

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.3302/M/2019
Assessment Year: 2014-15**

M/s. Harivardhan Steel & Alloys Pvt. Ltd., Shop No.2, Ground Floor, Casablanca Bldg., A-Wing, Old Raviraj Complex, Jesal Park, Bhayander (East), Thane – 401 105 PAN: AABCH 6483J	Vs.	ITO – 12(2)(3), Room No.226, 2 nd Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Dr. K. Shivaram, A.R.
Revenue by : Shri Pramod Nikalje, D.R.

Date of Hearing : 24.11.2021
Date of Pronouncement : 24.01.2022

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 28.02.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. The assessee has taken the following grounds of appeal:

"1. Addition of Rs.53,00,000/- u/s 68 being share capital and share premium received from M/s Sampada Chemicals Ltd (Rs 20,00,000/-) and M/s P. Saji Textiles Ltd (Rs 33,00,000/-)

1. The Ld CIT(A) erred in confirming order of AO making addition of share capital and share premium received from M/s Sampada Chemicals Ltd.

(Rs.20,00,000/-) and M/s P Saji Textiles Ltd (Rs 33,00,000/-) on the basis of statement of Vipul Vidur Bhatt without appreciating that Assessee had proved the identity, creditworthiness and genuineness of the shareholders by filing documentary evidences and gave satisfactory explanation in terms of first proviso to Section 68 and both parties responded to notice u/s 133(6) and filed all the details and Vipul Vidur Bhatt has retracted his statement and hence, addition u/s 68 of Rs 53,00,000/- may be deleted.

1.1 The Ld CIT (A) failed to appreciate that AO did not provide cross examination of Mr Vipul Vidur Bhatt thereby violating principles of natural justice and hence, addition u/s 68 of Rs. 53,00,000/- may be deleted.

1.2 The Ld CIT(A) erred in not admitting additional evidence u/r 46A though Assessee had given cogent explanation for admitting the additional evidence and hence, addition u/s 68 of Rs.53,00,000/- may be deleted.

II. Addition u/s 68 of Rs 4,66,50,000/- being share-application/loan received from M/s Shyam Alcohol & Chemicals Ltd.

2.The Ld CIT(A) erred in making addition of share application money/loan Rs.4.66,50,000/- received from M/s Shyam Alcohol & Chemicals Ltd u/s 68 without appreciating that said amount represented repayment of loan and thus did not fall within the ambit of S.68 and hence, addition u/s 68 of Rs.4.66,50,000/- may be deleted.

2.1 Without prejudice to above, the Ld CIT(A) erred in making the addition on the basis of statement of Vipul Vidur Bhatt without appreciating that Assessee had proved the identity, creditworthiness and genuineness of the party by filing documentary evidences and Vipul Vidur Bhatt has retracted his statement and hence, addition u/s 68 of Rs.4,66,50,000/- may be deleted.

2.2 Without prejudice to above, the Ld CIT(A) erred in enhancing addition u/s 68 by Rs.90,00,000/- by consolidating Share Application A/c and Loan A/c of M/s Shyam Alcohol & Chemicals Ltd without appreciating that such consolidation is impermissible under the law and hence the enhancement is bad in law.

2.3. The Ld CITY A) failed to appreciate that no addition of share application money can be made u/s 68 as same is received in earlier year.

2.4. The Ld CIT(A) erred in making addition of Rs.4,66,50,000/- on the basis of statement of Vipul Vidur Bhatt without appreciating that AO did not provide cross examination of Mr Vipul Vidur Bhatt thereby violating principles of natural justice and hence, addition u/s 68 of Rs. 4,66,50,000/- may be deleted.

2.5 The Ld CIT(A) erred in making addition of Rs.4,66,50,000/- without admitting additional evidences u/r 46A though Assessee had given cogent explanation for admitting the additional evidences and hence, addition u/s 68 of Rs.4,66,50,000/- may be deleted.

3. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”

3. The issue raised in ground No.1 is against the confirmation of addition of Rs.53,00,000/- by ld CIT(A) as made by the AO under section 68 of the Act as unexplained cash credit in respect of share capital and share premium received.

4. The facts in brief are that during the course of assessment proceedings the AO noted on perusal of note No.2.1, appended to the annual accounts as on 31.03.2014, that assessee has received share capital including share premium from two entities namely M/s. Sampada Chemicals Ltd. Rs.20,00,000/- and M/s. P. Saji Textiles Ltd. Rs.33,00,000/-. According to the AO these two entities belong to Vipul Vidur Bhatt and related Companies who, during the course of search under section 132 of the Act, admitted during the course of recording of statement u/s 132(4) of the Act on 09.02.2016 that he and his associate concerns were providing bogus accommodation entries only. Accordingly, the AO called upon the assessee to prove the genuineness of these transactions with documentary evidences. In response , the assessee filed before the AO various evidences comprising copies of ITRs, confirmations from investors, bank statements of investors evidencing receipt of payments through banking channels and share application forms etc. The AO also issued notice under section 133(6) of the Act to these investors to verify the genuineness of these transactions independently and the investors have duly replied to the said notices issued by the AO furnishing all the details sought by the AO with respect to investments in shares by the two entities. The AO, however, was not satisfied with the genuineness of the transactions of

subscriptions of share capital and share premium by these two parties on the ground that Shri Vipul Vidur Bhatt during the course of search has admitted to be engaged only in providing accommodation entries and thus added Rs.53,00,000/- to the income of the assessee under section 68 of the Act as unexplained cash credit.

5. The Ld. CIT(A) in the appellate proceedings dismissed the appeal of the assessee by observing and holding as under:

"4.5 Decision on ground No.1:

45.1 The appellant claimed to have received a sum of Rs.20 lakh from M/s. Sampada Chemicals Ltd. and another sum Rs.33 lakhs from M/s P. Saji Textiles Ltd. towards share capital and share premium. I find that Shri Vipul Vidur Bhatt is director of those two companies. As mentioned above, in the course of search action u/s 132 was carried out by the Investigation Wing, Mumbai his case, statement of Shri Vipul Vidur Bhatt was recorded u/s 132(4) of the Act and Shri Vipul Vidur Bhatt had admitted that he was into the business of providing accommodation entries and that for that purpose, 347 bogus entities were managed and controlled by Shri Vipul Vidur Bhatt. This fact has to be borne in mind while deciding the appeal.

4.5.3. 1st proviso to Section 68 reads as under:

"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 the 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 offer an explanation about the nature and source of the such sum so credited, and

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

4.55 Neither M/s Sampada Chemicals Ltd. nor M/s P. Saji Textiles Ltd. offered any explanation in this regard during the course of the appellate proceedings. Merely furnishing of balance sheet of the purported investors does not amount to offering an explanation by the purported investors about the nature and source of the sum so credited. As per the first proviso, the appellant can escape the rigour of that proviso, only if the person in whose name the money is credited himself offers the explanation. In other words, explanation by any person other than person in whose

name the money is credited will not help assessee's cause. The I find that the sums received are covered by the 1st proviso to section 68 and therefore, explanation furnished by the appellant regarding the source and nature of the sums credited are deemed to be not satisfactory. Therefore, the AO was justified in treating the sum of Rs. 53,00,000 as unexplained credit u/s 68 of the Act. Therefore, I confirm the addition made by the AO. In the result, the ground of appeal No. 1 is dismissed.”

6. The Ld. A.R. submitted before the Bench that the order passed by the Ld. CIT(A) upholding the order of AO is wrong and against the provisions of the Act as both the authorities below have overlooked and ignored the evidences filed by the assessee as well as by the investors namely M/s. Sampada Chemicals Ltd and M/s. P. Saji Textile Ltd. The Ld. A.R. submitted that assessee has raised money by way of share capital and share premium by issuing 8,500 equity shares of face value of Rs.10/- each at a premium of Rs.225/- per share to M/s. Sampada Chemicals Ltd. and by issuing 56,000 equity shares of face value Rs.10/- each partly paid up (Rs.2.50 paid up) at premium of Rs.225/- to M/s. P. Saji Textile Ltd on the basis of valuation report as per rule 11(UA) which was prepared on the basis of net asset value method. The Ld. A.R. submitted that the AO has ignored all the evidences filed by the assessee in the form of ITRs, confirmations from investors, bank statements of investors, evidences evidencing receipt of payments through banking channels and share application forms etc and relied merely on the statement of Shri Vipul Vidur Bhatt who admitted in his statement recorded under section 132(4) of the Act that he was providing accommodation entries in the form of share capital and bogus unsecured loans. The Ld. A.R. submitted that even the said statement has been withdrawn and retracted by Shri Vipul Vidur Bhatt. The Ld. A.R. also submitted that, in the reply given to show cause notice dated 23.12.2016, the assessee

has requested the AO to provide opportunity of cross examination of Shri Vipul Vidur Bhatt which was not provided to the assessee. The Ld. A.R. also submitted that the notices issued under section 133(6) of the Act by the AO to these parties independently were duly responded by these investors by filing the necessary evidences proving the identity , creditworthiness of the investors and genuineness of the transactions. The Ld. A.R. submitted that these investor companies have filed the copies of bank statements reflecting the payments made to the assessee and also the source of investments etc. Thus the Ld. A.R. submitted that even the source of sources also proved. The Ld. A.R. further submitted that the assessee even filed affidavit of Shri Vipul Vidur Bhatt before the Ld. CIT(A) stating that these transactions were genuine. Finally, the Ld. A.R. submitted that the addition as made by the AO and confirmed by the Ld. CIT(A) under section 68 of the Act is wrong as the assessee has proved the identity and capacity of the investors and genuineness of the transactions besides proving the source of source by filing the necessary evidences as stated hereinabove. So far as the investment by M/s. Sampada Chemicals Ltd. is concerned, the Ld. A.R. submitted that the said investment was made out of repayments received from M/s. SIL Retails Pvt. Ltd. of loans advanced by it earlier whereas the investment by M/s. P. Saji Textile Ltd. was made out of overdraft limit provided by the Bank of Maharashtra to that investor. The Ld. A.R. submitted that nowhere Shri Vipul Vidur Bhatt has named the assessee as beneficiary of these accommodation entries and statement made by him was general in nature which has been retracted since then and therefore has no evidentiary value in the eyes of law.

The Ld. A.R. relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Sunrise Systems Pvt. Ltd. (2014) 361 ITR 206 (Del-HC) wherein it has been held that addition on the basis of retracted statement was bad in law. Going a step further, the Ld. Counsel of the assessee submitted that if the share capital and share premium has been received by the assessee from bogus shareholders whose names and addresses along with ITRs, confirmations and various other evidences were given to the AO, then the AO is free to proceed against those investors and reopen their independent assessments in accordance with law and this amount can not be added in the hands of the assessee under section 68 of the Act as unexplained cash credit as has been held in the case of CIT vs. Lovely Exports Pvt. Ltd. (2008) 216 CTR 195 (SC). The Ld. A.R. submitted that the Hon'ble Bombay High Court has also followed this decision in the case of Gagandeep Infrastructure Pvt. Ltd. (2017) 394 ITR 680 (Bom.) as well as in CIT vs. Orchid Industries Pvt. Ltd. (2017) 397 ITR 136 (Bom.) by laying down same ratio. The Ld. A.R. also relied on the decision of Andaman Timber Industries vs. CCE (2015) 281 CTR 241 (SC) wherein it has been held that addition made without giving opportunity of cross examination is void ab-initio and order is nullity. The Ld. A.R. also relied on another decision of Hon'ble Supreme Court in the case of Kishanchand Chellaram vs. CIT (1980) 125 ITR 713 (SC) to defend his arguments that addition made without giving the opportunity of cross examination is invalid and bad in law. The Ld. A.R. also referred to the decision of H.R. Mehta vs. ACIT (2016) 387 ITR 561 (Bom.) wherein it has been held that addition made without giving an opportunity of cross

examination was to be deleted. Besides the Ld. A.R. also relied series of decisions namely; ITO vs. MJD Financial Services Pvt. Ltd. ITA No.6051/M/2018 A.Y. 2012-13 dated 20.09.2020, ITO vs. Celebrity Life Space Pvt. Ltd. ITA No.6301/M/2017 A.Y. 2014-15 dated 05.12.2019 and M/s. Moraj Realty Pvt. Ltd. vs. DCIT ITA Nos.708 & 709/M/2019 dated 08.12.2020 wherein the addition made on account of unsecured loans received from the companies of Shri Vipul Vidur Bhatt including some of the present investors/lenders were deleted by the co-ordinate Benches of the Tribunal. The Ld. A.R. therefore prayed that in view of the facts of the present case vis-à-vis the decisions by various judicial forums, the order of Ld. CIT(A) may kindly be set aside and AO may be directed to delete the addition of Rs.53,00,000/- as the assessee has proved the identity and creditworthiness of the investors and genuineness of the transactions.

7. The Ld. D.R., on the other hand, relied heavily on the order of AO as well as Ld. CIT(A) and submitted that the assessee has received share capital/share premiums from entities belonging to Shri Vipul Vidur Bhatt who is a hawala operator which has been brought to light by a search conducted under section 132 of the Act. The Ld. D.R. also referred to the statement recorded under section 132(4) of the Act wherein Shri Vipul Vidur Bhatt has admitted to have been engaged in providing accommodation entries in the form of share capital, unsecured loans and bogus purchases. The Ld. D.R., therefore, submitted that the share capital received by the assessee is nothing but a sham transactions and accommodation entries only. The Ld. D.R. therefore prayed that the authorities below have rightly taken a

view on these transactions and the plea of the assessee that the statement has been retracted and Shri Vipul Vidur Bhatt has filed an affidavit before the Ld. CIT(A) will not convert these non genuine transactions in the genuine ones. The Ld. D.R. therefore prayed that the appeal of the assessee on this issue may kindly be dismissed.

8. After hearing the rival parties and perusing the material on record, we find that the assessee has raised share capital and share premium from two parties namely M/s. Sampada Chemicals Ltd. of Rs.20,00,000/- by issuing 8,500 equity shares of Rs.10/- at a premium of Rs.225/- per share and Rs.33,00,000/- from M/s. P. Saji Textile Ltd. by issuing 56,000 equity shares of Rs.10/- each partly paid up (Rs.2.5 paid up) at a premium of Rs.225/-. During the course of assessment proceedings the assessee filed the ITRs, confirmations, bank statements of the investors besides filing the evidences of these transactions being carried out through banking channel and share application forms etc. We also note that the AO has issued notices under section 133(6) of the Act to these investors in order to verify the genuineness of the investments which have been responded to by these investors filing all the evidences before the AO and admitting that the investments were genuine. We also note that Shri Vipul Vidur Bhatt has filed an affidavit which stated that investments were made in the case of M/s. Sampada Chemicals Ltd. out of repayments of loans received from M/s. SIL Retails Pvt. Ltd. whereas the investment by M/s. P. Saji Textile Ltd. was made out of OD facility of the investor with Bank of Maharashtra. We also note that the AO/ Ld. CIT(A) have not pointed out any defect/deficiencies in these evidences

filed by the assessee and merely relied on the statement recorded under section 132(4) of the Act of Shri Vipul Vidur Bhatt during the course of search which has even been retracted by him later on. In our opinion, the reliance on his statement which has been retracted is not correct as it has no evidentiary value in the eyes of law. The Hon'ble Delhi High Court in the case of CIT vs. Sunrise Systems Pvt. Ltd. (supra) has laid down a ratio that addition on the basis of retracted statement is bad in law and has to be deleted. Similarly, we note that if at all these investments are made by bogus investors, then the AO is free to proceed against those investors as the assessee has provided all the details such as addresses, PAN numbers etc. of the investors to the AO and thus no addition can be made under section 68 of the Act in the hands of the assessee as has been held by the Hon'ble Apex Court in the case of CIT vs. Lovely Exports Pvt. Ltd. (supra) which has been followed by the Hon'ble Bombay High Court in the case of CIT vs. Gagandeep Infrastructure Pvt. Ltd. (supra) and CIT vs. Orchid Industries Pvt. Ltd. (supra). We also note that the assessee has specifically requested the AO to provide cross examination to the assessee which has not been provided and on this count also the assessee finds support from the decision of Apex Court in the case of Andaman Timber Industries vs. CCE (supra) and Krishnachand Chellaram (supra) wherein it has been held that additions can not be made without giving an opportunity of cross examination to the assessee. Similar ratio has been laid down by the Jurisdictional High Court in the case of A.R. Mehta vs. ACIT (supra) wherein the Hon'ble Bombay High Court has deleted the addition made on the ground of not giving

an opportunity of cross examination. We also note that the co-ordinate Benches of the Tribunal in the cases namely ITO vs. MJD Financial Services Pvt. Ltd., ITO vs. Celebrity Life Space Pvt. Ltd. and M/s. Moraj Realty Pvt. Ltd. vs. DCIT have deleted the additions made by the AO on account of unsecured loans from companies belonging to Shri Vipul Vidur Bhatt including some of the present investors. In view of these facts and the ratio laid down by the various judicial forums, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition as the assessee has proved all three ingredients of section 68 of the Act i.e. identity, creditworthiness of the investors and genuineness of the transactions. The ground no. 1 is allowed.

9. The issue raised in ground No.2 is against the confirmation of addition of Rs.4,66,50,000/- by Ld. CIT(A) as made by the AO under section 68 of the Act in respect of share application/unsecured loans received from M/s. Shyam Alcohol Chemical Ltd.

10. The facts in brief are that during the course of assessment proceedings the AO observed that assessee has received unsecured loan from M/s. Shyam Alcohol Chemical Ltd. during the year under consideration. The AO noted that the debits and credits appearing in the account of said party were Rs.10,26,00,000/- and Rs.6,49,50,000/- respectively and the assessee has shown at the year end as on 31.03.2014 the long term liability from body corporate at Rs.4,32,00,000/-. Accordingly the assessee was called upon by the AO to furnish the details of loans taken, repaid and squared up during the

year which were replied by the assessee vide letter dated 25.07.2016 submitting the tax audit report along with its enclosures in Annexure -2 and also submitted that the details of unsecured loan taken in Annexure-7. The AO found and observed on the basis of said details that assessee has entered into loan transactions with M/s. Shyam Alcohol Chemical Ltd. and accordingly issued notice under section 133(6) of the Act on 05.12.2016 which was not served upon the said party however later on the party made compliance to the said notice by filing details as desired by the AO. Besides the AO was in receipt of information from DGIT (Inv.) Wing, Mumbai that assessee is beneficiary of unsecured loans from M/s. Shyam Alcohol Chemical Ltd. which is controlled and operated by Shri Vipul Vidur Bhatt against which an amount of Rs.3,76,50,000/- was shown as outstanding. The AO, after rejecting the evidences filed by the assessee, treated the same as non genuine and added the same to the income of the assessee as unexplained cash credit under section 68 of the Act.

11. In the appellate proceedings, the Ld. CIT(A) not only confirmed addition of Rs.3,76,50,000/- as made by the AO but also made further enhancement of Rs.90,00,000/- by observing and holding as under:

“5.4.5 I have considered the submissions made by the appellant. The same are not acceptable. The appellant has maintained two ledgers in respect of M/s. Shyam Alcohol & Chemicals Limited. From the consolidated ledgers which is annexed to this order, it can be clearly seen that it had credited cash aggregating to Rs.4,66,50,000/- in its books in the account of M/s. Shyam Alcohol & Chemicals Limited from 07.12.2013 to 28.01.2014.

5.4.6 The appellant's contention that the no addition can be made u/s. 68 of the Act on the basis of credits in the consolidated ledger is fallacious. This is because the cash credits in consolidated ledger also correspond to identical cash credits appearing in the appellant's books of accounts. The cash credits appearing in one of

the two ledgers of M/s. Shyam Alcohol and Chemicals Ltd. in appellant's books are as under (as per confirmation filed by the appellant):

Date	Amount (in Rs.)
07.12.2013	27,00,000
10.12.2013	27,00,000
10.12.2013	25,00,000
10.12.2013	25,00,000
10.12.2013	25,00,000
11.12.2013	22,00,000
12.12.2013	2,00,000
13.12.2013	17,00,000
14.12.2013	12,50,000
19.12.2013	25,00,000
19.12.2013	25,00,000
20.12.2013	15,00,000
21.12.2013	11,00,000
23.12.2013	18,00,000
26.12.2013	25,00,000
30.12.2013	10,00,000
31.12.2013	30,00,000
02.01.2014	45,00,000
06.01.2014	15,00,000
07.01.2014	8,00,000
08.01.2014	11,00,000
11.01.2014	10,00,000
11.01.2014	6,00,000
13.01.2014	10,00,000
13.01.2014	10,00,000
28.01.2014	25,00,000
01.02.2014	15,00,000
Total	4,66,50,000

5.4.7 Therefore, the appellant's contention that there was no fresh cash credit in the account of M/s. Shyam Alcohol and Chemicals Ltd. is not correct. As regards the genuineness of the source of the cash credits, I find that Shri Vipul Vidur Bhatt is the director of M/s. Shyam Alcohol & Chemicals Limited. As mentioned above, a search and seizure operation u/s 132 of the Act was carried out in the case of Shri Vipul Vidur Bhatt and his associates on 05.02.2016. In his statement recorded u/s 132(4) of the Act in the course of the search Shri Vipul Vidur Bhatt had accepted that he was an entry operator and the entities controlled by him were used by him for providing bogus accommodation entries to various beneficiaries for commission. Shri Vipul Vidur Bhatt admitted that he had controlled, managed and operated as many as 347 bogus entities which were used for providing bogus accommodation entries to various beneficiaries for commission.

5.4.8 The appellant had cited two case laws. Those case laws are not applicable to this case. In the case of Pr. CIT vs. Shreedham Construction Pvt. Ltd., the sum

credited was share application money. That case was decided in favour of the appellant in view of Hon'ble Supreme Court's decision in the case of CIT vs. Lovely Exports (6 DTR 308) Similarly, in the case of PCIT vs. Paradise Inland Shipping P. Ltd. also, the issue was regarding cash credits on account of share application money. In that case, the Revenue's contention was that the two companies from whom the assessee had received share application money were did not exist. The assessee had produced voluminous public documents to in support of the claim that those companies were genuine. The Hon'ble ITAT had rejected the Revenue's contention that the two companies did not exist. After considering the facts of the case, the High court merely held that no substantial question of law was involved that case. The Hon'ble Court observed as under:

"7. The Appellants have failed to explain as to how such Companies have been assessed though according to them such Companies are not existing and are fictitious companies. Besides the documents also included the registration of the Company which discloses the registered address of such Companies. There is no material on record produced by the Appellants which could rebut the documents produced by the Respondents herein in such circumstances, the finding of fact arrived at by the authorities below which are based on documentary evidence on recon cannot be said to be perverse Learned Counsel appearing for the Appellants was unable to point out that any of such findings arrived at by the authorities below were on the basis of misleading of evidence or failure to examine any material documents whilst coming to such conclusions. Under the guise of the substantial question of law, this Court in an Appeal under Section 260A of the Income Tax Act cannot re-appreciate the evidence to come to any contrary evidence. Considering that the authorities have rendered the findings of facts based on documents which have not been disputed, we find that there are no substantial question of law which arises in the present Appeal for consideration. "(emphasis supplied)

5.49 Therefore, in that case the Hon'ble High Court did not decide any question of law. Even otherwise, the fact of that case is totally different from this case. In this case, the director of the company (Shri Vipul Vidur Bhatt) from whom the money was received himself admitted that he used to give bogus entries of loan, share application money etc.

5.4.10 Considering the facts mentioned above, I confirm the addition of Rs.3,76,50,000/- made by the AO and also make further addition (enhancement) of Rs.90 00,000/- (Rs.4,66,50,000/- minus Rs.3,76,50,000/-). I am satisfied that the appellant has concealed particulars income of Rs. 90,00,000/within the meaning of explanation 1 to section 271(1) of the Act. Accordingly, penalty proceedings under section 271(1)(c) are initiated for concealing particulars of income."

12. We note on the examination of records before us that various amount of unsecured loans were raised on different dates by the assessee from M/s. Shyam Alcohol Chemical Ltd.

an entity which belonged to Shri Vipul Vidur Bhatt. We note that the facts of the issue involved are quite similar to ones as has been decided by us in ground No.1 above with the difference that in ground No.1 the money was raised by way of share capital and share premium whereas in the present ground the money has been raised as unsecured loans/share application money. The undisputed facts are that the assessee has received share application money of Rs.5,44,50,000/- from M/s. Shyam Alcohol Chemical Ltd. in the earlier years. During the instant year a sum of Rs.1,68,00,000/- was refunded as the project for which the money was taken did not materialize and thus the closing balance at the year end was Rs.3,76,50,000/-. We also note that during the year the assessee had given unsecured loan to M/s. Shyam Alcohol Chemical Ltd. to the tune of Rs.4,81,50,000/- which has been repaid during the year itself. However, the Ld. CIT(A) during the course of appellate proceedings observed from the consolidated ledger of M/s. Shyam Alcohol Chemical Ltd. that opening balance of Rs.5,44,50,000/- was repaid by 03.10.2013 and thus balance in the said account was reduced to nil and thereafter between 07.12.2013 and 28.01.2014 total sums credited in the account of the said party were Rs.4,51,50,000/- with one more credit of Rs.15,00,000/- on 01.02.2014. Thus the Ld. CIT(A) noted that the total cash credit in the account of this party was Rs.4,66,50,000/- and not Rs.3,76,50,000/- as has been mentioned by the AO and thus enhanced the addition of Rs.90,00,000/-. Barring these facts all other facts are quite similar to the ones as involved in the ground no 1 above. We note that the assessee has filed the ITRs, confirmations and

bank statements from the lender/investor. The assessee has also filed before the AO the letter informing that the entire share application money has been paid subsequently. We also note that the lender has responded to the notice issued under section 133(6) of the Act by filing various documents therewith such as balance sheet, bank statements etc. beside filing affidavit of Shri Vipul Vidur Bhatt and thus confirmed the loan transactions. In our opinion, the issue decided in ground No.1 above is quite similar to the issue raised in the second ground by the assessee and therefore, our finding in ground No.1 would, mutatis mutandis, apply to this ground as well. Accordingly, we hold that assessee has proved the identity, creditworthiness of the lenders/investors and genuineness of the transactions. Resultantly, the order of Ld. CIT(A) is set aside and AO is directed to delete the addition.

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

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai, Dated: 24.01.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.