

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

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
Virtual hearing

ITA No.396/Ind/2018
Assessment Year 2010-11

ACIT-4(1), Indore : Appellant
V/s
Sanjay Lunawat, Indore : Respondent
PAN – AAKPL 1062 B

C.O.No.32/Ind/2018
Arising out of ITA No.396/Ind/2018
Assessment Year 2010-11

Sanjay Lunawat, Indore
PAN – AAKPL 1062 B : Appellant
V/s
ACIT-4(1), Indore : Respondent

Revenue by	Shri Rajib Jain, CIT-DR
Assessee by	S/Shri S.N. Agrawal & Bhavesh Agrawal, CAs
Date of Hearing	07.07.2021
Date of Pronouncement	13.09.2021

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ORDER

PER MANISH BORAD, A.M

The above captioned appeal & Cross-objection for Assessment Year 2010-11 are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-II (in short 'Ld. CIT(A)], Indore dated 15.1.2018 which is arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 22.03.2013 framed by JCIT, Range-3, Indore.

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

“On the facts and in the circumstances of the case the Ld. CIT (A):-

1. Whether on the facts and in the circumstances of the case. Ld. CIT(A) is justified in deleting the addition of Rs. 85.00,000/- and Rs. 1,07.50,000/- made by the AO u/s 68 of the IT Act on account of advances for agricultural land as shown by the assessee. despite the assessee failed to provide necessary evidences to prove the genuineness or transactions and creditworthiness of the persons giving advances.

2. Whether on the facts and in the circumstances or the case, Ld. CIT (A) is justified in deleting the additions of Rs. 1,59.30.060/- made u/s 68 of the I.T. Act in respect of unsecured loan from various persons, even though their creditworthiness was not proved.

3. Whether on the facts and in the circumstances of the case, , Ld. CIT (A) is justified in deleting the additions of Rs. 10,18.500/- on account or disallowances or interest on property claimed by the

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assessee by holding that similar claim made by the assessee was allowed in subsequent year.

4, Whether on the facts and in the circumstances or the case, Ld. CIT (A) is justified in deleting the additions of Rs. 9,15,600/- on account of disallowances or claimed of interest out of income from other sources. by holding that similar claim made by the assessee was allowed in subsequent year.

5. Whether on the facts and in the circumstances or the case Ld. CIT (A) is justified in holding that since the assessee was having agricultural land, he should have agricultural income even though the assessee failed to produce evidences regarding agricultural activities.

6. Whether on the facts and in the circumstances of the case Ld. CIT (A) is justified in deleting the disallowance u/s 40(a)(ia) of the IT Act even though the first proviso of section 201(1) of the IT Act was inserted w.e.f. 01/07/2012 whereas the relevant A.Y. in the case of the assessee is A. Y. 2010-11 and also the assessee has not produced the certificate from C.A in prescribed proforma as envisaged in provision to sec 201 (I) of the Act.”

3. Assessee has raised the following grounds in Cross Objection:

C.O.No.32/Ind/2018 Assessment Year 2010-11

1. That on the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in maintaining addition on account of amount as advanced to Shri Tarun Dassani as income of the assessee by invoking the provision of section 68 of the Income Tax Act.

2. That on the facts and in the circumstances of the case and in law the Ld CIT (A) erred in restricting the amount of Agricultural income of Rs. 5,00,000/- as against Agricultural income of Rs. 8,14,000/- as declared by the assessee in his return of total income.

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Departmental ITA No.396/Ind/2018 - A.Y. 2010-11

4. First ground raised in the appeal of the Revenue is with regard to deletion of additions of Rs. 85,00,000/- and Rs 1,07,51,000/- as received from Shri Rakesh Agrawal and M/s Royal Township [Prop concern of Shri Rakesh Agrawal] as advance against the sale of land. Facts as culled out from the orders of Revenue Authorities are that the assessee during the course of assessment proceeding filed confirmation with PAN of the persons from whom advances were received against sale of land. It was also pointed out to the Assessing Officer that land was sold and also registered in the name of the persons from whom advances were received by the assessee but the said amount was added to the total income of the assessee by the Assessing Officer on the ground that mere filing of confirmation and providing of PAN is not sufficient as to justify the genuineness of the amount as received in the form of advances. The Assessing Officer relied on certain judicial pronouncements in the assessment order and added Rs. 85,00,000/- and Rs 1,07,51,000/- u/s 68 of the I.T. Act to the total income of the assessee as undisclosed income.

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5. Being aggrieved, the assessee challenged the action of the Assessing Officer before the Id. CIT(A) who called for the remand report and after having gone through the facts/circumstances, material and submissions thereof deleted the addition. The Operative part/findings recorded by the Id. CIT(A) are reproduced hereunder:

*“.....The appellant during the course of hearing filed copy of confirmation letter as filed before the assessing officer, copy of affidavit and copy of registry in respect of land actually sold and registered in the name of Shri Rakesh Agrawal. These papers were forwarded to the assessing officer but the assessing officer in his remand report re-iterated the same facts as stated in the assessment order. The appellant during the course of hearing furnished complete details in respect of advances as received by him against the sale of Agricultural land through cheques and also in cash, details of landsold to Shri Rakesh Agrawal including the registry as provided which was also made available to the assessing officer mentioning the details of cheques as actually received by the appellant and significant amount of cash which was adjusted in these two registry. The appellant has provided the PA No, Confirmation and affidavit. In addition to that, copy of the registry as executed was also provided proving not only the identity but the genuineness of transactions as executed by the appellant. The amount as received by the appellant as advance against sale of land was thus proved by the appellant. Hence, the assessing officer was not justified in adding the same as income of the appellant. I hereby direct the assessing officer to delete the addition of Rs 85,00,000/- and Rs 1,07,50,000/- totaling to Rs 1,92,50,000/- made to the total income of the appellant. This ground of appeal is accordingly **allowed.**”*

6. Ld. CIT-DR relied upon the order of the Assessing Officer and submitted that mere filing of confirmation and providing of PAN is

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not sufficient as to justify the genuineness of the amount, thus, the Assessing Officer rightly made the additions. On the other hand, Id. Counsel for the assessee, reiterating the submissions made before Revenue Authorities, relied upon the order the Id. CIT(A) and submitted that since the amount of advances received by the assessee were subsequently adjusted against the sales made by the assessee and the same was also verifiable from the registered sale deeds, the Assessing Officer was not justified in treating the amount of advance received by the assessee as his income because the assessee had sold agricultural land belonging to him to Shri Rakesh Agrawal in lieu of consideration which included the amount of advance received from the said party. Further, Id. Counsel for the assessee also relied upon certain judicial pronouncement/synopsis of arguments as detailed in the paper books filed before us and submitted that the view drawn in these judicial pronouncements supports the order of the Id. CIT(A).

7. We have heard rival contentions of both the parties and perused material available on record. We find that the assessee during the course of first appellate proceedings filed copy of

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confirmation of accounts and affidavit of Shri Rakesh Agrawal wherein he categorically accepted that he had advanced Rs. 85,00,000/- and Rs. 1,07,51,000/- to the assessee as advance against purchase of land. The assessee also filed copy of sale registries executed subsequently wherein substantial amount of advance received was shown to have been adjusted. The ld. CIT(A) called for a remand report from the Assessing Officer on these documents filed during the course of appellate proceedings. The Assessing Officer submitted remand report dated 05-04-2017 which is filed on page nos. 187-193 of the paper book. On perusal of the remand report, the ld. CIT(A) found that the Assessing Officer did not comment on any of the documents filed by the assessee during the course of the appellate proceedings rather the Assessing Officer simply reiterated the findings of the then Assessing Officer. Thus, it is clear that the assessee filed ample documentary evidences to establish the identity and creditworthiness of Shri Rakesh Agrawal and genuineness of the transaction entered into with him. Therefore, we are of the view that ld. CIT(A) was right in recording that the Assessing Officer failed to controvert the genuineness of the transaction and identity as well as creditworthiness of the said

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party. Before us too, the Id. Counsel for the assessee filed the following documents in support of the action of the Id. CIT(A):

S. No	Description of documents	Page No. of Paper Book
1	Copy of confirmation of accounts of Shri Rakesh Agrawal wherein he duly confirmed the amount of advances of Rs. 85,00,000/- and 1,07,51,000/- given to the assessee	59-60
2	Copy of affidavit of Shri Rakesh Agrawal on oath wherein he again confirmed that he gave advances of Rs. 85,00,000/- and Rs. 1,07,51,000/- to the assessee towards purchase of agricultural land	61-62
3.1	Copy of registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 1,50,79,000/-	63-69
3.2	Copy of registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 63,94,000/-	70-76
3.3	Copy of registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 3,46,27,000/-	77-84
3.4	Copy of registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 3,59,00,000/-	85-92

Further, the details of the amount received as advance and subsequently adjusted against sales made to Shri Rakesh Agrawal were also filed before us as follows:

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S. No	Particulars	Amount of advance adjusted [in Rs.]	Relevant Page No.
1	Registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 1,50,79,000/-	85,00,000	65
	Total	85,00,000	
2.1	Registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 1,50,79,000/-	45,79,000	65
2.2	Registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 63,94,000/-	8,94,000	72
2.3	Registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 3,46,27,000/-	29,27,000	79
2.4	Registry as executed between the assessee and Shri Rakesh Agrawal for sale of agricultural land for a consideration of Rs. 3,59,00,000/-	23,51,000	87
	Total	1,07,51,000	

From perusal of the above, it is clear that amount of advances of Rs. 85,00,000/- and Rs. 1,07,51,000/- received from Shri Rakesh Agrawal were subsequently adjusted against sale of agricultural land made to Shri Rakesh Agrawal and the entire particulars of these advances were duly mentioned in the

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registered sale deeds as well. Thus, there was no justification for adding the amount of these advances to the total income of the assessee u/s 68 of the Income-Tax Act, 1961. So far as the case-laws cited by the Assessing Officer are concerned, we find that these are not applicable to the facts of the present case since the same deal with receiving of unsecured loan by an assessee and in the present case, no unsecured loan was received by the assessee from Shri Rakesh Agrawal rather the assessee received advance against sale of land from Shri Rakesh Agrawal which was subsequently adjusted against sales made to Shri Rakesh Agrawal and this fact was duly verifiable from the registered sale deeds executed subsequently. It is a settled position of law that no addition is called for u/s 68 of the Income-Tax Act, 1961 in respect of advances (cash credits) found recorded in the books of accounts which are subsequently adjusted against sales. It is also a well settled proposition of law that no addition is sustainable on account of advance received which stands duly reconciled against different sale deeds executed by the assessee in absence of any evidence to doubt the genuineness

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or correctness of registered sale deeds executed by the assessee. Our view finds support from the following judicial pronouncements:

8. Hon'ble Allahabad High Court in the case of CIT v. Mohd. Sahid as reported in [2018] 402 ITR 110 (Allahabad) held as under:

“12. Then as to question no. 2, we find that there is nothing to doubt the correctness of the finding of the Tribunal that upon two remand reports, the entire cash credit entry of Rs. 37,10,000/- considered for the purpose of addition made under Section 68 of the Act, stood reconciled against different sale deeds executed by the assessee. Once registered sale deeds had been executed by the assessee and the cash credit entries found standing in the books of account of the assessee during the previous year relevant to the Assessment Year 2005-06 had been adjusted against the same, there remained no further doubt as to the identity of the persons who deposited the money with the assessee in the previous year relevant to Assessment Year 2005-06. The fact that such person did not receive the letter or did not appear in person during the inquiry made by the assessing officer at the original assessment stage gets overshadowed and loses its relevance in absence of any evidence to doubt the genuineness or correctness of registered sale deeds executed by the assessee.

13. Even in respect of amount of Rs. 8,00,000/- the second remand report as extracted by the CIT (Appeals) clearly mentioned that Aashiq Ali Siddiqui had got the sale deed executed in his favour wherein an amount of Rs. 8,00,000/- had been adjusted. Thus, the finding of the Tribunal on this issue is also a concluded finding of fact recorded on the basis of material and evidence on record and warrants no interference. Questions of law are answered in favour of the assessee and against the revenue.”

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9. Hon'ble Supreme Court of India in the case of Pr. CIT v. Montage Enterprises (P.) Ltd. as reported in [2018] 100 taxmann.com 100 (SC) dismissed the SLP filed by the Department against the order of the Hon'ble Delhi High Court. The Hon'ble Delhi High Court in the case of Pr. CIT v. Montage Enterprises (P.) Ltd. as reported in [2018] 100 taxmann.com 99 (Delhi) approved the findings of the Ld CIT(A) and Hon'ble ITAT wherein it was held that:

"5. The Assessee has three manufacturing Units, i.e. Malanpur, Jammu and Noida. The original income declared was 'Nil' for the relevant Assessment Years. A search and seizure operation was conducted in respect of M/s. Flex Group of Companies on 23.02.2006, which led to the notice being issued under Section 153A of the Act to the Assessee. In the course of search assessment proceedings, the Assessing Officer added the sum of Rs.2.32 crores, which the Assessee claim towards trade credit. The CIT(Appeal) directed deletion of this amount after due verifications of the record by expressing his satisfaction that the credits claimed were genuine and in accord with the documents and the records produced by the Assessee. The CIT's findings are as follows :—

"10.3 I have carefully considered the facts of the case, submissions made by the appellant and remand report submitted by the A.O. It is observed that the appellant could not file the confirmations from the trade customers from whom the advance against sale is received in this year and in the absence of confirmations, the A.O. treated the amount of Rs. 2,32,13,640/- as income of the appellant under Section 68 of the Act. It is observed from the details filed before the A.O. that the ledger accounts of the concerned parties were filed before the A.O. as well as during the remand proceedings. The trade customers as appearing in the list are the regular customers making purchases from the

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appellant for the last many years. A perusal of the statement of accounts of the said parties for the current as well as subsequent year shows that the appellant had supplied the goods in the normal course of the business. The realization of proceeds thereof is an ongoing business activity. The only finding of the A.O. is that the appellant has been unable to produce the confirmations from few of the parties. It is observed from the submissions that the goods have been supplied under various invoices and the payments have been received by account payee cheques from time to time. In view of the totality of facts and circumstances, it is held that the parties from whom the appellant had received the advances are the regular customers of the appellant in the preceding as well as subsequent years. The trade advances received by the appellant have been adjusted against the sales made to them in the subsequent years. Few of the customers from whom substantial amount of advance is received are limited companies. It is not the case of the A.O. that the advance is outstanding in the books for the last many years. The advance is adjusted against the sale in the immediate next year. As such, the addition made by the A.O of Rs.2,32,13,640/- is deleted."

6. The Income Tax Appellate Tribunal (ITAT) affirmed the above finding. The Court is of the opinion that the question urged is purely factual. Since the findings recorded by the CIT(A) and the ITAT are concurrent, they reflected that the trade advances received by the applicant were adjusted against the sales made to them in the subsequent years. As such, no question of law arises."

10. The ratio laid down the following judicial pronouncements also supports the above view drawn by us:

- a) Pr. CIT, Durgapur v. Dutta Automobiles (P.) Ltd. as reported in [2016] 287 CTR 684 (Cal);*
- b) Ayushi Builders & Developers v. DCIT, Central Circle-2, Jodhpur as reported in [2014] 50 taxmann.com 396 (Jodhpur - Trib.);*

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c) ACIT v. Titan Engineers as reported in [2011] 15 taxmann.com 340 (ITAT-Bangalore);

11. On consideration of the above facts and discussion thereof in the light of the judicial precedents (supra), we are of the view that the additions of Rs. 85,00,000/- and Rs. 1,07,51,000/- as made by the Assessing Officer on account of advance received against sale of land by invoking the provisions of section 68 of the Income-Tax Act, 1961 were unjustifiable since the amount of advances received by the assessee were subsequently adjusted against the sales made by the assessee and the same was also verifiable from the registered sale deeds. Thus, the Assessing Officer was not justified in treating the amount of advance received by the assessee as his income as the Assessing Officer failed to consider the fact that the assessee had sold agricultural land belonging to him to Shri Rakesh Agrawal in lieu of consideration which included the amount of advance received from the said party. Accordingly, we are of the view that the additions of Rs. 85,00,000/- and Rs. 1,07,51,000/- made by the Assessing Officer were rightly deleted by the Ld CIT(A). We confirm the order of the ld. CIT(A) on this issue. Therefore, ground no.1 raised in the appeal of the Revenue is dismissed.

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12. Second ground raised by the Revenue is with regard to deletion of the additions of Rs. 1,59,30,060/- made u/s 68 of the I.T. Act in respect of unsecured loan from various persons. Facts, in brief, as culled out from the orders of the Revenue Authorities are that the Assessing Officer noted that the assessee has, during the year under consideration, received unsecured loans from the following persons:

S. No	Name of the party	PAN	Amount [in Rs.]
1	Anjana Bhachawat	ARQPB6739A	5,00,000
2	Manisha Morya	AITPM2857J	18,00,000
3	Deepak Jain	ABBPJ7325B	31,00,000
4	Shree Mangal Murtee Tradex Private Limited	AALCS7463B	18,60,060
5	Vijit Ramavat	ADUPR0676G	25,00,000
6	The IESM Academy	AAEFT4206F	32,00,000
7	Jain Infratech [Prop. Deepak Jain]	ABBPJ7325B	29,70,000
	Total		1,59,30,060

The Assessing Officer during the course of assessment proceedings observed that the assessee could furnish only the copy of ledger extract and confirmation of accounts of the parties from whom unsecured loans were taken during the year. The Assessing Officer accordingly noted that the assessee

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failed to prove the genuineness of the transaction, identity and creditworthiness of the depositor with corroborative evidences.

13. Being aggrieved, the assessee challenged the action of the Assessing Officer before the Id. CIT(A) who called for the remand report and after having gone through the facts/circumstances, material and submissions thereof deleted the addition. The Operative part/findings recorded by the Id. CIT(A) are reproduced hereunder:

“The appellant further claimed that as against fresh addition of Rs 79,00,000/-, an amount of Rs 1,59,30,060/- was added to the total income of the appellant which in any case was not justified. The amount as added by the assessing officer is dealt in detail hereunder:-

4.4.1] SMT ANJANA BHACHAWAT OF Rs 5,00,000/-

The appellant had received loan of Rs 5,00,000/- from Smt Anjana Bhachawat during the course of assessment proceeding. Copy of her ledger account in the books of the appellant was filed. The amount was added to the total income of the appellant by stating that PA No and address of the loan creditor was not provided. The appellant has provided copy of confirmation letter, PAN No and also bank account of the loan creditors. The documents as filed by the appellant were referred to the assessing officer for his comments but nothing new was submitted by him. The appellant has filed copy of confirmation letter, copy of ledger of the loan creditor in his books of account and has also filed copy of bank account of the loan creditor wherein the amount as advanced to the appellant was duly reflected. On perusal of the bank account of the loan creditor, it is also clear that no cash was deposited prior to issuance of the cheques to the appellant. The appellant therefore discharged the onus lying on him and no contrary finding was given by the

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assessing officer on these documents even in remand proceeding. I, therefore, direct the assessing officer to delete the addition of Rs 5,00,000/- as made to the total income of the appellant.

4.4.2] SMT MANISHA MAURYA OF Rs 18,00,000/-.

The appellant had received loan of Rs 18,00,000/- from Smt Manisha Maurya during the course of assessment proceeding. Copy of her ledger account in the books of the appellant was filed. The amount was added to the total income of the appellant by stating that PA No and address of the loan creditor was not provided. The appellant has provided copy of confirmation letter, PA No and his bank account wherein the amount as received was duly credited. The documents as filed by the appellant were referred to the assessing officer for his comments but nothing new was submitted by him. The appellant filed copy of confirmation letter, copy of ledger of the loan creditor in his books of account and also filed his bank account wherein the amount as received by him was reflected. The appellant by filing the confirmation and PA No discharged onus lying on him and no contrary finding was given by the assessing officer on these documents even in remand proceeding. I, therefore, direct the assessing officer to delete the addition of Rs 18,00,000/- as made to the total income of the appellant.

4.4.3] SHRI DEEPAK JAIN OF Rs 31,00,000/-

The appellant had received loan of Rs 31,00,000/- from Shri Deepak Jain. During the course of assessment proceeding, the confirmation letter was filed. The amount was added to the total income of the appellant by stating that only confirmation letter was filed but PAN No of the loan creditor was not provided. The appellant during the course of appellate proceeding filed copy of confirmation letter, PAN No, copy of account of the appellant in the book of loan creditor, copy of statement of affairs of Shri Deepak Jain wherein the amount as advanced to the appellant was properly reflected and copy of the Bank statement of loan creditor. The documents as filed by the appellant were forwarded to the assessing officer for his comments but nothing new was submitted by him. The appellant filed copy of confirmation letter, PAN No, copy of account of the appellant in his books, copy of statement of affairs and also filed copy of bank account of the loan creditor wherein the amount as advanced to the appellant was duly reflected. I find that the appellant by filing ample documents has discharged his onus lying on him and no contrary findings were given by the assessing officer on these documents even in remand proceeding. I, therefore, direct the assessing officer

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to delete the addition of Rs. 31,00,000/- as made to the total income of the appellant.

4.4.4] M/s SHREE MANGAL MURTI TRADEX P LIMITED OF Rs 18,60,060/-

The assessing officer during the course of assessment proceeding added an amount of Rs. 18,60,060/- to the total income of the appellant by invoking the provision of section 68 of the Act by stating that only copy of ledger was filed without PAN No and address. The appellant during the course of appellate proceeding filed copy of account of the appellant in the book of Shri Mangal Murti Tradex P Limited and contra account in the book of the appellant, Copy of Bank statement of M/s Shri Mangal Murti Tradex P Limited with Bank of Baroda, Copy of computation of Income and audited final account. The documents as filed by the appellant were forwarded to the assessing officer but in the remand report nothing new was submitted by him. On perusal of the copy of account of the appellant in the book of that company it is clearly evident that an amount of Rs 21,05,056/- was received at the beginning by the appellant but at the end an amount of Rs 56,86,839/- was due to the appellant. The amount as due from M/s Shri Mangal Murtee Tradex P Limited was shown as loans & advances in the book of the appellant. The assessing officer added two cheques as received from this company by invoking the provision of section 68 of the Act. The appellant from the ample documents as filed has duly discharged the onus lying on it. Hence, the assessing officer was not justified in adding an amount of Rs 18,60,060/- to the total income of the appellant. I, therefore, direct the assessing officer to delete the addition of Rs 18,60,060/- made to the total income of the appellant.

4.4.5] SHRI VIJAY RAMAWAT OF Rs 25,00,000/-

The appellant had received loan of Rs 25,00,000/- from Shri Vijay Ramawat, during the course of assessment proceeding and the confirmation letter was filed. The amount was added to the total income of the appellant by stating that only confirmation letter was filed. The appellant during the course of appellate proceeding filed copy of confirmation letter, PAN No, copy of account of the loan creditor in the book of the appellant and copy of bank statement of loan creditor wherein the amount as advanced to the appellant was properly reflected. The documents as filed by the appellant were forwarded to the assessing officer for his comments but nothing new was submitted by him. The appellant has filed copy of confirmation letter, PAN No, copy of account of the loan creditor in his books of

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account and copy of bank account of the loan creditor wherein the amount as advanced to the appellant was duly reflected. The appellant by filing ample documents has discharged the onus lying on him and no contrary finding was given by the assessing officer on these documents even in remand proceeding. I, therefore, direct the assessing officer to delete the addition of Rs 25,00,000/- as made to the total income of the appellant.

4.4.6] M/s THE IESM ACADEMY, INDORE OF Rs 32,00,000/-

The assessing officer during the course of assessment proceeding added an amount of Rs 32,00,000/- to the total income of the appellant by invoking the provision of section 68 of the Act by stating that only the copy of ledger was filed. The appellant during the course of appellate proceeding filed the copy of account of the appellant in the book of M/S The IESM Academy, Indore and contra account in the book of the appellant, copy of Computation of total income as filed with Acknowledgment, copy of final account and Copy of Bank statement of that party. The documents as filed by the appellant were forwarded to the assessing officer but in the remand report nothing new was submitted by him. On perusal of the copy of account of the appellant in the book of that firm, it is clearly evident that an amount of Rs 1,65,682/- was due to the appellant at the beginning and at the end an amount of Rs 2,18,833/- was payable by the appellant. The appellant let-out his premises to the said firm for use of office and also to run Hostel by it. The amount as due from the appellant was also reflected in its final account as receivable from the appellant. The two cheques as received by the appellant from the firm was added to the total income of the appellant which was neither proper nor correct to pick isolated one or two transactions from whole copy of account. The amount as issued in the name of the appellant was duly reflected in the bank account of that firm and source of the same is also clear from the Bank statement. The appellant from the ample documents as filed duly discharged onus lying on it. Hence, the assessing officer was not justified in adding an amount of Rs 32,00,000/- to the total income of the appellant. I, therefore, direct the assessing officer to delete the addition of Rs 32,00,000/- made to the total income of the appellant.

4.4.7] M/s JAIN INFRATECH , INDORE OF Rs 29,70,000/-

The assessing officer during the course of assessment proceeding added an amount of Rs 29,70,000/- to the total income of the appellant by invoking the provision of section 68 of the Act by stating that only copy of ledger was filed without PAN. The appellant during

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the course of appellate proceeding filed copy of account of the appellant in the book of M/s Jain Infratech and contra account of M/s Jain Infratech in the book of the appellant, copy of final account of M/s Jain Infratech and Copy of acknowledgment and computation of Income of Shri Deepak Jain Prop of M/s Jain Infratech. The documents as filed by the appellant were forwarded to the assessing officer but in the remand report nothing new was submitted by him. On perusal of the copy of account of the appellant in the book of that firm it was clearly evident that an amount of Rs 15,30,000/- was due to the appellant at the beginning and at the end an amount of Rs 4,40,000/- only was payable by the appellant. The cheques as received by the appellant towards his dues were also added to the income of the appellant which was neither legal nor proper. The amount as due from the appellant was also reflected in its final account as receivable from the appellant. The three cheques as received by the appellant from the firm were added to the total income of the appellant even when first two cheques were adjusted against the amount due from that firm. The assessing officer was therefore not justified in ignoring the opening balance and simply picking up some entries in isolation for making addition to the total income of the appellant. The amount as due from the appellant was duly reflected in the books of that firm, and the appellant had filed the ample documents so as to duly discharge the onus lying on it. Hence, the assessing officer was not justified in adding an amount of Rs 29,70,000/- to the total income of the appellant. I, therefore, direct the assessing officer to delete the addition of Rs 29,70,000/- as made to the total income of the appellant.

*4.4.8] The decisions as referred above are also applicable on the facts of the present case of the appellant. The appellant with the sufficient documents has properly discharged the onus lying on it. I, therefore, direct the assessing officer to delete the entire addition made U/s 68 of the Act to the tune of Rs 1,59,30,060/-. This ground of appeal is thus **allowed.**"*

14. Ld. CIT-DR relied upon the order of the Assessing Officer and submitted that since the assessee failed to furnish the sufficient documents in respect of the parties from whom unsecured loans were taken during the year, the Assessing Officer was right in

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observing that the assessee failed to prove the genuineness of the transaction, identity and creditworthiness of the depositor with corroborative evidences. On the other hand, Id. Counsel for the assessee, reiterating the submissions made before Revenue Authorities, relied upon the order the Id. CIT(A) and submitted that the Assessing Officer made addition not only in respect of the amount of unsecured loans received during the year but also in respect of the amount received back during the year against the amount initially advanced to the group concerns which is unjustified. The Assessing Officer failed to appreciate the fact that the addition comprised of the amount received from unsecured loan creditors, amount received as advance against land and amount received from parties to whom loans and advances were given. The assessee filed various documentary evidences before Id. CIT(A) in support of this explanation and the Id. CIT(A) called for a remand report from the Assessing Officer on these documents filed during the course of appellate proceedings and on receipt of remand report, the Id. CIT(A) found that the Assessing Officer failed to controvert the genuineness of the transaction and identity as well as creditworthiness of the these parties. Thus, the Id. CIT(A) was

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right in deleting the addition. Further, ld. Counsel for the assessee also relied upon certain judicial pronouncement/synopsis of arguments as detailed in the paper books filed before us and submitted that the view drawn in these judicial pronouncements supports the order of the ld. CIT(A).

15. We have heard rival contentions of both the parties and perused material available on record. Having gone through the material available on record, the detail of the amounts received from the parties in question is summarised as under:

S. No	Name of the party	Nature	Opening balance [in Rs.]	Amount received during the year [in Rs.]	Amount paid during the year [in Rs.]	Closing balance [in Rs.]	Amount of addition [in Rs.]
1	Anjana Bhachawat	Unsecured Loan	NIL	5,00,000	NIL	5,00,000	5,00,000
2	Manisha Morya	Unsecured Loan	NIL	18,00,000	NIL	18,00,000	18,00,000
3	Vijit Ramavat	Unsecured Loan	NIL	25,00,000	NIL	25,00,000	25,00,000
	Sub-Total		NIL	48,00,000	NIL	48,00,000	48,00,000
4	Deepak Jain	Advance against Land	NIL	31,00,000	NIL	31,00,000	31,00,000
	Sub-Total		NIL	31,00,000	NIL	31,00,000	31,00,000
5	Shree Mangal Murtee Tradex	Loans and Advances	21,05,056	18,60,060	96,51,955	(56,86,839)	18,60,060

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	Private Limited						
6	The IESM Academy	Loans and Advances	(1,65,684)	32,00,000	28,15,481	2,18,835	32,00,000
7	Jain Infratech [Prop. Deepak Jain]	Loans and Advances	(15,30,000)	29,70,000	10,00,000	4,40,000	29,70,000
	Sub-Total			80,30,060			80,30,060
	Grand Total			1,59,30,060			1,59,30,060

From the perusal of the above details, we find that the amount of Rs.1,59,30,060/- comprised of the amount received from unsecured loan creditors, amount received as advance against land and amounts received from parties to whom loans and advances were given. We further find that the assessee during the course of first appellate proceedings filed various documentary evidences including confirmation of accounts, ledger extracts, income-tax acknowledgment, bank statement and statement of affairs/ audited financial statements of these parties so as to justify the identity and creditworthiness of these parties and genuineness of the transactions as entered into with them and therefore, the ld. CIT(A) called for a remand report from the Assessing Officer on these documents filed during the course of appellate proceedings. Thereafter, the Assessing Officer filed remand report dated 05-04-

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2017 which is filed before us at page nos. 187-193 of the paper book. On perusal of the remand report, we find that the Assessing Officer did not comment on any of the documents filed by the assessee during the course of the appellate proceedings rather the Assessing Officer reiterated the findings of the then Assessing Officer. Thus, it is clear that the Assessing Officer failed to controvert the genuineness of the transaction and identity as well as creditworthiness of these parties. The following documents filed before the Id. CIT(A) and also available with the Assessing Officer were filed before us as under:

S. No	Description of documents	Page No. of Paper Book
1	Anjana Bhachawat [PAN: ARQPB6739A] – Addition of Rs. 5,00,000/-	
1.1	Copy of confirmation of accounts of the unsecured loan creditor	94
1.2	Copy of ledger account of the unsecured loan creditor in the books of the assessee	95
1.3	Copy of bank statement of the unsecured loan creditor duly highlighting the amount as advanced to the assessee	96
2	Manisha Morya [PAN: AITPM2857J] – Addition of Rs. 18,00,000/-	
2.1	Copy of confirmation of accounts of the unsecured loan creditor	97
2.2	Copy of ledger account of the unsecured loan creditor in the books of the assessee	98
2.3	Copy of bank statement of the assessee duly highlighting the amount as received from the unsecured loan creditor	99

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3	Deepak Jain [PAN: ABBPJ7325B] – Addition of Rs. 31,00,000/-	
3.1	Copy of confirmation of accounts of the unsecured loan creditor	100
3.2	Copy of ledger account of the assessee in the books of the unsecured loan creditor	101
3.3	Copy of acknowledgment of income-tax return along with computation of income of the unsecured loan creditor for the Assessment Year 2010-11	102-104
3.4	Copy of Statement of Affairs and Capital account of the unsecured loan creditor for the year ended 31 st March, 2010 wherein the amount receivable from the assessee is duly reflected	105
3.5	Copy of bank statement of the unsecured loan creditor duly highlighting the amount as advanced to the assessee	106-108
4	Shree Mangal Murtee Tradex Private Limited [PAN: AALCS7463B] – Addition of Rs. 18,60,060/-	
4.1	Copy of ledger account of the company in the books of the assessee	109
4.2	Copy of ledger account of the assessee in the books of the company	110
4.3	Copy of bank statement of the company duly highlighting the amount as advanced to the assessee	111
4.4	Copy of acknowledgment of income-tax return along with computation of income of the company for the Assessment Year 2010-11	112-113
4.5	Copy of audited financial statements of the company for the year ended 31 st March, 2010 wherein the amount payable to the assessee is duly reflected [Page No. 124]	114-129
5	Vijit Ramavat [PAN: ADUPR0676G] – Addition of Rs. 25,00,000/-	
5.1	Copy of confirmation of accounts of the unsecured loan creditor	130
5.2	Copy of ledger account of the unsecured loan creditor in the books of the assessee	131
5.3	Copy of bank statement of the unsecured loan creditor duly highlighting the amount as advanced to the assessee	132
6	The IESM Academy [PAN: AAFT4206F] – Addition of Rs. 32,00,000/-	
6.1	Copy of ledger account of the creditor in the books of the assessee	133-134
6.2	Copy of ledger account of the assessee in the books of the creditor	135-136
6.3	Copy of acknowledgment of income-tax return along with computation of	137-

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	income of the creditor for the Assessment Year 2010-11	139
6.4	Copy of final accounts of the creditor for the year ended 31 st March, 2010 wherein the amount receivable from the assessee is duly reflected [Page No. 142]	140-142
6.5	Copy of bank statement of the creditor duly highlighting the amount as advanced to the assessee	143-145
7	Jain Infratech [Prop. Deepak Jain] [PAN: ABBPJ7325B] – Addition of Rs. 29,70,000/-	
7.1	Copy of ledger account of the assessee in the books of the unsecured loan creditor	146
7.2	Copy of ledger account of the unsecured loan creditor in the books of the assessee	147
7.3	Copy of acknowledgment of income-tax return along with computation of income of the unsecured loan creditor for the Assessment Year 2010-11	148-150
7.4	Copy of Balance Sheet and Profit and Loss account of the unsecured loan creditor for the year ended 31 st March, 2010 wherein the amount receivable from the assessee is duly reflected	151
7.5	Copy of bank statement of the assessee duly highlighting the amount as received from the unsecured loan creditor	152

In view of the above documentary evidences, it is apparent that the assessee satisfactorily discharged the primary onus cast upon him under section 68 of the Income-Tax Act, 1961 to establish the identity and creditworthiness of these parties and genuineness of the transactions as entered into with them. Taking into consideration all these facts, the ld. CIT(A) examined each and every entry in respect of unsecured loan received from the creditors and reached to the conclusion that the addition made by the Assessing

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Officer is unjustified. In view of these facts, we are of the view that it is a settled position of law that no addition is called for under section 68 of the Income-Tax Act, 1961 on account of unsecured loans if the assessee establishes the identity and creditworthiness of the parties and genuineness of the transactions as entered into with them. Our view is supported by the following judicial pronouncements:

CIT, Meerut v. Avant Grade Carpets Ltd. as reported in [2015] 54 taxmann.com 216 (All);

CIT-1 v. Apex Therm Packaging (P.) Ltd. as reported in [2014] 42 taxmann.com 473 (Guj);

CIT v. Ranchhod Jivabhai Nakhava as reported in [2012] 21 taxmann.com 159 (Guj.)

*Ashok Pal Daga v. CIT as reported in [1996] 220 ITR 452 (MP);
CIT v. Metachem Industries as reported in [2000] 245 ITR 160 (MP)*

CIT v. Mark Hospitals (P.) Ltd. as reported in [2015] 373 ITR 115 (Madras)(Mag.)

16. In view of the above discussion in the light of the judicial pronouncements (supra), we are of the view that the addition of Rs. 1,59,30,060/- as made by the Assessing Officer on account of unsecured loans received during the year by invoking the provisions of section 68 of the Income-Tax Act, 1961 was not justified and was

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rightly deleted by the ld. CIT(A) as the assessee filed requisite documentary evidences so as to justify the identity and creditworthiness of these parties and genuineness of the transactions as entered into with them. Thus, we confirm the order of the ld. CIT(A) on this point. Accordingly, ground no.2 raised in the appeal of the Revenue is dismissed.

17. Ground nos. 3 & 4 raised by the Revenue are with regard to deletion of additions of Rs.10,18,580/- made on account of disallowance of interest out of property income and Rs.9,15,600/- made on account of disallowance of interest out of income from other source. Facts as culled out from the orders of Revenue Authorities are that the assessee took mortgage loan and home loan from ICICI Bank and State Bank of India which were used towards repayment of the loans taken earlier for purchase of the properties let-out by the assessee and also for the purpose of advancement of loan to other parties from whom interest income was earned. Thus, the assessee claimed deduction on account of interest paid against the income offered for tax under the head 'Income from House Property' and 'Income from Other Sources'. The assessee actually

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paid interest of Rs. 37,27,311/- during the year on the amount of loans / overdraft facility taken from banks and detail of the same is as summarised as under:

S. No	Particulars	Amount of interest [in Rs.]
1	Loan from ICICI Bank Ltd.	14,75,006
2	Loan from State Bank of India	16,33,438
3	Overdraft facility from Bank of Baroda	6,18,867
	Total	37,27,311

However, the assessee claimed deduction on account of interest of Rs. 35,67,618/- only against the income offered for tax under the head 'Income from House Property' and 'Income from Other Sources' as against the actual amount of interest of Rs. 37,27,311/- paid by him during the year under consideration and detail of the amount of deduction of Rs. 35,67,618/- claimed by the assessee and the amount disallowed by the Assessing Officer is summarized as under:

S. No	Particulars	Amount of interest claimed [in Rs.]	Amount of interest disallowed [in Rs.]
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1	Deduction of interest claimed under the head 'Income from House Property'	26,52,018	10,18,580
2	Deduction of interest claimed under the head 'Income from Other Sources'	9,15,600	9,15,600
	Total	35,67,618	19,34,180

The Assessing Officer observed that the assessee purchased and let-out the commercial properties situated at Dhenu Market prior to the date of sanction of loan from ICIC Bank Ltd. and State Bank of India. The Assessing Officer also observed that the assessee failed to furnish any evidence in respect of loan taken for purchase of other properties. Accordingly, the Assessing Officer disallowed an amount of Rs. 10,18,580/- out of interest claimed under the head 'Income from House Property' which is worked out as under:

S. No	Description of property	Amount of interest disallowed [in Rs.]
1	13-14, Dhenu Market	2,33,540
2	13-14, Dhenu Market, 2 nd Floor	2,33,540
3	12, Dhenu Market	1,01,500
4	103, Horizon, Saket Nagar	3,00,000
5	Self-occupied property at Old Palasia	1,50,000
	Total	10,18,580

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18. Being aggrieved, the assessee challenged the action of the Assessing Officer before the Id. CIT(A) having gone through the facts/circumstances, material and submissions thereof deleted the addition. The relevant portion of the order of the Id. CIT(A) are reproduced hereunder:

“5] GROUND No 6

5.1] The assessee in this ground of appeal has challenged the disallowance of Interest of Rs 10,18,580/- out of property Income.

5.2] The assessee had claimed deduction for interest of Rs 26,52,018/- under the head of Income from House property. The assessing officer has disallowed claim for Rs 10,18,580/- by stating that whether interest bearing funds were used by the assessee was not clear.

5.3] The detail of cost of assets and corresponding interest as claimed by the assessee is as under:-

<i>S.No</i>	<i>Description of the Property</i>	<i>Cost of the Property</i>	<i>Interest claimed</i>	<i>Interest Disallowed</i>
<i>1</i>	<i>13-14, Dhenu Market</i>	<i>3892340</i>	<i>467080</i>	<i>467080</i>
<i>2</i>	<i>12, Dhenu Market</i>	<i>845890</i>	<i>101500</i>	<i>101500</i>
<i>3</i>	<i>103, Horizon Saket, Indore</i>	<i>2505000</i>	<i>300000</i>	<i>300000</i>
<i>4</i>	<i>SOP</i>		<i>150000</i>	<i>150000</i>
			<i>1018580</i>	

5.4] The claim of interest of the assessee was legal and proper and the same was also accepted in the succeeding years by the assessing officer himself. Copy of assessment orders as passed for the Asst Years 2009-10 & 2012-13 are enclosed for your kind reference.

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5.5] That in view of the above, the deduction of Interest as claimed by the assessee was legal and proper, the addition so made by the assessing officer was therefore not right, the same now requires to be deleted in full.

19. Ld. CIT-DR relied upon the order of the Assessing Officer. On the other hand, ld. Counsel for the assessee, reiterating the submissions made before Revenue Authorities, relied upon the order the ld. CIT(A).

20. We have heard rival contentions of both the parties and perused material available on record. We find that the assessee categorically submitted that the amount of loan taken from ICICI Bank Ltd. and State Bank of India was utilized towards repayment of the loans taken earlier and utilized towards purchase of the properties which were let-out and rental income earned therefrom was duly offered for tax under the head 'Income from House Property' and the borrowed funds were invested by the assessee towards purchase of commercial as well as residential properties. The assessee paid interest @ 12% on the amount borrowed from banks and accordingly claimed deduction on account of interest @ 12% of the cost of properties which were either let-out or self-

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occupied. Detail of the deduction claimed on account of interest under the head 'Income from House Property' is summarized as under:

S. No	Description of property	Cost of property [in Rs.]	Amount of interest claimed @12% which was disallowed by the assessing officer [in Rs.]
1	13-14, Dhenu Market	38,92,340	4,67,080 (2,33,540 (+) 2,33,540)
2	12, Dhenu Market	8,45,890	1,01,500
3	103, Horizon, Saket Nagar	25,05,000	3,00,000
4	Self-occupied property at Old Palasia		1,50,000
	Total		10,18,580

We find that copy of repayment schedule/ loan statement in respect of the loan taken from ICICI Bank Ltd. and State Bank of India have been filed on Page No. 161-174 of the paper book so as to justify the amount of interest paid and claimed as deduction during the year under consideration. In view of these facts, it is clear that the disallowance of Rs. 10,18,580/- made by the Assessing Officer was unjustified as the borrowed funds were utilized towards purchase of

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the properties which were let-out and rental income earned therefrom was offered for tax under the head 'Income from House Property' and more so when such deduction on account of interest was allowed in the preceding as well as subsequent years. Therefore, we do not find any reason to interfere with the order of the Id. CIT(A) on this point. Accordingly, ground no.3 raised in the appeal of the Revenue is dismissed.

21. So far as ground no.4 with regard to addition of Rs.9,15,600/- on account of interest claimed under the head 'Income from Other Sources' is concerned, the Assessing Officer observed that the assessee failed to prove the direct nexus of funds borrowed and advanced to the parties from whom interest income was earned. Accordingly, the Assessing Officer disallowed an amount of Rs. 9,15,600/- on account of interest claimed under the head 'Income from Other Sources'. The details of claimed deduction on account of interest paid on the borrowed funds only to the extent of interest income earned from the following parties and offered for tax under the head 'Income from Other Sources' is as under:

S. No	Name of the party	Amount of interest
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		income [in Rs.]
1	Jitendra Soni	6,08,000
2	Lunawat Management and Educational Services Limited	35,810
3	Lunawat Publications and Media Pvt. Ltd.	2,71,830
	Total	9,15,640

22. Being aggrieved, the assessee challenged the action of the Assessing Officer before the ld. CIT(A) who having gone through the facts/circumstances, material and submissions thereof deleted the addition. The relevant portion of the order of the ld. CIT(A) are reproduced hereunder:

“6] GROUND No 7

6.1] The assessee in this ground of appeal has claimed deduction for Interest of Rs 9,15,640/-.

6.2] The assessee had paid interest of Rs 35,67,618/-, deduction for Rs 26,52,018/- was claimed from the Income from House property and Rs 9,15,600/- was claimed from Income from Other sources.

6.3] The assessee has utilised its interest bearing funds for advancing to different parties and interest income was earned from the same. The assessee had claimed deduction to the extent of Interest received. Hence, claim of deduction of Interest against the interest income of the assessee was legal and proper.

6.4] The assessing officer in the remand report has not discussed any new thing and simply referred the finding of the assessing officer as discussed in the original assessment order.

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6.5] The claim of deduction of interest has already been allowed by the assessing officer himself in the Assessment Years 2009-10 and also in the Asst Year 2012-13. Copy of both these assessment order are enclosed for your ready reference.

6.6] That in view of the above, the claim of deduction of interest from Income from other sources was legal and proper. The deduction for the same now requires to be allowed to the assessee.”

23. Ld. CIT-DR relied upon the order of the Assessing Officer. On the other hand, ld. Counsel for the assessee, reiterating the submissions made before Revenue Authorities, relied upon the order the ld. CIT(A).

24. We have heard rival contentions of both the parties and perused material available on record. We find that as observed by us above, the assessee utilized the borrowed funds towards repayment of the loans taken earlier for purchase of the properties let-out by the assessee and also for the purpose of advancement of loan to other parties from whom interest income was earned and during the course of assessment proceedings, the assessee filed copy of account of the parties to whom loans were advanced and from whom interest income was earned and offered for tax under the head 'Income from Other Sources'. Thus, the assessee categorically explained that the amount borrowed was advanced to

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these parties and therefore, interest paid on the borrowed funds was rightly claimed as deduction against the interest income earned and offered for tax under the head 'Income from Other Sources'. We find that the assessee claimed deduction on account of interest paid on the borrowed funds only to the extent of interest income earned from the parties and offered for tax under the head 'Income from Other Sources' and the deduction claimed on account of interest paid against the income offered for tax under the head 'Income from Other Sources' was duly examined and allowed in the preceding as well as subsequent years. A comparative chart showing the amount of deduction claimed on account of interest against the income offered for tax under the head 'Income from Other Sources' in the preceding as well as subsequent years' is summarized as under:

S. No	Particulars	Assessment Years		
		2009-10	2010-11 (Year in appeal)	2012-13
1	Type of assessment	Regular assessment – Section 143(3)	Regular assessment – Section 143(3)	Regular assessment – Section 143(3)
2	Deduction claimed	7,44,657	9,15,600	17,95,623

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3	Deduction allowed	7,44,657	NIL	16,95,623
4	Deduction disallowed	NIL	9,15,600	1,00,000

On consideration of above facts and discussion, it is clear that the disallowance of Rs. 9,15,600/- made by the Assessing Officer was unjustified as the borrowed funds were utilized towards advancement of loan to the parties from whom interest income was earned and was duly offered for tax under the head 'Income from Other Sources' and more so when such deduction on account of interest was allowed in the preceding as well as subsequent years. Therefore, we do not find any reason to interfere with the order of the Id. CIT(A) on this point. Accordingly, ground no.4 raised in the appeal of the Revenue is dismissed.

25. Ground no.5 of departmental appeal and ground no.2 of Cross-objection relate to taxability of agricultural income as income from other sources. Facts, in brief, as culled out from the orders of Revenue Authorities are that the Assessing Officer observed that the assessee failed to submit any supporting evidence in respect of agricultural income shown in the income-tax return. The Assessing

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Officer accordingly taxed the amount of agricultural income of Rs. 8,14,000/- shown by the assessee as income from other sources.

26. Being aggrieved, the assessee challenged the action of the Assessing Officer before the ld. CIT(A) who having gone through the facts/circumstances, material and submissions thereof accepted the income of Rs.5 lacs as agricultural income but the rest income was treated as income from other sources. The relevant portion of the order of the ld. CIT(A) are reproduced hereunder:

“ Ground No 8

The appellant in this ground of appeal has challenged the treatment of Agricultural income as given by the assessing officer as income from other sources. The appellant during the course of hearing and also during the appellate proceeding provided detail of Agricultural land given on Batai for Rs 8,14,000/- to various persons. The detail contain name of the person to whom lands were given on Batai, Name of village where agricultural land was situated, area of land and the amount actually received by the appellant. The appellant has consistently shown Agricultural income which was duly accepted by the assessing officer, year-wise detail of Agricultural Income as shown by the appellant and as accepted by the assessing officer is as under:-

S.No	Particulars	2009-10	2010-11	2011-12	2012-13
1	Agricultural income as shown	382000	814000	501400	9,00,000
2	Agricultural income as accepted	382000	NIL	501400	8,00,000

Considering the overall facts of the case and on perusal of the above table, it is clear that the appellant owned Agricultural land which was not disbelieved by the assessing officer himself. Hence, to meet the end of justice, I hereby direct the assessing officer to accept the Agricultural income to the tune of Rs. 5,00,000/-and the appellant

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*accordingly get relief in this ground. This ground of appeal is **partly allowed.***"

Being aggrieved, both the parties are before this Tribunal.

27. Ld. CIT-DR relied upon the order of the Assessing Officer. On the other hand, ld. Counsel for the assessee, reiterating the submissions made before Revenue Authorities, relied upon the order the ld. CIT(A) to the extent of acceptance of agricultural income at Rs.5 lacs. But, for non-acceptance of rest income i.e. Rs.3,14,000/-, ld. Counsel for the assessee submitted that during the course of assessment and first appellate proceedings, the assessee explained that agricultural land owned by him was given on Batai and agricultural income earned therefrom was duly shown in the income-tax return and the Assessing Officer himself did not disbelieve the agricultural lands owned by the assessee. Therefore, the ld. CIT(A) was not justified in treating the rest agricultural income as income from other sources.

28. We have heard rival contentions of both the parties and perused material available on record. We find that the assessee had submitted before the Revenue Authorities that that agricultural land owned by him was given on Batai and agricultural income

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earned therefrom was duly shown in the income-tax return and the Assessing Officer himself did not disbelieve the agricultural lands owned by the assessee. Further, the assessee has filed the detail of the persons to whom agricultural land was given on Batai and from whom agricultural income of Rs. 8,14,000/- was received during the year along with the details with respect to area of land given on Batai on Page No. 186 of the paper book. We find that the assessee owned agricultural lands costing Rs. 5,64,74,791/- as on 01-04-2009 and Rs. 5,81,65,931/- as on 31-03-2010 as is evident from the audited final accounts of the assessee filed on Page No. 9 of the paper book. We also find that the amount of agricultural income was duly shown by the assessee in his income-tax return every year and the agricultural income shown by the assessee had also been duly examined and accepted in the preceding as well as subsequent years as is evident from the following comparative chart:

S. No	Particulars	Assessment Years			
		2009-10	2010-11 (Year in appeal)	2011-12	2012-13
1	Type of assessment	Regular assessment – Section	Regular assessment – Section	Summary assessment – Section	Regular assessment – Section

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		143(3)	143(3)	143(1)	143(3)
2	Agricultural income shown	3,82,000	8,14,000	5,017,400	9,00,000
3	Agricultural income accepted	3,82,000	NIL	5,01,400	8,00,000
4	Agricultural income not accepted	NIL	8,14,000	NIL	1,00,000

29. On consideration of above facts, it is clear that non-acceptance of agricultural income of Rs. 8,14,000/- shown by the assessee in his income-tax return was unjustified more so when agricultural income was shown by the assessee on a year-to-year basis and such agricultural income had also duly been examined and accepted in the preceding as well as subsequent years. Thus, we direct the Assessing Officer to accept the agricultural income in full i.e. Rs. 8,14,000/-. Accordingly, ground no.5 raised in the appeal of the Revenue is dismissed whereas ground no.2 raised in the assessee's Cross-objection is allowed.

30. Ground No.6 raised in the appeal of the Revenue is with regard to deletion of addition of Rs.18,99,796/- made by the Assessing Officer on account of disallowance u/s 40(a)(ia) of the I.T. Act for non-deduction of TDS on the amount of late payment charges as charged by M/s Arihant Capital Markets Limited. Facts,

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in brief, as culled out from the orders of the Revenue Authorities are that the Assessing Officer observed that the assessee claimed late payment charges of Rs. 18,99,796/- during the year under consideration out of which an amount of Rs. 18,24,447/- was paid to Arihant Capital Market Ltd. The Assessing Officer further observed that the assessee did not deduct TDS on the amount of late payment charges. Accordingly, the Assessing Officer disallowed an amount of Rs. 18,99,796/- under section 40(a)(ia) of the Income-Tax Act, 1961.

31. Being aggrieved, the assessee challenged the action of the Assessing Officer before the Id. CIT(A) who having gone through the facts/circumstances, material and submissions thereof deleted the addition. The relevant portion of the order of the Id. CIT(A) are reproduced hereunder:

“ Ground No 9

The appellant in this ground of appeal has challenged the disallowance of Rs 18,99,796/- made on account of late payment charges as charged by M/s Arihant Capital Markets Limited by invoking the provision of section 40[a][ia] of the Act. It was claimed by the appellant that the amount as debited in the account of the appellant was reversed in the previous year relevant to the Asst Year 2011-12. The appellant also filed a certificate from chartered accountants of M/s Arihant Capital Markets Limited duly certifying that an amount of Rs. 18,99,796/- as charged from the appellant was duly offered for tax by them in their income tax return. The said issue stands now settled in favour of the appellant, since the

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*recipient has offered the income in its return of total income and therefore the appellant is not to be treated as appellant in default. Similar addition as made in the case of the appellant in the Asst Year 2009-10 has already been deleted by this office vide order Appeal No IT-193/ 15-16 / 185 dt 30-11-2016. Considering the decisions as relied upon by the appellant and present position of law in connection with the provision of section 40[a][ia] of the Act; I hereby direct the assessing officer to delete the addition of Rs 18,99,796/- made to the total income of the appellant U/s 40[a][ia] of the Act. This ground of appeal is accordingly **allowed.**”*

Being aggrieved, the Revenue is in appeal before this Tribunal.

32. Ld. CIT-DR relied upon the order of the Assessing Officer. On the other hand, ld. Counsel for the assessee, reiterating the submissions made before Revenue Authorities, relied upon the order of the ld. CIT(A).

33. We have heard rival contentions of both the parties and perused material available on record. We find that the assessee categorically submitted during the course of assessment proceedings that the broker, Arihant Capital Market Ltd. debited the amount of late payment charges on the amount which remained outstanding on account of F & O Trading and purchase of shares and securities. The assessee had also submitted that the said entries were unilaterally passed by the broker and as such, there was no occasion for the assessee to deduct TDS on the amount of

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late payment charges. Further, we find that the amount of late payment charges unilaterally debited by the broker were reversed by the broker itself in the subsequent year i.e. during the previous year 2010-11 relevant to the Assessment Year 2011-12 and were accordingly offered for tax by the assessee in that year. Thus, we are of the view that there was no justification for making any disallowance under section 40(a)(ia) of the Income-Tax Act, 1961 on account of non-deduction of TDS on the amount of late payment charges. We find that the assessee furnished copy of certificate from the Chartered Accountant of the broker, Arihant Capital Market Ltd. during the course of first appellate proceedings wherein it was duly certified that the amount of late payment charges charged from the assessee were included in the total income of the broker and requisite amount of taxes due thereon were also paid and the ld. CIT(A) called for a remand report from the Assessing Officer in respect of this certificate filed during the course of appellate proceedings. The Assessing Officer filed remand report dated 05-04-2017 which is filed on Page No. 187-193 of the paper book. On perusal of the remand report, we find that the Assessing Officer did not comment on the certificate filed by the assessee during the

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course of the appellate proceedings rather the Assessing Officer simply reiterated the findings of the then Assessing Officer. Further, the assessee has also filed copy of ledger accounts of the assessee in the books of accounts of the broker, Arihant Capital Markets Ltd. for the Financial Year 2009-10 and Financial Year 2010-11 at Page No. 179-182 of the paper book and copy of certificate obtained from the Chartered Accountant of the broker, Arihant Capital Markets Ltd. at Page No. 183 of the paper book. Further, we are of the view that the law is no more res-integra that second proviso to section 40(a)(ia) of the Income-Tax Act, 1961 inserted by the Finance Act, 2012 with effect from 1st April, 2013 is declaratory and curative in nature and it shall have retrospective effect from 01-04-2005. This view is supported by the following judicial pronouncements:

CIT-1 v. Ansal Land Mark Township (P.) Ltd. – [2015] 377 ITR 635 (Delhi)
Rajeev Kumar Agarwal v. ACIT, Range-3, Mathura - [2014] 45 taxmann.com 555 (Agra - Trib.)

DCIT, Circle-2(1)(1), Ahmedabad v. Esaote India (NS) Ltd. - [2018] 96 taxmann.com 624 (Ahmedabad - Trib.)

DCIT, Circle 1, Udupi v. Ananda Marakala - [2014] 48 taxmann.com 402 (Bangalore - Trib.)

ITO v. Dr. Jaideep Kumar Sharma – [2014] 34 ITR(T) 565 (Delhi - Trib.)

ACIT, Central Circle-24(1), New Delhi v. Satish Sehrawat – [2018] 92 taxmann.com 231 (Delhi – Trib.)

ACCME (Urvashi Pumps) Eng. (P.) Ltd. v. JCIT (OSD) Circle-4 Jaipur - [2018] 90 taxmann.com 189 (Jaipur - Trib.)

Dilip Kumar Roy v. ITO, Ward-1, Nadia - [2016] 68 taxmann.com 129 (Kolkata - Trib.)

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New Alignment v. ITO, Ward-51(4), Kolkata - [2016] 69 taxmann.com 122 (Kolkata - Trib.)

Punjab Goods Transport (P.) Ltd. v. ITO, Ward-12(3), Kolkata - [2017] 77 taxmann.com 37 (Kolkata - Trib.)

Brijgopal Madhusudan Bhattad v. ITO, Khamgaon - [2015] 61 taxmann.com 266 (Nagpur - Trib.)

34. On consideration of above facts and discussion in the light of the above judicial pronouncements, we are of the view that second proviso to section 40(a)(ia) of the Act shall have retrospective effect from 01-04-2005 and in the present case, the relevant assessment year is the Assessment Year 2010-11 and the benefit of the second proviso to section 40(a)(ia) of the Act shall be available to the assessee as the assessee had obtained and furnished the certificate of the CA of the broker wherein it has been clearly certified that the amount on which TDS not deducted by the assessee was included in the total income of the payee and requisite amounts of taxes due were also paid on it. Therefore, we do not find any reason to interfere with the order of the ld. CIT(A) on this point. Accordingly, ground no.6 raised in the appeal of the Revenue is dismissed.

35. Now, the only ground left is ground no.1 raised in the assessee's Cross-objection which is regarding the confirmation of

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addition of Rs.2 lacs made by the Assessing Officer u/s 68 of the I.T. Act. Facts, in brief, as culled out from the orders of the Revenue Authorities are that the Assessing Officer made the addition of Rs. 2,00,000/- on account of amount received back against the amount advanced earlier to Shri Tarun Dassani as the Assessing Officer observed that the assessee failed to prove the identity and creditworthiness of the party and genuineness of the transaction as entered into with him.

32. Being aggrieved, the assessee challenged the action of the Assessing Officer before the ld. CIT(A) who having gone through the facts/circumstances, material and submissions confirmed the addition. The relevant portion of the order of the ld. CIT(A) are reproduced hereunder:

“] Ground No 3

The appellant in this ground of appeal has challenged the addition of Rs 2,00,000/- made to the total income of the appellant. The appellant had advanced an amount of Rs 2,00,000/- to Shri Tarun Dasani and the said amount was received back from him. On perusal of the copy of account as filed by the appellant during the course of hearing which was also provided to the AO for his comments. On perusal of the said account, it appears that an amount of Rs 2,00,000/- was first advanced by the appellant which

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was refunded on very next date. The appellant during the course of assessment proceeding also brought these facts to the notice of the assessing officer. Considering the overall facts of the case and submission as made by the appellant during the course of assessment proceeding and also in the appellate proceeding, I find that the amount as received by the appellant was nothing but the amount as advanced by him received back and therefore there was no justification for adding the same by invoking the provision of section 68 of the Act but the fact of the matter remains that the appellant has not provided complete postal addresses and even Pan No of this party neither during the course of assessment proceeding nor the appellate proceedings. I therefore have no hesitation in confirming the addition of Rs 2,00,000/- as made by the assessing officer. This ground of appeal is dismissed.”

Being aggrieved, the assessee is in Cross-objection before this Tribunal.

33. Id. Counsel for the assessee, reiterating the submissions made before Revenue Authorities, submitted that assessee had initially advanced an amount of Rs. 2,00,000/- to Shri Tarun Dassani which was returned back by him on the very next day and as such, there was no justification for taxing the amount of Rs. 2,00,000/- under section 68 of the Income-Tax Act, 1961. On the other hand, Id. CIT-DR relied upon the orders of the Revenue Authorities.

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34. We have heard rival contentions of both the parties and perused material available on record. We find that the assessee, during the course of assessment and first appellate proceedings, submitted that he had initially advanced an amount of Rs. 2,00,000/- to Shri Tarun Dassani which was returned back by him on the very next day and both these entries were inadvertently posted in two different accounts as is evident from perusal of copy of ledger account of Shri Tarun Dassani in the books of accounts of the assessee filed before us at Page No. 184-185 of the paper book. Thus, we are of the view that the Assessing Officer and Id. CIT(A) failed to appreciate the contentions of the assessee and unjustifiably added the amount of Rs. 2,00,000/- to the total income of the assessee. Since, the assessee did not receive any loan from Shri Tarun Dassani rather the amount of Rs. 2,00,000/- was initially advanced to Shri Tarun Dassani which was returned back by him on the very next day itself, there was no reason for adding the amount of Rs. 2,00,000/- to the total income of the assessee for want of supporting documentary evidences. We find that the Id. CIT(A) accepted the fact that the amount received by the assessee

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was nothing but the amount initially advanced by him, therefore, there was no reason for adding the same by invoking the provisions of section 68 of the Income-Tax Act, 1961. But, the ld. CIT(A) even after understanding the true nature of the transaction sustained the addition merely for the reason that complete postal address and PAN of the party was not provided, which, in our humble opinion, is not justified because non-furnishing of address and PAN of the party to whom amount is advanced cannot by any stretch of imagination of lead to an inference that such amount constitutes income of the assessee thereby warranting addition to the total income of the assessee. In our view, the ld. CIT(A) should have required the assessee to furnish justification with respect to source of funds advanced to Shri Tarun Dassani. However, no such justification was sought from the assessee and addition of Rs. 2,00,000/- was sustained in unjust manner. Thus, we delete the addition of Rs.2 lacs. Accordingly, ground no.1 raised in the assessee's Cross-objection is allowed.

35. In result, departmental appeal i.e. ITA No.396/Ind/2018 is

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dismissed whereas assessee's Cross-objection No.32/Ind/2018 is allowed.

Order was pronounced as per Rule 34 of ITAT Rules, 1963 on 13.09.2021.

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 13.09.2021

!vyas!

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

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