

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI****BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM**

आयकरअपीलसं/ I.T.A. No.462 /Mum/2019 &amp; I.T.A.No.463/Mum/2019

(निर्धारणवर्ष / Assessment Year: 2010-11)

Dy. Commissioner of Income Tax Circle-1,6 <sup>th</sup> Floor, Ashar IT Park, B wing Wagle Industrial Estate Thane- 400604	<b>बनाम/</b> Vs.	M/S Darshan Enterprises 2 <sup>nd</sup> Floor, Rosa Vista, Ghodbunder Road, Opp. Suraj Water Park, Thane(West) 400615
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AADFD8612N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Shashi Tulsian	
Revenue by:	Ms. Mahita Nair, Sr AR	

सुनवाईकीतारीख / Date of Hearing: 26/10/2022  
घोषणाकीतारीख /Date of Pronouncement: 13/01/2023

**आदेश / O R D E R****PER ABY T. VARKEY, JM:**

These are appeals preferred by the Revenue against the action of the Ld.CIT(A)-Nashik dated 5-11-2018 for AY 2010-11. [One i.e. ITA 462 is against the quantum deleted by Ld.CIT(A) and ITA 463 is against the penalty u/s 271(1)(c) of the Income Tax Act, 1961(hereinafter “the Act”) deleted by Ld.CIT(A)].

2. First of all we will take up the quantum appeal preferred by the Revenue wherein the Revenue challenges the action of the Ld. CIT(A) to have deleted the addition made by the Assessing Officer (hereinafter referred to as AO) under section 68 of the Act.
3. Brief facts of the case are that the assessee Partnership Firm had filed return of income on 22.09.2010 declaring income of Rs. Rs. 1,47,73,191/-. Later the case for the relevant assessment year was selected for scrutiny and the AO noted that

the assessee had in its books recorded credit entry to the tune of Rs. 6,36,24,074/-. And when asked about it (the credit entries), the assessee replied that it is engaged in the business of purchase and sale of plot of lands at Thane and in the course of its business and in order to meet its working capital requirements, it borrowed money from several unsecured creditors through finance broker M/s KAH consultancy; and through it [finance broker] loan was taken from 127 parties in the relevant assessment year. And in the course thereof, the assessee duly paid interest on which TDS was deducted at appropriate rates of tax. And the assessee gave details of all the unsecured lenders [ PAN, loan confirmations, Income tax returns, Bank statement extract evidencing the loan transaction and the balance sheet of all the 127 loan creditors] from which the AO understood that these loans were also repaid from time to time.

4. Pursuant to which the AO issued notices under section 133(6) of the Act to selected 73 parties requiring them to furnish copy of the bank statements, PAN etc. According to AO, out of these, notices could not be served to 39 parties, and out of 34 parties who were served notices, 11 parties did not reply but 23 parties replied. And no notices were issued to 54 parties. And at the fag end of time barring of assessment, the AO informed the assessee's representative to produce all the 127 lenders within a span of 24 hours before him. And since the assessee could not produce all the 127 lenders before the AO on 26.3.2013, the AO drew adverse inference against all the unsecured lenders and added the entire loan amount under section 68 of the Act of Rs.6,36,24,074/- only on the reason that the assessee could not produce the lenders/ creditor before him and framed the assessment order dated 28.03.2013 under section 143(3) of the Act wherein the total income of the assessee was

determined to be Rs. 8,23,09,515/- by making addition/disallowances totaling to Rs.6,75,36,324/- as under:-

Sr. No.	Particulars	Amount (Rs.)
1.	Addition of unsecured loan received as unexplained cash credit	6,36,24,074/-
2.	Addition of interest on unsecured loan	34,06,250/-
3.	Disallowance of business promotion expenditure	5,00,000/-
4.	Disallowance of donation	6,000/-
	Total (Rs.)	6,75,36,324/-

5. Aggrieved by the aforesaid action of the AO, the assessee preferred an appeal before the Ld. CIT(A) and during the course of first appellate proceedings, the assessee again filed all the documentary evidences, which it filed before the AO to discharge the burden to prove the identity, creditworthiness of the lenders /creditors and genuineness of the transaction by submitting Confirmation of Account, Income tax returns, PAN, Bank statement and Annual Accounts (Balance sheet etc)with regard to all the 127 lenders. Since, as per the Ld. CIT(A) the documentary evidences were not verified by the AO during the course of assessment proceedings, the Ld. CIT(A) sent the same to the AO with following directions as under :

2. In this case a huge addition has been made u/s 68 on account of unexplained case credits along with consequential interest. The ld. AR of the assessee has filed a detailed written submission dated 31.7.2014 in a box file containing 596 pages of supporting documents. It has been claimed by the Ld.AR that all these documents in the form of confirmation, proof of filing Income tax return and copy of bank statements of the loan creditors were also filed before the AO.

3. It is also stated by the Ld.AR that at the last moment, the A.O. vide letter dated 22.3.2013 (served on 25.03.2013) required the assessee to produce all 127 parties before him on 26.3.2013 giving a very short period of time for compliance.
4. In view of the above facts, you are requested to please examine the documentary evidences and also the loan creditors u/s 131, if deemed necessary, and submit a comprehensive report by 14.8.2014 positively

7. Pursuant to which the AO submitted a remand report vide his letter dated 10.02.2017, the relevant extracts of the report are reproduced as under:-

4. During the remand proceedings, a letter dated 12.10.2015 has been issued to assessee to produce all the loan creditors during the period 26.10.2015 to 10.11.2015 in lot of 10 creditors. In response assessee could produce only 4 creditors whose details are as under :-

<i>Sr. No</i>	<i>Name</i>	<i>Date of attendance</i>	<i>Amount of Loan</i>
1	<i>Suresh D Jain(HUF)</i>	<i>28.10.2015</i>	<i>293396</i>
2	<i>Mrs Santosh S Mehta</i>	<i>28.10.2015</i>	<i>1539862</i>
3	<i>Mrs Gunjan Khetwani</i>	<i>10.11.2015</i>	<i>868800</i>
4	<i>Mrs Vinita J Khetwani</i>	<i>10.11.2015</i>	<i>2470551</i>

5. Further one more opportunity vide letter dated 30.11.2016 has been given to assessee to produce all the loan creditors during the period of 26.12.2016 to 12.01.2017 in lot of 10 creditors. In response to this letter the assessee has submitted his reply vide letter dated 23.01.2017 in which the assessee has expressed his inability to produce these parties for verification. The relevant portion of the letter is reproduced as under:

“kindly appreciate that we had borrowed the funds (from family members of the partners) by engaging the services of the finance brokers, M/s KAH consultancy. We did not have any direct contact with the unsecured loan parties. All the disputed loans except for loans from family members, have been repaid now. It is more than 7 years from the date of receipt of these loans. In such circumstances, it is beyond us to produce the loan parties for personal verification. As requested earlier, if required, your honour may verify the parties

with the powers at your command. The necessary details with regards to the above parties are already on record.”

6. In view of the above facts it is clear that assessee was not able to produce the all 127 loan creditors either in assessment proceedings or remand proceedings. In assessment proceedings, assessee showed his inability to produce these parties due to paucity of time. However in remand proceedings, in spite sufficient time has been offered to the assessee, he again failed to produce these parties.
7. In view of the above, it is clear that the assessee has repeatedly failed to produce the loan creditors for the verification, hence failed to discharge its onus fully. Mere filing of loan confirmation and their respective return will not prove the genuineness of the transactions. Reliance is also placed on the judgement in the case of Bharti Pvt Ltd Vs.CIT (1978) 111 ITR 961 (Cal) and Jamnaprasad Kanhaiyalal Vs CIT (1981) ITR 244 (SC).
8. In view of the above facts it is requested that the decision may kindly be taken on merits and submissions of the case. The submission of ld.AR dated 31/07/2014 alongwith all documents running into 596 pages in a Box file are returned herewith alongwith this report as directed.”

**8.** The Ld. CIT(A) furnished copy of the remand report to the Assessee and in response to the comments by the AO in the remand report dated 10.02.2017, the assessee filed written submission before the Ld.CIT(A) vide letter dated 27.02.2017, explaining the reasons for inability to produce the parties before the AO. The gist of the submissions are as under:

- i. In support of the genuineness of the unsecured loans, the assessee has filed documentary evidences during the course of assessment proceedings as under:
  - ii) Loan confirmations duly signed by the creditors containing name, address and PAN and ledger account of the party
  - iii) Copies of IT Return of the lender parties with copy of ack for filing of return

iv) Copy of bank pass book of the loan parties reflecting transactions pertaining to assessee.

The above filings has also been accepted by the AO in the assessment order. The AO in the remand report also admitted that copies of all the above documents are on record and are not in the nature of new evidences.

- ii. During the time window granted by the AO between 26.10.2015 to 10.11.2015, the assessee could only produce four parties and these parties were examined and their statements were recorded by the AO and no adverse comments were recorded with regard to these parties.
- iii. The assessee further sought to produce 3 more parties on 18/11/2015 but the AO did not entertain the assessee stating that period granted till 10/11/2015 was over.
- iv. Thereafter, vide letter dated 30/11/2016 (**Page No 23-24 of the Paperbook**), the AO, almost after a year once again requested for production of all the loan parties.
- v. That the assessee filed letter dated 23.01.2017 (**Page No 25-29 of the Paperbook**) before the AO stating that the unsecured loan from these parties have been repaid long back and therefore it was difficult to persuade the parties to appear before the AO.
- vi. It was further submitted that the assessee did not have direct contact with these parties since the unsecured loans were borrowed through finance broker M/s. KAH Consultancy (Address: Plot No. 86, Ravi Kiran, MCCH Society, Panvel). The relevant copy of bill of M/s. KAH Consultancy with voucher, bank statement reflecting payment of brokerage after deduction of TDS (**Page No 30-37 of the Paperbook**) was placed on record. The assessee therefore requested the AO to enforce the attendance of the loan parties during the remand proceedings through its statutory powers.

- vii. The assessee filed copies of ledger accounts of the 127 loan parties from A.Y. 2010-11 till date to evidence that it had already repaid these parties long time back and therefore was unable to produce these loan parties before the AO.
- viii. The summary of the compliances by the 127 parties is as under
1. Out of 127 loan parties, no notices was sent to 54 parties even though all the documentary evidences like Loan confirmation, Ledger account, Bank statement and Annual accounts were filed before the AO. Therefore the onus u/s 68 stands discharged by the assessee.
  2. Out of the 74 parties to whom notices u/s 133(6) was issued, the notices was served to 34 parties and out of that 23 parties immediately responded and filed all the required details. The balance 11 parties the AO again issued notices u/s 133(6) and in response they attended before the AO and filed the required documents.
  3. With regard to 39 parties (out of 74) to whom notices could not be served earlier in the first instance, they were not available at the addresses and hence the notices were returned un-served. The finance broker contacted them personally and they had filed the necessary details with the AO.
  4. Therefore all the 74 parties on whom notices were issued had complied with the notices of AO.
  5. The burden placed upon by section 68 has been duly discharged to substantiate the cash credits and that the addition of the nature made by Ld AO is not warranted.

**9.** The Ld.CIT(A), after considering the relevant documents filed to prove the nature and source of the credit/loans and the remand report and considering the ratio laid in the decisions of CIT Vs Orissa Corporation P Ltd 159 ITR 78 (SC) ,

Orient Trading Co Ltd v CIT, 49 ITR 723 (Bom) (1963), DCIT vs Rohini Builders 256 ITR 360 , Pr CIT V M/s Chawla Interbuild Construction vs Pvt Ltd ITA 1103 of 2015 , Pr CIT Vs Hi-tech Residency 257 Taxman 335 (SC) and CIT Vs Haresh Mehta 251 Taxman 346(2017) passed an order dated 05.11.2018 and deleted the addition made under section 68 of the Act. The relevant findings of the Ld CIT(A) from his impugned order are reproduced as under :

*(v) To sum up, in this case, the appellant firm had taken unsecured loan of Rs. 6.36 Crs from 127 persons, through finance broker KAH Consultancy. The appellant submitted confirmations with PAN, Bank account extracts and copy of I.T return in respect of these parties. The AO wanted to examine the credibility of these persons and genuineness of the transactions. He issued notices u/s 133(6) to 73 parties, out of which, 34 were served and 23 gave the replies. He issued summons to the remaining 11 persons, out of which, 8 persons gave reply in tapal. He could not issue 133(6) in respect of remaining 54 persons because of incomplete addresses. He thereafter, wanted the appellant to produce these persons. The appellant pleaded inability, as he had discharged the primary onus by giving the basic details, giving the identity, source of investment by giving the bank account and copy of Income Tax Return. Regarding genuineness of the transactions, it was stated that, all the loans have been prepaid long time back and therefore, it was difficult to persuade the loan parties for personal attendance. Further, the loan was taken through a broker, who was paid brokerage, after TDS deduction. The appellant submitted ledger accounts all the 127 parties showing the yearly payment of interest with deduction of TDS and repayments of loan in subsequent years and showing that nothing was payable to them even at the time of passing of the assessment order on 28.03.2013. Therefore, for non attendance by the loan creditors, cannot be the reason to treat as*

*unexplained cash credit u/s 58 of the Act, as the appellant has already discharged the primary onus of the transactions by proving Confirmations with PAN, copy of Income tax returns & Bank account extracts in respect of the loan creditors.*

*(vi) In view of the facts of the case, the relevant provisions of law and judicial decisions cited above, I hold that there is absence of sufficient ground to dispute the cash credits. The AO has not pointed out any justified reason to doubt the veracity of the concerned loans. The appellant having discharged the onus u/s 68 and the AO not having pointed out any significant defect in the evidences furnished, neither during asst. proceedings nor during remand proceedings, the adverse view in respect of the said loans would not be appropriate. Accordingly, addition of Rs.6,36,24,074/- made by the AO u/s 68 of the I. T. Act, 1961 is held by me to be not justified and accordingly deleted.*

**10.** Aggrieved by the aforesaid action of Ld.CIT(A), the Revenue is before us and has raised the following seven (7) grounds of appeal which are reproduced as under:-

1."Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs 6,36,24,074 made on account of unexplained cash credit u/s 68 of the IT Act 1961 without appreciating that mere submission of copies of return of income of the loan creditor and confirmation from loan creditor does not ipso facto establish the genuineness of the transaction which is one of the important ingredient to be established by the assessee".

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of

Rs.6,36,24,074 made on account of unexplained cash credit u/s 68 of the IT Act 1961 without appreciating the fact that the assessee repeatedly failed to produce the loan creditors before the A.O. during the assessment and even remand proceedings in spite of sufficient time offered to the assessee,

3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not taking cognizance of the finding of the assessing officer in paras 5, 6 & 7 of the remand report dated 10/02/2017 wherein the A.O. clearly mentioned that assessee has failed to produce all 127 loan creditors either in assessment or in remand proceedings and assessee showed his inability to produce these parties.

4."Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 6,36,24,074/- made on account of unexplained cash credit u/s 68 of the IT Act 1961 without appreciating the fact that the assessee cannot absolve itself from the onus of proving the genuineness and creditworthiness of the loan creditors only due to the fact that the loans were arranged through broker.

5. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs. 34,06,250/- made on account of interest paid on unsecured loans without appreciating that the assessee had failed to establish the genuineness of the transaction of the unexplained cash credits u/s 68 of the I.T. Act which is one of the important ingredient to be established by the assessee?".

6.The appellant craves leave to add, amend, alter or delete any grounds of appeal.

7. The order of the CIT(A) may be vacated and that of the assessing officer be restored.”

**11.** During the course of hearing before us, the Ld. DR representing the Revenue, assailed the impugned action of Ld CIT(A), and brought to our notice the action taken by the AO while enquiring in to the credit entries and ultimately had to make the addition under section 68 of the Act because the assessee failed to prove the *nature and source* of credit entries, and so addition was warranted. And the Ld CIT(A) erred in deleting it. The Ld. DR also referred to and relied on the following decisions : CIT Vs Maithan International 375 ITR 123 (Cal) and Pavankumar Sanghvi V ITO 165 ITD 260(Ahmd –Trib) apart from relying on the decisions referred to in the assessment order viz Bharti Pvt Ltd Vs CIT (1978) 111 ITR 951(Cal) and Jamnaprasad Kanhayalal Vs CIT 130 ITR 244 (SC).

**12.** The Ld DR filed an affidavit dated 19.10.2022 from Pr.CIT pointing out that Para 7 and Para 8 of the remand report dated 10.2.2017 of the AO has been erroneously reproduced in the impugned order of Ld CIT(A). The extract of the affidavit are reproduced as under

“After verification of the above remand report and order No.NSK/CIT(A)-1/254/2017018 dated 05.11.2018 of the CIT(A)-1, Nashik, it is observed that there is a variation in paragraphs 7 & 8 of the remand report and their reproduction on Page 26 of the above mentioned order of the CIT-A-1 Nashik are as under

Paragraphs 7 & 8 of the remand report of DCIT, Cir-1, Thane submitted vide letter No. THN/DCIT/Cir-1/Remand Report/2014-15 dated 10.2.2017

*“7. In view of the above, it is clear that the assessee has repeatedly failed to produce the loan creditors for the verification, hence failed to discharge its onus fully. Mere filing of loan confirmation and their respective return will not prove the genuineness of the transactions. Reliance is also placed on the*

*judgement in the case of Bharti Pvt Ltd Vs. CIT (1978) 111 ITR 961 (Cal) and Jamnadas Kanhaiyalal Vs CIT (1981) ITR 244 (SC).*

*8. In view of the above facts it is requested that the decision may kindly be taken on merits and submissions of the case. The submission of ld.AR dated 31/07/2014 alongwith all documents running into 596 pages in a Box file are returned herewith alongwith this report as directed.”*

Paragraphs 7 & 8 of the remand report as mentioned in page 26 of the order of the CIT(A)-1, Nashik

*“7. On verification of the records it is seen that the loan confirmations are duly signed by the loan creditors containing the names, complete addresses , PAN copies of IT returns and bank pass books reflecting the loan transactions barring the six parties where bank statements are not furnished (whose names are mentioned in the table of para 3 above ). On perusal of the details filed as well as the assessment order , the assessee appears to have discharged its primary onus of explaining the nature and source of the borrowings. The matter may be decided on merits.*

*8. The submissions of the ld.AR dated 31.07.2014 alongwith all the documents running into 596 pages in a box file are returned herewith alongwith this report as directed.”*

**13.** Since the Ld. DR has filed an affidavit taking exception to the wrong reproduction of Para 7 & 8 of the remand report [ as reproduced in the impugned order], that part of the wrong reproduction as alleged by Ld PCIT in the impugned order of CIT(A) is not given any credence and is ignored; and we make it clear that the same will not affect in anyway our adjudication of the action of Ld. CIT(A) which we will decide independently after considering the facts and evidences on record (refer para 7 supra where we have re-produced the correct para 7 & 8 of the remand report as stated in the Affidavit).

**14.** Further, the Ld. DR assailed the action of the Ld. CIT(A) and stressed that the assessee failed to produce the loan creditors which failure of the assessee should be viewed from the background that the AO during assessment proceedings had issued notices under section 133(6) of the Act and only few filed replies and appeared before him. Thus according to her, the assessee failed to prove the nature and source of credit to the tune of Rs. 6,36,24,074. Therefore the AO has rightly added the cash credits under section 68 of the Act and disallowed the interest purported to have been paid to the creditors. She emphasized that the Ld. CIT(A) failed to appreciate that the assessee during the assessment proceedings as well as during the remand proceedings failed to produce all the 127 parties before the AO. So, according to her, mere production of documents cannot absolve the assessee's burden of proof. Thereafter, according to the Ld DR , the AO's action to make addition under section 68 of the Act cannot be faulted and the Ld. CIT(A) ought to have upheld the addition. And therefore she pleaded that the impugned order of Ld. CIT(A) to be reversed and the AO's action to be upheld.

**15.** Per Contra, the Ld. AR, supporting the action of the Ld. CIT(A) contented that the assessee when asked by the AO to prove the *nature* and *source* of the credit entries recorded in the books, the assessee had filed documents to prove that the nature of credit was loan borrowed from 127 creditors through finance broker M/s KAH consultancy; and to prove the source, furnished complete details of all 127 parties by giving their names , addresses, confirmation of loan from lenders, PAN , Income tax returns, bank statement evidencing the transaction and Financial accounts including balance sheet of lenders. Thus, according to him the initial burden of proving the identity of the lenders, their credit worthiness and the genuineness of the transaction has been discharged. According to him, the AO was

made aware of the fact that the assessee being in the business of purchase and sale of plots of land in the course of its business and in order to meet its working capital requirement had borrowed funds through a finance broker M/s KAH consultancy, which arranged the loans from several unsecured creditors / lenders whose details were furnished to the AO. And during the assessment proceedings the AO had issued notice under section 133(6) of the Act to 73 parties out of 127 parties and the AO himself acknowledges that 34 parties were served notices and out of them 23 parties replied by filing the requisitioned documents directly to the AO. The AO also admits that out of 11 parties to whom summons under section 131 were issued, 8 parties filed replies in the tapal of his office. The AO at the fag end of time barring date vide letter dated 22.03.2013 (which was served on the AR of the assessee on 25.03.2013) was directed to produce all the 127 parties before him on 26.03.2013 ie within a span of 24 hours, which action of the AO according to him was arbitrary, whimsical and unreasonable. Drawing our attention to the list of 127 loan creditors and especially their addresses, the Ld. AR wondered as to how it was possible for any person to produce all the 127 parties who were residing at various far-flung places/districts within such a short time of 24 hours. The Ld. AR also pointed out that in response to the summons under section 131 of the Act, when the parties (8 nos) attended before the AO, it was the AO himself who directed the parties to file the documents in the tapal. According to the Ld. AR, even though the AO did not issue any notice/summons to 54 parties (out of 127 parties), still he drew adverse inference against them, without pointing out any defects about the documents filed to prove their identity and creditworthiness of the lenders and genuineness of the loan transaction, which action of AO according to Ld AR shows that he had prejudiced mind. Thus according to the Ld. AR, despite the assessee discharging the primary burden casted upon it as per section 68 of the Act, the AO without even pointing out any infirmity in the documents

filed by the assessee regarding the lenders who were regular income tax assesseees, the AO has made high pitched assessment by just giving 24 hours notice to produce all the 127 parties and thereafter drew adverse inference against the assessee which was rectified by the Ld. CIT(A) by passing a reasoned order wherein he took note that assessee had discharged the initial burden of proof regarding the loan taken from 127 lenders as well as the fact that TDS was deducted on interest payment to these lenders and that loans have been re-paid to all the lenders and so he deleted the addition.

**16.** Thereafter, the Ld. AR painstakingly took us through the documents filed by the assessee before the AO as well before the Ld. CIT(A), [a copy of which has been filed before us in the form of paper-book (PB)] to prove the identity of creditors, their creditworthiness and the genuineness of the transaction with respect to 127 parties which we find are given in the tabular form wherein in the first column numerical numbers from One(1) to One hundred and twenty seven(127) are given; and against each column, the names of the lenders are given; and correspondingly in the third column, the loan amount given to assessee; and in the fourth column, the documents to substantiate the identity, creditworthiness of the lender and genuineness of the loan transaction is mentioned; and thereafter in the fifth column the pages in the paper-book where such documents are found placed therein are stated as under :

Sr. No	Name	Amount (Rs.)	Documents	Page No. of Paparbook
1.	Aarti Pokar	488,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	153-158

2.	Amrut Jabuvani	542,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	159-164
3.	Amrutben Patel	592,900/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	165-168
4.	Amrutal Dadga	542,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	169-171
5.	Anup Sharma	826,133/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	172-175
6.	Arunaben Dholu	536,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	176-181
7.	Ashok G. Chauhan	536,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	182-187
8.	Ashok N. Makani (HUF)	620,600/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack.	188-191

			iv. Copy of relevant extract of passbook.	
9.	Ashwin G Patel	516,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	192-197
10.	Bharat H Vora	271,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	198-200
11.	Bharat S Patel	568,225/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	201-203
12.	Bharati R. Doshi	325,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	204-206
13.	Bhavana N Goswami	297,642/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	207-209
14.	Bhavna s Patel	517,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	210-212
15.	Bhavna B. Joshi	331,825/-	i. Copy of confirmation	213-215

			ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook.	
16.	Bunty B Bamania	357,350/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	216-220
17.	Chamshi P Satra(HUF)	306,300/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	221-224
18.	Chandan M Gada	643,800/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	225-228
19.	Chandanben Savla	306,300/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	229-231
20.	Chimanlal Gala	153,150/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	232-236
21.	Chirag Nemji Dedhia	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of	237-241

			passbook	
22.	Chunilal V Pokar	537,833/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	242-247
23.	Chunilal V Pokar(HUF)	669,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	248-253
24.	Daksha B Rajgor	405,875/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	254-256
25.	Damji N. Gada	463,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	257-260
26.	Damji P Patel	592,900/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	261-265
27.	Damyanti Keswani	324,700/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	266-269
28.	Devchand V Patel (HUF)	1032,667/-	i. Copy of confirmation ii. Name, Pan & Address	270-273

			iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	
29.	Dhanaben C Patel	1549,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	274-280
30.	Dhanji P Patel	651,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	281-286
31.	Dhanuba P. Jadeja	324,700/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	287-289
32.	Dilip K Patel (HUF)	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	290-293
33.	Dinesh M Gor	280,775/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	294-296
34.	Dipti Vedant	244,125/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	297-299

35.	Gunjan Khetwani	864,800/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	300-302
36.	Hansraj Senghani	429,200/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	303-305
37.	Harkhchand Gogari (HUF)	618,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	306-308
38.	Hasmukh Nakrani	569,625/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	309-314
39.	Heena L. Gala	268,917/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	315-317
40.	Ishwarlal Patel (HUF)	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	318-323
41.	Jayesh P. Patel	271,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack.	324-329

			iv. Copy of relevant extract of passbook	
42.	Kalaben A. Makani	620,600/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	330-333
43.	Kamal A. Upadhyay	268,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	334-337
44.	Kantaben A. Senghani	537,833/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	338-340
45.	Kantaben D. Patel	434,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	341-344
46.	Karanmshi. A. Dholu	409,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	345-349
47.	Kasturben Patel	268,917/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	350-355
48.	Keshav Ravatmal	618,000/-	i. Copy of confirmation	356-358

			ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	
49.	Ketan Naliyapara	379,750/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	359-361
50.	Ketan Senghani(HUF)	321,900/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	362-364
51.	Kuddus Ali Shah	517,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	365-367
52.	Laheerish Galal	268,917/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	368-370
53.	Laxmiben Paatel	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	371-375
54.	Laxmiben Limbani	268,917/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of	376-381

			passbook	
55.	Lilaben Limbani	536,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	382-387
56.	Lilaben S Patel	1032,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	388-390
57.	Madhu Bhanushali	325,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	391-393
58.	Mahadev V. More	434,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	394-397
59.	Mahendra K. Sanghavi (HUF)	321,900/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	398-400
60.	Mahendra V Shah	676,458/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	401-403
61.	Mahesh Raval (HUF)	189,875/-	i. Copy of confirmation ii. Name, Pan & Address	404-406

			iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	
62.	Maniben Surani	537,833/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	407-410
63.	Manish Gangar (HUF)	517,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	411-413
64.	Manish Jalawadia	361,433/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	414-419
65.	Manisha Ramani	539,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	420-425
66.	Manoj Thakkar	307,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	426-427
67.	Meenaben Gosai	877,767/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	428-430

68.	Meeta Vikmani	379,750/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	431-433
69.	Moghiben Patel	537,833/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	434-438
70.	Mohanlal Patel	432,933/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	439-441
71.	Mukesh Divani	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	442-447
72.	Nanji Patel (HUF)	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	448-451
73.	Naran K. Ramjiyani	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	452-455
74.	Narayangiri Goswami	517,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack.	456-458

			iv. Copy of relevant extract of passbook	
75.	Nayana Washani	434,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	459-462
76.	Nayanaben Jabuvani	563,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	463-466
77.	Neeta Shah	306,300/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	467-468
78.	Nilesh Hariya	268,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	469-472
79.	Nirmala Singadia	614,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	473-475
80.	Nirmalaben Patel	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	476-479
81.	Pachan Charan	379,750/-	i. Copy of confirmation	480-482

			ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	
82.	Pankaj Lalka (HUF)	437,750/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	483-485
83.	Paresh Patel	434,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	486-489
84.	Parsotam Ramji (HUF)	412,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	490-492
85.	Piyush Senghani	1085,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	493-495
86.	Pravin Modha	325,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	496-498
87.	Premchand Chhabiya	516,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of	499-501

			passbook	
88.	Premilaben D Surani	271,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	502-506
89.	Premilaben M Surani	409,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	507-511
90.	Priti D. Vira	511,667/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	512-514
91.	Priyanka Pokar	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	515-520
92.	Rajendra Salvi	517,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	521-523
93.	Rajesh Dani	271,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	524-526
94.	Rakesh I Patel	325,500/-	i. Copy of confirmation ii. Name, Pan & Address	527-531

			iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	
95.	Ramesh G Senghani (HUF)	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	532-537
96.	Ramji Patel	268,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	538-543
97.	Ranjana Atul Patel	360,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	544-549
98.	Rashimita Patel	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	550-555
99.	Rashmi Joshi	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	556-561
100.	Rasila Thakkar	324,700/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	562-564

101.	Ratanshi Jabuvani (HUF)	268,250/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	565-570
102.	Ravilal Patel (HUF)	811,750/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	571-574
103.	Rita Limbani	406,875/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	575-580
104.	Rita Patel	409,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	581-586
105.	Rupa Ravatmal	618,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	587-589
106.	Sadul Solanki (HUF)	310,300/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	590-594
107.	Sanjay Limbani	434,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack.	595-597

			iv. Copy of relevant extract of passbook	
108.	Santosh Jain/Mehta	15,39,862/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	598-600
109.	Saraswatiben Gusai	517,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	601-603
110.	Shailesh Mavani	409,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	604-607
111.	Shamant Charan	434,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	608-610
112.	Shantilal Pokar (HUF)	703,157/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	611-614
113.	Suresh Jain (HUF)	293,396/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	615-617
114.	Suresh Chhabhaiya	516,167/-	i. Copy of confirmation	618-620

			ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	
115.	Sushila Ramjiyani	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	621-626
116.	Sushila Bhatt	360,500/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	627-630
117.	Taraben Bhatt	257,167/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	631-634
118.	Upendra Surani	511,667/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	635-639
119.	Vaishali Hariya	847,467/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	640-644
120.	Vasanti Dand	334,750/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of	645-647

			passbook	
121.	Vasantlal Gala (HUF)	511,667/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	648-649
122.	Vijaykumar Rangani	539,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	650-655
123.	Vinita Khetwani	2470,551/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	656-657
124.	Vinod C. Solanki (HUF)	204,000/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	658-661
125.	Vinod Joshi (HUF)	431,200/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	662-665
126.	Vishal Patel	516,333/-	i. Copy of confirmation ii. Name, Pan & Address iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	666-670
127.	Yogesh Goswami	429,200/-	i. Copy of confirmation ii. Name, Pan & Address	671-673

			iii. Copy of ITR Ack. iv. Copy of relevant extract of passbook	
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**18.** The Ld AR further submitted that despite submitting the aforesaid documents to substantiate the loan transaction, and the AO without pointing any infirmities in it, has simply added it u/s 68 of the Act, even without raising any doubt about the veracity of documents even in the remand report; and therefore the Ld CIT(A) has rightly deleted the addition made by him only on the basis/ reason of non-appearance of the lenders.

**19.** Moreover, the Ld AR also pointed out that the assessee vide letter dated 27.02.2017 had filed copies of ledger account of the aforesaid 127 parties for period beyond the financial year under consideration (Page No 12-22 of the Paper book) to show that it has paid interest on the unsecured loans taken on a regular basis, deducted TDS on the interest payment as well as re-paid the loans taken by it from the said parties and also repaid the loans.

**20.** The Ld AR also relied upon the following case laws in support of the action of the Ld CIT(A)

Case Laws	Citation	Court / Tribunal
ITO Vs Superline Construction Pvt Ltd	ITA No. 3645/Mum/2014	Mumbai ITAT
ACIT Vs Sanjay M Jhaveri	168 TTJ 751 (2015)	Mumbai ITAT
Nemi Chand Kothari Vs CIT and Another	264 ITR 254(2003)	Gauhati HC
CIT Vs Orchid Industries Pvt Ltd	397 ITR 136	Bombay HC
CIT Vs Vacmet Packaging (India) Pvt Ltd	367 ITR 217 (2014)	Allahabad HC
CIT Vs Dwarkadhish Investment Pvt Ltd	330 ITR 298 (2011)	Delhi HC
CIT Vs Oasis Hospitalities P Ltd	333 ITR 119	Delhi HC

CIT vs Kamdhenu Steel & Alloys Ltd	361 ITR 220	Delhi HC
CIT Vs Lovely Exports Pvt Ltd	299 ITR 268	Supreme Court
PCIT Vs Veedhata Tower P Ltd	403 ITR 415	Bombay HC
Gaurav Triyugi Singh vs ITO	423 ITR 531	Bombay HC
Orient Trading Co Ltd Vs CIT	49 ITR 723	Bombay HC
CIT Vs Creative World Telefilms Ltd	333 ITR 100	Bombay HC

**21.** The Ld. AR submits that the following principles emerge from the various decisions referred above

i. The identity of the credit entries can to be established by the assessee by providing name and PAN/ITR of the parties through whom it had received the sum of money.

ii. Genuineness of the transaction can be demonstrated by showing that the assessee had, in fact, received money from the said lender and it came from the bank account of the lender and there was no cash deposits when the transaction took place.

iii. The bank statements and balance sheet of the creditors / lenders would prove the credit worthiness or financial strength of the parties.

It has been further held that when the initial burden is discharged by submitting primary evidences proving identity, creditworthiness of the lender and genuineness of the transaction, then the onus shifts to the AO/Department to prove that the same (documents) are bogus/forged etc, and if there is any adverse/infirmity in the documents, then again, the onus will shift back to the shoulders of assessee to prove the nature and source of the credit entry.

b. According to the Ld AR, tested on the touch-stone of the judicial precedents, the assessee has discharged the burden of proving the nature and source of credit entry by proving the identity and creditworthiness of the lenders and genuineness of the loan taken from each creditors/lendors by submitting the following documents :

With regard to identity of the lenders:

- a. Copy of Acknowledgement of Income Tax Return
- b. PAN of the lender parties.

c. Address of the lender parties.

With regard to Genuineness of the transaction:

a Copy of confirmation of the lender parties.

b Copy of Bank statement. There are no cash deposits or cash withdrawals in the books of the lender parties. Thus even suspicion against transaction cannot be raised against the loan taken from such lenders.

c. Copy of reply u/s 133(6)/131 of the Act furnished by the lender parties.

d. Copy of ledger account of the lender parties reflecting TDS deducted on interest payments and subsequent repayment of unsecured loans by the assessee.

With regard to Creditworthiness of the lender:

Copy of relevant extract of Balance sheet reflecting that the amounts have been advanced by the lender parties through regular banking channel to the assessee filed alongwith the ITR

c. Thus the Ld AR submitted that all the 127 lender parties are regular tax payers and the transaction with them have taken place through banking channels. The bank statement submitted by the assessee of the said party show that there is no cash deposit in their bank accounts prior to making payments to the assessee. Interest has been paid to these parties regularly and TDS has been duly deducted on the interest paid to the lenders. Further, the unsecured loans have been repaid by the assessee and the loans are no longer outstanding.

d. The Ld. AR also submitted that the genuineness / authenticity of the documents submitted by the assessee has nowhere been doubted by the AO.

e. The Ld AR drew our attention to the ratio-decidenti of important judgement which are reproduced here under

- i. Judgement of Hon'ble Bombay High Court in the case of Orient Trading Co. Ltd vs. CIT reported at (1963) 49 ITR 723 (Bom) held as under:-

*When, however, in a case where the entry stands in the name of the 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.*

*In our opinion, 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....."*

- ii. Judgement of Hon'ble Delhi High Court in the case of CIT vs. Kamdhenu Steel & Alloys Lad & Ors, reported at (2014)361 ITR 0220 (Del) held as under

*"3. It is, thus, clear that initial burden lies on the assessee to explain the nature und source of the share application money received by the assessee. It is also clear that the assessee has to satisfactorily establish the identity of the shareholders, the genuineness of the transaction and the creditworthiness of the shareholders. The manner in which such a burden is to be discharged has been explained in various judgments and noted by us above. At the same time, it is also well-established principle of law that in any matter, the onus brought is not a static one.*

*Though initial burden is upon the assessee, once he proves the identity of credits/share application by either furnishing PAN 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 assessee [sic-Revenue]. The question which assumes importance at this stage is as 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. This is the aspect which has to be gone into in all these cases."*

The Hon'ble Supreme Court, vide order dated 17.09.2012, has dismissed the SLP filed by the revenue against the aforesaid decision of the Hon'ble Delhi High Court in SLP No. CC 15640/2012 (Page No 119 of the Paperbook).

- iii. Judgment of Hon'ble Delhi High Court in the case of CIT vs. Oasis Hospitalities P. Ltd reported at (2011) 333 ITR 119 (Del) held as under:

*"Genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers from that very shareholder. Other documents showing the genuineness of transaction could be the copies of the shareholders register, share application forms, share transfer register, etc. As far as creditworthiness or financial strength of the creditor/subscriber is concerned, that can be proved by producing the bank statements of the creditors/subscribers showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital*

*However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion."*

- iv. Judgment of Hon'ble Gauhati High Court in the case of Nemi Chand Kothari vs. CIT & Another reported (2003) 264 ITR 0254 (Gau), wherein the Hon'ble High Court has held as under

*"Keeping in view the above position of law, when we turn to the factual matrix of the present case, we find that so far as the appellant is concerned, he has established the identity of the creditors, namely Nemichand Nahata & Sons (HUF) and Pawan Kumar Agarwalla. The appellant had also shown, in accordance with the burden, which rested on him under s. 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors aforementioned. In fact, the fact that the assessee had received the said amounts by way of cheques was not in dispute. Once the assessee had established that he had received the said amounts from the creditors aforementioned by way of cheques, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter the burden had shifted to the AO to prove the contrary. On mere failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee such failure, as a corollary could not have been and ought not to have been under the law, treated as the income from the undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by the assessee. Viewed from this angle, we have no hesitation in holding that in the case at hand, the AO had failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. In the absence of any such evidence on record, the AO could not have treated the said amounts as income derived by the appellant from undisclosed sources. The learned Tribunal seriously fell into error in treating the said amounts as income derived by the appellant from undisclosed sources merely on the failure of the sub-creditors to prove their creditworthiness."*

22. Thus according to the Ld AR, by submitting the documents as aforesaid, the assessee has proved the *nature* and *source* of credit/loan entries; and the AO has drawn adverse inference against the assessee only because the assessee could not produce all the 127 lenders before him. According to the Ld. AR, the AO did not appreciate the fact that the assessee in order to meet the working capital had borrowed the loan through finance broker M/s KAH consultancy (details of the finance broker filed along with the fees paid to them after deduction of TDS). And that since the loan was repaid, these lenders residing in other districts of Maharashtra were not interested in appearing before the AO within 24 hours etc. Without appreciating these practical difficulties just because assessee could not produce all the lenders within a days time [at the fag end before framing assessment] has drawn adverse inference against the genuineness of loan under section 68 of the Act. On enquiry from the Bench, the Ld. AR explained about the action of the AO in directing the appearance of the lenders before him, which the Ld AR explained with the help of a chart which is given as under

Sr. No	No. of Parties	Particulars	Remarks by the assessee
1.	54 Parties	No notice issued by AO.	Relevant documentary evidences already with AO.
2.	34 Parties	Notice issued u/s 133(6) of the Act, issued and served	Notice u/s 133(6) of the Act is served on all 34 Parties and out of them, 12 parties filed a response directly before the AO (Page No 699-710 of the Paperbook)
3.	28 Parties	Notice u/s 133(6) of the Act originally not served.	All the parties filed a response before the AO (Page No 711-738 of the Paperbook)
4.	11 Parties	Notice u/s 133(6) of the Act originally not served and later on summons u/s 131 of the Act was issued and served by the AO	All the parties filed a response directly before the AO (Page No 739-748 of the Paperbook)
Total	127 Parties		

23. Referring to the above chart, the Ld AR submitted that

- i. out of the total unsecured loan of Rs.6.36.24,074 from 127 parties, the AO had not conducted inquiry in respect of 54 parties. So it

should be presumed that AO has accepted their loan transaction with the assessee because assessee had discharged its obligations by filing documentary evidences in the form of confirmation letters, PAN, address, Copy of IT Acknowledgement and copy of relevant extract of bank books/pass books/balance-sheet etc of all 127 parties. The AO's action of not raising any defects means after verification he had accepted the veracity of the documentary evidences and so it may be presumed that he accepted the genuineness of these documents. And even during the course of remand proceedings, the AO did not issue summon to these 54 parties for verification Thus, it should be presumed that AO had no doubts about the genuineness of these parties.

- ii. Further in the case of 34 parties notice u/s 133(6) of the Act were issued and also served on them which fact substantiates that all the 34 lenders addresses were correct. And 12 parties had directly filed response before the AO. Also, in case of other 39 parties on whom notice u/s. 133(6) was not served, summons were later issued u/s 131 of the Act and 11 parties were served who appeared before the AO and filed the documents at tapal. And later all the 39 parties had respectively filed requisite documents before the AO.
- iii. Further, the assessee did not had any direct contact with these lender parties since the unsecured loans were borrowed through finance broker M/s. KAH Consultancy (Address: Plot No. 86, Ravi Kiran, MCCH Society, Panvel). The relevant copy of bill of M/s. KAH Consultancy with voucher, bank statement reflecting payment of brokerage after deduction of TDS (refer Page No 30-37 of the Paperbook) were placed on record to show that brokerage had been paid by the assessee for arrangement of the loans. And since the lenders were repaid their loans and were residing in far-flung distincts of Maharashtra, and when they were given minimum reaction time to come to Mumbai, they might not have

come. However, it was brought to our notice that AO has accepted that number of lenders had appeared before him. The only allegation of AO is that all 127 lenders didn't appear before him when he directed them to appear. And the Ld. CIT(A) after appreciating the entire facts and circumstances of the case found the loan transaction to be genuine and therefore he deleted it.

In the light of aforesaid facts and circumstances, the Ld. AR submits that the Ld CIT(A) has rightly deleted the additions made under section 68 of the Act since the assessee has proved the nature and source of credit entries and therefore he does not want to interfere with the impugned action of the Ld. CIT(A).

**24.** We have heard of both the parties and carefully gone through the facts and circumstances of the case as well as the judicial precedents cited before us. The main issue before us is whether the addition made by the AO under section 68 of the Act is justifiable or not. Before advertng on the facts of the case it is important to look at section 68 of the Act as applicable for Assessment Year 2010-11.

*68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.*

**25.** The phraseology of Section 68 of the Act is clear. When any sum is found credited in the books of an assessee, pursuant to which the AO ask about the *nature* and *source* of the credit entries, and the assessee offers explanation about it which is not to the satisfaction of the AO, then the AO may charge the same as income of

the assessee. So when there is a credit entry found in the books of assessee, then when asked by AO about the *nature and source* of it, the assessee has a burden to explain the nature (*share-capital or loan etc.*) and source of it. And if the AO is not satisfied, then he ‘**may**’ (discretion) to invoke section 68 of the Act and bring it to tax. The satisfaction of AO (*about the nature and source of credit*) is expected of that of a prudent person. So, what needs to be examined when a credit entry is found in the books of the assessee, is that whether the assessee’s explanation on the *nature and source* of such credit is satisfactory or not to that of a prudent person instructed in law. It is also important to bear in mind that even if the explanation given by assessee *about nature and source of credit*, section 68 of the Act doesn’t mandates that the unexplained credit should be charged to income-tax as income because the word used by the Parliament in section 68 of the Act (supra) is “*may*” (be charged to income tax) and not “*shall*” be charged to incometax. The Hon’ble Supreme Court while interpreting similar phraseology used in Section 69 of the Act has held that in creating the legal fiction, the phraseology used therein employs the word "may" and not "shall". Thus, the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Hon’ble Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570 SC.

**26.** As discussed section 68 of the Act casts the initial burden to prove the nature and source of credit in whose books the credit entry is found i.e. the assessee. Hence, the initial burden of proof is upon the assessee to prove the *nature and source* of credit entry, which he can do by adducing the following evidence to prove :-

- (i) Identity of the creditors;

- ii Creditworthiness of the lender/ creditor; and
- iii Genuineness of the loan transaction.

**27.** What is burden of proof ? Even though the AO is not fettered by the technical rules of Evidence Act as necessary for Civil and Criminal proceedings, but any issue will have to be determined on the basis of proof of facts and production of evidences. Burden of Proof, in ordinary language, means the duty of proving a fact affirmative of any issue. In other words, one who asserts the affirmative of an issue is burdened with the duty of proving it. It is important to bear in mind that burden of proof is fixed at the beginning of adjudication/trial and remains unchanged. Therefore, it is important to know initially itself [before adjudication on an issue] on whom the burden of proof lies to prove an issue i.e, whether it is on the shoulder of AO or the assessee in the Income Tax proceedings. Even though the burden of proof in Section 68 and Section 69 of the Act is on assessee, the burden of proof is on department/AO in cases where assessee says that he has no income from a particular source, the burden of proving that it was in existence lies squarely on the AO. And even if the assessee was in receipt of an income from a source in earlier years, and this year he denies receipt of it i.e, from that source and makes out a prima facie case that he has not received it from that source, the burden is again on AO to prove otherwise. Likewise, where the source of the receipt is disclosed by the assessee and the case of assessee is that receipt does not fall within the charging provision to tax it, the AO is not entitled to raise an inference that the receipt is assessable to income-tax on the ground that the assessee has failed to lead all the evidences in support of his contention that it is not within the taxing provision. The Hon'ble Supreme Court in Parimisetti Seetharamamma Vs. CIT (1965) 57 ITR 532 held that where a receipt is sought to be taxed as income, the burden lies upon the AO to prove that it is within the

taxing provision. Where, however, the receipt is in the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee. However, as discussed earlier, burden of proof lies on the assessee when it relates to cash credits u/s 68 and Section 69 of the Act etc wherein an entry in the books throws the burden of the proof on the assessee. Similarly, assessee has to prove his claim for deductions or allowances or expenditure claimable under the Income-tax Act. Having discussed about burden of proof, what is onus of proof ? There is a marked distinction between '*burden of proof*' and '*onus of proof*'. The '*burden of proof*' lies on a person who has to prove a fact initially remains unchanged [as fixed by statute], whereas onus of proof is shifting and ambulatory. When credit entry is found in the books of an assessee, the burden of proof lies on the assessee to prove it and if he fails to prove it, when asked to do so by the AO, then AO can draw adverse inference against the assessee under section 68 of the Act. But if the assessee discharges its primary burden and prove the nature & source of the credit entries, then the '*onus of proof*' shifts to the shoulders of AO. And then the AO has to verify the veracity of the documents produced by the assessee to prove the identity and creditworthiness of the creditor/lender and genuineness of the transaction. And if on such verification if AO finds some infirmities in the documents, then the same (adverse findings) have to be confronted to the assessee, then again the "onus of proof" shifts back to the assessee and then he has to explain with cogent evidence to substantiate the documents or counter/rebut the adverse findings of AO, and if he succeeds then again the "onus of proof" shifts back to the AO. Thus it may be noted that such shifting of 'onus' is a continuous process in the evaluation of evidence. If the evidence on record weighs in favour of the assessee [*based on preponderance of probability which is the standard of proof required in civil/income tax assessments* ] or that the explanation put forth can be said to be satisfactory in the evaluation of

a prudent person instructed in law, then the burden casted upon the assessee under section 68 of the Act can be said to have been discharged.

**28.** In view of the foregoing, it is settled position of law that in cases of credit entries in the books of an assessee, the initial burden is on the assessee to prove the *nature and source* of its credit entries; and for doing that he should first prove the nature of the credit i.e, in this case the loan; and then the sources from which the assessee borrowed it i.e, the lenders; in order to prove the source of loan, the assessee has to give details of the lenders to prove their (i) identity and (ii) creditworthiness and (iii) also prove the genuineness of the transactions. Then, onus shifts, and unless the AO is able to point out any infirmity in the primary documents produced by the assessee, no adverse view may be taken by the AO to make additions under section 68 of the Act. This is the principle emanating in this regard out of several judgments rendered by Hon'ble High Courts and Apex Court of India.

**29.** To sum up the legal position, if the assessee is able to explain the *nature and source* of the credit to the satisfaction of AO, then AO cannot use this deeming provision to charge the credit appearing in the books of the assessee as income for the purpose of taxation under the Act. It is settled position of law that '*satisfaction*' contemplated in section 68 of the Act is that of a reasonable prudent person and not that of an unreasonable person. So, when the AO calls upon the assessee to explain the nature and source of the credit found in assessee's book, then initial burden is on the assessee to bring material on record to prove the nature and source of the credit i.e. identity, creditworthiness and genuineness of the transaction in question. And once an assessee is able to discharge the initial burden which lies upon it, then the onus shifts back to the AO to disprove/rebut the material adduced by the

assessee to substantiate the nature and source of the credit transaction. And if the AO is unable to disprove/rebut the evidence brought on record by the assessee to prove the nature and source of the credit entry, then section 68 of the Act cannot be used by the AO to charge the credit appearing in the books of the assessee as income for taxation.

**30.** Coming back to the present case in hand, the issue is regarding addition of loan u/s 68 of the Act by the AO which was deleted by Ld CIT(A) which impugned action is under appeal. In this case the assessee is found to be engaged in the business of buying and selling plots of land, and in order to meet the working capital requirement has borrowed loan through the finance broker M/s KAH consultancy (supra) who arranged unsecured loans from 127 lenders. In order to prove that assessee has taken the services of the finance broker M/s KAH consultancy, assessee has furnished their address [ Plot No. 86, Ravi Kiran, MCCH Society, Panvel] to whom assessee has paid brokerage after deducting TDS which fact is discernable from the perusal of page 30-37 of the paper-book. And when the AO asked the assessee to prove the *nature and source* of unsecured loans, the assessee filed the complete details of finance broker as well as details of all 127 loan creditors which consist of the respective Confirmation of Account, PAN, Copies of Income tax return, Bank statement evidencing the transaction and Statement of Accounts like Balance sheet etc (reference Pages 153 to 673 of the paper book) and in that process has discharged the initial burden casted upon it to prove the identity and creditworthiness of the lenders and genuineness of the transactions with all the 127 parties. The only reason given by the AO for treating the credit/loan as income under section 68 of the Act is that is that the assessee was unable to produce all the 127 parties before him even though AO acknowledge that few of them appeared and the notices under section 133(6) and

summons under section 131 of the Act were served upon many of the lenders as seen supra. Further, it has been brought to our notice that the assessee has also filed documents indicating repayment of loans in the following/subsequent years (Pages 12-22 of the paperbook). As discussed earlier (supra), we have gone through the documents as noted in the chart placed at pages mentioned therein and find that the assessee has filed documents to prove the nature and source of credit entries (identity and creditworthiness of the lender and genuineness of the transactions). We find that, before us, neither the AO nor the Ld DR at the time of hearing before us have been able to indicate any discrepancy/infirmity of the documents found placed at Pages 153 to 673 of the paper book produced to prove the nature and source of credits.

**31.** Now let us consider the main plank on which the addition has been made by the AO i.e, the assessee has not been able to produce the lenders before him despite giving opportunity during the assessment proceedings or before remand proceedings. In this regard, we note firstly that AO did not give proper opportunity to the assessee to produce the lenders (as noted supra, the AO at the fag end of the assessment proceedings had directed the assessee to produce 127 parties within 24 hours). Secondly, the assessee had brought to the notice of the AO that the loans were arranged through finance broker M/s KAH Consultancy. Thirdly the AO has issued notices under section 133(6) of the Act to 73 out of 127 creditors, meaning no notice to 54 parties was issued. We find that out of 73 notices, 34 parties were served such notices and all parties replied; and later pursuant to summons issued under section 131 of the Act to 11 parties, all filed replies. Fourthly, all the lenders are income tax assesseees, their ITR's are therefore before the AO, PAN is also before the AO, TDS has been deducted and credited in the lenders account (AO could have very well verified about them). Fifthly all the

loans have been squared up. So, merely because some lenders did not turn-up before the AO at the fag end of time barring date of assessment, cannot be a ground to make addition of entire loan as income of assessee. And for that we rely on the decision of Hon'ble Supreme Court in the case of CIT vs Orissa Corporation (P) Ltd reported 159 ITR 78.

**32.** The Hon'ble Supreme Court in the case of CIT vs Orissa Corporation (P) Ltd (supra) wherein the facts of the case was that

“the assessee, with regard to loans taken produced before the Income- tax Officer letters of confirmation, the discharged Hundis and particulars of the different creditors general index numbers were with the Income-tax Department. Attempts had been made to bring those creditors therefore the Income-tax Officer by issue of notices under Section 131 of the Act, but the said notices were returned with the endorsement 'left'. The Income-tax Officer, therefore, treated the entire amount of R. 1,50,000 as unproved cash credit and added the same to the income of the assessee”

**33.** The Hon'ble Apex Court held that :

In this case 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 section 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 alleged 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 had 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.

**34.** We also rely upon the following judicial decisions of the respective Hon'ble Courts.

**35.** Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523, has held that burden of the assessee (in whose books of account credit appears) stands fully discharged once the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the AO is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from such creditor). Relevant observations of this decision are reproduced hereunder:-

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those

creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

**36.** In a case where the issue was whether the assessee availed credit as against future sale of product, the AO issued summons to the creditors who did not turn up before him and therefore AO disbelieved the existence of creditors and saddled the addition on the assessee, which was deleted by Ld. CIT(A). However, the Tribunal reversed the decision of the Ld. CIT(A) and upheld the AO's decision, which action of Tribunal was challenged by the Hon'ble High Court, Calcutta in the case of Crystal Networks (P.) Ltd. v. Commissioner of Income tax 353 ITR 171. The Hon'ble High Court overturning the Tribunal's decision and upholding the decision of Ld. CIT(A) has held that when the basic evidences are filed on record, the mere failure of the creditor to appear cannot be basis to make addition. The Hon'ble High Court held as follows:

8. Assailing the said judgment of the learned Tribunal learned counsel for the appellant submits that Income-tax Officer did not consider the material evidence showing the creditworthiness and also other documents, viz., confirmatory statements of the persons, of having advanced cash amount as against the supply of bidis. These evidence were duly considered by the Commissioner of Income-tax (Appeals). Therefore, the failure of the person to turn up pursuant to the summons issued to any witness is immaterial when the material documents made available, should have been accepted and indeed in subsequent year the same explanation was accepted by the Income-tax Officer. He further contended that when the Tribunal has relied on the entire judgment of the Commissioner of Income-tax (Appeals), therefore, it was not proper to take up some portion of the judgment of the Commissioner of Income-tax (Appeals) and to ignore the other portion of the same. The judicial propriety and

fairness demands that the entire judgment both favourable and unfavourable should have been considered. By not doing so the Tribunal committed grave error in law in upsetting the judgment in the order of the Commissioner of Income-tax (Appeals).

9. In this connection he has drawn our attention to a decision of the Supreme Court in the case of *Udhavdas Kewalram v. CIT* [1967] 66 ITR 462. In this judgment it is noticed that the Supreme Court as proposition of law held that the Tribunal must In deciding an appeal, consider with due care, all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law.

10. We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore, it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter the creditworthiness. As rightly pointed out by the learned counsel that the Commissioner of Income-tax (Appeals) has taken the trouble of examining of all other materials and documents, viz., confirmatory statements, invoices, challans and vouchers showing supply of bidis as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued, in our view, is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or not. When it was found by the Commissioner of Income-tax (Appeals) on facts having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this -fact finding. Indeed the Tribunal did not really touch the aforesaid fact finding of the Commissioner of Income-tax (Appeals) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 464, the Supreme Court has observed as follows:

"The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act; it is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts

and record its finding on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. "

11. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.

12. Taking inspiration from the Supreme Court observations we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Commissioner of Income-tax (Appeals). We also found no single word has been spared to upset the fact finding of the Commissioner of Income-tax (Appeals) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.

13. Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Commissioner of Income-tax (Appeals). The appeal is allowed.

**37.** Reliance is placed upon the decision of the Hon'ble High Court, Calcutta in the case of Commissioner of Income Tax vs M/s. Leonard Commercial (P) Ltd on 13 June, 2011 in ITA NO 114 of 2011 wherein the Court held as follows:

"The only question raised in this appeal is whether the Commissioner of Income-tax (Appeals) and the Tribunal below erred in law in deleting the addition of Rs.8,52,000/-, Rs. 91,50,000/- and Rs. 13,00,000/- made by the Assessing Officer on account of share capital, share application money and investment in HTCCL respectively. After hearing Md. Nizamuddin, learned Advocate appearing on behalf of the appellant and after going through the materials on record, we find that all such application money were received by the assessee by way of account payee cheques and the assessee also disclosed the complete list of shareholders with their complete addresses and GIR Numbers for the relevant assessment years in which share application was contributed. It further appears that all the payments were made by the

applicants by account payee cheques. It appears from the Assessing Officers order that his grievance was that the assessee was not willing to produce the parties who had allegedly advanced the fund. In our opinion, both the Commissioner of Income-tax (Appeals) and the Tribunal below were justified in holding that after disclosure of the full particulars indicated above, the initial onus of the assessee was shifted and it was the duty of the Assessing Officer to enquire whether those particulars were correct or not and if the Assessing Officer was of the view that the particulars supplied were insufficient to detect the real share applicants, to ask for further particulars. The Assessing Officer has not adopted either of the aforesaid courses but has simply blamed the assessee for not producing those share applicants. In our view, in the case before us so long the Assessing Officer was unable to arrive at a finding that the particulars given by the assessee were false, there was no scope of adding those money under section 68 of the Income- tax Act and the Tribunal below rightly held that the onus was validly discharged. We, thus, find that both the authorities below, on consideration of the materials on record, rightly applied the correct law which are required to be applied in the facts of the present case and, thus, we do not find any reason to interfere with the concurrent findings of fact based on materials on record. The appeal is, thus, devoid of any substance and is dismissed summarily as it does not involve any substantial question of law.

**38.** We also refer and rely on the decision of the Hon'ble Delhi High Court in the case of CIT Vs Gangeshwari Metal (P) Ltd (ITA No. 597 of 2012) dated 21.01.2012. The assessee, in this case, had received share application money of Rs.55.50 lacs during the year in question. During the course of assessment proceedings, the assessee had filed the complete names, addresses of the share applicants, confirmatory letters, copies of bank statements of both the company as well as the share applicants and copies of share application forms. In spite of the aforesaid sufficient documentary evidences the AO treated the share application as unexplained cash credit and made an addition under Section 68. On appeal the Ld.

CIT(A) deleted the aforesaid addition by holding that the identity of the share applicants stood established beyond doubt, all the payments were through account payee cheques and the share applicants were regular income-tax assessees. The Ld. CIT(A) further held that the Revenue did not bring any evidence on record to suggest that the share application had been received by the assessee from its own undisclosed sources nor any material was brought on record to show that the applicants were bogus. The Revenue was neither able to controvert the documentary evidences filed by the appellant nor prove that the share application were ingenuine or the applicants were non-creditworthy. The findings of the Ld. CIT(A) were upheld by the Income-tax Appellate Tribunal. On appeal to the High Court, the Revenue placed strong reliance on the decision of another coordinate Bench of the same Court in the" case of CIT Vs Novo Promoters & Finlease (P) Ltd (342 ITR 169). The Hon'ble High Court however held that the aforesaid judgment was distinguishable from the facts of the present case. The Court observed that in that judgment the Assessing Officer had brought on record enough corroborative evidence to show that the assessee had routed unaccounted monies into its books through medium of share subscription. The share applicants had confessed that they were "accommodation entry providers". The Assessing Officer in the latter case was able to prove with enough material that the share subscription was a pre-meditated plan to route unaccounted monies. In the present case, however, the Department was unable to bring any material whatsoever to show that share application was in the nature of accommodation entries. The Court observed that the appellant had filed sufficient documentary evidences to establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. The AO however chose to sit back with folded hands till the assessee exhausted all the evidence in his possession and then merely reject the same without conducting any inquiry or verification whatsoever. The Court thus held

that the decision of CIT Vs Novo Promoters & Finlease (P) Ltd (342 ITR 169) was not applicable to the facts of the case. Instead it was held that the issue in hands was on the lines of the decision of the Supreme Court in the case of CIT Vs Lovely Exports Pvt Ltd (319 ITR 5). Accordingly, the addition made under Section 68 on account of share application was deleted.

**39.** We draw support and guidance from the decision of Hon'ble Bombay High Court in case of Pr. CIT v. Ami Industries (India) (P.) Ltd. (424 ITR 219) where it was held as under:

“17. In so far order passed by the Assessing Officer is concerned, he came to the conclusion that the three companies who provided share application money to the assessee were mere entities on paper without proper addresses. The three companies had no funds of their own and that the companies had not responded to the letters written to them which could have established their credit worthiness. In that view of the matter, Assessing Officer took the view that funds aggregating Rs. 34 Crores introduced in the return of income in the garb of share application money was money from unexplained source and added the same to the income of the assessee as unexplained cash credit under section 68 of the Act.

18. In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under section 68 of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that non-responding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the

transaction and credit-worthiness of the creditors were available, without any infirmity in such evidence and the explanation required under section 68 of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted.

19. In appeal, Tribunal noted that before the Assessing Officer, assessee had submitted the following documents of the three creditors:—

- (a) PAN number of the companies;
- (b) Copies of Income-tax return filed by these three companies for assessment year 2010-11;
- (c) Confirmation Letter in respect of share application money paid by them; and
- (d) Copy of Bank Statement through which cheques were issued.

20. Tribunal noted that Assessing Officer had referred the matter to the investigation wing of the department at Kolkata for making inquiries into the three creditors from whom share application money was received. Though report from the investigation wing was received, Tribunal noted that the same was not considered by the Assessing Officer despite mentioning of the same in the assessment order, besides not providing a copy of the same to the assessee. In the report by the investigation wing, it was mentioned that the companies were in existence and had filed income tax returns for the previous year under consideration but the Assessing Officer recorded that these creditors had very meager income as disclosed in their returns of income and therefore, doubted credit worthiness of the three creditors. Finally, Tribunal held as under:—

"5.7 As per the provisions of Section 68 of the Act, for any cash credit appearing in the books of assessee, the assessee is required to prove the following-

- (a) Identity of the creditor
  - (b) Genuineness of the transaction
  - (c) Credit-worthiness of the party
- (i) In this case, the assessee has already proved the identity of the share applicant by furnishing their PAN, copy of IT return filed for asst. year 2010-11.
- (ii) Regarding the genuineness of the transaction, assessee has already filed the copy of the bank account of these three share applicants from which the share

application money was paid and the copy of account of the assessee in which the said amount was deposited, which was received by RTGS.

(iii) Regarding credit-worthiness of the party, it has been proved from the bank account of these three companies that they had the funds to make payment for share application money and copy of resolution passed in the meeting of their Board of Directors.

(iv) Regarding source of the source, Assessing Officer has already made enquiries through the DDI (Investigation), Kolkata and collected all the materials required which proved the source of the source, though as per settled legal position on this issue, assessee need not to prove the source of the source.

(v) Assessing Officer has not brought any cogent material or evidence on record to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represent company's own income from undisclosed sources.

Accordingly, no addition can be made u/s.68 of the Act. In view of above reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same."

21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

22. In *NRA Iron & Steel (P.) Ltd. (supra)*, the Assessing Officer had made independent and detailed inquiry including survey of the investor companies.

The field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

23. Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and credit-worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.

24. Under these circumstances, we find no error or infirmity in the view taken by the Tribunal. No question of law, much less any substantial question of law, arises from the order of the Tribunal. Consequently, the appeal is dismissed.

However, there shall be no order as to cost. ”

**40.** Gainful reference may also be made to the decision rendered by the coordinate Bench of this Tribunal in the case of Abhijavala Developers Pvt. Ltd. vs ITO (124 taxmann.com 72). In this case the assessee had raised share subscription monies from six bodies corporate. Although the summons issued u/s 131 of the Act remained unserved/non-complied, the assessee had furnished all documentary evidences including copies of confirmations, PAN Card, IT Acknowledgement, financial statements and bank statements of all these shareholders. Having regard to these documents and taking into account the judgments rendered in the cases of Ami Industries (I) Pvt. Ltd. (supra) and PCIT vs NRA Iron & Steel Pvt. Ltd. (supra), the Tribunal held that the assessee had discharged its primary onus of establishing the identity of the investors, proving their creditworthiness and establishing the genuineness of the transactions and accordingly deleted the

addition/s made u/s 68 of the Act. The relevant extracts of the decision are as follows

“1. It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders/investors to advance such monies and genuineness of the transactions. Once these three ingredients are shown to be fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of CIT v. Lovely Exports (P.) Ltd. [2009] 216 CTR 195, dismissing revenue's appeal, observed as under: —

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of Gagandeep Infrastructure (P.) Ltd. case (supra) & subsequently in CIT v. Orchid Industries (P.) Ltd. [2017] 88 taxmann.com 502/397 ITR 136 (Bom.). The Hon'ble Delhi High Court followed the said decision in Pr. CIT v. Adamine Construction (P.) Ltd. [2019] 107 taxmann.com 84 against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in Pr. CIT v. Himachal Fibers Ltd. [2018] 98 taxmann.com 172/259 Taxman 4 against which revenue's Special Leave Petition was

dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in Pr. CIT v. Chain House International (P.) Ltd. [2018] 98 taxmann.com 47/[2019] 408 ITR 561 against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in Pr. CIT v. Ami Industries (India) (P.) Ltd. [2020] 116 taxmann.com 34/271 Taxman 75/424 ITR 219 (Bom.) which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as Pr. CIT v. NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48/262 Taxman 74/412 ITR 161.

Upon perusal of above documents, we find that the primary onus of establishing the identity of the investor entities, proving their respective creditworthiness and to establish the genuineness of the transactions was duly been discharged by the assessee. The assessee was not required to prove the source of source for this year. Therefore, the onus was on revenue to rebut these evidences by bringing on record cogent material to dislodge assessee's evidences. However, except for the fact that summons remained un-served, there is nothing in the armory of revenue to unsettle the assessee's claim. The allegations are not supported by any corroborative evidences. Once the initial onus was discharged by the assessee, it was incumbent upon revenue to carry out further investigation to support the allegation that the credits were unexplained. However, nothing of that sort has been shown to have been carried out. So far as the information of DGIT (Inv.) is concerned, we find that these were merely third party statements which were never confronted to the assessee and those statements on standalone basis could not form the basis of making additions in the hands of the assessee. It is trite law that no additions could be based merely on doubts, conjectures or surmises. Therefore, the additions as made by Ld. AO, in our considered opinion, are not sustainable in the eyes of law. The settled legal position as enumerated by us in the opening

paragraphs duly support the said conclusion. Therefore, we delete the impugned additions as sustained by Ld. CIT(A). The grounds, thus raised, stand allowed.”

**41.** We also find guidance on the following decisions of Hon’ble Bombay High Court viz Orient Trading Co vs CIT reported at 49 ITR 723 (Bom) where it is held that

“When, however, in a case where the entry stands in the name of the 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.

In our opinion, 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.....”

**42.** We also rely on the decision of the Hon’ble jurisdictional Bombay High Court rendered in the case of Gaurav T Singh Vs ITO (121 taxmann.com 86). In the decided case the assessee had received unsecured loans from two individuals, whose details were submitted before the AO. The AO however doubted the creditworthiness of the individuals and took a view that the assessee had not established genuineness of the loan. On appeal, the Hon’ble High Court deleted the addition by observing as under:

“13. Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely : (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit- worthiness of the creditor.

14. In Pr. CIT v. Veedhata Towers (P.) Ltd. [2018] 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources

Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

15. In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

16. Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act.

17. Consequently, finding of the Tribunal to the above extent is set aside. The question framed is answered in favour of the assessee and against the Revenue.

**43.** We also rely and seek guidance of the decision of the Hon'ble Gujarat High Court in the case of CIT Vs Ayachi Chandrasekhar Narsangji reported in 42 taxmann.com 251 in which it was held that once the loans are repaid then additions under section 68 are not warranted.

“It has also come on record that the said loan amount has been repaid by the assessee to Shri Ishwar Adwani in the immediate next financial year and the Department has accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the ITAT has held that the matter is not required to be remanded as no other view would be possible, we see no reason to interfere with the impugned order passed by the ITAT.”

**44.** For completeness, we have also considered the decisions referred by the Ld. DR during the course of hearing before us viz. the decisions of the Hon'ble Calcutta High Court in the case of CIT Vs Maithan International and 375 ITR 123 and ITAT Ahmedabad Bench in the case of Pavankumar Saghvi V ITO 59 ITR(T) 389. The case of Maithan International (supra ) pertains to powers of the Commissioner of Income tax under section 263 to set aside the order of the AO on the grounds that the AO had not conducted proper enquiry to investigate the loans. In the case of Pavankumar M Sanghvi, the loan was taken from parties where there was a search operations and the investigation by the Income tax department had found that the loan creditors were not genuine. The case of Jamnadas Kanhayalal v CIT is on a completely different context where the Hon'ble Supreme Court held that where the creditors had surrendered the loan entries under the voluntary disclosure scheme and the question was whether benefit of the same can be granted to the assessee who has borrowed from him. Similarly in the case of Bharti Pvt Ltd (supra) the Calcutta High Court held that where the summons under section 131 is returned and the assessee had filed only loan confirmations and no other documents adverse view may be taken. Therefore, the cases referred and relied upon by the Ld. DR are on different set of facts and distinguishable, so it won't help the revenue.

**45.** Tested on the touchstone of the aforesaid judicial precedents when we examine the facts that has been examined by us as noted [supra] we find that when called upon by the AO to prove the nature and source of credit entries to the tune of Rs.6,36,24,074/- the assessee has brought to the notice that it has taken loan through the finance broker m/s KAH consultancy and has filed all the relevant documents to prove the genuineness of the loan viz documents establishing the existence of the party, the genuineness of the transactions and the creditworthiness

of the party which consisted of loan confirmations, ITR Copies, PAN, Bank statements evidencing the loan transactions and Balance sheet etc which in our considered opinion proves the identity of the lender, the genuineness of the loan transactions and the creditworthiness of the lender to lend the loan to the assessee. Thus we find that the assessee has discharged its initial burden imposed under section 68 of the Act and the AO failed to point out any infirmity regarding these documents and in such an event, the AO's action to saddle the addition under section 68 of the Act was not warranted in the facts of this case and therefore the Ld. CIT(A)s rightly has deleted the addition.

**46.** Further the revenue/Ld DR has not brought any evidence to show that the documents furnished by the assessee are in any way not reliable or point out any kind of infirmity/discrepancy and has not come out with any reason why they should not be accepted as genuine or without evidentiary value. In case if adverse view need to be taken the revenue was duty bound to bring on record cogent/credible evidence to show that the evidences/material furnished by assessee were defective/forged, which revenue has failed to do.

**47.** To sum up, section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source of it shall be assessed as its deemed income. Analysing the facts of the case reveals that when called upon by the AO the assessee has proved credit entries by filing the relevant evidences to prove the nature & source of the loans received by it. Accordingly the assessee had discharged its burden to prove the identity, creditworthiness of the loan creditors and genuineness of the loan transactions by filing the confirmation of account, PAN, bank account statements, financial statements and Income Tax Returns which were submitted before the AO and thereafter the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO simply because the assessee could

not arrange the lenders to appear before him, cannot be justified. In the light of various judicial pronouncements especially that of Hon'ble Supreme court in the case of Orissa Corporation (supra) and also taking note that the assessee has repaid the entire loans which fact was also known to the AO, the Ld. CIT(A) rightly deleted the addition which we confirm.

**48.** In the light of above discussions and judicial precedence (supra), we are of considered opinion that the Ld. CIT(A) rightly deleted the addition of Rs. 6,36,24,074/- on account of section 68 of the Act which we uphold. Therefore Grounds Nos 1 to 4 and 7 of the Revenue are rejected. Similarly, on the same reasoning we also uphold the action of the Ld. CIT(A) in allowing the interest on the above loans to the tune of Rs.34,06,250/-. Ground No 5 of Revenue is therefore rejected.

**ITA. NO. 463/MUM/2019:-**

**49.** Since, we have confirmed the action of the Ld. CIT(A) deleting the quantum addition made by the AO, the penalty based on the quantum addition falls. And therefore, we confirm the action of the Ld. CIT(A) deleting the penalty levied on the assessee. Therefore, both the appeals of the revenue challenging the action of the Ld. CIT(A) deleting quantum addition of Rs 6,36,24,074/-& Rs.34,06,250/-.as well as the penalty levied u/s 271(1)(c) of the Act, are dismissed.

**50.** In the result, the both appeals filed by the revenue stands dismissed.

Order pronounced in the open court on this 13/01/2023.

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 13/01/2023.  
Vijay Pal Singh, (Sr. PS)

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त / CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

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आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार / (Dy./Asstt. Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai