आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 332/JP/2022
निर्धारण वर्ष/Assessment Years : 2016-17

M/s. Alwar General Finance Co. (P) Ltd. 148, Alka Puri, Kali Mori Phatak Alwar	बनाम Vs.	The ACIT Circle-1 Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCA 4988P		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal, CA
राजस्व की ओर से/ Revenue by : Shri R.S. Meel, JCIT)

सुनवाई की तारीख/ Date of Hearing : 23/11/2022
उदघोषणा की तारीख/Date of Pronouncement : 17 /02/2023

आदेश/ ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 5-07-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2016-17 wherein the assessee has raised the following grounds of appeal

> "1. The Ld. AO has erred in law as well as the facts and circumstances of the case in not providing any opportunity to the assessee company with reference to the additions so made in the assessment order which is against the principles of natural justice, therefore the assessment order deserves to be quashed on this primary ground alone and the Ld. CIT(A) has not given any finding thereon.
> 2. The Ld. AO has erred in law as well as the facts and circumstances of the case in making addition of Rs.36 lacs on account of unsecured loan

> u/s 68 of IT Act, 1961 inspite of furnishing confirmation of account, balance sheet and copy of return of income and addition made on account of non furnishing of bank statement whereas the said bank account of the cash creditor was seized by the same AO who is the AO of assessee company and was released subsequent to the framing of assessment order of the assessee company and the copy of bank statement and confirmation of account was submitted by the cash creditor in response to notice u/s 133(6) of IT Act, 1961 so the addition so made deserves to be deleted and the Ld. CIT(A) has erred in sustaining the same.
>
> 3. The Ld. AO has erred in law as well as the facts and circumstances of the case in disallowing interest expense of Rs.50,597/- u/s 36(1) of IT Act, 1961 and Ld. CIT(A) has erred in sustaining the same.

2.1 At the outset of the hearing, the ld. AR of the assessee has not pressed the Ground No.2. Hence, the same is dismissed being not pressed.

3.1 Apropos Ground No. 1 and 3 of the assessee, brief facts of the case are that The assessee filed its return of income on 19.07.2016 declaring total income of Rs.1,45,65,900/- and book profit u/s 115JB at Rs.1,50,46,859/-. The case of the assessee was selected for scrutiny through CASS. Accordingly, a notice u/s 143(2) of the Act dated 19-07-2017 was issued which was served upon the assessee through e-mail. In spite of various notices, the assesee furnished written submission dated 25-10-2018 on the e-filing portal. The AO during the course of assessment proceedings noticed that during the year under consideration, the assessee company is engaged in NBFC activities and derived income therefroms. In this case, it is noticed by the AO that during the year under consideration, the assessee has obtained unsecured loan of Rs.36 lakhs from Sh. Divesh Goyal. The

AO issued notice u/s 133(6) dt. 17.10.2018 **(PB 4)** to Sh. Divesh Goyal requiring him to furnish the confirmatory letter, proof of source of income and bank account through which loan was advanced. This notice was not complied with by Divesh Goyal before the date of assessment order since his bank account was attached by AO who is also the AO of assessee.However, his bank account was released by the AO on 14.12.2018 **(PB 3)** and thereafter Sh. Divesh Goyal vide reply dt. 21.12.2018 **(PB 5)** filed the necessary documents including the bank statement **(PB 7-22)** which was received by the AO on 26.12.2018 **(PB 6)**, i.e. after the date of assessment order. It is also pertinent to mention that in the meanwhile the AO also required the assessee to establish the identity & creditworthiness of Sh. Divesh Goyal as well as genuineness of transaction. In response to same, the assessee vide letter dt. 11.12.2018 **(PB 1-2)** furnished the return, balance confirmation ledger account and Aadhar card of Sh. Divesh Goyal to the AO. The AO, however, held that in the computation of income **(PB 35-37)** Sh. Divesh Goyal has declared business loss at Rs.20,85,522/- and thus his creditworthiness could not be proved. Further his bank statement was also not furnished and thus genuineness of transaction also couldn't be proved. Accordingly, the AO vide order dt. 13.12.2018 passed u/s 143(3) of IT Act and made addition of Rs.36 lacs u/s 68 of IT Act,

1961. He also disallowed interest expense of Rs.50,597/- paid by assessee to Shri Divesh Goyal on the ground that unsecured loan raised from him is not proved.

3.2 Aggrieved by the order of the AO, the assessee in the appellate proceedings filed the documents which were filed by Shri Divesh Goyal to the AO after completion of assessment proceedings. The Ld. CIT(A) called for remand report. The AO submitted his remand report dt. 05.02.2020 **(PB 43-44)** wherein he stated that since Shri Divesh Goyal has filed the return at loss of Rs.20,85,522/- therefore, his creditworthiness is not proved in view of the decision of Hon'ble Supreme Court in case of NRA Iron & Steels (P) Ltd. 412 ITR 161 where it was held that it was worth noting that how could investor companies having filed income tax returns with a meager or nil income invest such huge sum of money. The assessee filed rejoinder to the remand report. In the appellate proceedings, the Ld. CIT(A) held that from the date of issue of first notice u/s 142(1) by the AO on 23.08.2018 to the date of attachment of bank a/c i.e. 23.10.2018, the assessee and Shri Divesh Goyal had adequate time available with them to obtain the bank statement and file written submissions. However, the assessee filed his first written submission on 11.12.2018 and Sh. Divesh Goyal chose not to comply with the notice u/s 133(6) issued by the AO on 17.10.2018. These facts shows that bank statement of Shri Divesh Goyal was not filed by the assessee or Shri Divesh Goyal before the AO in

spite of the fact that adequate time was available with them prior to attachment of bank a/c. The assessee filed the bank statement before the AO on 26.12.2018, i.e. 13 days after the completion of assessment on 13.12.2018. This fact clearly shows that the initial onus of proving the creditworthiness of creditor was not discharged by the assessee. Further mere filing of confirmation, PAN, ITR of creditors does not establish the creditworthiness of loan transaction when the ITR of creditor does not inspire such confidence. Mere fact that transaction was made through banking channel does not establish the genuineness of transaction. Accordingly, Ld. CIT(A) confirmed the addition of Rs.36 lacs made by AO u/s 68 of IT Act and also confirmed the disallowance of interest expense of Rs.50,597/- whose relevant para's are reproduced as under:-.

> ''7.4 Finding of Ground of Appeal No.2
>
> a) The undersigned has gone through the assessment Order and written submissions filed by Appellant. The AO has made the addition u/s 68 for following reasons:-
>
> - Appellant could not furnish bank statement of creditor.
> -Notice u/s 133(6) issued to creditor i.e. Dinesh Goyal calling for his bank statement but the same was not complied with.
> - Creditor has shown loss of Rs. (-) 20,85,522 in the ITR V filed by him.
> -Due to these reasons the AO held that Appellant failed to prove the creditworthiness of Creditor and genuineness of transaction.
>
> b) After examining these details the facts of this case are as under:-
>
> -AO issued notices u/s 142(1) to Appellant on 23.08.2018 and 05.10.2018 calling for these details in respect of cash credit of Rs. 36,00,000/-. AQ called for details and supporting documentary evidences in respect of

Unsecured loan of Rs.36,00,000/- specifically in notice u/s 142(1) dated 23.08.2018. Copy of bank statement of creditor was also called. These notices were not complied by Appellant. Final notice u/s 142(1) was issued to Appellant on 25.10.2018. In response the Appellant filed details vide letter dated 11.12.2018.

-Bank a/c of Dinesh Goyal was attached on 17.10.2018. Prior to that the AO had asked for bank statement of Creditor from Appellant on 23.08.2018 vide notices u/s 142(1). However, the Appellant failed to provide the bank statement inspite of opportunity given and adequate time available.

-Notice u/s 133(6) was issued to Dinesh Goyal on 17.10.2018 calling or his bank statement on or before 25.10.2018. Bank a/c of Dinesh Goyal was attached on 23.10.2018. Thus, Dinesh Goyal had a week's available with him from 17.10.2018 to 23.10.2018 to get his bank statement and prepare his submission and file it before the AO on 25.10.2018. However, Sh. Dinesh Goyal did not comply with this notice for reasons best known to him.
- Thus, from the date of issue of first notice u/s 142(1) by the AO on 23.08.2018 to the date of attachment of bank a/c i.e. 23.10.2018, the Appellant and Dinesh Goyal had adequate time available with them to obtain the bank statement and file written submissions. However, the Appellant filed his first written submission on 11.12.2018 and Sh. Dinesh Goyal chose not to comply with the notice u/s 133(6) issued by the AO on 17.10.2018.

-These facts show that bank statement of Dinesh Goyal was not filed by the Appellant or Dinesh Goyal before the AO inspite of the fact that adequate time was available with them prior to attachment of bank a/c. Appellant filed the bank statement of Dinesh Goyal before the AO on 26.12.2018 i.e. 13 days after the completion of assessment on 13.12.201

c) The above facts clearly show that the initial onus of proving the creditworthiness of creditor was not discharged by Appellant.

-The Hon'ble Delhi High Court in case of Sanraj Engg. Pvt. Ltd vs CIT (2016) TIOL-316-HC-DEL-IT held that Addition made u/s 68 on account of unsecured loans was justified, where initial onus of proving the creditworthiness of lenders was not discharged by the Assessee.

- The Hon'ble Delhi High Court in PCIT Vs Bikram Singh (2017) reported in 399 ITR 407 (Del.) held as under-

"Even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in absence of any agreement, security and interest payment. Mere submission of PAN card of Creditor does not established the authenticity of loan transaction when the ITR does not inspire such confidence. Mere submission of ID Proof and the fact that loan transactions were through banking channel does not establish the genuineness of transactions.

- The Hon'ble Gujarat High Court in Sitaram Ramchandass Patel vs ITO (2018) in 95 taxmann, com 290 (Guj) held that where assessee failed to prove the capacity of concerned persons who alleged to have given unsecured loan and /or gift, impugned addition made u/s 68 was to be confirmed.

-The Hon'ble Apex Court in Roshan Di Hatti vs CIT (1992) in 2 SCC 378 held that if the assessee fails to discharge the onus by producing cogent evidence and explanation, the AO would be justified in making the addition back to income of assessee.

-The Hon'ble Guwahati High Court in Neni Chand Kothari (2003) in 264 ITR 254 held that merely because the transaction has taken place be cheque is not sufficient to discharge the burden. The assessee has to prove the identity of creditors and genuineness of transaction.

d) In view of the above facts it is hereby held that mere filing of confirmation, PAN, ITR of creditor does not establish the creditworthiness of loan transaction when the TR of Creditor does not inspire such confidence. Mere/fact that transaction was made through banking channel does not establish the genuineness of transaction. In view of the facts and respectfully following the judgements as outlined in paras 7.4(a) to 7.4(c) of this order, the addition made by the AO of Rs.36,00,000/- u/s 68 is hereby upheld and confirmed. Ground of Appeal No. 2 is dismissed.

7.5 Ground of Appeal No. 3 Disallowance of Interest of Rs. 50,597/-

Since the addition made by the AO of Rs. 36,00,000/- u/s 68 has been as unexplained cash credit, then the interest debited of Rs. 50,597/- also deserves to be disallowed. Ground of Appeal No. 3 is dismissed.''

3.3 During the course of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) has erred in confirming the action of the AO for which the ld. AR submitted that only reason for making the addition is that the bank statement of the

creditor was not filed to the AO before completion of assessment though there was sufficient time to furnish the same and Sh. Divesh Goyal has declared business loss of Rs.20,85,522/- and therefore, genuineness of transaction and his creditworthiness is not established. It may be noted that the bank account of Shri Divesh Goyal was attached by the AO on 23.10.2018. After release of this bank account on 14.12.2018, the same was filed to the AO on 26.12.2018 and this bank account was before the Ld. CIT(A). From the bank statement **(PB 19)** it can be noted that in his bank account there was a balance of Rs.2,01,266/- on 15.02.2016. On this date there is credit of Rs.30 lacs in his bank account as amount received from Rajasthan Tractor Machinery. Thus, his bank balance on 15.02.2016 was Rs.32,01,266/-. Out of this, he gave loan of Rs.31,70,000/- on 16.02.2016 leaving a balance of Rs.6,007/-. Thereafter he made cash deposit of Rs.1,24,500/- on 16.02.2016 having balance of Rs.1,30,507/-. Out of it, he advanced Rs.1,30,000/- to the assessee on 16.02.2016. Subsequently, he received Rs.6,70,000/- in his bank account from DMVE Commerce on 02.03.2016 out of which Rs.3 lacs (1,92,500+1,07,500) was given to the assessee on 02.03.2016. Thus, from his bank account, the genuineness of transaction is proved. So far as creditworthiness of Divesh Goyal is concerned, only because he declared business loss of Rs.20,85,522/- during the year it cannot be held that he has no creditworthiness

ignoring his past. Sh. Divesh Goyal has been regularly filing its return and Balance Sheet with the department. From his return and Balance Sheet his financial position for AY 2014-15 & 2015-16 can be noted as under:-

Particulars	**AY 2014-15**	**2015-16**
Gross Total Income	Rs.53.73 lacs	Rs.48.98 lacs
Turnover	Rs.5.04 crores	Rs.1.96 crores
Gross Profit	Rs.1.38 crores	Rs.90.47 lacs
Net Profit	Rs.48.82 lacs	Rs.5.78 lacs
Loans & Advances	Rs.7.10 crores	Rs.5.47 crores

From the above table, creditworthiness of Sh. Divesh Goyal is evident. Only because in the year under consideration, he has declared business loss of Rs.20.85 lacs which cannot lead to an inference that he had no creditworthiness to give loan to assessee more particularly when in AY 2017-18 he has declared gross total income of Rs.12,03,800/- **(PB 40-41)**. The Ld. CIT(A) in spite of having all the documents evidencing the genuineness of transaction and creditworthiness of Sh. Divesh Goyal has confirmed the addition only for the reason that bank account of Sh. Divesh Goyal was not filed to the AO before completion of assessment proceedings. This cannot be a basis for confirming the addition more particularly when the AO who attached the bank account, could have called such bank statement from the banker, such bank statement was otherwise available before him in remand proceedings and no discrepancy has been pointed out by the lower authorities in the bank statement and other documents available before them.

Hence, the addition confirmed by Ld. CIT(A) is unjustified and uncalled for. The Ld. CIT(A) at Pg 16, Para (c) of his order by relying on certain decisions has observed that initial onus of proving the creditworthiness of the creditor was not discharged by the assessee. This is factually incorrect. The assessee has established the creditworthiness of creditors by filing his return and balance sheet for the preceding 2 years. Once the assessee has discharged the initial onus, the burden shifts on the departmental authorities to disprove the fact brought on record. Nothing has been done by the lower authorities after the assessee furnished ample evidences to prove the creditworthiness of the creditor. Hence, once the assessee has discharged the onus laid on him u/s 68 of the Act, the addition confirmed by the Ld. CIT(A) should be deleted. To this effect, reliance is placed on the following decisions of the jurisdictional High Court:-

Aravali Trading Co. Vs. ITO 187 Taxman 338 (Raj.) (HC)
The jurisdictional HC while deleting the addition u/s 68 of the Act held as follows:-

"20. This principle is fully applicable to the present case. The fact that the explanation furnished by the aforementioned four creditors about the sources where from they acquired the money was not acceptable by the Revenue could not provide necessary nexus for drawing inference that the amount admitted to be deposited by these four persons belonged to the assessee. ***The assessee having discharged his burden by proving the existence of the depositors and the depositors owing their deposits, he was not further required to prove source of source.***

21. ***Accordingly the Tribunal, and the AO had seriously erred and misdirected themselves in law by not correctly appreciating the legal principle about necessity of establishing such nexus once the assessee has discharged his onus by proving the existence of the depositors and the depositors having accepted their deposits with the assessee. Once this***

onus is discharged the presumption raised under s. 68 stands rebutted and it becomes burden of Revenue to prove that source of such deposits is traceable to assessee before the same can be treated as undisclosed income of the assessee concerned.

22. In view of the aforesaid discussion, this appeal must succeed. Accordingly, the appeal is allowed. The orders passed by the Tribunal, the CIT(A) and the AO are set aside to the extent additions of Rs. 3,15,000 in respect of the aforesaid cash credits found in the books of the account of assessee were added in the income of the assessee. The additions made in the income of the assessee of the aforesaid account are directed to be deleted and demand notice to be accordingly modified. There shall be no order as to costs."

Kanhaialal Jangid Vs. ACIT 217 CTR 354 (Raj.) (HC)
The jurisdictional HC while deleting the addition u/s 68 of the Act held as follows:-

"5. The question No. 1 relates to disallowance on account of cash credits found in the books of the assessees. Rs. 16,000 was alleged to have been borrowed to have been by Sri Devendra Sankhla and Rs. 16,000 was allegedly borrowed from one Ramulal. Assessee has produced the confirmation letters from both the creditors and has also produced Sri Devendra Sankhla before the AO. Sri Devendra Sankhla on being produced before the AO, affirmed that he had given in advance a sum of Rs. 16,000 to the assessee. However, the explanation of the assessee about the receipt of Rs. 16,000 from Devendra Sankhla was rejected on the ground that on inquiry from Devendra Sankhla the creditor could not satisfactorily explain source wherefrom whether he could have advanced Rs. 16,000, looking to his income and family expenditures. In other words, the cash credit in the name of Devendra Sankhla was rejected on the ground that the assessee has failed to prove source wherefrom deposit or advance by Sri Devendra Sankhla could be made. This finding has been consistently affirmed by CIT(A) as well as by Tribunal. ***We are of the opinion that in rejecting the explanation of the assessee on the undisputed facts is founded on erroneous application of law in the matter. While it was the assessee's burden to furnish explanation relating to such cash credits, the assessee's burden does not extend beyond proving the existence of the creditor and further proving that such creditor owns to have advanced the amount credited in the account of assessee to him. However, the burden does not go beyond to put the assessee under an obligation to further prove that wherefrom the creditor has got or procured the money to be deposited or advanced to the assessee. The fact that the explanation furnished by the creditor about the source from where he procured the money to be deposited or advanced to the assessee, is not relevant for the purposes of rejecting the explanation furnished by the assessee, and make additions of such deposits as income of the assessee from undisclosed sources by invoking s. 68 of the IT Act, unless it can be shown by the Department that the source of such money comes from the assessee himself or such source could be traced to the assessee itself.*** *In the present case while existence of Sri Devendra Sankhla the creditor is not in doubt, and he has admitted to have advanced the loan to the assessee. The fact that the explanation furnished by Sri Devendra Sankhla about his source of such advancement has not been accepted by the Revenue authority cannot lead to any presumption that the source of such advancement*

by Sri Devendra Sankhla emanated from the assessee. Therefore, addition of Rs. 16,000 in the income of assessee as cash credit in the name of Sri Devendra Sankhla cannot be sustained. Such addition of income of assessee has to be deleted from the income of assessee."

Labh Chand Bohra Vs. ITO 189 Taxman 141/ 219 CTR 571 (Raj.) (HC)
The jurisdictional HC while deleting the addition u/s 68 of the Act held as follows:-

8. Examining the present case even on these parameters, first requirement is not relevant. So far as second requirement is concerned, there is no doubt about initial burden being on the assessee. So far as third requirement is concerned, obviously if the explanation is not satisfactory, then it is added. Then fourth requirement is that the firm has to establish that the amount was actually given by the lender. Fifth requirement is about genuineness and regularity in maintenance of the accounts, obviously of the assessee, and it is not the finding, that the accounts were not regularly maintained. Then sixth requirement is that if the explanation is not supported by any documentary or other evidence, then the deeming fiction created by s. 68 can be invoked. ***In the present case, so far as 6th requirement is concerned, it is very much there in existence, inasmuch as the amount has been advanced by account payee cheques, through bank, and is duly supported by documentary evidence, as well as the evidence of the two lenders, and that satisfies the 2nd requirement also, about the discharge of burden on the part of the assessee to prove identity and genuineness of the transaction. So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat Ram's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment runs contrary to the judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent judgment in Mangilal's case (supra) relying upon Daulat Ram's case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in Mangilal's case (supra).***

9. The net result is that all the three questions are answered in favour of the assessee and against the Revenue."

CIT Vs. Jai Kumar Bakliwal (2014) 366 ITR 217/ 101 DTR 377 (Raj.) (HC)
The jurisdictional HC while deleting the addition u/s 68 of the Act held as follows:-

"20.When we peruse the facts herein above, it is an admitted position that all the cash creditors have affirmed in their examination that they had advanced money to the assessee from their own respective bank accounts. ***Therefore, when there is categorical finding even by the AO that the money came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition cannot be sustained and has been rightly deleted by both the two appellate authorities. There is no clinching evidence in the present case nor the AO has been able to prove that the money***

actually belonged to none but the assessee himself. The action of the AO appears to be based on mere suspicion.

21. Accordingly, in our view, the ITAT, after appreciation of evidence has rightly come to the aforesaid conclusion and when there is appreciation of evidence, then it is purely a finding of fact and no question much less substantial question of law can be said to emerge out of the said order of the Tribunal and we do not find any infirmity or perversity in the order of the ITAT so as to call for any interference of this Court. In our view, no substantial question of law arises out of the order passed by the ITAT."

CIT Vs. H.S. Builders (P.) Ltd. (2012) 78 DTR 169 (Raj.) (HC)
In this case, order of CIT(A) deleting addition u/s 68 was upheld by Tribunal after finding that assessee had submitted the accounts of return, computations of income, balance sheets of the creditors and also supplied all their particulars to evidence that the money given to the assessee had been shown in the respective balance sheets of the creditors and that the creditors who were called by the AO did affirmed the fact of giving money and explained the source of same. Tribunal also found that the circumstances of deposit of cash in the bank accounts of some of the creditors before giving cheques to the company by itself, would not lead to the conclusion that the money was deposited by the assessee company. Therefore, it was held that there is no reason to enter into a factual inquiry so as to appreciate & evaluate the evidence over again.

Thus the ld. AR further submitted that assessee has credited interest of Rs.50,597/- to Divesh Goyal on which TDS of Rs.5,060/- was deducted. As explained supra, the loan taken from Divesh Goyal is genuine, therefore, the disallowance of interest confirmed by CIT(A) be directed to be deleted. Hence, addition/ disallowance confirmed by CIT(A) should be directed to be deleted.

3.4 On the other hand, the ld. DR relied upon the orders of the lower authorities.

3.5 We have heard both the parties and perused the materials available on record. The crux of the issue is that the assessee had obtained unsecured loan of Rs.36 lakhs from Shri Divesh Goyal for which the AO vide issuance of notice u/s

133(6) dated 17-10-2018 to Shri Divesh Goyal desired to furnish the confirmation letter, proof of source of income and bank account through which loan was advanced, however, the Shri Divesh Goyal could not comply with the directions of the AO before the date of assessment order owing to attachment of bank account of Shri Divesh Goyal by the AO. It is pertinent to mention that the bank account of Shri Divesh Goyal was released by the AO on 14-12-2018 who vide reply dated 21-12-2018 filed the necessary documents including the bank statement and it was received by the AO on 26-12-2018 i.e. after the date of assessment order. It is also noted that the Assessee had furnished the return, balance confirmation ledger account and Adhar Card of Shri Divesh Goyal in order to establish the identity and creditworthiness besides genuineness of the transaction. From the bank statement of Shri Divesh Goyal, it is gathered that there was a balance of Rs.2,01,266/- and simultaneously there was credit of Rs.30 lacs in his bank account on 15-02-2016 as amount received from Rajasthan Tractor Machinery which shows that he had accumulated amount of Rs.32,01,266/-. It is also noted that out of it Shri Divesh Goyal advanced Rs.1,30,000/- to the assessee on 16.02.2016. Subsequently, he received Rs.6,70,000/- in his bank account from DMVE Commerce on 02.03.2016 out of which Rs.3 lacs (1,92,500+1,07,500) was given to the assessee on 02.03.2016. Thus, from his bank account, the genuineness of transaction is

proved. So far as creditworthiness of Divesh Goyal is concerned, only because he declared business loss of Rs.20,85,522/- during the year it cannot be held that he has no creditworthiness ignoring his past. Sh. Divesh Goyal has been regularly filing its return and Balance Sheet with the department. From his return and Balance Sheet his financial position for AY 2014-15 & 2015-16 can be noted as under:-

Particulars	**AY 2014-15**	**2015-16**
Gross Total Income	Rs.53.73 lacs **(PB 23-24)**	Rs.48.98 lacs **(PB 28-29)**
Turnover	Rs.5.04 crores **(PB 27)**	Rs.1.96 crores **(PB 33)**
Gross Profit	Rs.1.38 crores **(PB 27)**	Rs.90.47 lacs **(PB 33)**
Net Profit	Rs.48.82 lacs **(PB 27)**	Rs.5.78 lacs **(PB 33)**
Loans & Advances	Rs.7.10 crores **(PB 26)**	Rs.5.47 crores **(PB 32)**

Hence, the creditworthiness of Sh. Divesh Goyal is evident from the details mentioned hereinabove and only because in the year under consideration he has declared business loss of Rs.20.85 lacs which cannot lead to an inference that he had no creditworthiness to give loan to assessee more particularly when in AY 2017-18 he has declared gross total income of Rs.12,03,800/- **.** Hence, taking into consideration the above facts and circumstances of the case, it is found that the assessee has made full efforts to establish the creditworthiness of the creditors by filing his return and balance sheet for the last two years. Once the assesse had discharged the initial onus then the burden shifts on the Department to counter the facts brought on record by the assessee which could not be controverted by the ld.

DR during the course of hearing. Hence, in view of the above evidence on record as well as the case laws cited by the ld. AR of the assessee (supra), we do not concur with the findings of the ld CIT(A). Thus Ground No. 1 and 3 of the assessee are allowed.

4.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 17 /02/2023.

Sd/-	Sd/-
(राठोड कमलेश जयन्तभाई)	(एस.सीतालक्ष्मी)
(RATHOD KAMLESH JAYANTBHAI)	(Dr. S. Seethalashmi)
लेखा सदस्य /Accountant Member	न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 17/02/2023.
*Mishra
आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s.Alwar General Finance Co. (P) Ltd., Alwar
2. प्रत्यर्थी/ The Respondent- The ACIT, Circle-1, Alwar
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
5. गार्ड फाईल/ Guard File {ITA No. 332/JP/2022}

आदेशानुसार/ By order,

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सहायक पंजीकार/Asst. Registrar