

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.01/Ind/2020
Assessment Year 2011-12

DCIT-1(1) : Revenue
Indore

V/s

M/s Ad-Manum Finance Ltd,
2nd Floor, Agrawal House,
5 Y.N. Road,
Indore : Respondent
PAN AAABCA4980F

C.O No.01/Ind/2020
(Arising out of ITA No.01/Ind/2020)
Assessment Year 2011-12

M/s Ad-Manum Finance Ltd,
2nd Floor, Agrawal House,
5 Y.N. Road,
Indore : Appellant
PAN AAABCA4980F

V/s

DCIT-1(1) : Respondent
Indore

ITA No.03/Ind/2020
Assessment Year 2011-12

DCIT-1(1) : Revenue
Indore
V/s

M/s Available Finance Ltd,
2nd Floor, Agrawal House,
5 Y.N. Road,
Indore : Respondent
PAN AAACF1246F

C.O No.02/Ind/2020
(Arising out of ITA No.03/Ind/2020)
Assessment Year 2011-12

M/s Available Finance Ltd,
2nd Floor, Agrawal House,
5 Y.N. Road,
Indore : Appellant
PAN AAACF1246F

V/s
DCIT-1(1) : Respondent
Indore

Revenue by	Shri S.S. Mantri, CIT
Assessee by	S/Shri Ajay Tulsiyan, Kapil Shah & Miss Shalini Mehta, ARs
Date of Hearing	24.05.2021
Date of Pronouncement	29.06.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeals filed at the instance of the revenue and Cross Objection raised by the assessee(s) for Assessment Year 2011-12 are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld. CIT], Indore dated 10.10.2019 and 11.10.2019 which are arising out of the order u/s 143(3) r.w.s 147 of the Income Tax Act 1961(In short the 'Act') eveny dated 30.12.2016 framed by DCIT-1(1), Indore.

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

3. We will fist take up revenue's appeals in case of M/s. Ad-Manum Finance & M/s. Available Finance Limited. Perusal of grounds shows that the common issue has been raised in both these appeals wherein Ld. CIT(A) has deleted the addition which was made by the ld. AO u/s 68 of the Act treating the cash credit/share capital as

unexplained and also disallowing interest paid on the unsecured loans.

4. Brief facts of the case are that both the assesseees namely M/s. Ad-Manum Finance & M/s. Available Finance Limited are Private Limited companies engaged in the business. Returns of income for A.Y.2011-12 were filed. Cases were selected for scrutiny assessment. During the course of assessment proceedings Ld. Assessing Officer observed that in the case of M/s. Ad-Manum Finance received share capital of Rs. 3,31,87,500/- was received from M/s. Aerro Dealcom Pvt. Ltd. (in short ADPL). Similarly in the case of another assessee namely M/s. Available Finance Limited, Ld. Assessing Officer observed that assessee has received unsecured loan of Rs.2,05,00,614/- from 'ADPL' and Rs.5,72,43,488/- from Chamak Trexim Pvt. Ltd. (in short CTPL). In case of both the assessee(s) Ld. Assessing Officer asked to explain the source of share capital/unsecured loan from above stated parties. Detailed replies were filed in order to prove identity, genuineness and creditworthiness of both the creditors namely ADPL & CTPL but the same were not

sufficient to satisfy the Ld. Assessing Officer. Accordingly addition u/s 68 of the Act at Rs.3,31,87,500/- was made towards unexplained share capital received from 'ADPL' in the case of assessee namely M/s. Ad-Manum Finance Ltd. and addition for unexplained unsecured loan u/s 68 of the Act was made in the case of the assessee namely M/s. Available Finance Limited for unsecured loan of Rs.2,05,00,614/- from ADPL, Rs.5,72,43,488/- from CTPL & interest of Rs.14,44,102/- was made for the interest paid to above said parties was disallowed.

5. This addition was challenged by both the assessees before Ld. CIT(A) and both succeeded as Ld. CIT(A) on the basis of his observation of the documents was satisfied with the identity and creditworthiness of the cash creditors and the genuineness of transaction with the assessee(s) in question and also on the basis of decisions given by this Tribunal against the revenue in case of other group concerns wherein also similar type of additions was made by Assessing Officer for cash credit in the form of share capital/unsecured loan received from ADPL &

CTPL.

6. Now the revenue is in appeal before the Tribunal raising following grounds:

Ad-Manum Finance Ltd ITA No.01/Ind/2020 A.Y. 2011-12

1. *Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) was justified in deleting the addition made on account of unsecured loan amounting to Rs.3,31,87,500/- even when the assessee could not establish genuineness of transactions and creditworthiness of lender.*

Available Finance Ltd ITA No.03/Ind/2020 A.Y. 2011-12

1. *Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT(A) was justified in deleting the addition on account of unsecured loan amounting to Rs.7,77,44,102/- and also interest paid on unexplained unsecured loan amounting to Rs.14,44,102/-.*

7. Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. Assessing Officer but failed to controvert the fact that similar issue has already been adjudicated by this Tribunal in the case of same assessee(s) in other assessment year as well as other group concerns for the very same assessment year.

8. On the other hand, Ld. Counsel for the assessee referred to the detailed paper book showing various

documents filed to prove identity, genuineness and creditworthiness of the cash creditors namely ADPL & CTPL and also various decisions to support the finding of ld. CIT(A). It was also submitted that issues raised in both appeals of the revenue are squarely covered in favour of the assessee by recent decision of Hon'ble Indore Bench in the case of *Agrawal Fuel Corporation Pvt. Ltd., Ad Manum Finance Ltd. & Available Finance Limited in ITANo.651/Ind/2019, ITANo.331/Ind/2018 & ITANo.985/Ind/2019* order dated 14.10.2020 pertaining to A.Y. 2010-11, 2009-10 & 2014-15 respectively.

9. We have heard rival contentions and perused the records placed before us. Through ITANo.01/Ind/2020 & ITANo.03/Ind/2020 the revenue has raised common issue in ground No.1 of each appeals contending that the ld. CIT(A) erred in deleting the addition made by the Ld. Assessing Officer u/s 68 of the Act for share capital of Rs.3,31,87,500/- received from ADPL by the assessee company namely Ad-Manum Finance Ltd. and also deleting the addition u/s 68 of the Act made for unsecured loan of Rs.2,05,00,614/- received from M/s. Aereo

Dealcomm Private Limited, Rs.5,72,43,488/- received from M/s Chamak Trexim Private Limited and also deleting the disallowance of interest expenditure on the unsecured loan of Rs.7,77,44,102/- at Rs. 14,44,10/-.

10. We note that the Ld. Assessing Officer made the addition u/s 68 of the Act and also disallowed interest expenditure. Section 68 of the Act 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 consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

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

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

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.

11. We observe that the common issue raised in Revenue's appeal revolves around the common aspect about the fulfilment of the requirement of section 68 of the Act which provides that the assessee needs to explain the source of credit in its books of account which can be proved by showing identity of the creditors and creditworthiness of the creditor to pay such amount to the assessee and the genuineness of the transaction taken place between the assessee and the cash creditor and if the assessee is unable to do the needful the Assessing Officer can make addition for unexplained cash credit.

12. On perusal of the records shows that the ld. Assessing Officer was satisfied with the identity of the cash creditors namely ADPL & CTPL but was not satisfied with the creditworthiness of both these companies and also the genuineness of transaction of both these lender companies with the assessee(s) in appeal.

13. We, further observe when the matter came up before Ld. CIT(A), he in the light of the various documentary evidences filed by the assessee, similar issue adjudicated in other group

concerns and also the view taken by this Tribunal adjudicating this common issue for unexplained share capita/unsecured loan received from two lender companies M/s. Aereo Dealcomm Private Limited & M/s Chamak Trexim Private Limited. Ld. CIT(A) deleted the alleged addition made u/s 68 of the Act in case of both the assesseees namely *Ad-Manum Finance Ltd & Available Finance Limited*. However for the sake of convenience we reproduced below the relevant finding of Ld. CIT(A) given in para 5.1 to 5.3 of the impugned order the case of *Available Finance Limited*:

“5. Ground Nos.5 to 11: These grounds of appeals have been raised against the addition of Rs.7,77,44,102/- made u/s 68 of the Income Tax Act, 1961 on account of loan received from two parties namely M/s Chamak Trexim Pvt. Ltd. from whom loan of Rs.5,72,43,488/- was received and M/s Aereo Dealcomm Pvt. Ltd. from whom loan of Rs.2,05,00,614/- was received by the appellant during the year under consideration and the consequential disallowance of interest of Rs.14,44,102/- incurred in respect of these loans.

5.1 The Assessing Officer has discussed these issues at para no.5.1 to 5.7 of the assessment order. The appellant was required to file copy of bank statement, ITR acknowledgement and tax audit report of the fresh loan depositors along with copy of account and was required to prove the identity, creditworthiness and to furnish the details of mode of transactions. The appellant was also required to explain as

whereby the loan taken from M/s Chamak Trexim Pvt. Ltd. and M/s Aereo Dealcomm Pvt. Ltd. be not added back u/s 68 of the Income Tax Act, 1961.

5.2 The detailed written submissions have been found filed by the appellant in support of its contentions during assessment proceedings also. It is brought out in the assessment order that both the companies have provided loan entries not only to the appellant but also to other group companies of Agrawal Group. Further, the Assessing Officer has referred to the investigation carried out by the Investigation Wing and drawing support from his detailed discussions made by the Assessing Officer while rejecting the objections raised by the appellant to the reopening of the assessment u/s 147 fo the Act. The Assessing Officer has also observed that both these companies were controlled and managed by the appellant group to bring its unaccounted funds to the books of accounts. The Assessing Officer, on the basis of these observations and also drawing support from the assessment orders passed u/s 143(3) r.w.s. 147 of the Income Tax Act 1961 in the cases of M/s Agrawal Fuel Corporation Pvt. Ltd. and M/s Admanum Finance Pvt. Ltd. for A.Y. 2009-10 and also the case of Agrawal Transport Corporation Pvt. Ltd. for A.Y. 2010-11 concluded that the appellant could not establish genuineness of transactions and creditworthiness of the lenders and added the impugned loan amounts u/s 68 of the Income Tax Act, 1961 and also disallowed the interest paid thereon.

5.3 I have gone through the assessment order as well as the written submissions filed by the appellant carefully and after taking into account the arguments of the appellant and reasons brought out by the Assessing Officer in the assessment order, the relevant grounds of appeal are adjudicated as follows. It is observed from page no.13 of the assessment order that the addition u/s 68 of the Income Tax Act and the consequential

disallowance of interest made by the Assessing Officer in the present case are primarily influenced by the observations and information gathered during the course of search and seizure operation u/s 132 of the Income Tax Act 1961 on Mittal Group of Indore and Mr. Deepak Kalani on 04.09.2015, wherein it was observed that his companied M/s Aereo Dealcomm Pvt. Ltd. and M/s Chamak Trexim Pvt. Ltd. were entry provider companies.

5.4 It is seen that similar additions were made on identical facts, in the case of M/s Agrawal Transport Corporation Pvt. Ltd. for A.Y. 2010-11 drawing similar adverse inferences from the search conducted on Mr. Deepak Kalani, director of both the lender companies i.e. M/s Chamak and M/s Aero were also covered. The Additions made in the M/s Agrawal Transport Corporation Pvt. Ltd. for A.Y. 2010-11, have also been deleted by this office in IT No.10553/17-18 dated 18.03.2019.

14. Further we note that in para 5.4 of the impugned order of Available Finance Ltd. Ld. CIT(A) has referred to the facts in the case of *M/s Agrawal Transport Corporation Pvt. Ltd.* for A.Y. 2010-11 wherein also assessee(s) was given relief for the addition made by the Ld. AO drawing adverse inferences from the search conducted in the case of Mittal Group of Indore in which Mr. Deepak Kalani, Director of two lender companies namely M/s. Aereo Dealcomm Private Limited, & M/s Chamak Trexim Private Limited. were also covered and vide order dated

18.03.2019 Ld. CIT(A) deleted the additions made u/s 68 of the Act for the sum received from these two lender companies. Ld. CIT(A) draw the conclusion in para 5.5 to 5.12 of the impugned order observing as follows:

5.5 It is also seen that similar additions were made on identical facts, in the appellant own case for A.Y. 2014-15 drawing similar adverse inferences from the search conducted on Mr. Deepak Kalani, director of both the lender companies i.e. M/s Chamak and M/s Aero. The Additions made in the appellant's own case for A.Y. 2014-15, have also been deleted by this office in IT No.10980/16-17 dated 16.07.2019.

5.6 In the resent case also the observations of the A.O in the assessment order have been found to be sake, which were made in the assessment order of M/s Agrawal Transport Corporation Private Limited and addition is also made on the. similar lines on the basis of the information gathered and findings of the Investigation Wing in respect of the search proceedings conducted in the case of Mr. Deepak Kalani and Mittal Group wherein documents related to Aereo Dealcomm Pvt. Ltd and M/s Chamak Trexim Pvt.Ltd. were found and seized. It was the same finding of the Investigalion Wing that both these companies were being controlled and managed by Shri Deepak Kalani who was also director of these companies found intact from possession of Mr. Deepak Kalani and acquisition of these companies by him in FY 2007-08, change in directorship thereafter, change in the business profile and the investment patter, of both these two companies subsequent to the acquisition of these companies by Mr. Deepak Kalani, the issue of-handing over the cheques of Aereo to the staff of Agrawal group etc, on. the basis of which the AO doubted the creditworthiness of these two companies and also the

genuineness of the transactions of the appellant with both these companies and the same were considered as doubtful and additions were made',

5.7 It is seen that in the present appeal also, the appellant has cumulatively satisfied all the prerequisites of section 68 of .the Income Tax Act, 1961. The identity of both these companies stands established and is not even disputed by the AO. The appellant has successfully demonstrated the creditworthiness of both the companies through their financial accounts and also the income tax returns showing substantial gross revenues. Though both the companies have incurred asses in this particular year, yet it is seen that they have earned substantial profits in other years. Both these companies had sufficient net own funds and there were no borrowings in their balance sheets except for a nominal bank loan, of Rs. 34.73 lacs in the balance sheet of M/ s Aereo Dealcomm Pvt. Ltd. Which too was availed from HDFC Bank as overdraft facility. A part from this, there is no liability in the balance sheet of M/s Aereo Dealcomm Pvt. Ltd. also. Both, the companies have declared substantial taxable income in various years. The assessments of these companies were completed by the respective AOs for various years including that .of AY 2004-05 in the .case -of' M/ s Chamak Trexim Pvt. Ltd. and AY 2003-04 in the case of M/s_Aerro Dealcomm 'Pvt.Ltd. wherein the share capital raised by them were specifically examined and stand accepted as categorically mentioned in the respective assessment orders of both the companies passed 'I/s 143(3) of the Income Tax Act, 1961. It is al so important to note that, the cases of these lender companies were also reopened on the basis of the very search proceedings Conducted on Mr. Deepak Kalani and were completed after examining all the issues raised by the Investigation Wing as. discussed in. the assessment orders,

without any adverse observations/findings in respect of the findings given by the Investigation Wing. The case of M/s Chamak Trexim Pvt. Ltd. for AY 2011-12 was specifically reopened citing the reason of verification of loans advanced by it to the appellant, however, no adverse view was taken by the AO of M/s Chamak Trexim Pvt. Ltd. and the assessment was completed accepting the loss returned by M/s Chamak Trexim Pvt, Ltd for this year. Thus, subsequent to the search on Mr. Deepak Kalani, When the assessments of the lender company for various years are completed taking cognizance of the findings of the search, there remains no Scope for making additions in the hand of the appellant taking an adverse view regarding the lenders companies on the basis of same set of facts.

5.8 During the regular assessment proceedings for AY 2014-15, the appellant produced Mr. Deepak Kalani, Whose statements have been found recorded by the then AO. Mr. Deepak Kalani explained and substantiated an the issues raised by the Investigation wing' through his two statements recorded by the then AO on 01.12.2016 and on 08.12.2016 and also filed detailed and elaborate written submissions further explaining the various issues. He had also produced the books of accounts of the companies and the bank statements since financial years 2009-10 to 2016-17 before the then AO, explaining the sources of funds advanced to the appellant and other group concerns. In other words he has also substantiate the source of the source. Thus, the requirements of the newly inserted proviso to section 68 of the Income Tax Act, 1961 has also been fulfilled in this case. The appellant, in this case has also filed the financials of the companies, along with the balance sheets, reflecting the et owned funds of both these companies and also the gross revenues and net profits earned by UIC

companies, which conclusively established the creditworthiness.

5.9 Further, the appellant as well as Mr. Deepak Kalani have also established the source of the source by filing the bank statements and the ledger accounts, whereby it is conclusively brought out that the funds advanced to the appellant by both these companies during the year under consideration were sourced from repayment of earlier loans by the group concerns of the appellant. Mr. Deepak Kalani was produced before the then AO and his statements were recorded on various occasion. He produced the books of accounts of both the companies and also filed detailed and elaborate submissions along with documents to substantiate that the transactions of both the companies, with the appellant company and its group concerns are proper. All these facts of the case has established the creditworthiness of both the companies as well as the genuineness of the transactions with the appellant. No defects whatsoever were pointed out by the then AO in the books of accounts of the lender companies or in the submissions made by Mr. Deepak Kalani. The detailed submissions filed by the appellant and documents placed on record before the AO with regard to substantiate the creditworthiness of the lenders and genuineness of the transaction have remained uncontroverted in the assessment order.

5.10 It has also been observed that various contentions raised by the Investigation Wing and also by the AO such as finding of original share certificates of both the companies intact from the possession of Mr. Deepak Kalani, change in business profile and the investment pattern of both these companies, handing over of cheques to the staff of Agrawal Group, M/s Aereo and Chamak while being based in Kolkata have mainly

transacted with Agrawal group concerns based at Indore, losses incurred by both these lender companies' in this year; both these companies were controlled and managed by appellant group to channelize its unaccounted income into 'the books etc, on the basis of which the creditworthiness of these two companies and also the genuineness of the transactions of the appellant with both these companies were considered doubtful, have been conclusively rebutted and properly explained by the appellant, as already discussed above and also in the appeal orders passed by this office in the group cases.

5.11 In. the detailed appeal order passed in the case -of- group-company of the appellant i.e. M/s Agrawal Transport Corporation Pvt. Ltd. for AY 2010—11, the relevant portion of which is already reproduced as above, the issue of creditworthiness of both the lender companies has been discussed at length at para nos. 6 to 6.14 and 7 to 7.10 respectively in such order. Similarly, the issue of the genuineness of 'the' transactions has been discussed at para nos. 8 to 8.19 of the order. Similarly in the appeal order passed in the appellant's own case for AY 2014-15,' the issue of creditworthiness of both the lenders companies and also the genuineness of the transactions have been discussed at length at para nos. 5.4 to 5.9 in such order. Since the facts of these cases are identical, the observations made in the order of M/s Agrawal Transport Corporation Pvt. Ltd. for AY 2010-11 and also the observations made in the appellant's own case for AY 2014-15, while deleting the additions are squarely applicable' in this case also. It is further observed that the additions were also made on account of transactions with both these companies in other group cases in AY 2008-09 and AY 2009-10

in the regular assessments orders passed in those cases, which stand deleted by the CIT(A) as well as by the Hon'ble ITAT Indore Bench, Indore, the relevant parts of findings have also been-reproduced in the above referred order of M/s Agrawal Transport Pvt. Ltd for AY 2010-11. In the said order, I have also referred and discussed the finding of my predecessor who confirmed the similar additions in other group concerns of the appellant and have also explained the reasons of taking a different view by me while deleting the similar additions in respect of identical issue.

5.12 In view of above discussion and keeping in view entirety of facts and circumstances, the identity and creditworthiness of the loan creditors having properly been established and substantiated and so also the genuineness of the transactions, it is held that the impugned loan transactions of both the companies with the appellant is genuine and proper and the AO was not justified in making of impugned additions u/s 68 of the Income Tax Act, 1961. Therefore, the additions made u/s 68 of the Income Tax Act, 1961 and also the consequential disallowance of interest are directed to be deleted. Therefore, these grounds of appeal are allowed.

15. We further note that this Tribunal in the case of *M/s Agrawal Corporation Pvt. Ltd, Ad Manum Finance Ltd and Available Finance Ltd* in ITA Nos. 651/Ind/2019, 331/Ind/2018 and 985/Ind/2019 order dated 14.10.2020 has dealt with the very same issue raised by the Revenue challenging the finding of Ld. CIT(A) deleting the addition made by the Ld. AO u/s 68 of the Act for unexplained cash

credit received from M/s. Aereo Dealcomm Private Limited, & M/s Chamak Trexim Private Limited this tribunal after being satisfied with the identity and creditworthiness of both the lender companies and genuineness of transaction of these lender companies with the assessee(s) held against the revenue and in favour of the assessee confirming the finding of Ld. CIT(A) deleting the addition for unexplained cash credit u/s 68 of the Act as well as deleting disallowance of interest expenditure disallowed at Rs. 61,58,897/- observing as follows:

21. From perusal of the above finding of Co-ordinate Bench in the case of another Group concern of assessee(s) namely Agarwal Coal Corporation Pvt. Ltd wherein also unsecured loan taken from M/s ADPL and M/s CTPL were in dispute. We find that Hon'ble Tribunal after considering all the relevant facts and material; on record decided in favour of the assessee thereby confirming the finding of Ld. CIT(A) holding that the assessee has duly proved the identity of the cash creditors, genuineness of the transaction and proved creditworthiness of the lender companies which thus do not call for any addition u/s 68 of the Act and the interest paid on such loans should be allowed.

22. We also find that assessment proceedings of the alleged lender companies namely M/s ADPL & M/s CTPL have been carried out for multiple assessment years u/s 143(3)/147 of the Act but no adverse inference or action has been taken by the revenue authorities and thus accepting that the business carried out by these companies are genuine and are not bogus companies indulged in providing accommodation

entries. Detail of such assessments carried out in the case of two lender companies are summarised in the following chart:-

Assessment details of M/s Chamak Texim Pvt. Ltd

S. No	AY	Date of order	Passed u/s	Income assessed	Page No. PB-B-I	Remarks
	2004-05	31.05.06	143(3)	40,050	49-59	Last share capital and premium received is assessed and accepted
	2009-10	30.12.16	148/147	11,67,510	61-65	Regular reopening on other issues
	2010-11	29.12.16	148/147	17,40,714	51-55	Cases reopened on information of DDIT(Inv), Indore on the basis of search on Mr. Deepak Kalani
	2011-12	29.12.16	148/147	Nil	56-60	
	2011-12	05.12.18	143(3)/147	-7,44,953	66-70	
	2012-13	16.12.18	143(3)/147	38,65,530	71-75	

Assessment details of M/s Aereo Dealcomm Pvt. Ltd

S. No	AY	Date of order	Passed u/s	Income assessed	Page No. PB-B-I	Remarks
1	2003-04	28.06.07	147/143(3)	32,240	142-143	Last share capital assessed was accepted
2	2009-10	30.12.16	147/143(3)	18,42,160	144-148	Cases concluded after searching of DDIT(Inv), Indore and no adverse opinion was formed
3	2010-11	16.11.17	147	8,86,387	149	

23. It is also noteworthy that the loans taken by M/s Agrawal Coal Corporation Pvt. Ltd from two lender companies namely M/s ADCPL & M/s CTPL which were held to be genuine by the Co-ordinate Bench were repaid back and on the very same day of receiving the loan which repaid by M/s Agrawal Coal Corporation Pvt. Ltd the lender companies have used the same fund for advancing loan to M/s Agrawal Transport Corporation Pvt. Ltd. We have verified this fact and found that on

23.02.2010 sum of Rs.2,68,40,000/- was repaid by M/s Agrawal Coal Corporation Pvt. Ltd to M/s Aereo Deal Com Pvt. Ltd. This sum was received in UCO Bank account in case of M/s Aereo Deal Com Pvt. Ltd and on the very same day, through Cheque No. 111017 sum of Rs.2,68,00,000/- was given as loan to M/s. Agrawal Transport Corporation Pvt. Ltd. Similarly in the case of M/s Chamak Traxim Pvt. Ltd loan of Rs.3,42,55,000/-was repaid by M/s Agrawal Coal Corporation Pvt. Ltd on 23.02.2010 which was also credited in UCO Bank account held by M/s CTPL and on the very same day through cheque No.679523 loan of Rs.3,42,00,000/- was given to M/s Agrawal Transport Corporation Pvt. Ltd. So the source of source of alleged loans taken from two lender companies is proved beyond doubt. It further strengthens the finding of Ld. CIT(A) that both the lender Non Banking Finance are genuine having regular business of finance and have sufficient funds for providing loans to various borrowers for earning interest and once the identity, genuineness and creditworthiness of the company for the transaction carried out by group companies is proved beyond doubt and duly accepted by the Tribunal there hardly remain any scope to question it again in the case of other concerns where such type of unsecured loans are received from the same lender companies. Thus the decision of the Co-ordinate Bench in the case of M/s Agrawal Coal Corporation Pvt. Ltd (supra) is squarely applicable on the facts of the instant case and thus we hold that the loan received from M/s Aereo Dealcomm Pvt. Ltd and M/s Chamak Trexim Pvt. Ltd by M/s Agrawal Transport Corporation Pvt. Ltd, Admanum Finance Ltd and Available Finance Ltd are genuine and duly explained by the assessee(s) and the interest paid thereon as provided in the chart in the preceding paras is genuine business expenditure and the assessee(s) have duly explained the transaction of loan taken and also proved the identity, genuineness and creditworthiness of the loan creditors. We thus are of the view that respective Assessing Officers of the three assessee(s) in appeal before us erred in treating the loans taken from

M/s Aereo Dealcomm Pvt. Ltd and M/s. Chamak Trexim Pvt. Ltd has unexplained cash credit u/s 68 of the Act and further erred in disallowing the interest paid on said loans. We thus, confirm the finding of Ld. CIT(A) in the case of M/s. Agrawal Transport Corporation Pvt. Ltd deleting the addition u/s 68 of the Act at Rs. 6,10,00,000/- and also deleting the disallowance of interest at Rs. 8,39,425/-. We also confirm the finding of Ld. CIT(A) in the case of M/s Available Finance Ltd deleting the addition for unexplained cash credit u/s 68 of the Act at Rs. 69,00,000/- and deleting the disallowance of interest paid on such unsecured loans at Rs.51,93,162/-. We also set aside the finding of Ld. CIT(A) in the case of M/s Admanum Finance Ltd and delete the addition of unexplained cash credit u/s 68 of the Act for the unsecured loan taken from the above referred two lender companies totalling to Rs. 1,44,75,000/- and we also direct the revenue authorities to allow the claim of interest expenditure of Rs.61,58,897/-. We thus dismiss Ground No. 1 & 2 of Revenue's Appeal in the case of M/s Agrawal Transport Corporation Pvt. Ltd for Assessment Year 2010-11 allow Ground No. 2 & 3 of the assessee's appeal in case of M/s Admanum Finance Ltd for Assessment Year 2009-10 and dismiss Ground No.2 of Revenue's appeal in the case of M/s Available Finance Ltd for Assessment Year 2014-15.

16. From perusal of above finding of this Tribunal as well as the similarity of facts and issues in the instant appeals which remains undisputed at the end of Ld. Departmental Representative also, we are of the considered view that the issues raised in the instant two appeals by the Revenue are squarely covered against it and in favour of

assessee(s), since this tribunal with regard to both lender companies namely M/s. Aereo Dealcomm Private Limited, & M/s Chamak Trexim Private Limited was satisfied with regard to their identity, creditworthiness to make investment in the form of share capital and loans and advances to the assessee(s) and also satisfied with the genuineness of transaction between these two lender companies and the assessee(s) namely Ad-Manum Finance Ltd. & M/s. Available finance Ltd. We, thus, taking consistent view find no reason to interfere in the finding of Ld. CIT(A) in the case of Ad-Manum Finance Ltd. & M/s. Available finance Ltd. for A.Y. 2011-12 and accordingly dismiss both the appeals at the instance of Revenue.

17. Now, we will take up Cross Objections filed by the assessee(s) raising following grounds of appeal:

Ad-Manum Finance Ltd C.O.No.01/Ind/2020

A.Y. 2011-12

1. That the Learned CIT(A) erred holding that the reopening proceedings were properly and validly initiated u/s 147 of the Income Tax Act, 1961 and also erred in rejecting the various objections raised by the assessee in this regard by holding such objections as not acceptable. That on the facts and in the circumstances of the case & in law, the reopening proceedings initiated u/s 147 of the I.T. Act are invalid without jurisdiction and bad in law on various accounts.

2. That on the facts and in the circumstances of the case & in law, the appellant is entitled to deduction of cess of Rs.4,67,053/- incurred during the year under consideration which is prayed to be now allowed.

3. The assessee craves leave to add, alter, modify, substitute and/or withdraw all or any of the grounds of appeal at any stage of the appellate proceedings.

Available Finance Ltd C.O.No.01/Ind/2020

A.Y. 2011-12

1. That the Learned CIT(A) erred holding that the reopening proceedings were properly and validly initiated u/s 147 of the Income Tax Act, 1961 and also erred in rejecting the various objections raised by the assessee in this regard by holding such objections as not acceptable. That on the facts and in the circumstances of the case & in law, the reopening proceedings initiated u/s 147 of the I.T. Act are invalid without jurisdiction and bad in law on various accounts.

2. That on the facts and in the circumstances of the case & in law, the appellant is entitled to deduction of cess of Rs.36,804/- incurred during the year under consideration which is prayed to be now allowed.

3. The assessee craves leave to add, alter, modify, substitute and/or withdraw all or any of the grounds of appeal at any stage of the appellate proceedings.

18. At the outset, Ld. Counsel for the assessee requested for not pressing the legal grounds raised for challenging the validity of reopening proceedings u/s 147 of the Act.

Accordingly similar ground No.1 raised in C.O. No.1/Ind/2020 & CO.No.02/Ind/2020 are dismissed as not pressed.

19. Second common issue raised in both cross objections with regard to allowing the deduction of education cess of Rs. 4,67,053/- and Rs.36,804/- in the case of Ad-Manum Finance Ltd. & M/s. Available finance Ltd. respectively. At the outset, Ld. Counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the decision of this Tribunal in the case of M/s Agrawal Fuel Corporation Pvt. Ltd in and Ad-Manum Finance Ltd in *ITANo.330/Ind/2018 & CONo.13/Ind/2019* order dated 13.11.2020.

20. Ld. Departmental Representative (DR) though supported the orders of lower authorities but could not controvert this fact that the issue raised in Cross Objection stands covered by the decision of this Tribunal and also could not bring any other judgement in its favour.

21. We have heard rival contentions and perused the records

placed before us. Common issue raised in the Cross Objections by both the assesseees in appeal is with regard to allowing the deduction of education cess or expenditure. We find that similar issue was adjudicated by this Tribunal in the case of M/s. Agrawal Fuel Corporation Pvt. & Ad-Manum Finance Ltd. *ITANo.330/Ind/2018*, & *CONo.13/Ind/2019* order dated 13.11.2020 wherein observing as under:

19. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments and decisions relied and referred by the assessee. The common issue raised in additional ground of the assessee's appeal vide No.330/Ind/2018 and Ground No.1 in Cross Objection No.13/Ind/2019 is that education cess should be allowed as an expenditure u/s 37 of the Act in view of the judgment of Hon'ble Rajasthan High Court in the case of Chambal Fertilizers and Chemicals Limited (supra).

20. We observe that the issue whether the education cess should be claimed as an expenditure u/s 37 of the Act came for adjudication before this Tribunal in the case of assessee's sister concern namely M/s Agrawal Coal Corporation Pvt. Ltd (supra) ITA No.778/Ind/2018 order dated 28.11.2019 and was decided by us observing as follows:-

38. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments relied by the Ld. Counsel for the assessee. The other issue commonly raised by the assessee for Assessment Year 2013-14 is that whether the education cess paid by the assessee along with the income tax and surcharge is deductible as expenditure u/s 37 or it is not deductible as per provisions of Section 40(a)(ii) of the Act which refers to the 'amount not deductible'.

39. We observe that similar issue came up before the Hon'ble High Court of Rajasthan in the case of Chambal Fertilizers and Chemicals Limited (*supra*) wherein Hon'ble High Court referred to Circular No. No.91/58/ 66-ITJ(19) dated 18.5.1967 and also various judgments. The relevant extract of the judgment of the Hon'ble High Court in this case is mentioned below:-

(i) Hon'ble High Court of judicature for Rajasthan Bench, Jaipur in the case of CIT, Kota V/s Chambal Fertilizers and Chemicals Ltd, Kota D.B. IT No.52/2018 order dated 31.7.2018 raised following substantial question of law:-

“3. Whether under the facts and circumstances of the case the Ld. ITAT has not erred in holding that the education cess is a disallowable expenditure u/s 40(a)(ii) of the Act?

“Regarding Question no.3, Mr. Jhanwar has taken us to the order of CIT(A) and tribunal and strongly relied upon the circular dt. 18.5.1967 which reads as under:-

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS CIRCULAR F.NO. 91/58/66-ITJ(19) DT. 18TH MAY, 1967

BUSINESS EXPENDITURE

SECTION 40(a)(ii)

Recently a case has come to the notice of the Board where the ITO has disallowed the 'cess' paid by the assessee on the ground that there has been no material change in the provisions of s. 10(4) of the old Act and s.40(a)(ii) of the new Act.

2.The view of the ITO is not correct. Clause 40(a)(ii) of the IT Bill,

1961 as introduced in the Parliament stood as under:

“(ii) any sum paid on account of any cess, rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains”. When the matter came up before the Select Committee, it was decided to omit the word ‘cess’ from the clause. The effect of the omission of the word ‘cess’ is that only taxes paid are to be disallowed in the assessments for the year 1962-63 and onwards.

3.The Board desire that the changed position may please be brought to the notice of all the ITOs so that further litigation on this account may be avoided.”

Reliance were placed by the Ld. Counsel for the assessee on the following judgments;

In Instalment Supply (P) Ltd & Ors Vs/ Union of India & Ors (1962) 2 SCR 644, it has been held as under:-

“19. There is another answer to the point of res judicata raised on behalf of the petitioners, relying upon the decision of the Punjab High Court in Installment Supply Ltd, New Delhi v State of Delhi MANU/PH/0068/1956. It is well settled that in matters of taxation there is no question of res judicata because such year’s assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period. (See the decision in the House of Lords in Society of Medical Officers of Health v. Hope (Valuation Officer) (1960) A.C. 551 approving and following the decision of the privy Council in Broken Hill Proprietary Company Limited v Municipal Council of Broken Hill (1925) A.C. 94.

In Godrej & Boyce Manufacturing Company Ltd vs. Dy. Commissioner of Income Tax & ors (2017) 247 Taxman 361 (SC), it has been held as under:-

“33. While answering the said question this Court considered the object of insertion of Section 14A in the Income Tax Act by Finance Act, 2001, details of which have already been noticed. Noticing the objects and reasons behind introduction of Section 14A of the Act this Court held that:

Expenses allowed can only be in respect of earning of taxable income.

In paragraph 17, this Court went on to observe that:

Therefore, one needs to read the words “expenditure incurred” in Section 14A in the context of the scheme of the Act and, if so read, it is clear that it disallows certain expenditure incurred to earn exempt income from being deducted from other income which is includible in the “total income” for the purpose of chargeability to tax.

The views expressed in Walfort Share and Stock Brokers P.Ltd (supra), in our considered opinion, year again militate against the plea urged on behalf of the assessee.

34. For the aforesaid reasons, the first question formulated in the appeal has to be answered against the Appellant-Assessee by holding that Section 14A of the Act would apply to dividend income on which tax is payable Under Section 115-0 of the Act.”

The Hon’ble High Court decided the issue holding that;

“12. We have heard counsel for the parties.

13. *On the third issue in appeal No.52/2018, in view of the circular of CBDT where word “cess” is deleted, in our considered opinion, the tribunal has committed an error in not accepting the contention of the assessee. Apart from the Supreme Court decision referred that assessment year is independent and word Cess has been rightly interpreted by the Supreme Court that the Cess is not tax in that view of the matter, we are of the considered opinion that the view taken by the tribunal on issue no.3 is required to be reversed and the said issue is answered in favour of the assessee”*

40. *We, therefore respectfully following the judgment of Hon’ble Rajasthan High Court in the case of CIT, Kota V/s Chambal Fertilizers and Chemicals Limited (supra) find that the facts of the case are identical to the facts of the case in appeal before us and thus are inclined to hold that the education cess is not a tax and thus is an expenditure u/s 37 of the Act which cannot be claimed against the profits and gains of the business carried out by the assessee. Thus finding of Ld. CIT(A) is reversed. The additional ground No.3 raised by the assessee for Assessment Year 2012-13 and Ground No.1 of Cross Objection Nos. 23 & 34/Ind/2019 for A.Y. 2013-14 & 2014-15 stands allowed.*

21. *Subsequent to the above decision Revenue has failed to place any other judgment or decision favouring the revenue and we thus respectfully following the judgment of Hon’ble Rajasthan High Court in the case of CIT, Kota V/s Chambal Fertilizers and Chemicals Limited (supra) and following our own decision in the case of M/s Agrawal Coal Corporation Pvt. Ltd (supra) are inclined to hold that the assessee should be allowed the deduction for education cess of Rs.10,29,182/- and Rs.8,40,007/- u/s 37 of the Act as an eligible expenditure in the case of Agrawal Fuel Corporation Pvt. Ltd and Admanum Finance*

Limited respectively. Thus the additional grounds raised in ITA No.330/Ind/2018 and Ground No.1 of the C.O.No.13/Ind/2019 are allowed.

22. In the above finding reliance was placed on the judgment of Hon'ble Rajasthan High Court in the case of *CIT vs. Chambal Fertilizers and Chemicals Limited (supra)*. Ld. DR could not bring any other judgment of jurisdictional High Court or High Court/common High Court or Hon'ble Apex Court to have been decided in favour of Revenue on this issue. We, thus, taking consistent view respectfully following the judgment of Hon'ble Rajasthan High Court in the case of *CIT vs. Chambal Fertilizers and Chemicals Limited (supra)* directing the Ld. AO to allow the deduction of education cess to the assessee(s) claimed at Rs. 4,67,053/- in case of Ad-Manum Finance Ltd. and Rs.36,804/- in case of Available Finance Ltd. Thus, ground No.2 raised in both Cross Objections stands allowed. Other grounds of appeal in Cross Objections are general in nature which needs no adjudication.

23. In the result, Revenue's appeal in ITANo.01/Ind/2020 & ITANo.03/Ind/2020 are dismissed and Cross objection No.01/Ind/2020 & CO No. 02/Ind/2020 are partly allowed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 29.06.2021.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 29.06. 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