

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.311/SRT/2022

निर्धारणवर्ष/Assessment Year: (2013-14)

(Physical Hearing)

The ITO, Ward-1(1)(3), Surat.	Vs.	Mega Collections Pvt. Ltd., 38-39, Kamla Estate, Gitanjali Petrol Pump, Varachha Road, Surat – 395009.
(Appellant)/(Revenue)		(Respondent)/(Assessee)
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAGCM3809C		

Appellant by	Shri Ashok B. Koli, CIT-DR
Respondent by	Shri Suresh K. Kabra, CA
Date of Hearing	08/02/2023
Date of Pronouncement	17/04/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2013-14, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘NFAC’), which in turn arise out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 31.03.2016.

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

“(i) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of unexplained share Capital and Share Premium amounting to Rs.68,14,950/- without appreciating the fact that the assessee failed to prove genuineness of transactions and creditworthiness of investors during the assessment proceedings as well as at time remand report though he was requested to do so?”

“(ii) On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of unexplained unsecured loan amounting to Rs.8,10,13,188/- without appreciating the fact that the assessee failed to prove genuineness of transactions and creditworthiness of investors

during the assessment proceedings as well as at time remand report though he was requested to do so?

(iii) On the facts and circumstances of case and in law, the Ld. CIT(A) has erred in deleting the total additions of Rs.8,78,28,138/- on account of unexplained cash credit u/s 68 of the Act for unexplained Share capital + Share Premium and unsecured loan as the decision of the Hon'ble ITAT, Surat in assessee's own case on similar issue for the A.Y 2012-13 has not been accepted by the department and further appeal have been filed before the Hon'ble High Court where decision is pending:

(iv) On the facts and circumstances of case and in law, the Ld. CIT(A) failed to appreciate the fact reported by AO in his remand report dated 18.07.2018 that all the parties were merely entry providers and they hardly knew about the business shown by them in their Audited statement and they have failed to explain the sources out of which unsecured loan and investment in shares of assessee company were made. At the time statement recorded on oath during remand proceedings, they have failed to prove genuineness of transactions and their creditworthiness for investment in assessee-company as well for giving unsecured loan to assessee.

(v) On the basis of the facts and circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

(vi) It is therefore prayed that the order of the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.

(vii) The appellant craves leave to add, alter, amend and/or withdraw any grounds of appeal either before or during the course of hearing of the appeal."

3. Succinctly, the factual panorama of the case is that assessee before us is a Private Limited Company and filed Return of income for the Assessment Year 2013-14 on 03.10.2013 with returned total income at Rs.16,12,680/-. The assessee's case was selected for scrutiny in CASS and a statutory notice u/s 143(2) of the IT Act was issued on 03.09.2014 and was duly served upon assessee. Thereafter, notice under section 142(1) along with questionnaire was issued on 06.08.2015 and was duly served upon assessee. The assessee is engaged in Trading in textile items mainly in Yarn and Fabrics. During the year under consideration, assessee has shown gross profit of Rs.43,57,824/- on a turnover of Rs.78,90,91,864/- which comes at 0.55%. The assessee was asked to produce books of accounts for verification. During verification of books of accounts many discrepancies were found. Summons were issued to sale/purchase parties of assessee requesting them to attend the office of the assessing officer. The

Assessee has shown purchases from its Sister concerns, where proprietors are either female members of family or HUF or directors Family members. All concerns are showing sale-purchase to each other. Majority of the concerns are not showing any opening or closing stock. Other discrepancies found by AO were mentioned in show cause letter issued and served upon assessee.

4. During the year under consideration assessee has shown receipt of share capital/premium and unsecured loan from following persons/concerns:

Sr. No.	Name & Address	Unsecured Loan (Rs.)	Share Capital/Premium (Rs)	Total
1	Arya Marketing, Prop. Vipulbhai M Savaliya, C-401, City Corner Complex, Nandanvan Society, Mota Varachha, Surat	20775238	0	20775238
2	Ashvini Fibres, Prop. Sangita Rajesh Vekharia 8-C, Ashwini Apptt., Anmol Compound, Sumul Dairy Road, Surat	27,70,000	0	2770000
?	Creative Fashions, Prop Haresh Vekaria 3-D, Ashwini Apptt., Sumul Dairy Road Director in R. J. Squarelink Pvt. Ltd.,	3465000	2023500	54,88,500
4	Master Corporation, Prop. Haresh Vekharia HUF, 39, Kamla Estate, Kohinoor Road, Varachha, Surat	5631100	0	56,31,100

5	Metro Fibres, Prop. Jitendra Vekhar HUF 109, Sachi Complex, Runghnathpura, Nain Road, Lal Darwaja, Surat	5095850	0	50,95,850
6	Shilp International, Prop. Shilpa Prakash Dhanani C-1/101, Krishna Township, Satellite Road, Mota Varachha, Surat	14000000	591150	1,45,91,150
7	Sunflower Enterprise, Prop. Bhavikaben A. Vekhar , i) 3-C/D, Ashvini Apartment, Opp. Sardar Nagar Soc., Sumul Dairy Road, katargam, Surat	9940850	1000050	1,09,40,900
8	Sunrise Fibre, Prop. Ushaben J Vekhar 109 & 208, Sachi Complex, Rughnathpura, Main Road, Laldarwaza, Surat	7094950	1000050	8095000
9	Sunstars Creations, Prop. Manishaben Vekhar 38, Kamla Estate Kohinoor Road, Varachha Road, Surat	10014200	1000050	11014250
10	Wilson Enterprise, Prop. Ashwin Vekaria HUF. Trading of Textile fabrics, 108, Sanchi Complex, Raghunathpura Main Road, Laldarwaja, Surat	2226000	0	2226000
11	Vinubhai Ramani, A/6/203, Krishna Township, Satellite Road, Mota Varachha, Surat	0	800100	800100
12	Poonam K Dhanani, Prop. Prisha Fashion D-5, 403, Krishna Township, Satellite Road, Mota Varachha, Surat	0	400050	400050
13	Ashvin Vekaria, i). 3-C/D, Ashvini Apartment, Opp. SARDAR Nagar Soc., Sumul Dairy Road, Surat. ii). 7 MK Chambers, Kohinoor Road, Varchha, Surat	0	4326450	4326450
14	Jitendra Vekhar, Prop. Mega Collections, i). 38, Kamla Estate, Kohinnor Road, Varchha, Surat.	0	3127500	3127500
	TOTAL	8,10,13,188	1,42,68,900	9,52,82,088

The Assessee furnished bank statement, acknowledgment of return of income and confirmation of above mentioned cash creditor/shareholders. On verification of the bank statement it was found that before transferring the money to assessee similar amount was credited in their accounts. Other transactions of the bank statements are also having same nature. After credit of any transactions same was transferred to other accounts leaving a meager balance in bank statement at any particular time. Letter u/s 133(6) were issued to them, however following issued letters were returned back with postal remarks 'Not Available'.

i) Shilpa P. Dhanani

- ii) Vinubhai L. Ramani
- iii) Arya Marketing
- iv) Creative Fashion

Therefore, summons was issued by AO to all above persons/shareholders/cash creditors but no one attended. Bank Statements, Confirmations and Copy of return of income filed were furnished through Tapal in compliance of Summons issued. On verification of Return of Income filed by them it was found that no one is showing any significant income in his/her Return of Income. Before transferring the amount to assessee similar amount was credited on same date in bank accounts of assessee. Their capital and the balance sheet doesn't have enough credit worthiness to invest in assessee company or give advance to company. It was found that creditors of assessee have invested in company as share capital/premium or unsecured loans. The amounts which were paid to purchase parties returned back to assessee as unsecured loan or share capital. Further the persons who have invested have obtained unsecured loans or sale proceeds from creditors of assessee. All those concerns are not doing any real business. The Inspector was deputed by assessing officer to conduct a spot enquiry of business premises shown by the investors/creditors of assessee. As per his report as on date none of the concern from whom assessee has received unsecured loan/share capital are running from that premises. Neighbors of addresses given were unaware of any business running from those places. In few cases even proprietor herself stated that she was not aware of any concern running from that place. The Inspector's report is reproduced below:

Date: 17.03.2016.

To
The Income-tax Officer
Ward-1(1)(4), Surat.

Sir,

As per your direction I have visited the below mentioned premises for spot verification purpose. Enquiry report in respect of each of the below mentioned premises are as under:

Sr.No.	Name & address	Inquiry Report
1.	Arya Marketing, Prop Vipulbhai M Savaliya C-401, City Corner Complex, Nandanvan Society, Mota Varachha, Surat.	I visit this premise on 15.03.2016. Its residential premises. I met there Smt. Vishwa Thaiseiya (mobile No. 9727142276). She told me that the firm Arya Marketing is not running from this premises. And she has no knowledge about the firm and the place from where it is running.
2.	Ashvini Fibres, Prop Sangita Rajesh Vekharia, 8C, Ashwini Apptt, Anmol compound, Sumul Dairy Road, Surat.	I visit this premise on 15.03.2016. Its residential premises and no business activities are being carried out from this premise.
3.	Creative Fashions, 3-D Ashwini Apptt, Sumul Dairy Road, Surat.	I visit this premise on 15.03.2016. Its residential premises and no business activities are being carried out from this premise.
4.	Master Corporation, Prop, Haresh Vekharia i) 39, Kamal Estate, Kohinoor Road, Varachha, Surat. ii) 3-D, Ashwini Apptt. Opp. Sardar Nagar Soc. Sumul Dairy Road, Surat.	i) I visit this premise on 15.03.2016. The firm M/s. Master Corporation is not running from this premise. I met there Shri Himatbhai Kababhai who told me that the firm M/s. Master Corporation is closed two years ago.
5.	Metro Fibres, Prop. Jitendra Vekharia (HUF), 109, Sachi Complex Rughnathpura, Nain Road, Lal Darwaja, Surat.	I visit this premise on 17.03.2016. I met there Shri. Bhagirath S Narigara (Mobile No. 8460666039) who informed me that the firm Metro Fibres is closed two years ago. Now at present, Ankur Pharma is running from this premise.
6.	Shilp International, Prop. Shilpa Prakash Dhanani, C- 1/101, Krishna Township, Satellite Road, Mota Varachha, Surat.	I visit this premise on 15.03.2016. There I met the proprietor (Mobile No. 9909698088). She informed me that she has no knowledge about the firm and the place from where it is running. Her husband may be able to say anything about the firm and where about the place of operation. Its residential premises and no business activities are being carried out from this premise.
7.	Sunflower Enterprise, Prop. Bhavikaben A Vekharia, i) 3-C/D, Ashwini Apptt. Opp. Sardar Nagar Soc. Sumul Dairy Road, Katargam, Surat.	i) I visit this premise on 15.03.2016. From the premise, Medical clinic of Dr. Ashwinbhai Vekharia is running. I met the Dr. Ashwinbhai Vekharia (Mobile No. 9824199706) informed me that the firm is closed two years ago. ii) I visit this premise on 15.03.2016. Its residential premises and no business activities are being carried out from this premise.

8.	Sunrise Fibre, Prop. Ushaben J Vekharía, 109 & 208, Sachi Complex, Rughnathpura, Main Road, Lal Darwaza, Surat.	I visit this premise on 17.03.2016. I met there Shri. Bhagirath S Narigara (Mobile No. 8460666039) who informed me that the firm Metro Fibres is closed two years ago. Now at present, Ankur Pharma is running from this premise.
9.	Sunstar Creations, Prop Manishaben Vekharía, 38, Kamla Estate, Kohinoor Road, Varachha Road, Surat. ii) 3/C, Ashwini Apptt. Sumul Dairy Road, Surat.	i) I visit this premise on 15.03.2016. I met there Shri. Himatbhai Kababhai (Mobile No. 9824199706) informed me the firm Sunstar Creation, is closed two years ago. ii) I visit this premise on 15.03.2016. Its residential premises and no business activities are being carried out from this premise.
10.	Wilson Enterprise, Prop Ashwin Vekharía (HUF) i) 108, Sanchi Complex, Raghunathpura Main Road, Lal Darwaja, Surat. ii) 3/C, Ashwini Apptt. Sumul Dairy Road, Surat.	i) I visit this premise on 17.03.2016. I met there Shri. Bhagirath S Narigara (Mobile No. 8460666039) who informed me that the firm Metro Fibres is closed two years ago. Now at present, Ankur Pharma is running from this premise. ii) I visit this premise on 15.03.2016. Its residential premises and no business activities are being carried out from this premise.
11.	Shridhan Corporation, Prop. Ketan G Barvaliya, 45, Pramukh Park Soc. Near Patel Park Soc, Simadagam, Mota Varachha, Surat.	I visit this premise on 15.03.2016. I met there Smt. Vaishali Barvaliya (Mobile No. 9624290351). Its residential premise and no business activities are being carried out from this premise.
12.	SRV Tex-O-Fab, Prop. Rajesh Vekharía, 503-Trade Center, Ring Road, Surat.	In this connection, I visit World Trade Centre on 17.03.2016. The given address is incomplete as four shops having serial no. 503. Out of the four shops, one is an office of the Chartered Accountant. Remaining three was closed at the time of visit.

Submitted.

Sd/-
[A.S.Kanakadharan], Inspector
Ward-1(1)(4), Surat.

5. Considering these facts and taking into account the inquiries conducted, the assessing officer issued a show cause notice to the assessee as on 18.04.2010 which is reproduced by the Assessing Officer at page no.6 to 11 of the assessment order.

6. In response to the show cause notice, the assessee has furnished his reply before the assessing officer on dated 28.03.2016 which is reproduced by the Assessing Officer on page no.11 to 19 of the assessment order.

7. Thereafter, the Assessing Officer, after considering the reply of the assessee observed that the persons from whom assessee has received unsecured loans and share capital/premiums, a chart of figures shown in their balance sheet and Profit & Loss Account was prepared. The assessing officer noted that chart itself explains that business transactions shown by these investors/creditors are

not genuine and their creditworthiness is doubtful. The said chart is reproduced below:

	Ashvini Fibres, Prop. Sangita Rajesh Vekharia,	Master Corporation, Prop. Haresh Vekharia HUF,	Metro Fibres Prop. Jitendra Vekharia HUF,	Shilpa International Prop. Shilpa Prakash Dhanani,	Sunflower Enterprise, Prop. Bhavikaben A. Vekharia	Sunrise Fibre, Prop. Ushaben J Vekharia	Vinubhai Ramani,
	1	2	3	4	5	6	7
AMOUNT INVOLVED	27,70,000	56,31,100	50,95,850	1,45,91,150	1,09,40,900	80,95,000	8,00,100
Turn Over	393243321	30456463	9639055	158871566	56428500	12089344	No details were furnished as summons as well as letter u/s 133(6) could not be served
Purchase	392576953	27340160	7375854	164247852	51398989	5030459	
Administration & Selling Expenses	351685	18468	112024	232918	473419	258858	
Profit	616001	285134	121762	252234	402358	452726	
Capital	229103	2049142	1857066	703821	1487907	1177499	
USL	30820167	397257	12253804	0	0		
Cr	181483869	199955719	69302309	112405061	63774900	141888497	
Fixed Assets	25198	0	0	6054	0	0	
Loans, Advances	8971913	47574982	9971109	27536078	43802091	69989008	
VI-A	110000	35060	70677	59601	97289	101490	
Total Income	1353320	372680	51150	192730	308630	352730	
Withdraw	Not Furnished	180930	338190	197830	194090	1383320	

Transportation exp	0	0	0	0	0	0
Stationery Exp	102	0	0	0	0	0
Electricity	0	0	0	0	0	0
Interest exp	0	571644	0	0	0	0
Salary	289000	0	89500	189400	436000	226000
Rent	0	0	0	0	0	0

	Sunstar Creation, Prop. Manishaben Vekharia	Wilson Enterprise, Prop. Ashwin Vekharia HUF	Prisha Fashion, Prop Poonam Ketanbhai Dhanani	Arya Marketing, Prop. Vipulbhai M Savaliya,	Creative Fashions, Prop. Hareesh Vekharia,	Global Exim, Prop. Ashvin Vekaria,	Mega Collection, Prop. Jitendra Vekharia
	8	9	10	11	12	13	14
AMOUNT INVOLVED	1,10,14,250	22,26,000	4,00,050	2,07,75,238	54,88,500	43,26,450	31,27,500
Turn Over	12180438	75896314	268715585	No details were furnished as summon as well as letter u/s 133(6) could not be served	12898914	0	1182280694
Purchase	11540737	70689173	272791120		12360077	0	1170126811
Administration & Selling Expenses	18720	342444	238708		19368	2400	1090847
Profit	261817	140742	320266		(-)53540	(-)2465	1542381
Capital	2080261	1330911	915130		2877196	155037	51397581
USL	22603301	0	1000000		43809630	0	87882672
Cr	112557824	92024767			94350198	2146101	12920596
Fixed Assets	0	0	3027		0	0	687575
Loans, Advances	33415853	38485955	10879500		21229265	35000	31172011
VI-A	75761	59631	32869		116070	117861	208497
Total Income	264060	81400	287400		1158010	852230	1694510
Withdraw	86000	125000	60000		0	127056	0
Transportation exp	0	0	0		0	0	239176
Stationery Exp	0	0	0		0	0	16546
Electricity	0	0	0		0	0	20293
Interest exp	357835	0	0		571644	0	9241284
Salary	0	297000	0	0	0	782500	
Rent	0	0	0	0	0	60000	

8. In view of above table it is clear that except Shri Ashvin Vekharia and Shri Jitendra Vekharia all other persons creditworthiness is not enough to invest/advance of amount in excess of 20 lakhs. Shri Ashvin Vekharia is also running a medical clinic whose transactions are not shown in above chart. As stated in show cause letter no business can be run without incurring expenses of rent, electricity, stationery, transport. Majority of the business concerns were running from residence which 2 bed room accommodations. They were trading in grey cloths and yarns which are voluminous items and to trade in these goods substantial amount of space is required. All the lenders/investors were from the promoter families. Summonses were issued to them but no one attended. All the involved persons are relatives of assessee or closed friends so could be easy for assessee to produce before the undersigned, however surprisingly no one attended. All the concerns must have started their business at a particular period of time and as stated by assessee, all have closed their business as on date.

Almost all have opened their bank accounts with one bank and one branch with Bank of India, Varachha Road Branch. All these facts clearly explain that all these concerns have been created not to run any business but to provide entries of sale/purchase, share capital, unsecured loans to each other.

9. It has also been proved on record that the financial/economic position of assessee is far stronger than those of the depositors. It is a socially accepted phenomenon that a weaker may be supported by the stronger. In the present case it is reverse. Mere confirmation by the depositors without proving their capabilities to part with such sums can't make the transaction to be accepted to be true. The genuineness of the transaction is not proved. A person's creditworthiness can be judged from his balance sheet. In none of the lender's balance sheet there is any significant movable/immovable property. If the person is earning but instead of using the same capital for personal use or business purpose, he is advancing the same interest free to someone else that means his source of earning is not genuine and is controlled by someone else. Investment was many times more than the total capital of that person which clearly establishes that their creditworthiness is not enough to advance that much money with assessee company. The depositors are not capable of giving such loans since they have no investment or even provision for contingencies such day to, day livelihood, disease or even the demise of the bread winner of the family. It is a natural instinct in all living being that it will first be inclined to itself or its own family members. Though lenders are low income group persons and their yearly withdrawals is not that much, that they have advanced in multi lakhs to assessee. No one will part with his hard earned money without receiving interest.

10. The assessing officer noted that even on papers these concerns are not creditworthy enough to justify the claim of assessee regarding their investment/advance to company. This is once again strong evidence typical of entry providers and bogus transactions. One can, however, argue that merely income potential is not the true test of creditworthiness. It is clear from the above table that the concerns are not carrying out any proper activity. There is almost no

revenue generation, no income and even the expenses debited include no rent expenses, electricity expenses, stationery expenses, transportation expenses, salary expenses, telephone expenses which are the basic requirements of running establishment. From the bank account statements of all these concerns, one characteristic invariably emerges consistently in all the cases. There is a pattern of bank deposits immediately prior to the issue of cheques. This fortifies the stand of Revenue that the accounts are irrigated with need based 'temporary creditworthiness' adequate only to meet the fund requirements of the entry recipients. From the pattern of deposits and issuance of cheque it stands established that not only the alleged concerns are devoid of any true creditworthiness, they are merely account lenders providing accommodation entries through their bank accounts.

11. The assessing officer also noted that Investors made investments/advances of around 50 times or even more than 50 times of their yearly income. For example, Shri Vipul M Savaliya has shown total income of Rs.2,64,240/- whereas he has advanced Rs.2,07,75,238/-. Their yearly withdrawals are from Rs.60,000/- to 2,00,000/-. Manishaben, Prop of M/s Sunstar Creations has shown yearly withdrawals of Rs.86,000/- but her investments/advances to company is of Rs.1,10,14,250/-. All the involved persons have invested after obtaining unsecured loans or invested sale proceeds which were to be paid to their purchase creditors. However surprisingly no one is charging any amount of interest. Majority of the concerned persons have in last year too made investments with this company and they were treated as unexplained in assessment order of assessment year (A.Y.) 2012-13. In view of facts and findings narrated above, the assessing officer observed that out of 14 investors/creditors, transactions of 2 persons, Shri Ashvin Vekaria and Shri Jitendra Vekaria (total Rs.74,53,950) are treated as genuine and amounts received from them is treated as explained. In case of amounts received from remaining 12 concerns/persons are treated as unexplained. The unsecured loan and share capital/premium of Rs.8,78,28,138/- (95282088 - 7453950) has been found credited in the books of the assessee company maintained for previous year 2012-13, and the explanation offered by

the assessee company has not only been found unsatisfactory but also incorrect as revealed by inquiries conducted by the Department, therefore the sum of Rs.8,78,28,138/- was, added under section 68 of the Income Tax Act, 1961.

12. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer observing as follows:

“4.12 On perusal of facts, it is noticed that the identity of all the creditors was established as the creditors appeared before the A.O during remand proceedings. In the remand report the AO has only, mentioned that the creditworthiness of the creditors and genuineness of transactions are not proved. In this regard, the following facts are noticed on perusal of the details:-

- 1. Out of 12 creditors, 9 are individuals and 3 are HUF.*
- 2. All creditors are filling their return of income and copies of their income tax return were produced before the AO. PAN of all the creditors is mentioned in the assessment order.*
- 3. Copies of bank accounts of the creditors were furnished before the AO in which transaction of unsecured loans/share capital is reflected.*
- 4. Confirmation and contra confirmation of all the creditors were filed before the AO.*
- 5. The appellant filed copies of ITR-V, computation of income, copy of bank statement*
- 6. The appellant also filed contra ledgers and confirmation of source of source parties of all the creditors.*
- 7. The AO has mentioned in Para 8.3 of the assessment order that all the lenders/ investors from the promoter families.*
- 8. In the preceding assessment year 2012-13 the Ld. CIT(Appeal), Surat-3 has held that identity, creditworthiness of the creditors and genuineness of transactions of 8 creditors were proved. The Hon'ble ITAT, Surat also sustained the order of the Ld. CIT(Appeal), Surat-3.*
- 9. The appellant has filed the assessment orders u/s 143(3) for relevant AY 2013-14 in the case of 6 creditors while assessment orders u/s 143(3) for AY 2012-13 were filed in the case of 4 creditors.*
- 10. All the creditors presented themselves before the AO and confirmed giving the unsecured loan to the appellant company or the obtaining of shares of the appellant company.*

4.13 The appellant has submitted that the lenders/investors presented themselves before the AO during the remand proceedings and their statements were recorded by the AO. All the creditors submitted the supporting documents in respect of source of loans/share capital subscribed. It is further submitted that the statement was recorded in the end of January, 2018 and in the beginning of February, 2018. There was a gap of almost five years from the transaction being examined by the AO during the remand proceedings and therefore, the creditors

might not have recalled all the details of business conducted or transactions entered into in the year of FY.2012-13 after a gap of almost five years.

4.14 There is overwhelming evidence and facts furnished by the appellant. It is also pertinent to note that all the creditors were from the families of the promoters or the relatives of the promoters. The AO could have informed the concerned AO to make any verification he wanted to. The appellant has relied upon the decision of the jurisdictional High Court in the case of Ranchhod Jiva Bhai Nakhawa (2008 Taxman 35(Gujarat) the appellant has also relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd (216 CTR 195). The appellant has also relied upon the following decisions –

1. CIT vs. Namastey Chemicals Pvt. Ltd. (217 Taxman 25) Guj.
2. Earth Metal Electrical Pvt. Ltd. (SLP 21073/2009)(SC)

4.15 The then Ld. CIT(Appeal), Surat-3 has discussed the case laws and decisions of jurisdictional Gujarat High Court, other High Courts, Hon'ble ITAT in his order in the case of the appellant itself for AY 2012-13. The then Ld. CIT(Appeal), Surat-3 held that — "In view of the facts discussed above and the applicable binding decisions of the Hon'ble Supreme Court and Hon'ble High Court of Gujarat, and the jurisdictional ITAT, I hereby hold that the addition made u/s 68 of Rs.5,21,31,100/- on account of 'share application money' in the instant case cannot be sustained." The said discussion is very much relevant in the present appeal also. In that case, the creditors did not appear before the AO and on the basis of the documents/ evidences and on the basis of applicable binding decisions of the Hon'ble Supreme Court and Hon'ble High Court of Gujarat, and the jurisdictional ITAT the additions u/s 68 on account of unexplained share applications were deleted. The said appeal order of the CIT(A)-1, Surat for AY.2012-13 has been sustained by the Hon'ble ITAT, Surat. It is noted that the same documents/evidences relevant to the AY.2013-14 have been produced in the current appeal also. In the present appeal apart from the abovementioned documents/evidence, the creditors appeared before the AO during the remand proceedings. Considering the above facts, I do not find any reason to differ with the view taken by my Id. Predecessor CIT (Appeal), Surat for AY.2012-13 in the case of the appellant.

4.16 In view of the facts discussed above and the applicable binding decisions of the Hon'ble Supreme Court, Hon'ble Gujarat High Court and the jurisdictional ITAT, Surat Bench, I hereby hold that the addition of Rs.8,78,28,138/- on account of unexplained share capital of Rs.68,14,950/- and unexplained unsecured loan of Rs.8,10,13,188/- made u/s.68 cannot be sustained. Hence, the AO is directed to delete the same. Accordingly, ground no. 1 & 2 **are allowed.**"

13. Aggrieved by the order of ld.CIT(A), the Revenue is in appeal before us.
14. Learned DR for the Revenue vehemently relied on findings of the assessing officer. The ld DR pointed out that during the year under consideration, the assessee company has shown receipt of Share Capital/Share Premium Rs.1,42,68,900/- and also accepted unsecured loan amounting of Rs.8,10,13,188/-

from various Parties. During the scrutiny proceedings, a proper examination and verification in respect of credit amount of Share Capital/Share Premium and unsecured loans was made by the AO. After scrutinizing the details submitted by the assessee company and spot inquiry etc. made, the AO has treated genuine transaction in respect of two (2) parties only for total amounting of Rs.74,53,950/- and remaining amount of unsecured loan of Rs.8,10,13,188/- and amount of share capital/Share Premium of Rs.68,14,950/- was added to the total income of the assessee being unexplained cash credit u/s 68 of the Act. The Id DR stated that during the assessment proceedings, summons were issued to all persons/shareholders/cash creditors to examine their creditworthiness as well as identity and transactions made by them, but no one attended. A show cause notice was issued to assessee on 18.03.2016 asking assessee to furnish evidence for the identity of all the so called creditors/investors, after the A.O. was having in possession of valid documentary evidences which prima facie proved that claim made by assessee in respect of credit amount of Share Capital/Share Premium and unsecured loans are non-genuine. The Id DR pointed out that during the remand proceedings also the AO came to the conclusion that neither the creditworthiness nor the genuineness of the transactions of share capital and unsecured loans could be proved. Based on these facts, the assessing officer concluded that addition made by the assessing officer may be upheld.

15. Shri Suresh K. Kabra, Learned Counsel for the assessee defended the order passed by the Id.CIT(A). The Id Counsel argued that cash creditors/share applicants are having PAN, have filed returns of income, their scrutiny assessments were done hence their identity as well as creditworthiness has been established. As on date, the majority of loans were squared ups/paid. The concerned persons are closely related to assessee and they have made transactions through banking channels hence their transactions are genuine. This way, Id Counsel contended that conclusion reached by Id CIT(A) may be upheld.

16. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of

the ld. CIT(A) and other material brought on record. We note that disputed unsecured loan is to the tune of Rs.8,10,13,188/- and most of the loan has been repaid in subsequent year. Therefore, such loan should be treated genuine. Where department had accepted repayment of loan in subsequent year, no addition was to be made in current year on account of cash credit, as held by Hon`ble Gujarat High Court in the case of Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 (Gujarat). The detailed findings of the Hon`ble Court is reproduced below:

“5. Heard Shri Pranav Desai, learned Counsel appearing on behalf of the revenue. The only contention on behalf of the revenue is that on the last day of passing the order, communication dated 22/12/2008 of the assessee along with the confirmation letter of Shri Ishwar Adwani confirming the loan/advance of Rs.1,45,00,000/- given to the assessee, was produced before the Assessing Officer i.e. on the day the Assessing Officer passed the order and thereafter the same was reproduced before the CIT(A) and the CIT(A) considered the same, the CIT(A) ought to have remanded the matter to enable the Assessing Officer to hold further inquiry and, therefore, it is requested to admit/allow the present Tax Appeal.

6. Having heard Shri Pranav Desai, learned Counsel appearing on behalf of the revenue and on perusal of the order passed by the CIT(A) confirmed by the ITAT, it appears that CIT(A) was satisfied with respect to the genuineness of the transaction and creditworthiness of Shri Ishwar Adwani and, therefore, deleted the addition of Rs.1,45,00,000/- made by the Assessing Officer. It is required to be noted that as such an amount of Rs.1,00,00,000/- vide cheque no. 102110 and an amount of Rs.60 lakh vide cheque no. 102111 was given to the assessee and out of the total loan of Rs.1.60 crore, Rs.15 lakh vide cheque no. 196107 was repaid and, therefore, an amount of Rs.1,45,00,000/- remained outstanding to be paid to Shri Ishwar Adwani. It has also come on record that the said loan amounts been repaid by the assessee to Shri Ishwar Adwani in the immediate next financial year and the Department has accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the ITAT has held that the matter is not required to be remanded as no other view would be possible, we see no reason to interfere with the impugned order passed by the ITAT. No question of law, much less substantial question of law arises in the present Tax Appeal.”

17. We note that main plank on which the AO made the addition was because some of the creditors did not turn up before him. In such a case the Hon'ble Apex Court in the case of Orissa Corpn. (P) Ltd. (supra) 159 ITR 78 and the Hon'ble Gujarat High Court, in the case of Dy. CIT v. Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523 , has held that onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is

established and actual receipt of money from such creditor is proved. In case, the Assessing Officer is dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from such creditor). In arriving at this conclusion, the Hon'ble Court has further stressed the presence of word "may" in section 68. Relevant observations at pages 369 and 370 of this report are reproduced hereunder:

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by' treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

18. When a question as to the creditworthiness of a creditor is to be adjudicated and if the creditor is an Income Tax assessee, it is now well settled by the decision of the Calcutta High Court that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regard reliance can be placed on the decision of the Hon'ble High Court, Calcutta in the COMMISSIONER OF INCOME TAX, KOLKA TA-III Versus DATAWARE PRIVATE LIMITED ITAT No. 263 of 2011 Date: 21st September, 2011 wherein the Court held as follows:

"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction

has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness" of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."

19. We also noted that assessee has submitted essential evidences before assessing officer, such as PAN number, address, income tax returns and audited financial statements of creditors and all transactions were through banking channel. We have also gone through the detailed findings of Id CIT(A) and noted that conclusion reached by Id CIT(A) in deleting the addition of Rs.8,10,13,188/- is acceptable.

20. We note that so far addition of Rs.68,14,950/-, on account of share capital/premium is concerned, we note that assessee submitted PAN, returns of income, audited financial statements, transactions through banking channels, and assessee also stated that their scrutiny assessments were done. The Ld. Counsel invited our attention to the respective balance sheets of the share applicants to show that each of them had sufficient funds available at their disposal to make investment in the assessee- company. Referring to the respective bank statements, it was further pointed out that the transactions were conducted through proper banking channel and that there were no cash deposits in any of the bank account of the share applicants. He also invited our attention to the explanation furnished by each of the share applicants regarding their source of funds. It was thus submitted that the fund flow position of the share applicant and not the profitability was the decisive criteria to examine the creditworthiness of the share applicants.

21. Before we adjudicate as to whether the Ld. CIT(A)'s action is right or erroneous, let us look at section 68 of the Act and the judicial precedents on the issue at hand. Section 68 under which, the addition has been made by the AO reads as under:

“68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.”

22. The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words ‘shall’ be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the un-satisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as also held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570.

23. In the assessee's case there is no material that the assessee company had collected on money which could be routed back in the investment. The assessee had discharged primary onus of providing the identity, genuineness and creditworthiness of the said shareholders. The assessee has also proved the source of the source. Our view is also fortified by the judgment of the Hon`ble High Court of Gujarat in the case of Commissioner of Income-tax v. Ranchhod Jivabhai Nakhava, [2012] 21 taxmann.com 159 (Guj.)/208 Taxmann 35(Guj), wherein it was held as follows:

“Once the assessee has established that he has taken money by way of account payee cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial burden under section 68 was discharged. It

further appears that the assessee had also produced confirmation letters given by those lenders. [Para 15]

Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective returns they had shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, the Assessing Officer does not follow the principle laid down under section 68. [Para 16]

If on verification, it was found that those lenders did not disclose in their income tax return the transaction or that they had not disclosed the aforesaid amount, the Assessing Officer could call for further explanation from the assessee to prove the genuineness of the transaction or creditworthiness of the same. However, without verifying such fact from the income tax return of the creditors, the action taken by the Assessing Officer in examining the lenders of the assessee was a wrong approach. Moreover, those lenders have made inconsistent statements as pointed out by the Commissioner (Appeals) and in such circumstances, both the Commissioner (Appeals) and the Tribunal, were justified in setting aside the addition as the Assessing Officer, without taking step for verification of the income tax return of the creditors, took unnecessary steps of further examining those creditors. If the Assessing Officers of those creditors are satisfied with the explanation given by the creditors as regards those transactions, the Assessing Officer in question has no justification to disbelieve the transactions reflected in the account of the creditors. In other words, the Assessing Officer had no authority to dispute the correctness of assessments of the creditors of the assessee when a co-ordinate Assessing Officer is satisfied with the transaction. [Para 17]

Thus, the Tribunal rightly set aside the addition made by the Assessing Officer, based on erroneous approach by wrongly shifting the burden again upon the assessee without verifying the income tax returns of the creditors. The position, however, would have been different if those creditors were not income tax assesseees or if they had not disclosed those transactions in their income tax returns or if such returns were not accepted by their Assessing Officer. [Para 18] There was no merit in the appeal and same was to be dismissed. [Para 19]

24. From the details as aforesaid which emerges from the paper book filed before us as well as before the lower authorities, it is vivid that all the share applicants are (i) income tax assessee's, (ii) they are filing their return of income, (iii) the share application form and allotment letter is available on record, (iv) the share application money was made by account payee cheques, (v) the details of the bank accounts belonging to the share applicants and their bank statements, (vi) in none of the transactions the AO found deposit in cash before issuing

cheques to the assessee company, (vii) the applicants are having substantial creditworthiness which is represented by a capital and reserve as noted above. (viii). Source of the Source has been proved by the assessee. Therefore, based on these facts and circumstances, we do not find any infirmity in the order of Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

25. In the result, appeal filed by the Revenue is dismissed.

Order pronounced on 17/04/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत /Surat

दिनांक/ Date: 17/04/2023

SAMANTA

Copy of the Order forwarded to

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

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

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat