

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA Nos. 4112 & 4083/Mum/2019
(A.Ys: 2014-15 & 2015-16)

JCIT (OSD)-CC-7(4) Room No. 659, Aaykar Bhavan, MK Road, Mumbai – 400020.	Vs.	M/s. Shalimar Housing & Finance Ltd., 505, Shalimar Morya Park, Andheri (W), Mumbai – 400053
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS6732N		
Appellant	..	Respondent

Appellant by :	Shri. B.K.Bagchi.DR
Respondent by :	Shri.Vijay Mehta.AR

Date of Hearing	06.04.2022
Date of Pronouncement	25.04.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These are the appeals filed by the revenue against the separate orders of the Commissioner of Income Tax (Appeals)-49, Mumbai, passed u/s 143(3) and 250 of the Act.

Since the issues in these appeals are similar and identical, hence are clubbed, heard and consolidated order is passed. For the sake of convenience we shall take up assessee appeal in ITA No. 4112/Mum/2019,

for the A.Y 2014-15 as a lead case and facts narrated. The revenue has raised the following grounds of appeal.

1. Whether on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the addition of Rs. 7,67,00,000/- on account of unexplained cash credit u/s 68 of the Act, which the assessee obtained from dubious companies providing accommodation entries and having no justified financials for lending such money.

2. Whether on the facts and circumstances of the case and in law the CIT(A) was justified in deleting the addition of Rs. 1,55,78,492/- made on account of deduction claimed by the assessee for interest payment on unexplained unsecured loan from dubious lenders.

2. The brief facts of the case are that the assessee company is engaged in the business of construction works. The assessee has filed the return of income for the A.Y 2014-15 disclosing a total income of Rs. 5,09,87,284/-. Subsequently the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld.AR of the assessee appeared from time to time and submitted the details and case was discussed. In the course of assessment proceedings, the assessing officer (A.O) found that the assessee has obtained the unsecured loans from the various parties and paid

interest on loans and called for the details from the assessee. Whereas in the F.Y 2013-14 the assessee has obtained unsecured loans from thirteen parties amounting to Rs.7,67,00,000/- and has paid interest on the opening balance of unsecured loans and new loans obtained aggregating to Rs.1,55,78,492/-.The assessee has submitted the details referred at para4 of the order. The A.O dealt on the information, Tax audit report and called for the creditworthiness of the loan creditors/lenders and issued show cause notice. In compliance, the assessee has submitted ledger account copies, confirmations, bank statements, acknowledgment of return of income and audited financial statements of all the parties. Further the assessee has paid interest on loans to the lenders and was confirmed by the parties. The assessee has filed the explanations complying the identity, creditworthiness and genuineness and burden of proof was substantiated by the assessee. Further the audited financial statements of loan creditors reflect the substantial funds available for lending on interest.

3. The assessee has filed the voluminous details in support of the disputed issue but the A.O was not

satisfied with the evidences and observed that in A.Y 2013-14 a detailed enquiry was conducted on lenders and the current year financial statements are similar to earlier year. Finally the A.O. observes that the thirteen parties does not have required creditworthiness as in earlier year and made the addition of Rs.7,67,00,000/-. Similarly the A.O has disallowed the interest paid on the unsecured loans and assessed the total income of Rs. 14,32,65,770/- and passed the order u/s 143(3) of the Act dated 29.12.2016.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions and findings of the scrutiny assessment. In the appellate proceedings the assessee has filed the submissions supporting the unsecured loans referred at page 5 para 5.3 of the order read as under:

5.3 Aggrieved with this addition, the assessee filed the present appeal and made the following submissions:

"At the outset we would like to mention that AO has simply followed the findings of the earlier assessment year 2013-14 and reproduced the same order for the subject assessment year. In fact, in his eagerness to

assess income as high as possible, the AO has made addition in respect of the following 3 parties, which have been conclusively proved and explained by Appellant and the same has been accepted and not disputed by the then AO for AY 2013-14.

- a) CMM Infra Projects Ltd - Rs. 67,50,000/-
- b) Essar India ltd - Rs. 15,00,000/-
- c) Shraddha Buildcon P Ltd- Rs. 10,00,000/-

Your Honour, we wish to submit that there is no dispute that the appellant has borrowed money for the purpose of business in the course of construction of residential project at Indore. Hence, the genuineness of the transaction is very evident. The details as required in order to justify and explain the unsecured loans are filed on record with the AO. The same comprises of the following:

- a) Ledger account confirmation of lenders
- b) Bank statement of lenders reflecting loans given to Appellant company by account payee cheques.
- c) Financial statements of lenders including audited reports, balancesheet and profit and Loss Account.
- d) Copy of acknowledgement of Return of Income.

All the above clearly evidences the identity of lenders, genuineness of transaction and the creditworthiness of the lenders. There is no dispute raised by AO on the issue of identity and genuineness of the transaction.

IDENTITY OF LENDERS

All the lenders are duly incorporated Private Limited Companies. The copy of Acknowledgement of Returns are available with the A. O. which evidences that all the lender companies are assessed to tax. The fact that enquiries have been made by A.O. by issuing notices u/s

133(6) to parties for AY 2013-14 and all have been duly complied and responded by the parties. Hence, the identity of the persons is completely established.

GENUINENESS OF TRANSACTION

With respect to the genuineness of the transaction, we wish to submit that the loans are utilized in course of business of residential project. The said loans have been received by account payee cheques. The bank statements of lenders clearly reflects the amounts paid to Appellant company. The transactions have been duly confirmed by them through the Appellant and directly to A.O. in their response to notice u/s 133(6) for AY 2013-14. Thus, the genuineness of the transaction is also proved beyond doubt.

CREDITWORTHINESS OF LENDERS

With respect to the issue of creditworthiness, we wish to submit that the audited financial statements of all lender companies have been filed on record. The same reflects volumes about the creditworthiness of the lenders in terms of their ability to lend to the appellant company. The creditworthiness can be best judged from the following:

- a) Net worth (assets minus liabilities)
- b) Fixed Asset holdings
- c) Investments and stock in hand
- d) Bank Balance as date of balance sheet
- e) Peak balance of the month in which amount lent to Appellant company.
- F) Turnover

Your Honour, we have extracted a chart summarizing the above parameters of all the lender companies. Refer page

From the perusal of the same it can be seen that the networth of companies is substantially higher than the amount of loan advanced to the Appellant company. For e.g. in case of M/s CMM Infra Projects Limited the loan advanced is Rs. 67.50 Lacs and its Net Worth is 1,747.65 Lacs which is 25 times of loan given to appellant. Similarly, in case of M/s East West Fin west India Ltd the loan advanced is Rs. 105 Lacs and its Net Worth is 25,734.61 Lacs which is 245 times of loan given to appellant. Similarly, in case of M/s Purvi Finvest Ltd the loan advanced is Rs. 222 Lacs and its Net Worth is 20208.70 Lacs, which is 100 times of loan given to appellant. This can be seen in case of all companies.

Similarly, the asset holding in the form of Fixed assets, stock in trade, loans given are substantially higher as compared to the loan advanced to the appellant company.

The bank statements of all lenders have been filed on record. From the same it can be clearly seen that substantial balances are available with them as on the date of advancing loans to the appellant company. Also the peak balances of the month in which loans have been given to appellant company is large enough to evidence the availability of funds with them. Hence the financial capacity is clearly established. Also, in some cases, the bank balances available with lender companies as appearing in the balance sheet as on last day of the year is very significant and substantial to justify their financial strength.

From the chart as enclosed on page to, the source of funds available with the lender companies is clearly evidenced. The Bank statement of M/s Essar India Ltd reveals a peak balance of Rs. 118.11 lacs during the month of granting Loan of Rs. 15 Lacs. Refer page Similarly, the Bank statement of M/s.Tropical Vyapaar

Private Limited reveals a peak balance of Rs. 77.22 Lacs during the month of granting Loan of Rs. 10 Lacs Refer page. The Bank statement of Jay Jyoti India Private Limited reveals a peak balance of Rs. 88.38 Lacs during the month of granting Loan of Rs. 47 Lacs. Refer page. The availability of bank balances during the entire month clearly evidences the source of funds available.

Your Honour the profile of the most of the lender companies are that of Investment and finance companies. The source of funds available with them can be seen from the bank statements from the peak balances held by them. Similarly the balance sheet reflecting the networth, assets and liabilities speaks about their ability and capacity to lend such sums. The sources and application offunds can be clearly adduced from there.

Your Honour, we enclose a summary chart giving the A. a's observations and our rebuttal with respect to each of the 13 lenders separately (Refer Page No. to).

We therefore respectfully submit that the creditworthiness in terms of capacity and ability to lend the sums to Appellant company is clearly established.

Further it has been held by Hon. Delhi ITAT in case of ACIT vs Prem Anand ITA 3514/DEL/2014 as follows :

"Definitely, the taxable income is not only the criteria to explain the credit worthiness of any person; though it is an indicator. We have perused all three bank accounts of the above mentioned persons and find that the loan of Rs.22,00,000/- has advanced by Shri Parkhi Sigh out of a credit in his bank account through cheque clearing of Rs.23,41,500/- on 08.06.2007 and the loan has not been given to the appellant out of any cash deposit in his bank account. Similar facts are in respect of Shri Shailendra Kumar; wherein a credit of Rs.10,01,128/- through

cheque is appearing in his bank account on 05.10.2007 and the loan has been advanced thereafter. There is no cash deposit in his bank account before advancing loan. Similar facts are in respect of Smt. Su jata Sachdeva. Her bank account is showing consistent credit and debits having substantial credit balance throughout year. From the above, it is evident that the assessee has discharged her onus of proving identity, the source of loan and the genuineness of transactions in accordance with the provisions of section 68. It is a settled law that the assessee is not answerable to explain source of source of the fund."

REBUTTAL OF A.O.'s CONTENTION

Your Honour, with respect to the contention of the A.O. we would like to rebut the same as follows:

(i) The A. O. has remarked that analysis of financial statement of Lenders reveals abnormal features which is otherwise not possible in normal business transaction such as:

a) High Turnover

b) High Sundry creditors

c) Major portion of entire assets in balance sheet is loans, Debtors and Investments. These assets will almost match Business creditors.

d) Tax payments will be Nil despite turnover running in several crores,

In this respect, we wish to submit that these are no abnormal features at all. The presence of High Turnover indicates the financial strength of the company. It points out the availability offunds used in the business cycle. The higher the

turnover, means higher financial capacity. This cannot be abnormal, by any means.

Similarly, the presence of High Sundry creditors is also not an abnormal feature. The position of creditors should not be viewed in isolation but needs to be matched with the corresponding assets or net worth. What would have been abnormal, had there been creditors more than the net worth of the company or more than the total assets, which is not the case at all.

Also, the remarks of AO that major portion of assets are loans, debtors and Investments is also not an abnormal feature. In any financial statement, the assets comprises of Fixed Assets, investments, Loans, Debtors, Stock, Bank balances etc. The profile of most of the lender companies is that of Investment and Finance Companies (Financial Statements reflect same to be Registered NBFC with R.B.I.), hence it is natural for such companies to have low fixed assets and the major portion of assets of such companies will be loans, investments, stock in trade of securities and Bank Balances.

Further companies like CMM Infra Project Ltd is an infrastructure company listed on Bombay Stock Exchange engaged in business of undertaking Infra Projects in field of Irrigation network, canal works, metro trains, smart cities etc. Similarly Suryakiran Tradecom Pvt Ltd is a wholesale Importer dealer registered with Excise and Vat Authorities.

The remarks that business assets will match business creditors is very naïve and simplistic because in any balance sheet the assets and liabilities are matched with Net Worth.

Further the observations of AO that tax payments are Nil despite high turnover, is irrelevant because the appellant

has no control on the business model of the lender companies. The payment of taxes depends on the availability of taxable income and expenditures incurred by an Entity. The fact remains that the lender companies are assessed to tax and filing their return of income. The payment of tax or absence thereof by the lender is irrelevant in the quest to test creditworthiness, which can only be determined by sources and availability of funds with the lender.

Without prejudice to the above, the income returned by CMM Infra Projects Ltd is 1,02,80,350 and SuryaKiran Tradecom P Ltd is Rs. 72,92,240 (as confirmed by AO on page 4 of order) and it is such a strange anomaly that such income is still not enough for the AO to consider these parties as Creditworthy to lend an amount of Rs. 67.50 lacs and 27 lacs respectively.

(ii) The contention of the A. O. that the lender companies are shell companies engaged in business of providing accommodation entries of loans and share capital is absolutely baseless. This is merely an allegation and no findings or basis have been spelt out by the A. O. in this regard. The A. O. also failed to point out as to how the Unsecured Loans is an accommodation entry, nor has he discussed any modus operandi with conclusive evidences. The Appellant can not rebut a mere allegation except for a explaining the facts. Also A. O. failed to appreciate that most of the loans have been repaid during the year or in the immediate next financial year (Refer Page Nos.to). There has been no case of any benefit to Appellant as would be in the nature of accommodation entry.

Your Honour, it is such a strange anomaly that companies listed on Stock Exchange (eg CMM Infra Projects), NBFC registered with RBI (eg Crest Vanijya P Ltd, Purvi Finvest, Essar India ltd and others), Wholesale Importers (eg

SuryaKiran Tradecom P ltd) are considered to be shell companies by AO.

We also like to highlight the Directors report of M/s CMM Infra project Ltd on page which states as under:

"We, through this financial year have been able to break into new arenas of infrastructure construction and have comfortably placed ourselves into delivering agency of Irrigation network in nation. We have successfully bagged projects for major canal works and have successfully started on execution of the project. We are into the league of few contractors who have delivered on ambitious targets of government. We have broken into few more clients like M. P. Water Resources Department, Industrial Infrastructure Development Corporation, Gwalior Development Authority etc.

Going forward, we see huge and exciting opportunities with projects like metro trains, smart cities and massive river linking projects finally taking shape and governments across spectrum making all efforts to deliver its promise of better cities for its subjects."

iii) The AO has alleged that the lender companies do not possess credit worthiness to justify the loan given to the Appellant Company in view of low profits / income declared in their respective Financial Statements. The Appellant has vide submission letter dated 12/12/2016 clearly stated that appellant is not in control of profits/ income of lenders neither can it comment on the adequacy of their profit earned by them. Further, the appellant being a borrower, does not need to check creditworthiness of lenders but it is the reverse way as the lenders needs to ensure about the recovery of money lent from the likely sources and availability of funds with the borrower to repay the lenders.

Your Honour, the contention of the A.O. is illogical and impractical. I am afraid that the A.O. has got the whole concept of the establishing creditworthiness in the wrong spirit. This is because one year taxable income cannot be basis of establishing capacity / creditworthiness. This is because perusing the Profit and Loss Account alone as the Profit and Loss only reflects position for one year and does not reflect all the other sources of funds available. The funds can be available out of past accumulated profits, loans or borrowings of lenders, capital Infusion in business, advances / deposits etc. Further, the funds available from such activities are not captured from the Profit and loss account.

Your Honour, the term "CREDITWORTHINESS/CAPACITY" has not been defined anywhere in the Income Tax Act, Therefore, the term creditworthiness or the capacity has to be interpreted with a logical meaning. It can be interpreted as "AVAILABLE MEANS" i.e. it is to be best judged by the source and means of availability of funds with the creditor. There is no bar in law that the creditor has to give money out of his current years income only. This would be totally impractical and illogical. The personal capital and accumulated savings as well as investments can be used to give loans. Even for that matter, loans can be given from loans taken from genuine sources as well. Therefore what matters is the Net worth and source of funds available with the creditor to establish his capacity/ creditworthiness to lend such funds.

Hence, the entire financial statement needs to be seen as a whole. In fact as evident from the submissions above in Para above and the chart on Page

the Balance Sheet is a more determinative indicator about the sources and application of funds available with any

person. The Net Worth of all the companies is more dominant factor to evidence credit worthiness.

Your Honour, it is such a strange anomaly that persons / entities as charted on Page No. are having substantial net worth (Net owned Funds), but are not regarded (in the opinion of the A.O.), creditworthy to contribute to Appellant Company.

We would also like to submit that there are many public sector, nationalized banks which are operating under continuous losses and having low or negative income, but, then such cannot be a basis to form an opinion all loans and advance given by these banks are unexplained cash credit in the hands of the borrower because of lack of creditworthiness of such banks. This is because the source of funds as reflected from the Balance Sheet is indicative of creditworthiness and not the Profit and Loss Account of one particular year.

iv) The contention of the A. O, that the assessee has not offered any satisfactory explanation about the nature and source of the amount credited in its books of accounts is again false and untrue. The applicant has clearly demonstrated that nature of credit from 13 companies is in nature of Unsecured Loans. The fact remains that interest has also been paid to them on the borrowings, which has been duly confirmed by them. Hence, the source of credits has been duly explained. The same has been acknowledged by the A. O. in the Assessment Order itself

v) The A. O. has remarked that as per the proviso to section 68 of IT Act the assessee has failed to explain the source of share capital, share premium or any such sum credited in the books of lenders and hence the explanation offered by the assessee company is deemed to be not satisfactory.

In this respect, we wish to submit that the A. O. has erred in the Application of Proviso to Section 68, which is not applicable in the instant case. The A. O. has remarked that the Balance Sheet of Lender companies reveals share premium and the application money received by them and the source of which is not explained. In this respect, we wish to submit that the share premium and share application money are carried forward from earlier years. It is not a case of Lenders receiving the Security Premium / Share Application Money and granting Loan to the appellant out of the same. Further, the appellant cannot be asked to do the impossible. How would the appellant prove the source of source i.e. Source of the Share capital and share premium. The fact that the lenders are assessed to Tax and they would be required to explain their source independently. Similarly, the 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 such assessee-company shall be deemed to be not satisfactory, unless-

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

57 ,. such explanation in the opinion of the Assessing Officer aforesaid has 1 en found to be satisfactory:"

From the above, it can be seen that the explanation about source of source is required in case of assessee's who have received credit by way of share capital, share premium, share application money etc. like sums and not by

assessee who have received credit by way of Unsecured Loans. The A. O. has extended the application of Proviso to Section 68 to case of borrowings, which is a clear case of violation of interpretation of statute.

Your Honour, the statute in its wisdom has made a distinction in case of credit for Share Capital / Application vis-à-vis credit for Unsecured Loans. This is because in the former case, the assessee exercises control over new / proposed shareholders and onus is trust upon him to explain the source of funds available with the share subscribers. Whereas, in case of latter case of lenders the assessee does not exercise any control on them and hence the requirement to explain the source of funds available with the lenders is done away with. The observation of the A. O. about explaining source of source as per Proviso to Section 68 would be applicable in case of assessments of respective lender companies (who have share capital/security premium /share application) but shall not be applicable to the Appellant company.

Further it has been held by Hon. Delhi ITAT in case of ACIT vs Prem Anand ITA 3514/DEL/2014 as follows :

"we find that Ld. CIT(A) has rightly observed that the assessee is not required to explain source of source of the fund gets buttressed by the amendment made in section 68 with effect from 01.04.2013, which empowers the AO to examine source of source in case of share application money from 01.04.2013 and no other cases prior to that. This amendment further does not give power to the AO to examine source of source of non-share capital cases and that too prior to 01.04.2013. Undisputedly; the assessee has given complete addresses and credit worthiness of the persons from whom she has taken loans."

We therefore, summarize as under :

1) *The Appellant has furnished the details and source of Unsecured Loans obtained by filing the confirmation from lender companies.*

2) *The A. O. has made independent Enquiries by issuing notices U/s. 133(6) to all 13 lenders in the assessment proceedings in AY 2013-14, which have been duly complied and responded by respective lenders.*

3) *The genuineness of transaction, identity and capacity (creditworthiness) of lenders has been fully substantiated and explained with evidences filed on record.*

4) *The criteria of testing creditworthiness from the Profit and Loss Account, based on low income / low tax is incorrect, but the creditworthiness is adjudged from the Balance Sheet reflecting Net Worth, sources and application of Funds available with the entity.*

5) *The Bank Statement of Lenders reflects substantial peak Balance at the time of granting loans to appellant company.*

6) *The A. O.'s remark of Lender Company revealing Security Premium / share application in Balance Sheet and Source of same is not proved; is an attempt to make an assessee do the impossible. The requirements to explain Source of Source as per Proviso to Section 68 is not applicable to the credits from Unsecured Loans/ Borrowings.*

7) *Most of the loans have been repaid in the next year within a short period*

of time by the Appellant. Refer Chart on page. to -

In view of the above, we submit the additions made U/s. 68 is highly unjustified and may be deleted.

5. The CIT(A) observed that, the Ld. AR of the assessee has filed the substantial details to prove the identity, creditworthiness and genuineness of the transactions. The CIT(A) considering the facts and information is of the opinion that the assessee has discharged its onus by submitting the financial statements and supporting evidences and has proved the identity, creditworthiness and genuineness of unsecured loans. Further the interest was paid on unsecured loans (including opening balances) and TDS was deducted and the lenders have offered in their respective assessments and claimed TDS credit. Further the CIT(A) find that the present case, is similar to A.Y.2013-14 where the assessee has obtained unsecured loans during the year and repaid. The CIT(A) has dealt at page 15 para 5.4 to 5.8 of the order which is read as under:

5.4 The submissions of the learned Counsel have been considered carefully alongwith the assessment order, It is the learned Counsel's contention that the assessee has discharged the primary onus cast on it by providing necessary documentary evidences to prove the three criteria i.e, identity, creditworthiness of the lender and the genuineness of the transaction. The Assessing Officer had also independently issued notices u/s.133 (6) to all the

parties who have complied with the same and provided the Ld.AO with the required evidences. In a few cases, where the balance-sheet of the lender party was not enclosed by the party, the assessee had obtained the same and had furnished it to the Ld.AO. All the parties are income-tax assesseees and have filed Returns of income regularly. All the lenders are duly incorporated private limited companies and have been filing income-tax Returns regularly; therefore, there is no doubt about the identity of the parties. The loans have been received and many of them have been repaid subsequently, all through banking channels. The financials of the lender companies show that they had more than adequate reserves and surplus to advance the said loans. For example in the case of M/s. CMM Infra Projects Ltd., the loan advanced is Rs.67.5 lakhs and the net worth is Rs.1,747.65 Iakhs which is 25 times of the loan given to the appellant. In the case of M/s. East West Finwest India Ltd., the loan advanced is Rs.105 lakhs and its net worth is Rs.25,734.61 lakhs which is 245 times of the loan given to the appellant. Also, M/s. Purvi Finvest Ltd. has given a loan of Rs.222 Iakhs while its net worth is Rs.20,208.70 Iakhs which is almost 100 times of the loan advanced to the appellant. The learned Counsel argued that the payment of tax or absence of the same by the lender is irrelevant in the quest to test creditworthiness, which can only be determined by the sources and the availability of the funds with the lender.

5.5 The learned Counsel has also provided the details of the loans received during the year, interest paid and the details of the repayment of loans. The assessee has also deducted TDS on the interest payments made to the enders and the lenders themselves have shown the same as their income in the Returns of income filed by them.

5.6 The assessee had discharged its onus of providing all the necessary evidences to prove the identity of the creditor, creditworthiness of the creditor and genuineness of the transaction. All the lenders are income-tax assesseees and have filed Returns of income. The transactions have taken place through banking channels, The bank account statements of all the lender parties have been furnished to the Ld.AO which did not evidence any cash deposits or anything abnormal. The Assessing Officer states that there are certain abnormal features noticed by him which are high turnover and high sundry creditors. High turnover and high sundry creditors are by no means abnormal features. Further, the returned income being less or more cannot be the sole factor in deciding whether the party is creditworthy or not. The returned income or loss can only be an indicator and cannot be a deciding factor to decide whether the transaction is genuine or not. There is no adverse evidence against either the assessee or any of the lender parties brought in by the Ld.AO to suspect the transactions as non-genuine. The lender companies have not been identified/recognised as shell companies by any authority. The Assessing Officer had issued notices u/s.133(6) to all the parties which have been complied with. The Assessing Officer without bringing anything contrary on record and without assigning any reason has rejected the submissions made by the assessee and the creditors.

5.7 The Assessing Officer has not given any reason why he is rejecting the submissions made by the assessee or the evidences filed by the creditors in response to the notice u/s.133(6) issued by the Ld.AO. Further, he has not given any reason why he considers the loan transactions as non-genuine. The Ld.AO merely points out that he notices some abnormal features which are otherwise not possible in a normal business transaction in some of the companies. According to him they are:

(a) High Turn Over

(b) High Sundry Creditors

(c) The major portion of entire assets in the balance sheet comprising of Loan and Advances, Debtors and Investments (in shares etc.). These assets will almost match the figures of their Business Creditors.

(d) The advance tax payments or self assessment tax payments are NIL despite their Turn Over running into several crores.

Without ascribing any reason and without bringing any contrary evidence on record, the assessing officer merely makes a sweeping statement "it clearly reveals the companies are only shell/paper companies which are engaged in the business of providing accommodation entries of loans and share capital". How he arrives at this conclusion is not understood. Further, loans from three companies as under were present in the earlier assessment year, i.e. AY.2013-14 and the same are treated as genuine by the Ld.AO and no addition was made with regard to the loans received from these three parties:

(i) CMNI Infra Projects Ltd Rs. 67, 50, 000/-

(ii) Essar India Ltd. Rs. 15, 00, 000/-

(iii) Shraddha Buildcon P. Ltd Rs. 10, 00, 000/-

It is not understood as to how the loans from these three parties were

considered genuine in AY 13 -14 and as non-genuine in AY.2014-15. It pears that the Ld AO has not applied his mind and has blindly made the addition

5.8 The Assessing Officer placed his reliance on the decision of the Hon ble Apex Court in the case of Navodaya Castle Pvt. Ltd. vs. CIT [(2015) 230 Taxman 268], wherein the Hon'ble court held that certificate of incorporation, PAN etc.

will not be sufficient for purpose of identification of subscriber company when there was material to show that subscriber was a paper company and not a genuine investor. In this case, the Assessing Officer has not discussed what is the material with him to show that the creditor was a paper company. Further, in cases where there was high securities premium in the balance-sheets of the creditor parties, the Assessing Officer stated that the source of the same was not proved. However, this is a case where the assessee has received loans from the said parties and not share capital and, therefore, the burden of proving the source of source is not required. This is a case where loans have been obtained by the assessee and have been subsequently repaid after payment of interest and deduction of tax at source. If the Assessing Officer suspected the transactions to be non-genuine, he should have done further enquiry to bring some evidence on record to show that the transactions are not genuine. The Assessing Officer is totally silent on this front, When the assessee has discharged its primary onus of proving the transactions as genuine, the onus shifted to the Ld.AO who had not discharged the onus but has merely brushed aside the evidences furnished by the assessee and made the addition on suspicion and presumption. An addition based only on the basis of suspicion and presumptions cannot be sustained. The Ld.AO is directed to delete the addition of Rs,7,67,00,000/- made u/s.68. This ground of appeal is Allowed.

6. Further on interest disallowance, the CIT(A) has granted the relief by directing the A.O to delete the addition and observed at page 19 para 6 of the order read as under:

6. *The second ground of appeal is against the disallowance of interest expenditure of Rs.1,55,78,492/- by treating the same as not laid out or expended for the purpose of business. As discussed in the preceding paras the assessee had taken loans of Rs.7,67,00,000/- during the year and made interest payment of Rs.1,55,78,492/- on the same. Some of these loans have been repaid in the very subsequent year and the others in later years.*

The assessee has paid interest after deducting tax at source. The parties to whom interest has been paid have shown this amount as their income in the Returns of income filed by them. Further, the loans on which this interest has been paid have been considered genuine while deciding the first ground of appeal in the preceding para and also while deciding the appeal for AY. 2013-14. Therefore, the interest paid on these loans on which TDS is also made and which has been shown as income by the lender parties is also considered genuine. The Ld.AO is directed to delete the disallowance of Rs.1,55,78,492/-. This ground of appeal is Allowed.

7. *In the result, the appeal is ALLOWED.*

7. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Hon'ble Tribunal. At the time of hearing the Ld.DR submitted that the CIT(A) has erred in deleting the addition irrespective of the fact that the assessee has not discharged the burden of proof in proving the genuineness of the transactions and supported the order of the Assessing officer.

8. Contra, the Ld. AR supported the order of the CIT(A) and submitted that on the similar addition of unsecured loans of same parties in A.Y 2013-14, the CIT(A) has deleted the addition of unsecured loans and interest. On further appeal by the revenue, the Honble Tribunal has dismissed the Revenue appeal. The Ld.AR supported the submissions with Honble Tribunal Order.

9. We heard the rival submissions and perused the material on record. We find that the Honble Tribunal in assessee's own case in ITA No. 4079/Mum/2019 A.Y 2013-14 dated 01.06.2021 in the revenue appeal has observed at page 8 para 14 to 21 of the order, which is read as under:

14. We have carefully considered the submissions. We note that assessing in his case has submitted the following documents.

1. Confirmation from the lenders

2. Bank statement of lenders

3. Financial statement of lenders

4 Copy of acknowledgement of Return of Income.

5.Download of company master data from the MCA website

6. Statement of loan repayment.

15. The Assessing Officer has duly issued notice u/s 133(6) to the above said parties. All the necessary confirmation and compliances have been made. The assessing officer thereafter has not brought on record result of any further enquiry made. The AO's observation from the financials of lenders submitted are in the nature of AOs surmise, devoid of any cogent enquiry.

16. The documents mentioned above with regard to all the lenders are also submitted before us, by way of paper book. We note that the identity of the lenders is duly proved. They have duly responded to assessing officers notice issued u/s 133(6) and have made due compliances. It is not even the case of the assessing officer that these parties are non-existent. The lending companies are also active companies as evident from the documents furnished from the website of Ministry of Corporate Affairs. The bank statement of the lending companies have also been furnished. Loan is granted through bank. No adverse inference has been noted by the assessing officer from the bank statement.

17. The grievance of the assessing officer is that these companies do not have substantial income and hence are not capable of giving loans. He has also expressed doubt about the position of reserves and fund position without bringing on record any cogent material from any further enquiry made by bench. We find that the funds position of the companies as noted by the ld.CIT(A) is quite capable of granting loans. The adverse inference drawn from the financial statement of lending companies is only a surmise by the assessing officer without making any enquiry. In this regard, we note that honorable jurisdictional High Court in the case of Pr.CIT vs Veedhata Tower Pvt.Ltd, order dated 21.04.2018 has held that when all the necessary details of the fund provider was available with

the assessing officer, he was free to make the necessary enquiry and addition under section 68 in the hands of the recipient were unjustified. Furthermore, assessee has also paid interest to the lenders. It has also deducted tax at source. Loan have been duly repaid, some part has been repaid even in the present assessment year. In these circumstances, in our considered opinion assessee has discharged the onus. The assessing officer has not brought on record any cogent material to make the addition as unproved cash credit. Hence, the addition made by the assessing officer is not sustainable.

18. The case laws relied upon by the Ld. Departmental Representative are not at all applicable on the facts of the present case. In the case of Precision Finance(P.) Ltd (supra), the parties were found to be non-existent. In the case, we are dealing with it is nobody's case that the parties are non-existent. In Navodaya Castles(P.) Ltd (supra), share subscribers were found to be paper company. This is not at all the case here. In E.Ummer Bava (supra), the issue was gift from NRI where the creditworthiness of the donor was not proved. In Shantananda Steels(P.) Ltd (supra), the issue was share capital and huge share premium from entry providers from Kolkatta. In NRA Iron & Steel(P.) Ltd (supra), the issue was non-existent share applicants. In Synergy Finlease(P.) Ltd(supra), the issue was share capital and improbable share premium from accommodation entry providers. In Blessings Commercial(p.) Ltd(supra), the issue was share capital and huge share premium, where the providers had minimum balance in their bank account. Accordingly, we note these case laws do not help the case of the revenue.

19. Accordingly, in the background of aforesaid discussion and precedents, we do not find any infirmity in the order of

Ld.CIT(A) regarding deletion of addition on account of loan. Accordingly, we are uphold the same.

20. As regard, the issue of interest on unsecured loan, the addition was made by the AO by holding that since the loan have been held by him to be unexplained the interest, thereon cannot be said to be for business purpose. Since, we have already held that addition of loan as unexplained credit is not sustainable, the disallowances of interest thereon, on the same reasoning is liable to be deleted. Hence, we uphold the order of the Ld.CIT(A) on the issue also.

21. In the result, this appeal filed by the revenue stands dismissed.

10. In the present case the facts are similar and identical and further the thirteen lender parties of unsecured loans were the same parties who have provided unsecured loans to the assessee in the A.Y.2013-14. Further there is no change in the interest payments including on the opening balances of loan creditors and TDS and the Honble Tribunal has dismissed the revenue appeal for the A.Y.2013-14. We follow the judicial precedence considering the similarity of facts and transactions. The CIT(A) has considered the material information and the judicial decisions with respect to identity, creditworthiness and genuineness of the loan transactions. The Ld. DR could not controvert the findings of the CIT(A) with new

cogent material evidences or information to take a different view. Accordingly, we find that the CIT(A) has considered the facts, provisions of law and judicial decisions and passed a reasoned and speaking order. Accordingly, we do not find any infirmity in the order of the CIT(A) and up hold the same and dismiss the grounds of appeal of the revenue.

ITA No. 4083/Mum/2019 AY 2015-16

11. The facts of the case are similar to the earlier Assessment year (expect variance in figures) discussed in above paragraphs, therefore, the decision rendered in ITA No. 4112/Mum/2019 for AY 2014-15 shall equally apply mutatis mutandis for this case also. Accordingly, the grounds of appeal of the revenue are dismissed.

12. In the result, both the appeals filed by the revenue are dismissed.

Orders pronounced in the open Court on 25.04.2022.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 25.04.2022
KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

1.

आदेशानुसार/ BY ORDER,

(Asst. Registrar)
ITAT, Mumbai