

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE
PRESIDENT
AND
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.335 to 337/Ind/2018
Assessment Years: 2011-12 to 2013-14

M/s. Life Care International
37-38 Lasudia Mori,
Dewas Naka : Appellant
PAN: AABFL5181G
V/s
JCIT-3(1) : Respondent
Indore

Appellant by	Shri S. N. Agrawal, & Pankaj Mogra ARs
Revenue by	Shri S. S. Mantri, CIT-DR
Date of Hearing	10.06.2021
Date of Pronouncement	01.09.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeals filed at the instance of the assessee for Assessment Year 2011-12 to 2013-14 are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld. CIT], Indore dated 23.02.2018 & 26.03.2018

which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 07.03.2014, 28.01.2015 & 30.11.2015 framed by CIT-3(1), Indore.

The assessee has raised following grounds of appeal in ITANo.335/Ind/2018:

- 1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining addition of Rs.2,70,00,000/- as made by the Assessing Officer on the account of unsecured loan u/s 68 of the Act without properly appreciating the facts of the case and submissions ad made before him.*
- 2. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the disallowance of Rs.60,61,225/- as made by the assessing officer on account of interest paid without properly appreciating the facts of the case and submission made before him.*
- 3. That the appellant reserves its right to add, alter and modify the grounds of appeal as taken.*

The assessee has raised following grounds of appeal in ITANo.336/Ind/2018:

- 1. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining disallowance of Rs.35,12,470/- as made by the Assessing Officer on the account of interest paid without properly appreciating the facts of the case and submissions ad made before him.*
- 2. That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the disallowance of Rs.35,12,470/- as made by the assessing officer on account of interest paid even when the appellant has properly discharged onus lying on it.*
- 3. That the appellant reserves its right to add, alter and modify the grounds of appeal as taken.*

The assessee has raised following grounds of appeal in ITANo.337/Ind/2018:

1. *That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining disallowance of Rs.12,00,625/- as made by the Assessing Officer on the account of interest paid without properly appreciating the facts of the case and submissions ad made before him.*
2. *That on the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in maintaining the disallowance of Rs.12,00,625/- as made by the assessing officer on account of interest paid even when the appellant has properly discharged onus lying on it.*
3. *That the appellant reserves its right to add, alter and modify the grounds of appeal as taken.*

2. As the issues raised in these appeals are mostly common and relate to same assessee, at the request of all the parties these appeals were heard together and are being disposed of by this common order for sake of convenience and brevity.

We will first take up the assessee's appeal in ITANo. 335/Ind/2018

3. Brief facts as culled out from the records are that the assessee is a partnership firm engaged in the business of carrying and forwarding agent. Income of Rs.22,59,926/- declared in the return of income filed on 29.09.2011 for A.Y. 2011-12. Case selected for scrutiny through CASS. Notices u/s 143(2) & 142(1) of the Act duly served upon the assessee. Various details were called for by the Ld. Assessing Officer which were replied by the assessee. Ld.

Assessing Officer called specific information to prove identity genuineness and creditworthiness of the following five parties whom gave unsecured loans to the assessee:-

S.No	Name of the Loan creditors	Amount [Rs]
1	Advantage Dealtrade P Limited	50,00,000
2	Axiom Commodeal P Limited	45,00,000
3	Contra Vanijya P Limited	50,00,000
4	Dhanlabh Trade Link P Limited	75,00,000
5	Spangle Dealtrade P Limited	50,00,000
		2,70,00,000

4. Information was called for Ld. AO by issuing notice u/s 133(6) of the Act, which were duly served upon the alleged 5 creditors, but the information called for was not received. The assessee thereafter filed all the details in order to prove identity & creditworthiness of the cash creditors and genuineness of the transactions by placing copy of PAN, audited balance sheet, bank advice for the amount transferred to the assessee company, confirmation and other relevant details. However, Ld. Assessing Officer was not satisfied with the submissions made by the assessee and doubted the genuineness of the transaction and creditworthiness of the cash

creditors and accordingly made the addition u/s 68 of the Act at Rs. 2,70,00,000/-.

5. Ld. Assessing Officer also called the information about the deduction of prior period interest of Rs.60,61,225/- claimed by the assessee to have been paid on term loan from HDFC bank. The assessee claimed that this sum of interest of Rs.60,61,225/- is allowable u/s 43B(d) of the Act. However, assessee failed to find any favour from the Ld. Assessing Officer. As Ld. Assessing Officer making detailed observation as appearing at 45 to 52 of the assessment order dated 07.03.2014 denied the claim and made the addition of Rs.60,61,225/-. Ld. Assessing Officer also disallowed interest claim of Rs.24,47,865/-, since it was not paid before due date of filing the return. After making the aforesaid additions income assessed at Rs.3,77,69,020/-.

6. Aggrieved assessee preferred an appeal before the ld. CIT(A) and partly succeeded as Ld. CIT(A) allowed the claim of interest expenditure of Rs.24,47,865/- and confirmed the remaining addition u/s 68 of the Act at Rs.2,70,00,000/- and disallowance of the prior period

interest of Rs.60,61,225/-. Ld. CIT(A) confirmed the addition u/s 68 of the Act observing that the assessee failed to prove the identity and creditworthiness of the alleged lenders and genuineness of the transactions and for observing so placed reliance on certain judicial precedents.

7. As regards the interest expenditure of Rs.60,61,225/- Ld. CIT(A) was of the view that Shri Vaibhav Rai, working partner of the firm had taken loan of Rs.3.20 cr. for the business purpose from HDFC bank but since the assessee failed to bring on record, whether the said amount of loan was utilized for the purpose of business of the firm, this claim was denied.

8. Aggrieved assessee is now in appeal before this Tribunal challenging the finding of Ld. CIT(A) confirming the addition for unexplained loan u/s 68 of the Act and disallowance of prior period interest.

9. As regards the issue of unexplained cash credit u/s 68 of the Act for Rs.2.70 cr. Ld. Counsel for the assessee submitted that the alleged loan of Rs.2.70 cr was taken from following five companies:

S.No	Name of the Loan creditors	PA No	Amount [Rs]
1	Advantage Dealtrade P Limited	AAICA7805Q	50,00,000
2	Axiom Commodeal P Limited	AAICA5208K	45,00,000
3	Contra Vanijya P Limited	AADCC9936D	50,00,000
4	Dhanlabh Trade Link P Limited	AADCD5263C	75,00,000
5	Spangle Dealtrade P Limited	AAOCS5475L	50,00,000
			2,70,00,000

10. Thereafter, Ld. Counsel for the assessee referring to the paper book stated that the following documents were filed before Ld. Assessing Officer to explain the alleged cash credits.

a. M/s ADVANTAGE DEALTRADE P LIMITED [Loan of Rs 50,00,000/-]

S.No	Particulars	Page no	Reference in the assessment order
1.1	Confirmation of unsecured loan	119	Inner Page No 8 of the assessment order
1.2	Advice of bank regarding transfer of amount to the bank account of the assessee	120-121	---do---
1.3	Copy of PAN Card		---do---
1.4	Copy of audited balance sheet of the loan creditor as on 31.03.2011	122-131	---do---
1.5	Copy of intimation as passed by the CPC clearly mentioned the address of the lender	132-135	---do---
1.6	Abstract of the master of the lender company as downloaded from the site of ROC	136-137	---do---

b. M/s AXIOM COMMODEAL P LIMITED [Loan of Rs 45,00,000/-]

S.No	Particulars	Page no	Reference in the assessment order
1.1	Confirmation of unsecured loan	138	Inner Page No 12 of the assessment order
1.2	Advice of bank regarding transfer of amount to the bank account of the assessee	139-140	---do---
1.3	Copy of PAN Card	141	---do---
1.4	Copy of audited balance sheet of the loan creditor as	142-151	---do---

	on 31.03.2011		
1.5	Cop[y of Acknowledgment of IT Return	152	---do---
1.6	Abstract of the master of the lender company as downloaded from the site of ROC	153-154	---do---

c. M/s CONTRA VANJIYA PVT LIMITED [Loan of Rs 50,00,000/-]

S.No	Particulars	Page no	Reference in the assessment order
1.1	Confirmation of unsecured loan	155	Inner Page No 9 of the assessment order
1.2	Advice of bank regarding transfer of amount to the bank account of the assessee	156-157	---do---
1.3	Copy of PAN Card	158	---do---
1.4	Copy of Audited Balance sheet as on 31.03.2011	159-167	
1.5	Copy of ITR V generated online on submission of ITR-6 on 30.09.2011 vide Ack No 301049531300911	168	---do---
1.6	Abstract of the master of the lender company as downloaded from the site of ROC	169-170	---do---

d.M/s DHANLABH TRADELINK PVT LIMITED [Loan of Rs 75,00,000/-]

S.No	Particulars	Page no	Reference in the assessment order
1.1	Confirmation of unsecured loan	171	Inner Page No 10 of the assessment order
1.2	Advice of bank regarding transfer of amount to the bank account of the assessee	172-174	---do---
1.3	Copy of PAN Card	175	---do---
1.4	Copy of audited balance sheet of the loan creditor as on 31.03.2011	176-185	---do---
1.5	Copy of ITR V generated online on submission of ITR-6 on 02-11-2011 vide Ack No 311748621021111 by the lender company		---do---
1.6	Abstract of the master of the lender company as downloaded from the site of ROC	186-187	---do---

e. M/s SPANDGLE DEALTRADE PVT LIMITED [Loan of Rs 50,00,000/-]

S.No	Particulars	Page no	Reference in the assessment order
1.1	Confirmation of unsecured loan	188	Inner Page No 11 of the assessment order
1.2	Advice of bank regarding transfer of amount to the bank account of the assessee	189-190	---do---

1.3	Copy of PAN Card	191	---do---
1.4	Copy of audited balance sheet of the loan creditor as on 31.03.2011	192-201	---do---
1.5	Copy of ITR V generated online on submission of ITR-6 on 05-11-2011 vide Ack No 312512891021111 by the lender company	202	---do---
1.6	Abstract of the master of the lender company as downloaded from the site of ROC	203-204	---do---

11. Ld. Counsel for the assessee also submitted that in support of the genuineness of the loans taken from these five companies following documents were filed before the lower authorities:

S.No	Facts of the case
1	<i>The amount of loans was received through RTGS</i>
2	<i>The loan as received was also repaid in the year 2012 prior to the passing of the assessment order or prior to start of inquiry by the assessing officer</i>
3	<i>Interest on loans was credited in the account of the loan creditors</i>
4	<i>TDS on the amount of Interest was also deducted and deposited with the Income Tax department.</i>
5	<i>The said amount of TDS as deducted duly reflected in Form No 26AS of the deductee / Payee and credit of the same ought to be claimed by the appellant</i>
6	<i>Copy of account of the appellant in the book of the loan creditor was filed wherein the amount of loan as taken by the appellant was duly reflected</i>
7	<i>Copy of PAN No of the loan creditors</i>
8	<i>Copy of Bank statement of the loan creditors wherein the amount as advanced to the appellant was duly reflected</i>
9	<i>Copy of Income Tax return/ Intimation as passed in the loan creditors was filed</i>
10	<i>Copy of Audited financial statement of the loans creditors for the Year ended on 31.03.2011 was filed</i>
11	<i>Copy of Master records as downloaded from the site of MCA was also filed</i>

12. Thereafter Ld. Counsel for the assessee took us through the summary of loans received from the alleged five companies which were repaid subsequently and interest was debited and tax deducted at source consistently. It was stated that loan from Advantage Deal Trade P. Ltd. at Rs.50,00,000/- repaid on 25.08.2012, loan of Rs.45,00,000/- from Axiom Commodial P. Ltd. repaid on 21.08.2012, loan of Rs.50,00,000/- Contra Vanijya P. Ltd. repaid on 27.08.2012, loan of Rs.75,00,000/- taken from Dhanlabh Trade Link P. Ltd. repaid up to 21.08.2012 and loan of Rs.50,00,000/- from Spangle Dealtrade P. Ltd. repaid on 06.09.2012.

13. Ld. Counsel for the assessee also submitted that the appellant had received the entire amount of unsecured loan through banking channels, TDS deducted on the amount of interest wherever applicable and supporting documentary evidences were also filed so as to justify the unsecured loans received by the appellant and therefore onus as casted upon the appellant under section 68 of the Act stands duly discharged and therefore the amount of unsecured loan as received during the year shall be treated as genuine and from disclosed sources

and the addition so made to the total income of the appellant under section 68 of the Act is grossly unjustified and requires to be deleted in entirety.

14. The assessee has referred to following written submissions:

1.9.3] *That following two situation arises in case of inquiry:*

S.No	Circumstances	Action of the Assessing officer
1	<i>If the loan creditor refused to advance amount to the appellant</i>	<i>The loan as shown received by the appellant is to be added to its income</i>
2	<i>If loan creditors failed to explain the proper source of amount as advanced by them to the appellant</i>	<i>The source which was not properly explained by the creditors can be added to their income but in no case the same was to be added to the total income of the appellant</i>

1.9.4] *That in the present case in hand, the creditor never refused to advance the amount to the appellant rather reply to the notice as issued was not received by the assessing officer. The appellant with the ample documents proved not only the identity but also genuineness and creditworthiness of the loan creditors. Hence, there was no justification for adding the amount of loans as received from these five parties to the total income of the appellant.*

1.9.5] The assessing officer has also failed to pinpoint any documents which was filed by the assessee was not correct or fabricated. That once the documents as filed by the assessee seems as correct. In that case there was no reason for the assessing officer to disbelieve on the same.

1.10.1] *The assessing officer summarized the reason for non-accepting the loans as received by the assessee as genuine on inner Page No 36 of the assessment order, the reason of the assessing officer and its reply/ explanation from the side of the assessee is as under: -*

S.No	Observation of the assessing officer	Explanation of the appellant
1	<i>Letter as issued u/s 133[6] of the Act but no reply was received from the creditors. Hence, the credit worthiness and genuineness of the transaction remained unproved.</i>	<i>The assessing officer himself accepted the identity of the loan creditor and disputed about the credit worthiness and genuineness of the loan transactions. The assessee with the help of bank statement, Balance sheet and Income Tax return proved the credit worthiness and genuineness of the loan transactions which was not disbelieved by the assessing officer himself.</i>

2	<i>On the basis of ADIT [Inv] unit- (iii), Kolkata, since the summon was not served upon to the loan creditors the assessing officer reached to a conclusion that these companies are not in existence.</i>	<i>That all the loan creditors are companies and duly registered with the Registrar of the companies and also filing their Income Tax return. The assessee has provided copy of Acknowledgment, Intimation as received from CPC, Bank statement, audited final account and Master records as downloaded from the ROC/ MCA site. Hence identity of the loan creditors stands proved beyond doubt.</i>
3	<i>The assessing officer further observed that merely loan amount was received through an account payee cheques not discharged the onus lying on it in light of decision of the Hon'ble Calcutta High Court in the case of CIT vs Precision Finance Ltd as reported in 208 ITR 465.</i>	<i>The assessing officer was factually wrong, the assessee not only explained that entire amount of loans were received through an account payee cheques but also provided copy of its account in the book of loan creditors, PA No, relevant page of bank account, Balance sheet and master records as downloaded from MCA.</i>
4	<i>The assessing officer further observed that mere filing of the IT number is not enough to prove the genuineness of cash credit.</i>	<i>The assessee in the present case not only provided the IT number but also filed copy of account of the assessee in the book of the loan creditors along with PA No and relevant page of bank account with ack of income tax return as filed and intimation as received from CPC. Hence, the assessing officer was not right in stating that mere IT number was provided by the assessee. That from the PA No , it is the duty of the assessing officer to called information from his counterpart who is the assessing officer of the loan creditors and on receipt of the information from that officer the same was provided to the assessee for its comments but nothing was done by the assessing officer and simply rejected the submission of the assessee.</i>
5	<i>The assessing officer on the basis of inquiry jumped to a conclusion that all these loan creditors companies are paper companies.</i>	<i>The said observation of the assessing officer is also not correct more so when the assessee has provided the complete details to the assessing officer and not only proved the identity but also genuineness and creditworthiness of the loan creditors. These companies are regularly filing their income tax return and also filed return with the registrar of the companies.</i>
6	<i>The assessing officer referred investigation carried out by the Investigation wing and jumped to a conclusion that most of the companies based from Kolkata and Mumbai provided accommodation entries to the local indore base companies.</i>	<i>The assessing officer some investigation carried out by the Investigation wing but the said investigation carried out in which context is not known to the assessee whether the name of the assessee or loan creditor of the assessee was found place in the said investigation was also not known to the assessee. Hence, the assessing officer was grossly erred in making this type of casual remarks in the assessment order which supposed to be passed on the basis of material</i>

		<i>available before him.</i>
7	<i>The assessing officer ignored the judicial decisions as referred by the assessee during the course of assessment proceeding by stating that the same are distinguishable on the facts of the present case.</i>	<i>The assessing officer has utterly failed to mentioned why the decisions as referred by the assessee was distinguishable on the facts of the present case of the assessee. That decisions as referred by the assessee squarely applicable on the facts of the present case, as discussed by the assessee in this letter.</i>
8	<i>The assessing officer observed that the assessee has no furnished the complete details which includes confirmation and other documents.</i>	<i>The assessing officer grossly erred in stating that the assessee has not filed confirmation letter even when the assessee had filed copy of account of the assessee in the book of loan creditors along with the PA No and copy of Ack of income tax return as filed with relevant page of Bank account and audited final account of the loan creditors. Hence, the assessing officer was not justified in making casual remarks.</i>
9	<i>The assessing officer further observed that the assessee has not paid interest to these parties and it seems that whole transactions is a colorable device and fabricated.</i>	<i>The assessee has taken loan for long term period , if the loan creditors demand repayment within three months no interest was payable. However, the assessee had paid interest and also deducted TDS on the same in the succeeding years prior to the date of passing of the assessment order for the Asst Year 2011-12. Hence, the assessing officer was not correct in stating that no interest was paid by the assessee.</i>
10	<i>The assessing officer finally referred the provision of section 68 and reached to a conclusion that the assessee has not discharged onus lying on it by proving the identity, capacity and genuineness of the transactions.</i>	<i>That as per provision of section 68 of the Income Tax Act, the assessee fail to offer explanation or explanation as provided by the assessee was not found satisfactory by the assessing officer in that case necessary addition is to be made to the income of the assessee. However, in the present case in hand the assessee has properly explained that the above said amount of loans were received from particular companies and in support of its contention also filed ample documents, the assessing officer also failed to pin point which documents found false or fabricated. That in absence of any defects in the documents as filed by the assessee, there was no reason for the assessing officer to disbelieve on the same. Thus, the assessing officer has not justified in making addition on account of loan as received by the assessee.</i>

15. In support of the contention that where PAN No. are

provided, the amount received through account payee cheque, the identity of the same applicant/creditors has been treated as explained as held in the following decisions:

S.No	Reference	Citation
1	<i>CIT Vs Rock Fort Metal & Minerals</i>	<i>198 Taxmann 497 (Delhi)</i>
2	<i>CIT Vs Winstral Petrochemicals (P) Ltd</i>	<i>330 ITR 603 (Delhi)</i>
3	<i>CIT Vs Oasis Hospitalities (P) Ltd</i>	<i>333 ITR 119 Delhi</i>
4	<i>CIT Vs Gangour Investment Ltd</i>	<i>335 ITR 359 (Delhi)</i>
5	<i>CIT Vs Tulip Finance Ltd</i>	<i>015 DTR 185 (Delhi)</i>

16. Quoting the above decision Ld. Counsel for the assessee submitted that it is a settled position of law that once the assessee has proved the identity of the creditors, in that case there is no justification for making any addition to the income of the assessee. If the assessing officer has any doubt about the genuineness of the loan in that case also addition should be made in the case of that creditor and not in the case of the assessee. He also submitted that in case where the amount received by the assessee is in the form of unsecured loan and loan creditor is regularly assessed to tax, then, it is the duty of the assessing officer to write a letter to the assessing officer having jurisdiction on the unsecured loan creditors. That once the onus as lying on the assessee is discharged in that case

there is no justification for taking any adverse view against the assessee.

17. For the proposition that the year under appeal being A.Y. 2011-12 the assessee is only required to prove the source of loan received but not required to prove the source of source, reliance placed on following decisions:

S.No	Name of the decisions	Citation
1	<i>ACIT Vs India Tyre House</i>	<i>72 TTJ 316 (Gauhati Bench)</i>
2	<i>Rammanohar Singh Vs ACIT</i>	<i>009 DTR 270 (Jabalpur Bench)</i>
3	<i>S K Jain Vs ITO</i>	<i>002 SOT 579 (Agra Bench)</i>
4	<i>Nemichand Kothari Vs CIT</i>	<i>264 254 (Gauhati)</i>
5	<i>Orbital Communication (P) Ltd</i>	<i>327 ITR 560 (Delhi)</i>
6	<i>Dwarkadhish Investment (P) Ltd</i>	<i>330 ITR 298 (Delhi)</i>

18. Ld. Counsel for the assessee also referred to the decision of Coordinate Bench Jaipur in the case of *M/s Motisons Entertainment (India) P Limited [Appeal No ITA No 386 & 387/ JP/ 2017 dt 09-11-2017* as passed for the Asst Years 2011-12 and 2012-13 in support of the contention that the assessee has successfully explained the cash credit and no addition is called for u/s 68 of the Act. In this case issue of unexplained cash credit u/s 68 of the Act from various lender companies including the alleged five cash creditors of the instant appeals were for consideration. Hon'ble Jaipur Bench not only accepted

the identity but also of the capacity to lend the amount received from these companies and also satisfied with the genuineness of loan transaction. That the Hon'ble High Court of Rajasthan vide its order dt. 31-07-2018 has approved the order as passed by the Hon'ble ITAT, Jaipur Bench in case of M/s. *Motisons Entertainment (India) Pvt. Ltd. (supra)*, wherein the amount as received from these parties were accepted as genuine. Copy of the said order is enclosed in the paper book.

19. The reliance was placed on the following decisions:

- 1 *Hon'ble Jurisdictional Bench of ITAT in the case of M/s. Industrial Filters and Fabrics Pvt. Ltd. Vs ACIT as reported in (2020) 37 ITJ 61 (Trib. - Indore)*
2. *CIT v. Dolphin Canpack Ltd. [2006] 283 ITR 190 (Delhi),*
3. *CIT v Sahibganj Electric cables (p) Ltd. [1978] 115 ITR 408 (Cal.)*
4. *ITO v Suresh Kalmadi [1988] 32 TTJ (Pune) TM 300*
5. *Hon'ble Apex Court in the case of CIT Vs Orissa Corporation (P) Ltd as reported in 159 ITR 78*
6. *Hon'ble Jurisdictional High Court in the case of Ashok Pal Daga Vs CIT reported in 220 ITR 452*
7. *Hon'ble Jurisdictional High Court in the case of CIT Vs Barjatiya Children Trust as reported in 225 ITR 640*
8. *Hon'ble Jurisdictional High Court in the case of CIT Vs Metachem Industries as reported in 245 ITR 160*
9. *Hon'ble Gujarat High Court in the case of CIT Vs Ranchhod Jivabhai Nakhava as reported in 21 taxmann.com 159*
10. *Hon'ble Gujarat High Court in the case of DCIT Vs Rohini Builders as reported in 256 ITR 360*
11. *Hon'ble Calcutta High Court in the case of M/s Hindustan Tea Trading Co Limited as reported in 263 ITR 289*
12. *That Hon'ble ITAT Mumbai Bench in the case of Income Tax Officer 9(1)-1 Vs Anant Shelters (P) Ltd reported in 20 taxmann.com 153*

*13.Hon'ble Delhi High Court in the case of Gangeshwari Metal Pvt Ltd
[ITA No 597/2012]*

20. Per contra Ld. DR vehemently argued supporting the finding of both lower authorities. He also took us through the finding of Ld. CIT(A) appearing at para 4.2.2 to 4.2.6 at page 21 to 29 of the impugned order wherein Ld. CIT(A) has also referred to various judgements in favour of the revenue.

21. We have heard rival contentions and perused the records placed before us and carefully gone through decisions referred and relied by both sides. Through ground no.1 assessee has challenged the finding of Ld. CIT(A) confirming the addition for unexplained cash credit of Rs.2,70,00,000/- made by the Ld. Assessing Officer for unsecured loan received from following companies:

S.No	Name of the Loan creditors	PA No
1	Advantage Dealtrade P Limited	AAICA7805Q
2	Axiom Commodeal P Limited	AAICA5208K
3	Contra Vanijya P Limited	AADCC9936D
4	Dhanlabh Trade Link P Limited	AADCD5263C
5	Spangle Dealtrade P Limited	AAOCS5475L

22. We notice that during the assessment proceedings Ld. Assessing Officer issued notice u/s 133(6) of the Act

seeking information from the alleged cash creditors. Ld. Assessing Officer has accepted that all the notices were duly served upon the alleged cash creditors. However, no reply was received. We further notice that the assessee has filed all necessary details in order to prove identity and creditworthiness of the alleged cash creditors and genuineness of the loan transactions. We also notice that all the unsecured loans were received through banking channels, interest has been charged during the year, tax deducted at source and all the alleged loans have been repaid subsequently through banking channels.

23. On perusal of records filed before us by the Ld. Counsel for the assessee, following common details have been filed with respect to all the alleged cash creditors.

<i>S.No</i>	<i>Facts of the case</i>
<i>1</i>	<i>The amount of loans was received through RTGS</i>
<i>2</i>	<i>The loan as received was also repaid in the year 2012 prior to the passing of the assessment order or prior to start of inquiry by the assessing officer</i>
<i>3</i>	<i>Interest on loans was credited in the account of the loan creditors</i>
<i>4</i>	<i>TDS on the amount of Interest was also deducted and deposited with the Income Tax department.</i>
<i>5</i>	<i>The said amount of TDS as deducted duly reflected in Form No 26AS of the deductee / Payee and credit of the same ought to be claimed by the appellant</i>

6	<i>Copy of account of the appellant in the book of the loan creditor was filed wherein the amount of loan as taken by the appellant was duly reflected</i>
7	<i>Copy of PAN No of the loan creditors</i>
8	<i>Copy of Bank statement of the loan creditors wherein the amount as advanced to the appellant was duly reflected</i>
9	<i>Copy of Income Tax return/ Intimation as passed in the loan creditors was filed</i>
10	<i>Copy of Audited financial statement of the loans creditors for the Year ended on 31.03.2011 was filed</i>
11	<i>Copy of Master records as downloaded from the site of MCA was also filed</i>

24. We also notice that all the documentary evidences filed by the assessee and contents appearing therein have not been found to be incorrect by the lower authorities at any stage. Ld. Assessing Officer has treated the alleged cash creditors as an unexplained merely on the basis of an investigation report which is never confronted to the assessee nor any opportunity of cross examination was provided which in itself defies the principles of nature justice.

25. Provision of section 68 reads as follows:

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

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited

ted consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such an explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.*

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

26. From perusal of the above provision we find that a proviso was inserted w.e.f. 01.04.2013 after which in case of assessee company if any sum credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless it offers an explanation about the nature and source of such sum so credited and such explanation is found to be satisfactory in the opinion of the Ld. Assessing Officer. In short the assessee is required to explain the source of source to the satisfaction of the Ld. Assessing Officer w.e.f. 01.04.2013. However, this proviso is not applicable in the case of assessee as the issue relates to A.Y. 2011-12. Before the insertion of the proviso to section 68 of the Act w.e.f.

01.04.2013, assessee is only required to prove the source of the sum credited during the year in its books of account.

27. In the instant case, the assessee received loans from five companies as referred above. The companies being Pvt. Ltd. Company have all the details of their identity including address and financial data's on the portal of Ministry of Corporate Affairs available for the public. The assessee has also filed copies of bank invoices and the income tax return to prove the source. Prima facie in our view the assessee discharged its onus to prove the source of alleged cash credits before the Ld. Assessing Officer. Thereafter the burden shifts on to the revenue authorities to disprove such documents or to find any discrepancy in such documents, which has not been found by the revenue authorities in the instant appeal. The PAN No. of the alleged cash creditors was very much available with the Ld. Assessing Officer. No reports seem to have been called from the counterpart Ld. Assessing Officer having jurisdiction over the alleged cash creditors. The assessee has limited means to call for elaborate information required by Ld. Assessing Officer. Looking to the list of documents filed by the assessee to explain the cash credit we find that nothing more could have been

possible for assessee to explain the identity and creditworthiness of the cash creditors and genuineness of the transactions.

28. We also notice that the issue of identity, genuineness and creditworthiness of the alleged cash creditors namely Advantage Dealtrade P Limited, Axiom Commodore P Limited, Contra Vanijya P Limited, Dhanlabh Trade Link P Limited, Spangle Dealtrade P Limited. Came up before the Coordinate Bench Jaipur in the case of *M/s Motisons Entertainment (India) Pvt. Ltd. in ITANo.386 & 387/JP/2017 dated 09.11.2017* pertaining to A.Y. 2011-12 & 2012-13 and Coordinate Bench Jaipur after examining documentary evidences filed before it has not only accepted the identity but also capacity of the cash creditors of having lent the loans. The copy of this order of the Tribunal is placed 42 to 51 of the paper book dated 19.08.2019. In this order of Coordinate Bench Jaipur in the case of *M/s Motisons Entertainment (India) P. Ltd. (supra)* decision of the Tribunal in the case of *Motisons Builtech vs. ACIT in ITANo.385/JP/2017* was applied *mutatis mutandis*. We also find that Hon'ble High Court of Rajasthan vide its order dated 31.07.2018 has confirmed the view taken by Coordinate Bench Jaipur in the

case of *M/s Motisons Entertainment (India) P. Ltd. (supra)* wherein the Tribunal was satisfied with the identity, genuineness and creditworthiness of the alleged cash creditors in question before us in this appeal.

29. We further would like to refer to the judgment of *Hon'ble Bombay High Court in the case of H.R. Mehta vs. ACIT reported at 72 taxmann.com 110* wherein Hon'ble Court held in favour of the assessee and against the revenue dealing with issue of addition u/s 68 of the Act observing as follows:

11. We have therefore proceeded to hear and decide the matter unassisted by revenue In the course of his submissions Mr. Tralshawala had pressed into service inter alia the decision of the Calcutta High Court in Mather & Platt (India) Ltd. (supra) and submitted that merely because a person is not found at an address after several years it cannot be held that he is non existent and that the assessee had discharged his primary onus by identifying the source of the amount paid. The Court observed that once the primary onus is discharged, the onus shifted to the revenue to verify genuineness of the transaction. In the present case no such effort was made by the revenue. We find that in S. Hastimal (supra) the Madras High Court observed that after a lapse of several years the assessee should not be placed upon the rack and called upon to explain not only merely, the origin and source of his capital contribution but the origin of origin and the source of source as well. In yet another case of Bahri Brothers (P) Ltd. (supra) the Division Bench of Patna High Court observed that where the assessee upon whom the initial burden lies, produces bank certificate to establish that the transaction was carried out through account payee cheques thus is closing the identity of the creditors as also the source of income, the burden shifts on to the department and the department cannot add the cash

credits to his income from undisclosed source.

12. The Hon'ble Supreme Court in Nemi Chand Kothari (supra) observed that in order to establish the receipt of a cash credit, the assessee must satisfy three conditions i.e. identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. In the instant case by virtue of the fact that the transaction was completed by cheque payments, the appellant has contended that it had satisfied all the three tests.

13. In Kishanchand Chellaram (supra) wherein the Supreme Court observed that the revenue authorities had not recorded the statement of the Manager of the bank and it was difficult to appreciate as to why it was not done and why the matter was not probed further by the revenue.

14. The Delhi High Court in Ashwani Gupta (supra) held that once there is a violation of the principles of natural justice inasmuch as when its seized material was not provided to an assessee nor was he permitted to cross examine a person on whose statement the Assessing Officer relied, it would amount to deficiency, amounting to a denial of opportunity and therefore violation of principles of natural justice. In that case CIT (A) had deleted addition made by the Assessing Officer since the Assessing Officer had failed to provide copies of seized material to the assessee nor had he allowed the assessee to cross-examine the party concerned. The Division Bench held at once there is violation of the principles of natural justice inasmuch as seized material was not provided to the assessee nor was given Opportunity of cross examining the person Whose statement was being used against the assessee the order could not be sustained.

15. In Andaman Timber Industries (supm) the Supreme Court found that the Adjudicating Authority had not granted an opportunity to the assessee to cross examine the witnesses and the tribunal merely observed that the cross examination of the dealers in that case, could not have brought out any material which Would not otherwise be in possession of the appellant-assessee. The Supreme Court set aside the impugned order and observed that it was not for the Adjudicating Authority to presuppose as to what could be the Such matter of the cross examination and make the remarks

such as was done in that case.

16. In the instant case although the appellant assessee has called upon Us to draw an inference that the burden shifted to the revenue in the present case once it Was established that the payments were made and repaid by cheque we need not hasten and adopt that view after having given our thought to various issues raised and the decisions cited by Mr.TralshaWalla and finding that on a very fundamental aspect, the revenue Was not justified in making addition at the time of reassessment without having first given the assessee an opportunity to cross examine the deponent on the statements relied upon by the ACIT. Quite apart from denial of an Opportunity of cross examination, the revenue did not even provide the material on the basis of which the department sought to conclude that the loan was a bogus transaction.

"17. In our view in the light of the fact that the monies were advanced apparently by the account payee cheque and was repaid vide account payee cheque the least that the revenue should have done was to grant an opportunity to the assessee to meet the case against him by providing the material sought to be used against assessee in arriving before passing the order of reassessment. This not having been done, the denial of such opportunity goes to root of the matter and strikes at the very foundation of the reassessment and therefore renders the orders passed by the CIT (A) and the Tribunal vulnerable. In our view the assessee was bound to be provided with the material used against him apart from being permitting him to cross examine the deponents. Despite the request dated 15th February, 1996 seeking an opportunity to cross examine the deponent and furnish the assessee with copies of statement and disclose material, these were denied to him. In this view of the matter we are inclined to allow the appeal on this very issue.

18. Once we take this view it is not necessary to consider

the second question as to whether or not the Tribunal had erred in law in holding that the amendment to section 147(3) with effect from 1st April, 1989 were applicable to reassessment edings against the appellant in respect of assessment year 1983-84. This issue be considered in an appropriate case and need not detain us any further. Mr. Tralshawala had relied Upon the decision in Ranchi Handloom Emporium (supra) which held that the Direct Tax Laws (Amendment) Act, 1987 came into force from 1st April, 1989. The case before that Court related to assessment year 1988-89 and the relevant accounting year being 9th July, 1986 to 27th June, 1987 and hence the Court held that there was no doubt that the assessment in that year would be governed by the unamended provisions. The applicability of the amended provisions need not be gone into by us in the present case since we are of the view that on very first question, 'we are inclined to hold against the revenue and in favour of the assessee.

30. We find that Hon'ble Jurisdictional Bench of ITAT in the case of *M/s. Industrial Filters and Fabrics Pvt. Ltd. Vs ACIT* as reported in (2020)37 ITJ 61(Trib.Indore) has held that :

6. *We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The revenue has not disputed with regard to the fact that the co-ordinate benches of this Tribunal in respect of share application money received from Javda India Impex Ltd. found that the party is genuine and transaction was treated to be genuine. There is no change in the facts and circumstances. However, in respect of the other share applicants, assessee has not brought any material to rebut the finding arrived by the authorities below, hence we direct the AO to delete the addition of Rs. 25 lakhs in respect of share application money received from Javda India Impex Ltd. The ground raised in this appeal is partly allowed.*

31. In the case of *CIT v. Dolphin Canpack Ltd. [2006] 283 ITR 190 (Delhi)*, it was held that: "Tribunal, while observing that complete details including confirmation details of bank account, PAN of subscribers to the shares were furnished by assessee and the payments were made by cheques, was justified in deleting addition under section 68." And in the case of *CIT v Sahibganj Electric cables (p) Ltd. [1978] 1151TR 408 (Cal.)* it was held that where the amounts of loan received by cheques and repayments also made by cheques through assessee's bankers, the creditors gave confirmation letters mentioning therein their income tax file numbers. ITO without making any further enquiry, disbelieving the evidence of the assessee made addition. ITAT held the additions not justified as the assessee discharged the onus. High Court held that Tribunal is justified in deleting the addition and

32. In *ITO v Suresh Kalmadi [1988] 32 TTJ (Pune) TM 300*, it was held that where identity of creditor is established and entry shown to be not fictitious, the burden shifts on to the department to show as to why the entry still represented the suppressed income of the assessee. The assessee cannot be

called upon to prove the worth of his creditor's creditor. The fact that in the books of the creditors the same amounts had been credited in the name of other parties and that immediately after repayment, the creditors withdrew the money could not lead to any adverse inference when this was their modus operandi and assessee's case was not the solitary transaction.

33. We find that Hon'ble Apex Court in the case of *CIT Vs Orissa Corporation (P) Ltd* as reported in 159 ITR 78 has held that:

“13. In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assessees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.”

34. We further find that Hon'ble Jurisdictional High Court in the case of Ashok Pal Daga Vs CIT reported in 220 ITR 452 has held [Refer Para 7]:

“7. As the applicant satisfied the authority as to the identity of the third party and also supplied the relevant evidence showing prima facie that the entries were not fictitious, the initial burden can be said to be discharged by the applicant- assessee. In view of the factual matrix and legal position, we are satisfied that the aforesaid two questions are questions of law arising out of the order and are required to be referred for our opinion. ”

35. We find that Hon'ble Jurisdictional High Court in the case of *CIT Vs Barjatiya Children Trust* as reported in 225 ITR 640 has held that:

“3. We find that the Tribunal dismissed the appeal of the Department and held as under:

"He found that in the balance-sheet the loan of Rs. 20,000 given to the assessee-trust was mentioned. Under these circumstances, the Department should not have any grievance as to violation of r. 46A. The ITO could have taken pains to examine the income-tax file of Smt. Urmila Agrawal but instead he chose the easier course of ordering production of the creditor which cannot be appreciated. The Assessing Officer should realise the inconveniences which an assessee faces in producing the cash creditor before him. The production of the cash creditor in person should be insisted upon only when the genuineness of the transactions cannot be established with the help of documents and the record of the IT Department itself. I find no infirmity in the order of the Deputy CIT (A.). It is sustained."

4. On application under s. 256(1) of the Act, the Tribunal held that it correctly reached the conclusion that the addition was unwarranted and no referable question of law arose out of the conclusion reached on appreciation of facts properly.

5. In our view, the finding about the genuineness is a finding of fact based on proper appreciation of facts and does not manifest any illegality or perversity.”

36. We also find that Hon'ble Jurisdictional High Court in the case of *CIT Vs Metachem Industries as reported in 245 ITR 160* has held that [Refer Para 3 to 6]:

“3. We have heard learned counsel for the parties. Sec. 68 of the Act of 1961 says that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source, thereof or the explanation offered by him is not, in the opinion of the ITO, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. Therefore, according to s. 68, the first burden is on the assessee to satisfactorily explain the credit entry in the books of account of the previous year. If the explanation given by the assessee is satisfactory, then that entry will not be charged with the income of the previous year of the assessee. In case the explanation offered by the assessee is not satisfactory or the source offered by the assessee-firm is not satisfactory, then in that case, the amount should be taken to be the income of the assessee. In the present case, the AO did not feel satisfied with the explanation given by the assessee and accordingly assessed all the three credit entries to the account of the assessee as the income.

4. On appeal, the CIT(A) examined the matter in detail and found that Shri S.K. Gupta was the real owner of the business. The explanation given by the assessee was found to be satisfactory and he deleted the aforesaid three entries. The same finding of fact has been affirmed by the Tribunal. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is responsibility of that individual to account for the investment made by him. If that person owns that entry, then, the burden of the assessee-firm is discharged. It is open for the AO to undertake further investigation with regard to that individual who has deposited this amount.

5. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that

case that credit entry cannot be treated to be income of the firm for the purposes of income-tax. It is open for the AO to take appropriate action under s. 69 of the Act against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the CIT(A) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries.

6. We are, therefore, of the opinion that the view taken by the Tribunal is correct and the aforesaid question is answered against the Revenue and in favour of the assessee.”

37. We find that Hon'ble Gujarat High Court in the case of *CIT Vs Ranchhod Jivabhai Nakhava* as reported in 21 taxmann.com 159 has discussed the issue of cash credit in detail and held that [Refer Para 15 to 18]:

“15. In our view, once the assessee has established that he has taken money by way of accounts payee cheques from the lenders who are all income tax assessee whose PAN have been disclosed, the initial burden under Section 68 of the Act was discharged. *It further appears that the assessee had also produced confirmation letters given by those lenders.*

16. Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amounts of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, in our opinion, the Assessing Officer did not follow the principle laid down under Section 68 of the Income Tax Act.

17. If on verification, it was found that those lenders did not disclose in their income tax return the transaction or that they had not disclosed the aforesaid amount, the Assessing Officer could call for further explanation from the assessee to prove the genuineness of the transaction or creditworthiness of the same. However, without verifying such fact from the income tax return of the creditors, the action taken by the Assessing Officer in examining the lenders of the assessee was a wrong approach. Moreover, we find that those lenders have made in-consistent

statement as pointed out by the Commissioner of Income Tax(Appeals) and in such circumstances, we find that both the Commissioner of Income Tax (Appeals) and the Tribunal were justified in setting aside the deletion as the Assessing Officer, without taking step for verification of the Income Tax Return of the creditors, took unnecessary step of further examining those creditors. If the Assessing Officers of those creditors are satisfied with the explanation given by the creditors as regards those transactions, the Assessing Officer in question has no justification to disbelieve the transactions reflected in the account of the creditors. In other words, the Assessing Officer had no authority to dispute the correctness of assessments of the creditors of the assessee when a co-ordinate Assessing Officer is satisfied with the transaction.

18. We, thus, find that in the case before us the Tribunal below rightly set-aside the deletion made by the Assessing Officer, based on erroneous approach by wrongly shifting the burden again upon the assessee without verifying the Income Tax return of the creditors. The position, however, would have been different if those creditors were not income tax assesseees or if they had not disclosed those transactions in their income tax returns or if such returns were not accepted by their Assessing Officers.”

38. We find that Hon’ble Gujarat High Court in the case of *DCIT Vs Rohini Builders* as reported in 256 ITR 360 has held that:

“7. We have considered the rival submissions and have also gone through the order Passed by the Assessing Officer, the relevant portion of which we have also extracted in para. 2 above. The Commissioner of Income-tax (Appeals) more or less confirmed the addition on the reasoning given by the Assessing Officer in the assessment order. A perusal of the chart given by us in para. 3 above indicates that out of 21 creditors the Assessing Officer has recorded the statements of only six creditors, viz., creditors at serial Nos. 1, 2, 3, 4, 6, and 7. However, in respect of all the 21 creditors the assessee has furnished their complete addresses along with GIR numbers/permanent account numbers as well as confirmations along with the copies of assessment orders passed in the cases of creditors at serial Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 12 and 16. In the remaining cases where the assessment orders passed were not readily available, the assessee has furnished the copies of returns filed by the creditors with the Department along with their statement of income. All the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques along

*with the interest in relation to those loans. It is rather strange that although the Assessing Officer has treated the cash credits as non-genuine, he has not made any addition on account of interest claimed/paid by the assessee in relation to those cash credits, which has been claimed as business expenditure and has been allowed by the Assessing Officer. It is also pertinent to note that in respect of some of the creditors the interest was credited to their accounts/paid to them after deduction of tax at source and information to this effect was given in the loan confirmation statements by those creditors filed by the assessee before the Assessing Officer. Thus it is clear that the assessee had discharged the initial onus which lays on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent accounts numbers and the copies of assessment orders wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of [Orient Trading Co. Ltd. v. CIT](#) [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee -from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of *Orissa Corporation* [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee. In the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in*

their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

8. *Further, we may point out that section 68 under which the addition has been made by the Assessing Officer reads as under :*

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

9. *The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this, case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of [CIT v. Smt. P. K. Noorjahan](#) [1999] 237 ITR 570.*

10. *Thus taking into consideration the totality of the facts and circumstances of the case, and, in particular, the fact, that the Assessing Officer has not disallowed the interest claimed/paid in relation to these credits in the assessment year under consideration or even in the subsequent years, and tax deducted at source has been deducted out of the interest paid/credited to the creditors, we are of the opinion that the Departmental authorities were not justified in making the addition of Rs. 12,85,000 which is directed to be deleted.*

11. *In the result, the appeal is allowed.*

39. We find that Hon'ble Calcutta High Court in the case of *M/s Hindustan Tea Trading Co Limited* as reported in 263 ITR 289 has held that when the assessee has provided the Income Tax file Number it is the duty of the assessing officer to examine the same

from the file of the creditors. Since, identity of the creditor is provided from the file Number; no addition can be made in the name of the assessee and also refer that Hon'ble ITAT Mumbai Bench in the case of *Income Tax Officer 9(1)-1 Vs Anant Shelters (P) Ltd reported in 20 taxmann.com 153* has held that when then assessee had filed PANs, Bank statements and return acknowledgements of the creditors, the assessee has discharged his burden of proof and accordingly, addition was deleted.

40. Also on perusal of the company master data appearing on the portal of Ministry of Corporate Affairs, we find that the cash creditors namely Advantage Dealtrade P Limited, Contra Vanijya P Limited ,Dhanlabh Trade Link P Limited & Spangle Dealtrade P Limited. are active companies and have duly filed their balance sheet up to 31.03.2019 and are marked as active companies. Also for the remaining company namely Axiom Commodeal P Limited we find that this company has merged with Contra Vanijya P. Ltd. under the order of Hon'ble High Court of Delhi pronounced on 16.01.2017. These facts also supports our view that all the alleged five cash creditors are genuine cash creditors as their identity is proved beyond

doubted, creditworthiness is proved with the banking transactions and genuineness is proved as the loans taken from all these five companies have been repaid. We, therefore, in the light of the various judgments and decisions referred hereinabove, more particularly the decision of Coordinate Bench Jaipur in the case of *M/s Motisons Entertainment (India) Pvt. Ltd. vs. ACIT(Supra)* having dealt with various cash creditors including the alleged five cash creditors referred in the instant appeal, are of the considered view that the assessee has successfully discharged its onus by explaining source of cash credit of loan of Rs.2.70 cr. received during the year by placing relevant documentary evidences to our satisfaction which have not been found to be untrue/incorrect by the revenue authorities. We, thus set aside the finding of Ld. CIT(A) and delete the addition of Rs.2.70 cr. made u/s 68 of the Act. Ground No.1 of the assessee appeal is allowed.

41. As regards ground no.2 relating to disallowance of prior period interest of Rs.60,61,225/-, brief facts are that loan from HDFC bank of Rs.3.20 cr. was taken in the name of one of the partner Mr. Vaibhav Rai. Interest payable on this loan from

HDFC Bank was claimed as a business expenditure by the assessee as the loan was utilized for business purposes. This loan was taken from during F.Y. 2007-08. In initial three years the amount of installment paid was directly debited in the loan account and the interest expenditure remained to be entered in the books under the head of expenditure. The total of interest for F.Y. 2007-08 to 2009-10 was claimed as interest expenditure during the year and also the interest for F.Y. 2010-11 at Rs.24,47,865/- was claimed for the current year. Ld. AO disallowed the interest claimed by the assessee. This issue was challenged before the Ld. CIT(A) who deleted the disallowance of interest of Rs.24,47,865/- pertaining to year under appeal treating it as allowable expenditure incurred for carrying out for business activities but confirmed the remaining disallowance of prior period interest of Rs.60,61,225/-.

42. Aggrieved assessee is now in appeal before this Tribunal against the disallowance of prior period interest. Ld. counsel for the assessee vehemently argued referring to written submissions.

43. Per contra ld. DR supported the order of the both lower authorities.

44. We have heard rival contentions and perused the records placed before us. Through ground no.2 assessee has challenged the finding of Ld. CIT(A) confirming the disallowance of prior period interest of Rs.60,61,225/-. We note that loan was taken from HDFC bank at Rs.3.20 cr. in the name of the partner Mr. Vaibhav Rai. This loan has been shown in the books of account of the assessee and the same is supported by audited balances sheet as on 31.03.2007 to 31.03.2011 which shows that the loan was utilized in the business activities of the firm. Inadvertently, the installment paid through HDFC bank which included the element of principal and interest were debited to the loan account and no claim of interest was made during the F.Ys.2007-08 to 2009-10. When this mistake was detected the interest paid for F.Ys. 2007-08 to 2009-10 amounting to Rs.60,61,225/- was claimed as prior period expenditure. Interest of Rs.24,47,865/- for current year i.e. F.Y. 2010-11 was also claimed. We find that ld. CIT(A) has allowed the interest claim of Rs.24,47,865/- treating it as business expenditure. Ld. CIT(A)

has not doubted the utilization of loan for the business purpose. Ld. DR failed to controvert this fact that the loan taken from HDFC bank has been utilized for any other purpose other than for business of the firm. Audited balance sheet supports the contention made by the assessee and also there is no difference in the ultimate tax liability as it was subject to tax on the same rate in the preceding years as in the current year. Our view is supported by the judgment of Hon'ble Apex Court in the case of *Glaxo Smithline (Asia) P Limited reported in 226 CTR 133*.

45. Under these given facts and circumstances of the case, we are of the considered view that the claim of prior period interest of Rs.60,61,225/- needs to be allowed. We thus set aside the finding of Ld. CIT(A) and allow ground no.2 raised by the assessee.

46. Ground No.3 is general in nature which needs no adjudication.

47. In the result, appeal of the assessee in ITANo.335/Ind/2018 is allowed.

48. Now we take up ITANo.336 & 337/Ind/2018 wherein the assessee has commonly raised the issue of disallowance of

interest paid on unsecured loan of Rs.2.70 cr received during A.Y. 2011-12 and disallowed by the Ld. AO and confirmed by Ld. CIT(A) since the cash credit of Rs. 2.70 cr. was treated as unexplained u/s 68 of the Act. We, however, in view of the discussion made hereinabove find that while adjudicating ground no.1 raised in ITANo.335/Ind/2018 we have deleted the addition for unexplained cash credit of Rs.2.70 cr. made u/s 68 of the Act after being satisfied with the documentary evidence filed and explanation given by the assessee. Since the cash credit on which the interest payable has been disallowed by both the lower authorities has been treated as explained and addition has been u/s 68 of the Act deleted there remains no justification in disallowing interest of Rs. 35,12,470/- for A.Y. 2012-13 & Rs.12,00,625/- for A.Y. 2013-14. We accordingly delete the disallowance of interest made by the Ld. AO for A.Y. 2012-13 and 2013-14 set aside the finding of Ld. CIT(A) and allow grounds raised by the assessee in both the years on this issue. Accordingly appeals of the assessee in ITANo.336 & 337/Ind/2018 for A.Ys. 2012-13 & 2013-14 are allowed.

50. In the result, assessee's appeals in ITANo.335 to 337/Ind/2018 are allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 01.09.2021.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 01.09.2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore