction and argued that the AO of the search person have failed to record satisfaction as required u/s.153C of the Act before issuance of notice. Hence, the whole proceedings including assessment framed u/s.143(3) r.w.s. 153C of the Act becomes invalid. The assessee has also challenged addition made by the AO towards unsecured loans taken from certain parties along with various evidences including confirmation letters obtained from the parties and argued that loan taken from above parties are genuine in

nature which are supported by necessary evidences. The assessee further argued that it has proved the identity by filing name and address and PAN number of the creditors and further, it has filed financial statements of the creditors to prove creditworthiness. The genuineness of transactions was also proved by filing bank statements where total loan transactions were routed through proper banking channel.

7. The Id.CIT(A) after considering relevant submissions of the assessee, has rejected legal ground taken by the assessee challenging validity of assessment by holding that proceedings u/s.153C of the Act has been initiated on the basis of documents seized in the premises and statements recorded from Shri Pawan Kumar Goel, Managing Director of assessee company. The AO has also made use of statement of Shri Virendra Kumar Kesari and Shri Krishna Kumar Parsuramka, during the course of search conducted in Kolkata and on that basis adverse inference has been drawn against the assessee that assessee has obtained bogus accommodation entries of unsecured loans from various shell companies. Therefore, there is no merit in the arguments

taken by the AR for the assessee that AO has not recorded satisfaction as required u/s.153C of the Act.

7.1 As regards, addition made towards unsecured loans, the Id.CIT(A) by following various judicial precedents including decision of Hon'ble Supreme Court in the case of Andaman Timber Industries [2015] 281 CTR 214 held that the AO was erred in making addition towards unsecured loans on the basis of third party information without providing an opportunity of cross examination and also evidences collected from third parties in violation of principles of natural justice. The Id.CIT(A) further held that the assessee has discharged its onus by filing various details including name and address and PAN numbers of the creditors to prove identity of creditors. The assessee has further filed financial statements of creditors to prove creditworthiness. The assessee has also filed bank statements to prove the fact that loan transactions are routed through proper banking channels. The assessee has also paid interest on said loans. The Id.CIT(A) further observed that said loans have been backed by equitable mortgage of immovable properties in favour of the person who has been arranged loans. Further, the assessee has

repaid loan along with interest well before initiation of search proceedings in the case of the assessee. All these evidences goes to prove an undoubted fact that loan taken from said parties are genuine in nature, which are supported by necessary evidences and accordingly, opined that the AO was erred in making addition towards unsecured loans u/s. 68 of the Act and consequent interest u/s.37 of the Act and accordingly, deleted additions made by the AO towards unsecured loans. The relevant findings of the Id.CIT(A) are as under:-

13. The assessee has pleaded that he was not in touch with Shri V.K.Keshari and he was in touch with Shri K.K. Parsuramka, a Chartered Accountant by profession. Assessee has further pleaded that the loans were backed by equitable mortgage of immovable properties in favour of Shri K.K. Parsuramka and that the said Shri Parsuramka will vouch for genuineness of transactions if called for by the IT Department. The assessee has further pleaded that the loans taken had been repaid well before initiation of search and assessments proceedings u/s.153C in the case of the assessee. Considering the merits of the submissions made by the assessee, vide letter dated 14.3.2017, the AO had been directed to call Shri K.K.Parsuramka and Shri V.K.Keshari and provide an opportunity to the assessee to examine/cross examine them. As no reply was received from the AO as regards the opportunity to cross examine to the assessee, another letter dated 26.4.2007 was issued to the AO directing to give opportunity to

the assessee by calling for witnesses. However, it is noted that - no opportunity was given to the assessee and no remand report has been received in this regard from the AO. It is also noted that the AO had not given the opportunity to cross examine the witnesses to the assessee during the assessment proceedings as well. Considering the same, the additions made to the returned income are examined sans the statements which have been used in the assessment order without providing an opportunity to the assessee to cross examine the witnesses. The assessee has further made submissions as under on this issue.

With reference to the above we would like to state as under:

We have already made detailed submission before your honors vide letter dated 13th December, 2016 and further in reply to your letter dated 29.12.2016 we stated that we have taken loan from the various companies through Mr. Krishna Kumar Parsuramka. We have submitted before your honors that if opportunity is given then said Shri Krishna Kumar Parsuramka has assured that he will appear before Income-tax authorities for cross examination provided a proper correspondence is sent to him by Income-tax department. It is to be clarified here that all the loans taken through Mr. Krishna Kumar Parsurarnka has been paid with interest long back and We are not in a position to put pressure on him to appear before Income-tax authorities. In the law of land also we have no power to compel any person to attend before authorities of Income-tax department, however, the authorities of Income-tax department has vested such power. The statement given by alleged two deponents viz., Shri VK. Keshari and Shri Krishna Kumar Parsuramka were used against us by the department; hence, in the interest of natural justice, it is duty of the department to provide us the opportunity to cross examine the deponents.

In spite of our request for cross examination of the aforesaid deponents, no opportunity is provided by the assessing officer to cross examine said Shri V.K. Keshari and Shri Krishna Kumar

Parsuramka. The addition made solely on the basis of statements of said Shri V.K. Keshari and Shri Krishna Kumar Parsuramka is unjustified and after ignoring their statements for the reason above, it has to be deleted on this ground. We request your honors to decide the appeal on merit of the case on the basis of our submissions before you.

We have relied on the following judgments:

1. KishanchandChellaram Vs. CIT (125 ITR 713), Supreme Court : It was held that information collected at the back of assessee cannot be used against him for any proceedings. Further, adverse interference cannot be drawn against the assessee from the statements of third parties.

ii. H.R. Mehta vs. ACIT (Bombay High Court) : It was held that the assessee is bound to be provided with the material used against him apart from being permitted to cross examine the deponents. The denial of such opportunity goes to root of the matter and strikes at the very foundation of the assessment order and renders it vulnerable.

iii. V.Ramaiah vs. The Commissioner of Income-tax (Madras High Court);

iv. Mat her and Platt (India) Ltd. vs. Commissioner of Income-tax 168 ITR 493 (Cal.);

v. S.Hastimal vs. Commissioner of Income-tax 49 ITR 273 (MAD.);

vi. Addi. Commissioner of Income-tax vs. Bahri Brothers Pvt. Ltd. 154 ITR 244 (PAT.);

vii. Nemi Chand Kothari vs. Commissioner of Income-tax and another 264 ITR 254 (Gauhati,);

viii. Deputy Commissioner of Income-tax vs. Rohini Builders 256 ITR 360 (Gujarat,);

ix. Kishinchand Chellaram vs. Commissioner of Income-tax 125 ITR 173 (SC);

x. Commissioner of Income-tax vs. Ashwani Gupta 322 ITR 396 (Del.);

xi. Ranchi Handloom Emporium vs. Commissioner of Income-tax & another 235 ITR 604 (Pat.)

14. In this regard, the following judicial decisions are considered.

1. In the case of Andaman Timber Industries (2015)281 CTR 214(SC) the Hon'ble Apex Court has held that denial to the assessee of the right

to cross-examine the witness whose statement was made the basis of the impugned order is a serious flaw which renders the order a nullity in as much as it amounted to violation of the principles of natural justice because of which the assessee was adversely affected.

2. In the case of M/s.Ujala Dyeing & Printing Mills Pvt Ltd. (328 ITR 437) the Honble Gujarat High Court had considered the case of the assessee for AY.2002-03 wherein, the company had filed its return declaring certain incomes. During the course of assessment proceedings it was noticed by the AO that company had received a sum of Rs.50 lakhs from five parties on account of share application money. Assessing Officer did not find creditworthiness of five companies to advance amount in question and on that count, additions were made-On second appeal, Tribunal came to a finding that assessee had clearly discharged its onus of proving identity of parties, genuineness of transactions and creditworthiness of share applicants inasmuch as evidently their returns of income, assessment orders, balance sheets showing investment, explanation regarding how they raised funds had been submitted before lower authorities-Accordingly, Tribunal deleted impugned additions- whether since tribunal had recorded its findings of fact only after appreciation of evidence, no substantial question of law arose from order of Tribunal — Held, Yes. The SLP against the order of the High Court is dismissed by Apex Court.

3. In the case of M/s.Kamadenu Steel and Alloys Ltd (361 ITR 220) the Delhi High Court has considered the issue whether once adequate evidence/material is given, which would prima facie discharge burden of assessee in providing identity of shareholders, genuineness of transaction and creditworthiness of shareholder, thereafter in case such evidence is to be discarded or it is proved that it is 'created' evidence, revenue is supposed to make thorough investigation before it could nail assessee and fasten assessee with a liability u/s.68 and 69 — Held, Yes — Whether where assessee had given particulars of registration of investing/applicant companies; confirmation from share applicants; bank accounts details; and had shown payment through account payee cheques, etc., it could be said that assessee had discharged its initial onus and just because some of creditors/share applicants could not be

found at address given, it would not give revenue a right to invoke section 68 without any additional material to support such a move — Held, Yes (in favour of the assessee).

4. In the case of M/s.Fair Finvest Ltd (357 IT 146) the Hon'ble Delhi High Court has considered in a case where assessee adduces evidence in support of share application monies, it is open to AC to examine it and reject it on tenable grounds. In case he wishes to rely on report of investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between assessee and alleged hawala operators. Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application, affidavits of directors, Form 2 filed with Registrar of Companies by such applicants, confirmations by applicants for company's shares, certificates by auditors etc. Assessing Officer was not justified in making addition u/s.68 on account share application money merely on general inference to be drawn from the reading of the investigation report. The least that AO ought to have done was to enquire into matter by, if necessary invoking his powers u/s. 131 summoning the share applicants or directors.

5. In the case of M/s.Kapoor Chand Mangesh Chand (218 Taxmann 157) the Honble Allahabad High Court had considered a case where loan was advanced and repaid through the account payee charge. The PANs of lenders were furnished. The lenders had sufficient funds in their bank accounts. The court held that additions u1's.68 was not called for.

6. In the case of M/s.A.L.Lalpuria Construction Pvt Ltd.(215 Taxmann 12) the Hon'ble High Court of Rajasthan had considered a case whether oral statement of third party recorded by search authorities which was never placed to be confronted by the assessee and no documentary evidence was applied to assessee can be considered in making addition on account of alleged accommodation entries. The Court rejected the contention and held in favour of the assessee.

7. In the case of M/s.Value Capital Services Pvt Ltd. (221 CTR 511) the Hon'ble High Court Delhi has held that if department wants to make

addition on account of share application money, burden is on department to show that even if applicant did not have means to make investment, investment made by assessee actually emanated from coffers of assessee so as to enable it to be treated as undisclosed income of assessee (in the favour of the assessee).

8. In the case of Shri Abhik Jam (18 ITR 497) the Hon'ble ITAT Delhi bench has held that where the assessee had furnished relevant documents showing identity and creditworthiness of creditors in form of copies of permanent account number cards, ration cards, assessment orders of relevant year and wealth-tax assessment orders of creditors and transactions of receiving and returning of loan had been routed through bank accounts, amount of loan could not be added to assessee's income u/s.68 (In favour of the assessee).

9. In the case of M/s.Yamuna Synthetics (P) Ltd. (3 SOT 35) the Hon'ble ITAT Delhi bench has held that in respect of two cash credits, assessee could not produce creditor to prove their nature and genuiness, but furnished creditor's balance sheet which reflected said loan transaction- Assessing Officer concluded that circuitous route carried out by assessee to repay said load depicted that it was a mere sham transactions and for extraneous considerations — Assessing Officer accordingly made additions-Whether whenever revenue proposes to rely on a material found from a third party, principles of natural justice require revenue to confront same to assessee, and such infirmity coupled with factum of assessee not being put to notice with respect to details furnished during assessment proceeding lends ample support to pleas of assessee- Held, Yes — Whether ent.ire edifice built by revenue to view above transaction as suspect was not on basis of a credible evidence and, therefore, on account of lack of evidence and factual support, conclusions drawn by revenue that impugned transaction was a sham, could not be sustained — Held, Yes — Whether when balance sheet of 'S' Ltd, evidently reflected adequate sources for advancing impugned amounts to assessee and money had come through banking channels, inferences could safely be drawn that creditor was identified and had financial capacity to advance impugned amounts, and, thus, duty which

lay on assessee u/s.68 could be said to have been discharged — Held - Yes.

15. The assessee has been regularly filing returns of income showing a positive taxable income over the years. The assessee appears to have taken certain loans from Kolkata based parties for interest. The loans had been taken through regular banking channels. The assessee is able to produce all identification and other papers reflecting the legal and regular nature of the lending companies. The loans taken have been backed by equitable mortgage of immovable properties in favour of the person who has been arranging loans for them. The loans taken had been clearly reflected in the balance sheets filed by the assessee over the years. The loans taken for interest have been regularly serviced by interest payments. The said interest payments have also been claimed as expense in the P&L accounts filed. The principle amounts of loans have been repaid well before the initiation of search or assessment proceedings u/s.153A/C in the case of the assessee. The assessee has been proactive in submitting all the informations called for. The assessee is able to prove the identity and the genuineness of transactions beyond any reasonable doubt. It is not entirely up to the assessee to prove the creditworthiness of the lenders considering assessee has been at the receiving end of loans and there is only so much of information that he can expect to receive from the lenders. Considering the totality of reasons as above, the actions of the assessee cannot be faulted. It is for the Department to prove preponderance of probability that the lenders did not have the creditworthiness or that the lenders were mere entry providers. The department is not prevented from taxing the lending companies for amounts received by them from various other persons. In fact the lending companies have also been regularly assessed to tax. Considering the judicial decisions as above and the totality of the facts and

circumstances of the case, it is viewed that the assessee has been able to explain and unburden the onus cast upon him to justify the source of loans taken and repaid. The loans of Rs.3,24,00,050 and Rs.73,00,000 stand explained. There is no justification any further for disallowing the interest on it for AY 2011-12 at Rs. 22,35,023 and for AY 2012-13 at Rs.39,19,645 and for AY 2013-14 at Rs. 39,19,645. The additions are deleted.

8. Being aggrieved by the Id.CIT(A) order, the Revenue is in appeal before us.

9. The Id.AR submitted that the assessment framed u/s.143(3) r.w.s. 153C of the Act, is bad in law and liable to be set aside, because the AO has made additions towards unsecured loans taken from various parties in the assessment framed u/s.153C of the Act, without reference to any incriminating material found as a result of search. The Id.AR further submitted that in the present case search has been taken place on 18.12.2012 and at the time of search, assessment for the impugned assessment year 2011-12 was unabated because the time limit for issue of notice u/s.143(2) of the Act was expired on 30.09.2012. Therefore, assessment is clearly unabated as on the date of search. He further submitted that it is a well settled principle of law by the decision of various High Courts and Hon'ble Supreme

Court in the case of PCIT v.Meeta Gutgutia [2018] 257 taxmann.com 441 that no addition can be made in the assessment proceedings which are concluded / unabated as on the date of search. In this case, on perusal of additions made by the AO towards unsecured loans, it is very clear that the AO has made additions on the basis of regular books of accounts and financial statements filed by the assessee along with return of income filed u/s.139(1) of the Act. Further, there is no evidence of any incriminating material found as a result of search in connection with said addition. Although, the Department has found and inventoried certain incriminating material but on perusal of list of inventory of books of accounts found during the course of search, it is very clear that the AO has found and seized copies of confirmation letters obtained from loan creditors which are part of regular return of income filed for relevant assessment year. Therefore, said documents cannot be considered as incriminating material in connection with said addition. Therefore, the Id.AR submitted that in absence of any reference to incriminating material found during the course of search, additions made in assessment framed u/s.153C of the Act, in concluded / unabated assessment cannot survive under the law.

In this regard, the Id.AR has relied upon the following judicial precedents:-

1. PCIT v Meeta Gutgutia [2018] 96 taxmann.com 468 (SC)
2. PCIT v Meeta Gutgutia [2017] 395 ITR 526 (Delhi)
3. PCIT v Kurele Paper Mills P. Ltd. [2015] 94 CCH 294 ISCC
4. PCIT v Kurele Paper Mills P. Ltd. [2016] 380 ITR 571 (Del)
5. PCIT v Jignesh P. Shah [2018] 99 taxmann.com 111 (Bom)
6. CIT v Continental Warehousing Corporation [2015] 374 ITR 645 (Bom)
7. All Cargo Global Logistics Ltd v DCIT [2012] 18 ITR 106 (Mum)(SB)
8. ACIT v M. Kiran Kumar in ITA No.1054 & 1055/Chny/2018 and CO No.89 & 90/Chny/2018 – Chennai ITAT
9. DCIT v Saravana Stores (Tex) [2018] 61 ITR (Trib) 20 (Chennai)
10. ACIT v Lalithaa Jewellery Mart Pvt. Ltd. in ITA Nos. 3186 to 3188/Chny/2017 – Chennai ITAT
11. G. Mohan v ACIT in ITA Nos.2869 & 2872/Chny/2017 – Chennai ITAT
12. Vibhav Empire Pvt. Ltd. v DCIT [2017] 49 CCH 435 Vishakapatnam Trib
13. ACIT v M/s. S3H Builders Pvt. Ltd. [2018] 1 TMI 391 – ITAT Delhi

10. The Id.DR on the other hand strongly supporting the case of the Department submitted that there is no merit in arguments taken by the Id.AR for the assessee that additions made towards unsecured loans is not supported by incriminating material found as a result of search, because the Department has found and seized certain materials in connection with loan transactions including confirmations from the parties which constitutes

incriminating material as required under law. Therefore, addition made towards unsecured loans is supported by material found during the course of search. The Id.DR, further submitted that assuming for a moment there is no incriminating material found but fact remains that nowhere in the Act, it states that additions can be made in the assessment u/s.153A / 153C of the Act on the basis of material found as a result of search. If you go through the language used in section 153A / 153C of the Act, the moment search took place, the AO gets power to assess or re-assess total income including undisclosed income if any found during the course of search. In this case, the AO has assessed income on the basis of material found during the course of search and hence, arguments of the assessee that addition made in the unabated assessment without any reference to incriminating material found during the course of search is baseless and unfounded under the law.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We have carefully gone through arguments of the Id.AR for the assessee in light of provisions of section 153A of the Act. The

provisions of section 153A / 153C of the Act, deals with a situation where assessments are framed in pursuant to search action conducted u/s.132 or requisition u/s.132A of the Act. As per said sections, in the case of a person where search was initiated u/s.132 of the Act or books of accounts are requisitioned u/s.132A of the Act, the AO shall assess or re-assess income of each assessment years falling within six assessment years referred to in clause (b) of said section. Sub-clause (b) of Section 153A empower the AO to assess or re-assess total income of six assessment years immediately preceding assessment year relevant to previous year in which search is conducted or requisition is made. The proviso provided to section 153A of the Act, however made it clear that assessment or re-assessment if any relating to any assessment year falling within the period of six assessment years referring to in this sub-section, pending on the date of initiation of search as the case may be shall abate. From the reading of above proviso, it is very clear that although the legislature specifically not mentioned about unabated assessment, but it has consciously provided for abatement of assessment as per which if any proceeding is pending in respect of any of the six assessment years, then such

assessment years shall abate and the AO shall have power to assess or re-assess total income of that years. In other words, assessment years which have already been completed are treated as unabated as on the date of search and for those assessment years the scope of assessment u/s.153A / 153C of the Act is limited to assess income on the basis of incriminating material found as a result of search. This legal proposition is well supported by series of decisions of various High Courts and the Hon'ble Supreme Court, where it was categorically held that no addition can be made in the assessment year earlier to the year of search in absence of any incriminating material found during the course of search qua each earlier assessment years. The Hon'ble Supreme Court in the case of PCIT v Meeta Gutgutia *supra*, has clearly held that invocation of section 153A of the Act to re-open concluded assessment of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment years. The Hon'ble High Court of Bombay in the case of CIT v. Continental Warehousing Corporation [2015] 374 ITR 645 (Bom) has taken a similar view and held that in absence of any incriminating material found as a result of search, no addition

could be made in the assessments framed u/s.153A / 153C of the Act, when such assessments are unabated / concluded as on the date of search. The ITAT, Special Bench of Mumbai in the case of All Cargo Global Logistics Ltd v DCIT [2012] 147 TTJ 513 has taken a similar view and held that in assessments that are abated, the AO retains the original jurisdiction as well as jurisdiction conferred on him u/s.153A for which assessments shall be made for each of the six assessment years separately. The Co-ordinate Bench of ITAT, Chennai in the case of Shri M Kiran Kumar in ITA Nos. 1055 & 1054/Chny/2018 has taken a similar view and held that in absence of material found in the course of search operation, there cannot be any addition u/s.153A of the Act. In the present case, on perusal of facts available on record, we find that the AO has made additions towards unsecured loans on the basis of regular return of income filed by the assessee for the relevant assessment years without reference to any incriminating material found as a result of search. Although, the Id.DR has referred few documents found and seized during the course of search, but on perusal of said documents, we find that those documents are in fact confirmation letters obtained from said loan creditors in connection with

unsecured loans taken and disclosed in books of accounts prepared for the relevant assessment years. Therefore, said documents cannot be treated as incriminating material found as a result of search to make addition towards unsecured loans taken and declared in regular return of income filed for relevant assessment year.

12. In this view of the matter and considering facts and circumstances of this case and also by following the ratios of various case laws considered herein above, we are of the considered view that additions made by the AO towards unsecured loans taken from various parties is not supported by any incriminating material found as a result of search. Since, assessment for impugned assessment year has been unabated / concluded as on the date of search, additions made towards unsecured loans without reference to any incriminating materials cannot sustain under law. Hence, addition made by the AO towards unsecured loans u/s.68 of the Act is deleted.

13. The Revenue has challenged deletion of additions made by the AO towards unsecured loans received from various parties

u/s.68 of the Act and consequent interest u/s.37 of the Act on the ground that Id.CIT(A) has erred in deleting additions without appreciating the fact that enquiry conducted by Investigation wing of Income Tax Department, Kolkata reveals that certain parties were indulged in providing accommodation entries of unsecured loans to various parties and assessee being one of the beneficiary of such accommodation entries. We find that the AO has made additions towards unsecured loans on the basis of statement recorded from one Shri V.K. Keshari without providing copies of statement recorded from said person and also not provided opportunity of cross examination, even though the assessee has specifically requested for copies of evidence relied on to make said addition and opportunity for cross examination of said person. It is well settled principle of law by the decision of Hon'ble Supreme Court in the case of Andaman Timber Industries v CCE, [2015] 281 CTR 214 that denial to the assessee of the right to cross examine the witness whose statement was made the basis of the impugned order is a serious flaw which renders the order a nullity in as much as it amounted to violation of the principles of natural justice because of which the assessee was adversely affected. The Hon'ble Supreme Court in the case of

Kishinchand Chellaran v CIT [1980] 125 ITR 713 had taken a similar view and held that evidences collected from third party, in the absence of same being supplied to the assessee could not be used against the assessee. In this case, the AO has made additions on the basis of statement recorded from one Shri V.K. Keshari without providing said statement to the assessee and also without providing an opportunity of cross examination, even though the assessee has sought for such cross examination, in contravention of principles of natural justice. Therefore, on this count additions made by the AO cannot be sustained.

14. Coming to merits of the case. The Id.CIT(A) had recorded categorical finding that the assessee has filed various documents including confirmation letters from all loan creditors to prove identity, genuineness of transactions and creditworthiness of parties. We, further noted that the Id.CIT(A) has reproduced at para 9 of his order in respect of each and every loan creditors, the documents filed by the assessee to discharge its onus. As per the findings of the Id.CIT(A), the assessee has filed name, address and PAN card of the company and its Directors. The assessee has also filed financial statements of loan creditors and

their bank statements. As per financial statements, creditors are having sufficient source of income to establish creditworthiness of loan transactions with the assessee. Further, all loan transactions are routed through proper banking channels. It is also an admitted fact that the assessee has repaid said loans along with interest much before the date of initiation of search proceedings in the case of the assessee. Further, it was also an admitted fact that the assessee has obtained loans through Shri K.K. Parsuramka, a Chartered Accountant by profession and said loans are backed by equitable mortgage of immovable properties in favour of Shri K.K. Parsuramka, the person who arranged loans. From the above findings of the Id.CIT(A), it is very clear that the assessee had discharged its burden cast upon u/s.68 of the Act. Once, the assessee has discharged its initial burden then the burden shifts to the AO to prove otherwise that said sums recorded as unsecured loans in the books of accounts of the assessee is unexplained credit which represents undisclosed income of the assessee. Further, it is a well settled principle of law by various decisions of High Courts that once the assessee has discharged its onus by proving identity of parties, genuineness of transactions, and creditworthiness of creditors by

filing various documents, no addition can be made u/s.68 of the Act. The Hon'ble Supreme Court in the case of CIT v Lovely Exports (P) Ltd [2008] 216 CTR 195 (SC) has clearly held that once documents like PAN card, bank account details were given by the assessee, onus shifts to the AO and it is on him to reach the shareholders and proceed in accordance with law to assess such shareholders. But, said sum received from creditors cannot be regarded as unexplained credit of the assessee. The Hon'ble High Court of Delhi in the case of CIT vs. Kamdhenu Steel & Alloys Ltd., [2014] 361 ITR 220 has taken a similar view. The Hon'ble Supreme Court in the case of CIT v. Orissa Corporation (P) Ltd [1986] 52 CTR 138 had also taken similar view. The sum and substance of ratios laid by Hon'ble Courts are that the assessee should discharge initial burden by filing necessary documents to prove the identity, genuineness and creditworthiness of the parties. Once, the assessee discharges its burden by filing necessary documents then the burden shifts to the AO to prove otherwise. In this case, the AO has made additions only on the basis of statement recorded from third party ignoring various evidences filed by the assessee to prove unsecured loans taken from said parties. Therefore, we are of

the considered view that the AO was erred in making addition towards unsecured loans and consequent interest paid on said loans u/s.68 of the Act, even though the assessee has discharged its burden by filing enormous documents. The Id.CIT(A) after considering relevant submissions has rightly deleted additions made by the AO and hence, we are inclined to uphold findings of the Id.CIT(A) and dismiss appeal filed by the Revenue.

15. In the result, appeal filed by the Revenue is dismissed and cross objection filed by the assessee is allowed.

Order pronounced in the court on 9th June, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 9th June, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |