

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT)
"SMC" BENCH, MUMBAI**

BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER

ITA No. 6892/MUM/2018 (A.Y: 2012-13)

Shri Mahendra H. Shah C/o. The Presscopper Industries 175, Kika Street Mumbai – 400004 PAN: AAFPS0929R	v.	Income Tax Officer – 4(1)(3) 6 th Floor, Aayakar Bhavan M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by	:	Vimal Punmiya
Department by	:	Smita Verma
Date of hearing	:	29.07.2021
Date of pronouncement	:	27.09.2021

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals)–2, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 31.07.2018 for the A.Y. 2012-13 in confirming the addition made u/s. 68 of the Act.

2. Briefly stated the facts are that, assessee filed return of income on 19.09.2013 declaring income of ₹.5,30,000/-, return was processed u/s.143(1) of the Act and later the assessment was taken up for scrutiny by issue of notice u/s. 143(2) of the Act pursuant to search and survey carried out on 01.10.2013 in the case of Shri Pravin Kumar Jain Group (hereinafter referred to as "PKJ") by the DDIT (Investigation), Mumbai and information collected thereon and the statements recorded u/s.132(4) of the Act. The Assessing Officer noticed that assessee's name appeared in the list of beneficiaries who have taken loans from the concerns operated by the PKJ. In the assessment year under consideration the assessee has taken unsecured loan of ₹.25,00,000/- from M/s. Josh Trading Private Limited and as this entity was controlled by PKJ the assessee was required to prove the genuineness of the transactions, as according to the Assessing Officer it was providing only accommodation entries. Assessee filed copy of confirmations received from M/s. Josh Trading Private Limited along with ledger account, bank statements and copy of return of income filed by M/s. Josh Trading Private Limited, copy of PAN Card and complete set of balance sheet, Profit and Loss Account along with annexures Auditors Report and Directors Report of M/s. Josh Trading Private Limited to prove the identity, genuineness

and creditworthiness of the lender. However, not convinced with the evidences furnished by the assessee and the explanations given thereon, Assessing Officer relying on the statement of PKJ deposed u/s.133(4) of the Act came to the conclusion that the loan transaction is nothing but the accommodation entry and accordingly Assessing Officer treated the unsecured loans of ₹.25,00,000/- received from M/s. Josh Trading Private Limited as cash credit in the books of the assessee. On appeal the Ld.CIT(A) sustained the addition holding that appellant has not proved identity, creditworthiness and also the genuineness of the transactions.

3. Before us, Ld. Counsel for the assessee strongly placed reliance on the written submissions furnished. The written submissions furnished by the Ld. Counsel for the assessee are as under: -

"As regards the Identity of the party:

a. The Appellant has filed the following information / documents during the assessment proceedings to the AO vide it's various letters:

- i. Name, Address, PAN etc. of the party*
- ii. Copy of duly signed Loan Confirmation;*
- iii. Copy of Bank statements of both Lender as well as Lendee, highlighting the said transactions;*
- iv. Copy of ITR, P & L, Balance Sheet with schedules of the lender was also submitted by the party.*
- v. The Income-tax Jurisdiction details & financials of the party proved the identity as well as financial capacity i.e.*

creditworthiness of the party. Hence, the aforesaid documents have proved the identity of the party.

II. As regards the Genuineness of the transactions:

a. The Appellant has received the unsecured loan through proper banking channels as the funds were received through account payee cheques.

b. The Appellant submit that the bank statements and other documents submitted before the AO proved the genuineness of the transactions.

c. Moreover, it is pertinent to mention that party from whom short term money was borrowed by the appellant company had the financial strength & capacity to lend and duly submitted relevant financials & bank statements to confirm genuineness of the transactions.

d. Moreover the status of the company is showing as active on Ministry of Corporate Affairs (Page No 43)

III. As regards Creditworthiness of the party:

With regard to the capacity and credit worthiness of the Party, the financials for the year ended 31-03-2012 were already placed on record. The detail of the financial strength of the party based on its net worth, as depicted from the Financials of the Party, is reproduced here-under:

MAHENDRA HARICHAND SHAH			
Assessment Year 2012-13			
Determination of Creditworthiness of Lender / Party			
Name of the Lender Company / Party	Total Turnover of the Lender Company as on 31-03-2012	Total Turnover of the Lender Company as on 31-03-2011	Aggregate of Loan money paid by the Lender in Rs.
	(1)	(2)	(3)
Josh Trading Pvt Ltd	114,67,08,904	76,92,49,460	25,00,000

In view of the aforesaid details, the Appellant submits that the Lender company had adequate financial strength to lend to the Appellant. Hence, the creditworthiness of the Lender company cannot be doubtful.

Further, the Appellant submit that the Income-tax Jurisdiction details and financials of the Lender company proved the identity as well as financial capacity i.e. creditworthiness of the Lender company.

Also creditworthiness or financial strength of the Lender company is proved by producing it's bank statement duly showing that it had sufficient balance in its accounts to lend.

The Ld.CIT (A) treated unsecured loan receipts from M/s Josh Trading Limited as unexplained cash credit under section 68 of the Act on the alleged ground that the appellant hasw not brought on record to prove the identity, genuineness of the transactions and creditworthiness of the lender without appreciating that the Appellant/Lender have submitted the copies of ITR, balance sheet, bank statement, loan confirmation, etc., clearly brought out the nature of the transactions, amount involved and scope of the transaction.

iii) The Appellant had also repaid the entire amount back to the Lender company during the subsequent assessment year of which the details are on record. Copy of Ledger account along with bank statement till the date of entire loan amount repayment is enclosed as per paper book No

iv) Moreover, the Lender company from whom money was borrowed by the appellant company had the financial strength & capacity to lend and the relevant financials & bank statement confirm it's identity, genuineness of the transactions and creditworthiness as lender are on record.

v) The Appellant submit that the Appellant has discharged its onus of proving the identity of the party, genuineness of the transactions and creditworthiness of the lender.

Therefore,the Appellant humbly submits that the addition made under section 68 of the Act be deleted.

vi) On the perusal of the above submission, the appellant beg to submit that it has adequately demonstrated with documentary evidences, the presence of all three stipulated elements of :

- Identity of the Lender*
- Capacity of the Lender*
- Genuineness of the transactions in question.*

Therefore, it is submitted that to consider the unsecured loan receipts from M/s Josh Trading Private Limited as Unexplained Credit u/s 68 of IT Act is misconceived and illegal.

In view of the above facts and contention, we would like to place reliance on the following judicial precedents wherein the addition under section 68 of the Act on account of share application money

was duly deleted by the Hon'ble Supreme Court, Hon'ble High Court and Hon'ble ITAT.

<u>SR NO</u>	<u>CITATION</u>	<u>OBSERVATIONS</u>
1.	<i>Principal Commissioner of Income Tax-4 y.Hi-Tech Residency (P.) Ltd.[2018] 96 taxmann.com 403 (SC)</i>	<i>Section 68 addition deleted where assessee company had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders ; SLP dismissed</i>
2.	<i>Jalaram Enterprises (P.) Ltd. v. Income-tax Officer [2019] 104 taxmann.com 134 (Bombay)</i>	<i>Section 68, read with sections 133 and 147, of the Income-tax Act, 1961 - Cash credit (Accommodation entries) - Assessment year 2013-14 - Assessing Officer received information from DDIT (Investigation) unit that assessee-company was beneficiary of certain bogus accommodation entries provided by two bogus companies on which search was conducted - In reply to notice under section 133(6), assessee submitted that said sums were received in earlier assessment year 2010-11 and were already verified and assessed by revenue authorities - However,, in current year, Assessing Officer issued reassessment notice in respect of these sums with view that income chargeable to tax had escaped assessment - Whether initiation of reassessment was unjustified - Held, yes [Paras 5 and 6] [In favour of assessee]</i>
3.	<i>Nu Power Renewables (P.) Ltd. v. Deputy Commissioner of Income-tax, Circle</i>	<i>Section 68, read with section 147, of the Income-tax Act, 1961 - Cash credits (Shell entity) - Assessment year 2010-2011 - Whether</i>

<u>SR NO</u>	<u>CITATION</u>	<u>OBSERVATIONS</u>
	<i>1(2) (a) [2018] 94 taxmann.com 29 (Bombay)</i>	<i>information received has to be examined in context of facts on record before coming to a view that income chargeable to tax has escaped assessment on account of failure to disclose fully and truly all relevant facts and in absence of above, it amounts to outsourcing of reasons to believe - Held, yes - Whether where there had been no independent application of mind on part of Assessing Officer to information received from Deputy Director of Investigation, that assessee had issued zero coupon rate debentures to a company which prima facie was a shell entity and creditworthiness of lender and genuineness as well as nature of transaction was not explained, reopening of assessment on basis of such information was without jurisdiction - Held, yes [Paras 6 and 7] [In favour of assessee]</i>
4.	<i>Hubtown Ltd. v. Deputy Commissioner of Income-tax, Central Circle- 5(1)[2016] 74 taxmann.com 18 (Bombay)</i>	<i>Where confirmations from entities which took unsecured loans from assessee were alleged to be not signed by director/partner/proprietor of these entities, but in view of fact that said confirmations were produced during original assessment, reopening of assessment after 4 years would not be permissible</i>
5.	<i>Commissioner of Income-tax-15 v. Haresh D. Mehta[2017] 86 taxmann.com 22 (Bombay)</i>	<i>Section 68 of the Income-tax Act, 1961 - Cash credits (Burden of proof) - Assessment year 2007-08 - During relevant year, assessee obtained unsecured loans from various parties -Assessing Officer took a view that assessee had not</i>

<u>SR NO</u>	<u>CITATION</u>	<u>OBSERVATIONS</u>
		<p><i>proved capacity or genuineness of parties to undertake such huge loan transactions - He thus added said amount to assessee's income under section 68 - Tribunal found that assessee had produced details like copy of PAN card, copy of return of income, balance sheet and copy of bank accounts before Assessing Officer - Tribunal thus opined that once initial burden was discharged, Assessing Officer had then to find out that despite production of record in relation to those parties, why version of assessee could not be accepted – in view of failure of Assessing Officer to carried out siad exercise, Tribunal set aside addition made by him – Whether since finding recorded by Tribunal was based on material available on record, same did not require any interference - Held, yes [Paras 15 and 16] [In favour of assessed</i></p>
6.	<p><i>Gujarat Television (P.) Ltd. v. Assistant Commissioner of Income-tax, Circle 2(1)(2)[2018] 94 taxmann.com 400 (Gujarat)</i></p>	<p><i>Where Assessing Officer reopened assessment on ground that unsecured loans given to assessee company were subsequently converted into share capital with premium and, thus, provisions of section 68 were attracted, in view of fact that advances were squared up on same date and nothing remained outstanding at end of day, much less at end of financial year, impugned reassessment proceedings deserved to be quashed</i></p>
7.	<p><i>Income tax Officer 20(2)(5), vs. Smt.</i></p>	<p><i>Where assessee had taken loan from several companies and</i></p>

<u>SR NO</u>	<u>CITATION</u>	<u>OBSERVATIONS</u>
	<i>PratimaAshar [2019] 107 taxmann.com 135 (Mumbai - Trib.)</i>	<i>placed on record substantial supporting material to prove that loan transactions were genuine such as confirmations of lender companies, copies of financial statements of lender companies, copies of bank statements evidencing advancing of loan by lender companies to assessee through proper banking channels, etc., additions under section 68 on account of bogus loan was unjustified</i>
8.	<i>Income-tax Officer, Ward 15(2)(1), v. Iraisaa Hotels (P.) Ltd[2018] 97 taxmann.com 623 (Mumbai -Trib.)</i>	<i>Where assessee had furnished several documentary evidences to prove genuineness of unsecured loans and share capital investment and creditworthiness of parties, no additions under section 68 was to be made in respect of such loan and share capital relying upon order of SEBI that some of shareholders of assessee were part of several entities who were linked to money laundering</i>
9.	<i>Elder IT Solutions (P.) Ltd. vs. Commissioner of Income-tax[2015] 59 taxmann.com 232 (Mumbai - Trib.)</i>	<i>Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credit (Unsecured loan) - Assessment year 2009-10 -On verification of assessment records, Commissioner doubted genuineness of transaction of preferential shares issued at premium as well as unsecured loans -Commissioner held that Assessing Officer had not properly conducted enquiry and remanded matter back to file of Assessing Officer - It was found that Assessing Officer had called for all relevant details including financial</i>

<u>SR NO</u>	<u>CITATION</u>	<u>OBSERVATIONS</u>
		<i>details and parties for examination of genuineness of transaction and it was not a case of lack of enquiry or non-application of mind on part of Assessing Officer - Whether since Commissioner did not give conclusive finding that view taken by Assessing Officer was contrary to law, invocation of section 263 was not justified – Held , yes [Para 19] [in favour of assessee]</i>
10.	<i>The ACIT 25(2) Vs. M/s. H.K. Pujara Builders (ITAT Mumbai) ITA.No. 3127/Mum/2017</i>	<i>Since the receipt of loans, repayment and payment of interest thereon had been made through regular banking channels from account payee cheques and no deficiencies whatsoever were found in the documentary evidences submitted by assessee, therefore, no addition of loan amount could be made under section 68 merely relying on the statement of an alleged entry operator where identity, creditworthiness of the lender and genuineness of transaction was proved.</i>

8. *It is a settled law that it is mandatory for the Ld. AO to confront the assessee with any material collected by the Assessing Officer at the back of the assessee, and in case of information of third party recorded at the back of the assessee, opportunity of cross examination has to be offered to the assessee, failing which the said material/statement etc. will be rendered unreliable and additions made on the basis of such material/statement etc. shall be rendered illegal. Reference in this regard can be made from the decisions made in the following judiciary ruling: -*

- *R.B. ShreeramDurga Prasad 176 ITR 169 (SC),*
- *KishanChandChellaram Vs. C.I.T. (1980) 125 ITR 713 (SC)*
- *Jindal Vegetable (order of Hon'ble Delhi High Court in ITA no. 428 of 2007, 174 Taxmann 440 (Raj.)*

- *LaxmanBhai Patel (order of Hon'ble Gujarat High Court dated 22.07.2008 in ITR no. 41/1997).*

Further, following legal position/ judicial rulings on the subject under consideration must be considered before arriving at any conclusion:-

a. It is also settled law that where the assessee provides identity and details pertaining to the lenders/ creditors/ investor of share application money and is unable to produce them and requests the AO to issue summons u/s 131 for their attendance, it is the duty of the AO to issue such summons, failing which the addition would get deleted. Reference in this regard can be made from the decisions made in the following judiciary ruling:-

- *N.P. Garodia (order dated 13.01.2009 of Hon'ble P fit H High Court in ITA no. 808 of 2008)*
- *Brij Pal Sharma (order dated 17.02.2009 in ITA no. 685 of 2008 of Hon'ble P & H High Court)*

b. Similarly as held in the case of CIT v. Metachem Industries (2000) 245 ITR 160 (MP) where a credit is shown to have come from a person other than the assessee, there is no further responsibility of the assessee to show that it has come from accounted source of the lender, as long as the fact that the had made the advance and was capable of making the advance are established.

c. It was held by the Hon'ble Madras High Court in Hastimal (S) v. CIT (1963) 49 ITR 273 that after a lapse of decade, the assessee should not be placed upon the rack and called upon to explain not merely the origin and source of a capital contribution, but also the origin of origin and source of the source.

d. Recently in a similar/ identical case that of the Assessee, The honorable ITAT Delhi in the case of ITO, Ward 15 (2) vs. M/s. Rakam Money Matters P. Ltd. has held that "AO has to bring on record any valid material or evidence to discredit the evidences and the explanation given by the assessee company and cannot rely only on statement of third parties recorded by the investigation wing.

e. In another landmark judgment of Hon'ble Gujarat High Court in the case of Varshahen S Patel vs. ITO,[2015] 64 taxmann.com 179 (Gujarat) has also held in notice u/s 148 that the issue of notice u/s 148 pursuant to direction by DG Investigation is bad in law as the satisfaction has to be on your own and not a borrowed satisfaction. Head note is as under:

f. As held in the case of R.B. Mittal v. CIT 246 ITR 283 (AP) in an enquiry u/s 68, the rule of audi alteram parterm has to be

observed and the Assessee must be given a fair and reasonable hearing to discharge the burden cast on him u/s 68 of the Act. Further, it is settled law that in the matter of cash credit, the initial onus lies on the Assessee to prove the genuineness of the transaction along with the identity of the lender/investor and his creditworthiness. Having done so, the Respondent in the instant case has discharged the onus cast upon it. Beyond this, for the charge of unexplained cash credit to stick, the onus lies on the AO to disprove the claim of the Assessee by establishing that the evidence filed by the assessee was false and by bringing new material on record and failure to do so would vitiate the addition made on this count.

g. It was also held in the case of CIT v. Bedi & Co. P. Ltd. (1998) 230 ITR 580 (SC) that where prima-facie the inference on facts is that the assessee's explanation is probable, the onus will shift to the revenue to disprove it and the assessee's explanation in such case cannot be rejected on mere surmises. Other similar judiciary rulings are as under: -

- *Khandelwal Constructions v. CIT (1997) 227 ITR 900 (Gau.)*
- *CIT v. Orissa corporation Pvt. Ltd., 158 ITR 78 (SC)*
- *CIT v. Rohini Builders 256 ITR 360 (Guj.).*
- *Jurisdictional Hon'ble ITAT, Mumbai for an identical case i.e. Arceli Realty Limited Vs. The Income Tax Officer 15(1) (1), Mumbai pronounced on 21.04.2017 ITA-6492/Mum/2016-17, the summary of the case is outlined as under:-*

".....A.O. merely relied upon the information provided by the office of DGIT (Investigation), Mumbai and did not made any independent enquiry. The papers filed by the assessee do demonstrate the identity, credit worthiness, genuineness, Source of Source of the transaction. AO did not provide Opportunity to Cross Examine the concerned person and also the department has not provided authenticity of the information to the person against whom such information is used. The addition is made merely on surmises and conjectures. The statement recorded at the back of the Respondent cannot be utilized ignoring other verifiable evidences. The Id. Assessing officer has made the addition of Rs. 20,00,000/- disregarding the evidences on record and without discharging her onus and without establishing anything contrary to the agreement of the Respondent and without verifying the Bank Account, existence of Investor and without

making fruitful investigation, thus the demand was directed to be deleted."

- *Jurisdictional Hon'ble ITAT, Mumbai for an identical case i.e. Income Tax Officer, 12(2)(3) Vs. M/s Shreedham Construction Pvt. Ltd. On 14.11.2017 ITA-3754/3755/3756/Mum/2017, the summary of the case is outlined as under:-*

"We have considered the rival submissions of the parties and have gone through the material and the orders of the authorities below. We have noted that the assessing officer passed the assessment order on the similar lines as made for earlier year. The assessing officer has not given specific finding on the documentary evidences furnished by the assessee. The assessing officer while passing the assessment order has not given different finding though the facts for the year under consideration were at variance.

The assessee specifically contented that they have paid interest on the loan availed and deducted TDS. The Id Commissioner (Appeals) while considering the facts noted that the assessing officer has not correctly appreciated the loan amount from Raghuvver Sales nor its share capital and reserve funds. Similar, other discrepancies were pointed out about Viraj Merchantile P. Ltd, Park Tools Ltd and Utakantha Trading & Properties Ltd.

In view of the above discussion we do not find any infirmity and illegality and we have already confirmed the order passed by Ld. CIT(A) for AY 2008-09 and 2009-10, hence, the appeal for the year consideration is also dismissed with similar observation."

- *Recent Judgment delivered by Jurisdictional Hon'ble ITAT, Mumbai for an identical case i.e., M/s. Shree Laxmi Estate Pvt. Ltd., vs. Income Tax Officer 15(3)(3) On 29.12.2017 ITA-5954/Mum/2016, the summary of the case is outlined as under:-*

"We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO made addition towards unsecured loans received from Josh

Trading Company Pvt. Ltd. and Viraj Mercantile Put. Ltd on the basis of information received from Investigation Wing which revealed that the assessee is beneficiary of bogus accommodation entries provided by ShriPraveenkumar Jain through his bogus companies..... The AO has brought out facts in the light of statement of ShriPravinkumar Jain deposed before the Investigation Wing to make addition. Except this there is no contrary evidence in the possession of the AO to disprove the loan transaction from Josh Trading Company Pvt. Ltd. and Viraj Mercantile Pvt. Ltd. On the other hand, the assessee has furnished various details including confirmation letters from the parties, their bank statements alongwith their financial statements to prove identity, genuineness of transactions and creditworthiness of the parties. The assessee also furnished evidences to prove that the parties have responded to the notices issued u/s 133(6) by AO by filing various details"

".....It is well settled legal position that the assessee has to discharge 3 main ingredients in order to discharge the initial burden of proof, i.e. the identity of the creditor, the genuineness of transaction and creditworthiness of the creditors. Once the assessee discharges initial burden placed upon him, then the burden to disprove the said claim shifts upon the AO"

"Coming to the case laws relied upon the assessee, the assessee has relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs Gagandeep Infrastructure Pvt. Ltd (2017) 394 ITR680 (Bom). We have gone through the case laws relied upon by the assessee in the light of facts of the present case and find that the Hon'ble High Court categorically observed that

".....the three essential tests while confirming the pre proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the revenue that such large amount of share premium

gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The apex Court in Lovely Expoertws (P) Ltd., (supra) in the context to the Pre-amended Section 68 of the Act has held that where the revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit."

In the case of Komal Agrotech Pvt. Ltd. vs. ITO in ITA No. 437/Hyd/2016 vide its order dated 25.11.2016 has held as under: "A plain reading of the assessment order demonstrates that the AO merely went by the Investigation done by the office of D.G.I(Investigation), Mumbai. No enquiries or investigation was carried out. No evidence to controvert the claims of the Assessee was brought on the record by the AO. Even the statement of Shri Praveen Kumar was supplied. Nothing is on record about the result if investigations done by DGIT (Inv), Mumbai. The papers filed by the assessee do demonstrate the identity, creditworthiness and genuineness of the transaction. The addition is made merely on surmises and conjectures. In view of the above, we hold that the addition made under section 68 of the Act is bad in law."

It is not out of place to bring under your honours kind notice, that the assessee has discharged the onus cast upon it u/s 68 of the Act by submitting the number of documentary evidences during the course of assessment proceedings. The Ld. CIT (A) has failed to demonstrate and establish that how the impugned addition of Rs. 25,00,000/- was treated as Unexplained Cash Credit.

In view of the above, the appeal of the assessee needs to be allowed."

- 4.** Ld. DR appearing for the revenue also relied on written submissions filed by her which are as under: -

"With reference to the above, I am submitting the case laws relied by me in the above-mentioned appeal filed by the assessee. In this case, loan from one Josh Trading Pvt. Ltd. was added u/s 68 by the assessing officer, on the ground that this company is a shell company

and not involved in any genuine business activity but engaged in providing accommodation entry in form of loans, share capital and bogus purchases. This company was floated by Praveen Kumar Jain, who in the sworn statement u/s 132(4) has admitted before the department that all the 70 concerns are shell entities and are not doing any business. All the directors of these companies were found to be the the dummy directors and also admitted before the department that they use to sign the documents for nominal consideration given by Shri Praveen Kumar Jain. Books of accounts of all such shell companies are under the control of Shri Praveen Kumar Jain.

The assessee has submitted that the loan has been raised through banking channels and interest was also paid. Also, it was contended that all the documentary evidence to prove the identity, genuineness and creditworthiness is also submitted. The assessee is raising contention before the Tribunal that the CIT(A) has ignored the vital facts as submission of loan confirmation , copy of bank account statement.

In view of the above contention raised by the assessee, please record my submission point wise along with the citation and gist of the case laws on which I am placing reliance:-

- *Loan is raised and subsequently repaid through Banking Channel*

The payment through banking channel is not sacrosanct in such time of transactions where circumstantial evidences are against the assessee.

*Reliance is placed on the decision of IT AT, Jaipur in case of **M/s Kanchwala Gems Vs. JCIT ITA No. 134/JP/2002 dated 10/12/2003 affirmed by the Hon'ble Supreme Court in the case of M/s Kanchwala Gems Vs JCIT (2006) 206 CTR(SC) 585, 288 ITR 10(SC)** has held that even payment by account payee cheque is not sufficient to establish the genuineness of the purchases. Also reliance is placed on the decision of Kolkata High Court in the case of **CIT Vs Precision Finance Ltd. [1994] 208 ITR 465 Cal dated 14/06/1993**, Wherein it was held that payment through banking channel is not sacrosanct and it would not make an otherwise non-genuine transaction genuine.*

The bank account statement of Josh Trading Pvt. Ltd. has credit and debit entries revolving within the gamut of companies floated by Praveen Kumar Jain only. Also, once the credit is found to be not

genuine, there will not be any deviation in the findings, if the loan is repaid in subsequent years.

- *All necessary documents are produced before the AO and CIT(A) for establishing the identity, genuineness, and credit worthiness of the loan transactions*

Reliance is placed on the following judicial pronouncement: -

1. Pavan Kumar M sanghvi Vs ITO, ITA No. 2447/Ahd/2016 dated 17/05/2017 which is confirmed by Gujrat High Court in (2018) 404 ITR 601/301 CTR 265/163 DTR 209 and SLP dismissed by the Supreme court as reported in 97 taxmann.com 398 (sc)

Facts of the case cannot be considered in isolation with the ground realities. Modus operandi of shell companies explained:

Loan transactions would not become genuine merely because assessee filed loan confirmations, copies of ledger account and other supporting evidences to justify transactions at fag end of assessment proceedings. The facts of the case cannot be considered in isolation with the ground realities. It will, therefore, be useful to understand as to how the shell entities function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible.

These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many

other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these ground realities

2. *United metal and wires Ltd. Vs CIT [2019] ITA No. 7336/Mum/2016 of ITAT, Mumbai dated 01/03/2019*

Mere receipt of loan through banking channel or furnishing confirmations is not sufficient enough to discharge the onus cast upon u/s 68, when the parties himself admitted that they are engaged in providing accommodation entries. (Praveen Agarwal group of cases).

3. *DCIT Vs Smt Phoolwati Devi [2009] 314 ITR ATI (Delhi), wherein it is held " despite the documentation supporting the claim of the assessee specifically, the evidence could not be accepted in view of surrounding circumstances and human probabilities. There were certain features of the case which belie the documentary evidence.*

4. *Pr, C.I.T.Central)-1 vs NRA IRON & STEEL PVT.LTD. CIVIL APPEAL NO OF 2019 (Arising out of SLP (Civil No.29855 of 2018) SUPREME COURT recent decision dated 05th March 2019*

5. *Pr.CIT -6, New Delhi vs NDR Prompters Pvt Ltd ITA 49/2018 of Hon'ble Delhi High Court dated 17.01 .2019*

6. *CIT Vs Navodaya Castle Pvt Ltd (2014) 367 ITR 306 (Del)*

7. *Navodava Castle Pvt Ltd Vs CIT (2015-TIOL-314-SC-IT)*

8. *CIT Vs MAP Academy (P.) Ltd (361 ITR 258)*

9. *Rick Lunsford Trade & Investment Ltd Vs CIT (2016] 385 ITR 399 (Cal)*

10. *Rick Lunsford Trade & Investment Ltd Vs CIT (2016-TIOL-207-SC-IT (Supreme Court)*

11. *CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34)*

12. *CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169. 252 CTR 187)*

13. **CIT vs. Ultra Modern Exports (P.) Ltd (40 taxmann.com 458, 220 Taxman (165))**
14. **CIT vs. Frostair (P.) Ltd. (26 taxmann.com 11, 210 Taxman 221)**
15. **CIT vs. N.R. Portfolio Pvt. Ltd. (2013) 29 taxmann.com 291 (Delhi)/(2013) 214 Taxman 408 (Delhi)/(2013) 263 CTR 456 (Delhi).**
16. **CIT Vs Empire Builtech (P.) Ltd (366 ITR 110)**
17. **CIT Vs Focus Exports (P.) Ltd (51 taxmann.com 46 (Delhi)/£2015] 228 Taxman**

*I would also like to rely on the decision of **Delhi High Court in the case of Jan Sampark Advertising & Marketing Pvt. Ltd. (2015) 231 Taxman 384 (Delhi)** wherein Hon'ble High Court has held that " though it is the obligation of the Assessing officer to conduct proper scrutiny of material in the event of AO failing to discharge his function properly , obligation to conduct proper enquiry shifts to CIT(A) and on Tribunal and cannot delete the addition made by AO on the ground of lack of inquiry.*

- *On the issue of retraction statement filed by the PKJ group of companies. The DDIT (Inv.) has promptly acted on the retraction statemnt filed by the directors of PKJ group of companies. The point wise reply of the assertion made by PKJ and the common reading of all the affidavits filed, clearly go to establish that it is an afterthought given by PKJ, when the information pertaining to A.Y 2007-08 was disseminated to the field , such affidavits have been filed. The findings of the search have already established that all such associates who have now filed affidavits along with PKJ are his dummy directors/associates who work only his instructions and the affidavits so filed on this stage is baseless.*

Reliance placed on the following decisions:-

1. **P.S Barkathli Vs. Director of enforcement, New Delhi AIR 1981 KER 81**, wherein it was held that even though the statement is subsequently retracted , the significance of admission in the first place cannot be undermined.
2. **TAT Mumbai, D Bench ,in the case of Hiralal Magan Lal & Co. Vs. DCIT [2005] 96 ITD 113 (Mum)** has affirmed that a retracted statement may still form the sole basis of addition.

It is my humble request to kindly consider my above submission while deciding the case."

5. Heard both sides, perused the orders of the Authorities below and the written submissions furnished by both the parties. On a perusal of the Assessment Order it is noticed that the Assessing Officer treated unsecured loan of ₹.25,00,000/- received by the assessee from M/s. Josh Trading Private Limited as cash credit u/s. 68 of the Act, based only on the statements recorded in the course of the search and survey operation carried out in PKJ Group on 01.10.2013. The documentary evidences furnished by the assessee in the form of confirmations of accounts, copy of ITR acknowledgement, bank statement of the lender as well as the assessee, complete set of balance sheet, Profit and Loss Account along with its annexures and Auditors Report and Directors Report of the lender, were completely ignored. The Assessing Officer made addition solely relying on the statement of the PKJ and no enquiry whatsoever was carried out by the Assessing Officer. It is also noticed that the Assessing Officer never provided any information to the assessee which was collected from PKJ nor provided cross examination of the persons on whose statements the Assessing Officer was relying on. The Assessing Officer also not issued any summons to the persons on whose statements he was relying on to enquire whether the evidences furnished by the

assessee are genuine or not. He has simply gone by the statement of PKJ given before DDIT (Investigation), Mumbai. It is also observed that the assessee furnished retraction statement of PKJ before the Assessing Officer and also the Ld.CIT(A) which were completely ignored by the lower authorities.

6. In the case of M/s. Shree Laxmmi Estate Pvt. Ltd., v. ITO in ITA.No. 5954/Mum/2016 dated 29.12.2017 the Coordinate Bench considered the transaction with M/s. Josh Trading Private Limited and held as under: -

"4. The first issue that came up for our consideration is addition made by the AO towards unsecured loan u/s 68 of the Act. The AO made addition towards unsecured loans alongwith interest thereon received from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd on the ground that these are bogus accommodation entries received from group companies of Shri Pravinkumar Jain. According to the AO, the assessee is the beneficiary of accommodation entries provided by Shri Pravinkumar Jain from his bogus companies. The AO further observed that though the assessee has furnished details of identity, failed to prove genuineness of transactions and creditworthiness of the parties in the backdrop of clear findings of Investigation Wing that Shri Pravinkumar Jain has admitted that he was indulging in providing accommodation entries. This fact has been further confirmed by Shri Dinesh Choudhary, broker involved in arranging accommodation entries with Shri Pravinkumar Jain, who stated that Shri Pravinkumar Jain is indulging in providing accommodation entries, therefore, the AO opined that unsecured loans stated to be received from those companies are unexplained credit and hence made addition u/s 68 of the Act. It is the contention of the assessee that loans received from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd are supported by valid documents. The assessee further submitted that it has furnished confirmation letters alongwith copies of their bank statement and acknowledgement of IT returns showing the above transactions. The assessee further contended that in response to notices u/s 133(6) issued by AO, the above parties replied alongwith documents mentioned in the notice, therefore, there is no reason for the AO to

doubt the transactions only on the basis of information received from Investigation Wing that too, without providing any opportunity of cross examination of the parties. In this regard, he relied upon plethora of judgements including the judgement of Hon'ble Bombay High Court in the case of CIT vs Gagandeep Infrastructure Pvt Ltd 349 ITR 680 (Bom) and Hon'ble Supreme Court in the case of Lovely Exports Pvt Ltd vs CIT 216 CTR 295(SC).

5. *We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO made addition towards unsecured loans received from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd on the basis of information received from Investigation Wing which revealed that the assessee is the beneficiary of bogus accommodation entries provided by Shri Praveenkumar Jain through his bogus companies. The AO has made additions u/s 68 of the Income-tax Act, 1961 on the ground that though the assessee has furnished necessary evidences to prove identity of the parties, but failed to establish genuineness of transactions and creditworthiness of parties in the backdrop of clear findings of Investigation Wing that those companies are hawala companies involved in providing accommodation entries. The AO has brought out facts in the light of statement of Shri Pravinkumar Jain deposed before the Investigation Wing to make addition. Except this, there is no contrary evidence in the possession of the AO to disprove the loan transactions from Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd. On the other hand, the assessee has furnished various details including confirmation letters from the parties, their bank statements alongwith their financial statements to prove identity, genuineness of transactions and creditworthiness of the parties. The assessee also furnished evidences to prove that the parties have responded to the notices issued u/s 133(6) by AO by filing various details. The assessee also filed bank statements to prove that the said unsecured loans have been repaid in the subsequent financial years. Therefore, we are of the view that there is no reason for the AO to doubt the genuineness of transactions despite furnishing necessary evidences including their financial statements, bank statements and IT returns.*

6. *The AO has made addition u/s 68 of the Act, on the ground that the unsecured loans are bogus accommodation entries provided by Shri Pravinkumar Jain through his hawala companies. The provisions of section 68 deal with cases where any sum found credited in the books of account of the assessee in any financial year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, then sum so credited may be charged to income-tax as the income of the assessee of that previous year. A plain*

reading of section 68 makes it clear that the initial burden of proof lies on the assessee. It is well settled legal position that the assessee has to discharge 3 main ingredients in order to discharge the initial burden of proof, i.e. the identity of the creditor, the genuineness of transaction and creditworthiness of the creditors. Once the assessee discharges initial burden placed upon him, then the burden to prove the said claim shifts upon the AO. In this case, the assessee has discharged his onus cast u/s 68 by filing identity of the creditors, genuineness of transactions and creditworthiness of the parties which is evident from the fact that the assessee has furnished financial statements of the creditors wherein the said transaction has been disclosed in the relevant financial years. We further notice that the assessee also filed financial statements of the creditors which are enclosed in paper book filed. On perusal of the financial statements filed by the assessee, we find that both the companies are active in the website of Ministry of Corporate Affairs. This fact has been further supported by the letter of AO wherein the AO has accepted that both companies, viz. Josh Trading Company Pvt Ltd and Viraj Mercantile Pvt Ltd are active in MCA website. We further notice that both the companies have filed financial statements for the year ending 31-03-2006. Therefore, we are of the considered view that the assessee has discharged its initial burden cast u/s 68 by filing identity, genuineness of transaction and creditworthiness of the parties. Once, the assessee has discharged its initial burden, the burden shifts to the AO to prove otherwise. In this case, the AO made addition only on the basis of information received from Investigation Wing, but not based on any evidence to disprove the loan transaction from above companies are ingenuine. Therefore, we are of the view that there is no reason for the AO to treat loans from above 2 companies as unexplained credits u/s 68 of the Act.

7. *Coming to the case laws relied upon by the assessee, the assessee has relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs Gagandeep Infrastructure Pvt Ltd (2017) 394 ITR 680 (Bom). We have gone through the case laws relied upon by the assessee in the light of the facts of the present case and find that the Hon'ble High Court categorically observed that the Proviso to section 68 has been inserted by the Finance Act, 2012 wef 01-04-2013 is applicable from AY 2013-14 onwards. The Court further observed that the Parliament did not introduce the proviso to section 68 with retrospective effect nor does the Proviso introduced states that it was introduced for removal of doubts. Therefore, it is not open to give retrospective effect. The relevant portion of the order of High Court is extracted below:-*

"The proviso to section 68 has been introduced by the Finance Act, 2012 with effect from 1-4-2013. Thus, it would be

effective only from the assessment year 2013-14 onwards and not for the subject assessment year. In fact, before the Tribunal, it was not even the case of the Revenue that section 68 as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1-4-2013 was its normal meaning. The Parliament did not introduced to proviso of section 68, with retrospective effect nor does the proviso to introduced states that it was introduced 'for removal of doubts' or that it is 'declaratory'. Therefore, it is not open to give it retrospective effect, by proceeding the basis that the addition of the proviso to section 68 is immaterial and does not change the interpretation of section 68 both before and after the adding of the proviso.

In view of the matter the three essential tests while confirming the section 68 laid down by the Court namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on fact it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders, i.e., they are bogus. The Apex Court in a case in this context to the preamended section 68 has held that where the revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income-tax Officer to proceed by reopening the assessment of such shareholder and assessing them to tax in accordance with law. It does not entitle the revenue to add the same to the assessee's income as unexplained cash credit." [Para 3]

8. *The assessee has also relied upon the decision of Hon'ble Bombay High Court in the case of CIT vs Archid Industries Pvt Ltd in ITA No1433/Mum/2014 dated 5th July, 2017. The Hon'ble Bombay High Court, after considering relevant facts and also by following judgement in the case of CIT vs Gagandeep Infrastructure Pvt Ltd (supra) held as under:—*

"6] The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money. It was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of share i.e. allotment of shares to these parties, their share application forms, allotment letters

and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee. In view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeeep Infrastructure (P) Ltd (supra) would be applicable in the facts and circumstances of the present case."

9. *The assessee has also relied upon the decision of Hon'ble Supreme Court in the case of CIT vs Lovely Exports Pvt Ltd (2008) 216 CTR 195 (SC). The Hon'ble Apex Court while deleting the addition made u/s 68 observed that if the share application money is received by the assessee company from alleged bogus shareholders whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law, but this amount of share application money cannot be regarded as undisclosed income u/s 68 of the Income-tax Act, 1961."*

7. The Coordinate Bench of the Tribunal in the case of ITO v. M/s.Viswa Vyapar Trading Pvt. Ltd., in ITA No. 2888/Mum/2017 dated 05.04.2019 also considered the transaction by the assessee with the lender M/s. Josh Trading Pvt. Ltd., and held as under: -

"29. In view of what is discussed above and in view of the evidences furnished by the assessee, we are of the view that the assessee has discharged its onus of proving the identity, genuineness and creditworthiness of the creditors/shareholders and fulfilled the requirement of ingredients of section 68 of the Act. Thus, the addition made u/s. 68 of the Act which is purely based on the investigation reports and statements recorded from PKJ and whose statements were not provided to the assessee for rebuttal and no cross examination was provided to assessee and therefore is in violation of principles of natural justice. Further we observe that no sort of enquiries were made by the Assessing Officer to disprove the evidences furnished by the assessee. Further, we find that the Assessing Officer accepted the subscription of share capital by the shareholders as genuine and no addition has been made in respect of the same. However, Assessing Officer treated only the share premium as unexplained cash credit. Having accepted the share

capital as genuine the Assessing Officer cannot treat only the share premium as non-genuine and bring to tax as unexplained cash credit u/s. 68 of the Act. In the circumstances, the addition cannot be sustained. Thus, we direct the Assessing Officer to delete the addition made u/s. 68 of the Act."

8. In the case of ITO v. Khshboo Exports Pvt. Ltd., in ITA.No. 3647/Mum/2017 dated 21.09.2017 the Coordinate Bench held as under:

"2. The assessee-company is engaged in the business of manufacture and sale of clothes. The Assessing Officer received information that the assessee company has received share application money to the tune of ` 45 lakhs from various companies belonging to Shri Praveen Kumar Jain group. The Revenue had conducted search action in the case of Shri Praveen Kumar Jain group on 1.10.2013 and during the course of search, Shri Praveen Kumar Jain had admitted that his group of companies were giving only accommodation entries by way of share capital and share application money. Hence, the Assessing Officer took the view that the share application money of ` 45 lakhs received by the assessee is assessable to tax and accordingly reopened the assessment by issuing notice u/s. 148 of the Act. Various evidences were furnished by the assessee were not accepted by the Assessing Officer and accordingly he added ` 45 lakhs to the total income of the assessee u/s. 68 of the Act. The learned CIT(A) deleted the same and hence the Revenue has filed this appeal before us.

3. It is pertinent to note that the Assessing Officer has assessed a sum of ` 45 lakhs, but according to the assessee it has received ` 40 lakhs only from the companies belonging to Shri Praveen Kumar Jain group as detailed below:-

<i>1.</i>	<i>Java India Impex Ltd</i>	<i>- Rs.15.00 lakhs</i>
<i>2.</i>	<i>Kush Hindustan Entertainment</i>	<i>- Rs.10.00 lakhs</i>
<i>3.</i>	<i>Lexus Infotech Ltd</i>	<i>- Rs. 5.00 lakhs</i>
<i>4.</i>	<i>Vanguard Jewels Ltd</i>	<i>- Rs. 5.00 lakhs</i>
<i>5.</i>	<i>Yash V Jewels Ltd</i>	<i>- Rs. 5.00 lakhs –</i>
<i>-</i>		<i>-----</i>
		<i>Rs.40.00 lakhs</i>
		<i>=====</i>

4. *Learned Departmental Representative submitted that the impugned addition has been made by the Assessing Officer on the basis of admission made by Shri Praveen Kumar Jain in his sworn statement. Though the assessee has furnished details of annual accounts of share applicants, perusal of the income tax return would show that they are declaring only minimal income. The admission of Shri Praveen Kumar Jain would show that these companies have been used to launder the money. Learned AR placed reliance on the decision rendered by the Indore Bench of the ITAT in the case of Agrawal Coal Corporation (P) Ltd. (19 taxmann.com 209), wherein the Tribunal had confirmed the addition of share applications money made u/s. 68 of the Act by distinguishing decision rendered by Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. (Application No. 11993 of 2007 dated 11.1.2008).*

5. *On the contrary, learned AR submitted that the assessee has raised share capital of ` 90 lakhs during the instant year, which consists of share capital amount of ` 18 lakhs and share premium amount of ` 72 lakhs. Out of the amount of ` 90 lakhs; a sum of ` 40 lakhs only received as share capital from the companies belonging to Shri Praveen Kumar Jain and the remaining amounts were received from outsiders. He submitted that the AO has accepted the genuineness of the balance amount of Rs.50.00 lakhs. He further submitted that the assessee has fully utilised entire capital for capital work-in-progress purposes. He submitted that the decision rendered by the Indore Bench of the ITAT in the case of Agrawal Coal Corporation (P) Ltd. (supra) would not apply to the facts of the present case, since in the case before the Indore Bench, the identity of share applicants were not proved. Learned AR submitted that the assessee, in the instant case, has discharged the initial burden placed upon it u/s. 68 of the Act by establishing the identity of share applicants, their creditworthiness and genuineness of the transactions. He submitted that the assessee has furnished all documents to prove that three main ingredients in the paper book filed before lower authorities as well as before the Tribunal. Learned AR submitted that Shri Praveen Kumar Jain has given a general statement that he did not particularly implicate the investment made into assessee-company by his group. Hence the Assessing Officer was not justified in placing reliance on the general statement so given by Shri Praveen Kumar Jain. Learned AR further submitted that all the share applicants have again confirmed the genuineness of the*

investments and said confirmation letters are placed at page No. 128 to 135 of the paper book. These confirmation letters were filed before the learned CIT(A). Learned AR further submitted that the learned CIT(A) has followed decision rendered by Hon'ble Jurisdictional Bombay High Court in the case of Gagandeep Infrastructure (P) Ltd. (2017) 394 ITR 680 in deciding the issue in favour of the assessee. Hon'ble Bombay High Court has also held in the case of Principal CIT Vs. Paradise Inland Shipping (P) Ltd. (84 taxamnn.com 58) that once the assessee had produced documentary evidence to establish the existence of share applicant companies, burden would shift on the Revenue to establish their cases. He further submitted that the identical addition made in the case of M/s. SDB Estate Private Limited (ITA No. 584/Mum/2015) has been deleted by the Mumbai Tribunal vide its order dated 15.4.2015

6. *I have heard the rival contentions and perused the record. I noticed that the learned CIT(A) has deleted the addition by making following observations:-*

"6.3.1. I have considered the entire facts and circumstances of the case and have carefully considered the finding of AO, rival submission of the appellant and evidence on record. During the year the appellant in the process of expansion of its business and facilitation working capital in furtherance of its business has issued equity share capital amounting to Rs.18,00,000/- of face value of Rs. 100/- each at a premium of Rs. 400/- each amounting to Rs. 72,00,000/-, thus aggregating to sum of Rs. 90,0,000/-. The funds raised by issue of equity shares at premium were utilized for expansion of business which is evident from the balance sheet submitted that there has been increase in capital work in progress reflected under the head fixed assets amounting to Rs. 1.07 crores.

6.3.2. Of the said sum of Rs. 90,00,000/-, the appellant has issued equity capital including premium amounting to Rs. 40,00,000/- to the above mentioned five parties. The AO has considered sum of Rs. 5,00,000/- received from Lexus Infotech Limited twice and hence, computed sum of Rs. 45,00,000/-. The correct amount received from above parties stands at Rs. 40,00,000/, The appellant company has issued equity shares and that no share application money is

outstanding from the said five parties at the yearend as on 31-03-2007.

6.3.3. The appellant has submitted confirmation from the said five parties confirming the investments made along with copy of acknowledgement of return of income filed for the AY 2007-08, audited balance sheet, extracts of directorship of the said five companies and copy of bank statements evidencing amount of share application received through banking channels. On going through the details submitted it is observed that all the five companies have filed their respective return of income and the balance sheet shows substantial net worth. The investment amount made in the appellant company by the respective said five companies is very small as compared to the net worth. The said companies have declared income in their return and have paid taxes. Further, it is seen that in none of the company Mr. Pravin Kumar Jain is a director. The above documents are either filed with the Department or are available on the public domain of Ministry of Corporate affairs except to bank statement and confirmations.

6.3.4. On the face of the balance sheet and details submitted there is nothing incriminating that can be drawn to infer that the said transactions is merely accommodating entries and not genuine. More importantly there no direct evidence which has been brought on record by the AO. No nexus is established as to circulating of funds or that cash was paid by the appellant company to obtain the cheques for share application.

6.3.5. The appellant has provided the identification of the parties. The same is supported by the income tax returns filed by the respective parties. The allegation of the AO that PAN is issued without verification of the applicant is not correct. The AO could have verified the jurisdiction of the respective parties and could have made enquiries with the respective AO's about the said five parties from the PAN available with him.

6.3.6. The appellant has submitted balance sheet and details of the said five parties to prove credentials and

genuineness of the transactions. The three ingredients viz. identity, credentials and genuineness cannot be doubted.

6.3.7. The AO has heavily relied on information received from DDIT (Inv), Mumbai and that of the statement of Mr. Pravin Kumar Jain. The AO has not carried out independent enquiries to prove the case. On reading from the assessment order there is nothing corroborative brought on record to prove that the share application money received are accommodating entries or received from bogus share holders.

(i) It is submitted by the applicant that on giving the names of the share holders than the onus on the part of the applicant is discharged and that addition, if any to be made is to be in the hands of the investor and not applicant. In the case of CIT v. Lovely Exports (P) Ltd [2008] 216 CTR 195 it has been held that;

"If share application money is received by assessee-company from alleged bogus shareholders, whose names are given to Assessing Officer, then Department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of assessee-company

(ii) In the case of CIT vs. Creative World Telefilms Ltd. [2011](333 ITR 100)(Bombay) the court has held as under:-

"In the case in hand, it was not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also -given the die que number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement not traceable'. The Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders

since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal could not be faulted. No substantial question of law was involved in the appeal. In the result, the revenue's appeal was to be dismissed in limine. (para 2)"

(iii) The A.O. has merely based on the information received from the DDIT and the statement of third party Mr Praveen Kumar Jain has formed opinion that the appellant is one of the beneficiaries who has taken alleged accommodation entry. It is not shown that copy of the statement of Mr. Praveen Kumar Jain has been provided to the appellant and that opportunity of cross examining has been granted. There is no mention in the assessment order that Shri Praveen Kumar Jain has categorically stated having provided accommodation entry to the appellant.

(iv) In the case of M/s. SDB Estate Pvt. Ltd vs. ITO-5(3)(2) in ITA No. 584/Mum/2015 on similar ground it has been decided that:-

"In view of the above stated legal position and in the light of reliable evidences brought on record by assessee to substantiate identity, genuineness and creditworthiness of shareholders, which have not been controverted by the Revenue, the additions made solely on the basis of general statement of Shri Mukesh Chokshi cannot be held to be justified and the same are accordingly ordered to be deleted"

6.3.8. As regards issue involving addition of share premium amount alongwith share application money/share capital money, the jurisdictional ITAT, Mumbai has decided in many cases that it cannot be added. Further, the Honble High court has also decided the issue that the addition of share premium amount cannot be made in earlier years prior to amendment in the relevant provisions in the I.T.Act, 1961. In this regard, reference is made and reliance is placed 'to the various Judicial Pronouncements on the issue related to additions for share premium amount included in the share application money/share capital money. These are as under:

(i) In the case of *M/s. Vodafone India Services Pvt. Ltd vs. Addl. CIT reported in 368 ITR 001, Hon'ble Bombay High Court decided that :*

'The amounts received on issue of share capital including the premium are undoubtedly on capital account. Share premium have been made taxable by a legal fiction under Section 562)(viib)of the Act and the same is enumerated as Income in Section 2(24)(xvi) of the Act. However, what is brought into the ambit of income is the premium received from a resident in excess of the fair market value of the shares. In this case what is being sought to be taxed is capital not received from a non-resident i.e. premium allegedly not received an application of ALP. Therefore, absent express legislation, no amount received, accrued or arising on capital account transaction can be subjected to tax as Income. Court finds considerable substance in the Petitioner's case that neither the capital receipts received by the Petitioner on issue of equity shares to its holding company, a nonresident entity, nor the alleged short-fall between the so called fair market price of its equity shares and the issue price of the equity shares can be considered as income within the meaning of the expression as defined under the Act.'

(ii) The CBDT vide instructions No - 02/2015 dated 29/1/2015 directed the revenue not to file the SLP before Hon'ble to Supreme Court and directed Ld AOs to accept the High Court order. The relevant instructions is as under :-

"In reference to the above cited subject, I am directed to draw your attention to the decision of the High Court of Bombay in the case Of Vodafone India Services Pvt. Ltd for A.Y. 2009-10 (WP No.871/2014) = 2014-TH-19-HC-MUM-TP, wherein in the Court has held, inter-alia, that the premium on share issue was on account of a capital account transaction and does not give rise to income and, hence, not liable to transfer pricing adjustment. .. It is hereby informed that the Board has accepted the decision of the High

Court of Bombay in the above mentioned Writ Petition. In view of the acceptance of the above judgement, it is directed that the ratio decided of the judgement must be adhered to by the field officers in all cases where this issue is involved. This may also be brought to the notice of the ITAT, DRPs and CIT (Appeals)."

(iii) In the case of ACIT vs. Gagandeep Infrastructure Pvt. Ltd bearing ITA No. 5784/Mum/20 11 dated 23/4/2014, Hon'ble Mumbai ITAT decided that

"We have carefully perused the orders of the lower authorities. In our considered view, the issue of shares at premium is always a commercial decision which does not require any justification. Further the premium is a capital receipt which has to be dealt with in accordance with Sec. 78 of the Companies Act, 1956. Further, the company is not required to prove the genuineness, purpose or justification for charging premium of shares, share premium by its very nature in a capital receipts and is not income for its ordinary sense..... The entire dispute revolves around the fact that the assessee has charged a premium of Rs. 190/- per share. No doubt a non-est company or a zero balance sheet company asking for Rs. 190/- per share defies all commercial prudence but at the same time we cannot ignore the fact that it is a prerogative of the Board of Directors of the company to decide the premium amount and it is the wisdom of the share holders whether they want to subscribe to such a heavy premium. The Revenue authorities cannot question the charging of such huge premium without any bar from any legislated law of the land. The amendment has been brought in the Income Tax Act under the head "Income from other sources" by inserting Clause (viib) to Sec. 56 of the Act wherein it has been provided that any consideration for issue of shares, that exceeds the fair value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be

treated as the income of the assessee but the legislature in its wisdom has made this provision applicable w.e.f.1.4.2013 i.e. on and from A. Y. 201
Insofar as the year under consideration is consideration is concerned, the transaction has to be considered in the light of the provision of Sec. 68 of the Act. There is no dispute that the assessee has given details of names and addresses of the share holders, their PAN Nos, the bank details and the confirmatory letters... Considering all these undisputed facts, it can be safely concluded that the initial burden of proof as rested upon the assessee has been successfully discharged by the assessee. Even if it is held that excess premium has been charged, it does not become income as it is a capital receipt. The receipt is not in the revenue field. What is to be probed by the AO is whether the identity of the assessee is proved or not. In the case of share capital, if the identity is proved, no addition can be made u/s.68 of the Act. We draw support from the decision of the Hon'ble Supreme Court in the case of Lovely Exports Pvt Ltd. 317 ITR 218. We, therefore do not find any error or infirmity in the findings of the Ld CIT(A). Ground No.I is accordingly dismissed."

(iv) In the case of Green Infra Ltd vs. ITO reported in 38 taxmann.com 253-ITAT) dated 23/8/2013, Hon'ble Mumbai ITAT decided that

"During previous year ending on 31-3-2009, it had collected share premium on allotment of shares of face value of RS. 10 each at a premium of Rs. 490 per share - It had credited said amount in balance-sheet under head share premium account - It claimed that share premium was a capital receipt not exigible to tax - Assessing Officer had taxed share premium under section 56(1) as assessee's income from other sources - Whether since expenditure and receipts directly relating to share capital of a company are of capital in nature, share premium collected by assessee could not be taxed under section 56(1) as income

from other sources - Held, yes - Whether since entire transaction relating to allotment of shares had been done through banking channel and assessee had invested share premium in its three subsidiary companies, provisions of section 68 as suggested by revenue had also not applicable to instant case - field, yes.... No doubt a non est company or a zero balance company asking for a share premium of Rs. 490 per share defies all commercial prudence, but at the same time one cannot ignore the fact that it is a prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of the shareholders whether they want to subscribe to such a very premium. The revenue authorities cannot question the charging of such of huge premium without any bar from any legislated law of the land."

(v) In the case of CIT vs. Goa Sponge and Power Ltd reported in Appeal No. 16 of 2012, Hon'ble Bombay High Court decided that :-

"Once the authorities have got all the details, including the name and addresses of the shareholders, their PAN/GIR number, so also the name of the Bank from which the alleged investors received money as share application, then, it cannot be termed as "bogus". The controversy is covered by the judgements rendered by the Hon'ble Supreme Court in the case of Lovely Exports Pvt Lid, vs. CIT, (2008) 216 CTR (SC) 195, as also by this Court in CIT vs. Creative World Telefilms Ltd, (2011) 333 ITR 100 (Born). In such circumstances, we are of the view that the Tribunal 's finding that there is no Justification in the addition made under Section 68 of the Income Tax Act, 1961 neither suffers from any perversity nor gives rise to any substantial question of law."

(vi) In the case of CIT vs. Creative World Telefilms Ltd reported in 333 ITR 100. Hon'ble Bombay High Court decided that :-

".....the Tribunal was pleased to follow the judgment of the apex Court in the case of CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR (SC) 195: (2008) 6 DTR (SC) 308: (2009) 319 ITR 5 (St.) wherein the apex Court observed that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the AG, then the Department can always proceed against them and if necessary reopen their individual assessments. In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PAiV/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the AG to make proper investigation and reach the shareholders. The AG did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". In our considered view, the AO ought to have found out their details through PAN cards, bank 'count details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the AO. In the above circumstances, the view taken by the Tribunal cannot be faulted."

(vii) In the case of CIT vs. Lovely Exports (P) Ltd reported in 216 CTR 195, on'ble Apex court decided that :

If the share application money is received by the assessee company from alleged bogus shareholders, Whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

(viii) In the case of CIT vs. Steller- Investment Ltd reported in 251 ITR 263, Hon'ble Apex court decided that

"That the increase in subscribed capital of the respondentcompany could not be a device of converting black money into white with the help of

formation of an investment company, on the round that, even if it be assumed that the subscribers to the increased capital were not genuine, under no circumstances could the amount of share capital be regarded as undisclosed income, an appeal was taken by the Department to the Supreme Court. The Supreme Court dismissed the appeal holding that the Tribunal had come to a conclusion on facts and no interference was called for."

(ix) In the case of CIT vs. Expo Globe India Ltd reported in 361 ITR 147, Hon'ble Delhi High Court decided that

"It has been held by Hon'ble Supreme Court and various High Courts that no addition can be made on account of share application money once the names of the share applicants are given. In the instant case, identity of these persons are not or doubt and assessment particulars of all the persons are on record and there is no material to hold that creditworthiness of these persons are not established. The judgment of Hon'ble Supreme Court in the case of Lovely Export 216 CTR 195 and also the judgment of Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt Ltd 307 ITR 334 are relevant on this issue. It was held by Hon'ble Madras High Court in the case of CIT vs. Electro Polychem Ltd. 294 ITR 661 and Hon'ble Allahabad High Court in the case of Jaya Securities Ltd 166 Taxman 7 that no addition can be made on account of share application money even if subscriber to capital are not genuine. The above said judgements were challenged by the Department by way of SLP before Supreme Court of India and SLP has been dismissed by Supreme Court in both the cases. In view of above said facts of case and position of law, I hereby direct the AO to delete the addition of Rs.69,75,000/-.

(x) In the case of CIT v. Vacmet Packaging (India) Pvt Ltd reported in 88 CCH 065, Hon'ble Allahabad High Court decided that

"Held, assessee had filed documentary evidence to prove genuineness of share application money consisting of N share application forms; (ii) copies of bank accounts of share applicants; (iii) copies of income tax returns of share allottees; (iv) balance sheets; and (v) copies of share allotment certificates and of Board's resolution of the share applicants — Identity of applicants was established by production of copies of PAN cards and registration certificate with the Registrar of Companies — Financial capacity was also proved by filing of copies of the bank accounts from where the share application money was transferred through banking channels to the assessee- Assessee had discharged onus placed upon him by 68-Concurrent finding offacts also rendered by CIT(A) and tribunal in this regard — No substantial question of law arises- Revenue's appeal Dismissed"

(xi) In the case of Jaya Securities Ltd vs. CIT reported in 166 Taxman 7 (SLP filed by department dismissed), Hon'ble Allahabad High Court decided that

"Whether any addition under section 68 can be made in respect of investment made by different persons in share capital of assessee company, limited by shares, whether public or private -Held, no."

6.3.9. In the light of the above factual narration, various references and judicial propositions I reach to the, c, 91.1 this that the AO has erred in making addition u/s 68 of the Act on account of share application money. The appellant has established the genuineness of the transaction and that the same cannot be treated as unexplained credits. Therefore, the addition made by the AO of Rs. 45,00,000/- is deleted."

7. The assessing officer has made the impugned addition u/s 68 of the Act. Under the provisions of sec. 68 of the Act, the assessee is required to discharge initial burden of proof placed upon his shoulders, i.e., the assessee has to prove the identity of the creditor, the credit worthiness of the creditor and the genuineness of transactions. A perusal of documents filed before the tax authorities and also the observations made by Ld CIT(A)

would show that the assessee has discharged the burden placed upon its shoulders. Once the assessee discharges its primary burden, then the burden to disprove the assessee's version would shift to the shoulders of the assessing officer. In the instant case, the assessing officer has simply relied upon the general statement given by Shri Praveen Kumar Jain. As contended by Ld A.R, it was not shown that the transactions of the assessee with the above said companies have been declared as accommodation entries. On the contrary, the assessee has furnished confirmation letters obtained from the share applicant companies before the Ld CIT(A), after the sworn statement was given by Shri Praveen Kumar Jain. In my considered view, the AO has failed to discharge the burden shifted to his shoulders. The decision rendered by the Indore bench of ITAT in the case of Agrawal Coal Corporation (P) Ltd, in my view, has been rightly distinguished by Ld A.R. On the contrary, I notice that the Ld CIT(A) has followed the decision rendered by the jurisdictional Hon'ble Bombay High Court in the case of Gagandeep Infrastructure (P) Ltd (supra). The Ld A.R also placed reliance on the decision rendered by Hon'ble Bombay High Court in another case named Paradise Inland shipping (P) Ltd (supra). In these cases, it was held that once the assessee has discharged the initial burden of proof placed upon him u/s 68 of the Act, no addition could be made. It was further held that if the revenue's case was that the share applicants are bogus shareholders, then it was for the revenue to proceed by reopening of assessments of such shareholders and assessing them to tax in accordance with the law and it would not entitle the revenue to add same in assessee's hand.

8. Since the Ld CIT(A) has passed a reasoned order by duly considering all the relevant facts surrounding the issue and since he has followed the binding decision of Hon'ble Bombay High Court, I do not find any reason to interfere with his order"

9. In the case of CIT v. H.K. Pujara Builders in ITA.No. 930/Mum/2017 dated 31.10.2018, the Coordinate Bench held as under: -

"3. Briefly stated the facts are that, the Assessing Officer noticed that assessee during the year under consideration received unsecured loan of ₹.50 lakhs from M/s. J.P.K. Trading (I) (P.) Ltd., ₹.77.50 lakhs from M/s.New Plant

Trading Co. (P.) Ltd. A.O observed that there is a search and seizure operation in the case of Shri Praveen Kumar Jain Group and Shri Bhanwarlal Jain Group by the Investigation wing of the Department and in the course of proceedings it was established that these persons are in the business of providing accommodation entries to various beneficiary companies. He observed that the said companies have provided accommodation entries as these companies were managed by the Shri Praveen Kumar Jain Group and Shri Bhanwarlal Jain Group. The Assessing Officer required the assessee to prove the genuineness of the transactions and the assessee furnished copy of bank statements, Income Tax Returns of the lenders, copy of acknowledgments of the Income Tax Returns; copy of ledger accounts of the creditors, loan confirmations along with bank statements reflecting the receipts and payments of loans from the said parties. It was stated by the assessee that the loan was taken only for eight days and this will not serve any purpose of accommodation entries and therefore the transactions shall not be treated as accommodation entries at all. Assessee also requested the Assessing Officer to issue notice u/s. 133(6) of the Act to the above said parties for the further information. However, the Assessing Officer relying on the statements of Shri Praveen Kumar Jain and Shri Bhanwarlal Jain concluded that the companies have provided only accommodation bills to the assessee and therefore the assessee has not proved the nature and source of the transactions. Accordingly, he made addition u/s. 68 of the Act treating them as unexplained credits. On appeal Ld.CIT(A) deleted the addition based on the submissions and information/evidences furnished by the assessee against which the Revenue is in appeal before us.

4. Ld. DR strongly supported the orders of the Assessing Officer and submitted that transactions between the assessee and the companies operated by Shri Praveen Kumar Jain Group and Shri Bhanwarlal Jain Group are all paper transactions and the transactions are non-genuine. In the statements recorded by the Investigation Department the persons of Shri Praveen Kumar Jain Group and Shri Bhanwarlal Jain Group have categorically stated that they have provided only accommodation entries through various companies and these companies where the assessee has made transactions are all the companies which are run by Shri Praveen Kumar Jain Group and Shri Bhanwarlal Jain Group and therefore the Assessing Officer has rightly treated the transaction as only accommodation entries and rightly made addition u/s.68 of the Act.

5. Ld. Counsel for the assessee strongly placed reliance on the orders of the Ld.CIT(A). Ld. Counsel for the assessee invited our attention to the Page No. 69 of the Paper Book which is the loan confirmation from M/s. J.P.K. Trading (I) (P.) Ltd. and Page No. 73 of the Paper Book which is the loan confirmation from M/s. New Plant Trading Co. (P.) Ltd. Ld. Counsel for the assessee invited our attention to Page Nos. 71 & 72 of the Paper Book which are the bank statements wherein the transactions of loans received and paid were reflected. He also submitted that the parties have filed their confirmations, assessee

furnished income tax returns of the companies, bank statements of the parties showing the loan transactions. Therefore, it was submitted that all these evidences goes to show that the transactions are genuine. The identify and credit worthiness of the creditors are proved and therefore simply based on the statements given by the Shri Praveen Kumar Jain Group & Shri Bhanwarlal Jain Group addition cannot be made treating them as mere accommodation entries. It was also further submitted that the statements given by Shri Praveen Kumar Jain Group & Shri Bhanwarlal Jain Group have subsequently retracted by themselves. It was further submitted before us that the Assessing Officer has not provided the cross examination of the persons who gave statements. Therefore, the Learned Counsel for the assessee submitted that the transactions are genuine, the identity and credit worthiness of the creditors have been proved and therefore no addition is warranted u/s. 68 of the Act. Ld. Counsel for the assessee referring to the Page No. 194 of the Paper Book which is the order of the Tribunal in the case of A.C.I.T v. M/s. Shreedham Builders in ITA.No. 5589/MUM/2017 dated 22.06.2018 considered M/s. J.P.K. Trading (I) (P.) Ltd. as genuine. Similarly, referring to the Page No. 122 of the Paper Book it is submitted that M/s. New Plant Trading Co. (P.) Ltd. was considered as genuine by the Tribunal in ITA.No. 2979 & 2980/Mum/2017 dated 31.08.2017. Therefore, it was submitted that since both these companies were considered by the Hon'ble Tribunal as genuine in the above said cases, it was submitted that the transaction cannot be treated as non-genuine and therefore the addition is liable to be deleted.

6. We have heard the rival submissions, perused the orders of the authorities below. Assessing Officer made addition by placing reliance merely on the statements of Shri Praveen Kumar Jain Group and Shri Bhanwarlal Jain Group which were recorded u/s. 132(4) of the Act. No independent enquiry was carried out by the Assessing Officer, he has not brought any corroborative evidence to substantiate that the transactions are non-genuine. Assessee provided various evidences to establish that the transactions are genuine, creditors are identifiable and credit worthiness is proved. Following information is furnished by the assessee.

- (1) Confirmation of A/c. by the parties.*
- (2) Income tax returns of the parties for A.Y.2012-13.*
- (3) Bank Statements of the parties showing the loan transactions.*

7. By providing all this information to the Assessing Officer the assessee has discharged the initial onus of proving genuineness of the transactions u/s. 68 of the Act. Even the assessee requested Assessing Officer for issue of notices u/s. 133(6) of the Act to the lenders to find out the genuineness of the transactions with the assessee. Therefore, once the initial onus is discharged by the assessee the burden shifts to the Revenue to disprove the claim of the assessee. We notice that all the loans were taken through banking channels and the repayments for the same was also made through banking channels. The Assessing Officer ignored the documentary evidences submitted by the assessee and has exclusively relied on statements of third party in making the addition. In spite of request by the assessee the Assessing Officer did not

provide any cross-examination of the parties who have made the submissions. All these aspects have been considered by the Ld.CIT(A) and deleted the addition observing as under:

"5.9. From the assessment order, it transpires that the AO has solely relied upon the statement of Mr. Pravin Kumar Jain and did not carry out any worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted by the appellant. The AO in the assessment order has admitted existence of these details. The AO has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing out any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transaction cannot be doubted. Once evidences related to a transaction is submitted before the A.O., the onus shifts on him to prove these as non-genuine. The A.O. has not discharged the onus casted on him. In my opinion, merely based on the statement of a third person without any corroborative evidence will not make the loan transactions, in question, as accommodation entries. As such, in the absence of any contrary evidence placed on record, the transaction cannot be treated as accommodation entries.

5.10. As far as the question of validity of the transaction done through JPK Trading (I) Pvt. Ltd and New Planet Trading Co. Pvt. Ltd are concerned, even if some of the transactions entered into by Shri.Pravin Kumar Jain are found to be not genuine, it does not lead to the conclusion that all the transactions were non-genuine including the transactions related to the appellant. There is no evidence brought in the assessment order to prove the above conclusion, by the AO. The outcome of investigation carried out in the case of Mr.Pravin Kumar Jain the conclusions drawn therein cannot be applied ipso facto to all other cases. Simply relying on the report of the DGIT(Inv), Mumbai and statement the AO cannot conclude that all transactions are accommodation entries.

5.11. The case of the appellant is covered by the decision of ITAT, T Bench, Mumbai, in the case of Satish N. Doshi HUF Vs. ITO, Ward 21(2)(4), Mumbai in ITA No-2329/Mum/2009 and the decision of ITAT, 'E' Bench, Mumbai in the case of Shaf Broadcast Pvt. Ltd Vs. ACIT, Cir-9(3), Mumbai in ITA No.1819/Mum/2012. Both the cases relate to re-opening of assessment on the basis of statements of Mr. Mukesh Choksi and Mr. I.C. Choksi and associated brokerage companies. The Hon'ble ITAT on the analysis of the findings made

in the assessment orders has reached to the conclusion that the re-opening itself is bad in law and quashed the orders accordingly. The ratio of these judgments is applicable to the facts of the instant case. This is confirmed by the Delhi Bench of the Income Tax Appellate Tribunal in the case of DCIT v. Nipun Builders & Developers P. Ltd. (ITA No.557/DEL/2010) wherein the Tribunal dismissed the Revenue appeal by holding that the Assessing Officer has primarily relied upon the Report of the Investigation wing which cannot conclusively prove that assessee's own money was invested in the form of share application money.

5.12. Further, in the recent judgment of Shri.Jafferali K Rattonse V. DCIT reported in 5068/Mum/209, the Mumbai Bench of the Income Tax Appellate Tribunal has also held that the mere statement of a person cannot be a deciding factor for rejecting the genuineness of the purchase of shares by the assessee specially when all other supporting evidences filed by the assessee were neither proved to be false or untrue. The Hon'ble ITAT Mumbai in the case of ITO vs Anand Shelters Pvt.Ltd. (2012) 20 Taxmann.com 153 has enumerated certain principles which would be extremely useful in understanding the issue in hand. It has been stated in the said judgment that over the years, law regarding cash credits have evolved and has taken a definite shape. A few aspects of law u/s.68 can be enumerated.

- 1. Sec. 68 can be invoked when there is a credit of amounts in the books maintained by the assessee, such credit is a sum of money during the previous year and either the assessee offers no explanation about the nature and source of such credits or the explanation by the assessee in the opinion of the AO is not satisfactory.*
- 2. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be formed objectively with reference to the material on record.*
- 3. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner.*
- 4. The onus of proof is not static. The initial burden lies on the assessee to establish the identity and the credit worthiness of the creditor as well as the genuineness of transaction.*
- 5. The identity of creditors can be established by either furnishing their PANs or assessment orders. The genuineness of the transaction can be proved if it was shown that the money was received by Account payee Cheque.*

Creditworthiness of the lender can be established by attending circumstances.

5.13. During the assessment proceedings, the appellant has submitted Loan Confirmations, Copy of Acknowledgement and Copies of the Bank Statements of these two parties. If the above referred principles are applied to the facts of the case under consideration, it can be seen that the identity of the creditors has been established as they are having PAN and they are regularly filing return of income. The genuineness of the transaction is established from the fact that both the acceptance and repayment of loan has been through banking channels. The creditworthiness of the lenders can be established from the statements. In the assessment order, the A.O. did not at all discuss the merit of submission made by the appellant and casually brushed aside the details filed by the appellant. Further, the appellant has stated that he had furnished all the relevant details during the course of the assessment proceedings and accordingly had duly discharged its onus by furnishing the identity and address of the parties. Further, the source of receipt through banking channels to substantiate the genuineness of the credits reflected in its books of Account.

*5.14. Further, it may be pointed out that section 68 under which the addition has been made by the Assessing Officer reads as under-
:*

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

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

5.16. *After considering the totality of facts, the rival submissions, the applicable law and on the basis of discussions mentioned above, I have come to the conclusion that nature and source of credit in the books of account of appellant stands explained. Consequently, addition u/s. 68 cannot be sustained. Therefore, A.O. is directed to delete the addition of Rs.1,27,50,000/-. This ground of appeal is allowed."*

8. *On a careful reading of the order of the Ld.CIT(A), we do not find any infirmity in the order passed in deleting the addition made u/s. 68 of the Act and the consequential interest on the credits. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue."*

10. In the case of DCIT v. M/s. Manish Flour Mills Pvt. Ltd., in ITA.No. 6729/Mum/2016 dated 24.10.2018 the Coordinate Bench held as under:

"3. *Briefly stated the facts are that, the Assessing Officer noticed that assessee during the year under consideration received unsecured loan of ₹.40 lakhs from M/s. Meenaxi Diamonds Pvt. Ltd., ₹.25 lakhs from M/s. Roshan Gems Pvt. Ltd., and ₹.75 lakhs from M/s. Abhiman Gems Pvt. Ltd. A.O observed that there is a search and seizure operation in the case of Shri Bhanwarlal Jain Group by the Investigation wing of the Department and in the course of proceedings it was established that these persons are in the business of providing accommodation entries to various beneficiary companies. He observed that M/s. Meenaxi Diamonds Pvt. Ltd., M/s. Roshan Gems Pvt. Ltd, and M/s. Abhiman Gems Pvt. Ltd., have provided accommodation entries as these companies were managed by the Shri Bhanwarlal Jain Group. In order to verify the genuineness of the transactions Assessing Officer issued notices u/s.133(6) of the Act to the above parties and all the companies responded to the notices and filed necessary information regarding transactions made with the assessee. However, the Assessing Officer relying on the statements of Shri Bhanwarlal Jain Group concluded that the companies have provided only accommodation bills to the assessee and therefore the assessee has not proved the nature and source of the transactions. Accordingly, he made addition u/s. 68 of the Act treating them as unexplained credits. On appeal Ld.CIT(A) deleted the addition based on the submissions and information/ evidences furnished by the assessee against which the Revenue is in appeal before us.*

4. *Ld. DR strongly supported the orders of the Assessing Officer and submitted that transactions between the assessee and the companies operated by Shri Bhanwarlal Jain Group are all paper transactions and the transactions are non-genuine. In the statements recorded by the*

Investigation Department the persons of Shri Bhanwarlal Jain Group have categorically stated that they have provided only accommodation entries through various companies and these companies where the assessee has made transactions are all the companies which are run by Shri Bhanwarlal Jain Group and therefore the Assessing Officer has rightly treated the transaction as only accommodation entries and rightly made addition u/s.68 of the Act.

5. Ld. Counsel for the assessee strongly placed reliance on the orders of the Ld.CIT(A). He also submitted that the parties have responded to the notice issued u/s.133(6) of the Act they have filed the information called for, the assessee himself produced confirmations by the parties, assessee furnished income tax returns of the companies, bank statements of the parties showing the loan transactions, audited balance sheets of the creditors along with the schedule wherein the credit in the name of the assessee is outstanding in their books and the replies given by the creditors to the notice issued by the Assessing Officer u/s. 133(6) of the Act confirming the transactions with the assessee, Payment of interest to creditors after subjecting to TDS. Therefore, it was submitted that all these evidences goes to show that the transactions are genuine. The identify and credit worthiness of the creditors are proved and therefore simply based on the statements given by the Shri Bhanwarlal Jain Group addition cannot be made treating them as mere accommodation entries. It was also further submitted that the statements given by Shri Bhanwarlal Jain Group have subsequently retracted by themselves. It was further submitted before us that the Assessing Officer has not provided the cross examination of the persons who gave statements. It was also submitted that in the statements given by Shri Bhanwarlal Jain Group they have never mentioned assessee's name as the beneficiary of the accommodation bills. Therefore, the Learned Counsel for the assessee submitted that the transactions are genuine, the identity and credit worthiness of the creditors have been proved and therefore no addition is warranted u/s. 68 of the Act.

6. Ld. Counsel for the assessee placed reliance on the following decisions in support of his submissions: -

- a. ACIT vs. Sumit J. Jain (ITA No. 145/M/17)*
- b. ACIT vs. Shri Vashu Bhagnani (ITA.No.5648/M/16)*
- c. ITO vs. Gujarat Construction (ITA No. 7040/M/16)*
- d. DCIT vs. M/s YRV International (ITA No. 1414/M/17)*
- e. ACIT vs Shri Dilip Chimanlal Gandhi (ITA No. 7079/M/16)*
- f. ACIT vs Rajesh M. Shah HUF (ITA No. 7079/M/16)*
- g. DCIT vs Meridian Chem Bond P. Ltd (ITA No. 7385/M/16)*
- h. M/s Reliance Corporation vs. ITO (ITA No. 1069 to 1071/M/17)*

7. We have heard the rival submissions, perused the orders of the authorities below. Assessing Officer made addition by placing reliance

merely on the statements of Shri Bhanwarlal Jain Group which were recorded u/s. 132(4) of the Act. No independent enquiry was carried out by the Assessing Officer, he has not brought any corroborative evidence to substantiate that the transactions are non-genuine. Assessee provided various evidences to establish that the transactions are genuine, creditors are identifiable and credit worthiness is proved. Following information is furnished by the assessee.:

- (1) Confirmation of A/c. by the parties.*
- (2) Income tax returns of the parties for A.Y.2012-13.*
- (3) Bank Statements of the parties showing the loan transactions.*
- (4) Audited Balance sheet & P & L A/c of the creditors along with the schedule wherein credit in the name of the assessee is outstanding in their books.*
- (5) Reply given by the parties to the notice issued by the AO u/s 133(6) confirming the transaction with the assessee.*
- (6) Payment of interest to creditors after subjecting the amount to IDS.*

8. By providing all this information to the Assessing Officer the assessee has discharged the initial onus of proving genuineness of the transactions u/s. 68 of the Act. Even the creditors have responded to the notices issued u/s. 133(6) of the Act and confirmed the genuineness of the transactions with the assessee, therefore once the initial onus is discharged by the assessee the burden shifts to the Revenue to disprove the claim of the assessee. We notice that all the loans were taken through banking channels and the repayments for the same was also made through banking channels. The loans were repaid after paying interest and deducting TDS. The Assessing Officer ignored the documentary evidences submitted by the assessee and has exclusively relied on statements of third party in making the addition. In spite of request by the assessee the Assessing Officer did not provide any cross-examination of the parties who have made the submissions. All these aspects have been considered by the Ld.CIT(A) and deleted the addition observing as under:

"4.2.2. In the instant case, however, as seen from the details filed before the AO, a set of which were also filed before me, I do not find any inconsistency or incoherence in the receipt of loans from the parties. Firstly, as regards the transaction, the same has routed through the banking channels and the source cannot be doubted. Secondly, as was held in several cases that whatever maybe the strength of presumption it cannot replace evidence. Even though, the transaction is from a tainted group, the AO has not gathered any additional/independent evidence to show that the transaction with the appellant company was sham, fictitious or artificial except believing the statements given by the entry operators. He has failed

to gather evidence to show that the unaccounted cash of the appellant had changed hands subsequently replacing the cheque payments. Thirdly, he has also not answered several valid points raised by the appellant nor proved how the details like PAN, the IT returns, confirmation letters, bank statements of the creditors, audited balance sheet of the creditors cannot be taken note of. Fourthly, the ITAT Mumbai in the case of Anant Shelters P Ltd. (2012) 20 taxmann.com 153 has laid down certain principles with regard to section 68 which the AO is bound to follow. They are reproduced as under(para-7)-

(i) Section 68 can be invoked when following three conditions are satisfied -

(a) when there is credit of amounts in the books maintained by the assessee (b) such credit has to be a sum of money during the previous year (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

(ii) The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. The opinion of the AO is required to be formed objectively with reference to the material on record file. Once the explanation of the assessee is found unbelievable or false the AO is not required to bring positive evidence on record to treat amount in question as income of the assessee. While considering the explanation of the assessee, the AO has to act reasonably-application of mind is the sine qua non for forming the opinion.

(iii) Phrase appearing in the section - nature and sources of such credits - should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a causal manner. Assessee cannot be asked to prove impossible. Explanation about 'source of source' or 'origins of the origin' cannot and should not be called for while making inquiry under section.

(iv) In the matters related to section 68 burden of proof cannot be discharged to the hilt -such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under Section 68.

(v) Confirmatory letters or A/c payee cheques do not prove that the amount in question is properly explained for the purpose of section 68. Assessee has to establish identity and creditworthiness of the creditor as well as the genuineness of the transaction. All the three ingredients are cumulative and not exclusive.

(vi) In matters regarding cash credit the onus of proof is not a static one. As per the provisions of the section the initial burden of proof lies on the assessee. Amount appearing in the books of a/cs. Of the assessee is considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of the transaction can be proved by showing that the money was received by an account payee cheque or by draft. Credit worthiness of the lender can be established by attending circumstances. Once the assessee produces evidences about identity, genuineness and credit worthiness of the lender onus of proof shifts to the Revenue.

Fifthly, the Honorable Supreme Court in the case of Lovely Exports Private Limited, (2008) 216 CTR 195 (SC), has stated that the AO is

at liberty to bring to tax the amounts in their respective hands of the creditors if their identity, genuineness and creditworthiness is not proved. The AO should have made efforts to assess the amounts in the hands of the creditors at least on protective basis. Lastly, even if the creditworthiness of the creditors is not proved it will not automatically give license to the AO to make additions in the hands of the assessee u/s 68 unless it is proved that it is the unexplained money of the assessee which has been introduced in its books of account in the names of bogus/non-existent entities. In the instant case the AO has not made any dent in these lines. On the other hand, the appellant has filed the following details in the case of all the three creditors to prove the identity, genuineness and creditworthiness of the creditors.

- (1) Confirmation of A/c. by the parties.*
- (2) Income tax returns of the parties for A.Y.2012-13.*
- (3) Bank Statements of the parties showing the loan transactions.*
- (4) Audited Balance sheet & P & L A/c of the creditors along with the schedule wherein credit in the name of the assessee is outstanding in their books.*
- (5) Reply given by the parties to the notice issued by the AO u/s 133(6) confirming the transaction with the assessee.*
- (6) Payment of interest to creditors after subjecting the amount to IDS.*

4.2.3 As seen from the above, the appellant has furnished all the details proving conclusively the three ingredients of identity and creditworthiness of the creditors and the genuineness of the transaction. The amounts were paid by the creditors from their running bank accounts which were accounted in the books of the appellant as well as the creditors as seen from the audited accounts filed. The transactions were also confirmed by all the creditors who are assessed to tax. Further, the appellant has paid interest through banks to the creditors by duly subjecting the interest amount to TDS as detailed in this order at para 5.2. I find that the AO was in possession of good information in the form of investigation report, to begin with, but he could neither succeed to repudiate the evidences filed by the appellant nor he could gather independent evidence even to establish the surrounding circumstances not to speak of leading evidence to prove his hypothesis. In view of the above discussion I hold that the loan taken by the appellant from the above three parties cannot be doubted and the addition made by the

AO u/s 68 of the Act cannot survive the test of appeal. I therefore, direct the AO to withdraw the addition. The ground is allowed.

5. The second issue is with regard to addition of Rs.8,32,607/- on account of interest expenses u/s 69C of the Act. The AO has noticed payment of interest to the creditors from whom loan was taken. As the credits were disbelieved by the AO since the credits were given by the bogus concerns floated by Banwarlal Group who are the only entry operators, the AO has also disallowed interest claimed to have been paid to these creditors u/s 69C of the Act.

5.1 The appellant has objected for the disallowance of interest truly been paid to the creditors from whom loans were taken. He has further submitted that the payments were made through banking channel after making TDS applicable.

5.2 I have carefully considered the facts and submissions of the Id.AR. As seen from the details the appellant has borrowed money from four parties and paid interest after making TDS as under: -

Name of the lenders.	Capital borrowed.	Interest accrued.	IDS made	Net interest paid to lender.
Meenakshi Diamonds Pvt.Ltd.	40 lacs	7,24,657	72,466	6,52,191
Roshan Gems Pvt.Ltd.	25 lacs	12,705	1,270	11,435
Abhiman Gems Pvt.Ltd.	75 lacs	35,245	3,525	31,720
Madhur Gems Pvt.Ltd.	75 lacs cl.bal. (Outstanding amount-no borrowing during the year.)	60,000	6,000	54,000
Total		8,32,607/-		
		-		

Since the loan given by the above parties were treated as genuine, in this order earlier paragraphs, the interest paid to those parties is also treated as genuine. Accordingly, the interest paid is allowed as

expenditure and AO is directed to withdraw the addition made u/s 69C of the Act. The ground is allowed."

9. On a careful reading of the order of the Ld.CIT(A), we do not find any infirmity in the order passed in deleting the addition made u/s. 68 of the Act and the consequential interest on the credits. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue."

11. An identical issue came up in the case of DCIT v. Bairagra Builders P. Ltd reported in [2017] 51 CCH 0107 in ITA.No. 4691 and 4692/Mum/2015 dated 14.09.2017 wherein the Coordinate Bench held as under: -

"6. We have heard the rival submissions along with the orders of the tax authorities below. We noted that during the impugned assessment year, the assessee had taken unsecured loans from the following two parties:

<u>Sr. No</u>	<u>Name of the Party and Address</u>	<u>PAN</u>	<u>Loan taken(Rs.)</u>	<u>Rate of Interest</u>
1.	Javda India Impex Limited CS-1, Silver Anklet, Yari Road, Versova, Mumbai 400 061	AAACA7065L	20,00,000	9%
2.	Lexus Infotech Ltd. 626, Panchratna, Opera House, Mumbai 400 002	AAACL4646G	20,00,000	9%

When the Assessing Officer asked the assessee to prove the genuineness of these loans, the assessee submitted the following documents:

- a. Copy of acknowledgment of income tax return filed for A.Y. 2007-08.*
- b. Copy of PAN of the parties*
- c. Copy of bank statement of the parties from where the cheque is issued.*
- d. List of directors of the parties*

- e. Copy of annual report of the parties for financial year 2006-07.
- f. Copy of loan confirmation from the parties.

The Assessing Officer treated these loans to be non-genuine and made addition u/s 68 of the I.T Act on the basis of the statement of Shri Nilesh Parmar, one of the associate of Shri Praveen Kumar Jam, Director of Mohit International and one of the dummy Director of some of the companies of Shri Praveen Kumar Jam. Although said statement has been immediately retracted by him by filing an affidavit with the CBDT, the CIT(A) has deleted the said addition as in his opinion the assessee has duly discharged his onus as laid down on it u/s. 68 of the I.T.Act. It was also noted by the CIT(A) that the assessee has proved the identity, credit worthiness as well as genuineness of the transactions and, therefore, no addition u/s. 68 can be made.

7. The learned AR before us relied on the order of the CIT(A) and has also pointed out that the loan received by the assessee has been returned to the respective parties through cheques and in none of the case the respective party has deposited any cash. He relied on the following Tribunal decisions:

- *Arceli Realty Ltd vs. ITO [ITA No.6492/Mum/2016 dated 21.04.2017 (Mumbai)]*
- *M/s Komal Agrotech Pvt. Ltd. vs. ITO [ITA No.437/Hyd/2016 dated 25.11.2016 (Hyderabad)]*
- *Sudhanshu Suresh Pandhare vs. ITO [ITA No.5185/Mum/2012 dated 05.10.2016 (Mumbai)]*
- *Dilsa Distributors Combines vs. ITO [ITA No.5849/Mum/2011 dated 06.09.2013 (Mumbai)]*
- *Aim Properties & Investments Pvt. Ltd vs. ITO [ITA No.7426/Mum/2012 dated 04.12.2013 (Mumbai)]*

He further placed reliance on the following judgments:

*Nemi Chand Kothari vs. CIT [2004] 136 Taxman 213 (Gau)
Vijay Kumar Talwar vs. CIT [2011]330 ITR 1 (SC)*

8. The learned DR, on the other hand, relied on the decisions of the Hon'ble Delhi High Court in the case of Principal CIT vs. Bikram

Singh ITA.No. 55/2017 & CIT vs. Jansampark Advertising & Marketing Pvt. Ltd. in ITA.No.525/2014.

9. *We have gone through the orders relied upon by the learned DR. We noted that the decision of the Delhi High Court in the case of Bikram Singh, the assessee could not discharge the onus as laid down by section 68 of the Act. Similarly, in the case of CIT vs. Jansampark Advertising & Marketing Pvt. Ltd. (supra), the additions have been made u/s. 68 in respect of the share capital received by the assessee from various companies and during the course of investigation, it was found that the share capital has been received from three entry operators, who are allegedly in the business of providing accommodation entries. Notices issued u/s. 131 to these parties were returned undelivered by the postal authorities with the remark "left"/ "no such person". Under these circumstances, the Hon'ble High Court took a view that the assessee failed to discharge the burden to prove the credit worthiness as well as the genuineness of the transactions.*

10. *But in the impugned case, we noted that the assessee has submitted all the evidences including the confirmation of the creditors. This is not a case where the creditors have not given confirmations rather they have duly confirmed to giving loan to the assessee, the loans were received and returned through banking channels. The assessee has also submitted copies of bank accounts. The lender has not deposited cash into bank account. The assessee has duly discharged the onus with regard to identity of the lender, credit worthiness of the party and all supporting evidences as required u/s. 68 of the I.T.Act. Therefore, in our opinion the decisions relied upon by the DR does not assist the Revenue to the facts of the present case.*

11. *We have also gone through the decisions relied upon by the learned AR. We noted that this Tribunal in similar circumstances in the case of Komal Agrotech Pvt. Ltd. vs. ITO in ITA No. 437/Hyd/2016 vide its order dated 25.11.2016 has held as under:*

A plain reading of the assessment order demonstrates that the AO merely went by the Investigation done by the office of D G. I T (Investigation), Mumbai. No enquiries or investigation was carried out. No evidence to controvert the claims of the Assessee was brought

on the record by the AO. Even the statement of Shri Praveen Kumar was supplied. Nothing is on record about the result of investigations done by DGIT (Inv), Mumbai. The papers filed by the assessee do demonstrate the identity, creditworthiness and genuineness of the transaction. The addition is made merely on surmises and conjectures.

In view of the above, we hold that the addition made under section 68 of the Act is bad in law.

We noted that in the said case also loan had been received from Javda India Impex Ltd.

12. Being consistent with the view taken by this co-ordinate Bench in the case of Komal Agrotech Pvt. Ltd. (supra), and in view of the facts and circumstances, we do not find any illegality or infirmity in the orders of the CIT(A). It is accordingly, confirmed for both the years under appeal.

13. In the result, the appeals filed by the Revenue are dismissed.”

12. On a plain reading of the Assessment Order, we find that the Assessing Officer has gone only by the statement recorded from Shri Pravin Kumar Jain who said to have been deposed that he is only providing accommodation entries and no real business is carried on by the entities. The Assessing Officer has not made any efforts to make independent enquiries with the lender company. We also observe from the Assessment Order that the Assessing Officer has not provided the statements of Shri Pravin Kumar Jain to the assessee for his rebuttal. Nothing is placed on record to suggest that the information furnished by the assessee in the form of copy of affidavit, establishing identity of the

lender, copy of the ledger giving details of loans confirmation taken and also repayment in subsequent years, copy of bank statement highlighting the natures of loan taken and repayment in subsequent years to establish the genuineness of the transactions copy of ITR-V filed establishing creditworthiness of the lender are non-genuine. The assessee has discharged his primary onus on providing complete details in respect of the loan transaction and the Assessing Officer failed to carry out any fruitful investigation. Therefore, no addition can be made towards unexplained unsecured loan.

13. The case laws relied on by the Ld.DR are of no help to the revenue given the facts and circumstances of the assessee's case. In the case on hand assessee provided various evidences to establish the transactions are genuine, creditors identity and creditworthiness is proved by providing all the information to the Assessing Officer the assessee has discharged the initial onus of providing genuineness of the transactions under u/s 68 of the Act. Therefore, once the initial burden is discharged by the assessee the burden shifts to the revenue to disprove the claim of the assessee. It is noticed that Assessing Officer did not make any sort of enquiries to disprove the genuineness of the transaction on the evidences furnished by the assessee. He has completely ignored even the statement

retracted by the PKJ. The addition is made merely on surmises and conjectures without probing further by the Assessing Officer. The result of the investigation in the case of PKJ is not known especially when the PKJ has retracted his earlier statement. The sole basis for the addition in this case is the statement of PKJ and nothing else. In view of the above, I hold that the addition made u/s. 68 of the Act is bad in law.

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

Order pronounced on 27.09.2021 as per Rule 34(4) of ITAT Rules by placing the pronouncement list in the notice board.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER
Mumbai / Dated 27/09/2021
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum