

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "A" चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "A" CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.165 /CHD/2020

निर्धारण वर्ष / Assessment Year : 2012-13

M/s K. Lall Overseas, 293, Industrial Area-A, Ludhiana.	Vs	The ACIT, Circle-6, Ludhiana.
स्थायीलेखासं./PAN NO: AABFK5507D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ITA No.174 /CHD/2020

निर्धारण वर्ष / Assessment Year : 2012-13

The ACIT, Circle-6, Ludhiana.	Vs	M/s K. Lall Overseas, 293, Industrial Area-A, Ludhiana.
स्थायीलेखासं./PAN NO: AABFK5507D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by: Shri Ashwani Kumar, CA, Shri Aditya
Kumar, CA & Shri Bhavesh Jindal, CA

राजस्वकीओरसे/ Revenue by : Shri Vivek Nangia, CIT-DR

सुनवाईकीतारीख/Date of Hearing : 04.04.2022

उद्घोषणाकीतारीख/Date of Pronouncement : 08.04.2022

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present are the cross appeals, one by the assessee and the other by the Revenue against the order dated 06.12.2019 of the Commissioner of Income Tax (Appeals)-3, Ludhiana [hereinafter referred to as 'CIT(A)'] pertaining to 2012-13 assessment year.

2. First we take up the assessee's appeal in ITA No. 165/CHD/2020. In this appeal, the assessee has taken following grounds of appeal:-

1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-3, Ludhiana is against law and facts on the file in as much as she was not justified to arbitrarily uphold the action of the additions made by the Learned Assessing Officer on account of alleged unexplained loans raised from the following parties: -

<i>1. Gautam Gupta</i>	<i>Rs. 25,00,000/-</i>
<i>2. Kips Corner</i>	<i>Rs. 42,50,000/-</i>
<i>3. Kips Corner</i>	<i>Rs. 19,50,000/-</i>
<i>4. Lakhwinder Singh Chawla</i>	<i>Rs. 30,00,000/-</i>
<i>5. Rahul Jain</i>	<i>Rs. 25,00,000/-</i>
<i>6. Sachin Goyal</i>	<i><u>Rs. 75,00,000/-</u></i>
<i>Total</i>	<i><u>Rs. 2,17,00,000/-</u></i>

2. That the Ld. CIT(A) was further not justified to arbitrarily uphold the disallowance of interest in respect of the unsecured loans which have been held to be allegedly unexplained vide Ground No. 1

3. That she was further not justified to arbitrarily uphold the disallowance of Rs. 26,32,000/- out of interest account made by the Learned Assessing Officer by invoking provisions of Section 36(1)(iii)

4. That she further gravely erred in upholding the disallowance of Rs. 1,18,024/- out of interest account made by the Learned Assessing Officer in respect of certain interest free advances made by the appellant company

5. That she further gravely erred in upholding the disallowance of Rs. 5,68,361/- representing 20% of following expenditure which in any case was highly excessive:

<i>1. Car maintenance</i>	<i>Rs. 6,17,504/-</i>
<i>2. Mobile phone expenses</i>	<i>Rs. 4,10,762/-</i>
<i>3. Telephone expenses</i>	<i>Rs. 1,75,779/-</i>
<i>4. Travelling & Conveyance</i>	<i>Rs. 2,89,576/-</i>
<i>5. Car depreciation</i>	<i><u>Rs. 11,98,184/-</u></i>
<i>Total</i>	<i><u>Rs.26.91.805/-</u></i>

GROUND NO. 1

3. The assessee vide ground No.1 has contested the action of the CIT(A) in upholding the additions made by the Assessing Officer (hereinafter referred to as the 'AO') on account of unexplained loans raised from six parties as mentioned in ground No. 1 of the appeal.

4. The brief facts relevant to the issue are that the AO during the assessment proceedings noted that the assessee had shown unsecured loans totaling to Rs. 8,48,13,814/- in the balance sheet claimed to have been taken in different amounts from various parties. He further noted that total credits of Rs. 15,25,03,551/- were shown to have received from various parties during the assessment year under consideration. On being asked to file details to prove the identity and credit worthiness of the creditors and genuineness of the transactions, the assessee filed the necessary explanations in the form of confirmations, ITRs of the creditors, bank accounts of the creditors etc., but the AO noted that the assessee had filed the aforesaid details at a very belated stage i.e. on 24.03.2015 whereas, the assessment was becoming time barred on 31.03.2015. Therefore, the AO noted that at that point of time, it was not possible for him to examine the information and details furnished by the assessee. He noted that the assessee had deliberately filed the details at the fag end of the year knowing that it would not be possible for the AO to examine the aforesaid information due to work pressures of time barring assessments. He, therefore, treated the aforesaid unsecured loans of Rs. 15.25 Cr as unexplained and added the same into the income of the assessee.

5. Being aggrieved by the aforesaid order of the AO, the assessee preferred the appeal before the CIT(A).

6. During the appellate proceedings, the assessee moved an application for adducing additional evidence under Rule 46 of the Income Tax Rules alongwith necessary documents and evidences such as confirmation of the parties, bank account statement, Income Tax Return etc. of the creditors to prove the identify and credit worthiness of the creditors and genuineness of the transactions. The ld. CIT(A) forwarded the aforesaid evidences and submissions of the assessee to the concerned AO for a remand report. However, the ld. AO vide report dated 18.08.2016 did not report and comment relating to merits of the case but only agitated against the admission of additional evidences by the ld. CIT(A).

7. The assessee again filed further submissions before the ld. CIT(A) contending that since the AO before giving his reply/Report has gone through the evidences and had also issued summons to various parties and had made necessary enquiries and as nothing adverse had been pointed out in the report, therefore, the explanation offered by the assessee was deemed to be accepted by the AO. However, the ld. CIT(A) again directed the AO to verify the identity and credit worthiness of the creditor and genuineness of the transaction. In response to that the AO issued notices u/s 133(6) of the Income Tax Act to various creditors and after making enquiries, he sent his report to the ld.

CIT(A) which has been reproduced in the form of following Chart in the order of the CIT(A) itself:

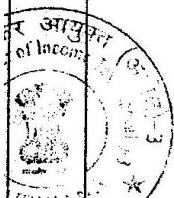
Sr. No.	Name	Amount	Date on which the information submitted before the A.O	Document submitted before the A.O
1	Amrit Lal Jain	5000000/-	28.08.2017	1. Income Tax Return for A.Y. 2012-13 2. Computation chart for A.Y.2012-13 3. Copy of Pass Book for A.Y.2012-13 4. Copy of Account of M/s K.Lall overseas 5. Balance sheet for A.Y. 2012-13
2.	Arun Berry	4000000/-	28.08.2017	1. Income Tax Return for A.Y 2012-13 2. Computation chart for A.Y. 2012-13 3. Copy of Pass Book for A.Y. 2012-13 4 Copy of Account of M/s K.Lall overseas 5. PAN CARD 6. ADHARCARD
3	Ashok Kumar Garg	3500000/-	28.08.2017	1. ITR for A.Y. 2012-13 2. Computation of Income for A.Y. 2012-13 3. Copy of Bank Account Statement
4.	Eastman Industries	2300000/- & . 2500000/-	28.08.2017	1. ITR for A.Y. 2012-13 2. Computation of Income for A.Y. 2012-13 3. Ledger Account statement of K. Lal overseas
5	Gautam Gupta	2500000/-	28.08.2017	1. ITR for 2012-13. 2. Computation of Income for 2012-13 3. Balance Sheet for 2011-12
6	Kaka Ram Hari Chand	5000000/-	30.08.2017	1. ITR for A.Y. 2012-13 2. Computation of total income for A.Y. 2012-13 3. Bank Account Statement
7	Khanna Trade Chem Pvt. Ltd.	7000000/- & 4500000/-	28.08.2017	1. ITR for 2012-13 2. Computation of Income for 2012-13 3. Auditor Report 4. Balance Sheet for 2012-13 5. Bank statement 6. Copy of account of M/s K. Lal Overseas.
8	Kips Corner	4250000/- & 1950000/-	29.08.2017	1. ITR for 2012-13 2. Balance Sheet for A.Y. 2012-13 3. Bank Account Statement for 2012-13 4. Account Statement of K. Lai Overseas
9	Lakhwinder Singh Chawla	3000000/-		Reply not received
10.	Naresh Jain HUF	2000000/-	24.08.2017	1. ITR for A.Y. 2012-13 2. Computation of Income for A.Y. 2012-13 3. Confirmation copy of account in the book

				<i>of M/s Naresh Jain HUF of M/s K. Lai Overseas</i>
11	Rahul Jain	2500000/-	N/A	Copy of ITR for A.Y. 2012-13 2. Computation chart for A.Y. 2012-13
12.	Rajat Khanna	3500000/-	28.08.2017	1. ITR for A.Y. 2012-13 2. Computation of Income for A.Y. 2012-13 3. Bank account statement 4. Copy of ledger account
13.	Ramesh Kumar Jain	1500000/-	30.08.2017	1.The account of M/s K.Lal Overseas for A.Y. 2011-12 and 2012-13. Copy of ITR for A.Y 2012-13 3.Copy of bank account statement.

14	Ranju Jain	2000000/-		Reply not received
15.	Raunaq Fabrics Pvt. Ltd	3000000/-	05.9.2017	1. copy of ledger account 2. Bank Account statement
	Sachin Goyal	7500000/-		Reply not received
17.	Sandeep Kumar Singal	2000000/-	30.08.2017	1. Bank account statement 2. ITR for A.Y.
18	Sarla Rani	1650000/-	30.07.2017	1. Ledger Account statement 2. Bank account statement
19.	Sheenu Khanna	4000000/-	28.08.2017	1. ITR for A.Y. 2012-13 2. Copy of computation of income for A.Y. 2011-12 3. Bank pass book for A.Y. 2012-13
20	Upasana Jain	2500000/-	31.08.2017	1.Copy of ITR for A.Y. 2012-13 2. Copy of bank account statement 3. Copy of account of M/s K. Lal overseas
21	Sushil Garg	3000000/-	N/A	1 Copy of ITR for A.Y. 2012-13 2. Copy of computation of income for A.Y. 2012-13 3. Bank account statement
22	Vikram Jain	2500000/-	30.08.2017	1. Copy of account of M/s K. Lal overseas for A.Y. 2012-13 2. The copy of computation of Income 3. Photo copy of passbook
23	.Vallabh Yarns	2000000/- 1500000/-& 2500000/-	28.08.2017	1. Copy of ITR for A.Y. 2012-13 2. Copy of computation of income for A.Y. 2012-13 3. Copy of bank statement 4. Copy of balance sheet

8. In response to the aforesaid report in the shape of chart as reproduced above, the assessee filed its comments/rejoinder which has been further reproduced by the Id. CIT(A) in para 3.4 of the impugned order, which for the sake of ready reference is reproduced hereunder :

Sr. No.	Name	Amount	Remarks given by AO	Comments of the Assessee
1	Amrit Lal Jain	5000000/-	Cheque issued against amount received from Eastman Exports	<p>6. The Learned AO has observed that Amrit Lal Jain has issued cheque of Rs.50 lacs against cheque of Rs.50 lacs received from Eastman Exports to whom Amrit Lal Jain has given loan earlier.</p> <p>7. Amrit Lal Jain has submitted his Balance Sheet having total capital of Rs.11836968/- as on 31.03.2012. it has also been shown in the balance sheet that Amrit Lal Jain has given loan to other persons apart from K. Lall Overseas. Amrit Lal Jain is receiving interest from all parties where such loans are given.</p> <p>8. Eastman Exports is established and known industrial house therefore creditability of Eastman Exports cannot be kept in doubt.</p> <p>9. Hence observation made by AO regarding unexplained source is against the fact of the case.</p> <p>10. Assessee is paying</p>



				<p>interest on quarter basis and also requisite amount of TDS deducted and deposited.</p> <p>11. The said amount of Rs.50 lacs has been returned back on 28.12.2012. Copy of account enclosed.</p>
2.	Arun Berry	4000000/-	No specific remarks is given	<p>5. Arun Berry has issued cheque to assessee against available balance of Rs.853202/- and a cheque of Rs.30 lacs received from Eastman Exports and Rs.2 lacs from Raj Trade.</p> <p>6. Eastman Exports is established and known industrial house therefore creditability of Eastman Exports cannot be kept in doubt.</p> <p>7. The Amount of Rs.40 lacs has been returned back on 10.01.2012. it means during the same financial year amount has been adjusted. Copy of account enclosed.</p> <p>8. The assessee has paid interest against which TDS has been deducted and deposited.</p> <p>9. Arun Berry has shown Rs.1238129/- as net taxable income for the A.Y. 2012-13.</p>
3	Ashok Kumar Garg	3500000/-	No specific remarks is given	<p>4. Ashok Kumar Garg has given Rs.35 lacs to assessee against Rs.35 lacs transferred from Kishan Garg & Sons HUF. Kishan Garg & Sons has issued cheque against credit facilities availed from the bank.</p> <p>5. Ashok Kumar Garg has files its return having taxable income Rs.5553433/-.</p> <p>6. Assessee has returned back</p>



				<p>Rs.35 lacs along with Rs.20 lacs received earlier in this financial year itself. Copy of account enclosed.</p> <p>7. The assessee has paid interest against which TDS has been deducted and deposited.</p>
4.	Eastman Industries	2300000/- & 2500000/-	No specific remarks is given	<p>1. The assessee has received Rs.23 lacs from Eastman Industries. This cheque was issued against payment received from Kohinoor India Pvt. Ltd. the assessee has returned this amount on 03.10.2011 against which Eastman Industries again issued cheque of Rs.25 lacs. If your honour with see the bank statement of Eastman Industries, there is always sufficient available balance.</p> <p>2. The Eastman Industries has total capital of Rs.14461601/- as on 31.03.2012 from where loan to K. Lall Overseas as well as to other parties has been given.</p> <p>3. The said amount of Rs.25 lacs has been returned on 26.06.2014 Copy of account enclosed..</p> <p>4. The assessee is regularly paying interest and deducting TDS against the said amount.</p> <p>5. Eastman Industries is known and established organization therefore creditability cannot be kept in doubt.</p>
5.	Gautam Gupta	2500000/-	The loan has been given against amount received from his father as gift. However no gift deed was produced.	<p>4. Mr. Gautam Gupta has given loan of Rs.25 lacs against gift amount received from his father.</p> <p>5. The Learned AO has taken detail statement on oath from Gautam Gupta.</p> <p>6. From the statement so</p>



				<p>recorded source of money cannot be doubted as it has been clearly stated that amount is given out of gift taken from father.</p> <p>7. The assessee is regularly paying interest and deducting TDS against the said amount.</p> <p>8. The said amount of Rs.25 lacs has been returned back on 18.02.2013. Copy of account enclosed.</p> <p>9. Since the assessee has complied all pre conditions like his identity and source and also mode of payment which is through banking channel therefore genuineness is also justified.</p>
6	Kaka Ram Hari Chand	5000000/-	No specific remarks is given	<p>4. Kaka Ram Hari Chand has given loan from his OD account with HDFC Bank Limited.</p> <p>5. Kaka Ram Hari Chand has filed its income tax return having taxable income of Rs.10247000/-.</p> <p>6. The said amount has been returned back on 10.11.2011. Copy of account enclosed.</p> <p>7. The assessee has paid interest and deducted TDS.</p> <p>8. Keeping in view amount of taxable income and also having the fact that the amount has been given from Overdraft account hence genuineness of the transaction as well as credit worthiness of the party cannot be kept in doubt.</p>
	Khanna Trade Chem Pvt. Ltd.	7000000/- & 4500000/-	No specific remarks is given	<p>7. Khanna Trade Chem Pvt Ltd has given loan from its overdraft account with ICICI Bank and Indian Overseas Bank therefore source of the amount is</p>



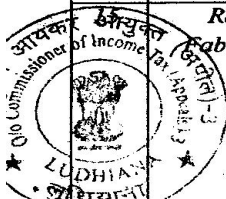
				<p>justified.</p> <p>8. It is a registered company therefore identity of the company is stands proved.</p> <p>9. All the amount has been returned back in the same financial year itself. Copy of account enclosed.</p> <p>10. Assessee is paying interest regularly and TDS has been deducted and deposited.</p>
8	Kips Corner	4250000/- & 1950000/-	<p>No specific remarks is given subject to one observation that cash is deposited on 08.07.2011.</p>	<p>1. Regarding observation as to cash deposit, it is submitted that Kips Corner which is a very known shop having various kind of confectionary and Bakery Items located at Sarabha Nagar Main Market having cash sale counter. As per profit and loss account Kips Corner has total turnover of Rs.31226698/- against which receivable is Rs.429787/-. This figure also indicates that almost all sale amount is against cash. Therefore amount of cash deposit is fully justified in view of nature of the business.</p> <p>2. Credit worthiness of the Kips Corner, its identity and genuineness of the transaction cannot be doubted in view of level of working and also in view of transactions routed through Bank Account.</p>
9	Lakhwinder Singh Chawla	3000000/-	<p>No remarks</p>	<p>1. Summons u/s 131 was not served due to non availability of assessee. In our earlier submission we have filed the copy of Income Tax Return, Copy of Bank Statement and confirmed copy of account. Thus all the ingredients required for complying the provision of section 68 is</p>



				<p>available in the file.</p> <p>2. The said amount has been returned back in the same financial year. Copy of account enclosed.</p>
10.	Naresh Jain HUF	2000000/-	No specific remarks is given	<p>4. Naresh Jain HUF has issued cheque of Rs.20 lacs in favour of assessee from Bank account against transfer amount.</p> <p>5. Naresh Jain HUF has filed its income tax return, copy of bank statement against reply to summons issued u/s 131. No further enquiry is made to justify the loan amount therefore it can be presumed that AO has found the identity, credit worthiness and genuineness of the transaction as established in view of the compliance of the provision of section 68. No further enquiry is made and also no reverse opinion is give.</p> <p>6. The assessee is paying interest regularly and TDS has been deducted and deposited. Copy of account enclosed.</p>
11.	Rahul Jain	2500000/-	The AO has observed that the notice was served upon has another assessee having same name.	<p>3. From the observation made by the AO it seems that notice has been issued wrongly.</p> <p>4. In our earlier submission we have filed copy of Income Tax Return, Copy of Bank Statement and Confirmed copy of account to justify the compliance of section 68.</p> <p>5. The assessee is paying interest regularly and TDS has been deducted and deposited.</p> <p>6. The said amount has been returned back on 28.12.2012. copy of account is enclosed.</p>



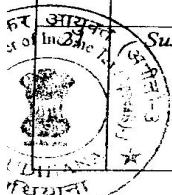
12.	Rajat Khanna	3500000/-	No specific remarks is given	<p>5. Rajat Khanna is given Rs.35 lacs from his bank account against Rs.35 lacs received from Nucon Power Control Private Limited to whom he has given advance earlier.</p> <p>6. The assessee is paying interest and TDS has been deducted and deposited.</p> <p>7. The said amount of Rs.35 lacs has been returned back in the financial year 2012-2013. Copy of account enclosed.</p>
13.	Ramesh Kumar Jain	1500000/-	---	<p>4. During the year under consideration assessee has not taken any loan from said Ramesh Kumar Jain to whom notice u/s 131 is given. In fact this loan was taken in the F.Y. 2010-11.</p>
14	Ranju Jain	2000000/-	Summons issued but not served as reported that assessee has sold the house.	<p>1. In our earlier submission we have filed copy of Income Tax Return, Copy of Bank Statement and confirmed copy of account to justify the compliance of section 68.</p> <p>2. Assessing officer has wrongly mentioned address at 56 Kidwai Nagar, Ludhiana against address written on Income Tax Return i.e. 98, Mahavir Enclave, Barewal, Ludhiana.</p> <p>3. The assessee is paid interest and TDS has been deducted and deposited.</p> <p>4. The said amount has been returned back on 12.05.2012. Copy of account enclosed.</p>
	Raunaq Fabrics Pvt. Ltd	30,00,000/-	AO has observed that no verification is made in the absence of evidence.	<p>1. The assessee has received this money in the F.Y. 2010-11 therefore there is no case for the F.Y. 2011-12. However in lieu of notice issued u/s 131, the assessee has filed relevant</p>



				documents like bank statement, confirmation.
16	Sachin Goyal	75,00,000/-	No reply received	<p>1. In our earlier submission we have filed copy of Income Tax Return, Copy of Balance Sheet and Confirmed copy of account to justify the compliance of section 68.</p> <p>2. The assessee has filed its income tax return having income of Rs.2996741/- and also as per Balance Sheet assessee has owned capital of Rs.4324537/- as well as family loan of Rs.185598345/-.</p> <p>3. The assessee has paid interest and TDS has been deducted and deposited.</p> <p>4. The said amount has been returned back on 24.12.2012. Copy of account enclosed.</p>
17.	Sandeep Kumar Singal	2000000/-	No specific remarks is given	<p>3. Sandeep Kumar Single has issued cheque against available balance which was accumulated out of amount received from LIC of India having credited amount of Rs.2109410/-.</p> <p>Thus source is justified.</p> <p>4. The assessee is paid interest and TDS has been deducted and deposited.</p> <p>5. The said amount has been returned back on 26.03.2013. Copy of account enclosed.</p>
18	Sarla Rani	1650000/-	Cheque issued against cheque credited by Rs.1663000/-.	<p>3. Sarla Rani has issued cheque against amount of Rs.1663000/- received from Sanjay Mahendru to whom she has given loan earlier. Copy of account of Sanjay Mahendru is also enclosed. Amount is received through Banking Channel therefore all the condition of section 68 is complied with.</p>



				<p>4. The assessee has paid interest and TDS has been deducted and deposited.</p> <p>5. The said amount has been returned back on 28.12.2012. Copy of account enclosed.</p>
19.	Sheenu Khanna	4000000/-	No adverse remark is given	<p>4. Sheenu Khanna issued cheque against the amount received and deposited in her bank account from Newcon Switch Gears Pvt Ltd and Khanna Trade Chem Limited.</p> <p>5. In lieu of summons u/s 131 Sheenu Khanna has filed her Bank Statement showing amount credited.</p> <p>3. The assessee has paid interest and TDS has been deducted and deposited.</p> <p>7. The said amount has been returned back on 22.01.2013. Copy of account enclosed.</p>
20	Upasana Jain	2500000/-	No adverse remark is given	<p>4. Upsana Jain has given Rs.25 lacs against amount received from Veera Auto Components Pvt. Ltd. copy of account of Veera Auto Components Pvt. Ltd is also enclosed. Hence there is a confirmation has a level from Veera Auto-Components regarding the amount of Rs.2738580/- returned to Upasana Jain. All other evidence is available in the file.</p> <p>5. The assessee has paid interest and TDS has been deducted and deposited.</p> <p>6. The said amount has been returned back on 04.10.2011. Copy of account enclosed.</p>
	Sushil Garg	3000000/-	No adverse remarks is given	<p>4. As reported by AO matter has been verified.</p> <p>5. The said amount has been returned back on 14.05.2012. Copy of</p>



				<i>account enclosed.</i>
22	Vikram Jain	2500000/-	No adverse remarks is given	4. As reported by AO matter has been verified. 5. The said amount has been returned back on 28.12.2012. Copy of account enclosed.
23	Vallabh Yarns	2000000/-, 1500000/- & 2500000/-	No adverse remarks is given	5. As reported by AO matter has been verified. 6. The amount of Rs.20 lacs has been returned back on 14.10.2011, Rs.25 lacs on 07.02.2012 and Rs.15 lacs on 16.08.2012. Copy of account is enclosed.

9. The Id. CIT(A) after going through the aforesaid report of the AO and considering the evidences furnished by the assessee as well as the rejoinder filed by the assessee to the report of the AO accepted that the assessee has been able to prove the identity and credit worthiness of the creditors and genuineness of the transaction in respect of 17 parties out of total 23 parties. However, he confirmed the additions in respect of 6 parties observing as under :

“3.6 Keeping in view the specific report of Id. A.O., after carrying out specific enquiries , In case of following parties, I have found that the appellant has not been able to satisfactorily explain and prove genuineness and the credit worthiness of lending huge amount to appellant:

1. *Gautam gupta - Rs. 25,000,000/- .The creditworthiness could not be proved, as the party could not furnish gift deed ,as gift received from father despite availing time.*
2. *Kipps corner-Rs. 42,50,000/- and Rs. 19,50,000/-. It has been noticed that huge cash have been deposited in bank account, w.r.t the appellant could not furnish,satisfactory reply. The party has filed its ITR showing petty income of Rs. 3,37,447/- only. On 06/07/2011 and 08/07/2011, there are entries of cash deposit of Rs. 17,50,000/- and Rs. 42,50,000/-, for which the*

appellant could not furnish satisfactory reply , as these are the dates when just before lending amounts to appellant, the same amounts have been deposited in bank in cash .

3. Lakhvinder singh chawla - Rs. 30,00,000/- . No confirmation filed by appellant, even after no verification in absence of service of notice by A.O, in enquiry proceedings.

4. Rahul Jain - RS. 25,00,000/- . It is observed that, the party has received accommodation entry of Rs. 24,62,623/- from a penny stock company M/s twenty first century ltd. It is observed from the bank statement that, the party has received amount just before lending money to the appellant concern. Therefore the creditworthiness of this party is not proven.

5. Sachin Goyal Rs. 75,00,000/- . The party has not responded during the enquiry proceedings of A.O. during appellate proceedings. No proof has been filed , in order to prove creditworthiness of this party. No bank statement furnished from where the amount has been given to the appellant, by Sh. Sachin goyal. The creditworthiness thus has remained questionable. The Individual cases of sachin goyal are also pending with the undersigned wherein the creditworthiness of the individual has not been proven, hence additions were made, therefore the requisite actions wrt creditworthiness of the individual , also needs to be taken in this year in his own case ,for the same year .

3.7 Accordingly after considering detailed submission, and reports of assessing officer the unsecured loan pertaining to the above persons have remained unexplained, hence the same is confirmed. The disallowance on account of other parties w.r.t unsecured loan by Id. A.O., also consisted opening balance from last year, even as pointed out by appellant. I have also considered various judicial pronouncements relied upon by appellant. As apparent from the facts emerged from discussion in above paragraphs , the appellant has not been able to satisfactorily prove genuineness and creditworthiness of few parties from whom the appellant has taken unsecured loans, during the year. Undoubtedly the appellant has not been able to discharge its onus wrt the same as required u/s 68. There are several decisions with regard to the appellant's duty to discharge its onus to prove the identity, genuineness and creditworthiness of unsecured loan depositors at the time of assessment proceedings. In my considered opinion the appellant has failed badly to prove all three limbs of section 68 that this identity genuineness and creditworthiness. I have also perused and considered, various case laws relied upon by the appellant. After careful consideration of the facts of the case and the various submission filed by the appellant and the case laws relied upon the appellant, I am not in agreement with the contention of appellant as it has failed to discharge its basic onus to prove the unsecured loans at the time of assessment proceedings. Merely furnishing of PAN and confirmation and producing financial statement is not enough. It is equally important to prove credit worthiness of these loan depositors. Various courts have also upheld this view of Id AO that, there are three limb of section 68 and it is the primary onus of assessee only to prove the identity, genuineness and creditworthiness.”

10. Being aggrieved by the above additions confirmed by the CIT(A), the assessee has come in appeal before us.

11. We have considered the rival submissions and have gone through the record. We hereby discuss the case of each party/creditor of the said six creditors as under :

i) Shri Gautam Gupta

12. The ld. CIT(A) has confirmed the addition in respect of the credits received from Shri Gautam Gupta observing that credit worthiness could not be proved as the party could not furnish Gift Deed relating to gift received from father despite availing time. The assessee in this respect has explained that in response to the summons issued by the AO, Shri Gautam Gupta appeared before the AO and confirmed 'on oath' regarding the loan given by him of Rs. 25 lacs to the assessee. It was explained that the source of the money was gift received by him from his father. The amount was credited to the account of Shri Gautam Gupta by his father through banking channel. The assessee has been regularly paying interest and deducting TDS against the said loan amount. Even the said loan amount has been repaid/returned back on 18.02.2013. The fact on the file is that the assessee has not only proved the identity and credit worthiness of the creditor but also genuineness of the transaction. The addition has been confirmed by the CIT(A) only

on the ground that the Gift Deed was not produced on the file by the said Shri Gautam Gupta. In our view, aforesaid reason mentioned by the Id. CIT(A) is not tenable as for a gift of movable property, the only requirement is that the gift must be given by free will of the donor and accepted by the donee and possession of the property is handed over. The amount has been given by the father of Shri Gautam Gupta through banking channel, which has been further transferred to the assessee as a loan through banking channel. There is no requirement under law that a written Gift Deed must be executed in respect of movable property. In view of this, we do not find justification on the part of the CIT(A) in confirming the aforesaid addition. The same is, accordingly, ordered to be deleted.

ii) Kips Corner

13. In respect of this party, the Id. CIT(A) noted that there were entries of cash deposits of Rs. 17,50,000/- and Rs. 42,50,000/- in the bank account of the party before giving loan to the assessee by this party. The Id. CIT(A) further noted that the assessee could not furnish satisfactory reply in respect of the aforesaid cash deposits in the account of the said party 'Kips Corner'. A perusal of the chart as reproduced above shows that the AO has not given any adverse report except the observation that the cash was deposited on 08.07.2011. The assessee, on the

other hand has explained that the 'Kips Corner' is a very known shop having various kind of confectionary and bakery items located at Sarabha Nagar, Main Market, Ludhiana. That as per the Profit & Loss Account, 'Kips Corner' has total turnover of Rs. 31226698. That this figure indicates that almost all sale amount is against cash. The assessee, therefore, has explained that it was not in-genuine that the cash was deposited in the bank account of the Kips Corner which was out of its sale proceeds, out of which the loan amount was given by the said party to the assessee. There is no rebuttal by any of the lower authorities in respect of aforesaid submissions made by the assessee. The ld. CIT(A) has also not made any adverse comment about the aforesaid explanation given by the assessee in this respect. In view of this, the action of the CIT(A) in confirming the aforesaid addition does not seem to be justified. Therefore, the addition made by the lower authorities in respect of the loans received by the assessee from the aforesaid party namely 'Kips Corner' is ordered to be deleted.

iii) Shri Lakhwinder Singh Chawla

14. In this respect, ld. CIT(A) has noted that the assessee did not file any confirmation from the aforesaid party regarding the loan amount received of Rs. 30 lacs. The ld. counsel for the assessee in this respect has invited our attention to page 112 to

114 of the Paper Book to submit that not only the confirmations of the party but also the details including the bank accounts etc were duly filed, not only before the AO but also before the CIT(A). The ld. counsel has further invited our attention to the Chart as reproduced in the impugned order of the CIT(A) to submit that there are no adverse remarks made by the AO in respect of the aforesaid loan received from the aforesaid party. It has been further explained that even the said amount has been returned back in the same Financial Year and the copy of the account was also filed with the AO during the remand proceedings. In view of this, the finding of the ld. CIT(A) that no confirmation was filed is infact factually wrong. Therefore, the action of the CIT(A) in confirming the addition in respect of the aforesaid party cannot be held to be justified and the addition made in respect of the aforesaid party by the lower authorities, therefore, is ordered to be deleted.

iv) Shri Rahul Jain

15. The ld. CIT(A) in respect of the aforesaid party has observed that the said party had received accommodation entries of Rs.24,62,623/- from a penny stock company M/s Twenty First Century Ltd. He, therefore, held that the credit worthiness of this party is not proved.

15.1 The ld. counsel has invited our attention to the chart reproduced by the CIT(A), wherein, it has been shown that the AO has observed that notice was not served upon this party because there was another person having the same name. It appears that perhaps the notice stands served upon a wrong person and had not been served upon the aforesaid party, therefore, no fault can be attributed on the part of the said party in not appearing before the AO. On the other hand the ld. counsel for the assessee has invited our attention to page 138 to 143 of the Paper Book to submit that assessee has duly filed copy of Income Tax Return, copy of bank statement and confirmed copy of account of the said party to prove the identity and credit worthiness of the creditor and genuineness of the transaction. The assessee has filed copy of the bank statement and has duly paid the interest and deducted TDS on the interest paid. Even the amount has been returned back on 28.12.2018 to the said party. The assessee has duly produced on the file what was expected from the assessee in this respect to prove the identity, credit worthiness of the creditor and genuineness of the transaction. Even otherwise, if there was an allegation that the said party had received any accommodation entry from some other party, that cannot be co-related with the assessee. The amount in question was duly declared as income in the return of income of the said party. Even the amount, as observed above,

has been repaid/returned by the assessee to the said party. In view of this, we do not find any justification on the part of the CIT(A) in confirming the addition in respect of loan received from the aforesaid party.

v) Shri Sachin Goyal

16. In respect of loan amount received of Rs. 75 lacs from Shri Sachin Goyal. The ld. CIT(A) has mentioned that the party has not responded during the enquiry proceedings of the AO. That no proof has been filed in order to prove the credit worthiness. He has further pointed out that even individual cases of Shri Sachin Goyal were also pending before the CIT(A) where the credit worthiness of the individual has not been proven, hence additions were made. The ld. counsel for the assessee, however, has invited our attention to page 176 to 181 to submit that the necessary evidences such as copy of Income Tax Return, copy of Balance Sheet and confirmed copy of account of the said party were duly furnished.

The ld. counsel has further invited our attention to the Chart reproduced by the CIT(A) to submit that in respect of the aforesaid party, the said party had filed its ITR showing sufficient income of Rs. 29,96,741/- and that as per the balance sheet, the said party had owned capital of Rs. 432457/- as well as family loan of Rs. 185598345/-. Further that the interest has

been duly paid by the assessee to the said party and TDS thereupon also deducted and deposited with the Income Tax Department. It has been further mentioned that the said amount has been returned back on 24.12.2012 to the said party. The ld. counsel has further submitted that, even otherwise, additions were made by the AO in the hands of the said party. Once the addition of income has been made in the hands of the said party which shows that the said party has been taxed for the income/credits in his account which establishes the credit worthiness of the said party. As the above matter regarding the aforesaid addition, as observed by the CIT(A) was pending before the CIT(A), if the CIT(A) is satisfied about the credit worthiness and income of the said party, then the credit worthiness of the said party gets established and if the additions made by the AO are confirmed, then naturally the said party would have paid income tax in his hands on the income out of which the loan given to the assessee is established. In any case, under the circumstances, addition cannot be made in the hands of the assessee in respect of the said loan amount. Therefore, the addition made and confirmed by the lower authorities in respect of the aforesaid party is held not justifiable and the same, accordingly, is ordered to be deleted. In view of our observations made above, ground of appeal No. 1 of the assessee's appeal is hereby allowed.

Ground No. 2

17. Vide ground No.2, the assessee has agitated the action of the CIT(A) in upholding the disallowance of interest paid by the assessee in respect of the aforesaid loan amount. Since this ground is consequential and since we have already held the issue relating to unsecured loans in favour of the assessee vide Ground No. 1, therefore, the issue relating to the interest paid on the aforesaid loans being consequential in nature is decided in favour of the assessee. The additions made on this account are ordered to be deleted.

Ground No. 3

18. Vide Ground No. 3 the assessee has agitated the action of the CIT(A) in upholding the disallowance of Rs. 26,32,000/- out of interest expenditure by invoking the provisions of Section 36(1)(iii) of the Act. The ld. counsel, in this respect has invited our attention to page 34 of the Paper Book which is copy of the balance sheet to submit that assessee had enough funds i.e. partner's capital of Rs. 6.2 Crores, whereas the investment in land, building and machinery was less than Rs. 2 Crores. The ld. counsel has submitted that since own funds of the assessee were sufficient to meet investment, therefore, as per the settled law laid down by the Hon'ble Supreme Court in the case of 'Hero Cycles P. Ltd Vs. CIT', 379 ITR 347 (SC), Hon'ble Punjab &

Haryana High Court in the case of 'Bright Enterprises Pvt. Ltd Vs. CIT', 381 ITR 107 and of the Hon'ble Bombay High Court on in the case of 'CIT Vs. Reliance Utilities & Power Ltd.' 313 ITR 340 wherein the Hon'ble Courts have held that where the own funds of the assessee are sufficient to meet the interest free advances given during the year, then the presumption would arise that such advances or investments have been made out of the own funds of the assessee. Hence, respectfully following the aforesaid decisions, the ground of appeal of the assessee is allowed.

Ground No. 4

19. Vide ground No.4 the assessee has agitated the confirmation of the disallowance of Rs. 1,18,024/- out of interest account in respect of certain interest free advances made by the assessee company. The assessee during the year had made interest free advances to certain parties totaling Rs. 9.83 lacs. The ld. counsel has again relied upon decision of the Supreme Court in the case of 'Hero Cycles P. Ltd Vs. CIT', 379 ITR 347 (SC) to submit that the aforesaid unsecured loan was given by the assessee from his own funds and that the own funds of the assessee were sufficient to meet the aforesaid advances. In view of our discussion made above, this issue is also squarely covered in favour of the assessee and the same is, accordingly, decided in favour of the assessee.

GROUND NO.5

20. Vide ground No. 5, the assessee has agitated the action of the lower authorities in making adhoc disallowance @ 20% in respect of expenditure claimed on account of car maintenance, Mobile phone expenses, telephone expenses, travel and conveyance and car depreciation. The ld. counsel for the assessee in this respect has submitted that the aforesaid disallowance @ 20% has been made purely on adhoc basis without any justification on the part of the lower authorities. The ld. DR on the other hand has submitted that in this type of expenditure, some element of personal usage usually is involved.

21. Considering submissions of ld. representatives of both the parties, we are of the view that the adhoc disallowance @ 20% out of the aforesaid expenditure is highly excessive. Considering the overall facts and circumstances, the disallowance in respect of the aforesaid expenditure is restricted to @ 5% of the total expenditure. This ground is, therefore, partly allowed.

ITA NO. 174/CHD/2020 :

22. Now coming to the Revenue's appeal in ITA No. 174/CHD/2020 wherein the Revenue has taken the following grounds of appeal :

1. (a) *Whether on the facts and circumstances of the case the decision of CIT(A), to accept the additional evidence of the assessee, summarily, without recording any reasons, as mandated under sub-rule (2) of rule 46A of IT. Rules is correct.?*
- (b) *Whether on the facts and circumstances of the case the decision of Ld.CIT(A) in admitting additional evidence, is in violation of principles of law relating to admissibility of additional evidence u/r 46A as laid down by the ITAT, Delhi Bench 'D' in the case of ITO Vs. Mittal International (I) Pvt. Ltd. in ITA No. 1671/Del/04 dated 30.06.2008, A.Y. 2001-02 & ITA No.5706/Del/2004 dated 30.06.2008 reported in 2008-T10L-474-ITAT-DEL.?*
- (c) *Without prejudice to the above, whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in not granting another opportunity to the AO for furnish comments on merit, after admission of additional evidence, in accordance with the principle of law laid down in the case of Mittal International (I) Pvt. Ltd., by ITAT, Delhi Bench 'D' in ITA No. 1671/Del/04 dated 30.06.2008.?*
2. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs. 13,08,03,551/- made by the Assessing Officer by not appreciating the facts and circumstances highlighted by the Assessing Officer as the*

assessee has failed to discharge its onus of establishing identity, creditworthiness and genuineness of unsecured loans taken by it.

3. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of interest paid on unsecured loans by ignoring the fact that identity, creditworthiness and genuineness of such unsecured loans could not be established by the assessee.*
4. *That the appellant craves leave to add or amend any ground of appeal before it is finally disposed off.*

23. The Revenue vide first ground has agitated the action of the CIT(A) in admitting the additional evidences furnished by the assessee. As observed above, the assessee had duly furnished the evidences during the assessment proceedings but the same were not considered by the AO due to want of time to verify the authenticity of the same. The assessee again furnished the necessary evidences before the CIT(A) which were forwarded by the Id. CIT(A) to the AO where upon the AO made the necessary enquiries, issued summons to the parties and has given his report. Under the circumstances, we do not find that any prejudice has been caused to the Revenue for admission of the aforesaid additional evidences/documents in respect of which the AO has been given proper opportunity to examine and verify the same. There is no merit in ground No. 1 of the Revenue and the same is, accordingly, dismissed.

24. Vide ground No. 2, the Revenue has agitated the action of the CIT(A) in deleting the additions made by the AO in respect of the unsecured loans in respect of 17 parties out of 23 parties. As observed above, while deciding the assessee's appeal, it is to be noted that the assessee had duly furnished details and evidences before the AO but the same could not be verified at the assessment stage for want of time. Thereafter, the necessary details again were filed before the CIT(A) and the Remand Report was called upon by the CIT(A) from the AO. As reproduced in the charts above, the AO has duly given his comments and after considering the report/comments of the AO, the CIT(A) finding

nothing adverse in respect of the aforesaid loans, has deleted the additions so made by the AO. We do not find any infirmity in the order of the CIT(A) in this respect. Ground of appeal No. 2 of the Revenue's appeal is, therefore, dismissed.

Ground No. 3

25. Vide Ground No. 3, the Revenue has agitated the action of the CIT(A) in deleting the consequential addition of interest in respect of the aforesaid loan amounts received from 17 parties. This ground being consequential and since the additions in respect of the loans from aforesaid 17 parties stood deleted, the consequential payment of interest has been rightly allowed by the CIT(A). This ground of Revenue having no merits is, accordingly, dismissed.

26. Ground No. 4 is general in nature.

27. There is no merit in the appeal of the Revenue and the same is, accordingly, dismissed.

28. In view of our observations made above, the appeal of the assessee is hereby allowed whereas the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 8th April, 2022.

Sd/-

Sd/-

(VIKRAM SINGH YADAV)

(SANJAY GARG)

लेखा सदस्य/ Accountant Member

न्यायिक सदस्य/ Judicial Member

“Poonam.”

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant 2. प्रत्यर्थी/ The Respondent 3. आयकर आयुक्त/ CIT 4. आयकर आयुक्त (अपील)/ The CIT(A) 5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH 6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar