

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAN (ACCOUNTANT MEMBER) AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 4169/MUM/2019
Assessment Year: 2014-15**

DCIT-13(3)(2),
Room No. 229/219, 2nd floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Vs. M/s Vedartha Entertainment Ltd.,
201, 2nd floor, Jaimala Apartment,
Near Hotel Shimmers, Link Road,
Malad (E),
Mumbai-400064.

PAN No. AAECV 0129 N

Appellant

Respondent

Revenue by : Mr. Usha Gaikwad, DR
Assessee by : Ms. Neelkant Khandelwal, AR

Date of Hearing : 21/09/2021
Date of pronouncement : 25/11/2021

ORDER

PER S. RIFAUH RAHMAN, A.M.

The present appeal is filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-21, Mumbai [in short 'CIT(A)'] for the assessment year 2014-15 dated 28.02.2019 and arises out of assessment completed u/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. The brief facts of the case are, assessee filed its return of income for assessment year 2014-15 on 30.09.2014 declaring total income at Nil, after carrying forward of current year loss of ₹ 82, 78, 483/-. The case of the assessee was selected for scrutiny and notice under section 143 (2) and 142 (1) of the Income Tax Act 1961 (in short Act) along with

questionnaires. In response AR of the assessee attended and filed the relevant information as called for.

2.1. During the course of assessment proceedings, assessing officer observed that assessee has taken unsecured loans from the following parties:

S. No.	Name of the party	Amount (₹)
1.	Euro Concept Pvt. Ltd.	2,32,00,000/-
2.	Gangotri Exim Pvt. Ltd.	25,00,000/-
3.	Shree Bharve Exports Ltd.	88,00,000/-
	Total	3,45,00,000/-

2.2 The assessee was asked to provide the details of the parties from whom unsecured loans were taken along with confirmations. In response assessee submitted the confirmations and financials of the unsecured lenders wide letter dated 8.11.2016. After perusal of the balance-sheet submitted by the assessee, AO observed that all the lenders have scarce share capital, reserve and surplus, no borrowed funds and did not show any income in their respective return of income. However, he acknowledged that all the lenders have huge trade payables and they've advanced short terms loans to the assessee. In order to verify the identity, credit worthiness and genuineness of the transaction, he issued summons under section 131 of the Act and served on all the lenders requiring their personal attendance. None of the lenders appeared before the assessing officer and subsequently assessee was issued show cause notice under section 142(1) of the Act in order to produce the principal officers of the lenders for verification and examination. In response assessee submitted the following submissions before him:

"5.5 The assessee in response to the show cause notice has stated as follows:

1. *The assessee has taken the unsecured loan from these concerns in the normal course of business. The loan was genuine and obtained from legitimate sources.*
2. *The assessee has taken the loan from above concerns through banking channel.*
3. *Further the concerns M/s. Shree Bharve Exports Put Ltd, Gangotri Exim Put Ltd and Euro Concept Pt Ltd are assessed to Income Tax and regular in filing the return of income.*
4. *The loan amount is reflected in the books of Ms. Shree Bharve Exports Put Ltd. Gangotri Exim Put Ltd and Euro Concept Put Ltd as well as in the assessee's books and books of accounts of all these concerns are audited without any qualification by auditors.*
5. *The loan taken from above companies was used for the purpose of business only.*
6. *In the said show cause notice your goodself has stated that the summon w/s 131 of Act were issued to principal officers of M/s. Shree Bharve Exports Put Ltd. Gangotri Exim Pvt Ltd and Euro Concept Pt Ltd. In this connection we say that the assessee has fulfilled its onus by submitting the ITR Acknowledgement, account confirmation and Bank Statement. However, we enclosed herewith the Audited Financial Statement of above concerns The assessee has proved the identity, genuineness and creditworthiness of the above of the above concerns by submitting the document stated above. The assessee requested the principal officers of above concerns to appear before you. However, the assessee cannot compel or force the party to appear before you.*
7. *The assessee has not paid or receives any cash against the said loan and your goodself have not provided any corroborative evidence to prove that the assessee has paid any cash against the said loan.*
8. *In the present case the assessee has proved the identity, creditworthiness of the parities and also proved the genuineness of loan by submitting the documents as stated above.*
9. *In view of the above submission and details submitted, the assessee has discharged its onus by submitting the documents as asked by you and it is proved beyond doubt that the assessee has taken the genuine loan from above parties, hence provision of section 68 of the Act is not attract is present case as the assessee has proved the identity, creditworthiness and genuine."*

3. After considering the above submissions, assessing officer rejected the submissions of the assessee by relying on the decision of hon'ble Delhi High Court in the case of Nipun Builders & Developers Private Limited (ITA 120/2012), NR Portfolio Private Limited (ITA 1018/2011) and Nova promoters and Finlease (P) Ltd (ITA 342/2011). The assessing officer as observed in show cause notice on the financial strength of the lenders, he

completed the assessment with the same observations as made in show cause notice and made the addition under Section 68 of the Act, the whole unsecured loan taken by the assessee during this assessment year to the extent of ₹ 345,00,000/-.

4. Aggrieved assessee preferred an appeal before CIT (A) – 21, Mumbai. Before Ld. CIT(A) assessee filed a detailed submission, for the sake of brevity it is reproduced below:

"4. At the outset, we would like to submit that the said loan taken by the appellant from the said three entities are genuine loan and the appellant had submitted all the documents to justify the genuineness of the same. The Learned A. O. without considering the submission made by the appellant and without conducting any specific enquiry and without any strong evidence had added the amount of loan received to the Income of the appellant. The addition is made merely on the basis of presumption, surmises and conjecture of the assessing officer.

5. Before dwelling into further submission, we would like to draw your honour's kind attention to the provision of Section 68 of the Income Tax Act, 1961. The same is reproduced 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-tax as the income of the assessee of that previous year.

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

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

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

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a

venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.

6. On perusal of above section, your honour will find that provision of Section 68 can be invoked, when any sum is found to be credited in the assessee, for which he offers no explanation in respect of the nature and source of the same or the assessing officer is not satisfied with the explanation of the assessee. We would like your honour to appreciate the fact that your appellant had duly explained the nature and source of the Unsecured Loans received from the said three entities. The appellant had also submitted Confirmations for the same and had also submitted Copy of Financial Statements and Acknowledgement of Return of Income filed of the Said parties, which further substantiates the identity of the persons from whom loan has been received. The Bank Statement of the said parties were also submitted, on perusal of same, it is established that the said party was having sufficient balance to give the said loan which also establishes the creditworthiness of the said party.

In view of above, your honour will appreciate the fact that the appellant, as a businessman, had submitted all the details which justifies the genuineness of the said loans received from the said four entities. The appellant had duly discharged its primary onus to justify the genuineness of the said loan transactions. We would like your honour to also appreciate the fact that the Learned A.O. has not pointed out any discrepancy in the details submitted by the appellant.

7. In view of the above submission, we would like to submit that the provision of Section 68 of the Income Tax Act, 1961 cannot be invoked in the present case of the appellant as the appellant duly discharged its primary onus to substantiate the genuineness of the loan received from the said three entities.

8. According to section 68, the first burden is on the assessee to satisfactorily explain the credit entry in the books of account. If the explanation given by the assessee is satisfactory, then the entry will not be charged as income. Whereas, in the case of assessee, the credit entry was satisfactorily explained to the learned AO during the proceedings by submitting various evidences as explained above.

9. In support our above contention, we would like to draw reference to Hon. High Court of Madhya Pradesh decision in the case of Metachem Industries [2001] 116 Taxman 572 wherein it was held that

"Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment, whether the money invested is properly taxed or not. The assessee is only to explain that the investment has been made by the particular individual and it is the responsibility of that individual to

account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open for the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income-tax payer or not or from where he had brought this money, is not the responsibility of the firm. The moment the firm has given a satisfactory explanation and produced the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open for the Assessing Officer to take appropriate action under section 69 against the person who has not been able to explain the investment. In the present case, there was the concurrent finding of both the Commissioner (Appeals) as well as of the Tribunal that the firm had satisfactorily explained the aforesaid entries. Therefore, no addition in the instant case could be made in the hands of the assessee-firm on account of the cash credits in the names of its partners"

10. Further we would like to rely on the decision of High Court of Delhi in the case of *Oasis Hospitalities (P.) Ltd.* The summary of the case is as under:

"Section 68 of the Income-tax Act, 1961 - Cash credits - Whether if Assessing Officer doubts genuineness of investors, who had purportedly subscribed to share capital of assessee-company, he may ask assessee to explain nature and source of those sums received by it on account of share capital and burden of proof would be on assessee to provide nature and source of those receipts - Held, yes - Whether this burden of proof can be discharged by assessee by producing PAN card and bank statement of creditor/subscriber showing that it had sufficient balance in its accounts to enable it to subscribe to share capital and thereafter, it is for Assessing Officer to scrutinize same and, in case he nurtures any doubt about veracity of those documents, to probe matter further - Held, yes - Whether opinion of Assessing Officer, for not accepting assessee's explanation as being not satisfactory, has to be based on proper appreciation of material and other attending circumstances available on record - Held, yes"

11. We would also like to rely upon the decision of Honble Agra Tribunal in the case of *S.K.Jain vs ITO(2004) 2 SOT 579 (Agra)* wherein it was observed that:-

*"The creditors have confirmed that they have advanced loan to the assessee. In most of the cases, transactions have been routed through bank account. Therefore, asking source of such deposits will amount to asking source of the source which is not permitted under the law as held by the Hon'ble High Court of Patna in the case of *Sarogi Credit Corpn. vs. CIT 1975 CTR**

(Pat) 1 : (1976) 103 ITR 344 (Pat) and the decision of the Ahmedabad Bench of the Tribunal in the case of Rohini Builders vs. Dy. CIT (2002) 76 TTJ (Ahd) 521 : (2001) 117 Taxman 25 (Ahd) (Mag). Once it is established that the amount has been invested by a particular person, be he is a family member or close relative then the responsibility of the assessee is over. The assessee cannot ask that person, who advanced the loan, whether money advanced is properly taxed or not."

12. At this juncture, we would like to state that, as mentioned by the learned AO vide Page 2 Para 5.3 of the Assessment order, to establish the genuineness of receipt of funds, three basic criteria should be fulfilled. In this case, all the three criteria have been fulfilled as follows

- *Proof of identity of creditor - The unsecured loan parties are holding valid PAN and are filing return of Income.*
- *Capacity of creditor to lend money - Financial statement of parties have been submitted by appellant along with bank statement to prove the capacity of the parties.*
- *Genuineness of transaction - The transactions are carried through banking channels and duly recorded in the books of accounts of both-appellant and respective parties*

13. In view of above, it is evident that, the appellant has satisfactorily proved the genuineness of the transaction. However, the learned AO merely on the basis of suspicion, presumption and conjecture conclude that the above mentioned transactions are non-genuine. This is evident from the fact that, the AO himself vide Page 8 Para 5.10, based his conclusion by stating that

"The activity of purchasing the goods on credit, selling them and advancing the loans from the realization of debtors instead of clearing the creditors seems to be very suspicious and abnormal"

14. Your honour will appreciate the fact that, appellant shall not be required to determine the source of the creditor from whom the appellant has received the amount or in other words, source of the source. Your appellant has discharge its obligation to explain the genuineness of the parties. Rather as a businessman, what he could do, has been done.

15. The Learned AO was in possession of the PAN of the parties and their bank details. The learned AO could have issued summons u/s 131/133(6) to bankers of such parties to get the present whereabouts of the said parties. The learned AO failed to disprove the contentions submission.

16. Further, your honour will appreciate the fact that since all the payments have been made through account payee cheque, all the parties are having Bank Accounts, and your honour will appreciate that Banks also have strict KYC rules & regulations for opening a Bank Account. Thus,

it can be said that all the parties from whom purchases have been made are existent, which by any means cannot be doubted.

17. The Learned AO failed to appreciate the fact that, it is the duty of the AO to enforce attendance of a witness if his evidence is material. Thus, if the AO does not exercise his power to call the witness and examine him, he cannot treat the deposit in the name of the witness as assessee's suppressed income (Nathu Ram Premchand v. CIT, (1963) 49 ITR 561 (All); E.M.C. Works Pr. Ltd. v. ITO, (1963) 49 ITR 650 (All); MunnalalMurlidhar v. CIT, (1971) 79 ITR 540 (Al); R.S. Seth Gopikisan Agarwal v. A.C. of S.T., (1971) Tax LR 355 (MP). Also see, Ashok Electro Diamonds v. Jt. CTO, (1971) 28 TC 21 (Mad); Mahboob Singh Subhash Chand Arhanti v. CST, (1988) 69 STC 229, 230 (All); CIT v. Ter Karadhenu Vyapar Co. Ltd., (2003) 263 ITR 692, 696(cal)]. In a proper case, the learned AO should exercise all his power to collect all evidence and collate all material before coming to proper conclusion. This is the legal duty of the officer concerned who is vested under section 131 with certain powers in respect to certain matters. We earnestly request your honour to direct the AO to issue the summons to the lender and enforce its presence before the AO or your honour.

18. In view of above your honour will appreciate the fact that the appellant, as an businessman, has submitted all the details which justifies the genuineness of the unsecured loans received. The appellant had duly discharged its primary onus to justify the genuineness of the said amount received.

19. The learned AO further failed to appreciate the basic fact that mere non production of creditor cannot be taken as a basis to make the addition, where as all the documentary evidences filed by the appellant establish the genuineness of the transaction.

20. Similar view has also been held by Hon. Mumbai ITAT in case of Reliance Corporation v. Income Tax officer [ITA No. 1069 to 1071 of 2017] wherein Hon. Tribunal has made the following observation while deleting the similar addition made by the learned A.O.:

"g. We have heard the rival contentions perused the material placed before us including the orders of authorities below and orders relied upon by the parties. We find that undisputedly the assessee has borrowed money by way of loan from three aforesaid parties i.e. M/s Laxmi Trading Company, M/s Rose Impex and Megha Gems from whom the assessee has borrowed the money and total outstanding including the interest as on 31.3.2010 were amounting to Rs 1.29.04.231/-. The case of the assessee was re-opened upon receiving the information from DGIT(Inv), Mumbai that the assessee was one of the beneficiary of the said accommodation entries provided by Mr. Bhanwarlal Jain and group. We find from the record that the assessee filed during the course of assessment proceedings all

the details like loan confirmation letters from the creditors, PAN of the creditors, bank statement of the creditors and the assessee, form no. 16 qua TDS on Interest, profit and loss account and balance sheet including the ledger account of the creditors and the ITR etc. Moreover, the loan creditors also appeared before the A.O. in response to notice issued under section 133(6) of the Act and filed confirmations before the AO that loans were actually given to assessee. From all these details and facts on record, we find that the assessee has discharged its onus cast upon it by filing all the necessary details as called for by the AO to corroborate the transactions of borrowing the money and

thereby satisfied all the three ingredients i.e. creditworthiness of the creditors, genuineness of the transactions and creditworthiness of the creditors have been established by the assessee. So much so that the loan creditors in response to the notice issued under section 133(6) appeared before the AO and confirmed the that they have given interest bearing loans to the assessee on which TDS have been deducted and paid and form no.16A issued to the loan creditors also filed before the AO. Once the assessee has filed all the necessary documents before the AO then the onus is shifted to the department to disprove the stand of the assessee, which department has failed to do so in the present case. The AO has merely proceeded and relied on the information received from the GIT (Inv), Mumbai that the assessee is one of the beneficiary of the accommodation entries without bringing any material against the assessee on record by contrary to the defense put up by the assessee during the course of appellant proceedings. No cross examination was allowed to the assessee and information was used against the assessee causing violation of natural justice."

Copy of above judgment is enclosed vide Page No. 115 to 126 of Paper Book.

21. In support of the above contention, we would like to draw reference to on. Delhi High Court's decision in case of Commissioner of Income Tax v. Dwarkadhish Investment (P.) Ltd [2010] 194 Taxman 43, wherein it was held as under:

"In any matter, the onus of proof is not a static one. Though in Section 68 proceedings, the initial burden lies on the assessee, yet once he proves the identity of the creditors/share applicants by either furnishing their PAN numbers or income tax assessment numbers and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus

of proof would shift to the revenue. Just because the creditor / share applicants could not be found at the address given, it would not give the revenue the right to invoke section 68. One must not lose sight of the fact that it is the revenue which has all the powers and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the 'source of source'."

Copy of above judgment is enclosed herewith vide Page No. 127 to 134 of the Paper Book for your honour's reference.

22. At this juncture, we would also like to refer to Hon. Allahabad High Court's decision in case of Nathu Ram Premchand V. Commissioner of Income Tax [1963] 49 ITR 561 wherein it was held that It is the duty of the A. O. to enforce attendance of a witness if his evidence is material. Thus, if the A.O. does not exercise his powers to call the witness and examine him, he cannot treat the deposits in the name of witness as assessee's income. The catch- note of the said judgment is reproduced as under:

Section 131 of the Income-tax Act, 1961 /Corresponding to section 37(1) of the Indian Income-tax Act, 1922] - Discovery, production of evidence, power regarding - Assessment year 1948-49 - While completing assessment ITO noticed a credit entry in name of 'B' in books of assessee HUF - Assessee was given dasti summons to produce "B' but 'B' refused to accept it - No steps as provided under order/XVI, rule 10 of Civil Procedure Code, 1908, for appearance of witness were taken by ITO for appearance of "B' Whether, on facts, income-tax authorities were not justified in fastening blame at door of assessee and disbelieving his version that amount entered in his account books was deposit made by "B' on ground that former had failed to produce latter - Held, yes Whether, therefore sum credited to account of B' was not income of assessee and, as such, was not liable to assessment under Act - Held, yes

Similar view has been held by Hon. Allahabad High Court in the case of Munnala/Murlidhar v. Commissioner of Income Tax [1971] 79 ITR 540.

23. We would like to draw further reference to Hon. Nagpur High Court's decision in case of Niranjnlal Ramballabh v. Commissioner of Income Tax [1956] 29 ITR 459, the catch-note of which is reproduced as under:

Section 68, read with section 131 of the Income-tax Act, 1961 - Cash credits - Assessment year 1946-47 - While scrutinizing books of account of assessee-firm, ITO found that certain deposits appearing in personal account of certain persons were not genuine - Assessee explained that aggregate amounts in dispute were deposits made by aforesaid parties with firm and also filed affidavits executed by creditors, and also relied on

fact that deposits had been received. by cheques or drafts on banks and repayments of same were also by cheques and drafts – Assessee also expressed his inability to produce depositors for cross- examination as those persons resided far away, but offered to examine all depositors on commission - However, no commission was issued by ITO and he held that aforesaid deposits represented profits from undisclosed sources and included same in total income of assessee - Whether depositors could not be compelled by ITO to appear before him in person for giving evidence and ITO could not have refused to issue commission for their examination when assessee applied for it - Held, yes - Whether, material relied upon by department was not sufficient to come to conclusion that said credits represented undisclosed profits of firm - Held, yes

Similar view has been held by Hon. Nagpur ITAT (Third Member) in the case of Gopal Bindraban Agarwal v. Assistant Commissioner of Income Tax [1997] 62 ITD 107.

24. Undoubtedly, as noted above the assessee has a legal duty to identify the creditors in addition to his means and genuineness of the transaction. Also it is also a matter of fact that where the identities of creditors are shown by the assessee, the department is at liberty to proceed against such creditor wherever required. This view has been upheld by the Hon'ble Delhi Tribunal in the case of Mrs. Ranjana Katyal VS ACIT (2008) 1 DTR (Del) (Trib) 24 and Pankaj Sawhney Vs ITO (2004) 3 SOT 1 (Del)

25. The Hon'ble Supreme Court in the case of CIT Vs Orissa Corporation (P) Ltd. 159 ITR 78 (SC) held as follows:

"13. In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were incometaxassessees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further.

26. We would further like to rely on the decision of High Court of Delhi in the case of Commissioner of Income Tax vs. Shiv Dhooti Pearls & Investment Ltd. the summary of case is as follows :

Section 68 of the Income-tax Act, 1961 - Cash credit (Burden of Proof) - Assessment year 1994-95 - Whether in terms of section 68, assessee is liable to disclose only source(s) from where he has himself received credit and it is not burden of assessee to show source(s) of his creditor nor is it burden of

assessee to prove creditworthiness of sources) of sub-creditors - Held, yes - Whether, however, Assessing Officer has ample 'freedom' to make inquiry 'not only into source(s) of creditors, but also of his (creditor's) sub-creditors and prove as a result of such inquiry, that money received by assessee, in form of loan from creditor, though routed through sub-creditors, actually belongs to, or was of, assessee himself Held, yes [Paras 12 and 15] [In favour of assessee]

27. We most respectfully submit that we have established (i) identity of the creditor, (ii) his capacity to advance (viz Audited Balance Sheet, Bank Statements etc.) and (in) Genuineness of transaction are established then onus shifts on to the Department. (Vide Commissioner of Income Tax v. Baishaab Charan Mohanty 212 IT 199). We most respectfully submit that burden of the assessee to prove genuineness of transaction as well as creditworthiness is confined to the transaction which have taken place between the appellant and creditors, and it is not burden of the assessee to show the source of his creditors or to prove creditworthiness of the sources of such creditors - 264 ITR 254. When appellant had disclosed name, address and Income Tax File number (PAN), it is duty of the A. O. to take steps to examine him and no addition could have been made without taking steps to examine him – Pritam Daftary v. Commissioner of Income Tax 195 ITR 304 (Calcutta High Court).

In view of legal and factual submission made hereinabove, we would like to submit that the loan received by the appellant from the said 3 companies are genuine and the same has been duly substantiated by the appellant during the course of assessment proceedings. The addition is made merely on the basis of presumption, surmises and conjecture of the assessing officer without any strong corroborative evidence to substantiate the same and hence the addition made is bad in law and requires to be deleted. Therefore, we request your honour to delete the said addition made of Rs 3,45, 00,000/- u/s 68 of the Income Tax Act 1961.

Should you in any event resolve to take an adverse and detrimental view appertaining to the issues involved in this appeal proceeding than that canvassed by us as explicated supra, you are hereby specifically requested to afford an opportunity to us to displace the same.

5. After considering the detailed submissions, Ld. CIT(A) deleted the addition made by the assessing officer under section 68 of the Act with the following observations:

"6.9 I have carefully examined the facts and considering the totality of the circumstances of the case and submissions made by the AR. I have gone through the decisions relied upon by the AR and the Remand Report of the AO and also the documents filed by the AR supporting the genuineness of the loan transactions, identity, source and the creditworthiness/capacity

of both the parties. In the case of the appellant, all the necessary details regarding loan have been field before the AO, the lender has confirmed the loan transaction. It can also be seen that in the case of Nikuni Eximp (supra), the Hon'ble High Court held that merely on the basis of suspicion because the sellers and canvassing agents have not been produced before the AO, shall not result in addition and in the case of M/s Reliance Corporation v. ITO, the ITAT, Mumbai has under the similar facts of the present case deleted the addition made u/s.68 of the Act. Nothing contrary has been brought on record by the AO."

6.10 In view of facts and circumstances of the case, the decision of Hon. Gujarat High Court decision in case of Commissioner of Income Tax v. Apex Therm Packaging (P.) Ltd [2014] 222 Taxman 125, wherein it has been held that Where name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/lenders as well as their confirmation had been furnished, Assessing Officer could not make addition on account of unsecured loan and interest thereon.

6.11 Further, the decision in case of Hon. Gujarat High Court decision in case of Commissioner of Income Tax v. Patel Ramniklal Hirji [2014] 222 Taxman 15, wherein also it has been held that Where assessee received loan through account payee cheques and, in support of loan transaction he also brought on record copy of books of account, bank statement and income-tax return of lender, transaction in question was to be regarded as genuine and, thus, loan amount could not be added to assessee's taxable income under section 68.

6.12 Thus, the decision of the AO treating the unsecured loans as unexplained credits is not justified when all the details are furnished. Therefore, the AO is accordingly directed to delete the addition made u/s 68 of the Income Tax Act. 1961"

6. Aggrieved the revenue is in appeal before us by raising the following grounds of appeal:

On the facts and circumstances of the case and in law the Ld. CIT(A)Rs.1,11,93,525/- has erred in deleting the cash credit of Rs.3,45,00,000/ received by the assessee company because as per section 68 of the I.T. Act, the onus is upon the assessee to prove the three ingredients, i.e. identity, creditworthiness of. creditors/lenders and genuineness of the transaction but despite of being given various opportunities by the assessing officer to prove unexplained cash credit, the assessee has failed to do so.

6.1 At the time of hearing Ld. DR brought to our notice findings of the assessing officer and he supported the observations of the assessing

officer in assessment order and submitted that Ld CIT(A) deleted the addition made by the assessing officer, according to him it is not proper.

7. On the other hand Ld. AR brought to our notice page 8 of the paper book to submit that it is the 2nd year of operation for the assessee and in this year assessee has incurred the loss, he submitted that in the initial years of operation it is normal to incur huge loss and subsequently assessee will recover the initial investments made during initial stages of the operation. He submitted that assessee has diligently filed all the relevant documents in support of the unsecured loan transactions. He heavily relied on the findings of Ld. CIT(A).

8. Considered the rival submissions and material on record. We notice that assessee has taken unsecured loans from the 3 parties and submitted all the relevant documents in support of proving the identity, creditworthiness and genuineness of the transaction. It is fact on record that assessee has submitted relevant confirmations from all the parties and the transactions involving unsecured loans from the above said parties are only through banking channels. The assessing officer does not deny the fact that assessee has submitted all the relevant documents and also the transactions were only through banking channels. However, in assessment order he observed that all the 3 lenders does not have sufficient profit and means of share capital to lend the money to the assessee, however he acknowledges that all the 3 lenders have sufficient funds by means of sundry creditors which was generated through business operation. It is fact on record that all the 3 lenders have sufficient means to lend the money to the assessee and also assessee has filed the confirmations from all the parties. However, assessing officer further observes that none of the lenders appeared before him for verification

and examination. Therefore, he relies on hon'ble Delhi High Court decisions in the case of Nipun Builders (supra) and other decisions to come to the conclusion that the onus lies only with the assessee to prove the genuineness of the transaction. We observed that the decision of hon'ble Delhi High Court is on proving the genuineness of the transaction on share capital of the private limited companies, the honourable High Court observed that the shares of the private limited companies are sourced through private placement and the assessee should have known or has to prove the identity and genuineness. In that context, hon'ble Delhi High Court observed that it is on the part of assessee to prove the identity and genuineness of the issue of share capital. However, we observed that in the given case, assessee has taken unsecured loans and submitted all the relevant information in support of the sum credited in the books for which assessee has offered explanation in respect of the nature and source of the same and in the given case assessing officer is not satisfied due to the fact that none of the principal officers of the lender companies appeared before him. The assessing officer merely issued show cause notice to the lenders and apparently stopped without making any further verification. He cannot merely reject all the detailed submissions and supporting documents which were submitted before him and further he has not pointed out any defect in the documentary evidences submitted by the assessee before him and made addition merely because none appeared before him for explanation.

8.1 After considering the detailed findings of Ld. CIT(A), we do not see any reason to interfere with his findings and in our view the assessing officer treated the unsecured loans as unexplained credit under section 68 even though all the documentary evidences were submitted before

him. Therefore, we are inclined to dismiss the grounds raised by the revenue.

9. In the net result, the appeal filed by the revenue is dismissed.

Order pronounced in the open Court on 25/11/2021.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 25/11/2021

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Mumbai