

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.183/Ind/2021
Assessment Year: 2015-16

DCIT(Central)-2 Indore	<u>बनाम/</u> Vs.	M/s. NICG Combines Pvt. Ltd. 204, 2 nd Floor, Laxmi Tower, 576, MG Road, Indore
(Appellant / Revenue)		(Respondent / assessee)
PAN: AABCN 9507 D		
Assessee by	Shri C.P. Rawka, AR	
Revenue by	Shri P.K. Mitra, CIT-DR	
Date of Hearing	01.09.2022	
Date of Pronouncement	09.11.2022	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 26.07.2021 passed by learned Commissioner of Income-Tax (Appeals)-3, Bhopal [**“Ld. CIT(A)”**], which in turn arises out of assessment-order dated 21.12.2017 passed by learned DCIT, Central-2, Indore [**“Ld. AO”**] u/s 153A read with section 143(3) of Income-tax Act, 1961 [**“the Act”**] for Assessment-Year [**“AY”**] 2015-16, the Revenue has filed this appeal on following grounds:

- “(1) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the additions Rs. 1,51,96,767/- made by the Assessing Officer u/s 68 of the Income-tax Act, 1961 as unexplained cash credits.
- (2) On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the additions Rs. 3,48,000/- made by the Assessing Officer u/s 37 of the Income-tax Act, 1961.”

2. Briefly stated the facts are such that the assessee is a company engaged in the business of fashion designing, beauty parlour, boutique, interior and exterior decoration etc. A search was conducted u/s 132 of the Act on 17.06.2015 on one “Moirra Group” of Indore and the assessee was found to be associated with the group. Accordingly, the assessment of assessee was framed u/s 153A read with section 143(3) of the act. While completing assessment, the Ld. AO made certain additions, namely (i) an addition of Rs. 1,50,00,000/- in respect of loan taken from M/s Piyali Trading Company (P) Ltd., Mumbai plus interest of Rs. 1,96,767/- paid thereon, thus aggregating to Rs. 1,51,96,767/- u/s 68 of the act; and (ii) an addition of Rs. 3,48,000/- on account of disallowance of remuneration paid to Smt. Sadhna Todi, director of assessee-company u/s 37 of the act. Aggrieved by order of assessment, the assessee filed appeal to Ld. CIT(A) and got full relief. Now, against the order of Ld. CIT(A), the revenue has filed this appeal and before us.

Ground No. 1:

3. In this Ground, the revenue claims that the Ld. CIT(A) has erred in deleting the addition of Rs. 1,51,96,767/- made by Ld. AO in respect of loan taken from M/s Piyali Trading Company (P) Ltd., Mumbai [“PTCL”]

4. During assessment proceeding, the Ld. AO observed that the assessee had taken a total loan of Rs. 1,50,00,000/- from PTCL in three tranches comprising of Rs. 50,00,000/- each on 13.02.2015, 14.02.2015 and

19.02.2015. Ld. AO further observed that the assessee has also paid an interest of Rs. 1,96,767/- thereon and claimed the same as deduction. Ld. AO confronted the assessee with regard to the genuineness of the loan-transactions, in response to which the assessee made submissions. However, the Ld. AO rejected submissions of assessee. In drawing such adverse conclusions, Ld. AO considered mainly following facts / evidences:

- (i) PTCL is registered with ROC Mumbai and PAN is also taken at Mumbai, but all directors are residing at Indore.
- (ii) Financial data of PTCL shows that PTCL is hardly having any profit in preceding four years; it has raised loans / creditors and extended those funds to different parties by way of loans / debtors including the assessee; it has no fixed assets; the financial costs and administrative expenses are very nominal; the paid-up capital is just Rs. 1.01 lakh; the reserves are negative; these weak financial parameters show that PTCL is a paper-company.
- (iii) Statements of Shri Kailash Mehtani, director of PTCL, were recorded u/s 131 on 18.12.2017 which are re-produced verbatim in assessment-order. Those statements reveal that PTCL is a paper-company.
- (iv) The bank statements of PTCL showed heavy deposits and immediate transfer of funds, which demonstrated circular transactions of money-transfers to cover up unaccounted income.
- (v) The evidences demonstrate that PTCL does not have any business activity.

5. Based on above facts / evidences, Ld. AO concluded that the identity of PTCL, creditworthiness of PTCL and genuineness of transactions remains unproved. Relying upon certain decisions mentioned in assessment-order, Ld. AO considered the loan-transactions as unexplained in terms of section

68 of the act and made an addition of Rs. 1,50,00,000/- and also disallowed the interest-deduction of Rs. 1,96,767/-.

6. During first-appellate proceeding, Ld. CIT(A) examined all factual aspects, legal aspects and judicial rulings and thereafter deleted additions made by Ld. AO by observing and holding as under:

“4.3 Ground No. 3 of A.Y.2015-16:- Through this ground of appeal the appellant has challenged the addition of Rs.1,50,00,000/- on account of unexplained cash credit u/s 68 of the Income Tact Act, 1961. Through this ground of appeal the appellant has challenged additions aggregating to a sum of Rs.1,50,00,000/- by the AO, in its income has been made u/s 68 of the Act in respect of unsecured loans claimed to have been taken by the appellant company in its books of accounts During the course of the appellate proceedings, the appellant has furnished written submission.

4.3.1 The appellant is in receipt of credit of Rs. 1,50,00,000/- from M/s Piyali Trading Co. Mumbai during the period relevant to A.Y. 2015-16. It has been noted by the AO, herself that the said loan has been repaid by the assessee along with interest during the period relevant to A. Y. 2016-17. The AO has assessed the above sum along with accrued interest on the following grounds:-

- 1.The lender company has no business activity.***
- 2.The source of funds of lender company are the Unsecured Loan.***
- 3.The lender company had no Profitability Ratio, Capital Structure and Infrastructure.***
- 4.The lender company has no Fixed Assets.***

4.3.2 The AO summoned one of the directors of the lender company and interrogated him on the back of the assessee. Opportunity to cross-examine the said director was not afforded to the assessee. Thus, there is no evidentiary value of the statement of the said director. As regards other observations of the AO the assessee is not required to establish the business activity of the lender company. However, for the sake of academic perception the balance sheet of the lender company has been perused for last three years which has been reproduced by the AO herself in the assessment order in para 4.2 on page no. 5. The said balance sheet clearly depicts that the lender company has little business during the relevant period however the quantum of turnover during the preceding years was voluminous. There cannot be uniformity so far as the quantum of turnover is concerned. There are always ups & downs in the business. Therefore, even if the turnover during the subject year is not higher as compared to the preceding years; the worth of the company does not diminish. It has worth in the shape of Loans and Advances. There is no bar for advancing loans from the receipt of unsecured loan

with the intention of earning interest. In the instant case, sufficient interest has been charged by the lender company from the assessee. The interest has been duly incorporated in the computation of income in the case of lender-company. Therefore, the observation made by AO on the question of turnover as well as source of funds has no meaningful implication on the question of genuineness of loan advanced to the assessee.

4.3.3 The AO observed that there is non-existence of Fixed Assets of the lender company. This is a non-issue. There are several businesses which do not require any assets and in several other cases if required part of assets are utilized by sister concerns. However, on the strength of this argument alone the AO erred in holding the lender company as paper company. The factors which govern genuine existence of a company is the functioning in accordance with Memorandum of Association & articles of Association which are accepted by Registrar of Companies and subsequently a company is ought to comply with the statutory obligations under the Companies Act. Unless, a company commits a default in respect of the provisions of Companies Act none can brand it a paper company, particularly in the background of assets and liabilities of a company. In the instant case nothing has been brought on record by AO justifying her opinion that the lender company is a paper company.

4.3.4 Copy of PAN card was submitted in support of proof of identity. Copies of Bank Statement, Financial Statements and Income Tax Returns of the lender company were submitted in support of creditworthiness of the same. As regard genuineness, the aspect of transaction being through banking channels was brought to the notice of the AO. Accordingly, all the ingredients of cash credit were duly fulfilled and established by the assessee leaving no scope for any action u/s 68. The above gesture on the part of assessee was sufficient for holding transactions as genuine. There is not even a slight whisper which could cast any doubt on any of the documents submitted by the assessee.

4.3.5 Reverting back to the interrogation of the director of the lender company; though there appears no incriminating version of the director, the .said statement is self serving document for the AO. There was no intimation to the assessee so far as the said interrogation is concerned and the assessee was not offered any opportunity to cross examine the said director. The inferences drawn by the AO from out of the statement of director of the lender company is misplaced.

4.3.6 The AO has further not appreciated the factual matrix of the case. Generally, when a taxpayer records fictitious credits in its balance sheet the repayment is prolonged as there is nobody to whom the amount is required to be repaid. Contrary to the above circumstances, the assessee's case stands on real footings. The loan was raised during the period relevant to A.Y. 2015-16 & repaid in the very next year. The repayment of loan has been made on 29.05.2017. The word 'real' appearing in this paragraph has relevance to the pronouncement of Hon'ble Apex Court decision in the case of Sumati Dayal relied upon by the AO. It is true that a transaction is ought to be apparent and real and it is so in the instance case, the transaction is very well apparent and very much real.

However, AO has not appreciated these aspects in the right perspective. The AO has further relied upon several other decisions on the question of application of section 68 and duty of the AO and assessee on the subject matter. As has been discussed in the preceding paras the onus has been duly shifted by the assessee to the department which never reverted back to him as for want of any valid doubt on the documents and evidences submitted by the assessee. Therefore, the facts of the assessee's case are clearly distinguishable from the cases relied upon by the AO.

4.3.7 Thus, according to the appellant, the AO has made the aforesaid additions without having recourse to any material seized during the course of the search. On merits, the appellant submitted that the AO has made addition of Rs. 1,50,00,000/- in respect of the fresh unsecured loans obtained by it during the previous year relevant to the assessment year under appeal.

4.3.8 The appellant vide its written submission has dealt with the transactions of unsecured loan accepted by it from the above company and has furnished its explanation on the identity of the lender company, genuineness of the loan transactions and creditworthiness of the lender company. It was further contended that the company was duly registered under the Companies Act, 1956 and shown as a in-function company on the website of the Ministry of Corporate Affairs. Further, the company is regularly assessed to Income-Tax and the entire loan transactions had taken place through banking channels only. The appellant company had paid interest to such lender companies after deducting applicable TDS. It has further been submitted that all the company have duly confirmed the loan transactions carried out by them, with the appellant company and have also duly shown the amount of interest credited by the appellant company in their respective returns of income for the respective years, filed u/s. 139 of the Act and in such returns, they also made the claim for TDS made by the appellant which was duly allowed to them. Further, the company was having sufficient net owned funds as per their audited financial statements and were also having adequate cash balance in its bank accounts before providing loans to the appellant company. The loan transactions with company has got completely squared off during the subsequent financial years relevant to A.Y. 2018-19 through banking channels. However, the AO did not made any independent inquiry in respect of any of the aforesaid company. The AO has relied upon statements of one of the director.

4.3.9 In support of its claim the appellant has filed copy of the loan confirmation letters duly given by the loan creditors, copies of the certificate of incorporation, memorandum and articles of association, PAN card and abstract of the master data as downloaded from the website of the Ministry of Corporate Affairs. Besides, the appellant has also furnished copies of the acknowledgement of returns of the loan creditors, copies of their audited financial statements, copies of the relevant bank statements of the loan creditors and as well as of the appellant. The appellant taking alternate plea has contended that the additions have been made on whims and surmises and without considering the evidences on record.

4.3.10 Further, the appellant in order to establish the identity of the loan creditor, the genuineness of the loan transactions and the creditworthiness of the loan creditors, the appellant had furnished all the necessary documents before the AO such as the copies of the loan confirmation letters duly given by the loan creditor, copies of the certificate of incorporation, memorandum and articles of association, PAN card and abstract of the master data as downloaded from the website of the Ministry of Corporate Affairs relating to the lender companies. Also, the genuineness of the transactions get established from the fact that the entire transactions have been carried out through banking channels and the same are duly reflected in the relevant bank statements of the lenders as well as the appellant. Further, furnishing of the letters of the confirmation by the lender companies, crediting the account of the loan creditors with the due amount of interest, making of TDS on the interest and the subsequent repayment of the loan by the appellant company to such lender company also establishes the genuineness of the transactions. As a matter of fact no independent enquiry was done by the AO. Thus, considering all the evidences in entirety, the appellant could be able to discharge its onus as contemplated u/s. 68 of the Act, however, the AO failed to her onus by bringing any cogent material or evidence on record for disbelieving the explanation as well as the various documentary evidences furnished by the appellant before her, during the course of the assessment proceedings.

4.3.11 Clearly, the entire addition has been made on the basis of statements and no incriminating documents is on record suggesting nexus of appellants taking unsecured loan from shell company. The statement of the director of the lender company cannot be used against the appellant, in view of the settled position of the law, as per the decision of the Hon'ble Supreme Court in the case of *Mis. Kishanchand Chelaram vs. CIT (1980) 125 ITR 713 (SC)* and again in the case of *Mis. Andaman Timber Industries vs. Commissioner of Central Excise, Kolkatta-II 2016 (15) SCC 785 (SC)*, without giving the opportunity of cross examination of the witnesses to the appellant, the statements of such witnesses could not have been utilized against the appellant. Further, the case law relied upon by the AO are distinguishable on facts of the case of appellant with that of the case of *PCIT (Central)-1 vs. NRA Iron Steel Pvt. Ltd. (2019) 412 ITR 161 (SC)*.

4.3.12 First of all, the AO has not mentioned as to what was her source treating the lender company as shell company. Secondly, again, as per the AO's own version, the list is not based upon any concrete evidence but, merely on the basis of inputs received from various investigation agencies. The AO has not specifically brought on record that what adverse informations were gathered by the Department from the various investigation agencies in respect of the companies for whom the provisions of section 68 have been invoked.

Reliance is also placed on the following judicial pronouncements:

i) *PCIT vs. Aditya Birla Telecom Ltd. (2019) 263 TAXMAN 539 (Born)*

ii) Baba Bhootnath Trade & Commerce Ltd. vs. ITO (2019) 199 TTJ 423 (Kol)

iii) Addl. CIT &Anr. vs. Prayag Poly tech Pvt. Ltd. &Anr. (2019) 56 CCH157 (Del Trib.)

iv) Tara Mercantile Pvt. Ltd. vs. DCIT (2019) 56 CCH 262 (Del Trib.)

v) DCIT vs. B.P. Edible Oil Pvt. Ltd. (2019) 56 CCH 351 (AgraTrib.)

vi) DCIT vs. Acro Exports Trade Pvt. Ltd. &Ors. (2019) 56 CCH 446

(Mum Trib.)

vii) ITO vs. Axisline Investment Consultants Pvt. Ltd. (2019) 178 ITD 402 (Kol Trib.)

viii) DCIT vs. SMS SME Ltd. (2019) 57 CCH 31 (GauTrib.)

ix) ITO vs. Ashiana Home Marts Pvt. Ltd. (2019) 57CCH 354 (Mum Trib.)

x) Prime Comfort Products Pvt. Ltd. vs. ACIT (2019) 179 ITD 647

(Del Trib.)

xi) Shri Sumati Kumar Kasliwal&Ors. vs. ACIT [Order dated 30-04-2019 in Appeal Nos. ITA-181 & 472/Ind/2017] (ITAT Indore)

The Hon 'ble Jurisdictional High Court which have held that once the identity & creditworthiness of the loan creditors and genuineness of loan transactions are established, no addition can be made in the hands of the loan recipient. The brief notes of such judgments are given below:

i) CIT vs. ORISSA CORPORATION P. LTD. (1986) 1591TR 0078 (SC)

Decision in favour of Assessee

Income-Cash credit-Burden of proof-Assessee had given the names and addresses of the creditors-It was in the knowledge of the Revenue that the said creditors were income-tax assessee-Their index number was in the file of the Revenue-Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further-Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the allowed loans Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence-High Court was, therefore, right in refusing to refer the questions sought for

Held:

Sec. 68 of 1961 Act was introduced for the first time in the Act. There was no provision in 1922 Act corresponding to this section. The section

only gives statutory recognition to the principle that cash credits which are not satisfactorily explained might be assessed as income. The cash credit might be assessed either as business profits or as income from other sources.

(Para 7)

It is not in all cases that by mere rejection of the explanation of the assessee, the character of a particular receipt as income could be said to have been established; but where the circumstances of the rejection were such that the only proper inference was that the receipt must be treated as income in the hands of the assessee, there is no reason why the assessing authority should not draw such an inference. Such an inference is an inference of fact and not of law.

(Para 10)

The assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the allowed loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises. It cannot, therefore, be said that any question of law arose in these cases. The High Court was, therefore, right in refusing to refer the questions sought for.

(Paras 13 & 15)

Reference-Question of fact--Cash Credit--High Court has no power to call upon the Tribunal to state a case if there was some evidence to support the finding recorded by the Tribunal, even if it appears to the High Court that on appreciation of the evidence, it might arrive at a conclusion different from that of the Tribunal--Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence--High Court was, therefore, right in refusing to refer the questions sought for

Held:

The High Court has no power to call upon the Tribunal to state a case of there was some evidence to support the finding recorded by the Tribunal, even if it appears to the High Court that on appreciation of the evidence, it might arrive at a conclusion different from that of the Tribunal.-CIT vs. Daulatram Rawatmull (1964) 53 ITR 574 (SC) : TC 54R.233 followed. The

assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notice under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors. There was no effort made to pursue the so-called alleged creditors. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on which a conclusion could be arrived at, no question of law as such arises. It cannot, therefore, be said that any question of law arose in these cases. The High Court was, therefore, right in refusing to refer the questions sought for.

ii) ORIENT TRADING CO. LTD. vs. CIT (1963) 49ITR 0723 (BOM)

Decision in favour of Assessee

Cash credit-Burden of proof-Cash credit in the name of third party-When the entry stands in the name of third party, the assessee satisfies the ITO as to the identity of the third party and also supplies such other evidence which will show, prima facie, that the entry is not fictitious, the initial burden which lies on him can be said to have been discharged by him and it will not, thereafter, be for the assessee to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of the same with the assessee-The burden thereafter shifts on to the Revenue to show that the entry represented assessee's suppressed income-Department has to be in possession of sufficient and adequate material in order to reach to such conclusion

Held:

When cash credits appear in the accounts of an assessee, whether in his own name or in the name of third parties, the ITO is entitled to satisfy himself as to the true nature and source of the amounts entered therein, and if after investigation or inquiry he is satisfied that there is no satisfactory explanation as to the said entries, he would be entitled to regard them as representing the undisclosed income of the assessee. When these credits entries stand in the name of the assessee himself the burden is undoubtedly on him to prove satisfactorily the nature and source of these entries and to show that they do not constitute a part of his business income liable to tax. Where the entry stands in the name of the assessee's wife or children, or in the name of any other near relation or an employee of the assessee, the burden will lie on the assessee, though the entry is not in his own name, to explain satisfactorily the nature and source of that entry. Where the entry stands not in the name of any such person having a close relation or connection with the assessee, but in the name of an independent party. The burden will still lie upon him to establish the identity of the said party, and to satisfy the ITO that the entry is real and not fictitious. When, however, in a case where the entry stands in the name of third party, the assessee satisfies the ITO as to the identity of the third party and also supplies such other

evidence which will show, prima facie, that the entry is not fictitious, the initial burden which lies on him can be said to have been discharged by him. It will not, thereafter, be for the assessee to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of the same with the assessee. The burden will then shift on to the Department to show why the assessee's case cannot be accepted and why it must be held that the entry, though purporting to be in the name of a third party, still represents the income of the assessee from a suppressed source. In order to arrive at such a conclusion, however, the Department has to be in possession of sufficient and adequate material.-MMA.K. Mohideen Thamby& Co. vs. CIT (1959) 36 ITR 481 (AP) : TC42R.1188 and P. V Raghava Reddy vs. CIT (1956) 29ITR 942 (AP) : TC42R.1037 followed.

The assessee has sufficiently discharged the burden which lay upon it to explain the nature and source of the cash credits appearing in its accounts and the burden clearly shifted in the present case on to the Department to prove to the contrary and hold that in spite of the assessee's explanation, the entries could still be held to represent the assessee's income from undisclosed sources. There is no material whatsoever on the record on the basis of which the Department can be said to have discharged that burden. The solitary circumstances of a difference of three days in the record of the entries with regard to the items of Rs. 2,00,000 and Rs. 40,000 in the books of account of the assessee and those of S is not in view of the rest of the material on record sufficient to reject the assessee's case. Therefore, it must be held that the amount of Rs. 2,50,000 standing in the books of the assessee to the credit of R on the 10th Oct., 1942 and the further entries of Rs. one lakh and of Rs. 40,000 occurring in the said account on 16th March, 1948, and 19th July, 1948, did not belong to the assessee and did not constitute his undisclosed income.

Conclusion:

On the facts and circumstances of the case. assessee's initial burden stood discharged and there being no material to show that Revenue discharged its burden, cash credit could not be treated assessee's suppressed income.

iii) ASHOK PAL DAGA vs. CIT (1996) 220 ITR 0452 (MP)

Decision in favour of Assessee

Reference-Question of law-Assessee having satisfied the IT authority as to the identity of the third party and also supplied the relevant evidence showing prima facie that the entries were not fictitious, the initial burden can be said to be discharged by the assessee=Treating the cash credits and interest thereon as

iv) ADDL. CIT vs. BAHRI BROTHERS (P) LTD. (1985) 154ITR 0244 (PAT)

Decision infavour of

Assessee

11. The assessee was asked to explain the nature and the source of the deposit and the assessee filed details of loans stating the nature and the mode of transactions. In the instant case, the transactions were completed through account payee cheques. The creditors gave the amount in question to the assessee by account payee cheques which were encashed by the assessee through his own bank. Not only this, the assessee has also submitted the copy of a certificate of the bank to the effect that the cheques in question, given by the creditors, were honoured in favour of the assessee. Even the brokerage amount on the transaction was also paid through cheques. When the assessee disclosed the names of the creditors and the names of the banks on which the cheques were drawn, the assessee discharged the primary onus and the assessee not only disclosed the identity of the creditors but also the sources of income. Then the onus shifted on the Department to verify. The creditors were having bank accounts. Hence, not that they were known only to the bank but they were introduced by a third person to the bank. In view of these facts, it could not be said that the creditors were fictitious persons. As I have already held above that the assessee discharged his primary onus and the onus shifted upon the Department, the Department, on getting materials in hand could proceed to verify whether the creditors were genuine or not. They could also examine the other transactions of the creditors in their respective bank accounts and could have also examined the person who introduced them to the bank and such an examination/verification would have given a correct picture and then if any adverse material was available, the same could have been passed on to the assessee. In my opinion, the assessee having discharged the primary onus, the Department without resorting to verification, could not add the amount as income from undisclosed sources.

v) CIT vs. HANUMAN AGARWAL (1985) 151 ITR 150 (Pat)

Decision in favour of: Assessee

Cash credits-Onus of proof=Obligation of assessee, when fulfilled Assessee, a registered firm called upon to explain certain deposits appearing in its books- Submission of confirmatory letter stating address and GIR number of creditor- Primary onus under s. 68, therefore, discharged Imposition of penalty without adverting to s. 131 - Not justified

Held:

The so-called confession by the creditor is not in relation to the amount in question but it seems clear that the so-called confession was made by the creditor in a third party's case. If the confirmatory letter was issued by the creditor subsequent to the so-called confession, it was much more incumbent upon the Department to summon the creditor in order to verify the statements made in the confirmatory letter. This was never done.

(Para 14)

The assessee having furnished the correct name and address of the creditor, having given the GIR number and having filed the confirmatory letter from the creditor did all that it could do and these three materials should prima facie not only be identity of the creditor but also the genuineness of the transaction and also the capacity of the creditor and as such the assessee completely discharged its initial onus under s. 68. The Revenue on its part, did not summon the creditor under s. 131. It took no steps to verify the statement of the assessee. The onus which was shifted on the Department was not discharged by it in this case and the Tribunal has rightly held so. The addition, therefore, was rightly deleted. Prakash Textile Agency vs. CIT (1980) 121 ITR 890 (Cal) : TC42R.1197. Bharati (P) Ltd. vs. CIT 1975 CTR (Cal) 40 : (1978) 111 ITR 951 (Cal) : TC42R.1227, Jamna Prasad Kanhaiyalal vs. CIT (1981) 23 CTR (SC) 146: (1981) 130ITR 244 (SC) : TC42R.1363 distinguished.

(Para 14)

vi) JALAN TIMBERS vs. CIT (1997) 223ITR 11 (GAU)

Decision in favour of

Assessee

Income-Cash credits-Assessee and creditors both showing the impugned amounts in their income-tax returns>Returns of creditors accepted by the ITO-Tribunal, without giving cogent reasons as to why the returns of creditors should be ignored. making addition under s. 68-Not valid

Held:

It is to be seen whether the assessee could discharge the onus regarding the receipt of the cash credit. The Tribunal indicated that the identity of the creditor was not enough. It is true that by proving the identity the assessee cannot be said to have discharged its onus. The amounts were shown in the IT return of the assessee. Besides, the creditors had also shown in the returns about the giving of the loan to the assessee. Strangely, the ITO while making the assessment in respect of the three creditors accepted the returns. This itself will go to show that the amount received by the assessee was at least prima facie genuine. As the ITO had accepted the returns of the three creditors it should go to mean that the amounts given by those creditors were also genuine. The Tribunal did not make any endeavour to give any cogent reason why the IT returns filed by the creditors and accepted by the ITO should be ignored. The Tribunal was not therefore justified in law in upholding the addition of three cash creditors as income of the assessee.

(Para 9)

vii) DCIT vs. ROBINI BUILDERS (2002) 256ITR 360 (GUJ)

Appeal (High Court)-Substantial question of law-Cash credit-Assessee furnished complete addresses of all the creditors along with GIR numbers / PAN as well as confirmations along with copies of assessment orders

passed in the cases of individual creditors, wherever available, and copies of returns filed by the creditors in the remaining cases-All loans were received and repaid by assessee by account payee cheques along with interest. Tribunal deleted the addition-No substantial question of law arises-Appeal dismissed

Conclusion:

Tribunal having deleted the addition under s. 68 accepting the genuineness of loans which were received and repaid by assessee by account payee cheques, assessee having established the identity of the creditors by giving their complete addresses, GIR numbers/PAN as well as confirmations along with the copies of their assessment orders wherever readily available, no substantial question of law arises; appeal under s. 260A dismissed.

viii) CIT vs. DALMIA RESORTS INTERNATIONAL (2007) 290 ITR 508 (DEL)

Decision in favour of

Assessee

Appeal (High Court)-Substantial question of law-Cash credit=CIT(A) and the Tribunal, on a proper appreciation of the attendant circumstances and the material on record, concurrently found that the lender company was genuine and that it had resources and income during the relevant period to advance the loans said to have been borrowed by the assessee-Questions whether the lender company was a genuine company, whether it had resources and capacity to lend money and whether it had actually lent the money to the assessee are all questions of fact-In view of the aforesaid findings of fact the deletion of addition under s. 68 was perfectly justified-No substantial question of law arises

Held:

The questions whether the lender company was a genuine company, had the resources and the capacity to lend money and had actually lent the money shown to have been borrowed by the assessee are all pure questions of fact which have been concurrently answered in favour of the assessee by the CIT(A) and the Tribunal. The authorities below have, on a proper appreciation of the attendant circumstances and the material on record, held that the lender company was genuine, had the resources and the income during the period the loans were advanced and was, upon an investigation made for purposes of taxation, found to be a genuine company. In the light of the said finding of fact, the deletion of the income added by the AO was perfectly justified. No question of law arises for consideration in these appeals, much less a substantial question of law. The appeals accordingly fail and are hereby dismissed.

(Para 4)

ix) CIT vs. MEHROTRA BROTHERS (2004) 270 ITR 0157 (MP)

2. To appreciate the aforesaid questions of law which are urged to be substantial questions of law. }ve have perused the order passed by the CIT(A) as well as that of the Tribunal. The Tribunal in para 10 of the order dwelt upon the facts and came to hold as under:

"10. We have considered the citations relied on by both the parties and concluded that when the assessee has furnished requisite information and the ITO has considered the records before him and completed the assessment after considering the evidence filed and after his satisfaction about the genuineness of cash credits, the order of revision under s. 263 on vague ground that the AO did not make proper enquiry is not valid [CIT vs. Ratlam Coal Ash Co. (J 987) 65 CTR (AIP) 305 : (1988) 171 ITR 141 (111P)]. The assessee furnished GIRIPAN number, address. confirmation from the creditors, the assessee has discharged the burden to prove the genuineness of parties and transaction in addition to the capacity satisfactorily; as such there is no ground for addition [Add!. CIT vs. HanumanAgarwal (1984) 40 CTR (Pat) 15: (1985) 1511TR 150 (Pat)]. In this regard the Department also has not brought any material to disprove the genuineness of the parties, capacity of the lenders and transactions on the basis of cogent facts on record. The Hon 'ble Supreme Court in the case of CIT vs. Orissa Corpn. (P) Ltd. (J 986) 52 CTR (SC) 138 : (1986) 159 ITR 78 (SC) (headnote) :

'Held. that in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were IT assesseees. Their index numbers were in the file of the Revenue. The Revenue apart from issuing notices under s. 131 at the instance of the respondent did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. '

The decisions of the Patna High Court in the case of CIT VS. Ram Prasad Ram Bhagat (1986) 51 CTR (Pat) 240 : (1987) 163 ITR 202 (Pat); Add!. CIT vs. Bahri Bros. (P) Ltd. (1984) 42 CTR (Pat) 66 : (1985) 154 fTR 244 (Pat), the Allahabad High Court in the case of Sundar Lal Jain vs. CIT (1979) 117 ITR 316 (All); Shankar Industries vs. CIT (1978) 114fTR 689 (Cal) and the Madhya Pradesh High Court in the case of CIT vs. Shiv Shakti Timbers (1997) 140 CTR (MP) 562 : (1998) 229 ITR 505 (AIP); CIT vs. Shanti Swarup (2002) 255 ITR 655 (P&H); CIT vs. Ram Narain Goel (1997)140 CTR(P&H) 148 : (1997)224ITR 180 (P&H); Intruded(India)

International vs. ITO (1999) 63 TTJ (Del) 191 assist the claim of the assessee. The assessee has explained satisfactorily the cash credits in the books of account of the firm and discharged the burden. The Department has not brought out material or evidence to rebut the same. As such the cash credits are not the income of the firm.

3. In view of the aforesaid finding of fact, we are of the considered view

that no substantial question of law is involved in this appeal.

x) CIT vs. METACHEM INDUSTRIES (2000) 245ITR 0160 (MP)

Decision in favour of

Assessee

Income-Cash credits-Credits in the accounts of partners of the firm - Concurrent finding of CIT(A) as well as of the Tribunal that assessee-firm has satisfactorily explained the aforesaid entries-Once it is established that the amount was invested by a particular person whether a partner or anybody else, the responsibility of the assessee-firm is over and its burden is discharged-It is open to the AO to undertake further investigation against that partner or creditor-Credit cannot be treated as income of the firm

Held:

According to s. 68, the first burden is on the assessee to satisfactorily explain the credit entry in the books of account of the previous year. If the explanation given by the assessee is satisfactory, then that entry will not be charged with the income of the previous year of the assessee. In case the explanation offered by the assessee is not satisfactory or the source offered by the assessee-firm is not satisfactory, then in that case, the amount should be taken to be the income of the assessee. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is responsibility of that individual to account for the investment made by him. If that person owns that entry, then, the burden of the assessee-firm is discharged. It is open for the AD to undertake further investigation with regard to that individual who has deposited this amount. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be income of the firm for the purposes of income-tax. It is open for the AO to take appropriate action under s. 69 against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the CIT(A) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries. Therefore, the view taken by the Tribunal is correct. (Paras 3 to 6)

xi) LALITHA JEWELLERY MART P. LTD. vs. DCIT (2017) 399 ITR 0425 (MAD)

Decision in favour of

Assessee

Income-Cash credits-Unexplained credit/ investment-Addition-Assessee was company carrying on business in gold and manufacture of jewellery and trading-Assessee reflected increased share capital in its return, thus assessment was picked up for scrutiny u/s 143(2) and survey was also conducted u/s 133A--AD held that though monies were routed through banking channels, explanation offered by assessee company 1-was not acceptable--Addition to share capital was treated as income in hands of assessee--CIT (A) held that assessee had discharged onus cast on it u/s 68 and deleted addition-Tribunal confirmed assessment of share capital contributions as unexplained credit/ investment within scope of Section 68/69-Held, AD was looking for proof of resources of investors of assessee and such proof was beyond realm of possibility of production by assessee-AD had adopted totally unreasonable attitude and was acting unreasonably-Assessee company had completely explained sources of investments received by it-It had also disclosed identity of such investors--AD traced out and reached all four investors of assessee-Assessee also found as fact that all payments were received through banking channels-Burden cast on assessee was discharged-AD as well as Tribunal proceeded to discredit investors 0.[assessee was completely erroneous-Suspicion was not sufficient enough to lead to conclusion that investments received by assessee company were all manipulated receipts and on that basis recorded finding that explanation of assessee was not satisfactory-if department had doubt about genuineness 0.] investors capacity, it was open to it to proceed against those investors-Without taking such course 0.] action AD and Tribunal were proceeding on conjectures that assessee had ploughed back money- Very approach of AD and Tribunal were completely opposed to settled legal principles enunciated-Assessee could not call upon its investors to disclose all such business transactions they carried on in immediate past and as to how much they made from their respective business enterprises-Assessee's appeal allowed

xii) CIT vs. JAI KUMAR BAKLIWAL (2014) 366 ITR 217 (RAJ)

Decision infavour of

Assessee

Income from undisclosed sources Cash credit Genuineness and creditworthiness of transaction Addition Validity Assessee was carrying on business of finance and earning income by way of interest During course of work of financing and money lending, had raised loans from certain parties As per AO most of parties were relatives of assessee and they were said to be unsecured loans It had been claimed by AO that in most of cases, though amount was received by account payee cheque and most of creditors were assessed to Income Tax Act and had even provided their permanent account number but on desire of AO of producing said parties, none of parties were able to prove source of amount advanced to assessee Thus, AO made addition U/S 68 as income from undisclosed sources CIT(A) deleted addition holding that source of cash creditors was not required to be proved by assessee once identity, capacity and

genuineness stands proved ITAT dismissed revenue's appeal Held, all cash creditors had affirmed in their examination that they had advanced money to assessee from their own respective bank accounts Therefore, when there was categorical finding even by AO that money came from respective bank accounts of creditors, which did not flow in shape of money, then, such addition could not be sustained and had been rightly deleted by both two appellate authorities There was no clinching evidence in present case nor AO had been able to prove that money actually belonged to none but assessee himself Action of AO was based on mere suspicion Accordingly, ITAT, after appreciation of evidence had rightly dismissed revenue's appeal It was pure finding of fact Revenue's appeal dismissed

Held:

All cash creditors had affirmed in their examination that they had advanced money to assessee from their own respective bank accounts. Therefore, when there was categorical finding even by AD that money came from respective bank accounts of creditors, which did not flow in shape of money, then, such addition could not be sustained and had been rightly deleted by both two appellate authorities. There was no clinching evidence in present case nor had A D been able to prove that money actually belonged to none but assessee himself Action of AD was based on mere suspicion. Accordingly, ITAT, after appreciation of evidence had rightly dismissed revenue's appeal. When there was appreciation of evidence, then it was purely finding of fact and no question much less substantial question of law could be said to emerge out of said order of the Tribunal. There was not any infirmity or perversity in the order of the ITAT so as to call for any interference. Revenue's appeal dismissed (para20, 21 &22)

xiii) CIT vs. SHRI E.S. JOSE (2014) 220 TAXMAN 0032 (KER)

Decision in favour of Assesse/Revenue (Partly)

Cash credits-loan-Creditworthiness of creditors-Assessee in its return had mentioned several credits-AD found that two creditors disowned to have given any loan to assessee, four other have not signed confirmation letters-A O held that loan credits were not proved and made addition-CIT(A) deleted additions

made by AO-Tribunal confirmed findings o.[AO-Held, evidence available was sufficient to prove source-persons who gave loan, have confirmed having given loans to assessee in their sworn statements-Once such statements have been given and merely because they have not given any confirmation letter. said credits cannot be excluded appears to be wrong Confirmation letter was produced at appellate stage--Confirmation letter was taken as evidence by appellate authority and said act had been confirmed by Tribunal-Appellate authority as well as tribunal had accepted explanation given by assessee since transaction was done through bank account, loan transaction was genuine This apparently was finding of fact confirmed by Tribunal-Revenues' appeal dismissed.

Held:

On a perusal of the assessment order as well as reference to the credit shown in the accounts to an extent of Rs.11,60,000/-, the evidence clearly indicated that the persons who appeared before the authorities have confirmed having given loans to the assessee in their sworn statements. Once such statements had been given and merely because they have not given any confirmation letter, the said credits cannot be excluded appears to be wrong. The same is the situation with reference to the credit of Rs.10 lakhs. The assessee had indicated that the said amount was sent by Sri. C. C. Thampi through bank account and the particulars of bank account were also produced. The only reason for not deleting the said amount was non- production of confirmation letter. The same was produced at the appellate stage. The said confirmation letter was taken as evidence by the appellate authority and the said act had been confirmed by the Tribunal. Apparently deletion of various amounts which were reflected as credits authorities. Though the AO had decided against the assessee on those points, the appellate authority had accepted the explanation given by the assessee and had deleted the said amount from the income as the evidence available was sufficient to prove the source. This apparently is a finding of fact which was confirmed by the Tribunal and for that reason no question of law arise for consideration to reconsider the said deletion. The appellate authority had found that the assessee had already produced sufficient documents to prove the credit. The confirmation letter produced by the assessee during the appellate stage was only a further document to prove such a credit. It is found by the appellate authority that since the transaction was done through the bank account, the loan transaction was genuine and hence the addition made has to be deleted. Non- compliance of Rule 46A of the Rules by itself would amount to a substantial question of law as even otherwise the appellate authority was convinced about the genuineness of the transaction.

(Para 17-19)

xiv) CIT vs. KAMDHENU STEEL & ALLOYS LTD. & DRS. (2014) 361 ITR 0220 (DEL)

Decision in favour of

Assessee;

Income-Cash credit-Share application money-Burden of proof and genuineness- Though initial burden is upon the assessee, once he proves the identity of credits/share applications by either furnishing permanent account numbers or copies of bank accounts and shows the genuineness of the transaction by showing money in the banks is by account payee cheques or by draft, etc., then the onus to prove the same would shift to the Revenue-Question which assumes importance at this stage is to what the Revenue is supposed to do to dislodge the initial burden discharged by the assessee and to throw the ball again in the assessee's court demanding the assessee to give some more proofs, as the documents produced earlier by the assessee either become suspect or are rendered

insufficient in view of the material produced by the Department rebutting the assessee's documentary evidence. When registered letters addressed to companies returned undelivered AD presumed that these companies did not exist at the given address. But, it has to be conclusively established that the company is non-existence. AD did not bother to find out from the office of the Registrar of Companies the address of those companies from where the registered letter received back undelivered. No effort was made to examine as to whether these companies were filing the IT return and if they were filing the same, then what kind of returns these companies were filing. If there was no return, this could be another factor leading towards the suspicion nurtured by the AD. Likewise, when the bank statements were filed, the AD could find out the address given by those applicant companies in the bank, who opened the bank accounts and are the signatories, who introduced those bank accounts and the manner in which transactions were carried out and the bank accounts operated. This kind of inquiry would have given some more material to the AD to find out as to whether the assessee can be convicted with the transactions which were allegedly bogus and/or companies were also bogus and were created for namesake. Mere failure of the creditors to respond to Department's notices could not be a basis to conclude that the assessee has invested its undisclosed income and invoke provisions of s. 68 against assessee. AD failed to carry his suspicion to logical conclusion by further investigation. More steps which should have been taken by the Revenue in order to find out causal connection between the cash deposited in the bank accounts of the applicant companies and the assessee were not taken. It is necessary to link the assessee with the source when that link is missing, it is difficult to fasten the assessee with such a liability. Additions rightly deleted in the peculiar facts and circumstances of the case, order of remand was not called for

xv) ACIT vs. MITTAL APPLIANCES LTD. (2016) 27 ITJ 120 (TRIB.-

INDORE)

Cash Credits - U/s. 68 of the Income-tax Act, 1961- Share Application Money - AD made additions of Rs. 22 lacs u/s 68 -- CIT(A) deleted the additions - HELD _ In various cases it was held that when the PAN No. of the shareholders were provided and the amount of share application money was received through an account payee cheque in that case, the identity of the shareholder be treated as explained - In view of documents filed before the AD, wherein the identity of the share applicant was established - ITAT does not find any infirmity in the order of CIT(A) for deleting addition made by the AD on account of share application money.

xvi) ACIT vs. SHREE SAI VIHAR (2016) 28 ITJ 158 (TRIB.-RAIPUR)

Cash Credits - U/s. 68 of the Income-tax Act, 1961 - Though confirmations are filed, but due to no efforts made by the assessee to establish the creditworthiness of the lenders, A O invoked the provisions of Section 68 and made addition in the income - CIT(A) deleted the additions - HELD - CIT(A) has noted that (/ the AO had any doubt about the transactions he could have issued summons u/s 133(6) or even deputed the Inspector, which had not been done. The creditors were

assessed to income-tax at the same place and hence the AO could have very easily invoked any enquiry. In these circumstances, there is no infirmity in the order of learned CIT(A).

xvii) ITO vs. VAIBHAV COTTON PVT. LTD. (2012) 19 ITJ 113 (TRIB.-INDORE)

Cash Credits – U/s. 68 of the Income-tax Act, 1961 - Assessee took loan from parties through account payee cheques - Transaction were duly recorded in books of assessee and that of creditors - Creditors were income-tax payees; Confirmation letters were filed; Statement of creditors were recorded, who confirmed the transactions -- Source of loan were proved through bank accounts of creditors - A O doubted that the credit worthiness of creditors as income offered by them was very low - Also. A O tried to establish that the assessee's money was routed back to assessee - HELD - Assessee has proved the credit by giving evidences for identity, genuineness and credit-worthiness of creditors Credits in the bank account of creditors was also explained - Addition cannot be made

xviii) DEEPTI AGRAWAL Clo. Mis. PRA TAXINDIA Vs. ACIT 2019 (7) TMI 1437 (ITAT DELHI)

Addition on account of loan received u/s 68 - HELD THA T:- We find force in the argument of the ld. counsel for the assessee that when the Assessing Officer has not doubted the identity and credit worthiness of the party and genuineness of the said advance of Rs. 1 crore in the subsequent year, how can he disbelieve the amount of advance of Rs. 29,50,000/- during the current year especially when the assessee has furnished all the details such as the copy of confirmation, bank account statements reflecting the advances so received, copies of ITRs/audited financial statements, etc.

Further, the amount so obtained as advance has also been repaid by the assessee in the subsequent years and it is not a case of bogus share capital. Therefore, various decisions relied on by the CIT(A) as well as the DR are not applicable to the facts of the present case. Further a perusal of the balance sheet of the loan creditor shows that it has got sufficient share capital and free reserves of its own and, therefore, merely because the assessee has incurred loss during the current year should not be a ground for making the addition u/s 68 especially when in subsequent year more than Rs.1 crore has been accepted by the AO in the order passed u/s 153A/143 (3). We, therefore, set aside the order of The CIT(A) and direct the Assessing Officer to delete the addition of Rs. 29,50,000/-.

So far as the amount of Rs.5 lakhs received from Mahesh Finsec Pvt Ltd is concerned, we find M/s Mahesh Finsec Pvt. Ltd, has filed the return of income for assessment year 2010-11 declaring total income of Rs.2,35,251/- and Rs. 26,97,925/- for assessment year 2011-12 in the name of M/s RPL Capital Finance Ltd after its merger with the said company. The balance sheet of RPL Capital Finance Ltd, as on 31st March, 2011 shows capital and free reserves of Rs.53.78 crores. When the assessee has filed the full details of the said lender along with the copy of the income tax return, audited financial statements, bank

statements, confirmation, etc., we are of the considered opinion that the assessee has discharged the onus cast on it by proving all the three ingredients of section 68, namely, the identity and credit worthiness of the persons and the genuineness of the transaction. Further, it is not a case of issue of any bogus share capital with high premium. We, therefore, set aside the order of the CIT(A) on this issue and direct the AO to delete the addition. The grounds raised by the assessee are accordingly allowed.

4.3.13 Hon'ble Jurisdictional Indore ITAT in the recent case of ACIT vs Ariba Foods Pvt Ltd and Ors in ITA No 736IIInd/2019 dated 11.01.2021, has held that funds were received from group companies of the Bangur Group and simultaneously survey proceedings were carried out in all group companies, during search/survey no incriminating material was found, the AO during assessment proceedings had not whispered a single word regarding any enquiry made and statement recorded by him, no opportunity of cross examination was provided by the AO, the assessee has established identity and creditworthiness of the lender and genuineness of the transaction and the loan/share capital investment has been accepted by the AO in the case of investor companies. The facts of the case of appellant and M/s Ariba Foods (supra) are an exact match. The appellant, as discussed above, has fully explained identity & creditworthiness of the lenders and genuineness of the transaction. No enquiry was made by the AO and no incriminating material was found during the course of search for the alleged addition. The relevant extract of decision of Hon 'ble ITA T in the case of Ariba Foods (supra) is as under:-

“29. We find that the entire assessment order is based upon some statements recorded by the Investigation Wing or by some other authorities on some earlier occasions, and the AO has not conducted any independent inquiry at his own from the lender companies, despite the assessee's making a specific request to him to issue summons u/s. 131 or letters u/s. 133(6) to the lender companies. Recently, the Coordinate Bench Mumbai in the case of Smt. Kalpana Mukesh Ruia vs. DCIT 2021 (1) TAIL 93 - ITAT ITA No. 736, 737 & 77312019 Ariba Foods Pvt. Ltd & Ors. 66 Mumbai in its order pronounced on 3111212020 has deleted the addition made u/s. 68 by holding as under:

"56. As regards the addition of unsecured loans is concerned above note that assessing officer has accepted that assessee had submitted the confirmation, ITR, Bank Statement of parties. However, he rejected by simply observing that investigation w=« at Kolkata has reported that some of the entry operators are providing bogus loans at Kolkata. The assessing officer did not make any enquiry of his own and only referred to the date of the confirmation of the unsecured loan and give adverse inference

57. We find that by simply referring to the general findings of the Investigation Wing at Kolkata entry operators providing bogus loans, the revenue authorities cannot fasten liability of unsecured loans upon the assessee, unless the assessing officer makes enquiries of his own and rebut the documentary evidences

submitted by the assessee. The assessee has duly discharged its onus of submitting the loan confirmation. Income Tax Returns and Bank Statements and Financial Statements of the loan creditors. Without making inquiry of his own, the assessing officer has rejected them which is totally unsustainable. "

30. We observe that the Ld AO issued the commission in respect of one of the lender companies at the old address Whereas, in the body of the assessment order itself, he has brought on record the copy of the Notice of the Extra Ordinary General Meeting held by one of the lender companies for changing its address from Kolkala to Ujjain. In the similar circumstances, their lordships of the Hon 'ble Bombay High Court in the case of PCIT vs. Shree Rajlaxmi Textile Park Pvt. Ltd. (2020) 268 TAXMAN 0405 (Born.) was pleased to upheld the order of the Tribunal deleting the addition u/s. 68 of the Act where the AD despite having correct address on his record sent notice to the creditor at a wrong address which came back unserved.

31. Further we observe that during the course of the assessment proceedings, the assessee had furnished all the necessary documentary evidences such as copy of certificate of incorporation, copy of Memorandum and Articles of Association, copy of Acknowledgement of Income Tax Return, copy of Master data downloaded from the official website of the MeA, particulars of directors of all the lender companies for establishing the identity of the lender companies. For establishing the genuineness of the transactions, the assessee had also furnished the copies of ledger accounts of the lender companies in the books of the assessee company and vice versa, copies of confirmation letters duly given by the lender companies, copies of the relevant bank statements of the lender companies and as also of the assessee company demonstrating that all the transactions had taken place through banking channels only. Further, in order to establish the creditworthiness of the loan creditors before the AD, the assessee had furnished copies of the audited financial statements of the lender companies, copies of assessment orders passed in the cases of the lender companies and as also statement showing details of the taxable income and tax paid by the lender companies in the last eight years. Although, the transactions being loan transactions and not the transactions relating /O the share capital, the assessee was not required to establish the source of the source as contemplated under proviso to Section 68 of the Act, but, despite such fact, the assessee had not only furnished the details regarding availability of 'funds in the hands of the lender companies immediately before providing loans to the assessee company but has also furnished the necessary documentary evidences such as the copies of bank accounts, financial statements and Income-Tax Returns of the subcreditors. We find that all the aforesaid documentary evidences have also been furnished by the assessee before us in Paper Books filed in two volumes and the relevant aforesaid documents are placed at Page No. 170 to 676 of the Paper Book.

32. We also observe that in the instant case, although the AO has disputed the identity and genuineness of the loan transaction carried out by the assessee with the Dwarkesh Finance Ltd. Famous Vanijya Pvt. Ltd

and Navyug Vyapar Pvt. Ltd. but. in respect of the share capital transactions aggregating to a sum of Rs. 6,37,00,000/- carried out by the same three companies with the assessee company in the same financial year, the same A O has accepted the genuineness of the transactions and as also the identity of these companies. Thus. the A O has adopted two different approaches for two different kind of transactions carried out by the assessee in the same companies in the same financial year which in our view is not permissible.

33. We further observe that one of the lender companies namely, Navyug Vyapar Pvt. Ltd had provided loans to the assessee company for an aggregate sum of Rs. 10.13,83,277/- and before providing loan to the assessee company, the lender company had raised substantial amount of Rs. 9,00,45,000/- by way of issuance of Share Capital and the Shareholders subscribing the shares in such lender companies were having taxable income of more than Rs. 20 Crores as per their personal income tax returns for A. Y 2016-17 and this fact strongly goes in favour of the assessee and its cash creditor company about the source of funds received by the assessee.

34. It is also observed that Dwarkesh Finance Ltd was a Public Limited Company duly listed on Vadodra Stock Exchange and therefore, its identity cannot be disputed Further such company provided funds to the assessee company out of the funds received by it from other group companies namely, Vyankatesh Plastics and Packaging Pvt. Ltd and Shree Niwas Polyfabrics and Packrvell Pvt. Ltd

35. We further observe that the other lender company namely, Mis. famous Vanijya Pvt. Ltd had also provided funds to the assessee company out of funds procured by it from other group companies namely, Mrs. Vyankatesh Corrugators, Shree Packers MP. Private Limited, etc. Thus, by any stretch of imagination, the trail of the fund's in the hands of the assessee company emanated from the lender companies cannot be disputed or doubted The Ld. A O could not rebut the genuineness of the various documentary evidences furnished by the assessee before him for establishing the genuineness of the loan transactions. Thus, the assessee had discharged its onus of proving the genuineness of the sum credited in its books of accounts as contemplated u/s. 68 of the Act and since, no inquiry was conducted by the A O, the addition was not sustainable as held by the Hon 'ble Karnataka High Court in the case of Mis. Kumar Nirman and Nivesh Pvt. Ltd vs. the Assistant Commissioner of Income Tax Bangalore 2020 (3) TMI340 (Karn. HC). Their Lordships at para (7) of the Order were pleased to hold as under: "In the background of aforesaid well settled legal principles, the facts of the case may be seen. In the instant case, the assessee in support of identity, genuineness of transaction and credit worthiness of Mis. Bhuawania Bros. Pvt. Ltd had supplied a copy of the balance sheet and profit and loss account to the Assessing Officer. The appellant had also filed the copy of the return of income of Mis. Bhuawania Bros Pvt. Ltd as well as copy of information letter. The appellant having proved the identity and creditworthiness of the party as well as the genuineness of the transaction had discharged its burden and it was for the revenue to conduct an enquiry and to prove that the transaction in question was not genuine and the identity of the

creditor was not established and it had no credit worthiness. In the instant case, the revenue has not conducted any enquiry and has failed to discharge its burden. In view of preceding analysis, we answer the substantial question of law Nos. (i), (ii) and (iii) in the negative and in favour of the assessee and against the revenue. "

36. We also observe that the various screenshots and cash trail pointed out by the CIT(DR), from the findings given by the A O in respect of one of the lenders namely, Navyug Vyapar Pvt. Ltd pertain to the year 2010 only and therefore, they cannot be said to be having any nexus with the loan transaction.,' carried out by the assessee during the year under consideration. From the Paper Book filed by the assessee, it is appearing that the case of aforesaid lender company, an assessment u/s. 143(3) r. w.s. 147 of the Act was framed post survey event in the assessee's group on 24.12.2018 for A. Y 2011-12 and the AO framing such assessment has not found any irregularity or infirmity in the transactions pointed out by the present Assessing Officer

37. It is also not disputed that all the lender companies are assessed to tax and they have duly shown the interest income earned by them on the loans provided to the assessee company in their returns of income for the concerning assessment year and have also claimed the TDS made by the assessee company on such interest payment which has duly been allowed. The assessee company has made substantial repayment of the loans again through banking channels. The Ld. CIT in his order has very elaborately dealt with loan transactions carried out by each of the lender companies with the assessee company. Before us, the ld. DR could not point out any discrepancy in the findings given by the ld. CIT(A) on the merits of the loan transactions.

38. Further we do not find any substance in the ground of the revenue that no consideration is required to be given to the various documentary evidences but the facts should be on the groups of the assessee and group companies working as dummy paper companies. It is a trite law that a suspicion howsoever strong it may be cannot substitute the legal proof especially when such legal proof remains uncontroverted. The addition made by the Ld. A.O are more on the basis of the theory adopted on the basis of some investigation carried out in the preceding years 'which either may had its fate by way of additions in the hands of the respective companies in those years. Had there been additions in the hands of those companies in the preceding years then there remains no reason to make any additions in the hands of other assessee(s) in the subsequent years and in case in the preceding years if no addition could be made by the revenue authorities in other lender companies or assessee company that could not be a basis with the revenue authorities to tax such untaxed income in the hands of the in the subsequent assessment years because it is well established rule that each assessment year is to be treated separately and the assessee should be taxed for the income earned during the year to which it pertains.

39. We therefore in the given facts and circumstances of the case, respectfully following the judgments and decisions referred herein above and being satisfied with the documentary evidences filed before us are of

the view that the assessee has successfully discharged its onus to prove the identity and creditworthiness of the three cash creditors i.e. M/s DFL, M/s EVPL and M/s NVPL and the genuineness of transaction of unsecured loan taken by the assessee company from these three companies. Thus there remains no reason to interfere in the detailed finding of Ld. CIT(A) deleting the impugned addition of Rs.12, 44, 12, 690/- made by the Ld. A.O invoking provisions of Section 68 of the Act for unexplained cash credit. Ground No.2 to 7 of the Revenue stands dismissed."

4.3.14 Thus, in view of my findings already given above, various judicial pronouncements as referred to by the appellant in its written submission and as also in the light of the facts and circumstances of the case, the appellant has successfully establish the identity of the loan creditor company, the genuineness of the loan transactions carried out with such companies, and as also, the creditworthiness of such nine loan creditor companies, by furnishing the necessary documentary evidences and the AO, except relying upon the third person statements has not brought any positive material on record to discredit the explanation and various documentary evidences furnished by the appellant, I thus, hold that there was absolutely no justification for the AO in making the addition of Rs. 1,50,00,000/- in the total income of the appellant. Thus, in view of the above discussion, addition made by the AO amounting to Rs. 1,50,00,000/- is Deleted. Therefore, appeal on this ground is Allowed.

4.4 Ground No. 4 of AY 2015-16 and Ground No.2 of AY 2016-17:- Through this ground of appeal the appellant has challenged the disallowance of interest expense of Rs.1,96,767/- in AY 2015-16 and Rs.14,20,720/- in AY 2016-17 paid on unsecured loan taken from M/s Piyali Trading Company Pvt. Ltd. Once, it has been held that the loan taken from company is genuine then the interest paid on such loan is also an allowable expenditure. Therefore, the disallowance made by AO on account of interest expense of Rs. 1,96,767/- in AY 2015-16 and Rs. 14,20,720/- in A.Y. 2016-17 is deleted. Therefore, appeal on this ground is allowed."

7. Before us, the Ld. Representatives of both sides made strong submissions in favour / against the additions. While Ld. DR relied upon the assessment-order, Ld. AR relied heavily upon the order of Ld. CIT(A). After a careful consideration of the rival submissions of both sides and on perusal of material held on record, we note following:

- (i) The assessee had filed copy of PAN card and ITR of PTCL, which establishes the identity of PTCL; the assessee has filed Loan confirmation-letter, Bank Statement and Auditor's Report of PTCL and also proved that PTCL was having funds, whether own or borrowed, which proves creditworthiness of PTCL; and the loans have been taken

through banking channel, which establishes genuineness of transaction. Ld. AR pointed out that the audited Balance-Sheet of PTCL is held on record in which the loans taken by assessee are duly reflected. Thus, all three ingredients of section 68 are clearly proved.

- (ii) The loans had been repaid alongwith interest in the subsequent year [Para No. 4.3 of assessment-order / Para No. 4.3.6 of the order of Ld. CIT(A)]. The factum of repayment within a very short span of time is sufficient enough to support that the loans were genuine.
- (iii) The assessee had paid interest after deducting TDS as applicable. PTCL has shown interest income in its ITR and also claimed credit of TDS [Para No. 4.3.8 of order of Ld. CIT(A)].
- (iv) The assessee has filed certificate of incorporation, memorandum of association, articles of association and abstract of mast data downloaded from website of the Ministry of Corporate Affairs of PCTL [Para No. 4.3.10 of the order of Ld. CIT(A)], which proves that PTCL is a company existing, governed and recognized statutorily under the Companies Act. The Ld. AO has not brought on record any evidence to demonstrate that the PTCL has been de-recognised by the regulatory-authorities under Companies Act or that the PTCL has been identified as a shell company by those regulators. There is no iota of adverse information gathered by Ld. AO from any of the statutory or non-statutory agencies which could demonstrate that PTCL is a paper-company.

8. The above facts / evidences clearly establish that the Ld. AO has no basis to project PTCL as a paper-company. At this stage, we also observe that the Ld. AO is heavily harping upon the statements of Shri Kailash Mehtani, director of PTCL. But we also observe that his statements were recorded at the back of assessee and no opportunity of cross-examination was given to the assessee. In fact, there was no intimation to the assessee so far as the said interrogation is concerned [Para No. 4.3.2 and 4.3.5 of the

appeal-order of Ld. CIT(A)]. During hearing, the Bench asked the Ld. AR as to whether the assessee demanded opportunity of hearing from Ld. AO? In reply, Ld. AR categorically mentioned that the assessee came to know of the Statements after passing assessment-order and hence there was no occasion to demand such opportunity. Ld. AR strongly contended that the Ld. AO has recorded statements and used the same in framing assessment at the back of assessee. Ld. DR could not rebut such categorical submissions of Ld. AR. Therefore, the reliance placed by Ld. AO upon those Statements is clearly and absolutely illegal in the eyes of law. It is a settled-law in innumerable decisions that the Statements recorded at the back without affording opportunity of cross-examination, has no legal validity and any addition made on the basis of such statement has not legs to stand.

9. That brings us to conclude that the Ld. AO has made addition which could neither stand on facts nor in law. Hence, the Ld. CIT(A) has rightly deleted the same and we do not find any infirmity in the action of Ld. CIT(A). We, therefore, uphold the order of Ld. CIT(A) and dismiss Ground No. 1 of revenue.

Ground No. 2:

10. In this Ground, the revenue claims that the Ld. CIT(A) has erred in deleting the disallowance of Rs. 3,48,000/- made by Ld. AO on account of remuneration paid by assessee-company to Smt. Sadhna Todi (director).

11. During assessment-proceeding, Ld. AO observed that that during search-proceeding the director stated that she was not a director in assessee-company; and when she was asked for her duty as director in another company (M/s Bharti Ingot Pvt. Ltd.), she admitted that she does not carry out any work of the company. Ld. AO also observed that the director had been taking Rs. 60,000/- per month from her husband for household expenses. With such observations, Ld. AO inferred that she is only a housewife and had been made director of the assessee-company only to inflate expenses of the assessee-company. Vide letter dated 20.03.2017,

Ld. AO confronted the assessee as to why the remuneration may not be disallowed but the assessee did not file any reply to Ld. AO. Therefore, Ld. AO made addition / disallowance.

12. During first-appeal, Ld. CIT(A) observed that the addition / disallowance has been made solely on the basis of statement of director recorded during search and there is no other material; that in the Statement the director merely stated that she was not much involved in any of the group-companies, which was not a specific statement pertaining to the assessee-company; that the director is a well-qualified lady holding BA, LLB degrees; that the assessee-company is engaged in the business of fashion designing, beauty parlour, boutique, etc. which is a woman-dominated business in which the director was involved. Ld. CIT(A) further observed that the remuneration had been paid through banking-channel and the concerned director did not prefer to withdraw, the household expenses being met by her husband. With these observations and conclusions, Ld. CIT(A) deleted the disallowance.

13. Before us, Ld. DR supported the assessment-order. Per contra, Ld. AR relied heavily upon the order passed by Ld. CIT(A).

14. We have considered rival contentions of both sides and perused the material held on record. We observe that the addition has been made merely on the basis of statement of director recorded during search and there is no incriminating material or evidence found during search. We further observe that the Statements of director, though not produced before us by either side during the hearing yet as can be culled out from the orders of lower authorities, regarding duties or non-involvement in duties was not with reference to the assessee-company. We further observe that the Ld. CIT(A) has made findings / observations taking into account various factual aspects, as narrated above, which Ld. DR could not seriously rebut / contradict before us. Therefore, we do not find any infirmity in the view

taken by Ld. CIT(A). We are, thus, persuaded to uphold the order of Ld. CIT(A) and dismiss Ground No. 2 raised by revenue.

15. In the result, this appeal of Revenue is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 09/11/2022.

Sd/-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 09.11.2022

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	7.11.22
2.	Date of typing & draft order placed before the Dictating Member	7.11.22
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	
6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	