

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.2907/M/2018
Assessment Year: 2007-08**

**ITA No.2908/M/2018
Assessment Year: 2008-09**

M/s. IM Media Pvt. Ltd. (Now known as M/s. Saraswathi Media Pvt. Ltd.), 411, Embassy Centre, Nariman Point, Mumbai – 400 021 PAN: AABCI 6694L	Vs.	ACIT Circle 16(1), Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vijay Mehta, A.R.
Shri Anuj Kisnadwala, A.R.

Revenue by : Shri Awungshi Limson, D.R.

Date of Hearing : 11.12.2019

Date of Pronouncement : 05.03.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The above titled two appeals have been preferred by the assessee against the common order dated 06.02.2018 of the

Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment years 2007-08 & 2008-09.

ITA No.2907/M/18

2. The various grounds raised by the assessee are as under:

“1. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in upholding the reopening of the assessment under section 147 of Income Tax Act, 1961 (“the Act”) as valid and ought to have annulled the assessment.

2. In any event, on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in holding that the notice u/s. 148 dated 30.10.2013 was not barred by limitation.

3. Without prejudice, on the facts and in the circumstances of the case, the Ld. CIT (A) was not justified in upholding the addition of the amount of Rs.38,19,83,854/- received from INX Executive Search Pvt. Ltd. as cash credit u/s. 68 of the Act, more particularly so since the source of the source had also been explained.

4. On the facts and in the circumstances of the case, the Ld. CIT (A) ought to have deleted the interest charged by the AO u/s.234B of Rs. 12,34,32,7687- and u/s.234C of Rs.64,93,077/-.

The Appellant requests for costs of this Appeal.

The above grounds are without prejudice to one another

Your Appellant craves to amend, alter or delete any of the above grounds or to add any fresh ground(s) either before or at the time of hearing.”

3. The issue raised in ground No.1 is against the order of Ld. CIT(A) upholding the reopening of assessment by the assessing officer (hereinafter referred to “the AO”) under section 147 of the Act.

4. The facts in brief are that the assessee filed the return of income on 30.10.2007 declaring total income at Rs.Nil which was processed under section 143(1) of the Act. Thereafter, the AO received information from DIT (Intelligence), New Delhi vide letter dated 15.07.2009 qua the various transactions of

unsecured loans received by the assessee and based on the said information, the AO recorded the reasons to believe under section 148(2) of the Act and also obtained approval of joint CIT, Range-16(1), Mumbai for issuing notice u/s 148 of the Act. The AO thereafter issued notice under section 148 of the Act on 30.10.2013. The reasons recorded for reopening assessment under section 148(2) of the Act are reproduced as under for the sake of ready reference:

"6.1 In this case information was received from DIT(Intelligence), New Delhi by the AO and based on the information, the case reopened after due approval of Jt. CIT, Range 16(1), Mumbai after recording following reasons :

"M/s. I.M. Media Pvt. Ltd has e-filed its return for A. Yr. 2007-08 on 30.10.2007 showing NIL income. During the year the assessee has made investments of Rs 38.18 crores. The company has commenced the business on 15.02.2007. In this case information was received from DIT (Intelligence), New Delhi vide letter dated 15/07/2009 as under:

"Ms. Indrani Mukherjea whose previous experience consists of solely of recruiting staff for other companies could acquire the huge sum (over Rs 100 crore) that her 60% stake required to invest in M/s INX News P. Ltd? What are the source of her funds? Who are the entities from whom she has obtained these funds? What are the terms of lending? Is she the Director of many other companies including the assessee company. Is she fronting for someone? Is there any benami arrangement? Who has acquired a huge sum and has a 60% stake in M/s INX News P. Ltd?"

After receiving the information, the return was perused and found that during the year the assessee has made huge investments as under-

a) INX Media Pvt. Ltd. Rs	Rs. 18,53,64,636
b) INX News Pvt. Ltd. (equity shares)	Rs. 19,64,70,000
	<u>Rs. 38,18,34,636</u>

During the year the assessee has shown unsecured loans to the tune of Rs 38,19,83,854/- which was received from M/s iNX Executive Search Pvt. -Ltd., a related concern. All these facts and information need proper verification. In view of the above, I have reason to believe that income chargeable to tax has escaped assessment and hence the case required to be reopened u/s 147 of the I T. Act, 1961."

5. The AO framed the assessment under section 143(3) read with section 147 of the Act vide order dated 05.03.2015 by making an addition of Rs.38,19,83,854/- being unexplained cash credit under section 68 of the Act as the assessee has failed to establish the creditworthiness and genuineness of the investor companies.

6. The assessee has challenged the reopening of assessment under section 147 of the Act before Ld. CIT(A) who, after taking I into account the contentions and pleas of the assessee, dismissed the appeal on jurisdictional issue by observing and holding as under:

"6.3 I have carefully considered the facts of the case, oral contentions and written submission of the assessee, discussion of the AO in the assessment order and material available on record. The appellant has submitted that the AO has relied entirely on conjectures and surmises in arriving at the conclusion that Appellant had not made a true, complete and correct disclosure of the material facts and that the reasons for reopening has nothing whatsoever to do with Appellant's case. It has been further contended that it was regarding Ms. Indrani Mukerjea that some information had been received and even that is in the nature of doubts and not absolutely information and that it was a roving enquiry and further that the so-called information received from DIT (Intelligence), New Delhi, dated 15.07.2009 had no certainty and the CIT was only questioning whether a certain position is correct or not and thus, there was no certainty in the mind of DIT that there has been any escapement of income, it was accordingly contended that this was not in the nature of information as is generally understood under the law and, therefore, was not required to be taken notice of and that the reopening is bad in law, particularly, because all the facts regarding loans taken by 1NX Executive Search Pvt. Ltd, as well as investment in shares of 1NX Media Pvt. Ltd, were disclosed in the accounts of the Company. In respect of such contentions of the appellant it is stated that in the letter of the DIT(Int), part of which has been reproduced in the reasons recorded by the AO, there are certain aspect of the funding which has been questioned, but ultimately it is the AO, who, based on the information in his possession, has to form 'reason to believe', which the AO has done. It is nowhere provided that the information can only be in the shape of assertions and not in any other form. The moot point is the information which may be in any shape, should be tangible and credible for the AO to form a belief. In this case after receipt of the information form the DST (int), the AO verified the records of the appellant and arrived at reason to believe' that income in the hands of the appellant has escaped assessment. The appellant has further contended that information, if at all, was received in the case of Indrani Mukharjea and not in the case of the appellant. In this regard it is mentioned that there cannot be any argument of the kind that the information received in the case of one person, if leads to verification and conclusion and formation of 'reason to believe' that income of the any other person has escaped assessment than case of that other person cannot be reopened. The appellant has further contended that every information was on record and nothing was hidden and therefore, the reassessment proceeding initiated was bad in law. In this regard it is stated that it is a fact of the case that original assessment in the case of the appellant was not completed under section 143(3) of the Act and therefore, there was no occasion for the AO to verify the same and further there was no occasion to form any kind of opinion by the AO during the original assessment.

6.3.1 The appellant in its submission has relied upon the decision in the case of CIT vs. Kelvinator of India Ltd (Supra). In respect of such reliance placed it is stated that in the facts of the case there is no change of opinion as in this case original assessment was not completed under section 143(3) of the Act and therefore, there was no occasion for the AO to verify any facts of the case and further there was no occasion to form any kind of opinion by the AO during the original assessment Accordingly such reliance placed are found to be distinguishable on facts. The appellant has further relied upon the decision in the case of KanaK Fabrics Pvt. Ltd. vs. ITR (Supra) and General Motors Pvt. Ltd. vs. DCIT (supra). In respect of such reliances placed it is stated that in those cases the issue dealt is failure on the part of the assessee to fully and truly disclose all material facts and that there was no such failure on the part of the assessee. In the case of the appellant the original assessment was completed under section 143(1) of the Act The conditions of failure on the part of the assessee to fully and truly disclose all material facts is applicable only under the circumstances, when the original assessment was done u/s 143(3) of the Act and not u/s 143(1) of the Act. Accordingly, such reliance placed is found to be distinguishable on facts. It is further stated that it is a settled legal position that in a case where there was no assessment or re-assessment prior to the reopening of assessment, even if all the material facts are disclosed in the return of income already filed, reopening can be initiated, if the Assessing Officer has 'reason to believe that the income has escaped assessment. The assessee in such cases cannot assail the reopening on the ground that the facts were already placed on record and that the Assessing Officer ought to have considered the facts. Hon'ble Supreme Court in the case of ACIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd. (291 ITR 500) observed that the word 'reason' in the expression 'reason to believe' would mean cause or justification and if the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reasons to believe that income had escaped assessment, ft is further observed by the Supreme Court that the expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. At the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief that income has escaped assessment. In the facts of this case the AO did come to have information in his possession and after due verification of the appellant's case records formed a valid 'reason to believe' and invoked provisions of section 147 in accordance with law and after following procedure.

6.3.2 The appellant has further relied upon the decision in the case of Indo Arab Services vs. ACIT (Supra) to contend that information available with the AO should have live nexus and should not merely raise a suspicion. In this regard it is stated that the information received by the AO in this case was examined with reference to the records of the assessee and it was prima facie found that the income in the hands of the appellant has escaped assessment and it was after such formation of belief that the reassessment proceedings were initiated in accordance with the law. Accordingly, it cannot be said that either there was no live nexus of the information with the records of the appellant or that the information was only raising a suspicion and not leading to reason to believe.

6.3.3. As already mentioned, at the initiation stage, what is required to be seen is whether there are prima-facie 'reasons to believe' but not to establish fact of escapement

of income. The AO in this case has recorded proper reasons for formation of the belief that income has escaped assessment. It is also important to note that the concerned information was made available to the AO by the DIT(Intelligence), New Delhi and after receipt of such information, the AO verified the facts from the appellant's records and formed his reason to believe and therefore the reasons for reopening the assessment are not based on mere suspicion. Thus, all the conditions necessary for reopening of the assessment under the provisions of Sec. 147 and for issue of notice u/s. 148 are satisfied in the case of the appellant for the year under appeal Hence the re-opening the assessment u/s 148 of the Act is absolutely valid. Hence Ground No. 1 is '**dismissed**'."

7. The aggrieved assessee came in appeal before the tribunal .The Ld. A.R. vehemently submitted before the Bench that reopening of assessment proceedings of the assessee was done without valid and lawful jurisdiction by the AO and therefore the assessment proceedings as well as the consequent assessment framed by the AO are void ab-initio and bad in law. The Ld. A.R. while taking us through the reasons recorded for reopening the assessment contended that the reasons to believe as recorded by the AO under section 148(2) of the Act have only stated in the last para that assessee has raised loans to the tune of Rs.38,19,83,854/- from M/s. INX Executive Search Pvt. Ltd. a related concern and all these facts and informations need proper verification and thus in view of these facts , the AO have reason to believe that income chargeable to tax has escaped assessment and therefore the case is required to be reopened under section 147 of the Act to tax the said escaped income. The Ld. A.R. vehemently argued before the Bench that the assessment can not be reopened just for making verification of facts and information which have been received by the AO. The Ld. A.R. contended that the AO is required to form a belief on the basis of said information received that income of the assessee has escaped assessment failing which the AO has no jurisdiction to initiate the proceedings under section 147 read with section

148 of the Act. The Ld. A.R. argued that the AO is required to form a reasonable belief that that income chargeable to tax has escaped assessment on the basis of information available to him which is missing in the instant case as is apparent from the reasons reproduced above. The AO has resorted to the provisions of section 147 of the Act to merely verify the information received from DIT(Inv) New Delhi and therefore the notice issued under section 148 for verification of information received is invalid and unsustainable in the eyes of law. The Ld. A.R. argued that AO can not be allowed to reopen an assessment under section 147 of the Act to undertake fishing or robbing enquiry or to seeking to verify claims as if it were a scrutiny assessment. Therefore, the Ld. A.R. submitted that if verification is proposed in the reasons recorded, the same can not be a substitute for reason to believe which empowers the AO to reopen the assessment on the ground that income chargeable to tax has escaped assessment. The Ld. A.R. therefore, argued before the Bench that there is no formation of belief or finding by the AO that income has escaped assessment and therefore the assessment proceedings as well as the consequent assessment order are bad in law and may kindly be quashed. In defence of his arguments, the Ld. A.R. relied on a series of decisions as under:

1. PCIT v Manzil Dineshkumar Shah (406 ITR 326)(Guj)
2. SLP dismissed by the Hon'ble Supreme Court against the judgment of the Hon'ble Gujrat High Court in the case of PCIT v Manzil Dineshkumar Shah
3. Judgment of the Hon'ble Gujrat High Court in the case of Inductotheran (India) P. Ltd. v DCIT (356 ITR 481)

4. Judgment of the Hon'ble Supreme Court in the case of Chhugamal Rajpal v S P Chaliha and Ors. Ltd. (416 ITR 435)
5. Judgment of the Hon'ble Bombay High Court in the case of Nivi Trading Ltd v Union of India (375 ITR 308)
6. Judgment of the Hon'ble Bombay High Court in the case of CIT v Maniben Lalji Shah (283 ITR 453)
7. Judgment of the Hon'ble Delhi High Court in the case of CIT v Batra Bhatia Company (321 ITR 526)

8. The Ld. A.R., therefore, prayed that in view of the ratio laid down by the Apex Court and various High Courts, the assumption of jurisdiction under section 147 of the Act for verification of facts/information received from DIT(Inl.), New Delhi is bad in law and so is the consequent assessment framed u/s 143(3) r.w.s. 147 of the Act. Accordingly, the Ld. A.R. prayed that the same may kindly be quashed.

9. The Ld. D.R., on the other hand, strongly opposed the arguments putforth by the Ld. A.R. by submitting that in this case the information was received from the DIT (Intelligence), New Delhi vide letter dated 15.07.2009 to the effect that the assessee has received huge unsecured loans from sister concerns and based upon the said information the reasons to believe were recorded and after obtaining approval from Joint CIT, Range -16(Mumbai), notice under section 148 of the Act was issued on 30.10.2013. The Ld. D.R. argued that in this case the AO has tangible and fresh material to form a belief that income has escaped assessment. The Ld. D.R., while referring to the reasons recorded, submitted that it is clearly mentioned in the reasons recorded under section 148(2) of the Act that

unsecured loans to the tune of Rs.38,19,83,854/- was received from INX Executive Search Pvt. Ltd. which was invested in the other group entities namely INX Media Pvt. Ltd. Rs.18,53,64,636/- and INX News Pvt. Ltd. (equity shares) Rs.19,64,17,000/-. The Ld. D.R. submitted that it has been clearly recorded in the reason that the unsecured loans raised from the sister concerns need proper verification and thereafter the AO formed the belief that income chargeable to tax has escaped assessment. The Ld. D.R., therefore, prayed that the ground raised by the assessee before Id CIT(A) has rightly been dismissed by the first appellate authority after going into the legal aspect of the issue. The ld. DR prayed that in view of these facts and circumstances especially independent and tangible materials received from DIT(Int.) New Delhi, the legal ground raised by the assessee may kindly be dismissed by upholding the order of Ld. CIT(A) on this issue.

10. We have heard the rival submissions of both the parties and perused the material on record including the impugned order and the reasons recorded under section 148(2) of the Act for reopening the assessment. We note that in this case the assessee has raised unsecured loan to the tune of Rs.38,19,83,854/- from sister concern M/s. INX Executive Search Pvt. Ltd. We also note that during the year, the assessee has made investments of Rs.38.18 crores in the sister concerns. We also note that the assessee commenced its business on 15.02.2007. The AO has recorded the reasons as required u/s 148(2) of the Act to reopen the assessment after receiving information from DIT (Intelligence), New Delhi vide letter dated

15.07.2009 and recorded in the concluding para of the reasons that facts and information as to receipt of unsecured loans by the assessee need proper verification. For the sake of convenience and ready reference the said para is extracted again as under:

*During the year the assessee has shown unsecured loans to the tune of Rs 38,19,83,854/- which was received from M/s iNX Executive Search Pvt. - Ltd., a related concern. **All these facts and information need proper verification. In view of the above, I have reason to believe that income chargeable to tax has escaped assessment and hence the case required to be reopened u/s 147 of the I T. Act, 1961.***

11. Thus we note that the AO has mentioned in the reasons recorded that the facts and information as regards unsecured loans from sister concern M/s. INX Executive Search Pvt. Ltd. need proper verification and in view of the said fact he has reason to believe that income chargeable to tax has escaped assessment and accordingly reopened the assessment under section 147 of the Act. We find merit in the contentions and arguments of the Ld. A.R. that the AO has not formed any independent belief or recorded a finding that income of the assessee has escaped assessment but merely stated in the reason to believe that these facts and information need proper verification and hence reopened the case in order to carry out the verification of these facts which are not permissible under the Act. The case of the assessee is squarely covered by a series of decisions as referred to during the hearing by the ld counsel of the assessee and are discussed hereunder:

(a) In the case of PCIT vs Manzil Dinesh kumar Shah (supra), the Hon'ble Gujrat High Court has held that formation of independent opinion by the AO is mandatory condition and mere mentioning of need for deep verification

of information received is not a valid ground for reopening. The Hon'ble court has held that reopening of assessment could not be permitted for fishing or robbing enquiry as it would not satisfy the requirement of the AO having reasons to believe that income chargeable to tax has escaped assessment. In this case, the AO has recorded that I have reason to believe that income chargeable to tax has escaped assessment for the assessment year 2009-10 due to omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment and thus the case needs to be reopened as the information received by this office needs deep verification. The Hon'ble Court has held that had the AO on the basis of information made available to him and upon applying his mind to such information formed a belief that income chargeable to tax has escaped assessment, the court would have rightly allowed him to reassess the income but in the present case he recorded that information required deep verification and later reconstitution of mandatory words that he believed that income chargeable to tax has escaped assessment would not cure this fundamental defect. The Hon'ble Supreme Court has dismissed the special leave petition filed by the Revenue in the above case as reported in (2019) 101 taxmann.com 259 (SC) wherein thereby upholding the view taken by the Hon'ble Gujarat High Court in the above case.

(b) In the case of Inductotheran (India) P. Ltd. v DCIT (supra) the Hon'ble Gujarat High Court has held that the reassessment notice is not permissible merely for verification of claim made under section 80HHC of the Act. The relevant extract of the decision of the Hon'ble Gujarat High Court is reproduced below:

"18. Reverting to the facts of the present case, we notice that in two out of the four reasons recorded by the Assessing Officer for reopening the assessment, he stated that he need to verify the claims. In the second ground, he had recorded that the admissibility of the bad debts written off required to be verified. In the fourth ground also, he had recorded that the admissibility of royalty claim was required to be verified. We are in agreement with the contention of the counsel for the petitioner that for a mere] verification of the claim, the power for reopening of assessment could not be exercised. The Assessing Officer in the guise of power to

reopen ai assessment, cannot seek to undertake a fishing or roving inquiry and see] to verify the claims as if it were a scrutiny assessment.”

(c) In the case of Chhugamal Rajpal v S P Chaliha and Ors. Ltd. (supra), the Hon’ble Supreme Court has held that the AO must have prima facie grounds for issuing notice u/s 148. The operative part is reproduced as under:

“Held, (i) that the Income-tax Officer had not even come to a prima fade conclusion that the loan transactions to which he referred were not genuine transactions : he appeared to have only a vague feeling that they might be bogus transactions. Such a conclusion did not fulfil the requirements of section 151(2). Under that section he had to give reasons for issuing a notice under section 148. He should have some prima facie grounds before him for taking action under section 148. His conclusion that there was a case for investigating the truth of the alleged transactions was not the same thing as saying that there were reasons for the issue of the notice. The Commissioner had mechanically accorded permission. The important safeguards provided in sections 147 and 151 were lightly treated by the officer and the Commissioner. The Income-tax Officer could not have had reason to believe that income had escaped assessment by reason of the appellant-firm's failure to disclose material facts and if the Commissioner had read the report carefully he could not have come to the conclusion that this was a fit case for issuing a notice under section 148. The notice issued under section 148 was therefore invalid.”

Thus the court observed that AO has recorded in his report that there is a case for investigation as to the truth of the alleged bogus transactions and court held that this does not meet the requirements to issue notice under section 148 of the Act.

(d) In the case of Nivi Trading Ltd v Union of India (supra) & others (supra) the Hon’ble Bombay High Court has held that if more details are sought or some verification is proposed that can not be a substitution for reason which led the AO to believe that income chargeable to tax has escaped assessment. The court has held as under:

“Held, allowing the petition, that the return of income was filed. There was a processing and verification thereof. In the return of income and on the respondents' own showing on its verification, the long-term capital gains and dividend income in

the sum came to be disclosed and equally another sum (Rs. 1,21,33,429) as gift. The Revenue proceeded on the footing that these shares were gifted without consideration. It was this fact which it wanted to verify and particularly whether the value of these shares had been computed on the market value. The tax authorities did not state that any income chargeable to tax had escaped assessment: All that the Revenue desired was verification of certain details and pertaining to the gift. That was not founded on the belief that any income which was chargeable to tax had escaped assessment and, hence, such verification was necessary. That belief was not recorded. The notice of reassessment was not valid."

(e) In the case of CIT v Maniben Lalji Shah (supra) the Hon'ble Bombay High Court has held that the reopening of assessment under section 147 to scrutinize the investment made in the flat purchased is not valid as the AO only seeks to find out the source of funds and same does not constitute any reason for belief that income has escaped assessment so as to invoke section 148 of the Act and accordingly the appeal of the Revenue was dismissed.

(f) In the case of CIT v Batra Bhatia Company (supra) the Hon'ble Delhi High Court has held while dismissing the appeal of the Revenue that Ld. CIT(A) as well as Tribunal had given a concurrent finding that there was no material before the AO on the basis of which the AO would have had a belief that agricultural land sold by the assessee was a capital receipt within the meaning of section 2(14) of the Act and expression of the AO "requires much deeper scrutiny" indicated that he was mere embarking on mere presumptions without any belief much less belief based on reason and material and thus the reassessment was not valid.

12. In view of the ratio laid down in the various decisions as discussed above vis a vis facts of the assessee case, we are of the

considered view that the AO has not formed a prima facie and independent belief on the reasons recorded that income has escaped assessment but reopened the assessment only for carrying out the verification of facts/information qua the unsecured loans raised by the assessee. Under these facts and circumstances, we are not in a position to concur with the finding of the Ld. CIT(A) justifying the re-opening of assessment. Under these facts and circumstances, the order of Ld. CIT(A) is required to be set aside on the jurisdictional issue and the reassessment proceedings are held to be invalid and so is the assessment framed under section 143(3) read with section 147 of the Act. The legal ground raised by the assessee is allowed.

13. Insofar as merits of the issue is concerned, we find that the Ld. AO has made additions towards unsecured loans taken from INX executive search pvt Ltd amounting to Rs. 38,19,83,854/- u/s 68 of the Act, on the ground that purported loans had failed the test of genuineness as enumerated under the provisions of section 68 of the I.T. Act, 1961. According to the Ld. AO, mere furnishing confirmation letters from the parties is not sufficient enough, but what is important is to prove the loans to the satisfaction of the AO with all evidences, including their true identity, their capacity to extend loans and genuineness of such loans. The Ld. AO had invoked provisions of section 68 of the I.T. Act, 1961 to draw an adverse inference against the assessee to make additions towards said unsecured loans. As per provisions of section 68 of the I.T. Act, 1961, where any sum found credited in the books of accounts of the assessee in any financial year, for which the assessee offers no explanation or

explanation offered by the assessee, in the opinion of the Ld. AO is not satisfactory, then sum found credited may be treated as income of that previous year. As per provisions of section 68 of the Act, the initial onus is on the assessee to prove credit found in his books of accounts to the satisfaction of the Ld. AO. In order to come out of the clutches of said provisions, the assessee shall produce necessary evidences to prove identity of the creditors, genuineness of transactions and creditworthiness of the creditors. Once, initial burden is discharged by the assessee, then burden shifts to the revenue to prove that credit found in the books of accounts of the assessee is income of the assessee derived from undisclosed source of income.

14. In this legal back ground, if you examine the case of the assessee, in light of provisions of section 68 of the I.T. Act, 1961, one has to examine, whether the assessee has discharged his initial onus cast upon in the relevant provisions of the Act or not. In this case, on perusal of details available on record, there is no dispute with regard to the fact that the assessee has filed confirmation letters from all parties relating to unsecured loans, including name and address of the parties and PAN numbers before the AO. We further noted that on perusal of evidences filed by the assessee, we find that the assessee had filed all evidences, including their financial statement, ITR copies and bank statements. The assessee has also filed necessary evidences to prove that said loans have been taken through proper banking channels. The assessee had also, filed loan agreement between INX Executive Search Pvt Ltd and assessee dated 27-02-2007 and loan agreement between INX Executive

search pvt Ltd and Xanti Commercial Pvt Ltd. dated 28/02/2007. From the evidences filed by the assessee it is abundantly clear that loans have been taken from assessee group/sister concern and hence, it cannot be said that identify of the loan creditor is not proved. As regards genuineness of transaction and creditworthiness of loan creditors, we find that loans have been taken by cheques for which bank statements the creditors has been furnished. Similarly, the creditworthiness of loan creditor is not in doubtful, because, the assessee has produced copies of ITR and balance sheets of creditor, loan agreement between the parties. The assessee had also proved source of source by filing loan agreement between INX Executive Pvt Ltd and Xanti Commercial Pvt Ltd where the later had advanced loan to former an amount of Rs. 38,35,00,000/- and out of said loan M/s INX Executive Search Pvt Ltd had given loan of Rs. 38,19,83,854/- to assessee. We therefore are of the view that the assessee has discharged its onus cast upon u/s 68 of the Act.

14. Further, it is well settled legal position of law that in order to come out of the rigors of section 68 of the Act, it is the responsibility of the person or assessee to file necessary evidences to prove identity, genuineness of transactions and creditworthiness of the parties. But, once, initial burden cast upon on the assessee has been discharged by filing necessary evidences, then burden shifts to the revenue to prove that the credits found in the books of accounts of the assessee is income earned from undisclosed source of income. In this case, there is no doubts of whatsoever with regard to the fact that assessee

had filed all evidences, including confirmation letters, PAN of creditors, financial statements and bank statements of all parties. But, the AO has disregarded all evidences filed by the assessee without any valid reasons. Unless, the AO controvert voluminous evidences filed by the assessee, he cannot jump to a conclusion on conjecture and surmisees that the purported loans taken from those parties are non-genuine in nature, more particularly, when the assessee has filed necessary evidences to prove loans taken from above parties. This legal position is supported by the decision of Hon'ble Supreme Court, in the case of CIT vs Lovely Exports Pvt.Ltd. (2008) (2016 CTR 195) (SC), where the Hon'ble Supreme Court clearly held that if, the share application money is received by the assessee company from alleged bogus shareholders, the names are given to the Ld. AO, then the department is free to proceed to reopen their individual assessment in accordance with law, but the sum found credited in its books cannot be regarded as undisclosed income of the assessee. This legal proposition is further strengthen by the decision of Hon'ble Bombay High Court, in the case of CIT vs Goa sponge & Power Ltd.(supra), where the Hon'ble High court by following the decision of Hon'ble Supreme court, in the case of CIT vs Lovely Exports Pvt.Ltd (supra) held that once, the authorities have got all the details, including name and address of the shareholders, their PAN / GIR number, so also, the name of the bank from which the alleged investors received money as share application money, then it cannot be turned as bogus. In the case of PCIT vs. AMI Industries (India) Pvt Ltd(2020) 116 taxmann.com 34(Bombay), the Hon'ble Bombay High court after considering and distinguishing Hon'ble Supreme Court decision

in case of PCIT vs. NRA Iron & Steel Pvt Ltd 412 ITR 161(SC) held that where the first appellate authority had written a clear finding of fact that assessee had discharged its onus of proving identity of creditors, genuineness of transactions and credit worthiness of creditors which finding of fact stood affirmed by the Tribunal and revenue had not been able to show any perversity in aforesaid findings of fact by the authorities below, Tribunal was right in holding that no addition could be made under section 68 of the Act. Similar view has been expressed in the case of CIT vs Creative World Tele films Limited (2011)333 ITR 100 (Bom), CIT vs. Steller Investments Ltd (2001) 251 ITR 263 (SC), CIT vs. Dwarkadhish Investment (P) Ltd (2011) 330 ITR 298 (Del-High Court). The ITAT, Mumbai, in the case of Sangvi Realtors Pvt.Ltd. vs DCIT(2017) (60 ITR (Trib.) 150 held that when, the assessee has furnished all relevant details in order to discharge burden of proof placed upon it u/s 68 of the Act, then additions made u/s 68 is not justified. In yet another decision of ITAT, Mumbai in case of ACIT vs. Sreedham Builders (2018) 53 CCH 2012 it was held that additions on account of unsecured loans cannot be made, where the assessee has discharged its primary onus of providing complete details, in respect of loan transactions. The ITAT, Mumbai in the case of DCIT vs Bairagra Builders Pvt.Ltd.(2017) 51 CCH 107 has held that the Ld. AO has proceeded to make additions, merely on the basis of investigation done by the office of DG Investigation, without conducting any independent enquiries to ascertain nature of transaction and also without challenging the claims of the assessee that loans taken from above parties were genuine, in contraventions of settled legal position of law. In the case of

Principal Commissioner of Income Tax Vs. Veedhata Towers Pvt. Ltd. (2018) 403 ITR 415 (Bom), the Hon'ble Bombay High court held that the assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, the assessee has discharged his duty by providing all the information required but the assessing officer had doubt on the source of source. To prove the genuineness of the source of the source is the duty of the revenue and in this case, revenue could not prove or bring in any material to impeach. From the ratios of above cases, it is very clear that once, the initial burden was discharged by filing necessary evidences additions cannot be made u/s 68 of the Act. If the Ld. AO is not satisfied with details filed by the assessee, then he is free to proceed against creditors in accordance with law, but sum so found credited in the books of accounts of the assessee cannot be recorded as unexplained cash credit u/s 68 of the I.T.Act, 1961. In yet another case, the ITAT Mumbai, in assessee sister/group concern, M/s INX Recruitment Services Pvt Ltd vs. ACIT, in ITA No. 6463/Mum/2011, dated 08/12/2015, under identical circumstances and fact held that when assessee is a new company which had not commenced business activity for the year under consideration, shall earn undisclosed income of huge amount for making addition as done by the AO towards loan u/s 68 of the Act.

15. In this case, on perusal of facts available on record, the assessee had filed all possible evidences to prove the identity of the creditors, their capacity to explain loan given to assessee and genuineness of transactions. Therefore, we are of the

considered view that even on merits, addition made by the AO towards loans u/s 68 of the Act, cannot be sustained. Hence, considering facts and circumstances of this case and by following the ratios of various case laws discussed hereinabove, we direct the AO to delete additions made towards loans u/s 68 of the Income Tax Act, 1961.

16. In the result, the appeal of the assessee is allowed.

ITA No.2908/M/2018

17. The grounds raised in this appeal are identical to ones as decided by us in ITA No.2907/M/2018 (supra) wherein we have allowed the appeal of the assessee on jurisdictional issue as well as on merits. Accordingly, our decision and findings in the said appeal would, mutatis mutandis, apply to this appeal as well and hence appeal of the assessee is allowed.

18. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 05.03.2020.

Sd/-
(Amarjit Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 05.03.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.