

**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH,
NAGPUR**

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI O.P. KANT, AM

ITA No. 142/NAG/2019
Assessment Year: 2013-14

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Chandana Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: AMBPK 2497 G		
Appellant		Respondent

ITA No. 143/NAG/2019
Assessment Year: 2013-14

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Smita Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: ALNPK 1191 N		
Appellant		Respondent

ITA No. 144/NAG/2019
Assessment Year: 2013-14

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Sunita Suresh Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: AFFPK 2282 L		
Appellant		Respondent

ITA No. 145/NAG/2019
Assessment Year: 2013-14

A.C.I.T., Central Circle-2(2), Nagpur.	Vs.	Smt. Seema Kothari, Kothari Bhawan, Naik Lane, Itwari, Nagpur-440002.
PAN No.: ALNPK 1190 P		
Appellant		Respondent

ITA No. 146/NAG/2019
Assessment Year: 2015-16

A.C.I.T.,	Vs.	M/s Karan Kothari Aabhusan
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Central Circle-2(2), Nagpur.		Private Limited, 301F, 3 rd Floor, Siddheshwar Apartment, Khattar, Thakurdwar, Dr. Babasaheb Jayakar Marg, Near Darbhanga House, Kalbadevi, Mumbai-400002.
PAN No. AAFCK 3453 P		
Appellant		Respondent

Revenue by : Shri Pradeep Hedao (CIT-DR)
Assessee by: Shri Hitesh P Shah (CA)

Date of Hearing: 27/10/2021
Date of Pronouncement: 20/12/2021

ORDER

PER: SANDEEP GOSAIN, J.M.

These are the appeals filed by the Revenue against the separate orders of the Id. CIT(A)-3, Nagpur dated 08/04/2019 and 05/04/2019, 2013-14 and 2015-16 respectively.

2. Common issues have been involved in all these appeals, therefore, for the sake of convenience and brevity, a common order is being.

3. Firstly, we take ITA No. 142/Nag/2019 for the A.Y. 2013-14 as a lead case for deciding the appeals of the A.Y. 2013-14 & 2015-16 respectively. In this appeal, the Revenue has taken sole effective ground of appeal which reads as under:

"1. On the facts and circumstances of the case and in law, Id. CIT(A) erred in deleting the addition of Rs. 95,00,000/- made by the AO treating the unsecured loan received by the assessee as unexplained cash credit u/s 68 of the I.T. Act without appreciating

the fact that the assessee has failed to establish the creditworthiness of the creditors and the genuineness of the transactions to the satisfaction of the AO?"

4. The brief facts of the case are that the assessee filed return of income U/s 139(1) of the Act on 11/02/2014 declaring total income of Rs. 3,92,430/-. A search and seizure action was conducted in the case of M/s Karan Kothari Jewellers Pvt. Ltd. And entire Kothari Group on 10/09/2014. Notice u/s 153C of the Act was issued on 14/10/2016 and duly served on the assessee. In response to notice U/s 153C, the assessee filed return of income on 25/11/2016 declaring total income of Rs. 3,92,430/-. During the course of search, gold jewellery, diamond studded gold ornaments and silver articles were found. The AO has completed the assessment of the assessee by making addition of Rs. 95,00,000/- on account of unexplained cash credit U/s 68 of the Act.

5. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of the parties and the material placed on record, deleted the action taken by the A.O. Against which the Revenue is in further appeal before the ITAT on the ground mentioned above.

6. At the outset, the Id. CIT-DR has vehemently supported the order of the A.O. and submitted that the A.O. has made the addition on the basis

of detail enquiry and verification and the Id. CIT(A) has erred in deleting the addition.

7. On the contrary, the Id. AR appearing on behalf of the assessee has reiterated the same argument as were raised before the Id. CIT(A) and also vehemently supported the order of the Id. CIT(A). He has further submitted that the exactly on the identical issue involved in this appeal, the Hon'ble ITAT, Nagpur Bench in the case of member of group concern i.e. M/s Karan Kothari Jewellers Pvt. Ltd. in ITA No. 141/Nag/2018 for the A.Y. 2010-11 and in ITA No. 229 & 230/Nag/2018 for the A.Y. 2011-12 and 2012-13 order dated 03/12/2018 have decided the issue of loan received from M/s Haldaur Leasing Finance P. Ltd. (HLFPL) in favour of the assessee and against the Revenue.

8. We have considered the rival contentions and carefully perused the material placed on record. We have also perused the orders of the authorities below. From perusal of the record, we observed that the Id. CIT(A) has dealt with the issue from para 6 to 6.9 of his impugned order and the same is reproduced as under:

"6. Ground Nos. 1, 2 and 3: *The appellant has challenged the addition made by the AO at Rs.95,00,000/- as unexplained cash credit u/s 68 on account of unexplained unsecured loan. I have gone through the assessment order, the grounds of appeal, the submission made by the appellant. The appellant has made a detailed submission rebutting the contentions of the*

Assessing Officer (AO) by establishing the facts and agitating the incorrect addition and the same is discussed hereunder.

- 6.1 *The assessee is an Individual and had filed her return of income u/s. 139 of the Act on 11/02/2014 as required under the law declaring total income at Rs.3,92,430/-. The search and seizure operations u/s 132 of Income Tax Act, 1961 was conducted on **10/09/2014** in case of M/s Karan Kothari Jewellers Pvt Ltd and entire Kothari group. During the course of the search action in the Karan Kothari Jewellers group, a survey action u/s 133A was also carried out in the case of M/s. Haldaur Leasing & Finance Company Private Limited (HLFCPL) at Kolkata. According to the assessment order, it was found that during the year under consideration now unsecured loans of Rs. 95,00,000/- was taken by the assessee from M/s. Haldaur Leasing & Finance Company Private Limited (HLFCPL). The assessee was already asked vide a notice & questionnaire dated 08/06/2016 to furnish confirmation, complete address and PAN in respect of unsecured loans. In the course of the assessment proceedings, the assessee was again asked to furnish its explanation alongwith evidence regarding the identity and creditworthiness of the party advancing the unsecured loan and genuineness of the transaction. During the proceedings, the assessee submitted a common explanation with regard to the loans taken by the members of the Kothari family from Haldaur Leasing & Finance Company Private Limited and mentioned that the same applies in the case of the assessee also. **As per the reply of the assessee, the amount advanced by HLFCPL was its contribution towards A.P.M.C. Project and this was as per an MOU.** It was also claimed that the entire transaction was through banking channels and copies of bank accounts, Income Tax returns & balance sheet of HLFCPL have been enclosed with the reply. The issue was examined during the course of proceedings and statement of Shri Pradeep Kothari, Director, HLFCPL was also recorded. The compliances made by the assessee and other facts relating to transaction*

especially the source of credits, were held as not satisfactorily explained as per discussions in the AO's order at Para 3, 4 and 8.

6.2 *The AR of the appellant has submitted various documents which are examined. The argument of the appellant has been also examined with respect to the documents found during search/ survey and investigations and assessment proceedings as well. The AO has based his assessment on certain events over time, which have been narrated in the order and it appears that this narration has coloured his view of the issue at hand. To understand the issues raised by the AO, the order was perused.*

- (1) *The AO's first objection is that the promoters had taken over the control of the company named Haldaur Leasing & Finance Company Private Limited (HLFCPL), by acquiring the shares of Gateway Tradecom Pvt. Ltd.(GTPL) and Silverlake Suppliers Pvt. Ltd. (SSPL), which in turn acquired control of the first company in 2012. Summons issued to these two entities had returned unserved. However, curiously, even the AO was aware that the above two companies were owned by the promoter family members.*
- (2) *The AO's second objection was that these two companies had acquired HLFCPL by purchasing shares at face value without paying any premium and the entire reserve and surplus of HLFCPL came under the control of Kothari family without cost. Therefore, the AO himself accepts rather obliquely, that HLFCPL had the reserves and surplus and the resource and the credit worthiness, and these had been allegedly usurped by the Kothari family members circuitously.*
- (3) *The third objection thereafter raised was that the reserves of HLFCPL were on account of questionable investors, and somehow the Kothari family may have been involved or the reserves were bogus. Now, this capital of Rs. 18.25 crores was raised in the year 2009 by issuing shares at premium by the previous promoters. **The search / survey action did not however reveal any connection of this company with the Kothari family in the year 2009. The records indicate that the said company was acquired by GTPL and SSPL in***

2012 only. Hence, when in the year 2016, the AO issued notices to the 18 original investors who had invested in HLCPL in 2009, he found no response due to return back of notices. Therefore, the AO made up the opinion that the genuineness of investment was not proved and hence the amount of Rs. 18.25 crores is nothing but funds belonging to the Karan Kothari Jewellers group which has been rotated under the guise of capital introduction in Haldaur Leasing & Finance Company Private Limited (in the year 2009) and the same have been brought back as unsecured loans in the hands of the family members and other sister concerns. This is a turnaround from the earlier position that the said company had huge reserves and the Kothari group of assesseees had acquired the company without paying (adequate) cost. The search and survey actions have not revealed any such fact and therefore, it remains a conjecture.

- (4) The next issue of the APMC agreement has been linked to this event of acquiring of HLCPL, by holding that the MOU between the six individuals and the said company (henceforth also referred as the investor company) dated 1.2.2013 was an afterthought. As per this MOU, HLCPL has paid Rs. 5,50,00,000/- to 6 different individual members of Kothari family (out of which the share of the assessee was Rs. 95,00,000/-) and the purpose of the funding is for purchase of agricultural lands for the project. The AO has considered the fact that the lands in question were purchased by the above assesseees and major part of the sale consideration was paid by them before the receipt of funds from HLCPL, and hence the AO has not accepted it as a genuine transaction for the so-claimed APMC project, but as a loan, to which the assessee has attempted to give a different colour as an afterthought. The MOU was found during the survey action on HLCPL, and contents thereof will be discussed hereafter.

- 6.3 The MOU dated 1.02.2013 found during survey action was perused and contains the following facts:

- i. Six individuals of the family entered into an understanding (referred as First Party) with HLCPL (Second Party) to create a Agricultural Product Marketing Complex (APMC) with modern Facilities for storage etc, in the form of a SPV. The intention was to create a land bank of 50 acres by purchasing land at Mathani Village, Nagpur District. The First Party were already in possession of 16.825 acres, and the remaining land was to be purchased with the finance provided by Second Party, being its share of the APMC Project, as an Associate/ Partner having 30% share in the project cost and profits. Accordingly, HLCPL paid a total amount of Rs. 5.50 crores as its initial share of investment and this payment was made to the other six individuals who were to purchase the remaining land, as under:

Shri Narendra Kothari	Rs. 2,95,00,876/-
Shri Karan Kothari	Rs. 90,00,000/-
Smt. Sunita Kothari	Rs. 85,00,000/-
Smt. Smita Kothari	Rs. 95,00,000/-
Smt. Chandana Kothari	Rs. 95,00,000/-
Smt. Seema Kothari	Rs. 95,00,000/-

- ii. In case the proposed project failed to take off, the complete amount of investment made by Second Party will be returned back to the Second Party.
- iii. The land of 16.825 acres were purchased by the six individuals in the months of November and December 2012 with the funds availed from the Second Party, and the MOU was signed in February 2013. The assessee received the amount of Rs. 95 lacks in 9 tranches as follows:

Date	Amount Received	Mode of Receipt
27/ 11/ 2012	15,00,000/-	RTGS
06/ 12/2012	10,00,000/-	RTGS
12/ 12/2012	10,00,000/-	RTGS
17/ 12/2012	10,00,000/-	RTGS
18/ 12/2012	10,00,000/-	RTGS
19/ 12/2012	10,00,000/-	RTGS
24/ 12/2012	10,00,000/-	RTGS
04/ 01/ 2013	10,00,000/ -1	RTGS
07/ 01/ 2013	10,00,000/-	RTGS
TOTAL	95,00,000/-	

- iv. Further, this MOU was terminated on 5.10.2015, and perusal of this document shows that after the purchase of land of 16.825 acres, the First Party could purchase only 0.61 hectare in the same Mouza, aggregating to 18.35 Acres only, and the remaining land could not be acquired to due increase by nearly 50% in land cost on rumours of such Project. It further states that since the targeted 50 acres was unavailable, the APMC Project would not be eligible for subsidies and concessions from NABARD and hence the Project had become unviable and was terminated. The First Party returned the invested funds to the HLCPL on various dates. The assessee has returned her share of fund of Rs. 95 Lacs on the following dates:

Date	Amount Received	Made of Receipt
14.10.2015	62,50,000/-	RTGS
16.10.2015	32,50,000/-	RTGS
Total	95,00,000/-	

- v. The source of funds with HLCPL that was given to the appellant initially has been explained by the appellant as under:

Date	Amount Received	Mode of Receipt	Immediate Source of lender HLCPL
27/ 11/2012	15,00,000/-	RTGS	Sale of Investment to Penguin Vincom Pvt. Ltd.
06/ 12/2012	10,00,000/ -	RTGS	Repayment of Advances given to Brilliant Developers Pvt. Ltd.
12/ 12/2012	10,00,000/ -	RTGS	Sale of Investments to Expression Dealer Pvt. Ltd.
17/ 12/2012	10,00,000/ -	RTGS	Sale of Investment to Subhashree Barter Pvt. Ltd.
18/ 12/ 2012	10,00,000/-	RTGS	Sale of Investment to Goodnight Management Pvt. Ltd.
19/ 12/2012	10,00,000/ -	RTGS	Sale of Investments to Superlite Sales Pvt. Ltd.
24/ 12/2012	10,00,000/ -	RTGS	Sale of Investment to Good point Management Pvt. Ltd.
04/ 01/ 2013	10,00,000/ -	RTGS	Repayment of Advances given to Digvijay Vinimay Pvt. Ltd.
07/ 01/ 2013	10,00,000/-	RTGS	Repayment of Advances given to Parmanand Niryat Pvt. Ltd.
TOTAL	95,00,000/.		

- vi. It is also observed from the MOU that the amount of Rs. 5.50 crores was treated as investment by HLCPL in the APMC Project. The Balance Sheet of FY 2012-13

(AY 2013-14) was perused, and the same is reflected as Investment in APMC Project.

- 6.4 *Based on the above facts as documented, the appellant's submission that the amount of Rs. 5.50 crores [Rs. 95 lacs pertaining to appellant] were not loans, but Investment made by HLCPL in the APMC project, out of its own source of reserves and capital. As HLCPL was a registered NBFC, it was its business to invest and finance projects and earn profits or losses, and the investment in the APMC Project was disclosed in its return, and the same had also been scrutinised by RBI while providing the certificate. In this regard, the AR of the appellant also drew attention to the fact that the said company was incorporated in 1990 and had obtained registration under RBI as an NBFC in the year 2001, which was renewed again on 29.2.2008. In June 2009, the company initiated the process of shifting its registered Office from Bijnor in Uttar Pradesh to Kolkata and on 12.06.2010, the Company ultimately changed its registered office from Bijnor to Kolkata. During the said process of getting the permission from RBI for transferring the registered office, the company had to comply with very stringent requirements of RBI as time and again it was called upon to establish its nature of business, legitimacy of its operations, working standards and credibility of its Management personnel. Apart from this, the Company was required vide RBI Letter Dated 29/04/2013 to explain the authenticity and veracity of the raising of Share Capital and Share Premium during F.Y. 2009-10. The company submitted all the said information and evidences and finally secured the Order from RBI for shifting of the registered office from Uttar Pradesh to West Bengal. This Order of RBI dated 26/02/2014, confirms its registration by the RBI, which has very strict rules for Compliances. The above facts show that the said company was never a paper company.*
- 6.5 *The aspect of raising share capital in 2009 through share premium has been examined at various point of time as witnessed through documents which have not been controverted by the AO:*

1. *The Assessing Officer of HLCPL while assessing the company for A.Y. 2010-11 had issued notices to the 18 new investors and examined the issue in details and accepted these investments. This is evident from the order present before the AO and he has not challenged the same with fresh facts or findings, other than that notices issued to those same 18 investors in 2016 were unanswered hence the present AO opined that these were sham transactions. Hence this is merely a change of opinion the facts remaining unchanged.*
2. *In 2013 again, the issue was examined by the RBI, prior to issuing its certificate. The company had by this time already changed ownership in 2012, and the major stakeholder being the Kothari group promoters had appeared before RBI and explained the transactions. This aspect has been happily ignored, and no contradictory findings were made by present AO to refute these facts either. Hence, the AO's opinion that this Investment company was merely a paper company is not backed by documented evidences, and is merely an opinion.*
3. *The Hon'ble ITAT, Nagpur Bench has also examined the issue on the basis of same facts and documents that were before the AO, and in the case of a sister concern (Karan Kothari Jewellers P. Ltd) for A.Y. 2015-16 has found the following, in its decision vide order dated 03/12/2018 as under :*

"53. As regards the Loan taken from M/s. Haldaur Leasing Finance Private Limited (HLFPL), the assessee had submitted various details and explanations during the assessment and appellate proceedings as per which, the Company was incorporated in year 1990 in Bijnor, Uttar Pradesh. Its business was of financing, leasing of vehicle & sale of vehicle, Hire Purchases, commission income. This business was continued till 31.3.2009. The company changed its registered office from Bijnor to Kolkata on 12.06.2010. The Company is Non-Banking Financial Corporation registered with Reserve Bank of India

under Certificate of Registration No. B.05.06956. The company M/s HLFCL being a NBFC has to comply with very strict norms under RBI Rules and Regulations. M/s HLFCL has duly complied with the RBI rules and regulation during its entire existence from the date of securing the NBFC Status. Further sometime in June 2009 M/s HLFCL initiated the process of shifting its registered Office from Bijnor in Uttar Pradesh to Kolkata in West Bengal. The company had to comply with very stringent requirement when it was time and again called to establish its business existence, genuinely of its operations, business working and genuinity of its management. Apart from above, the Company was required vide RBI letter dated 29/04/2013 (Copy enclosed) to explain the authenticity and veracity of the raising of share capital and share premium during FY 2009-10. The company management complied with all the requirements of information and evidences and finally secured the order from RBI for shifting of the registered office from Uttar Pradesh to West Bengal. This order of RBI dated 26/02/2014 confirms its registration by the RBI which by no means any lesser in terms of compliance and due-diligence with Income Tax Department. M/s HLFCL had been assessed under sec 143(3) r.w.s. 147 vide order Date 30-12-2010 for A.Y. 2009-10, wherein the issue of share capital raised by M/s HLFCL is dealt with to examine the Identity, genuineness and credit worthiness of the company M/s HLFCL as well the subscribers to the Share capital. The AO had accepted the raising of share capital at a premium by conducting detailed enquiries that is why no adverse findings, observations were recorded by the AO. (Copy Enclosed). The ITO scrutinized process of issue of 18440 equity shares of Rs.100/- each at a premium of Rs.9900/- per share. ITO sent notice u/s 133(6) to major share applicants on test check basis. The ITO placed records of all replies received from applicant companies. The income of the company for Asst. Year 2009-10 was assessed u/s 143(3)/ 147 of the Income Tax Act, 1961 and demand

raised u/s 156 for Rs.16790/-. The company had also been assessed u/s 143(3) for A.Y. 2010-11 vided ordered dated 31-03-2013 3 where no adverse facts as to the business model, business/operational existence and head of income has been observed and recorded. This Assessment order in subsequent years after assessment u/s 147 cements the factual position of company being operational and functioning. (Copy Enclosed) The said company was introduced by a friend Shri Prihar during March 2012, he informed that company has facing problems to comply with the norms of RBI, applicable for NBFC and struggling to get its investments liquidated which are blocked since long. He also informed us about required investment id efforts to make.

54. *As regards the issue of notices to 18 Share Applicants, the AO has observed that the statement of Shri Pradeep Kothari, Director, HLF CPL, was recorded under Sec. 131 of the Act on 08/ 12/2016 and it was found from the information supplied that all the original investor-companies were Kolkata based. Notices u/s 133(6) were issued to them as per the addresses furnished by Shri Pradeep Kothari for making verifications regarding the source of their funds. Out of these in 16 cases, the Notices u/s 133(6) of the Act were not delivered and returned back and in 2 cases, though the Notices were received but no reply was furnished by the creditor (Para No. 10, Page No. 7 of A.Y. 2013-14). The assessee was confronted and also asked to furnish the latest address of the creditors, which was not given Neither by the assessee nor the above said company i.e. HLF CPL have produced the investor companies to substantiate their identity and the creditworthiness and genuineness of the transactions. But, fact remains that letter was submitted to Department on Date 09/ 10/2017 seeking information regarding all the 18 parties to whom summons u/s 133(6) have been issued, out of which 16 were not delivered and*

returned back in 2 cases notice was received but no reply was furnished. Therefore, we are of the view that when addition is made on the basis of third party statements, the AO ought to have furnished such statements for the assessee for its rebuttal. In this case, the AO had made additions without confronting such statements in violations of principles of natural justice. In a recent judgement of Hon'ble Bombay High court, in the case of CIT vs Harish D. Mehta, the High court has dealt with this issue. In the above case, transportation charges were paid by the assessee by crossed cheques. A.O. doubted the transactions and issued notices u/s 133(6), which were unserved. A.O. treated the amounts paid as bogus entries and made the additions in this regard. It is held by the jurisdiction High court that nonattendance or non-service of notices without anything more- could not be reason enough to sustain the addition.

55. *We further noticed that the company has declared sufficient income in its return of income right from A. Y. 2003-04 to A.Y. 2015-16 as per which it declared income ranging between Rs. 7.43 lacs to Rs. 86.57 lacs. The assessee has established credit worthiness of the parties by filing details of source of source. The assessee has furnished complete details and said information is genuine (i.e. PAN CARD, ITR, Confirmation, Bank statement) and no efforts was made by A.O to determine the same. That Jewel India Pvt Ltd (Total 92 Lacs out of 132.87 Lacs) is a well know Kolkata based company involved in Jewellery business and it was lack of effort on the AO to enquire the same from the party through 133(6). The Identity of all the Company, was proved beyond doubt by the Evidence of the PAN card Copy, Copies of their Income Tax Returns and Copy of Order of RBI. The Genuineness of the Transaction was established from the Confirmation Letter and the Bank Statements of the Company that were filed. This established the fact that the loan was received by Cheque/ RTGS from*

the Bank Account of the said Company. The Full set of Audited Financial Statements of the said Company was submitted on the record of Ld. A.O. This alongwith the balance sheet clearly established the loan given by the said Company to Assessee Company and their year-wise Income Track record proved the capacity of the said Company. The assessee has also proved the Source of source, by bringing on record the source of amount received by the said company along with the nature of transaction. The AR has vehemently argued that proviso to Section 68 is not applicable to assessee's case as the applicability of proviso to Section 68 is for any such amount in the nature of Share Application Money, Share Premium and does not envisage the Loan Amount. Further, we find that just because the bank statement of M/s. Halduar showed numerous transactions, it could not be held that the said company did not have credit worthiness especially when the said company was an NBFC company and would not like to keep its funds blocked in the current account, when it could easily utilize its funds for earning income as the companies are compulsorily required to keep funds in current account on which no interest is received. We further noted that just because the said company was taken over at much reduced price it cannot be said that the said company lacked credit worthiness especially when the company not only had proved the source of its fund but source of source also. There may be several reasons due to which the directors are forced to sale the companies and adhering to strict RBI guidelines in case of NBFC companies is one of them.

56. *Considering facts and circumstances of this case and by following ratios of case laws discussed above, we are of the considered view that the said Joan amount could not be added under the first proviso to Section 68 as also that the identity, creditworthiness and genuineness of the transactions are proved. Hence, we direct the AO to delete the*

addition on account of loan received from M/s. HLFPL in both the years.

57. *In the result, all appeals filed by the Revenue for A.Y. 2010-11 to 015-16 are dismissed and appeals filed by the assessee for A.Y. 2012-13, 2014-15 and 2015-16 are allowed.*

Order pronounced in the open court on 03rd December, 2018."

Perusal of this order makes it evident that the addition of Rs. 95 lacs in the hands of the appellant was made by AO for exactly identical reasons which have been discussed by Hon'ble ITAT in the above order. Therefore, the Hon'ble ITAT has also satisfied itself about the identity, genuineness and creditworthiness of the investor company HPFCPL who had also provided loans and advances to the other group company. The relevant year under consideration in that case was A.Yrs. 2012-13, 2013-14 and 2014-15, and the amended provisions of section 68 was found not applicable due to the extensive explanation provided by the assessee company. The Hon'ble ITAT has also rejected the idea that the fact that the investor company had numerous transactions meant there was no creditworthiness, by clearly holding that this company was an NBFC and its only business activity was to provide financing and loans and it was permitted to do so by RBI itself, and such numerous transactions by themselves could not be said to be non-genuine. (Para-55 of the referred order). It is this same 'investor company' which had invested in the APMC project alongwith the appellant of amounts aggregating to Rs. 5.50 crores, during A.Y. 2013-14, which is the subject of dispute in the present appeal. The issue at hand of the appellant being recipient of the advance as investment in APMC is thus covered by the above order.

6.6 *The above discussions therefore make the following facts clear and these facts have been established and accepted by the Hon'ble ITAT in the case of the investor company, M/s. HPFCPL, that:*

1. *The investor company HPFCPL, is an approved NBFC company and has been accredited by none other than Reserve Bank of India vide its certificate issued u/s 45-IA of RBI ACT, 1934 dated 26/ 02/ 2014. **Therefore, the creditor entity's identity is established. This aspect has en ignored by AO.***
2. *Secondly, the RBI while processing the creditor's case for approval as NBFC has considered the issue of its share at premium in the year 2009, and has verified the availability of share capital and reserves and surplus as on that date (of certificate). **Hence, the credit worthiness has been proved before RBI which is the regulator authority for the investor company being an NBFC. This fact has not been controverted by the AO.]***
3. *Thirdly, the Income Tax Department, i.e., the Assessing Officer of the creditor company also has examined the share capital raised through premium in 2009, and has not reported any anomalies. **Therefore, the sources of funds have been investigated by the department, and no adverse findings were recorded.** Perusal of the Assessment Orders of that AO reveals that he had carried out a proper examination of the issue. This fact has not been converted by the AO with any findings to the contrary.*
4. *Being an NBFC, the investor company's business is of making investments, advancing and financing loans and the interest received is its business income. The said company has consistently filed returns showing healthy income, which has not been denied by the AO. It is common sense that unless the company had funds, it cannot as an NBFC carry on business of financing, leave alone*

earn profits, which were declared. This fact has been accepted by the AO.

Table showing Returned Income:

Assessment Year	Business income Declared in Return
2003-04	Rs. 33.41 Lakhs
2005-06	Rs. 25.24 Lakhs
2006-07	Rs. 16.93 Lakhs
2007-08	Rs. 18.74 Lakhs
2008-09	Rs. 21.55 Lakhs
2009-10	Rs. 7.43 Lakhs
2013-14	Rs. 2.79 Lakhs
2014-15	Rs. 42.80 lakhs
2015-16	Rs. 86.57 lakhs

5. *The attempt to link the acquisition of the investor company by the promoters of the group concerns in A.Y. 2013-14, to the investment made in APMC Project in partnership with the appellant and five other individuals in AY 2013-14 is without merit, as the said company had adequate source to explain the availability of funds that was provided as advance. Moreover, the subject of acquisition of the creditor company by the promoters would be a subject of assessment in the hands of the promoters, not the appellant. **The source of loans is found explained and documented. These have not been proved by the AO as incorrect.***

6. *The Audited financial statements of the creditor company and the bank statements when perused reflect the advancing of Rs. 5.50 crores towards the APMC Project, which is disclosed as Non-Current Investment as Investment in APMC Project. Further, HLCPL, had made this investment out of realization of Sale of Investments in other companies, and return of loans and advances from its other clients. **The source of the advance to the appellant is examined to***

reveal the fact that it was out of realization of earlier advances given to various parties, and sale of shares/ investments for which these parties had provided confirmation of accounts, the dates of receipt and repayment of such advances from HPFCPL. The source of such credit as available in the books of HPFCPL is documented and explained by HLCPL. These have not been faulted by AO.

7. *The Bank Statement, confirmations, and other relevant documents like source letter was available with AO, who has not controverted these facts, and nothing adverse was found during investigations by AO. These specific facts have been accepted by AO. **Therefore, the source of the investment is also explained, and the AO has not denied the facts resented by appellant.***
8. *The identity, creditworthiness of the investor and the source of the advance/ investment has been proved many times over and cannot be denied simply on the whim of the AO, more so since none of the documents and evidences submitted by the appellant have been disproved by the AO, or the department in any of proceedings so far whether in the case of the investor company, or in the appellant's case.*
9. *Merely holding the transactions as unexplained by ignoring the evidences produced does not make the transactions suspect or unexplained. The appellant has fulfilled her burden and onus of providing explanations, but it is apparent that the AO has not discharged his burden of proving the documents/ materials wrong.*
10. *Merely deeming a transaction as not satisfactorily explained does not attract the provisions of section 68, as the AO has the onerous duty to establish the documentary evidences produced as false before taking support of the section 68 which is not so in the present case.*

6.7 *In view of the above facts on record, which have not been controverted by the AO during the assessment proceedings, the addition made u/s. 68 is not found proper, and in fact, is based on incorrect view of the whole issue, which is not judicious in the eyes of law. The appellant has not only provided all necessary evidences to support the transaction but has also provided all evidences to show the identity, creditworthiness of the investor company, as well as the genuineness of the transaction, and if the AO still wanted to add the sum on account of his lack of satisfaction, then such lack of satisfaction should have been preceded with disproving all the facts on record. I find that such is not in the present case, and the AO has merely rejected the explanations and evidences provided. However, a mere rejection of explanation does not make the impugned transaction non-genuine. It almost appears as though the AO was pre-determined to hold the impugned transactions as a non-genuine loan whereas, it was clearly a business transaction. The evidences provided by the appellant of the source of the advance in the investing company's books have been simply rejected without even an enquiry either with the third parties or even the Assessing Officer of the investing company. Even the amended provision of section 68 does require the Assessing Officer to disprove the evidences before rejecting them. Further, the term 'to the satisfaction of the AO' is a subjective term, and cannot be summoned up for use without objective findings. The Assessing Officer was still required to follow certain processes for applying the provisions of section 68 of the Act. If the assessee furnishes an explanation, the AO should examine whether the explanation so offered establishes the three ingredients i.e. identity of the creditor, creditworthiness of the creditor and genuineness of the transactions. If the explanation so offered by the assessee is not acceptable or reliable, the AO should give a detailed reasoning in*

the assessment order for not accepting the same. Here in this case, the order of the AO is replete with generalized views and comments, indicating suspicions and presumptions without any specific finding of anomalies.

6.8 Lastly, the appellant's case is covered by the findings of the Hon'ble ITAT Nagpur in ITA No. 228/Nag/2018 vide order dated 03/12/2018, especially in connection with the investor company HPFCPL. Accordingly, I am of the considered view that the appellant under the given circumstances has been able to prove adequately, the nature and source of sum of Rs. 95,00,000/- credited in her account. The AO accordingly was not justified in adding the above said amount u/s 68 of the I.T. Act, 1961.

*6.9 Considering the totality of the facts of the case, the addition of Rs. 95,00,000/- made to the income of the appellant u/s 68 of the Act is directed to be deleted. **The grounds of appeal of the appellant pertaining to this addition are allowed.***

9. From perusal of the record, we observed that the assessee is an Individual and had filed her return of income u/s. 139 of the Act on 11/02/2014 declaring total income at Rs.3,92,430/-. The search and seizure operations u/s 132 of Act was conducted on 10/09/2014 in case of M/s Karan Kothari Jewellers Pvt Ltd and entire Kothari group. During the course of the search action in the Karan Kothari Jewellers group, a survey action u/s 133A was also carried out in the case of M/s. Haldaur Leasing & Finance Company Private Limited (HLFCPL) at Kolkata. It was found that during the year under

consideration unsecured loans of Rs. 95,00,000/- was taken by the assessee from M/s. Haldaur Leasing & Finance Company Private Limited (HLFCPL). During the course of the assessment proceedings, the assessee submitted a common explanation with regard to the loans taken by the members of the Kothari family from Haldaur Leasing & Finance Company Private Limited and mentioned that the same applies in the case of the assessee also. **As per the reply of the assessee, the amount advanced by HLFCPL was its contribution towards A.P.M.C. Project and this was as per an MOU.** It was claimed that the entire transaction was through banking channels and copies of bank accounts, Income Tax returns & balance sheet of HLFCPL have been enclosed with the reply by the assessee. The statement of Shri Pradeep Kothari, Director, HLFCPL was also recorded. As per the assessee's submission that the amount of Rs. 5.50 crores [Rs. 95 lacs pertaining to assessee] were not loans, but Investment made by HLFCPL in the APMC project, out of its own source of reserves and capital. As HLFCPL was a registered NBFC, it was its business to invest and finance projects and earn profits or losses and the investment in the APMC Project was disclosed in its return and the same had also been scrutinised by RBI while providing the certificate. In this regard, the AR of the assessee also has drawn our attention to the fact that the said company was incorporated in 1990 and had obtained registration under RBI as an

NBFC in the year 2001, which was renewed again on 29.2.2008. In June 2009, the company initiated the process of shifting its registered Office from Bijnor in Uttar Pradesh to Kolkata and on 12.06.2010, the Company ultimately changed its registered office from Bijnor to Kolkata. During the said process of getting the permission from RBI for transferring the registered office, the company had to comply with very stringent requirements of RBI as time and again it was called upon to establish its nature of business, legitimacy of its operations, working standards and credibility of its Management personnel. Apart from this, the Company was required vide RBI Letter Dated 29/04/2013 to explain the authenticity and veracity of the raising of Share Capital and Share Premium during F.Y. 2009-10. The company submitted all the said information and evidences and finally secured the order from RBI for shifting of the registered office from Uttar Pradesh to West Bengal. This Order of RBI dated 26/02/2014, confirms its registration by the RBI, which has very strict rules for Compliances. The above facts show that the said company was never a paper company. The aspect of raising share capital in 2009 through share premium has been examined at various point of time as witnessed through documents which have not been controverted by the AO. The Assessing Officer of HLF CPL while assessing the company

for A.Y. 2010-11 had issued notices to the 18 new investors and examined the issue in details and accepted these investments.

10. We also observed that in 2013 again, the issue was examined by the RBI, prior to issuing its certificate. The company had by this time already changed ownership in 2012 and the major stakeholder being the Kothari group promoters had appeared before RBI and explained the transactions and no contradictory findings were made by present AO to refute these facts either.

11. The Coordinate Bench of the ITAT Nagpur has also examined the issue on the basis of same facts and documents that were before the AO and in the case of a sister concern (Karan Kothari Jewellers P. Ltd) for A.Y. 2015-16 has found the following, in its decision vide order dated 03/12/2018 as under :

"53. As regards the Loan taken from M/s. Haldaur Leasing Finance Private Limited (HLFPL), the assessee had submitted various details and explanations during the assessment and appellate proceedings as per which, the Company was incorporated in year 1990 in Bijnor, Uttar Pradesh. Its business was of financing, leasing of vehicle & sale of vehicle, Hire Purchases, commission income. This business was continued till 31.3.2009. The company changed its registered office from Bijnor to Kolkata on 12.06.2010. The Company is Non-Banking Financial Corporation registered with Reserve Bank of India under Certificate of Registration No. B.05.06956. The company M/s HLFPL being a NBFC has to comply with very strict norms under RBI Rules and Regulations. M/s HLFPL has duly complied with the RBI rules and regulation during its entire

existence from the date of securing the NBFC Status. Further sometime in June 2009 M/s HLFCL initiated the process of shifting its registered Office from Bijnor in Uttar Pradesh to Kolkata in West Bengal. The company had to comply with very stringent requirement when it was time and again called to establish its business existence, genuinely of its operations, business working and genuinity of its management. Apart from above, the Company was required vide RBI letter dated 29/04/2013 (Copy enclosed) to explain the authenticity and veracity of the raising of share capital and share premium during FY 2009-10. The company management complied with all the requirements of information and evidences and finally secured the order from RBI for shifting of the registered office from Uttar Pradesh to West Bengal. This order of RBI dated 26/02/2014 confirms its registration by the RBI which by no means any lesser in terms of compliance and due-diligence with Income Tax Department. M/s HLFCL had been assessed under sec 143(3) r.w.s. 147 vide order Date 30-12-2010 for A.Y. 2009-10, wherein the issue of share capital raised by M/s HLFCL is dealt with to examine the Identity, genuineness and credit worthiness of the company M/s HLFCL as well the subscribers to the Share capital. The AO had accepted the raising of share capital at a premium by conducting detailed enquiries that is why no adverse findings, observations were recorded by the AO. (Copy Enclosed). The ITO scrutinized process of issue of 18440 equity shares of Rs.100/- each at a premium of Rs.9900/- per share. ITO sent notice u/s 133(6) to major share applicants on test check basis. The ITO placed records of all replies received from applicant companies. The income of the company for Asst. Year 2009-10 was assessed u/s 143(3)/ 147 of the Income Tax Act, 1961 and demand raised u/s 156 for Rs.16790/-. The company had also been assessed u/s 143(3) for A.Y. 2010-11 vide order dated 31-03-2013 3 where no adverse facts as to the business model, business/operational existence and head of income has been observed and recorded. This Assessment order in subsequent years after assessment u/s 147 cements the factual position of company being operational and functioning. (Copy Enclosed) The said company was introduced by a friend Shri Prihar during March 2012, he informed that company has facing problems to comply with the norms of RBI, applicable for NBFC and

struggling to get its investments liquidated which are blocked since long. He also informed us about required investment id efforts to make.

54. *As regards the issue of notices to 18 Share Applicants, the AO has observed that the statement of Shri Pradeep Kothari, Director, HLCPL, was recorded under Sec. 131 of the Act on 08/12/2016 and it was found from the information supplied that all the original investor-companies were Kolkata based. Notices u/s 133(6) were issued to them as per the addresses furnished by Shri Pradeep Kothari for making verifications regarding the source of their funds. Out of these in 16 cases, the Notices u/s 133(6) of the Act were not delivered and returned back and in 2 cases, though the Notices were received but no reply was furnished by the creditor (Para No. 10, Page No. 7 of A.Y. 2013-14). The assessee was confronted and also asked to furnish the latest address of the creditors, which was not given Neither by the assessee nor the above said company i.e. HLCPL have produced the investor companies to substantiate their identity and the creditworthiness and genuineness of the transactions. But, fact remains that letter was submitted to Department on Date 09/10/2017 seeking information regarding all the 18 parties to whom summons u/s 133(6) have been issued, out of which 16 were not delivered and returned back in 2 cases notice was received but no reply was furnished. Therefore, we are of the view that when addition is made on the basis of third party statements, the AO ought to have furnished such statements for the assessee for its rebuttal. In this case, the AO had made additions without confronting such statements in violation of principles of natural justice. In a recent judgement of Hon'ble Bombay High court, in the case of CIT vs Harish D. Mehta, the High court has dealt with this issue. In the above case, transportation charges were paid by the assessee by crossed cheques. A.O. doubted the transactions and issued notices u/s 133(6), which were unserved. A.O. treated the amounts paid as bogus entries and made the additions in this regard. It is held by the jurisdiction High court that nonattendance or non-service of notices without anything more- could not be reason enough to sustain the addition.*

55. We further noticed that the company has declared sufficient income in its return of income right from A. Y. 2003-04 to A.Y. 2015-16 as per which it declared income ranging between Rs. 7.43 lacs to Rs. 86.57 lacs. The assessee has established credit worthiness of the parties by filing details of source of source. The assessee has furnished complete details and said information is genuine (i.e. PAN CARD, ITR, Confirmation, Bank statement) and no efforts was made by A.O to determine the same. That Jewel India Pvt Ltd (Total 92 Lacs out of 132.87 Lacs) is a well know Kolkata based company involved in Jewellery business and it was lack of effort on the AO to enquire the same from the party through 133(6). The Identity of all the Company, was proved beyond doubt by the Evidence of the PAN card Copy, Copies of their Income Tax Returns and Copy of Order of RBI. The Genuineness of the Transaction was established from the Confirmation Letter and the Bank Statements of the Company that were filed. This established the fact that the loan was received by Cheque/ RTGS from the Bank Account of the said Company. The Full set of Audited Financial Statements of the said Company was submitted on the record of Ld. A.O. This alongwith the balance sheet clearly established the loan given by the said Company to Assessee Company and their year-wise Income Track record proved the capacity of the said Company. The assessee has also proved the Source of source, by bringing on record the source of amount received by the said company along with the nature of transaction. The AR has vehemently argued that proviso to Section 68 is not applicable to assessee's case as the applicability of proviso to Section 68 is for any such amount in the nature of Share Application Money, Share Premium and does not envisage the Loan Amount. Further, we find that just because the bank statement of M/ s. Halduar showed numerous transactions, it could not be held that the said company did not have credit worthiness especially when the said company was an NBFC company and would not like to keep its funds blocked in the current account, when it could easily utilize its funds for earning income as the companies are compulsorily required to keep funds in current account on which no interest is received. We further noted that just because the said company was taken over at much reduced price it cannot be said that the said company lacked credit worthiness especially

when the company not only had proved the source of its fund but source of source also. There may be several reasons due to which the directors are forced to sale the companies and adhering to strict RBI guidelines in case of NBFC companies is one of them.

56. *Considering facts and circumstances of this case and by following ratios of case laws discussed above, we are of the considered view that the said Joan amount could not be added under the first proviso to Section 68 as also that the identity, creditworthiness and genuineness of the transactions are proved. Hence, we direct the AO to delete the addition on account of loan received from M/s. HLFPL in both the years.*
57. *In the result, all appeals filed by the Revenue for A.Y. 2010-11 to 015-16 are dismissed and appeals filed by the assessee for A.Y. 2012-13, 2014-15 and 2015-16 are allowed.*

Order pronounced in the open court on 03rd December, 2018."

In view of the above facts and circumstances, we are of the view that the Bank Statement, confirmations, and other relevant documents like source letter was available with AO, who has not controverted these facts, and nothing adverse was found during investigations by AO. These specific facts have been accepted by AO. Therefore, the source of the investment is also explained and the AO has not denied the facts represented by the assessee. The identity, creditworthiness of the investor and the source of the advance/ investment has been proved many times over and cannot be denied simply on the whim of the AO, more so since none of the documents and evidences submitted by the assessee have been disproved by the AO, or the department in any of proceedings so far whether in the

case of the investor company, or in the assessee 's case. Merely holding the transactions as unexplained by ignoring the evidences produced does not make the transactions suspect or unexplained. The assessee has fulfilled her burden and onus of providing explanations, but it is apparent that the AO has not discharged his burden of proving the documents/ materials wrong.

12. We further observed that the assessee has not only provided all necessary evidences to support the transaction but has also provided all evidences to show the identity, creditworthiness of the investor company, as well as the genuineness of the transaction, and if the AO still wanted to add the sum on account of his lack of satisfaction, then such lack of satisfaction should have been preceded with disproving all the facts on record. We find that such is not in the present case and the AO has merely rejected the explanations and evidences provided. However, a mere rejection of explanation does not make the impugned transaction non-genuine. The evidences provided by the assessee of the source of the advance in the investing company's books have been simply rejected without even an enquiry either with the third parties or even the Assessing Officer of the investing company. Even the amended provision of section 68 does require the Assessing Officer to disprove the evidences before rejecting them. Further, the term 'to

the satisfaction of the AO' is a subjective term and cannot be summoned up for use without objective findings. If the assessee furnishes an explanation, the AO should examine whether the explanation so offered establishes the three ingredients i.e. identity of the creditor, creditworthiness of the creditor and genuineness of the transactions. If the explanation so offered by the assessee is not acceptable or reliable, the AO should give a detailed reasoning in the assessment order for not accepting the same. Here in this case, the order of the AO is replete with generalized views and comments, indicating suspicions and presumptions without any specific finding of anomalies.

13. Considering the totality of the facts and circumstances of the case we hold that the identical issue of the group concern i.e. M/s Karan Kothari Jewellers Pvt. Ltd. had already been decided the Coordinate Bench of this Tribunal in favour of the assessee and the Id. CIT(A) has passed the impugned order on the basis of detailed analysis of the facts and circumstances as well as merits of the case. The Id. CIT(A) has also given its findings on the basis of decision of the Coordinate Bench already decided in the case of M/s Karan Kothari Jewellers Pvt. Ltd. as mentioned (supra). No new facts and circumstances of the case have been put forth by the Id. CIT-DR. The Id. CIT(A) has passed a well speaking order

discussing all the material facts and circumstances as well as legal proposition of law, therefore, considering the totality of the facts and circumstances, we do not find any reason to interfere or deviate from the findings so recorded by the Id. CIT(A), accordingly, we uphold the same.

14. In the result, this appeal of the revenue is dismissed.

15. Now we take ITA No. 143, 144, 145 and 146/Nag/2019 for the A.Y. 2013-14 and 2015-16.

In all these appeals, grounds of appeal, facts of the case and submissions of both the parties are identical to the grounds, facts and submissions of ITA No. 142/Nag/2019 for the A.Y. 2013-14, therefore, our finding given in ITA No. 142/Nag/2019 for the A.Y. 2013-14 shall apply mutatis mutandis in all these appeals of the Revenue also.

16. In the result, all these appeals of the Revenue are dismissed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-
(O.P. KANT)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Nagpur

Dated:- 20/12/2021

*Ranjan

Copy of the order forwarded to:

1. The Appellant- The A.C.I.T., Central Circle-2(2), Nagpur.
2. The Respondents- (i) Smt. Chandana Kothari, Nagpur.
(ii) Smt. Smita Kothari, Nagpur.
(iii) Smt. Sunita Suresh Kothari, Nagpur.
(iv) Smt. Seema Kothari, Nagpur.
(v) M/s Karan Kothari Aabhushan Private Limited,
Mumbai.
3. CIT
4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 142 to 146/Nag/2019)

By order,

Asst. Registrar