

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**  
**BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM**  
**आयकर अपील सं./ITA No.55/SRT/2020**  
**(निर्धारण वर्ष / Assessment Year: (2013-14)**  
**(Physical Court Hearing)**

Deputy Commissioner of Income Tax., Circle-2(1)(1), Room No.216, 2 <sup>nd</sup> Floor, Aayakar Bhavan, Majura Gate, Surat-395001	<b>Vs.</b>	M/s R.K.Shah Projects Pvt. Ltd., 1 <sup>st</sup> Floor, Aditya Complex, Nr. Kapadia Health Club, Bhatar Road, Surat-395007
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCR 8584 Q</b>		
<b>(Appellant )</b>		<b>(Respondent)</b>

निर्धारिती की ओर से /Assessee by : Shri Sapnesh R Seth, C.A

राजस्व की ओर से /Respondent by : Shri Ashok B. Koli- CIT-DR

सुनवाई की तारीख/ **Date of Hearing** : **18/01/2023**

घोषणा की तारीख/**Date of Pronouncement** : **31/01/2023**

**आदेश / ORDER**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the Revenue, pertaining to assessment year 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-2, Surat, [‘CIT(A)’ for short] dated 04.12.2019, which in turn arises out of an order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (in short ‘the Act’), dated 14.03.2016.

2. The grounds of appeal raised by the Revenue are as follows:

*“(i) On the facts and circumstances of the case and in Law, the Ld. CIT(A) erred in deleting the addition of Rs.54,90,000/- made on account of share capital/ share premium treated as unexplained cash credits u/s 68 of the I.T. Act despite of the fact that it was established that bank accounts have been used for channelizing unaccounted money by analysing the entries of bank accounts of the share applicants where the assessee failed to explain and substantiate the creditworthiness of the share applicants and genuineness of the transactions.*

*(ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) erred in deleting the addition of Rs.2,30,05,000/- made on account of unsecured loans received treated as unexplained cash credits u/s 68 of the Act despite of the fact that it was established that the bank accounts have been used for channelizing*

*unaccounted money by analysing the entries of bank accounts of the creditors, where the assessee failed to explain and substantiate the creditworthiness of the lender and genuineness of the transactions.*

*(iii) On the facts and circumstances of the case and in Law, the Ld. CIT(A), Surat ought to have upheld the order of the Assessing Officer. It is, therefore, prayed that the order of the Ld. CIT(A)-2, Surat may be set-aside and that of the Assessing Officer's order may be restored.*

*(iv) On the facts and circumstances of the case and in Law, the assessee craves its right to add, alter, amend, delete, any of the ground or grounds of appeal.”*

3. We note that in this appeal, the Revenue has raised two substantial grounds and both these grounds are relating to addition under section 68 of the Act.

4. The brief facts relating to addition of Rs.54,90,000/- made on account of share capital/ share premium treated as unexplained cash credits u/s 68 of the Income Tax Act, are as follows: During the assessment proceedings, the assessing officer noted that the assessee had received funds under head the share capital @ Rs.10 per share and premium of Rs.140 per share. Total funds of Rs.54,90,000/- were received from seven persons. Show cause notice dated 16.02.2016 was issued to the assessee by the assessing officer for compliance by 18.02.2016. The assessing officer noted that part details were furnished before him and bank statements indicated repetitive pattern of two or three credits followed by debits of an equivalent amount. The assessing officer concluded that despite sufficient opportunities, the assessee could not substantiate and comply to the requirements of section 68 of the Act. Thus, Rs.54,90,000/- was added as unexplained cash credits u/s 68 of the Act.

5. The brief facts relating to addition of Rs.2,30,05,000/- made on account of unsecured loans received and treated as unexplained cash credits u/s 68 of the Act, are as follows: In respect of unsecured loan of Rs.2,84,95,000/- received from various persons, the assessing officer again observed that assessee failed to furnish any reply. It was also observed by the assessing officer that despite specific requests, only part details were furnished and no confirmations of lenders were filed. It was mentioned by the assessing officer that the bank statement of lenders indicated similar pattern of 2 or 3 credit entries followed by debits of

equivalent amount and credit balance in the bank account of the lenders were negligible. Thus, the assessing officer held unsecured loans of Rs.2,84,95,000/- as unexplained credit u/s 68 of the Act.

6. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id CIT(A) who has deleted both the addition made by the assessing officer. The combined findings of Id CIT(A) are as follows:

*“After considering the findings of the assessing officer in the assessment order, remand reports/and assessee's explanations/submissions, following facts and findings are noted:*

- (i) During the current A.Y., the assessee company received new share capital fund of Rs.54,90,000 (Rs.3,66,000/- face value @ Rs.10 per share and Rs.51,24,000 share premium @ Rs.140 per share) from the existing directors and their family members. The assessee also received unsecured loans of Rs.2,30,05,000/- from the existing directors and family members, In the assessment proceedings, the assessee had complied to the assessing officer's query of explaining the funds received under share capital and unsecured loans in terms of requirement of section 68 of the Act by filing copies of ITRs, ledger a/c, bank statement etc. However, the assessing officer concluded that full details were not filed to substantiate the receipts of Rs.54,90,000/- and Rs.2,30,05,000/- as per requirements of S.68 of the Act. Certain additional evidences filed during appellate proceedings were forwarded to the assessing officer for remand report. In the remand report dtd 17/07/2017, the assessing officer pointed out cash deposits in the bank a/cs of share applicants/investors and other credits prior to issue of cheques for share capital/loans advanced to the assessee. These observations of cash deposits and other credits led to assessing officer's observations in the remand that the creditworthiness and genuineness of share applicants/lenders were not proved.*
- (ii) In the rejoinder report, the assessee controverted the assessing officer's observations in the remand. After verifying the copy of bank statement, ITR computation and cash book of share applicants/lenders, following facts are observed:
  - a) Kantilal M. Shah: In the remand report, assessing officer noted that cash deposits of Rs.1 lacs on 14/03/2013 and another Rs.1 lacs on 15/03/2013 was made prior to issue of equivalent amount of cheques of Rs.1 lacs each for investment of Rs.4,20,000/- as share capital in the company. Balance of Rs.2,20,000/- is out of transfer of the amount of Rs.2,20,000/- from the company to the assessee on 20.03.2013. The AR has shown from the cash book statement that the said cash deposits were made out of available cash on hand of Rs.2,40,836/- as on 01.04.2012 as well as withdrawals from bank during the year Opening cash balance is duly supported by the copy of ITR and balance sheet of A.Y. 2012-13. Further, the assessee being a director in the company earning salary income also, there is nothing adverse in receipt of Rs.2,20,000/- from assessee company which was invested as share capital. Thus, no adversity could be noticed in cash deposits and other credits.**

b) Falguni R. Shah, Kusum K. Shah, Kevuri V. Shah, Ratnesh K. Shah (HUF): In these cases also cash deposit of Rs.2 lacs each were made prior to issue of cheque for share capital in the company and the same was found explained from cash book statements, ITRs and computation of total income duly supporting such cash availability from opening cash as well as withdrawals from the bank a/c.

c) Vimal K. Shah (HUF): assessing officer pointed out cash deposits of Rs.10 lacs in the bank a/c for share capital investment of Rs.7 lacs and unsecured loans of Rs.3 lacs. Cash book statement indicate opening cash of Rs.1,79,996/- as on 01.04.2012 and cash withdrawals from bank amounting to Rs,3 lacs in June 2012, Rs.7 lacs in July 2012, Rs.3.25 lacs in October 2012, Rs.4.50 lacs in November 2012, Rs.2.50 lacs in Jan 2013, Rs, 3 lacs In March 2013 are duly indicated from bank statement leading to cash balance available for cash deposits of Rs.10 lacs from 14/03/2013 to 20/03/2013 which was invested in the assessee company. Thus, the assessing officer ignored these evidences and only partly commented for cash deposits of substantial amount.

d) Kantilal M. Shah (HUF)-Rs.5 lacs cash deposit and Vimal K. Shah-Rs.5 lacs cash deposits were also found explained as per cash book statement indicating available cash balance and bank withdrawal prior to cash deposits.

e) Ratnesh K. Shah: Cash deposits of Rs.10 lacs was explained from the cash book statement out of opening cash of Rs.11,85,669/-and bank withdrawals. Opening cash balance is duly supported by copy of ITR and balance sheet of A.Y. 2012-13. Also opening cash balance was demonstrated as accumulated in F.Y. 2011-12 through bank withdrawals of more than Rs.20 lacs on different date. Copy of cash book of F.Y. 2011-12 supports this contention of the assessee.

(ii) With regard to the unsecured loans received by the assessee, the AR contentions are found to be demonstrated from the copy of ITRs, bank statements and other relevant documents. Merely because the credit patterns of lenders show 2 or 3 credits followed by an equivalent debit for payment to assessee, the genuineness of loans cannot be disproved. Moreover, all these lenders and share applicants are none else than directors and their family members. The assessing officer did not carry out any inquiry leading to dead end in such cases and neither there can be dead end in the current case as all lender/share applicants are directors and family member of directors. Thus, the requirement of S.68 can be said to have been fulfilled as there is on doubt on identity neither on genuineness and creditworthiness of the loans. Facts as per ledger account of lenders indicate that out of total unsecured loans of Rs.2,30,05,000/-, Rs.1,59,45,000/- was advanced by Sh. Ratnesh K. Shah (one of the directors) whose identity is not in doubt and the funds availability is also explained from his balance sheet indicating loans taken by him from various parties. Even cash deposits of Rs.10 lacs in his bank account was duly explained. Similarly, other major lender is Sh. Vimal K. Shah (again one of the directors) wherein the balance sheet indicate loans taken from various parties and even cash deposits of Rs.5 lacs in his bank account was duly explained. Thus, the evidences filed during assessment as well as remand proceedings support assessee's contention of unsecured loans explained as per requirement of sec. 68 of the Act.

*(iv) The assessee's reliance on the decision of Hon'ble Gauhati High Court in the case of CIT v. Gopal & Co. (204 TTR 285) and decision of Hon'ble Supreme Court in the case of CIT vs. Odissa Corporation Pvt. Ltd (159 FTR 78) is found to be squarely applicable to the facts of the case. The assessing officer could not disprove the explanations for loans and share capital investment duly discharged through documentary evidences.*

*In view of the above facts "and circumstances, the addition of Rs.54,90,000/- pertaining share capital and Rs.2,30,05,000/- pertaining to unsecured loans are no sustainable. The AR has also pointed out that the assessing officer mistakenly added unsecured loans at Rs.2,84,95,000/- by combining the share capital and unsecured loans and also making separate addition of Rs.54,90,000/- leading to double addition of Rs.54,90,000/-. This facts was found to be correct from the copy of ledger a/c of lenders indicating total unsecured loans of Rs.2,30,05,000/- only received during the year. Accordingly, the addition of Rs.54,90,000/- and Rs.2,84,95,000/- are hereby deleted."*

7. Aggrieved by the order of Ld. CIT(A) the Revenue is in appeal before us.
8. Learned CIT-DR for the Revenue submitted that during the year under consideration, the assessee company had received share capital and share premium to the tune of Rs.54,90,000/- from seven persons. The assessee furnished only part details and did not furnish confirmations even though specifically asked to do so. The bank accounts of the investors showed repetitive pattern of two or three credit entries followed by debit of an amount equivalent to the sum total of the credit entries. During the assessment proceeding, the assessee did not furnish explanation regarding such prior deposits without which payment of the share application money would not have been possible. The assessing officer has observed from analysis of bank account of the investors that the transactions are arranged in such a way as to give the transactions a colour of genuineness. The assessing officer has observed that the bank accounts of the investors show identical patterns wherein the money is deposited and transferred immediately and the credit balance is always negligible. There are no debit of establishment expenses and any other regular expenses clearly indicating that there was no proper activity. There was no genuine movement of funds and the bank accounts had apparently been used only for channelizing unaccounted money. So, the sum of Rs.54,90,000/- claimed to have been received from the above mentioned investors should be disallowed.

9. Learned DR for the Revenue further took us through the provisions of section 68 of the Income Tax Act 1961, which reads as under:

**“Cash credits.**

**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:*

**[Provided that]** *where the assessee is a company not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*

- (a) *the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) *such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

**[Provided further]** *that nothing contained in the first proviso [or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]”*

10. Learned DR submitted that proviso to section 68 was inserted with effect from 01.04.2013 and as per the said proviso; the assessee needs to prove **“Source of the Source”**. The ld DR pointed out that considering the contents of the assessment order, neither the assessing officer examined the **“Source of the Source”**, nor assessee has submitted documents/evidences to explain **“Source of the Source”**. Even in remand report, neither the assessing officer examined the **“Source of the Source”**, nor has assessee submitted documents/evidences to explain **“Source of the Source”**. Before making investment in shares of the assessee company, there is sufficient cash deposit in the bank account of share applicants and the same has escaped from examination by the assessing officer. Even during the appellate proceedings, the ld CIT(A), who supposed to adjudicate the issue in accordance with new provisions of section 68 has failed to do so. As the assessment year involved in the assessee’s case is the assessment year 2013-14, where amended provisions of section are clearly applicable to the assessee.

Therefore, the assessment was not framed as per the provisions of section 68 of the Act.

11. The Id DR also pointed out that even source of the money has not been properly examined by Id CIT(A) after getting the remand report of the assessing officer during the appellate proceedings. The Id DR relied on the statement of facts filed with form no.36 and pointed out that there are various deposits including cash deposits in the bank accounts of the investors without which payment of the share application money would not have been possible. The Ld. CIT(A) has erred by accepting the explanation of the assessee during appellate proceeding that same was sourced from opening cash in hand and withdrawals from banks since the time gap is very large between the dates of opening cash in hand and cash withdrawn from the banks and investments made in the share application money. Even opening balance of various cash books were not examined by the assessing officer. No sensible persons would withdraw cash from bank and simply keep such huge cash balances with itself and investment the same after such long period. The basic element of safety consideration as well as idle cash with no return over long period of time is an aspect which has been overlooked in the appellate order. The observation of the Ld. CIT(A) may be correct so far identity of the share applicants are concerned as they relate to family members, but creditworthiness and genuineness of the transactions were not proved.

12. The Ld DR also stated that addition on account of protective addition made on account of provisions of section 56(2) (viib) at Rs.1,54,452/- has not been discussed and adjudicated by Id CIT(A) which is part of share capital and share premium to the tune of Rs.54,90,000/- from seven persons. On perusal of the Audit Report of the company along with its related schedules, it was noticed that the company had issued 36600 shares during the year. It was seen by the assessing officer from the data available that the shares had been issued at the face value of Rs.10 each and on premium of Rs.140 per share but as per the balance sheet of the company for AY 12-13, that the fair market value, as on 31.3.2012 was Rs.135.78/-. Thus over each share excess amount of Rs.4.22 (140- 135.78) had

been received, which for the total issue of 36600 shares was equal to Rs.1,54,452/- and so addition of Rs.1,54,452/- was made on account of provisions of section 56(2)(viib) of the I.T Act, 1961. The assessee company had furnished statement showing working of the book value of shares. It is reported in the remand report that a simple working was furnished without any Valuation Report regarding the Fair Market Value of the shares. The assessing officer in the assessment order has duly given his findings regarding the working as per Rule 11UA and the difference in the fair market value of the shares. In absence of any proper valuation, the justification of the fair market value of the shares furnished by the assessee cannot be accepted. This amount is however as such covered in the addition of Rs.54,90,000/- made on account of unexplained share application money. Hence this addition was made on protective addition, as the substantive addition of Rs.54,90,000/- was already separately made. Since appeal is being recommended in respect of the deletion of additions of Rs.54,90,000/- no separate recommendation for further appeal is being made in respect of the deletion of addition of Rs.1,54,452/-.

13. The Id DR further pointed out, with help of statement of facts, that identical facts, as discussed above, in respect of addition with regard to unexplained share application money, are observed in the deletion by the Ld. CIT(A) of addition of Rs.2,30,05,000/- comprising unsecured loans receipts treated as unexplained u/s 68 of the Act. On the same grounds and reasons as in respect of the unexplained share application money receipt, the decisions of the Ld. CIT(A) with regard to deletion of addition of Rs.2,30,05,000/- comprising unsecured loans receipts treated as unexplained u/s 68 is also not acceptable.

14. On the other hand, Shri Sapnesh R Seth, Learned Counsel for the assessee defended the order passed by Ld. CIT(A). The Ld. Counsel submitted that during the assessment proceedings, the assessee submitted the copy of Income Tax Return, bank statement, PAN Number of the share applicants. However, the confirmations of the respective share applicants and loan creditors were not submitted but the same were submitted during the appellate proceedings. The Ld.

Counsel also submitted that in respect of source of source, the Assessing Officer has not asked from the assessee and did not demand from the assessee to submit documents, therefore it is not a mistake on the part of the assessee. The Ld. Counsel, of course, has accepted that for AY.2013-14, the source of the source needs to be explained in respect of share capital transactions, however in respect of loan transactions, the source of the source need not to be explained because the amendment in section 68 came from 01.04.2022 and the same does not apply to the loan transactions. The Ld. Counsel, to prove his arguments, has relied on the following judgments:

- (i) *CIT vs Lovely Exports P. Ltd. 216 CTR 195 (SC)*
- (ii) *CIT vs Ranchod Jivabhai Nakhava, ITA No.50 of 2011 (Guj.)*
- (iii) *Hindustan Inks & Resins Ltd. vs DCIT, 60 DTR 18 (Guj.)*
- (iv) *CIT vs Ujala Dyeing and Pringins Mills P. Ltd. (Guj.)*
- (v) *Earthmetal Electricals Pvt. Ltd. vs CIT (SC)*
- (vi) *CIT vs Jalan Hard Coke Ltd., 95 taxmann.com 331 (SC) & 98 taxmann.com 330 (Raj.)*
- (vii) *CIT vs Gangandeeep Infrastructure Pvt. Ltd., 394 ITR 680 (Bom.)*
- (viii) *CIT vs Himatsu Bimet Ltd., 12 taxmann.com 87 (Guj.)*
- (ix) *DCIT vs Rohini Builders, 182 CTR 373 (Guj.)*
- (x) *ITO vs Narmada Thermal Power Ltd. (Surat Trib.)*
- (xi) *DCIT vs Ellsons Developers Pvt. Ltd. (Surat Trib.)*

Therefore, Ld. Counsel contended that assessee has explained the identity, creditworthiness and genuineness of the share capital as well as the loan transactions, therefore the respective addition has rightly been deleted by Ld. CIT(A) and therefore, he prays the Bench the order of the Ld. CIT(A) may be upheld.

15. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Ld CIT(A) and other materials brought on record. We find merit in the submissions of Ld DR for the Revenue that with effect from 01.04.2013, (applicable to the

assessment year 2013-14 under consideration), the proviso to section 68 is applicable to a Private Limited Company to prove “**Source of the Source**” of the share application money/share premium received by the assessee-company. The proviso to section 68 is reproduced below for ready reference:

*“[Provided that] where the assessee is a company not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, **any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—***

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

*(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory”*

16. After going through the above proviso to section 68 of the Act, it is abundantly clear that it is the duty of the assessee-company to prove “**Source of the Source**”. Therefore, we do not find any merit in the submission of Id Counsel to the effect that since the assessing officer had not asked the documents and evidences from the assessee, at the assessment stage, therefore assessee need not to prove “**Source of the Source**”. In fact, as per the proviso to section 68, as noted above, it is the duty of the assessee-company to prove “**Source of the Source**”. The above proviso to section 68 clearly states that where the assessee is a company not being a company in which the public are substantially interested, and the sum so credited consists of share application money, share capital, share premium whatever name called, **any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless** the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory.

17. We note that even, Id CIT(A), while calling remand report, did not instruct the assessing officer to examine the “**Source of the Source**”. **Therefore, we note that both the lower authorities [(AO and CIT(A)] have ignored the provisions**

**of section 68 of the Act, which is applicable to the assessee under consideration. Hence, we are of the view that there is no correct determination of tax liability of the assessee in accordance with provisions of section 68 of the Act.** The duty of the Tribunal is to examine the assessee`s facts and applicable provisions of the Act, and precedent applicable on facts. We note that neither assessing officer nor Id CIT(A) have considered the proviso to section 68 of the Act, to determine the correct tax liability of the assessee-company.

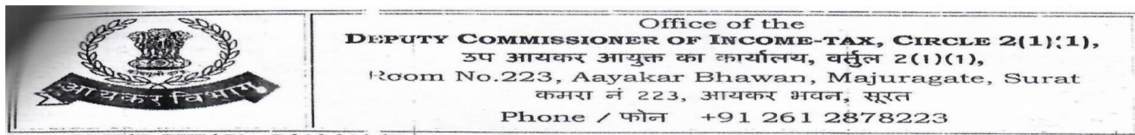
18. Learned Counsel for the assessee submitted before us a lot of judgments including the judgments of Hon`ble Jurisdictional High Court of Gujarat, as noted by us above. We have gone through the above judgments and noted that these judgments are related to the period prior to amendment in section 68 of the Act and hence do not applicable in the scenario where the assessee needs to prove source of the source, therefore these precedents do not assist the assessee company. With effect from 01.04.2013, the amended provisions are applicable. The assessment year under consideration is 2013-14 therefore the assessee-company needs to explain, as per amended provisions, the source of the source about share capital/share premium received, which the assessee-company failed to do so. We also do not agree with the arguments made by Id Counsel that assessee-company has received share capital/share premium from directors and family members therefore all the ingredients of section 68 have been proved, in this situation at least identity of the share applicants can be proved, but creditworthiness and genuineness should be proved as per amended provisions of section 68 of the Act, wherein the assessee needs to explain the source of the source.

19. Besides, the Id CIT(A) did not adjudicate the issue about protective addition made on account of provisions of section 56(2)(viib) of the Act at Rs.1,54,452/-, which is included in the total addition of Rs.54,90,000/- made by the assessing officer. Considering these facts and circumstances of the case, we are of the view that this issue should be remitted back to the file of the assessing officer to examine the source of the source. Therefore, we deem it fit and proper to set aside the order of the Id. CIT(A) and remit the matter back to the file of the

assessing officer to adjudicate the issue afresh on merits as per the amended provisions of section 68 of the Act and assessee is also directed to furnish relevant documents and evidences to prove the source of the source. For statistical purposes, ground no.1 raised by the Revenue is treated as allowed.

20. In the result, ground no.1 raised by the Revenue is allowed for statistical purposes.

21. Now coming to ground No.2 which relates to deletion of the addition of Rs.2,30,05,000/- made on account of unsecured loans received treated as unexplained cash credits u/s 68 of the Act. We note that these loan transaction, the assessee-company needs to prove source only and amended provisions of section 68 are not applicable. In case of transactions relating to loan and borrowings, the amended provisions of section 68 are applicable from 01.04.2023, hence the assessee need not to prove the source of the source. However, we note that in these transactions also the source has not been properly examined by the lower authorities. This fact is proved by the remand report submitted by the assessing officer during the appellate proceedings, which is reproduced below:



No.SRT/DCIT/Cir.2(1)(1)/Remand Report/RKSPPL/2017-18 17.07.2017

To  
The Commissioner of Income-tax(A)-2,  
SURAT

Sir,

[Submitted through the Addl. CIT, Range 2(1), Surat]

Sub: Submission of Remand report in the case of M/s R.K. Shah Projects P. Ltd., Surat for A.Y. 2013-14 - PAN - AABCR8584Q - Reg. -

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Kindly refer to your letter No. सुरत/आ.आ.(अपील)-2/RR/130/BNP/17-18 dated 16.05.2017, your Honour has directed to furnish the admissibility of the additional evidences under Rule 46A of the IT Rules. In this regard, I humbly place before your Honour, the comments of which are as under:-

(1) In this case, during the year under consideration, the assessee company received Share Capital and Share Premium from the following persons / parties:

Sr. No.	Name of the Share Applicant	Share Capital	Share Premium	Total
1	Kantilal M. Shah	28000	392000	420000
2	Falguni R.Shah	60000	840000	900000
3	Kusumben K. Shah	53000	742000	795000
4	Keyri V. Shah	13000	182000	195000
5	Ratnesh K. Shah (HUF)	86000	1204000	1290000
6	Vimal K. Shah (HUF)	93000	1302000	1395000
7	Kantilal M. Shah(HUF)	33000	462000	495000
	<b>Total</b>	<b>366000</b>	<b>5124000</b>	<b>5490000</b>

Even after specific queries, the assessee failed to furnish the complete details in this regard. Now, the assessee furnished before your Honour the additional evidences. The assessee had also failed to furnish any

reasons for not furnishing these evidences during the assessment proceedings. Hence, the additional evidences furnished before your Honour should not be admitted. Without prejudice to the above, the additional evidences were perused and on perusal of the additional evidences, the following facts emerged with respect to the Share Capital and Share Premium:

Sr. No.	Name of the Share Applicant S/Shri	Share Capital + Share Premium	Observations	Remarks
1	Kantilal M. Shah	420000	On perusal of the Bank account furnished, it is noticed that <b>cash of Rs.1 lakh deposited on 14.03.2013</b> and immediately <b>Cheque No.303037 issued to the company for Rs.1 lakh.</b> Further <b>cash of Rs. 1 lakh deposited on 15.03.2013 and Cheque No.303040 issued to the company.</b> In addition to the above, there is transfer of Rs.2,20,000/- from the company to Shri Kantilal M. Shah on 20.03.2013 and immediately Cheque No.303045 issued to the company.	Returned income of the assessee is Rs.5,71,580/- and the assessee has made investment of Rs.4,20,000/- as Share Capital and Share Premium in the company and also lended Rs.4,80,000/- as unsecured loan. The genuineness and creditworthiness of the transactions are not proved.
2	Falguni R.Shah	900000	On perusal of the Bank account furnished, it is noticed that Rs.7 lakhs was credited from Ariham and <b>Rs.2 lakhs cash deposit on 14.03.2013</b> and RTGS of Rs.9 lakhs to the assessee company on 15.03.2013.	The Returned income of the investor is Rs.2,67,380/- and investment made during the year is Rs.9 lakhs. The genuineness and creditworthiness of the transactions are not proved.
3	Kusumben K. Shah	795000	On perusal of the Bank account furnished, it is noticed that Rs.6 lakhs	The Returned income of the investor is

			was credited from Arihant Diamond and <b>Rs.2 lakhs cash deposit on 14.03.2013</b> and RTGS of Rs.8 lakhs to the assessee company on 15.03.2013.	Rs.2,22,480/- and investment made during the year is Rs.8 lakhs. The genuineness and creditworthiness of the transactions are not proved.
4	Keyuri V. Shah	195000	On perusal of the Bank account, it is noticed that the investor has made cash deposit of Rs.2 lakhs on <u>14.03.2013</u> and NEFT transfer to the assessee company of Rs.2 lakhs on 15.03.2013.	No source of the cash deposits given by the investor. In absence of any source, the genuineness and creditworthiness of the transactions are not proved.
5	Ratnesh K. Shah (HUF)	1290000	On perusal of the Bank account, it is noticed that there is credit entry of Rs.5 lakhs from Arihant Diamond on <u>12.03.2013</u> followed by issue of Cheque No.436638 of Rs.5 lakhs on 13.03.2013. Similarly, credit entry of <u>Rs.5 lakhs</u> from Arihant Diamond on <u>14.03.2013</u> followed by issue of Cheque No.436641 on 14.03.2013. Further, cash deposit of Rs.1 lakh on <u>14.03.2013</u> followed by issue of Cheque Nos.436640 on 14.03.2013 and cash deposit of Rs.1 lakh on 15.03.2013 followed by issue of Cheque No.436642 on 15.03.2013.	The Returned income of the investor is Rs.2,16,440/- and investment made during the year is Rs.13 lakhs. The genuineness and creditworthiness of the transactions are not proved.
6	Vimal K. Shah	1395000	On perusal of the Bank account, it is noticed that	The Returned income of the

	(HUF)		there is credit entry of Rs.7 lakhs from <u>Arihant Diamond</u> on 14.03.2013 followed by issue of Cheque No.436697 of Rs.7 lakhs on 14.03.2013. Further, <u>cash deposit of Rs.3 lakhs</u> on 14.03.2013 followed by issue of Cheque Nos.436696 on 14.03.2013 and cash deposit of <u>Rs.4 lakhs</u> on 15.03.2013 followed by issue of Cheque No.436698 on 15.03.2013.	investor is Rs.2,46,820/- and investment made during the year is Rs.14 lakhs. The genuineness and creditworthiness of the transactions are not proved.
7	Kantilal M. Shah(HUF)	495000	On perusal of the Bank account, it is noticed that <u>cash deposits of Rs.2 lakhs</u> on 14.03.2013 followed by issue of Cheque Nos.436615 & 436614 of <u>Rs. 1 lakh</u> each on 14.03.2013 and <u>further cash deposit of Rs.3 lakhs</u> on 15.03.2013 followed by issue of Cheque No.436616 on 15.03.2013.	The Returned income of the investor is <u>Rs.2,49,380/-</u> and investment made during the year is Rs.5 lakhs. The entire investment is out of cash deposits made by the assessee for which genuineness and creditworthiness of the transactions are not proved.
	<b>Total</b>	<b>5490000</b>	<b>366000</b>	<b>5124000</b>

The assessee had satisfied the only condition of identity but as per the above discussion, the creditworthiness and genuineness of the transactions were not proved. For a transaction to be genuine, the assessee company needs to satisfy all the three conditions. Further, assessee failed to furnish any explanation with respect to the source of the cash deposits and its genuineness.

- (ii) During the course of assessment proceedings, it was noticed that during the year the assessee had also received unsecured loan from the following persons / parties, the details of which were as under:

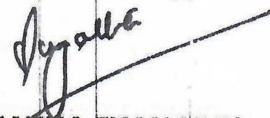
Sr. No.	Name of the party	Amount received
1	Vimal Kantilal Shah (HUF)	1910000
2	Falguni R. Shah	900000
3	Kantilal M. Shah	900000
4	Keyuri V. Shah	200000
5	Kusum K. Shah	800000
6	Mehul V. Patel	600000
7	Ratnesh K. Shah	15945000
8	Vimal K. Shah	5440000
9	Ratnesh K. Shah (HUF)	1300000
10	Kantilal M. Shah (HUF)	500000
	<b>Total</b>	<b>28495000</b>

(iii) A similar pattern as discussed with respect to the share capital and share premium was observed with respect to the unsecured loans received by the company during the year under consideration. The so-called lenders were proved to be non genuine. Even the additional evidences were taken into account, the assessee had failed to furnish and establish the genuineness and creditworthiness of the transactions made with the assessee company. So, the assessee company had miserably failed to prove the genuineness and creditworthiness of the unsecured loans received during the year under consideration.

3. The assessee company had furnished the statement showing working of the Book value of shares. On perusal of the same, it is noticed that a simple working was furnished without any Valuation Report regarding the Fair Market Value of the shares. The AO in the assessment order already given his findings regarding the working of Rule 11UA and the difference in the fair market value of the shares. In absence of any Valuation Report, the justification of the fair market value of the shares furnished by the assessee cannot be accepted.

Submitted for your kind perusal.

Yours faithfully,



(SUJATHA IYANGAR)  
Dy. Commissioner of Income-tax,  
Circle-2(1)(1), Surat

22. The assessing officer in the remand report has given his findings stating that a similar pattern as discussed with respect to the share capital and share premium was observed with respect to unsecured loans received by the assessee-company. The cash has been deposited in the account of the lenders, prior to issue cheques to the assessee- company, and said source has not been verified by the Id CIT(A). The relevant findings of Id CIT(A) is reproduced below:

*“.....Merely because the credit patterns of lenders show 2 or 3 credits followed by an equivalent debit for payment to assessee, the genuineness of loans cannot be disproved.....”*

23. From the above findings of Id CIT(A) it is vivid that Id CIT(A) did not quantify the cash amount deposited in the Lenders bank accounts before giving loan to the assessee company. The said source of cash deposit is from assessee company or from Lenders, has not been explained by Id CIT(A) in his order. Just to say that 2 or 3 credits followed by equivalent debit, is not sufficient. The Id CIT(A) has to examine that such cash deposit is from genuine sources and it is not the cash of the assessee-company. Therefore, we note that source has not been explained properly. We also note that Id CIT(A) has given combined findings in respect of share capital/share premium and unsecured loans. Therefore, we are of the view that this issue should also be remitted back to the file of the assessing officer to examine the source of cash deposit in respect of unsecured loan.

24. We note that in the case of CIT Vs. Biju Patnaik 1986 (160 ITR 674) (SC), the Apex Court held that even the source of funds has to be proved by the assessee in case of cash credits. Similarly, in the case of Sumati Dayal Vs. CIT 1995 (214 ITR 801) (SC), The Apex Court held that where any sums found credited in the books of the assessee in any previous year, by virtue of Section 68 of the Act, it may, be charged to Income tax as income of that previous year if the explanation offered by the assessee about the nature and source of the credit is in the opinion of Assessing Officer not satisfactory.

It follows from the ratio of these decisions that the scope of Section 68 is not confined to the issue of deposits or loan credit but encompasses of all such credits whose nature remains unexplained. Therefore, we deem it fit and proper to set

aside the order of the Id. CIT(A) and remit the matter back to the file of the assessing officer to adjudicate the issue afresh on merits and the assessee is also directed to furnish relevant documents and evidences to prove the source of cash deposit. For statistical purposes, ground no.2 raised by the Revenue is treated as allowed.

25. In the result, ground no.2 raised by the Revenue is allowed for statistical purposes.

26. In combined result, the appeal of the Revenue is allowed for statistical purposes.

Order is pronounced on 31/01/2023 by placing the result on the Notice Board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat/दिनांक/ Date: 31/01/2023  
*Dkp Outsourcing Sr.P.S.*

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS  
ITAT, Surat