

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3122/Del/2018
Assessment Year: 2012-13

Addl. CIT,
Special Range-9,
New Delhi.

Vs Vimal Moulders India Pvt. Ltd.,
FA-44, Shivaji Enclave,
New Delhi.

PAN: AAACV0697B
Co No.128/Del/2018
(ITA No.3122/Del/2018)
Assessment Year: 2012-13

Vimal Moulders India Pvt. Ltd.,
FA-44, Shivaji Enclave,
New Delhi.

Vs. Addl. CIT,
Special Range-9,
New Delhi

PAN: AAACV0697B

(Appellant)

(Respondent)

Assessee by : Shri Ajay Wadhva, Advocate
Revenue by : Shri Munesh Kumar, CIT, DR

Date of Hearing : 28.10.2021
Date of Pronouncement : 18.11.2021

ORDER

PER R.K. PANDA, AM:

The above appeal filed by the Revenue and the CO filed by the assessee are directed against the order dated 26th February, 2018 of the CIT(A)-42, New Delhi,

relating to assessment years 2012-13. For the sake of convenience these were heard together and are being decided by this common order.

2. Facts of the case, in brief, are that the assessee is a private limited company and is engaged in manufacturing of Plastic moulded products and a wide range of products used in Automotive & White Goods Industry. The company manufactures different sizes of plastic products according to the needs & specifications given by its customers with the help of Injection Moulds. It filed its return of income on 30.09.2012 declaring loss of Rs. 1,64,78,986/- under the normal provisions of Income Tax and book profit of Rs.3,62,593/- u/s 115JB. The case was processed u/s 143(1) of the I.T. Act, 1961. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 12.08.2013. Thereafter, notices u/s 143(2)/142(1) of the Act along with questionnaire was issued. The AR of the assessee appeared from time to time and filed the details as called for.

3. During the course of assessment proceedings, the AO noted that as per the audited accounts for the year ending 31.03.2012, the unsecured loan of Rs.33,49,98,619/- are outstanding. He, therefore, asked the assessee to furnish the details as under as per the questionnaire:-

"provide the details of unsecured/secured/squared-up loans with name/ addresses/ where assessed/ PAN No. along with confirmation/statements of accounts. Also give a chart of unsecured loans containing details regarding opening balance, amounts received, repaid, interest, rate of interest and closing balance. Complete details of transactions made in contravention to section 269SS and 269T of the IT Act, 1961. Furnish the following evidence of unsecured loan taken fresh and repayment of loan made during the year:

Furnish the copy of account of all persons from whom unsecured loan was obtained or to whom the repayment of loan was made, as appearing in the books of account along with complete current address of the lender with their phone numbers, PAN and copy of ITR along with computation of income.

Furnish the mode of receipt of loan from persons or mode of repayment of loan to person along with copy of bank statements of the sundry creditors."

3.1 In response to the above, the assessee filed the following details as reproduced by the AO in the body of the assessment order at para 2 which is as under:-

S.N.	Name of parties from whome loan taken	O/s balance as on 31.03.2012	Out of o/s loan Received during the year	Documents Received
1	Vimla Batra	39,917,590	3,99,17,590	Confirmation, ITR
2	Sangita Batra	258,055	2,58,055	Confirmation, ITR
3	Avvish Batra	6,201,306	50,75,000	Confirmation, ITR
4	Satish Batra	18,177,736	1,81,77,736	Confirmation, ITR
5	Ansh Digitronics Pvt. Ltd.	5,200,440	-	Confirmation, ITR
6	Vimal Autoplast P. Ltd.	500,000	-	Confirmation, ITR
7	Vimal Past (India) Plas Ltd.	21,963,232	2,19,63,232	Confirmation, ITR
8	Harish batra	14,836,483	1,48,36,483	Confirmation, ITR
9	BDS tech & financial consultancy	1,800,000	18,00,000	
10	SJA Technical consultants p ltd.	7,200,000	72,00,000	
11	Star management consultants	3,000,000	30,00,000	
12	Priyanka Batra	1,900,000	-	Confirmation, ITR
13	R.L. Juneja	364,543	-	
14	Vishal Bajpai	500,000	-	
15	Arihant classic Finance Pvt. Ltd.	15,270,000	10,80,000	
16	Shree Swastik sales corpn	1,200,000	-	
17	Crystal Audio	257,182	-	
18	CBBC	33,519,838	-	
19	Dipika Polymers	15,485,000	-	Confirmation
20	Jewel Polymers	6,805,136	-	Confirmation
21	Jewel Overseas Pvt. Ltd.	7,217,776	72,17,776	Confirmation
22	Sunvoice electronics	1,900,000	19,00,000	Confirmation
23	Tulika appliances Pvt. Ltd.	36,425,000	3,64,25,000	Confirmation
	Total (Rs.)	23,98,99,317	15,88,50,872	

3.2 According to the AO, the assessee did not provide the copy of ITR and confirmation of all parties and their bank statements, etc. The assessee also did not produce the parties for his examination to prove the genuineness. He, therefore, relying on various decisions invoked the provisions of section 68 of the IT Act, 1961 and made addition of Rs.15,88,50,872/- to the total income of the assessee.

3.3 From the various details furnished by the assessee, the AO noted that the office expenses claimed at Rs.93,57,459/- include the following expenses:-

S.N.	Particulars of Expenses	Amount (Rs.)
1	Repairs & Maintenance-Machinery	21,63,823
2	Telephone Expenses	23,12,009
3	Business Promotion	10,63,709
4	Vehicle Running Exp. -Motor Cars	22,26,824
	Total (Rs.)	79,66,365

3.4 The AO asked the assessee to provide the complete details of expenses exceeding Rs.10 lakhs and Rs.1 lakh for single transaction. Since the assessee company did not furnish the bills/supporting documents to his satisfaction, the AO disallowed an amount of Rs.15,93,273/- being 20% of the above expenses on ad hoc basis.

3.5 Thus, the AO determined the income of the assessee at Rs.14,39,65,159/-.

4. Before CIT(A), the assessee filed detailed submissions with request to admit certain additional evidences under Rule 46A. It was argued that these evidences which go to the root of the matter could not be filed due to insufficient time given by the AO. The Id.CIT(A) forwarded the details to the AO and called for a remand

report. The AO objected to the admission of additional evidences and sent his remand report. After considering the remand report of the AO and rejoinder of the assessee to such remand report, the Id.CIT(A) deleted the addition of Rs.15,88,50,872/- on account of unexplained loans u/s 68 of the IT Act, 1961 and sustained the addition of Rs.15,93,273/-.

4.1 So far as the deletion of Rs.15,88,50,872/- is concerned, the Id.CIT(A) deleted the same by observing as under;-

6.8 As discussed above, there are thirteen parties from whom the loan has been taken. It is noted that these parties can be broadly classified into five categories:

- (a) Loan from relatives who in turn have taken loan
- (b) Parties which are relatives/sister concerns and regular assesses and have their own source of income
- (c) Parties where civil suit has been filed for recovery of the loan.
- (d) Parties where addition in unsecured loan is only on account of interest
- (e) Transaction with Raw material supplier / debtors - wrongly classified as unsecured loans.

(a) Loan from relatives who in turn have taken loan:

Vimla Batra

6.9 During the year under consideration, the assessee company received an amount of Rs. 3,99,17,590/- as unsecured loan from Smt. Vimla Batra, who is a shareholder of the appellant company and mother of Shri Avnish Batra, managing director of the assessee company. As regards the source of the loan, Smt. Vimal Batra in turn took a loan against her personal property from a NBFC, named M/s Canfin Homes Ltd. The appellant submitted certificate from M/s Canfin Homes Ltd. confirming the fact of disbursal of loan of Rs. 3,99,17,590/- in the name of Smt. Vimal Batra. Further, the appellant submitted that the loan raised to the extent of Rs.3,41,27,500/- from Smt. Vimal Batra out of loan of Rs. 3,99,17,590/- was used directly to repay a loan taken by the assessee company from Vijaya Bank Ltd. The appellant submitted certificate from Vijaya Bank as an evidence to demonstrate the fact of repayment of loan of Vijaya bank using the loan taken from M/s Canfin Homes Ltd. by Smt. Vimal Batra. The remaining

loan amount of Rs. 57,90,090/- out of Rs. 3,99,17,590/- was debited directly to M/s. Vimal Moulders as unsecured loans.

6.10 Ld. AO has verified the documents filed as additional evidences and accepted the explanation of the assessee company in the remand report. I find that the appellant has proved the genuineness of the transaction and identity & capacity of the payer with the submission of certificate from M/s. Canfin Homes Ltd. and Vijaya Bank.

Satish Batra & Harish Batra

6.11 The appellant clarified that the loan of Rs. 13.60 crore was raised from Bajaj Finserv in the name of Avnish Batra against the property (BG12, Shivaji Enclave) of Sh. Satish Batra and another loan of Rs. 3.80 Cr was also raised from Bajaj Finserv against the property (FA43, Shivaji Enclave) of Sh. Harish Batra. Out of the loan of Rs. 13.60 crore raised from Baja Finserv against the property of Sh. Satish Batra, the disbursement of Rs. 3,62,08,426/- was made to square up the loan account of the assessee company from Standard Chartered bank. The appellant company treated the disbursement of loan of Rs. 3,62,08,426/- from Bajaj Finserv as unsecured loans of equal amount of Rs. 1,81,04,213/- in its books of account in the name of Satish Batra & Sh. Harish Batra respectively.

6.12 Ld. AO in the remand report stated that loan statement was in the name of Shri Avnish Batra and therefore, the loan in the name of Sh. Satish Batra stands unverified. In this regard, the appellant clarified that even though the loan was released by Bajaj Finserv in the name of Avnish Batra, however, the fact of the matter, as evident from the statement of Bajaj Finserv, is .that the loan was released against the property in the name of Sh. Satish Batra and Sh. Harish Batra. Keeping this very fact in view, the appellant company treated the disbursement paid directly to Standard Chartered bank as the loan outstanding in equal installments in the name of Sh. Satish Batra & Sh. Harish Batra. The appellant highlighted that Sh. Avnish Batra, Sh. Satish Batra & Sh. Harish Batra are real brothers. Therefore, the disursed loan in the name of Avnish Batra was apportionment equally to his brothers Sh. Satish Batra & Sh. Harish Batra in the books of accounts of the appellant company.

6.13 It is noted that the copy of Bajaj Finserv statement of account has been produced as an evidence of disbursal of loan of Rs. 3,62,08,426/-. Further, confirmation from Standard Chartered Bank regarding closure of outstanding loan account number 48237574 has also been placed on record. The copy of property ownership documents (Conveyance deed of property) in the name of Shri Satish Batra and Shri Harish Batra have also been placed on record.

6.14 I find that the loan was released against the property in the name of Sh. Satish Batra and Sh. Harish Batra as per the statement of Bajaj finserv. Therefore, there is no doubt that funds have been arranged by Avinash against the property of Satish and Harish Batra for repayment of loan outstanding against standard chartered Bank. Necessary evidences (conveyance deed, copy of Bajaj Finserv statement of account) have been placed on record. Accordingly, I find that the source of loan of Rs. 3,62,08,426/- stands explained.

(b) Parties which are relatives/sister concerns and regular assesses and have their own source of Income:

Sangeeta Batra

6.15 During the year under consideration, the assessee company received an amount of Rs. 5,50,000/- as unsecured loan from Smt. Sangeeta Batra, who is a shareholder of the appellant company and wife of Shri Avnish Batra, managing director of the assessee company. As regards the source of the loan, the appellant stated that Smt. Sangeeta Batra had the taxable income of Rs.8,51,060/-out of which the above specified amount was given as interest free unsecured loan. Further, the appellant submitted that she had the sufficient balance in her bank account to lend the said amount of money. The appellant submitted supporting evidences such as copy of the bank statement of Mrs. Batra, bank statement of ING Vysya Bank of assessee company reflecting credit entry of Rs. 5,50,000/-, copy of ITR of Smt. Sangeeta Batra and confirmation of Smt. Sangeeta Batra.

6.16 Ld. AO has verified the documents filed as additional evidences and accepted the explanation of the assessee company in the remand report. I find that the appellant has proved the genuineness of the transaction and identity & capacity of the payer with the submission of evidences as discussed above.

Avnish Batra

6.17 During the year under consideration, the assessee company received an amount of Rs. 50,75,000/- as unsecured loan from Shri Avnish Batra, who is a shareholder and managing director of the assessee company. As regards the source of the loan, the appellant submitted, copy of bank account and ITR to highlight that a) Shri Avnish Batra had regular source of income and returned gross taxable income of Rs.14,66,761/- for the subject year. Further, it is noted from the perusal of the bank account statement that the unsecured loan has been advanced in 4 installments on different dates. First payment is of Rs.4,50,000/- on 19/04/2011 and the same has been paid out of available bank balance. It may be relevant to note that the opening balance in the bank accdunt of Avnish Batra was of Rs. 3,96,105/- as on

01/04/2011. There are no cash deposits in the bank account till 19/04/2011. The second payment is of Rs. 17,00,000/- on 21/12/2011 and the same has been paid out of receipt of Rs 37,00,000/- on 16/12/2011 through cheque from Sh. Subhash Chander Karang. The third payment is of Rs. 24,25,000/- on 16/02/2012. The same has been paid out of receipt of Rs. 24,25,000/- from Vimal Moulders (the appellant company) on 15/02/2012. Effectively, the funds have been source from the appellant company only. Similar is the position in respect of fourth payment of Rs. 5,00,000/- on 29/03/2012. The same has been paid out of receipt of Rs. 5,00,000/- from Vimal Moulders (the appellant company) on 28/03/2012.

6.18 The above discussion clearly shows that the appellant company has discharged its onus to explain the source of funds in the hands of Avnish Batra for extending advances to the appellant company. The funds are routed through the bank accounts of Avnish Batra. It is not a case where the funds are sourced from shell companies. Moreover, Avnish Batra is a regular taxpayer and assessed to tax.

6.19 Ld. AO has verified the documents filed as additional evidences and accepted the explanation of the assessee company in the remand report.

Vimal Plast India Pvt. Ltd.

6.20 During the year under consideration, the assessee company received an amount of Rs. 2,19,63,232/- as unsecured loan from its related party i.e. M/s Vimal Plast India Pvt. Ltd. As regards the source of the loan, the appellant submitted that the lending company had lent the money to the assessee company from its internal accruals. The appellant invited my attention to the fact that the same assessing officer passed assessment order under the provisions of section 143(3) of the Income Tax Act, 1961 and duly accepted the fact of advance made by the aforesaid company. The appellant claimed that the capacity and identity of the entity and the genuineness of the transaction is not in doubt once the aforesaid entity has duly filed the income tax return and reflected the transaction of advancing the loan to the appellant company. Further, as per the assessee, the same transaction has not been questioned in the scrutiny assessment made by the same assessing officer.

6.21 I find that the bank account statement of M/s. Vimal Plast India (P) Ltd. and the appellant company have been placed on record to substantiate the source of funds advanced to the appellant company. It is noted that the funds have been sourced out of business receipts of the party (M/s. Vimal Plast India (P) Ltd.). It is interesting to note that both parties i.e. M/s. Vimal Plast India (P) Ltd. & appellant company are assessed with the same AO. Assessee filed confirmation, ITR, computation, party ledger, bank

statement of assessee & M/s. Vimal Plast and Assessment order of M/s. Vimal Plast passed u/s 143(3) for A.Y 2012-13 in support of its contention.

6.22 Further, it is noted from the remand report that Ld. AO has verified the documents filed as additional evidences and accepted the explanation of the assessee company in the remand report. There are no adverse comments in this regard. In view of the above, I do not find any merit in the addition made by the AO in respect of the unsecured loan raised from M/s Vimal Plast India (P) Ltd.

(c) Parties where civil suit has been filed for recovery of the loan:

1. M/s BDS Tech & Financial Consultancy-Outsider party-(Rs. 18,00,000/-)
2. M/s SJA Technical Consultants Pvt. Ltd.-Outsider party- (Rs. 72,00,000/-)
3. M/s Star Management Consultants Pvt. Ltd.-Outsider party-(Rs.30,00,000/-)

6.23 The assessee company claimed to have taken interest free unsecured loan for a stipulated time period from the above companies. However, the AO made addition under section 68 of the act for unexplained cash credits in the books of accounts. The appellant highlighted that the lender parties filed a recovery suit against the assessee company due to delay in repayment of loan to such parties as a result of financial crisis of the appellant company. The appellant pointed out that documentary evidence to explain the source of funds for such loans could not be procured from the aforesaid parties due to above discussed dispute.

6.24 The assessee submitted that the Hon'ble Court decided the recovery suit filed by the lender parties against the assessee company and therefore, after the court order, the assessee company had to compulsorily deposit the amounts with interest to the lending company. In this regard, the appellant company submitted the copy of the judgment evidencing of return of loan to the aforesaid parties. In the backdrop of the facts discussed above, I hold the loan transaction from the aforesaid companies as genuine one because the evidence of repayment of loan is quite clinching based on the court's decision.

6.25 I find that the assessee filed copy of District Magistrate Court order dated 20.09.2013 wherein it is categorically pointed out that "Litigating parties in question are having four cases, including the present case, pending between them. Both of them agreed to settle this dispute and in this regard a demand draft in the sum of Rs. 10 Lacs/-, is advanced by accused persons to the complainant, which is duly received by counsel for complainant. She has her receiving on this order sheet. Both the parties

submit that a sum of Rs. 1 crore 10 lakhs/- has already been paid by accused persons, collectively to the complainant, till date. Balance amount of Rs. 20 lacs/- towards interest and cost, has to be paid by accused persons collectively to the complainant."

6.26 Ld. AO in his remand report has stated that no copy of the complaint/petition has been furnished by the assessee company. In this regard, the appellant submitted that copies of the orders passed by the District Magistrate are sufficient proofs of complaint/petition filed against the assessee company. I do find merit in the argument of the assessee that if there is District Magistrate's order on the basis of complaint, in such a case, the requirement for copy of complaint is redundant. Moreover, the fact of complaint is clearly mentioned in the court order. The AO observed that the name of the company is not mentioned in the court order, whereas, the perusal of court order does show the name of the appellant company.

6.27 In view of the above, I find that the appellant has proved the genuineness of the transaction and identity & capacity of the payer with the submission of copy of court decision.

(d) Parties where addition in unsecured loan is only on account of interest:

M/s Arihant Classic Finance Pvt, Ltd.

6.28 During the year under consideration, the AO made addition of an amount of Rs. 10,80,000/- on account of addition in unsecured loan during the year in the name of M/s Arihant Classic Finance Pvt. Ltd. The appellant submitted that the increase in the loan account of Rs. 10,80,000/- was entirely on account of amount of interest credited after deduction of tax @ 10% out of total interest credit of Rs. 12 lakh on the unsecured loan raised during the preceding years. The appellant submitted copy of TDS Certificates showing entries of interest on which TDS has been deducted u/s 194A of the Income Tax Act. Since, no fresh loan has been raised during the year, therefore, I find that AO is not correct in making addition on account of unexplained credit in the books of accounts.

6.29 Ld. AO has verified the documents filed as additional evidences and accepted the explanation of the assessee company in the remand report.

(e) Transaction with Raw material supplier / debtors - wrongly classified as unsecured loans:

M/s Jewel Overseas Pvt. Ltd.

6.30 As per the final accounts for the year under consideration, the assessee company has unsecured loan of Rs. 72,17,776/- in the name of the party. The AO made the addition in the absence of the explanation of the assessee. The appellant submitted that the credit was not in the nature of unsecured loan but the same was in respect of the supply of raw material to the assessee company by M/s Jewel Overseas Pvt, Ltd.

6.31 Ld. AO In his remand report has stated that contention of the assessee is not acceptable as assessee has changed its stand. The AO observed that during assessment proceedings, amount of Rs. 72,17,776/- was shown as unsecured loan and at no time, it was claimed as creditor on account of purchase of raw material.

6.32 In this regard, the appellant clarified that assessee did file confirmation from M/s Jewel Overseas Pvt. Ltd during assessment proceedings wherein entries of sale made to the assessee company were clearly reflected. Accordingly, the appellant disputed the AO's contention that throughout the assessment, credit balance has been shown as unsecured loan. Further, the assessee also contended based on various citations (Hon'ble High Court of Delhi in the case of CIT v. Ritu Anurag Aggarwal reported in 2 taxmann.com 134 & Hon'ble ITAT Kolkata in the case of Standard Leather P. Ltd. reported in 162 ITD 285) that sundry creditors could not be treated as bogus where corresponding purchases from them were admitted.

6.33 The appellant admitted that the account of the aforesaid party was wrongly classified as unsecured loan by the assessee company with an intent to show high Debt Equity ratio. However, the appellant reiterated that M/s Jewel Overseas Pvt. Ltd. is factually a raw material supplier of the assessee company and the same has been evidenced through supporting material such as Ledger account of M/s Jewel Overseas Pvt. Ltd. in the books of assessee company for F.Y 2011-12 reflecting entries of purchase, purchase invoices of the party and ICICI bank statement of assessee company showing corresponding payment made to M/s Jewel Overseas Pvt. Ltd.

M/s Sunvoice Electronics Pvt. Ltd.

6.34 As per the final accounts for the year under consideration, the assessee company has unsecured loan of Rs. 1900,000/- in the name of the party. The AO made the addition in the absence of the explanation of the assessee. The appellant submitted that the credit was not in the nature of unsecured loan but the same was in respect of the supply of raw material to the assessee company by M/s Sunvoice Electronics Pvt. Ltd. The total credit

balance as on 31.03.2012 from the two units of the party was Rs. 20,82,517/- (Rs. 17,65,767 from first unit and Rs. 3,16,759/- from second unit). First unit was located at C-161, Sector-63, Noida and Second unit was located at A-6, Sector-8, Noida. As per the appellant, out of Rs. 20,82,517/-, Rs. 19,00,000/- was classified by the assessee company as unsecured loan to show high debt equity ratio and balance Rs. 1,82,517/- was shown as sundry creditors in its books of account.

6.35 Ld. AO in his remand report has stated that contention of the assessee is not acceptable as assessee has changed its stand. He stated that during assessment proceedings, amount of Rs. 19,00,000/- was shown as unsecured loan and at no time it was claimed as creditor on account of purchase of raw material.

6.36 In this regard, the appellant clarified that assessee did file confirmation from M/s Sunvoice Electronics during assessment proceedings wherein entries of sale made to the assessee company were clearly reflected. Accordingly, the appellant disputed the AO's contention that throughout the assessment, credit balance has been shown as unsecured loan. Further, the assessee also contended based on various citations (Hon'ble High Court of Delhi in the case of CIT v. Ritu Anurag Aggarwal reported in 2 taxmann.com 134 & Hon'ble ITAT Kolkata in the case of Standard Leather P. Ltd. reported in 162 ITD 285) that sundry creditors could not be treated as bogus where corresponding purchases from them were admitted.

6.37 The appellant admitted that the account of the aforesaid party was wrongly classified as unsecured loan by the assessee company with intent to show high Debt Equity ratio. However, the appellant reiterated that M/s Sunvoice Electronics Pvt. Ltd. is factually a raw material supplier of the assessee company and the same has been evidenced through supporting material such as Ledger account of M/s Sunvoice Electronics Pvt. Ltd. in the books of assessee company for F.Y 2011-12 reflecting entries of purchase. Further, the assessee made the payment of Rs. 19,00,000/- to M/s Sunvoice Electronics through banking channels in F.Y 2012-13 and 2013-14.

M/s Tulika Appliances Ltd.

6.38 As per the final accounts for the year under consideration, the assessee company has unsecured loan of Rs. 3,30,00,000/- in the name of the party. The AO made the addition in the absence of the explanation of the assessee. The appellant submitted that it received advance payment of Rs. 3,30,00,000/- from M/s Tulika Appliances Ltd to meet its working capital requirement. The appellant averred that it had an opening balance of Rs. 34,25,000/- on account of advance payment received in preceding year. Further, the assessee pointed out that M/s Tulika Appliance Ltd. is a regular

buyer of the assessee company and it made central sale, local sale or some payments in subsequent years to M/s Tulika Appliances Ltd against the advance received from it.

6.39 Ld. AO in his remand report has stated that contention of the assessee is not acceptable as assessee has changed its stand. He stated that during assessment proceedings, amount of Rs. 3,30,00,000/- was shown as unsecured loan and at no time it was claimed as creditor on account of advance towards supply of goods.

6.40 In order to rebut the contention of the AO, the appellant submitted that the confirmation as well as ledger account of M/s Tulika appliances was filed during the assessment proceedings which shows that M/s Tulika Appliances Ltd. is a regular buyer of the assessee company. Further, the appellant made submission of supporting evidences such as Bank statement of IndusInd Bank of M/s Tulika Appliances Pvt. Ltd. showing entries of making advance payment to the assessee company & Bank statement of assessee company showing entries receiving advance payment from M/s Tulika Appliances Pvt. Ltd. The appellant has also submitted the copy of the ledger account of the party for succeeding years to demonstrate that the supply was made to the party against the advances so received.

6.41 I find that in all three cases as discussed above, the issue is that the sundry creditors against supply of raw material have been classified wrongly as unsecured loans. As regards the genuineness of the transaction is concerned, I find that the appellant has duly discharged its onus by furnishing evidence in the form of bank accounts and ledger of the relevant parties. As regards the capacity and identity of the sundry creditors, it is noted that the appellant has provided PAN Number and confirmation from the respective parties. Further, it is noted that the payments against supply of material to the aforesaid parties have been cleared in subsequent years. Therefore, the addition in this case is not warranted.

6.42 Hence, the ground of appeal is allowed.ö

4.2 Similarly, the Id.CIT(A) sustained the addition of Rs.14,93,273/- by observing as under:-

ö7.6 I have carefully considered the submission of the appellant and the facts of the case. As regards the appellant's claim of the audited accounts, I find that there is no provision in the Act which provide that no disallowance can be made in case of audited accounts. The audit of accounts is not the blanket assurance that no disallowance can be made during assessment proceedings. It is a settled law that if the assessee claims deduction of any

expenses, the burden of proof is on him to establish that such expenditure was incurred wholly & exclusively for the purpose of his business. Reliance is placed on the decisions of the Supreme Court in the case of CIT vs. Calcutta Agency Ltd. 19 ITR 191 (SC), Lakshmiratan Cotton Mills Co. Ltd. vs. CIT 73 ITR 634 3 ITA No 2578/AHD/2011 . A.Y. 2008-09 (SC) and L.H. Sugar Factory & Oil Mills (P) Ltd. vs. CIT 125 ITR 293 (SC), and other decisions in the case of Dalmia Jain & Co. Ltd, V/s, CIT [1958] 33 ITR 294 (Pat) Dey's Medical Stores 9 ITA no.2113/Ahd/2010 Mft. Pvt. Ltd, V/s. CIT [1986] 162 ITR 630 (Cal) Liberty Cinema V/s. CIT [1964] 52 ITR 153 (Cal) Hotz Trust V/s. CIT [1952] 21 ITR 149 (Punj), CIT V/s, Chandravilas Hotel [1987] 164 ITR 102 (Guj) and State of Madras V/s. GJ, Coelho [1964] 53 ITR, 186 (SC).

7.7 Further, the Hon'ble Supreme Court in the case of L.H. Sugar Factory & Oil Mills (P.) Ltd. v. CIT 125 ITR 293 (SC) has held that where an assessee claims a deduction the onus is on him to bring all material facts on record to substantiate his claim.

7.8 Whether the appellant had kept complete record of the expenses alongwith vouchers or not is not the question to be decided here. The disallowance was made only on the ground that the bills and vouchers were not produced before the Assessing Officer inspite of specific request. The Ld. Counsel could not able to explain the reasons of not producing the bills and vouchers before the Assessing Officer. In absence of the production of bills and vouchers, the claim of the expenses was not subject to verification by the Assessing Officer. The Assessing Officer was thus justified in disallowing part of the expenses claimed because he had no other option when the assessee was not responding to the specific request of production of bills and vouchers. The appellant has produced part of bills pertaining to Repairs & Maintenance (Plant & Machinery), Telephone expenses, Business Promotion, Vehicle running expenses - motor car. However, amount of such bills is well below the extent to which the AO has already allowed the "other expenses". Accordingly, there is no case of altering the disallowance made by the AO.

7.9 The disallowance so made for Rs.15,93,273/- is in order and the same is hereby confirmed. Hence, the ground of appeal is dismissed.ö

4.3 Aggrieved with such relief granted by the CIT(A), the Revenue is in appeal before the Tribunal and the assessee has filed the CO by raising the following grounds:-

Ground of appeal

ö1. The Ld. CIT (A) has erred on the facts and circumstances of the case in not appreciating the fact that AO made the disallowance of Rs. 15,88,50,872/- on account of unsecured loans u/s. 68 of the I.T. Act, 1961.ö

Grounds of Cross Objections

ö1. That the order u/s 143(3) of the Act dated 16.03.2015 passed by the Id. AO is bad on facts and in law.

2. The Id. CIT (A) has erred in sustaining the disallowance of Rs. 15,93,2737- being 20% of Rs. 79,66,365/- in respect of repairs and maintenance expenses (Plant & Machinery), telephone expenses, business promotion expenses, vehicle running expenses - Motor Cars.

2.1 That the disallowance was sustained despite the fact that the appellant has filed the respective bills and ledgers before the Ld. Commissioner of Income Tax (Appeals).

3. The appellant craves leave to add, alter, amend, delete, substitute any ground of appeal on or before the date of hearing.ö

4.4 The Id. DR heavily relied on the order of the AO. He submitted that the Id.CIT(A) without considering the various issues raised by the AO has deleted the addition of Rs.15,88,50,872/- which is not justified under the facts and circumstances of the case. He accordingly submitted that the order of the Id.CIT(A) be set aside and the order of the AO be restored.

4.5 The Id. counsel for the assessee, on the other hand, submitted that the Id.CIT(A) after calling for a remand report from the AO and rejoinder of the assessee to such remand report has deleted the addition by passing a speaking order. Hence the grounds raised by the Revenue deserve to be deleted.

4.6 So far as the CO filed by the assessee is concerned, he submitted that the assessee is a private limited company and filed the requisite details during the course of assessment proceedings. The accounts are audited and no discrepancies were pointed out by the auditors. The AO has not pointed out any specific defect or discrepancies. Therefore, in view of the following decisions of the Honøble Delhi High Court such ad hoc disallowances of expenses is not permissible:-

- 1) National Industrial Corpn. Ltd. vs. CIT, 258 ITR 575; &
- 2) Friends Cleaning Agency (P) Ltd. vs. CIT, 332 ITR 269.

5. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. So far as the ground raised by the Revenue is concerned, we find the AO made addition of Rs.15,88,50,872/- u/s 68 of the IT Act, 1961 on the ground that there is an increase in unsecured loan during the year in respect of 13 parties and the assessee failed to discharge the onus cast on it by proving the identity and credit worthiness of the 13 parties and the genuineness of the transaction. We find, the Id.CIT(A) after admitting the additional evidence and after considering the remand report of the AO and rejoinder of the assessee to such remand report deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of Id.CIT(A) in deleting the addition on account of unsecured loan of Rs.15,88,50,872/-.

6. So far as the loan from Smt. Vimal Batra amounting to Rs.3,99,17,590/- is concerned, we find the CIT(A) deleted the same on the ground that she is a shareholder of the company, is the mother of the MD Mr. Avinash Batra and has given the loan out of loan against her personal property from M/s Canfin Homes Ltd., amounting to Rs.3,99,17,590/-. Out of the above an amount of Rs.3,41,27,500/- was directly paid to Vijaya Bank Ltd. towards loan of the assessee company and the balance amount of Rs.57,90,090/- was given to the assessee company as unsecured loan. The AO in the remand report has accepted the same and no adverse comments have been given. We, therefore, uphold the order of Id.CIT(A) on the issue of loan from Smt. Vimala Batra as genuine in absence of any adverse material.

7. So far as loan from Satish Batra of Rs.1,81,77,736/- and Harish Batra of Rs.1,48,36,483/- are concerned, we find they have also extended the loan out of loan obtained from Bajaj Finserv. The Id. CIT(A) after verifying the relevant details deleted the addition by passing a speaking order on this issue. In absence of any contrary material brought to our notice by Id.CIT, DR, we do not find any infirmity in the same. Accordingly, the order of the Id.CIT(A) is upheld in respect of unsecured loan from Satish Batra and Harish Batra.

8. So far as unsecured loan from Sangeeta Batra and Avinash Batra are concerned, we find the Id. CIT(A) after verifying their assessment particulars and bank statement, etc., has deleted the addition by passing a speaking order. He has

given a finding that the AO in the remand report has verified the additional evidence and accepted the explanation of the assessee. In absence of any contrary material brought to our notice by Id. DR, we do not find any infirmity in the order of Id.CIT(A) deleting the addition. Accordingly, the order of the Id.CIT(A) accepting these two unsecured loans as genuine are upheld.

9. So far as the unsecured loan of Rs.2,19,63,232/- from Vimal Plast India Pvt. Ltd. is concerned, we find the Id.CIT(A) while deleting the same has given the finding that the loan was given out of internal accruals. The said concern is a related party, assessed under the same AO and order has been passed u/s 143(3) for this very assessment year i.e., 2012-13. The AO in the remand report has accepted the same. We, therefore, uphold the order of the CIT(A) accepting the loan from Vimal Plast India (P) Ltd. as genuine in absence of any contrary material.

10. So far as loans from (a) M/s BDS Tech & Financial Consultancy, Rs.18,00,000/-; (b) M/s SIA Technical Consultancy (P) Ltd., Rs.72,00,000/- and (c) Star Management Consultancy, Rs.30,00,000/- are concerned, we find the Id.CIT(A) while deleting the addition has given a finding that the lender parties had filed a recovery suit against the assessee and after the court order the assessee had to compulsorily deposit the amount with interest. In view of the detailed reasoning given by the Id. CIT(A) on this issue and in absence of any contrary material brought to our notice, we do not find any infirmity in the order of Id.CIT(A) deleting the addition in respect of the above three parties.

11. So far as unsecured loan of Rs.10,80,000/- from M/s Arihant Classic Finance (P) Ltd. is concerned we find the Id.CIT(A) while deleting the addition has given a finding that the same is only on account of credit of interest on the outstanding loan and no fresh loan has been obtained during the year. Further, TDS has been deducted u/s 194A. In view of the above and in absence of any contrary material brought to our notice by Id. DR, we uphold the order of the Id.CIT(A) on this issue.

12. So far as unsecured loan of Rs.72,17,776/- from M/s Jewel Overseas (P) Ltd. and rs.19,00.000/- from M/s Sunrise Electronics are concerned, we find the Id.CIT(A) after verifying the fact that these are sundry creditors against sales and were wrongly classified as unsecured loans has deleted the addition by passing a speaking order. In absence of any contrary material brought to our notice by Id.CIT, DR, we do not find any infirmity in the order of Id.CIT(A) on this issue. Accordingly, this order deleting the above two additions are upheld.

13. So far as Rs.3,64,25,000/- from M/s Tulika Appliances (P) Ltd., is concerned, we find the Id.CIT(A) while deleting the addition has given a finding that it had an opening balance of Rs.34,25,000/- and the assessee during the year has received advance of Rs.3,30,00.000/-. The above party has regular transaction with the assessee and materials were supplied in the subsequent year. He had verified the bank statement of Tulika Appliances (P) Ltd. maintained with Indusind Bank where the entries are reflected. Since the Id. CIT(A) while deleting the

addition has given elaborate reasoning and the Id. DR could not point out any mistake in the same, we uphold the order of the Id.CIT(A) deleting the above addition.

14. In view of the above discussions, the ground raised by the Revenue is dismissed.

15. So far as the ground raised by the assessee in the Cross Objections is concerned, we find the AO disallowed 20% of the various expenses as per para 3.3 of this order on the ground that assessee failed to produce the relevant bills/vouchers, etc. to his satisfaction. We find the Id.CIT(A) upheld the disallowances, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Id. Counsel for the assessee that the books were audited and the AO has not pointed out any specific defect and, therefore, no such ad hoc disallowance is called for in view of the various decisions relied on by him. We do not find any merit in the argument of the Id. Counsel for the assessee. The Id.CIT(A) has given a finding that the disallowance was made on account of failure of the assessee to produce the relevant bills and vouchers before the AO despite specific request. It is the settled proposition of law that for claiming any expenditure as an allowable deduction, the onus is always on the assessee to produce the relevant bills and vouchers and other details to the satisfaction of the AO. However, in the instant case the assessee failed to produce the relevant details before the AO despite specific request. Therefore, ad hoc disallowance of

expenses is justified. However, considering the totality of the facts of the case and considering the fact that the books are audited and the auditors have not pointed out any defects in the books of account and such disallowance @ 20% of the expenses appear to be on the higher side, we direct that such disallowance be restricted to 10% of the expenses to meet the ends of justice. We hold and direct accordingly. The disallowance is thus restricted to 50% of Rs.15,93,273/- i.e., Rs.7,96,637/-. The ground raised by the assessee in the Cross Objections is accordingly partly allowed.

16. In the result, the appeal filed by the Revenue is dismissed and the CO filed by the assessee is partly allowed.

The decision was pronounced in the open court on 18.11.2021.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Dated:18th November, 2021

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi