

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.557/Kol/2020  
Assessment Year: 2017-18**

Deputy Commissioner of Income-tax, Circle-13(1), Kolkata.	Vs.	Panchdeep Construction Ltd. 548, G. T. Road Howrah-711101 (PAN: AABCP5879N)
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Vijay Kumar, Addl. CIT, Sr. DR

Respondent by : Shri Miraj D. Shah, Advocate

Date of Hearing : 10.11.2022

Date of Pronouncement : 06.02.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the revenue is against the order of Ld. CIT(A)-5, Kolkata vide Appeal No. 814/CIT(A)-5/Cir-13(2)/2019-20 dated 26.08.2020 passed against the assessment order by DCIT, Circle-13(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.12.2019.

2. Grounds raised by the revenue are reproduced as under:

*"(i) That on the facts and in the circumstances of the case, the Ld.CIT(A), Kolkata erred in deleting the addition of Rs.2,54,75,000/- made U/S 68 of the 1. T. Act, on account of unsecured loan raised during the year without appreciating the fact that the assessee failed to prove the identity of the parties, genuineness of the transaction and creditworthiness of the parties in respect of the 'amount credited in its book of accounts on account of unsecured loan.*

*(ii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in holding that the source of source cannot be verified*

*and examined in respect of the credit appeared in the books on account of unsecured loan.*

*(iii) That on the fact and circumstances of the case the Ld. CIT(A) erred in deleting the addition of Rs. 1171554/- on account of expenses of interest on unsecured loan without appreciating fact that the unsecured loan raised during the year itself is bogus.*

*(iv) That Ld. CIT(A) erred in deleting the addition of Rs.509500/- made under section 69C on account of commission paid to the entry operators for taking accommodation on raising the so-called unsecured loan.*

*(v) That the Department craves leave to add, modify or abrogate the grounds of appeal during the course of hearing of the case"*

3. We note that there is a delay of 249 days in filing the present appeal before the Tribunal. We also note that the impugned order by Ld. CIT(A) is dated 26.08.2020. The limitation for filing the present appeal falls during the period of Pandemic of Covid-19. Petition for condonation of delay is placed on record by revenue, explaining the reasons for delay owing to Pandemic of Covid-19 during that time. It is noted that the period of delay falls during the time of Pandemic of Covid-19 which has been excluded by the Hon'ble Supreme Court in the case of *suo moto* Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation. Vide this order a further period of 90 days has been granted for providing the limitation from 01.03.2022. Accordingly, we condone the delay and proceed to admit the appeal for hearing.

4. Brief facts of the case are that assessee is a public limited company, engaged in the business of construction, executing civil and allied contracts of various government and semi-government authorities. It had filed its return of income on 28.02.2018 reporting a total income of Rs.5,69,22,230/-. Case was selected for scrutiny through CASS for which statutory notices were issued and served on the assessee which were duly complied with as noted in the impugned

assessment order. In the course of assessment proceeding, assessee was asked to furnish details of unsecured loans raised during the year. Ld. AO noted that assessee had received Rs.2,54,75,000/- as unsecured loans and paid interest of Rs.11,71,554/- by deducting TDS thereon of Rs.1,17,642/-. The details of loans raised during the year are tabulated as under:

Sl. No	Name of the company	Address of the company	Pr.Amount	Interest paid	TDS
1	Konark Commercial Ltd.	H B Road Machkhowa Guawahati Assam-781 001	2925,000/-	1,10,540	11,540
2	Mahanth Multitrading Pvt Ltd.	C/106 Shanti Ganga Apartment Station Road Bhayander(E) Thane Maharastra-401105	20,00,000/-	80,877	8,088
3	Metro Commercial Pvt Ltd	H B Road Machkhowa Guawahati Assam-781 001	55,00,000/-	2,54,219	25,422
4	Moukthika trading Pvt Ltd	A/106 Kamal Cooperative Society Housing Navghar Road Near Navdhar Police Station Bhayander East Mumbai City- Maharastra-401105	1,20,00,000/-	5,96,096	59,610
5	Yudhisthir Developers Pvt Ltd.	A/106 Shanti Ganga Apartment Station Road Bhayander(E) Thane	30,50,000/-	1,29,822	12,982

		Maharastra-401105			
	Total		2,54,75,000/-		

4.1. In the course of assessment, assessee furnished details of unsecured loans taken from the above said five companies, along with their confirmation of loans, ITR Acknowledgments, Balance Sheet, source of funds, bank statement, director's report and MCA Master data. Summons issued u/s. 131 of the Act on the directors of the assessee remained non-complied which led the Ld. AO to embark upon the theory of preponderance of human probability to make the addition by treating it as unexplained cash credit u/s. 68 of the Act. While issuing summons u/s. 131 of the Act, Ld. AO required the principal officer of the assessee to furnish details and documents including proof of identity and address, copies of bank statements, copies of relevant ROC returns, sources of funds and utilisation of fund, copies of ITRs filed as well as copies of Balance Sheet, P&L Account and tax audit report in respect of funds raised by way of unsecured loans.

4.2. Notices u/s. 133(6) of the Act were issued by the Ld. AO to the five lenders which were duly responded by them by furnishing all the required details and documents. Being not satisfied with the submissions and explanations furnished by the assessee, Ld. AO proceeded to complete the assessment by resorting to the theory of preponderance of human probability and made the addition of Rs.2,54,75,000/- as unexplained cash credit u/s. 68 of the Act.

4.3. Aggrieved, assessee went in appeal before the Ld. CIT(A), who after elaborately and analytically going through the explanations and

material placed on record, held that transactions in question are unsecured loans and that proviso to sec. 68 of offering explanation about the source of source is not applicable. He further observed that assessee had filed all the relevant documents and details and discharged its initial burden casted upon it u/s. 68 in respect of establishing the identity and creditworthiness of the lenders and genuineness of transactions. He also noted that there is no falsity or infirmities in the details or documents furnished in the course of assessment. Ld. CIT(A) also noted that creditworthiness of the lenders/creditors and genuineness of transactions could not have been doubted by the Ld. AO merely on the ground that the assessee had failed to produce loan creditors for his verification. Thus, finding force in the submissions made by the assessee, Ld. CIT(A) directed the Ld. AO to delete the addition of Rs.2,54,75,000/- made u/s. 68 of the Act. Consequent to this relief, addition made in respect of interest expenditure of Rs.11,71,554/- and unexplained expenditure u/s. 69C of Rs.5,09,500/- were also directed to be deleted. Aggrieved, revenue is in appeal before the Tribunal.

4.4. Before us, Shri Miraj D. Shah, Advocate represented the assessee and Shri Vijay Kumar, Addl. CIT, DR represented the department.

5. Before us, Ld. Sr. DR, Shri Vijay Kumar placed reliance on the order of Ld. AO and submitted that thorough examination has been conducted by the Ld. AO to arrive at a conclusion of treating the unsecured loans raised during the year as unexplained cash credit. He submitted that these companies (commonly known as jama-kharchi) are controlled and managed by entry operators for providing accommodation entries to the beneficiaries and, therefore, assessee brought back its undisclosed income into the books in the form of

unsecured loan through accommodation entry provided by the entry operators in lieu of commission. He pointed to the observation of Ld. AO that the e-mail address of these companies are common which has led to the conclusion that these are operator driven companies and that the assessee has routed its funds after layering through different such jama-kharchi companies. Ld. Sr. DR countered the findings given by the Ld. CIT(A) by submitting that by merely furnishing plethora of documents and details and not producing directors of the lender companies does not in any way establish the identity, creditworthiness of the lender companies and genuineness of the transactions. Thus, the relief granted by the Ld. CIT(A) ought to be reversed.

6. Per contra, Ld. Counsel for the assessee submitted that to establish the identity and creditworthiness of the lenders and genuineness of the transactions, assessee has submitted all the relevant details and documents in the course of assessment proceedings in respect of all the five lenders companies, details of which are noted in the order of Ld. CIT(A) in para 2.6.

6.1. Ld. Counsel placed on record a paper book containing 198 pages to demonstrate the details and explanations along with supporting corroborative documents furnished by it in the course of assessment proceeding as well as before the Ld. CIT(A). The index of the said paper book is reproduced as under for ease of reference. Ld. Counsel also placed on record, a compilation of case laws with nine citations therein.

<u>SR. NO.</u>	<u>DESCRIPTION</u>	<u>FILED</u>	<u>FILED</u>	<u>PAGE NOS.</u>
		<u>BEFORE AO</u>	<u>BEFORE CIT(A)</u>	
1.	IIR Acknowledgement & Computation of Income for A.Y 2017-18	Yes	Yes	1 to 4
2	Audited Financial Statement along with accompanying notes and disclosures annexed thereto of the assessee for A.Y. 2017-18	Yes	Yes	5 to 25
3	Requisition No.7 for Details of Unsecured Loans and reason for large increase of unsecured loans during A.Y 2017-18 filed on 13.07.2019	Yes	Yes	26 to 33
4	Show cause Notice No.ITBA/AST/F/143(3)/(SCN)/2019-20/1022593662(1) dated 18.12.2019	Yes	Yes	34 to 35
5	Reply to Show Cause Notice dated 18.12.2019	Yes	Yes	36 to 36
6	Reply to Show Cause Notice dated 24.12.2019	Yes	Yes	37 to 39
7	<u>Documents in respect of following companies:</u>			
	<u>(i) Yudhisthir Developers Private Limited</u>	Yes	Yes	
	a) MCA Master Data			40 to 40
	b) Email sent by Party to DCIT in reply to Notice u/s 133(6)			41 to 41
	c) Reply filed in response to notice u/s 133(6)			42 to 42
	d) Confirmation of Account			43 to 43
	e) Ledger Account of Trasaction			44 to 44
	f)Sources of Funds			45 to 45
	g)Income Tax Acknowledgement			46 to 46
	h) Bank Statement			47 to 49
	i) Directors Report			50 to 51
	j) Audited Balance Sheet			52 to 65
	<u>(ii) Metro Commercial Company Ltd</u>	Yes	Yes	
	a) MCA Master Data			66 to 66
	b) Email sent by Party to DCIT in reply to Notice u/s 133(6)			67 to 67
	c) Reply filed in response to notice u/s 133(6)			68 to 68
	d) Confirmation of Account			69 to 69
	e)Income Tax Acknowledgement			70 to 70
	f) Ledger Account of Trasaction			71 to 71
	g)Sources of Funds			72 to 72
	h) Bank Statement			73 to 74
	i) Directors Report			75 to 76
	j) Audited Balance Sheet			77 to 89
	<u>(iii) Moukthika Trading Private Limited</u>	Yes	Yes	
	a) MCA Master Data			90 to 90
	b) Email sent by Party to DCIT in reply to Notice u/s 133(6)			91 to 91
	c) Reply filed in response to notice u/s 133(6)			92 to 92
	d) Confirmation of Account			93 to 93
	e) Ledger Account of Trasaction			94 to 94
	f)Sources of Funds			95 to 95
	g)Income Tax Acknowledgement			96 to 96
	h) Bank Statement			97 to 97
	i) Directors Report			98 to 99
	j) Audited Balance Sheet			99 to 111

PANCHDEEP CONSTRUCTIONS LTD.

*RVC*

<u>Mark Commercial Ltd</u>	Yes	Yes	
a) MCA Master Data			112 to 112
b) Email sent by Party to DCIT in reply to Notice u/s 133(6)			113 to 113
c) Reply filed in response to notice u/s 133(6)			114 to 114
d) Confirmation of Account			115 to 115
e) Ledger Account of Transaction			116 to 116
f) Sources of Funds			117 to 117
g) Income Tax Acknowledgement			118 to 118
h) Bank Statement			119 to 120
i) Directors Report			121 to 122
j) Audited Balance Sheet			123 to 133
<u>(v) Mahanath Multitrading Private Limited</u>	Yes	Yes	
a) MCA Master Data			134 to 134
b) Reply filed in response to notice u/s 133(6)			135 to 135
c) Confirmation of Account			136 to 136
d) Ledger Account of Transaction			137 to 137
e) Sources of Funds			138 to 138
f) Income Tax Acknowledgement			139 to 139
g) Bank Statement			140 to 140
h) Directors Report			141 to 142
i) Audited Balance Sheet			143 to 155
8 Notice u/s 142 of the I.T. Act 1961 Dated 12.04.2019 issued to Respondent	Yes	Yes	155 to 158
9 Reply to Notice u/s 142(1) dated 12.04.2019 filed on 26.04.2019	Yes	Yes	159 to 159
10 Reply to Notice u/s 142(1) dated 12.04.2019 filed on 03.05.2019	Yes	Yes	160 to 160
11 Reply to Notice u/s 142(1) dated 12.04.2019 filed on 25.05.2019	Yes	Yes	161 to 162
12 Reply to Notice u/s 142(1) dated 12.04.2019 filed on 03.07.2019 - Full response	Yes	Yes	163 to 164
13 Acknowledgement of Details of unsecured Loan with evidences filed on 13.07.2019	Yes	Yes	163 to 164
14 Submissions Filed before Ld. CIT (A)	.....	Yes	165 to 198

6.2. Ld. AO sought details and explanations by issuing notice u/s. 142(1) of the Act for the unsecured loan so raised by the assessee. In the course of assessment proceedings assessee filed all the details. Specific attention of the Bench was invited to the e-proceedings Response Acknowledgement vide number – 13071911392797 uploaded on 13.07.2019 in the course of assessment proceedings whereby, following documents were furnished in respect of the five lender companies –

- (i) Confirmation letters;
- (ii) Bank Statements;
- (iii) Sources of funds;
- (iv) ITR Acknowledgments;

- (v) Audited Balance Sheet;
- (vi) MCA Master Data;
- (vii) Directors' Report.

7. Ld. Counsel reiterated that all the five lender companies are body corporate, registered with ROC and are assessed to income tax. He further stated that these lender companies had confirmed the transactions, filed relevant papers and documents and also explained their source of funds. He thus, emphasized that assessee had discharged its primary onus casted upon it u/s. 68 of the Act. According to him, the onus thus shifted to the Ld. AO to disprove the material placed before him. Without doing so, the addition made by the Ld. AO is based on conjectures and surmises and, therefore, cannot be sustained.

7.1. Ld. Counsel also emphasized on the fact that in addition to other evidence, assessee has submitted confirmation letter from the lender companies, confirming they lending to the assessee. He submitted that when a confirmation letter is submitted, it cannot be ignored. The confirmation letters are to be *prima facie* considered as correct unless evidence is brought on record to falsify the claim made therein. According to him, even in the submissions including ITRs, audit reports, bank statement, etc. as listed above, the Ld. AO has not found fault in any of the details submitted and simply proceeded to make addition in respect of the amount of unsecured loans given by these five lender companies.

7.2. Ld. Counsel further submitted that all the shareholder companies are regular income tax assessee and had filed their income tax returns. It was thus emphasized that identity of all the five lender companies is well established before the Department and is beyond any doubt.

7.3. It was further submitted on the aspect of genuineness of the transactions that the amounts were lent through proper banking channel which is duly reflected in the respective audited financial statements of the lender companies. It was thus contended that since the lending reflected in the respective financial statements and the source of such lending duly explained by them, the genuineness cannot be doubted.

7.4. To establish the creditworthiness of these five lender companies, details relating to their net-worth and the unsecured loans granted by them to the assessee were furnished along with their respective bank statement and audited financial statements. To corroborate this, details of net worth of each of the five loan creditors were furnished which are noted in the order of ld. CIT(A) in para 2.6, as under:

(i) Konark Commercial Ltd. – This lender is listed in the stock-exchange having net-worth of Rs.21.26 Cr. as on 31.03.2017. The loan given to the assessee is of Rs.29.25 lakh. The amount of loan outstanding as on 31.03.2017 from the assessee is disclosed in Note No. 12 of the Balance Sheet of the lender.

(ii) Mahanth Multitrading Private Limited – this lender company's net worth is Rs.46.42 Cr. as on 31.03.2017 and the loan given to the assessee is of Rs. 20 lakh.

(iii) Metro Commercial Company Ltd. – This lender company is also listed in stock exchange having net worth of Rs.21.29 Cr. as on 31.03.2017, loan given to the assessee is of Rs.55 lakh which is duly reported in its audited Balance sheet in Note No. 12.

(iv) Moukthika Trading Private Ltd. – The net worth of this lender company is Rs.56.10 Cr. as on 31.03.2017 and the loan given to the assessee is of Rs.1.20 Cr.

(v) Yudhisthir Developers Private Limited – The net worth of this lender company is Rs.59.44 Cr. as on 31.03.2017 and the loan given to the assessee is of Rs.30.50 lakh.

7.5. Ld. Counsel thus submitted that the above factual details unequivocally testifies and proves that all the lender companies had sufficient own fund for making lending unsecured loans to the assessee.

7.6. Ld. Counsel stated that all the assertions made by the Ld. AO on the three limbs of identity, creditworthiness of the loan creditors and genuineness of the transactions hinges, primarily on non-production of the directors of the five loan lender companies. He submitted that notice u/s. 131 of the Act was issued to the director of the assessee for personal appearance, who was requested to produce all the directors of the lender companies which was not complied with, though all the desired submissions were made during the course of assessment by the assessee. He submitted that non-appearance of directors of the lender companies is not fatal to the assessee as it was not within its control. He pointed to the fact that though directors of the lender companies did not appear in person but all the relevant compliances were fulfilled against the notices issued u/s. 133(6) of the Act by these lender companies. Ld. Counsel thus stated that it is a fact that assessee filed complete details of unsecured loans raised by it during the year. Notices and summons issued to the lender companies were duly served and complied with by filing details and evidence as called for and also confirming the investigations made by them explaining the source thereof. The assessee had duly discharged the onus laid upon them u/s. 68 of the Act. Ld. Counsel thus, asserted that ld. CIT(A) has rightfully deleted the additions made by the ld. AO.

8. We have heard the rival contentions and perused the material available on record and have given our thoughtful consideration to the elaborate observations and findings given by the Ld. CIT(A) while giving relief to the assessee. At the outset, we note that notices u/s. 133(6) of the Act were issued by the Ld. AO to all the five lender companies, who had replied giving all the details and documents required by the Ld. AO along with confirming the transaction of, they granting loan to the assessee. We also take note of the fact that the lender companies had furnished copies of their ITR acknowledgments which showed that each of them were regular income tax assessee, testifying their identity.

8.1. From the perusal of the paper book and the documents placed therein, it is seen that all the lender companies are (i) income tax assessee filing their income tax returns, (ii) loans were given by account payee cheques, (iii) details of the bank accounts belonging to lender companies and their bank statements, (iv) in none of the transactions there are any deposit of cash before issuing cheques to the assessee, (v) all the lender companies are having substantial creditworthiness represented by their net worth as reported in their audited financial statements, (vi) all of them replied to the notice issued by ld. AO u/s 133(6) and confirmed the transaction of granting of loan by issuing confirmation letter.

8.2. We also take note of the elaborate and well reasoned findings and decisions arrived at by the Ld. CIT(A) by taking into consideration all the details and documents placed on record. The relevant findings and decisions from para 6 are extracted as under:

*“6.1. I have gone through the assessment order, the submissions filed by the Appellant, the evidences of submission of reply u/s. 133(6), the reply in respect of show cause the details of loans and supporting documents filed by the assessee in July 2019 electronically and have also gone through various decisions of High courts examining these kind of issues.*

6.2 The A.O. has also mentioned that some of the source of source of Loans were having common directors and common email ID, bank account, which has been replied by the AR vide Para 4.1 of the submission which proves that neither there were all common Directors, Nor all common emails, Nor all common banks. The AR also argued that even if there any such issues with sources of source, the A.C. ought to have confronted the assessee, which was not done. Moreover the appellant can be expected to answer what is in his knowledge and not otherwise. The A.C. has also taken a ground that ITRs are being filed at Assam and Maharashtra. Well that should not be any allegation when the country itself is moving in faceless assessment, appeal and the matter of any part of the country can be taken on any part of the country. I find that there is no merit in the allegations levelled against the appellant especially when he is not supposed to answer them and also without confronting him with any specific allegation or infirmity. Nowhere in the assessment order it finds mention that the appellant was confronted with an such question and hence any adverse inference does not hold ground.

.... ....

6.4 In the appellant's case I find that the assessee had filed copies of the audited accounts for the FY 2016-17 of all the Five Lender companies. Examination of these accounts revealed that each of these company was having substantial own funds in the form of capital & reserves which were several times more than the Loans Granted to the appellant. For example, in the case of Konark Commercial Ltd, the Net worth is 21.26 Crores as on 31.03.2017. The Loan to the assessee was Rs. 29.25 Lacs, which in percentage terms was 1.37%. Similarly, in case of Mahanth Multitrading Pvt. Ltd. The Company's Net worth was Rs. 46.42 Crores and the Loan to the assessee was Rs. 20 Lacs, which 0.43 %. In case of Metro Commercial Co. Ltd, The Company's Net worth is Rs. 21.29 Crores and the Loan to the assessee was Rs. 55 Lacs, 2.58%, In case of Moukthika Trading Pvt. Ltd., The Company's Net worth is 56.10 Crores and the Loan to the assessee was Rs. 1.20 Crores, which is 2.13%, and Lastly in the case of Yudhithir Developers Pvt. Ltd. The Company's Net worth is Rs. 59.44 Crores and Loan to the assessee was Rs. 30.50 Lacs, which comes to 0.51%. From these facts, I find that only a fraction of the net owned funds of the respective Lending companies was granted as Loan to the appellant.

6.5 From the impugned order I note that the assessee had provided to the AO the complete details of Five Loan Creditors who had granted Loans to as early as July 2019. On receipt of these details the A.O. did not choose to carry out any enquiry and it appears that only in December 2019 (date not mentioned by AO) he chose to issue notices u/s 133(6) to Loan creditors and each notice was complied with. I also find that on receiving replies to notices u/s 133(6) in no case the AO considered it necessary to issue notice u/s 131 of the Act for personal appearance of the Loan creditors. Even in the impugned order the AO has not alleged non-compliance to his notices by any of them, he has selectively stated that reply was not received till 14.12.2019. Each of the Loan Creditor was an independent income-tax assessee and for AY 2017-18 had filed tax returns and evidence thereof was filed before the AO. The audited financial statements of each of them proved that they had sufficiently large investible funds from which the Loans were paid. Each one admitted granting Loans to the appellant by proper Banking channel. No falsity or infirmity in

*these documents was proved. In view of these facts therefore I have no hesitation in holding that the assessee had discharged the onus cast on him for proving creditworthiness of the share applicants.*

*6.6 From the A/R's submissions it is noted that although the AO made direct enquiries from them u/s. 133(6) but he chose not to issue personal summons u/s 131 upon them. Instead the AO required the appellant to enforce their attendance and that too at the fag end of the time barring period. The AO having been vested with statutory powers was expected to enforce personal attendance of Loan creditors and not the appellant. In my considered view therefore such action of the AO was completely uncalled for and unjustified. I further find that the AO had not stated the reason or purpose for which the Directors of Loan Creditors were required to be present. From the details available on record, I find that the information ordinarily required to be furnished by the Loan Creditors in support of their Loans granted had already been provided. In view of these facts therefore I have no hesitation in holding that the assessee had discharged his onus of establishing the identity, creditworthiness & genuineness of the Loan Creditors.*

*6.7 The PAN Details and IT Acknowledgments of the Loan Creditor companies also proved that each company was assessed to tax and for AY 2017-18 being the year under consideration they were assessed in their own right. The facts and documents therefore supported the AR's contention that the assessee had established identity of all the five Loan Creditors. The A.R of the appellant also furnished copies of the bank statements of the respective Loan creditor companies. Referring to the copies of the bank statements, the AR established that payment of Loans was recorded in the bank statements of the respective companies. The entries in the bank statement proved that the Loans substantiated that before payment of the amounts and no cash was deposited in the bank accounts of the lender companies or even their source companies. The AR further pointed out that appellant had furnished explanations before the AO with regard to immediate sources from which loan amounts were paid. On these facts therefore I find that in terms of section 106 of the Evidence Act, the creditworthiness of the loan creditor and the genuineness of the transactions could not have been doubted by the AO merely on the ground that the appellant had failed to produce the loan creditors for his verification.”*

8.3. Before arriving at our finding, to buttress our observations and conclusions, we refer to the decision of Hon'ble Jurisdictional High Court of Calcutta in the case of *PCIT v. Sree Leathers in ITA No. ITAT/18/2022 (IA No. GA/02/2022) dated 14.07.2022* from the case law compilation placed on record by the Id. Counsel, wherein it was held as under:

*Fortunately, for the assessee, CIT(A) has done an elaborate factual exercise, took into consideration, the creditworthiness of the 13 companies the details of which were furnished by the assessee. More importantly, the CIT noted that all these companies responded to the notices issued under Section 133 (6) of the Act which fact has not been denied by the assessing officer. On going*

*through the records and the net worth of the lender companies, the CIT has recorded the factual findings that the net worth of those, companies is in crores of rupees and they have declared income to the tune of Rs. 45,00,000/- and 75,00,000/-. Therefore, the assessing officer if in his opinion found the explanation offered by the assessee to be not satisfactory, he should have recorded so with reasons. We find that there is no discussion on the explanation offered by the assessee qua, one of the lenders. Admittedly, the assessee was not issued any show cause notice in respect of other lenders. However, they are able to produce the details before the CIT(A) who had in our view rightly appreciated the facts and circumstances of the case. As pointed out earlier, the assessing officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It is not enough for the assessing officer to say so but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply dated 22.12.2017 does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. In the absence of any such finding, we have to hold that the order passed by the assessing officer was utterly perverse and rightly interfered by the CIT(A). The Tribunal re-appreciated the factual position and agreed with the CIT(A). The tribunal apart from taking into consideration, the legal effect of the statement of Ashish Kumar Agarwal also took note of the fact that the notices which were issued by the assessing officer under Section 133 (6) of the Act to the lenders where duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the assessing officer and there is no discussion on this aspect. Thus, we find that the tribunal rightly dismissed the appeal filed by the revenue.”*

8.4. In the course of assessment proceeding, Ld. AO directed the assessee to produce the director of the assessee and also the directors of the lender companies along with relevant documentary evidence and details which was not complied with in full. Ld. Counsel submitted that mere non-appearance of directors of lender companies is no basis for invoking provisions of section 68 of the Act, more particularly when for two of the lender companies (Konark Commercial Ltd. and Metro Commercial Company Ltd.) are listed on stock exchange. For this, he placed reliance on the decision of Hon'ble Supreme Court in the case of *CIT v. Orissa Corporation (P) Ltd. (1986) 159 ITR 78 (SC)* wherein it was held as under:

*“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 the 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 was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise.*

*The High Court was, therefore, right in refusing to refer the questions sought for. Decision of the High Court affirmed.”*

8.5. We notice that all the details were very much placed before the Assessing Officer but while framing the assessment, the entire emphasis has been on the non-appearance of the directors. We, therefore considering the facts and circumstances of the case and judicial precedent referred above, are of considered view that since the assessee has sufficiently explained the identity and creditworthiness of the lender companies and the genuineness of the transaction of unsecured loans obtained by the assessee company, we find no reason to interfere with the meritorious finding of the CIT(A). We accordingly dismiss the grounds raised by the revenue in this respect.

9. In respect of grounds taken by the revenue vide ground nos. (iii) and (iv) for deletion of addition of Rs.11,71,554/- towards interest on unsecured loans and Rs.5,09,500/- on account of commission paid to the entry operators for taking accommodation for raising the so called unsecured loans u/s. 69C of the Act, we have already deleted the addition made u/s. 68 of the Act for the unsecured loans raised by the assessee

during the year as stated above. The Ld. AO made a disallowance of interest on these unsecured loans by holding that as the loan itself is a bogus loan, interest paid on such loan is also bogus. Also in respect of addition made towards unexplained expenditure u/s. 69C of the Act, Ld. AO noted that assessee has raised unsecured loans by way of accommodation entry through brokers and entry operators on which he assumed that the entry provider was given commission @ 2% per 100 rupees., by thereby arriving at a figure of Rs.5,09,500/- as commission.

9.1. Since the quantum of the appeal in respect of unsecured loans raised by the assessee of Rs.2,54,75,000/- has already been held in favour of the assessee, the consequential addition as per ground no. (iii) and (iv) for interest of Rs.11,71,554/- and commission u/s. 69C of Rs.5,09,500/- is also directed to be deleted. Accordingly, ground nos. (iii) & (iv) taken by the revenue are also dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 06<sup>th</sup> February, 2023.

Sd/-  
(Sanjay Garg)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 06<sup>th</sup> February, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(A)-5, Kolkata
  4. The Pr. CIT,           Kolkata.
  5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata