

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'A', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 9025/Del/2019 : Asstt. Year: 2014-15

DCIT, Central Circle-1, Noida (APPELLANT)	Vs.	M/s Aashiyana Civil Contractors Pvt. Ltd., R/o 302-304, Harsha Corner Complex, Ghazipur, New Delhi-110096 (RESPONDENT)
PAN No. AAECA4833G		

Assessee by : None

Sh. Manoj Kumar, CA (LOA filed)

Revenue by : Sh. Kanv Bali, Sr. DR

Date of Hearing: 16.02.2023

Date of Pronouncement: 23.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by Revenue against the order of the Id CIT(A)-IV, Kanpur dated 07.08.2019.

2. The Revenue has raised the following grounds of appeal:

"1. On facts and circumstances of the case and in law, the Ld CIT (A) erred in law while deleting the addition of Rs. 2,00,00,000/- made by A.O. in respect of unexplained cash credit for which no satisfactory explanation was furnished by the assessee in view of the amended provisions to section 68 w.e.f. 01.04.2013 and therefore the burden u/s 68 could not have been said to be discharged by assessee just by filing confirmations at appellate stage in view of the ratio of decision in case of N R Portfolio Pvt. Ltd. 264 CTR 258 (Delhi), Nova promoters & fin lease Pvt. Ltd. 252 CTR 187 (Delhi), Seema Jain 406 1TR 411 (Delhi).

2. On facts and circumstances of the case and in law, the Ld. CIT(A) in law, while deleting the addition of Rs.

2,00,00,000/- made by A.O. in respect of unexplained cash credit, failed to appreciate that no evidence was given during asst proceedings and that during remand proceedings also the bank statement of creditors could not be furnished to establish the source and genuineness of the money received from creditors. The Ld CIT(A) further failed to appreciate the findings of the AO in remand report that the creditors were not carrying any regular business but showing trade payables in balance sheet even though there were no purchases or change in stock position in the P&L a/c and there were NIL or negative tangible fixed assets with the creditors.

3. On facts and circumstances of the case and in law the Ld. CIT(A) failed to allude to the relevant facts & circumstances and misread the legal provisions and ignored relevant observations of AO in the remand report to arrive at the conclusion.

4. On facts and circumstances of the case and in law, the Ld. CIT(A) even before calling the remand/enquiry report u/s 250(4) from the AO on addl. evidence furnished, erred in admitting such additional on his own without giving any opportunity to AO to file objections on admission of addl. evidence or passing any order u/r 46A(2) to show that the conditions for filing addl. evidence u/r 46A(1) are satisfied, thereby violating the principles of admissions of addl. evidence as explained in Ranjit Kumar Choudhary 288 1TR 179 (Guj). That the powers of CIT(A) to admit or reject is not absolute but only subject to satisfaction of conditions under rule 46A(1) to be specifically recorded in writing in the appellate order.

5. On facts & circumstances of the case and in law, the CIT(A) erred in calling the enquiry (remand) report from the AO without passing any order u/r 46A(2) to show that the conditions for filling addl. evidence u/r 46A(1) are satisfied and ignoring the objection raised by AO during the remand proceedings. The CIT(A) failed to record any findings with reference to the circumstances under which the assessee was prevented from producing the evidence before the AO or on the genuineness and correctness of the claims raised by assessee nor has not controverted this assertion of the AO in remand report, while admitting the addl. Evidence.

6. On facts & circumstances of the case and in law. the Ld. CIT(A) erred in admitting the additional evidence at appellate stage without appreciating that the purpose of

rule 46A is to ensure that evidence is primarily led before the Income-tax Officer as held in Rajkumar Srimal 102 ITR 525 (Cal), Ganpatrai & Sons Ltd. 24 ITR 362 (Bom)."

3. Facts taken from the order of the Id. CIT(A).

4. A search and seizure operation u/s 132 was conducted on 30.09.2015 at the premises of the assessee. Accordingly, notice u/s 153A of the Act was issued on 25.10.2017. Further, in response to notice u/s 153A of the Act, the assessee filed return declaring income of Rs. 19,01,730/-. Subsequently, the Assessing Officer completed assessment by making addition of Rs. 2,00,00,000/- on account of unexplained unsecured loan. Aggrieved, the assessee is in appeal before the Id. CIT(A) who deleted the addition made by the AO. Hence, the appeal before us.

Unexplained unsecured loans:

5. The assessee company has received an amount of

Rs. 1,00,00,000/- from M/s Juliana Finance Pvt. Ltd.,

Rs.50,00,000/- from M/s AVT Homes Pvt. Ltd. and

Rs.50,00,000/- from M/s. RITS Jewelers Pvt. Ltd.

6. The Assessment Order reads as under:

"5. During the course of assessment proceedings, the bank book of Axis Bank Ltd has been perused and it was observed that the assessee company received funds of Rs. 1,00,00,000/- front Julonia Finance, Rs. 50,00,000/- each from AVT Homes Pvt. Ltd. and RITS Jewellers Pvt. Ltd. which were also squared up during the year. During the course of, assessment proceedings, the assessee vide questionnaire dated 07.11.2017 has been asked to provide complete details of fresh unsecured loan taken or accepted by the assessee during the year under consideration, in order to

verify the authenticity, creditworthiness and the genuineness of lender, the assessee has been further asked to provide the following details:-

- a) Confirmation from the lender in original*
- b) Audited financial results of lenders*
- c) Bank statement of the lender explaining the source of funds*
- d) Income tax return filed by the lender*
- e) Agreement of Loan and details of interest paid, if any*

In response to the same, no details were furnished by the assessee regarding these entities, in fact, the assessee in his reply didn't even discuss about these entities which were reflected in the bank book of the assessee since they are squared up during the same year. On perusal of the submissions filed by the assessee, it is observed that the assessee has failed to provide bank statement of lenders from whom unsecured loan was raised by the assessee during the year, In the absence of such information, the source of funds could not be substantiated. Further, the assessee is also failed to prove the creditworthiness of the lenders as they have not shown any income in their financial results.

In view of the above, the assessee has failed to discharge his onus to prove the creditworthiness of the investors, genuineness of the transactions and existence of the lenders. Therefore, the entire sum of Rs. 2,00,00,000/- is treated as unexplained and hereby added to the total income as Unexplained Unsecured loans u/s 68 of the income Tax Act."

7. Before the Id. CIT(A), the assessee submitted as under:

"1.4 The appellant company has received cheques/RTGS aggregating to Rs. 2,00,00,000/-, which were deposited with the bank account of the company received from the following parties, which were also squared up during the financial year itself:

Name of the company	Date of Receipt	Amount (Rs)	Date of squared up	Amount (Rs)
Juliana Finance Private Limited	08/06/2013	1,00,00,000/-	26/03/2014 27/03/2014	50,00,000/- 50,00,000/-
RITS Jewellers Private Limited	25/06/2013	50,00,000/-	24/03/2014	50,00,000/-
A. V Homes Private Limited	25/06/2013	50,00,000/-	25/03/2014	50,00,000/-

1.5 During the course of assessment proceedings, the appellant has submitted the copy of complete bank statement for year under consideration along with the detailed bank narration clearly showing nature of debit and credit bank entries.

1.6 The appellant has also paid interest on above mentioned amounts received after deducting tax at source during the financial year under consideration, payment of which has also been made through same bank account and also shown in the bank narrations.

1.7 The learned assessing officer on perusal of the bank statement and bank narrations of bank account maintained with Axis Bank bearing account no. 912020064615134 observed that the appellant company received funds of Rs. 1,00,00,000/- from Juliana, Finance Private Limited, Rs. 50,00,000/- each from AVT Homes Pvt. Ltd and RITS Jewellers Pvt. Ltd. which were also squared up during the year under consideration itself. The learned AO asked the appellant to furnish certain documents to verify the authenticity, creditworthiness and the genuineness of the lenders.

1.8 The appellant was not able to furnish all the requisite details and source regarding the amount received from above mentioned persons as the appellant got utmost 38 - 40 days time to furnish all the details for 7 A.Ys.

1.9 The learned assessing officer acknowledged the fact that the amount of Rs.2,00,00,000/- received by the appellant have been squared up during the FY itself and arbitrarily and prejudicially made addition of Rs

2,00,00,000/- being cash credit into bank account as unexplained cash credit under section 68 only on the basis of doubt, suspicion, conjectures and surmises that, the assessee company failed to discharge its onus. The learned assessing officer alleged in the impugned order as under:

"In response to the same, no details were furnished by the assessee regarding these entities. In fact, the assessee in his reply didn't even discuss about these entities which were reflected in the bank book of the assessee since they are squared up during the same year. On perusal of the submissions filed by the assessee, it is observed that the assessee has failed to provide bank statement of lenders from whom unsecured loan was raised by the assessee during the year, in the absence of such information, the source of funds could not be substantiated. Further, the assessee is also failed to prove the creditworthiness of the lenders as they have not shown any income in their financial results.

In view of the above, the assessee has failed to discharge his onus to prove the creditworthiness of the investors, genuineness of the transactions and existence of the lender(s). Therefore, the entire sum of Rs. 2,00,00,000/- is treated as unexplained and hereby added to the total income as unexplained unsecured Loans u/s 68 of the Income Tax Act

1.10 On perusal of the impugned assessment order, it is observed that the learned assessing officer has made the said addition only on the basis of conjectures and surmises by alleging that the assessee has failed to furnish any details /documents and thus failed to discharge his onus to prove the creditworthiness of the investors, genuineness of the transactions and existence of the lender(s) though the repayment of amount received and payment of interest thereon has been clearly shown in the same bank narrations submitted before the learned assessing office.

1.11 It is pertinent to note that the appellant has made satisfactory compliance in relation to various notices received and queries raised through order sheet entries. The appellant himself disclosed true and correct particulars of its income and also of various financial transaction undertaken by the appellant either through banking channel or otherwise during the year under consideration. (Pages 1 to 3 of the Paper Book)

1.12 However, the learned assessing officer failed to appreciate the details / documents / explanations furnished by the appellant in relation to unsecured loan received aggregating to Rs 2,00,00,000/- -from the following parties during the year under consideration and alleged : the said unsecured loan of Rs. 2,00,00,000/ is unexplained unsecured loans:

Name of the party	Amount (in Rs)
Juliana Finance Private Limited	1,00,00,000/-
AVT Homes Private Limited	50,00,000/-
HITS Jewellers Private Limited	50,00,000/-
Total	2,00,00,000/-

1.13 It is pertinent to note that during the course of assessment proceedings the appellant has submitted complete bank statement and the bank transactions for all debit and credit entries appearing in bank statement with no intention of concealing any facts / details.

1.14 It is pertinent to note that, appellant is a Private Limited Company incorporated under:

"the Companies Act, 1956 and its books of account has been statutorily audited by the Chartered Accountant as per the provisions of the Companies Act as well as Income tax Act, 1961."

1.15 It is pertinent to note that on perusal of the bank statement and bank narrations of Axis Bank Limited bearing account no. 912020064615134 it is evident that the transaction of receipt and repayments of loan are through banking channel and appearing on the same bank statement. Moreover, the appellant has also paid interest on such amounts received after deducting tax at source during the financial year under consideration. The payment of same has been made through same bank account and reflecting in the bank narrations.

1.16 It is pertinent to note that the learned assessing officer despite of comprehensive information available with him and also aware of the fact that the appellant has got few days of time to file replies for 7 assessment

years, arbitrarily and prejudicially rejected the submissions of the appellant only on the basis of conjectures and surmises and alleged that it is duty of the assesses to provide the corroborative evidences to establish the loan is genuine and sources from the person / entities having capacity' to lend such amount. In the absence of such documentary evidences, treated the said unsecured loan of Rs. 2,00,00,000 as unexplained.

1.17 It is pertinent to note that the appellant had put forth details / explanations as far it can submit in few days time, the same cannot be arbitrarily and prejudicially disregarded merely on the basis of doubts, surmises and conjectures and thus cannot form a basis for making an addition of Rs. 2,00,00,000/- in the hands of the appellant on account of unexplained unsecured loan under section 68 of the Income tax Act, 1961.

1.18 In view of above, it is strongly argued dun the. impugned addition of Rs.2,00,00,000/- merely on the basis of doubts, suspicion, conjectures and surmises is bad in law, as it is a well settled law that disallowance/ addition must be related to some evidence or material placed on record. We relied on following decisions rendered:

- Commissioner of Income-tax vs. Greaves Cotton & Co. Ltd., 68 ITR 200, SUPREME COURT OF INDIA*
- Mehta Parikh & Co. vs. Commissioner of Income-tax, 30 ITR 181, SUPREME COURT OF INDIA*
- Omar Salay Mohatned Sait Commissioner bf Income-tax, 37 ITR 151, SUPREME COURT OF INDIA*
- Assistant Commissioner of Income-tax, Central Circle-13, New Delhi vs. Vikrant Puri [2017] 82 taxmann.com 48 (Delhi-Trib.)*
- Mehul V. Vyas vs. Income-tax Officer, 23(2)(3), Mumbai, [2017] 80 taxmann.com 311 (Mumbai - Trib.)*
- Income-tax Officer, Ward-1 (2), Rajkot v. Smt. Jayshreeben Vallabhbai Patel, [2012] 21 taxmann.com 46 (ITAT-Rajkot)*

1.19 It is also pertinent to note that the learned assessing officer was, aware of the fact that the lenders are also Private Limited. Companies and thus the incorporation details can be easily retrieved by the learned assessing officer in case of any doubts or suspicion. However, learned AO

did not make any effort, to confirm the facts from the lenders, how the so called investment were made and also what1 tire source of credits in their bank accounts. The learned assessing officer failed to discharge his onus to show the amount given by the lenders were emanated from the coffers of appellant company as laid down by the Hon'ble High Court of Delhi in the case of Commissioner of Income tax v Value Capital Private Limited.

1.20 It is well settled law that where the learned assessing officer raised doubt as1 regard to the genuineness of the transaction and creditworthiness of the person, then there is an additional burden on the assessing officer to show that the amount given by the lenders has actually emanated from coffers of the appellant, and if the revenue has not discharged this burden, the amount received cannot be treated as unexplained even if the lender does not have the means to lend funds. We relied on the following pronouncements by jurisdictional High Court of Delhi:

- Commissioner of Income tax v Value Capital Services Private Limited (2008) 207 ITR 224 (HC - Delhi)*
- Income-tax Officer v. Neelkanth Finbuild Ltd., [2015] 61 taxmann.com 132 (ITAT - Delhi.)*
- Assistant Commissioner of Income-tax v. AMR Hospitality Services Ltd. [2013] 40 taxmann.com 96 (Hyderabad- Trib.)*

1.21 Further, it is also pertinent to note that the learned assessing officer in order to examine the identity, creditworthiness and [genuineness of the transactions can also issue notices/summon under section 133(6) /131 of the Income tax Act, 1961 to the lenders calling for relevant details / documents / explanations. However, the Id. AO even failed to do so and thus said obligation on the part of the learned assessing officer also remain un-complied.

1.22 It is pertinent to note that when learned assessing officer has jurisdictional information of the lenders, then he has every right to show cause and ask the lenders about the said transactions. In the present case, even no information has been submitted by the appellant as alleged, the Id. AO have other means available with him to retrieve the information direct from the lenders financial statements or lenders itself as they all

are companies incorporated under the Companies Act, 1956 and the said facts are best known to the AO and after this-the learned assessing officer while perusing such, information can apply his judgment as to the validity of the claim of the appellant. However, in order to reduce his burden and in order to pass order in hurry the Id. assessing officer simply failed to acknowledge the details / documents produced by the appellant and alleged no details were submitted by the appellant as regard to said entities.

1.23 It is pertinent to note in a case where such information as required under the provisions of section 133(6)/131 of the Income Tax Act, 1961 has not been asked for from the person concerned, it is not open to the learned assessing officer to take an adverse view on the claims made by the appellant. The Income Tax Act, 1961 has provided many recourses to the learned assessing officer to extract such relevant information by other lawful means, whereas, the learned assessing officer has not brought on record any material evidence that categorically pointed out that the said unsecured loan is unexplained.

1.24 It is well settled law that transaction with a person cannot be treated as unexplained, where the learned assessing officer has failed-to discharged his onus by issuing notice under section 133(6) / 131 of the Income tax Act, 1961. It is also well settled in law the-assessing officer should also consider all the details/documents / evidences filed by die appellant before treating any transaction as bogus.

1.25 It is pertinent to note, that in the present case the learned assessing officer despite of knowing the fact that the said credit, entries under consideration has been squared up during the year itself, further proceeded to make addition on account of unexplained cash credit under section 68 of the Income Tax Act, 1961 only by relying upon credit entries and completely ignoring the debit entries appearing on the same bank statement.

1.26 Hence, the learned assessing officer has adopted pick and choose method by relying on certain entries of bank narrations / statement which is beneficial to revenue and detrimental to the appellant and ignored other

relevant entries of the said statement which is detrimental to the revenue, thus erred in law in reading /considering the statement in parts instead of the entire statement which is bad in law.

1.27 It is settled law that when document is being relied by an income tax authority to draw an inference, such reliance is to be placed on the whole document. It cannot be open for the assessing officer to pick and choose that part of the document, which he wishes to rely on. He cannot rely partially on that part of the document which imparts benefit to the revenue and blindly ignore that fact which is in favour of the assessee. It is a matter of principle when a document / evidence is being relied upon a portion of it cannot be disregarded on the whims and fancies of the learned assessing officer.

1.28 It has also been held by the Hon'ble Supreme Court in the case of Charan Singh vs. State of UP (AIR 1976 SC 520) that court must guard against the danger of allowing conjectures and suspicion to take place of legal proof. If two views are possible on any evidence, one proving guilt and another proving innocence, the view favourable to the accused be adopted. We relied on the following decisions also rendered by Hon'ble Supreme court and various Hon'ble High Courts:

- *Provash Chandra Dalui vs. Biswanath Banerjee AIR 1989 SC 1834 (Supreme Court)*
- *Commissioner of Income tax vs. Sodra Devi [1957] 32 ITR 615 (Supreme Court)*
- *Glass Lines Equipment Co. Ltd. vs. CIT[2002] 253 ITT: 454 (Gujarat)*
- *Narayan Prasad Vljaiavargiya vs. Commissioner of Income tax [1976] 202ITR 748 (Calcutta)*

1.29 Further, it is also pertinent to note that the learned assessing officer has also failed to afford an opportunity of being heard before making addition of Rs, 2,00,00,000/- as unexplained credit which is in gross violation of principle of natural justice.

1.30 It is also pertinent to note that the principle of natural justice states that before any action is taken on the basis of material / information gathered against the appellant, the affected party should be given a

reasonable opportunity of being heard, to show, cause against the proposed action along with copies of material evidence which were relied upon by him. It is pertinent to note that any order passed without giving sufficient and reasonable opportunity is against the principle of natural justice.

1.31 It is pertinent to note that all the acts done by the learned assessing officer are in gross violation of principle of natural justice and, any, order made in violation, of natural justice is void and null and the, principles of natural justice are so fundamental that it is not to be construed as a mere formality. The principle of natural justice embodied in the Latin dictum "audi alteram partem" only means that a person has right to be heard by way of opportunity, which should be adequate and reasonable, so as to enable the person affected to meet the case against him. In all such cases, it is clear 'that a fair opportunity means not only hearing the assessee on the inference drawn, but also giving a further opportunity, when the explanation given is not satisfactory. It is only such opportunity, which meets the requirements of basic principles.

1.32 It is pertinent to note, that the principles of natural justice have been elevated to the status of fundamental rights guaranteed in the Constitution of India as it is evident from the decision of the Full Bench of the Supreme Court in the case of Union of India v. Tulsiram Patel AIR 1985 SC 1416, that the principles of natural justice have, thus, come to be recognized as being a part of the guarantee contained in Article 14 of the Constitution of India because of the new and dynamic interpretation given by the Supreme Court to the concept of equality which is the subject matter of that article and that violation of principles of natural justice by a State action is a violation of Article 14. In fact, the principles of natural justice, in the realm of life and liberty, would ipso facto even be read into Article 21 of the Constitution because any procedure which affected life or liberty had to be a just, fair and reasonable procedure, which necessarily meant the principles of natural justice. The aim of the principle of natural justice is to secure justice and to prevent miscarriage of justice. We relied on the decision of the Hon'ble Supreme Court:

- *K. Kraipak v. Union of India AIR [1970] SC 150 (Supreme Court)*
- *State of Kerala v. K. T. Shadul Grocery Dealer AIR [1977] SC 1627 (Supreme Court)*

1.33 It is well settled principle of natural justice that before any action is taken, the affected party should be given a notice to show cause against the proposed action and seek his explanation. Any order passed without giving notice is against the principles of natural justice. Accordingly, even if there is no provision in the statute about giving of notice, if the order in question adversely affects the rights of an individual, the notice must be given. The notice must be clear, specific and unambiguous and the changes should not be vague and uncertain. The object of notice is to give an opportunity to the individual concerned, to present his case. Moreover, the notice must give a reasonable opportunity to comply with the requirements mentioned therein natural justice, therefore, requires that the person adversely affected by the proposed acts, decisions or proceedings be given adequate notice of what is proposed, so that he may be in a position:

- a) to make representation on his own behalf, or*
- b) to appear at the hearing or inquiry (if any), and*
- c) to effectively to prepare his own case and to answer the case he has to meet.*

Accordingly, the notice should be served in sufficient time to enable these representations to be made effectively. If an oral hearing is to be held, the time and the place must be properly notified. If the charges are to be brought, they should be specified with particulars.

1.34 It is well settled law that any order made in violation of natural justice is null and void and the principles of natural justice are, so fundamental that it is not to be construed as a mere formality. It is also settled law that the right of natural justice is so fundamental that the failure to observe the principles of natural justice cannot be made good subsequently in appeal and lack of opportunity before the Assessing, Officer cannot be rectified by the appellate authority by giving such

opportunity. We relied on the following decisions rendered by, Hon'ble Supreme Court:

- *Shreeram Durga Prasad [RB vs. Settlement Commission (1989) 176 ITR 169 (SC)]*
- *Nawaabkhan vs. State of Gujarat AIR ID74 SC 1471*
- *Appropriate Authority vs. Vijay Kumar Sharma (2001) 249 ITR 554 (SC)*
- *Tin Box Co. vs. CIT (2001) 249 ITR 216 (SC)*

1.35 It is also pertinent, to note that assessments are to be framed by the Assessing Officer under section 153A of the Income Tax Act, 1961 which would have bearing on the determination of total income in view of the existence of incriminating materials found and impounded at the time of search, whereas in, the present case of the appellant no incriminating materials found and impounded at the time of search in relation to impugned addition of Rs.2,00, 00,000/- on account of unsecured loan received during the year under consideration.

1.36 It is a well settled law that assessment under section 153A in the absence of any incriminating material found in the course of search from the premises of the assessee is bad in law. Reliance is placed on the following judicial pronouncements by High Court of Delhi and Others, Tribunal benches of Delhi and Others:

- *Principal Commissioner of Income-tax, Central -2, New Delhi V. Meeta Gutgutia [2017] 82 taxmann.com 287 (HC- Delhi)*
- *Principal Commissioner of Income-tax-V v. Vikas Gutgutia [2017] 88 taxmann.com 60S (HC- Delhi)*
- *Principal Commissioner of Income-tax-9 v. Ram Avtar Verma, [2017] 88 taxmann.com 666 (HC- Delhi)*
- *Principal Commissioner of Income-tax-18 v. Ms. Lata Jain [2017] 81 taxmann.com 83 (HC - Delhi)*
- *Principal Commissioner of Income-tax, Ahmadabad v. Dipak Jashvantlal PanchaU [2017] 88 taxmann.com 611 (HC- Gujarat)*
- *Principal Commissioner of Income-tax-1 v. Devangi, [2017] 88 taxmann.com 610 (HC - Gujarat)*

- *Commissioner of Income-tax-20 v. Deepak Kumar Agarwal) [2017] 86 iaXmdnn.com 3 (HC - Bombay)*
- *HBN Dairies & Allied Ltd. v. Assistant Commissioner of Income Tax, Central Circle-4, New Delhi [2018] 96 taxmann.com 353 (ITAT-Delhi)*
- *Priya Holding (P.) Ltd. v. Assistant Commissioner of Income Tax, Central Circle 2(1), Ahmedabadf2018] 90 taxmann.com 408 (ITAT-Ahmadabad)*

1.37 Thus, it is pertinent to note that keeping in view the above mentioned facts and in the circumstances of the appellant's case, reappraisal of facts and ratio of cases cited, the learned assessing officer erred both in facts and in law as under:

A. The learned AO erred both in fact and in law in making addition of Rs. 2,00,00,000/- on account of amount deposited with bank account, being unexplained cash credit ids 68 only on the basis of conjectures and surmises without appreciating the details available before him.

B. The learned AO erred both hi fact and in law in making addition of Rs. 2,00,00,000/- on account of amount deposited with hank account, being unexplained cash credit ids 68 without confirming the facts of receipts and payment of Rs. 2,00,00,600/- from the fenders by issuing notice under section 133(6) or summons under section 131 of the Income tax Act, 1961.

C. The learned AO erred both in fact and in law in making addition of Rs, 2,00,00,000/- on account of amount deposited with, bank recount, being unexplained cash credit u/s 68 by adopting pick and choose method by relying on certain entries of bank narrations / statement which is beneficial to revenue and detrimental to the appellant and ignored other relevant entries of the said statement which is detrimental to the revenue.

D. The learned AO erred both fact and in law in making addition of Rs. 2,00,00,000/- on account of amount deposited with bank account, being unexplained cam credit ids 68 without affording an opportunity of being heard before making addition of Rs.2,00,00,000/- as unexplained credit which is in gross violation of principle of natural justice.

E. The learned AO erred both in fact and in law in framing assessment under section 153A of the Income tax Act, 1961 by making addition of Rs. 2,00,00,000/- on account of amount deposited with bank account, being unexplained cash credit ids 68 in the absence of any incriminating material found in this regard during the course of search at the premises of the appellant.

So, keeping in view of the facts and circumstances of the case of the appellant, reappraisal of the facts and ratio of above cited cases, the learned assessing officer erred both in facts and in law in framing an assessment under section 153A of the Income Tax Act, 1961 at an Total Income of Rs 2,19,01,730/- against Returned Income of Rs 19,01,730/- thereby making an addition of Rs 2,00,00,000/- on account of amount deposited with bank account, being cash credit ids 68 of the Income tax Act, 1961 Hence, the addition of Rs 2,00,00,000/- being unexplained cash credit is bad in law and liable to be deleted."

8. The submission of the appellant was sent to AO for its remand report. The AO has furnished its remand report on 04.07.2019, which is as under:

Dated: 04.07.2019

F.No. JCIT/CC/OSD/Noida/2017-18/363

*To,
The Commissioner of Income Tax (Appeals),
16/104A, Income Tax Office,
Civil Lines, Kanpur- 208002*

[Through Proper Channel]

Sir,

**Sub- Calling for Remand Report in the case of M/s
Ashiyana Civil Contractors Pvt. Ltd. M-167, 302, 304
Harsha Corner Complex for the AY 2014-15- Regarding.**

As directed, written submissions made by the assesses and the evidences placed in the paper book forwarded to this office were examined with reference to records maintained in this office, and report for above assessment years¹ are being submitted for your good self's kind perusal and consideration.

2. In the very outset, it is relevant to mention that search & seizure operation a/s 132 of the Income Tax Act, 1961 was conducted on 30/09/2015 on the premises of the assessee comprising Airwill Group of cases. Search action u/s 132(1) of the Act was carried out at the business premise of the Assessee company at B-20, 21-22, Sector-16, Noida – 201306 (U.P.). Various incriminating documents were found and seized/impounded during the course of search/survey operation.

During the course of assessment proceedings, the bank book of Axis Bank Ltd has been perused and it was observed that the assessee company received funds of Rs. 1,00,00,000/- from Julinia Finance, Rs. 50,00,000/- each from AVT Homes Pvt. Ltd. and RITS Jewellers Pvt. Ltd. which were also squared up during the year. During the course of assessment proceedings, the assessee vide questionnaire dated 07/11/2017 has been asked to provide complete details of fresh unsecured loan taken or accepted by the assessee during the year under consideration. In order to verify the authenticity, creditworthiness and the genuineness of lender, the assessee has been further asked to provide, the confirmation from the lender in original, Audited financial results of lenders, Bank statement of the lender explaining the source of funds, Income tax return filed by the lender, Agreement of Loan and details of interest paid, if any.

In response to the same, no details were furnished by the assessee regarding these entities, In fact, the assessee in his reply didn't even discuss about these entities which were reflected in the bank

book of the assessee since they are squared up during the same year. On perusal of the submissions filed by the assessee, it is observed that the assessee has failed to provide bank statement of lenders from whom unsecured loan was raised by the assessee during the year, In the absence of such information, the source of funds could not be substantiated. Further, the assessee is also failed to prove the creditworthiness of the lenders as they have been shown any income in their financial results. In view of the above, the assessee has failed to discharge his onus to prove the creditworthiness of the investors, genuineness of the transactions and existence of the lender(s). Therefore, the entire sum of Rs, 2,00,00,000/- was treated as unexplained and added to the total income as unexplained unsecured loans u/s 68 of the Income Tax Act.

4. At the remand stage the AR. of the Assessee submitted tire Additional evidence which were admitted by your good self. In order to verify the veracity of the loan of Rs.2,00,00,000/- from the three (03) parties/companies, details submitted were examined. Further, information was requisitioned u/s 133(6) of the Act. The detailed findings are as under:

4.1 In the ease of M/s Juliana Finance Pvt. Ltd it was seen that ITR was filed at Rs.6,98,851/- for the AY 2014-15, The loan amount was squared up during the year. Interest on loan amount has been paid. But no complete bank statement was given, hence the return amount is not reflecting. No complete sets of bank account were submitted. Hence, nature and sources of the credit in the bank accounts are not amenable to verification. From the perusal of the Audited balance sheet and profit & Loss account it is seen that the company is not engaged in any business. No income from business has been reported during the year. An income of Rs. 43,93,666/- was declared under the heads "income from other sources". In the previous year too,

there was no income from business, it had only income from other sources of Rs.38,82,978/-. Hence, the capacity to lend a loan of Rs. 1,00,00,000/- is not proved in this case.

4.2 In the case of M/s RITS Jewelers Pvt. Ltd., it was seen that ITR was filed at Rs.3,64,152/- for the AY 2014-15. The loan amounts was squared up during the year, interest on loan amount has been paid. But no complete bank statement was given, hence the return .amount is not reflecting. No complete sets of bank account were submitted. Hence, nature and sources of the credit in the bank accounts are not amenable to verification. From the perusal of the Audited balance sheet and profit & Loss account, it is seen that the company is not engaged in any business. No income from the jewellery business has been reported during the year. An income of Rs.22,52,038/- was declared under the heads "income from other sources". In the previous year too, there was no income from business, it had only income from other sources of Rs. 8,10,089/-. Hence, the capacity to lend a loan of Rs.50,00,000/- is not proved in this case.

4.3 In the case of M/s AVT Homes Pvt. Ltd., it was seen that ITR was filed at Rs.2,67,268/- for the AY 2014-15. The loan amount was squared up during the year. Interest on loan amount has been paid. But no complete bank statement was given, hence the return amount is not reflecting. No complete sets of bank account were submitted. Hence, nature and sources of the credit in the bank accounts are not amenable to verification. From the perusal of the Audited balance sheet and profit & Loss account it is seen that the company is not engaged in any business. No income from the real estate business has been reported during the year. An income of Rs.21,01,785/- was declared under the heads "income from other sources". In the previous year too, there was no income from business, it had only

income from other sources of Rs.9,14,669/-. Hence, the capacity to lend n loan of Rs.50,00,000/- is not proved in this case.

From the above, it can be safely held that merely filing of confirmation, copy of ITR etc., is not enough to prove the genuineness & creditworthiness of the transaction, as the creditworthiness must also be proved and the transactions should invite confidence of normal, business principles of profit. When the account of the assessee company and the transaction are doubted by the A.O. then to prove the genuineness of such transactions; the assessee has to go some steps further of its own to prove the genuineness of the transactions by direct and corroborative evidence and must establish the capacity to invest / advance such funds by such persons/ Company. Further, weak financials of these so called investor companies substantiate that these companies don't have any creditworthiness to invest and give loan to some non-listed companies. In the cases of all three parties/companies, the creditworthiness is not proved.

5. Therefore, in view of above facts, your goodself may take appropriate decision in accordance with law."

The rejoinder of the assessee in the remand report is as under:

"This is with reference to Remand Report dated 04/07/2019 submitted at your office by learned Joint Commissioner of Income Tax, OSD, Central Circle -1, Noida. A copy of the said remand, report has been provided to us by your good self vide letter dated 05.07.2019 for our comments /explanation on same. In this regard, we would like to submit as under: -

At the very outset, we would like to submit that in the remand report, the assessing officer did not object the main contentions of the appellant raised in the written submission filed before your good

self, So the appellant stands by the submissions made earlier, wherein the main contentions tape as under:

A. The learned AO erred both in facts and in law in making addition of Rs.2,00,00,000/- on account of amount deposited with bank account being unexplained cash credit u/s 68 only on the basis of conjectures and surmises without appreciating the details available before him.

B. The learned AO erred both in fact and in law in making addition of Rs.2,00,00,000/- on account of amount deposited with bank account, being unexplained cash credit u/s 68 without, confirming the facts of receipts and payment of Rs.2,00,00,000/- from the lenders by Issuing notice under section 133(6) or summons under section 131 of the Income tax Act, 1961.

C. The learned AO erred both in fact and in law in making addition of Rs.2,00,00,000/- on account of amount deposited with bank account, being unexplained cash credit u/s 68 by adopting pick, and choose method by relying on certain entries of bank narrations / statement which is beneficial to revenue and detrimental to the appellant and ignored other relevant entries of the said statement which is detrimental to the revenue.

D. The learned AO erred both in fact and in law in making addition of Rs.2,00,00,000/- on account of amount deposited with bank account, being, unexplained cash credit u/s 68 without affording an opportunity of being heard before making addition of Rs 2,00,00,000/- as unexplained credit which is in gross violation of principle of natural justice.

E. The learned AO erred both in fact and in law in framing assessment under section 153A of the income tax Act, 1961 by making addition of Rs.2,00,00,000/- on account of amount deposited

with bank account, being unexplained cash credit u/s 68 in the absence of any incriminating material found in this regard during the course of search at the premises of me appellant.

it is further submitted that the learned assessing officer in assessment framed under section 153A of the Income tax Act, 1961 consequent upon search & seizure operation carried out under section 132 of the Income Tax Act, 1961 on 30/09/2015 at the business premises of the appellant company at B-20, 21-22, Sector-16, Noida-201306 has made addition of Rs.2,00,00,000/- being amount received by the appellant during the year under consideration by treating the same as unexplained Unsecured loan under section 68 of the income tax Act.

The appellant company has received cheques / RTGS aggregating to Rs.2,00,00,000/-, which were deposited with the bank account of the company received from the following parties, which were also squared up during the said financial year itself:

<i>Name of the company</i>	<i>Date of Receipt</i>	<i>Amount (Rs.)</i>	<i>Date squared up</i>	<i>Amount (Rs)</i>
<i>Juliana Finance Private Limited</i>	<i>08/06/2013</i>	<i>1,00,00,000/-</i>	<i>26/03/2014 27/03/2014</i>	<i>50,00,000/- 50,00,000/-</i>
<i>RITS Jewellers Private Limited</i>	<i>28/06/2013</i>	<i>50,00,000/-</i>	<i>24/03/2014</i>	<i>50,00,000/-</i>
<i>AV Homes Private Limited</i>	<i>25/06/2013</i>	<i>50,00,000/-</i>	<i>25/03/2014</i>	<i>50,00,000/-</i>

The appellant has also paid interest on above mentioned amounts received after deducting tax at source during the financial year under consideration, payment of which has also been made through same bank account and also shown in the bank narrations submitted before the learned assessing officer.

However, despite of comprehensive information available with him and also aware of the fact that the appellant has got merely 38-40

days time only to furnish all the details for 7 assessment years, arbitrarily and prejudicially rejected the submissions of the appellant only on the basis of conjectures and surmises and alleged that it is duty of the assessee to provide the corroborative evidences to establish the loan is genuine and sources from the person / entities having capacity to lend such amount, in the absence of such documentary evidences treated the said unsecured loan of Rs. 2,00,00,000 as unexplained.

Further, in view of above facts opportunity is afforded to us by your good self to justify the three main elements of section 68 of the income tax Act, 1961 i.e. the identity, creditworthiness and genuineness of the lenders from whom unsecured loan have been received which the appellant could not prove during the course of assessment proceedings due to shortage of time, in compliance of which the appellant has furnished Copy of income tax return, Company information as per official portal of (MCA), Relevant part of Bank statement of the Senders and Confirmed copy of account of lenders in the books of appellant in relation to all 3 lenders.

Thereafter, on the basis of said documents and information requisitioned under section 133(6) of the income tax Act, 1961, the learned assessing officer has submitted his Remand report dated 04.07.2019.

On perusal of same, it is submitted that the learned assessing officer only raised general issues in his remand report, which are also not sustainable keeping in view of the explanation along with documentary evidences furnished by the said lenders confirming the facts that they have given loan to the appellant which are also squared up during the same financial year.

The contentions of the learned assessing officer are as under:

1. *That the lenders have weak financials and thus, don't have any creditworthiness to give loan to non-listed companies. In case of all three companies, the credit worthiness is not proved.*

2. *The assessee has to prove of its own the genuineness of the transactions by direct and corroborative evidence and must establish the capacity to lend such funds by such persons.*

The learned assessing officer in the remand report has mentioned general comments in relation to all 3 lenders after verifying the details / documents submitted by the appellant and directly by the lenders in compliance of notice issued under section 133(6) of the Income tax Act, 1961. The same is extracted as under:

In the case of M/s Juliana Finance Private Limited, it was seen that ITR was filed at Rs.6,98,851/- for the A.Y. 2014-15. The loan amount ms squared up during the year. Interest on loan amount has been paid. But no complete bank statement was given, hence the return amount is not reflecting. No complete set of bank account were submitted. Hence, nature and sources of the credit in the bank accounts are not amenable to verification. From the perusal of the Audited balance-sheet and Profit and loss account it is seen that the company is not engaged in any business. No income from business has been reported during the year. An income of Rs.43,93,666/- was declared under the heads "income from other sources". In the previous year too, there was no income from business, it had only income from other sources of Rs.38,82,978/-. Hence, the capacity to lend a loan of Rs.1,00,00,000/-is not proved in this case.

In the case of M/s RITS Jewellers Private Limited, it was seen that ITR was filed at Rs.3,64,152/- for the A.Y. 2014-15. The loan amount was squared up during the year. Interest on loan amount has been paid. But no complete bank statement was given, hence the return amount is not reflecting. No complete set of bank account were

submitted. Hence, nature and sources of the credit in the bank accounts are not amenable to verification. From the perusal of the Audited balance sheet and Profit and loss account it is seen that the company is not engaged in any business. No income from business has been reported during the year. An income of Rs 22,52,038/- was declared under the heads "income from other sources". In the previous year too, there was no income from business, it had only income from other sources of Rs 8,10,089/-. Hence, the capacity to lend a loan of Rs 50,00,000/- is not proved in this case.

In the case of M/s AVT Homes Private Ltd., it was seen that ITR was filed at Rs.2,67,268/- for the A.Y. 2014-15. The loan amount was squared up during the year. Interest on loan amount has been paid. But no complete bank statement was given, hence the return amount is not reflecting. No complete set of bank account were submitted. Hence, nature and sources of the credit in the bank accounts are not amenable to verification. From the perusal of the Audited balance sheet and Profit and loss account it is seen that the company is not engaged in any business. No income from business has been reported during the year. An income of Rs 21,01,785/- was declared under the heads "income from other sources". In the previous year too, there was no income from business, it had only income from other sources of Rs.9,14,669/-. Hence, the capacity to lend a loan of Rs 50,00,000/- is not proved in this case.

In this regard we would like to submit that the appellant has already discharged its onus to prove the identity creditworthiness of the persons and genuineness of the transaction by furnishing the necessary documents, which proves that the said amount received and squared up were disclosed and is genuine in nature. It is also a well settled law that addition of unexplained cash credit under the Income tax Act, 1961 cannot be made when the assessee discharged

his onus by furnishing necessary documents to prove identity, creditworthiness and genuineness of transactions.

Further, it is submitted that after perusal of Remand report it is evincible that lenders has also confirmed payment and receipt of loan amounts along with receipt of Interest payments and also submitted their Financials, Bank statement and Returns for verification of same. However, the learned assessing officer arbitrarily and prejudicially rejecting the submissions by alleging impugned statements again only on the basis of conjectures and surmises.

From the verification of Financials of the lenders as available in the Public Domain of MCA it is evincible that all the companies are profit making companies and have accumulated Reserves and Surplus. The detail of same is summarized as under: -

Name of Company	PBT for A.Y. 2014-15	Reserves and Surplus	
		As 31.03.2014	on As 31.03.2013
<i>Juliana Finance Private Limited</i>	<i>6,98,851/-</i>	<i>4,19,74,131/-</i>	<i>4,14,91,225/-</i>
<i>R1TS Jewellers Private Limited</i>	<i>2,77,152/-</i>	<i>1,28,86,491/-</i>	<i>8,423,229/-</i>
<i>AV Homes Private Limited</i>	<i>2,67,268/-</i>	<i>12,858,619/-</i>	<i>8,386,436/-</i>

Thus, it is clearly verifiable that all the lenders have capacity to lend funds to the extent advanced by them to the appellant during the year under consideration on payment of interest in advance In order to earn interest income.

Thus, the objection of the learned assessing officer that the lenders have weak financials is completely not sustainable and also the assessee has already prove on its own all the essential elements of a transaction found credited in the books of account during the year under consideration.

We would further like to submit that the main contentions of the AO for making addition has been duly satisfied as the lender companies themselves in their submission in response to notice under section 133(6) of the Income tax Act, 1961 have submitted all the required documents like bank statement, audited financial statements of the lenders, confirmation of loan and Interest from lender, Income tax return as per remand report of AO itself. So all the requirements of the AO have been fulfilled in the remand proceedings at appellate stage, deficiency of which are the main basis for making addition.

So, keeping in view of the facts and circumstances: of the case of the appellant, reappraisal of the facts, the learned assessing officer erred both in facts and in law in framing an assessment under section 153A of the Income tax Act, 1,961 at an Total Income of Rs.2,19,01,730/- against Returned Income of Rs.19,01,730/- thereby making an addition of Rs.2,00,00,000/- on account of amount deposited with bank account, being cash credit u/s 68 of the Income tax Act, 1961. Hence, the addition, of Rs.2,00,00,000/- being unexplained cash credit is bad in law and liable to be deleted:

We pray that the appeal be allowed."

9. Further, the Id. A.R. of the assessee filed other rejoinder/comments on 30.07.2019, which is as under:

"This is with reference to oar hearing at your office in case of above mentioned appeal, wherein we would like to submit the following details /documents / explanations as required by your good Self under section 250(4) of the Income Tax Act, 1961.

In the present case, the appellant company has received cheques/ RTGS of Rs.2,00,00,000/- deposited with the bank account of the company received from the following parties, which were also squared up during the financial year itself:

Name of the company	Date of Receipt	Amount (Rs.)	Date of squared up	Amount (Rs)
Juliana Finance Private Limited	08/06/2013	1,00,00,000/-	26/03/2014 27/03/2014	50,00,000/- 50,00,000/-
RITS Jewellers Private Limited	28/06/2013	50,00,000/-	24/03/2014	50,00,000/-
AVT Homes Private Limited	25/06/2013	50,00,000/-	25/03/2014	50,00,000/-

Since the appellant was not able to furnish all the requisite details / documents regarding the amount received from above mentioned persons as the appellant got almost 38 - 40 days only to furnish all the details for 7 AYs. Though, the learned assessing officer himself acknowledged that fact in the impugned order that the amount of Rs.2,00,00,000/- deposited into bank account, which were also squared up during the FY itself, arbitrarily and prejudicially made addition of Rs.2,00,00,000/- being cash credit into bank account as unexplained cash credit under section 68 of the Income tax Act, 1961 by alleging that the assessee company failed to discharge its onus by furnishing the details and documents of these entities to prove the authenticity, creditworthiness and the genuineness of the lenders.

The detailed written submission as to why the addition of Rs.2,00,00,000/- being unexplained cash credit under section 68 of the Income tax Act, 1961 is bad in law has already been submitted before your goodself.

In addition to same, as required by your good self, in order to justify the three main elements of section 68 of the Income tax Act, 1961 i.e. the identity, creditworthiness and genuineness of the lenders from whom unsecured loan have been received which the appellant could not prove during the course of assessment proceedings due to shortage of time, we would like to furnish following documentary evidences to prove identity and creditworthiness and genuineness of the lenders and genuineness of transactions with the appellant:

- Copy of income tax return, Company Information as per official portal of (MCA), Relevant part of Bank statement of the lenders and Confirmed copy of account of lenders in the books of appellant of Juliana Finance Private Limited is enclosed herewith as Annexure -1.*

- *Copy of Income tax return, Company Information as per official portal of (MCA), Relevant part of Bank statement of the lenders and Confirmed copy of account of lenders in the books of appellant of HITS Jewellers Private Limited is enclosed herewith as Annexure – 2.*
- *Copy of Income tax return, Company Information as per official portal of (MCA), Relevant part of Bank statement of the lenders and Confirmed copy of account of lenders in the books of appellant of AVT Homes Private Limited is enclosed herewith as Annexure -3.*

Thus, the three main elements of section 68 of the Income tax Act, 1961 i.e. the identity, creditworthiness and genuineness will get proved beyond doubt In view of evidences enclosed as above:

Identity of the lenders

- *Income tax return of the lenders for the year under consideration which shows complete Income tax jurisdiction particulars of the lenders.*
- *Company Information as per Master Database as available on the official portal of Ministry of Corporate affairs (MCA).*

Creditworthiness of the lenders

- *Income tax return, of the lenders for the year under consideration.*
- *Bank statement of the lenders.*

Genuineness of transaction

- *Bank statement of appellant and lenders showing relevant credit and arid debit entries.*
- *Confirmed copy of ledger account in the books of the appellant.*

Further, it is also pertinent to note that from the perusal of confirmed copy of accounts of the relevant parties it is also quite evident that the

appellant has also paid interest on such amounts during the financial year under consideration and tax at source has also been deducted thereupon. It is pertinent to note that now the appellant had duly discharged its onus to prove the identity, creditworthiness of the persons and genuineness of the transaction by furnishing the documents, required by your goodself, which proves that the said amount received and squared up were disclosed and is genuine in nature.

It is well settled law that addition of unexplained cash credit under the Income Tax Act, 1961 cannot be made when the assessee discharged his initial onus by furnishing necessary documents to prove identity, creditworthiness and genuineness of transactions."

10. We find that the Id. CIT(A), after considering the assessment order, written submission, remand report and rejoinder/comments of the assessee held that during the relevant assessment year the assessee company has received unsecured loans amounting to Rs. 2,00,00,000/. The assessee company has received an amount of Rs. 1,00,00,000/ from M/s Juliana Finance Pvt. Ltd. and amount of Rs. 50,00,000/- each from M/s AVT Homes Pvt. Ltd. & M/s RITS Jewelers Pvt. Ltd. which have been found to be genuine. The Id. CIT(A) held that during remand proceedings, the AO has carried out verification of alleged unsecured loans and no adverse finding is recorded by him, other than saying "part" submission of bank statements of the lenders evidencing refund of unsecured loans.

11. We also find that the assessee has filed all the bank statements and ledger account of creditors, evidencing receipts and refund of unsecured loans. The factual matrix of the case indicates that the assessee has discharged its initial onus to prove the identity, creditworthiness and the genuineness of transaction by filing necessary details as an additional

evidences which have been duly accepted by the Id. CIT(A) and necessary remand reports have been called for in accordance with the laid down procedure of law. No incriminating material was brought on record by the AO during the opportunity provided to him to examine and investigate based on the additional evidences. Admittedly, loans were repaid, during this relevant assessment year itself. The date of receipt of the loan was 06/2013 and the date of repayment was 03/2014 which is much before the date of search i.e. 13.09.2015. Due interest has been paid and tax on payment of interest was also deducted as per law. Thus, it can be held that the requirement of law like identity, credit capacity and genuineness of transaction is satisfied by the assessee. Hence, the addition made by the Assessing Officer is deleted and the ground of appeal of the Revenue is dismissed. The order of the Id. CIT(A) is affirmed.

12. In the result, the appeal of the Revenue is dismissed.
Order Pronounced in the Open Court on 23/03/2023.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 23/03/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR