

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos. 60/Mum/2022
ITA Nos. 2464/Mum/2021
(A.Ys. 2013-14 & 2014-15)**

ITO-32(2)(1) Room No. 704, 7 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex Mumbai – 400 051	Vs.	M/s Kinjal Enterprises Tulsi Tower, T.P.S. III, 51 st Road, Borivali (West) Mumbai – 400 092
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AALFK1595P		
Appellant	..	Respondent

Appellant by :	Soumendu Kumar Dash
Respondent by :	Shashank Mehta

Date of Hearing	20.01.2023
Date of Pronouncement	13.02.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

These 2 appeals filed by the revenue for assessment year 2013-14 & 2014-15 against the different order of CIT(A). Since, these appeals are based on identical issue on similar facts, therefore for the sake of convenience these 2 appeals are adjudicating together by taking ITA No.60/Mum/2022 as a lead case and its finding will be applied as mutatis mutandis to the other appeal.

ITA No. 60/Mum/2022

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in allowing the appeal of the assessee despite

the fact that assessee is one of the beneficiaries who has obtained accommodation entries of Rs.1,59,50,000/- and interest paid of Rs.20,28,853/- under the garb of Unsecured loan from Shri Praveen Kumar Jain Group which has indulged in providing accommodation entries like bogus purchases, sales, unsecured loans. share capital etc. as per statement on oath of Shri Praveen Kumar Jain recorded during the course of search and seizure action u/s 132 of the IT Act carried out by the DGIT(nv) Mumbai

2. *Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) has erred in not considering that merely filing copies of ledger bank statements no way establish that the transactions are genuine The assessee failed to produce the party to prove the genuineness of transactions in spite of being provided a reasonable opportunity. Mere payment by account payee cheque is not sufficient proof for claiming any expenditure as held by Assam pesticides and Agro Chemicals Vs Commissioner of Income Tax, 227 ITR 845 & Chemaux Private Ltd Vs Commissioner of Income Tax 109 ITR 134*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition of Rs.1,79,78,853/- granting relief without considering the principals laid down in the decisions of Hon'ble Supreme Court in the cases of Sumati Dayal Vs CIT(1995) 80 Taxman 89(SC) and Durga Prasad More Vs CIT(1971) 82 ITR 540(SC) that apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities*
4. *The appellant craves leave to amend or alter or add a new ground which may be necessary.”*

2. The fact in brief is that return of income declaring income at Rs.1,03,75,480/- was filed on 21.11.2014. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 28.08.2015. During the course of assessment proceedings the A.O has noticed that assessee has taken unsecured loan from the following parties as under:

Sr. No.	Particulars	Amount
1.	M/s Duke Business Pvt. Ltd.	Rs.84,50,000/-
2.	M/s Pragati Gems Pvt. Ltd.	Rs.40,00,000/-
3.	M/s Falak Trading Co. Pvt. Ld.	Rs.15,00,000/-
4.	M/s Josh Trading Pvt. Ltd.	Rs.20,00,000/-

3. The A.O stated that information was received from DGIT(Investigation), Mumbai that search action u/s 132 of the Act has been carried out in the cases of Shri Praveen Kumar Jain who was engaged in the business of providing accommodation entries in various forms. A.O has further stated that the aforesaid entities were managed and controlled by Shri Praveen Kumar Jain. On query the assessee furnished the loan confirmation and income tax return of the aforesaid entities and submitted that the loan obtained by the assessee were genuine loan and the transaction were carried out through banking channel. However, the A.O has not accepted the submission of the assessee. He was of the view that all the aforesaid 4 entities from whom the assessee has obtained the unsecured loan were operated managed and controlled by Shri Praveen Kumar Jain who was engaged in the business of providing accommodation entries in various forms. The AO has also stated that assessee has not filed any evidence to prove identity and genuineness and creditworthiness of the transaction. The A.O also referred the statement of directors of these concern which were recorded during the course of search action stating that all these concern were controlled and operated by Shri P.K. Jain. The assessing officer also referred the statement of Shri Praveen Kumar Jain in which he stated that these concern were engaged in the business of providing accommodation entries in the form of unsecured loan. In response to the show cause notice the assessee submitted that all the transaction were carried out through banking channel only and bank statement and loan confirmation have been filed. It was also submitted that making addition on the basis of statement of third party Shri Praveen Kumar Jain was not acceptable. It was also submitted that affidavit of the parties confirming the transaction were also filed. However, A.O has not accepted the explanation of the assessee stating that Shri Praveen Kumar Jain was the person who floated all these entities with a view to

provide accommodation entries in the various forms and concluded that the loan transaction with these entities were not genuine transaction and same was entered to avoid payment of tax. Therefore, the aforesaid loan amount payable to Rs.1,59,50,000/- obtained from the said 4 concerns was traded as unexplained credit and added to the total income of the assessee. The assessee has also shown payment of interest to these following concern for the year under consideration as under:

Sr. No.	Particular	Amount
1.	M/s Duke Business Pvt. Ltd.	Rs.10,43,704/-
2.	M/s Pragati Gems Pvt. Ltd.	Rs. 8,07,615/-
3.	M/s Falak Trading Co. Pvt. Ltd.	Rs. 57,205/-
4.	M/s Josh Trading Pvt. Ltd.	Rs. 1,20,329/-

The A.O has also disallowed the deduction of these interest payment u/s 37(1) of the Act because of treating the loan amount as unexplained credit.

4. Aggrieved, the assessee filed the appeal before the ld. CIT(A). However, the ld. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of CIT(A) is as under: CIT page 48 to 62

8. DECISION

8.1 *I have considered the, the findings of the learned AO appearing in the assessment order and the submissions of the appellant. It is evident that the learned AO has held the impugned loans as bogus solely on the basis of evidences gathered during the course of the search conducted in the case of Shri Pravin Kumar Jain. I find that this issue has already been considered by the learned CIT(Appeals) at the National Faceless Appeal Centre (NFAC), in the case of the assessee for A.Ys. 2012-13 and 2013-14. In A.Y. 2013-14, the assessee had taken loans in similar manner from four concerns, two of which, viz. M/s. Duke Business Pvt. Ltd, and M/s. Pragati Gems Pvt. Ltd., are common in A.Y, 2013-14 decided by the CIT(A) at NFAC and A.Y.2014-15, which is the year under consideration before me. After considering the facts and evidences referred to by the learned AO and as gathered during the course of the search conducted in the case of Shri Pravin Kumar Jain, the learned CIT(Appeals) had held that the loans taken by the appellant cannot be held as non-genuine. The learned CIT(Appeals), in the order for A.Y 2013-14. has placed reliance on the decision of Hon'ble ITAT in the case of M/s. Yug Developers v. ACIT-17(3), Mumbai in ITA No.7130/Mum/2018 dated 17/07/2019, wherein identical issues were involved. The learned CIT(Appeals) has noted that even two of the loan creditors, viz. M/s. Duke Business Pvt. Ltd. and M/s. Pragati Gems Pvt. Ltd., were common, which is also the case for the year under consideration*

before me. The findings of the learned CIT(Appeals), as appearing in the appellate order No. ITBA/NFAC/S/250/2021-22/1035193248(1) dated 31/08/2021 in the case of the assessee for AY 2013-14 are as below:

5.1.3 The Assessment Order and submissions of the appellant have been perused. It is seen that the Assessing Officer made disallowance of Rs.2,52,50,000 u/s.68 of the Income Tax Act 1961 and disallowance of interest of Rs.15,46,850 It is seen that the appellant obtained loans from the following parties:

Sr. No.	Name of the party	Amount
1.	Duke Business Pvt. Ltd.	84,00,000
2.	Pragati Gems	65,00,000
3.	Summukh Commerical Pvt. Ltd.	56,00,000
4.	Viraj Mercantile Pvt. Ltd.	47,50,000
Total		2,52,50,000

5.1.4 It can be seen from the assessment order that the Assessing Officer issued notice u/s 133(6) to all the above parties calling for information Accordingly, the above parties have submitted replies to the notice of the Assessing Officer except M's Vijay Mercantile Pvt Ltd. which was returned back as unserved However, the appellant submitted the details of loan transactions with Ms Viraj Mercantile Pvt. Ltd along with copy of affidavit confirming the loan transaction with the appellant.

5.1.5 It is also pertinent to note that from the financial statements of the loan creditors for the year ended 31.03.2013, that the income from operations during the year ended 31.03.2013 itself was several times more than the loans advanced to the appellant which is evident from the following table:

Sr. No.	Name of the party	Turnover from business operations	Loan amount to appellant
1.	Duke Business Pvt. Ltd.	158.99 crores	0.84 crores
2.	Pragati Gems	168.96 crores	0.65 crores
3.	Summukh commercial Pvt. Ltd.	97.01 crores	0.56 crores
4.	Viraj Mercantile Pvt. Ltd.	82.44 crores	0.47 crores

5.1.6 It can be seen from the above table that the turnover for the year ended 31.03 2013 itself proves the creditworthiness of all the loan creditors. Hence the made by the AO with regard to creditworthiness is devoid of any merits. It is also seen from the submissions made by the appellant that all the four parties are assessed to income tax. Hence, the identity of the loen creditors are established. It is also pertinent to note that all the transactions are routed through regular banking channels and no cash deposited in their respective bank accounts.

5.1.7 It is also seen that the appellant had furnished complete details of four loan creditors together with affidavits from Directors duly notarized and confirmation from them for the loans advanced to the appellant Thus the onus cast on the appellant u/s 68 had been duly discharged Further, as per the

affidavit submitted by the appellant, it is noticed that the appellant had repaid the loan taken from M/s Duko Business Pvt Ltd on 11.01.2014 amounting to Rs.1,00,00,000 and Rs.95,50,000/-.

5.1.8 It is fact that the appellant had obtained loans through cheques and paid interest on the said loans to the above parties The appellant submitted that the above loan creditors had offered the interest income cans given to the appellant and claimed credit for TDS in their respective returns.

5.1.9 The Assessing Officer in the assessment order had placed reliance in the case of M/s. Assam pesticides and Agro Chemicals vs Commissioner of Income-Tax 227 ITR 845 and M/s. Chemaux Private Limited Vs Commissioner of Income Tax 109 ITR 134 The case law relied upon by the Assessing Officer is distinguishable. It is seen from the order of the Hon'ble High Court of Gauhati that the Assessing Officer noted that the agreement made was simply a device to reduce the income of the assessee by applying the same to other members of the family of the partners, who in fact, did not render services to the assessee in the present case, the appellant obtained loan which was confirmed by the loan creditor and the said loan was repaid in the subsequent year. In the case of CIT vs Orchid Industries Pvt Ltd report in 397 ITR 136, the Honble Jurisdictional High Court held as under:-

“.....only because those persons had not appeared before the Assessing Officer would not negate the case of the assessee. The judgement in case of Gagandeep Infrastructure (P) Ltd. (supra) would be applicable in the facts and circumstances of the present case.”

5.1.10 The appellant placed reliance on the decision of the Jurisdictional Hon'ble ITAT Mumbai G Bench in the case of Ms. Yug Developers vs. ACIT-17(3), Mumbai in ITA No 7130/Mum/2018 dated 17.07.2010, wherein identical issue was involved in the case with same lenders of the appellant in appeal. Para-5, 6 and 7 of the Hon'ble ITAT order is reproduced below:

6. We have heard the rival submissions and perused the materials available on record including the paper book of the assessee comprising of pages to 317. We find that the assessee had borrowed loans from the following parties during the Asst Year 2013- 14

Casper Enterprises P Ltd	Rs.10,00,000
Falak Trading P Ltd	Rs.70,00,000/
Duke Business P Ltd	Rs.70,00,000/
Nakshatra Business P Ltd	Rs.20,00,000/
Pragati Gems P Ltd	Rs.20,00,000/-
Summukh Commercial P Ltd	Rs.12,00,000/-
.....	
	Rs.2,22,00,000/-.

6.1 We find that assessee had submitted all the relevant details with documentary evidences listed above before the id AO. The ld. AO sought to examine the voracity of the came by issuing notices u/s 13316) of the Act to the loan creditors address mentioned in cox audit report, which returned unserved. We find that the assessee vide letter dated 19.2.2016

filed before the Id AO on 21.3.2016 had duly furnished the latest address of 4 loan creditors viz, Falak Trading Co Pvt Ltd, Nakshatra Business Pvt Ltd Sumukh Commercial Pvt Ltd and Pragati Gems Pvt Ltd. We find that the assessee vido letter dated 22.3.2016 had objected to reliance placed by the Id AO on the statements recorded from Shri Praveen Kumar Jain and his associates by clearly stating that no specific mention has been made by Shri Praveen Kumar Jain and his associates in their statements recorded during the course of search stating that The loan transactions with the assessee are accommodation entries. We find that the assessee had paid interest on the aforesaid loans after subjecting to deduction of tax at source, wherever applicable, as under:

Casper Enterprises P. Ltd.	Rs.81,860/-(TDS Rs.8,186)
Falak Trading P Ltd.	Rs.1,72,610/(TDS Rs.17,261/-)
Duke Business P Ltd.	Rs.3,55,900/- (TDS Rs.35,550/-)
Nakshatra Business P Ltd.	Rs. 1,90,0304 (TDS Rs.19,003/-)
Pragati Gems P Ltd.	Rs.3,288 (TDS Rs.Nil)
Sumukh Commercial P Ltd.	Rs.28,800/- (TDS Rs.2,8804)

6.2 is not in dispute that the Id AO had allowed the aforesaid interest paid on loans as a deduction while completing the assessment. The Id AR also submitted that the assessing officers of the aforesaid parties had in turn duly assessed the interest income on loans given to the assessee and had also given credit for TDS in their respective assessments The Id AR submitted that the assessee had given the latest address of the loan creditors before the id AO. The id AO had not issued any notices u/s 133(6) of the Act on the latest address

6.3 It would be pertinent to understand the following facts from the financial statements of the loan creditors for the year ended 31.3.2013, that their income from operations during the year ended 31.3 2013 itself was several times more than the loans advanced to the assessee as is evident from the following table:-

Name of the party	Gross Revenue from operations (Rs.in crores)	Loan amount to assessee (Rs. In crores)
Casper Enterprises P. Ltd.	196.49	0.10
Falak Trading P. Ltd.	192.36	0.70
Duke business P. Ltd.	158.99	0.90
Nakshatra Business P.Ltd.	163.13	0.20
Pragati Gems P. Ltd.	168.96	0.20
Sumukh Commercial P. Ltd.	97.01.	0.12

Hence the gross revenue from operations for the year ended 31.3 2013 itself proves the creditworthiness of all the loan creditors beyond doubt. Hence all the allegations levelled by the lower authorities with regard to creditworthiness is devoid of any merits and deserves to be dismissed.

6.4 We find that all the parties are duly assessed to income tax and assessments are framed on them by the income tax department. Hence the identity of the loan creditors stood clearly established All the transactions are

routed through regular banking channels without having any cash deposits in their respective bank accounts. In fact the Id AO himself had stated in his order that the sale proceeds of diamond business were credited in the bank accounts of the loan creditors which were utilized for advancing loan to the assessee. This itself goes to prove the genuineness of transactions and creditworthiness of parties beyond doubt. Hence we hold that all the three necessary ingredients of section 68 of the Act had been duly established by the assessee in the instant case.

6.5 *We hold that once the assessee has furnished the complete details about the loan creditors together with their latest addresses and affidavits from directors duly notarized and confirmation from them for the loans advanced to the assessee, the onus cast on the assessee us 68 of the Act had been duly discharged and no addition could be made in its hands merely because the lenders fail to appear before the id AO or the assessee failing to produce them before the Id AO Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Orchid Industries P Ltd reported in 397 ITR 136 (Bom) We hold that no addition could be made on mere presumption that the assessee routed its own cash in the form of unsecured loans without any concrete evidence to this effect Reliance has been rightly placed on the decision of Hon'ble Jurisdiction a High Court in the case of PCIT vs Aquatic Remedies P Ltd in ITA No 83 of 2016 affirming the tribunal decision in ITA No. 6356/Mum/2014*

6.6 *We find that the directors of the lending companies had filed affidavits confirming the loan transactions before the Id AO which had not been disputed Once the averments made in an affidavit are not disputed or refuted, the same are to be construed as true and correct, as held by the Hon'ble Supreme Court in the case of Mehta Parikh & Co Vs CIT reported in 36 118-481 (SC).*

6.7 *With regard reliance placed by the ld. D.R on the decision of Hon'ble Gujarat High Court in the case of pavan kumar Sangthvi v. ITO reported in 404 ITR 601 (Gu). we find that in that case the assessee received loans from two companies who were found to be shell companies not doing any businesses and were maintaining minimum bank balances. Whereas in the instant case, there is no finding by the lower authorities, that the loan creditors are shall companies and all the loan creditors are engaged in the business of diamond trading and were having substantial turnover from their businesses. The business transactions carried out by the loan creditors have not been doubted by the assessing officers of the loan creditors. Hence the reliance placed by the Id DR on the aforesaid decision is distinguishable on facts and would not advance the case of the revenue*

6.8 *With regard to yet another decision relied upon by the id DR in the case of PCIT vs Bikram Singh reported in 85 taxmann.com 104 (Del HC), the facts and decision thereon are as under-*

In this case, the loans were received from 8 persons whose identities were not established. There was a clear finding that the lenders did not have sufficient financial strength to advance the loans to the assessee therein, that too without any collateral security, without any interest and without a loan agreement. The relevant observations of the assessing officer in that case on facts were as under- 9. A brief summary of each

of the eight transactions and creditors thereof, as per the AO's order is as under

- (i) *Shri Amar Singh - Only a letter of confirmation was filed. Name of the father and address was not given PAN number was not given. The information requested from Gurgaon Gramin Bank from where the cheque was issued with respect to the compensation from land acquisition, was also not received. The person was not produced. Thus, the identity, creditworthiness and genuineness of Shri Amar Singh were not proved*
- (ii) *Shri Chandan Singh - A confirmation letter of Shri Chandan Singh was filed along with the bank statement. The AO noticed that the bank account was opened with a cash deposit of Rs.500/- and huge amounts of cash was deposited in this account before the cheques of Rs. 60, 00,000 and Rs.50. 00,000 were issued. The AO concluded that since the source of cash was unverified and Shri Chandan Singh was also not produced, the identity, creditworthiness and genuineness of Shri Chandan Singh was not proved.*
- (iii) *(Shri Harpreet Singh No documents were filed by the Assessee to establish the identity, address etc. Even the PAN number or proof was not filed and he was also not even produced.*
- (iv) *Shri Om Prakash No documents to establish the address, PAN number, source of deposit and ID proof were filed. Neither was a confirmation letter filed nor was he produced.*
- (v) *Shri Shiv Tej-Ne documents to establish the address, PAN number source of deposit and ID proof were not filed. Neither was a confirmation letter filed nor was he produced.*
- (vi) *Shri Ram Chander Only a confirmation letter was filed. However, the AO observed that the same was not supported by any evidence of identification, cheque numbers, sources of income or sources of loan. The person was not produced.*
- (vii) *Smt. Sunita - Only a confirmation letter was filed. However, the AO observed that the same was not supported by any evidence of identification, cheque numbers, sources of income or sources of loan and even she was not produced*
- (vi) *Shri Virender Yadav - A confirmation letter was produced but no PAN number was mentioned. The AO observed that the bank statements reveal the deposit of cash of Rs. 13,00,000/- and Rs 7,00,000/- immediately before the issuance of the cheque in favour of the Assessee. He was also not produced.*

15. The ITAT by order dated 19th July, 2016 partly allowed the Assessee's appeal and deleted the additions in respect of four of the creditors. The summary of the conclusions of the ITAT in respect of the eight creditors and the transactions is set out below:

(i) In respect of Smt. Sunita, the ITAT held that additional evidence was submitted by the Assessee and the same was taken on record. The ITAT observed that Smt. Sunita, being the wife of the Assessee and her financial affairs having been handled by the Assessee himself, the identity and creditworthiness of Smt. Sunita was established. Her PAN Card has been filed. By assessing the bank accounts of Smt. Sunita, the ITAT concluded that the genuineness and creditworthiness was also established.

(ii) In respect of Shri Virender Yadav, the ITAT observed that since his PAN card had been submitted by the Assessee, the matter deserved to be remanded to the AO to pass a speaking order.

(iii) in respect of Shri Shiv Tej, the ITAT after relying upon the documents, produced by the Assessee, restored the matter to the file of the AC as he had not been produced before the AO

(iv) In respect of Shri Om Prakash, the Assessee relied upon the letter of confirmation, the PAN card and Voter Identity Card to establish the identity and also submitted that the AO did not record the statement of Shri Om Prakash despite his appearance before the AO Thus, the ITAT concluded that the matter deserved to be restored to the file of the AQ

(v) in respect of Shri Ram Chander the ITAT referred to the confirmation letter issued by him, Voter ID Card, the copy of bank statement and the cheque of Rs. 18.48 Lakhs, which was explained by him as ang been received from his sister Vidya. Thus, the ITAT concluded that the identity creditworthiness and genuineness was established and the addition of Rs 10 lakhs neraspect of Shri Ram Chander was deleted.

(vi) In respect of Sho Changan Singh, the AT referred of the copy of PAN Card, Voter ID Card and the bank statement which was submitted by the Assessee. The addition made to of Rs. 1.10 Crores was deleted

(vii) In respect of Shi Amar Singh the ITAT referred to the letter of confirmation and Voter ID Card to establish the identity of this creditor. Ho further referred to the bank statement, which showed a deposit of Rs. 84,44,762 in his bank account, just before the issuance of cheque of Rs 50 lakhs to the Assessee. According to the Assessee, this amount was received from the Land Acquisition Officer, Gurgaon in favour of Shri Amar Singh The ITAT thus deleted the addition of rupees Rs 50 lakhs in respect of Shri Amar Singh. ITAT held that the identity, genuineness end creditworthiness was established and the

(viii) In respect of Shri Harpreet Singh, the ITAT referred to the letter issued by him explaining that the loan was given by his son Mr. Dakshdeep Singh vide cheque no 58913 dated 18th June, 2010 drawn on HDFC Bank. He also referred to the confirmation letter given by Mr Dakshdeep Singh The ITAT and hence the matter was restored to the file of the AO to examine the identity, genuineness and creditworthiness However, for statistical purpose, addition of Rs 3,50,000 in respect of Shri Harpreet Singh was allowed.

16. Thus, the ITAT

- deleted the following additions qua Shri. Amar Singh, Shri. Chandan Singh, Shri. Ram Chander, and Smt. Sunita
- the additions with respect to Shri Virender Yadav, Shri Om Prakash, Shri Shiv Tej Singh, and Shri Harpreet Singh, to the AO for reconsideration.

It was held by Hon'ble Delhi High Court as under-

41. An analysis of the above facts shows that none of these four individuals have the financial strength to lend such huge sums of money to the Assessee. that too without any collateral security, without interest and without a loan agreement. The mere establishing of their identity and the fact that the amounts have been transferred through cheque payments, does not by itself mean that the transactions are genuine. The AO and the CIT (A) have rightly held that the identity, creditworthiness and the genuineness are all in doubt Moreover, the Court notes that that these amounts have been advanced to the Assessed without any explanation as to their relationship with the Assessee, the reason for the payment of such huge amounts, as also whether any repayments have, in fact, been made. There are contradictions in the explanation given by the Assessee and the statements recorded by these four individuals, which are irreconcilable. For example, in the case of Shri Ram Chander/Ram Charan, he had initially stated that he had goth Rs 10,00,000 out of the proceeds of sale. of the land but thereafter it was claimed by him that the money had come from her sister Vidya Such contradictions cloatly render all these transactions dubious The ITAT could not have perely because the payments were through cheques, held that the transactions were genuine. The ITAT erred in simply accepting the explanation of the Assesses quá the four transactions. The ITAT clearly, did not follow the binding precedent in Divine Leasing & Finance Ltd (supra) which no uncertain terms requires that the authorities are duty bound to investigate the creditworthiness of the creators subscribers and the genuineness of the transactions Tags the ITAT did not merely give findings of fact but misapplied the Taw Hence the authorities CIT v S Nelliappan [1967] 66 ITR 722 (SC), Orissa Corpn Pvt. Ltd. (supra), Gun Nidhi Dalmia (supra) do not support the Assessee's case, The Assessee has failed to discharge his initial burden as the explanation given by the Assessee and the four individuals does not appear to be credible

We find that in the aforesaid case, the details of creditworthiness of the lenders were not available before the revenue authorities and there is a specific finding to that effect. Whereas in the instant case, we have already held that there is sufficient creditworthiness and moreover, the creditworthiness of the loan creditors have been proved by the Id AO himself in his assessment order, wherein he had stated that the sale proceeds of diamond business were used by the loan creditors to advance loans to the assessee. Hence the reliance placed on the aforesaid decision by the Id DR is factually distinguishable and would not advance the case of the revenue.

6.9 Finally the Id DR placed reliance on the recent decision of the Hon'ble Apex in the case of Principal CIT vs NRA Iron & Steel (P) Ltd reported in 412 ITR 161 (SC) wherein the decision on addition made towards cash credit was rendered in favour of the revenue. We have gone through the said judgement and we find in that case, the id AO had made extensive enquiries and from that he had found that some of the investor companies were non-existent which is not the case before us. Certain investor companies did not produce their bank statements proving the source for making investments in assessee company, which is not the case before us. Source of funds were never established by the investor companies in the case before the Hon'ble Apex Court, whereas in the instant case, the entire details of source of source were duly furnished by all the respective loan creditors before the Id AO and the directors of lending companies had also filed an affidavit confirming the loan transactions with the assessee. In the instant case before us, after the relevant details were furnished by the assessee before the Id AO, no enquiries were further made by the Id AO with the loan creditors at their new addresses. The Id AO merely relied on the statement of Shri Praveen Kumar Jain and proceeded to make the addition. Hence the decision relied upon by the Id DR is factually distinguishable and does not advance the case of the revenue.

6.10 We find that as per the mandate of section 68 of the Act, the nature and source of credit in the books of the assessee has been duly explained by the assessee. The credit is in the form of receipt of unsecured loan from loan creditors. The nature of receipt towards unsecured loan is well established from the entries passed in the balance sheet of the assessee by crediting unsecured loan account. This is also cross verifiable from the balance sheets of respective loan creditor companies, wherein they had reflected under 'Loans and Advances' in the asset side of their balance sheet. Hence the nature of receipt is proved by the assessee beyond doubt to respect of source of credit, the assessee has to prove the three necessary ingredients: the identity of loan creditors, genuineness of transactions and creditworthiness of loan creditors. We have already held *tempore* that the three necessary ingredients of section 68 of the Act had been duly proved by the assessee beyond doubt.

6.11 Undisputedly the loan creditors in this case are the bank account holders in their respective banks in their own name and are sole owners of the credits appearing in their bank account from where they issued cheques to the assessee. For the proposition that a Bank Account holder himself is the 'owner' of 'credits' appearing in his account (with the result that he himself is accountable to explain the source of such credits in whatever way and form, the same have emerged) support can be derived from section 4 of Bankers Book Evidence Act 1891 which reads as under-

"4. Mode of proof of entries in bankers' books. Subject to the provisions of this Act, a certified copy of any entry in a bankers' book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the

original entry itself is now by law admissible, but not further or otherwise.”

611.1 Following the said provisions, the co-ordinate bench of Allahabad Tribunal in the case of Anand Prakash Agarwal reported in 6 DTR (All Trib) 191 held as under:-

“The question that remains to be decided now is whether the subject matter of transfer was the asset belonging to the transferor/donors themselves. There is enough material on record which goes to show that there were various credits in the bank accounts of the donors, prior to the transaction of gifts, which undisputedly belonging to the respective donors themselves, in their own rights. No part of the credits in the said bank accounts was generated from the appellant and/or from its associates, in any manner. The certificates issued by the banks are construable as evidence about the ownership of the transferors or their respective bank accounts, as per s. 4 of the Bankers' Books Evidence Act 1891, which read as under:

4. Where an extract of account was duly signed by the agent of the bank and implicit in it was a certificate that it was a true copy of an entry contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book was in the custody of the bank, it was held admissible in evidence Radheshyam v. Safiyabal Ibrahim AIR 1988 Bom. 361 1987 Mah 725 1987 Bank J 552

In view of the position of law as discussed above it is always open for a borrower to contend, that even the “creditworthiness” of the lender stands proved the extent of credits appearing in his Bank Account and he should be held to be successful in this contention.

6.12 We find that the Hon'ble Calcutta High Court in the case of S.K. Bothra & Sons, HUF v. Income tax Officer, Ward 46(3), Kolkata reported in 347 ITR 347(Cal) had held as follows:

“15. It is now a settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no explanation is given or the explanation given by the appellant is not satisfactory, the Assessing Officer can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to assessee

16. In the case before us, the appellant by producing the loan confirmation- certificates signed by the creditors, disclosing their permanent account numbers and address and further indicating that the

loan was taken by account payee cheques, no doubt, prima facie, discharged the initial burden and those materials disclosed by the assessee prompted the Assessing Officer to enquire through the Inspector to verify the statements."

6.13 We find that the Hon'ble Supreme Court in the case of *M/s. Earthmetal Electricals P Ltd vs CIT & Anr.* reported in 2010 (7) TMI 1137 in Civil Appeal No. 21073 /2009 dated 30.7 2010 arising from the order of Hon'ble Bombay High Court had hold as under

ORDER

Delay condoned

Leave granted

Heard learned counsel on both sides

We have examined the position. We find that the shareholders are genuine parties They are not bogus and fictitious: Therefore, the impugned order is set aside.

The appeal is allowed accordingly No order as to costs.

*In the instant case before us, the loan creditors are private limited companies and are duly assessed to income tax It is not in dispute that the loan creditors are in existence, it is not in dispute that the loan creditors are duly assessed to income tax and their income tax particulars together with the copies of respective income tax returns the balance Sheets are already on record. Hence it could be safely concluded that they are genuine tenders and not bogus and fictitious. Accordingly, the rap fa 3-down-by the Honble Apex Court in the case of *M/s. Earthmetal Electricals P Ltd supra* would be squarely applicable to the facts of the instant case.*

6.14 We find that the Hon'ble Apex Court recently in the case of *Principal CIT vs Vaishnodevi Refoils & Solvex* reported in (2018) 96 taxmann com 469 (SC) had dismissed the SLP of the Revenue. The brief facts were that the addition u/s 68 of the Act was made by the Assessing Officer in respect of capital contributed by the partner of the firm The Hon'ble High Court noted that when the concerned partner had confirmed before the Assessing Officer about his fact of making capital contribution in the firm and that the said investment is also reflected in his individual books of then no addition could be made u/s 68 of the Act. The decision of Hon'ble Gujarat High Court is reported in (2018) 89 taxmann com 80 (Guj HC) The SLP of the revenue against this was dismissed by the Hon'ble Supreme Court.

615 We also find that the Hon'ble Jurisdictional High Court in the case of *CIT vs Orchid Industries Pvt Ltd* reported in 397 ITR 136 (Bom) had held as under:-

5. The Assessing Officer added Rs 95 lakhs as income under Section 68 of the Income Tax Act only on the ground that the parties to whom the share certificates were issued and who had paid the share money had not appeared before the Assessing Officer and the summons could not be served on the addresses given as they were not traced and in respect

of some of the parties who had appeared, it was observed that just before issuance of cheques, the amount was deposited in their account.

6. The Tribunal has considered that the Assessee has produced on record the documents to establish the genuineness of the party such as PAN of all the creditors along with the confirmation, their bank statements showing payment of share application money it was also observed by the Tribunal that the Assessee has also produced the entire record regarding issuance of shares ie, allotment of shares to these parties, their share application forms, allotment letters and share certificates, so also the books of account. The balance sheet and profit and loss account of these persons discloses that these persons had sufficient funds in their accounts for investing in the shares of the Assessee in view of these voluminous documentary evidence, only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. The judgment in case of Gagandeep Infrastructure (P) Ltd (*supra*) would be applicable on the facts and circumstances of the present case

6.16 In view of the aforesaid observations in the facts and circumstances of the case and respectfully following the dis judicial precedents relied upon hereinabove including the decisions of Hon'ble Jurisdictional High Court among other High Courts we hold that the Id CA erred in confirming the addition made u/s 68 of the Act in the instant case Accordingly, the ground nos 6&7 raised by the assessed for Asst Year 2013-14 allowed."

5.1.11 It can be seen from the above ITAT Order In the case of M/s Yug Developers that the loan creditors/lenders Geese of MS Yug Developers are similar to the appellant in the present case Les Kinjal Enterprises in fed the loan creditors Viz. M's Duke Business P Lid M/s Pragati Gems P Ltd and Sumukh Commercial P Ltd rare the same in both the cases 10. Ms. Yug Developers and M/s Kinjal Enterprises and assessment years are also same The Jurisdictional ITAT in the case of M/s. Yug Developers in ITA No 7130/Mum/2018 dated 17.07.2019 for the AY 2013-14 allowed the appeal of the appellant, wherein the above three loan creditors had given loan to M/s Yug Developers.

5.1.12 A plain reading of provisions of Section 68 of Income Tax Act, 1961 is as follows.

Cash credits.

1. 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:-

1. *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*
2. *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 shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or venture capital company as referred to in clause (23F8) of section 10.

5.1.13 *In the Instant case, the loan creditors are private limited companies and are duly assessed to tax. It is not in dispute that the loan creditors are duly assessed to income tax and their income tax particulars together with the copies of respective income tax returns with their balance sheets are already on record. Hence it can be concluded that the loan creditors are genuine lenders and not bogus or fictitious.*

5.1.14 *The case law in the case of M/s Yug Developers in ITA No.71301um/2018 dated 17 07 2019 supra would be squarely applicable to the facts and circumstances of the instant case Considering the facts, issues and circumstances of the case and respectfully following the various judicial decisions relied upon supra including the decision of Hon'ble Jurisdictional High Court, the addition of Rs 2.52.50.000 made use of the Act in the instant case is deleted Hence, Ground Nos 1,3,4,5,6 and 8 in appeal are allowed.*

8.2 *The material facts remain the same for the year under consideration. The majority of the loans which were held as 60gus during the year have been received from the two parties, viz. M/s. Duke Business Pvt Ltd and M/s Pragati Gems Pvt. Lid, the loans of which were held as genuine by the Hon'ble ITAT in the case of M/s Yug Developers and by the learned CIT(Appeals) in assessee's own case for A.YS. 2013-14. The loans from M/s. Falak Trading Co. Put Lid, and M/s. Josh Trading Pvt. Ltd. were received in similar manner and all the necessary details in respect of these loans were also filed before the learned AO. The learned AO has treated the loans as bogus solely on the basis of evidences gathered during the course of the search conducted in the case of Shri Pravin Kumar Jain, which have previously been considered by the learned CIT(Appeals) in his order passed in the case of the assessee for A.Y. 2013-14, as reproduced earlier In the given facts of the case, respectfully following the decision of the Hon'ble ITAT in the case of M/ s. Yug Developers and the learned CIT(Appeals) in the case of the assessee for the immediately preceding assessment year, it is held that the loans cannot be held as bogus, and, therefore, the addition made by the learned AO on this account is directed to be deleted Ground No.1 is, accordingly, allowed.*

8.3 *Vide Ground No 2, the appellant has contested the disallowance of interest paid on the aforesaid amount of loans. The interest was disallowed for the reason that the loans have been held as not genuine. Since the loans have been held as genuine, there remains no reason for disallowance of interest. The AO is, accordingly, directed to allow interest as claimed by the appellant. Ground No.2 is, accordingly, allowed."*

5. During the course of appellate proceedings before us the ld. D.R contended that assessee has entered into loan transaction with bogus entities floated and managed by Shri. Pravin Kumar Jain and ld. CIT(A) is not justified in deleting the addition made by the assessing officer.

6. On the other hand the ld. Counsel contended that the A.O has not disproved the loan confirmation PAN details, income tax return, bank statement etc. filed before the assessing officer during the course of assessment proceedings. He further submitted that the A.O has not provided opportunity to cross examine Shri Pravin Kumar Jain and his associates. He has also referred the various judicial pronouncement on which the assessee relied upon as discussed in the order of the ld. CIT(A). He supported the order of the ld. CIT(A).

7. Heard both the sides and perused the material on record. During the course of assessment the A.O noted that the assessee had shown loans from four parties as discussed supra which were found to be floated and managed by Shri Pravin Kumar Jain. On the basis of information received from the office of the DGIT (Inv) Mumbai that a search was conducted in the case of Shri Pravin Kumar Jain it was found that he had floated and managed the entities through wherein accommodation entries were provided to the beneficiaries. The A.O treated the loan taken by the assessee from the aforesaid concerns as bogus and added the loan amount of Rs.159,50,000/- and the amount of interest of Rs.20,2,853/- to the total income of the assessee. The assessee submitted that entire addition was made relying upon the statement made by Shri Pravin Kumar Jain & his associates during the search action without affording any opportunities to cross examine Shri Pravin Kumar Jain & his associates. No specific mention has been made by Shri Pravin Kumar Jain and his associates in their statement recorded during the course of search stating that the loan transactions

with the assessee were accommodation entries. During the course of assessment in respect of loan taken from four parties the assessee furnished copies of confirmation letters, copies of acknowledgment of return of income, copies of annual audited account of the lenders, copies of bank statements of the lenders and the assessee, specific affidavit of the directors of the lenders companies confirming the transactions of loan and repayment received for the same. It was also submitted that Mr. Pravin Kumar Jain and his associates have retracted their statements. The sole basis of the AO to make addition was the statement of Shri Pravin Kumar Jain & his associates which have been retracted by them. The assessee has claimed that identity of the creditors have been established on the basis of PAN Card, return of income, account confirmation, genuineness of the transactions have been established on the basis of account confirmation and bank statements, where all the loan were taken by account payee cheques and creditworthiness of the creditors were established on the basis of balance sheet and bank statement of the parties. The A.O had not controverted these material facts with any relevant evidences. In the appeal the ld. CIT(A) has deleted the addition after following the various decisions of the courts and Tribunals as elaborated supra in his order. The ld. CIT(A) has also discussed the decision of the ITAT Mumbai relied upon by the assessee in the case of M/s Yug Developers Vs. ACIT 17(3), Mumbai in ITA No. 7130/Mum/2018 dated 17.07.2019 wherein identical issue was involved in the case with same lenders of the assessee in respect of M/s Duke Business Pvt. Ltd. and M/s Pragati Jain Pvt. Ltd. which were also common to the case of the assessee. The revenue could not substantiate how the decisions of the Hon'ble Supreme Court referred in the grounds of appeal of the Revenue i.e Sumati Dayal and Durga Prasad More are applicable to the facts of the case of the assessee. We are of the view that these case laws are distinguishable on the basis

of facts and specific material referred in the case of the assessee i.e confirmation letters, PAN, ITR, bank statements affidavit, repayment of loan amount etc. as discussed supra in this order including not providing opportunities of cross examination and retraction of statements. In the case of the assessee the AO has failed to controvert the submission of the assessee supported with relevant material as discussed supra in this order. Therefore, after taking into consideration the facts and findings as discussed above, we don't find any infirmity in the decision of the ld. CIT(A). Accordingly, grounds of appeal no. 1 to 3 of the revenue stand dismissed.

8. In the result, the appeal of the revenue stand dismissed.

ITA No.2464/Mum/2021

9. As the facts and issues involved in this appeal is same in ITA No. 60/Mum/2022 as supra, therefore, applying the same findings mutatis mutandis this ground of appeal of the revenue is also dismissed.

10. In the result, the appeals of the revenue stand dismissed.

Order pronounced in the open court on 13.02.2023

Sd/-

Sd/-

(Pavan Kumar Gadale)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 13.02.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai

6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.