

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER

**आ.अ.सं./ITA No.264/SRT/2022** (AY 2018-19)

(Hearing in Physical Court)

Income Tax Officer, Ward-Daman,	Vs	Gewinner Tradex Pvt. Ltd. 1 <sup>st</sup> Floor, Flat No.12 Survey No.338/8 and 668/09, Somnath Kachigam Road Dabhel Daman-396210 <b>PAN No. AAGCG 5384 C</b>
<b>अपीलार्थी /Appellant</b>		<b>प्रत्यर्थी /Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Vijay Mehta, C.A
राजस्व की ओर से /Revenue by	Shri Ashok B Koli, CIT-DR
सुनवाई की तारीख/Date of hearing	04.05.2023
उद्घोषणा की तारीख/Date of pronouncement	13.07.2023

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by Revenue is directed against the order of National Faceless Appeal Centre, Delhi [ for short to as “NFAC)/Ld. CIT(A)”] dated 11.07.2022 for the assessment year 2018-19, which in turn arises out of assessment order passed by National Faceless Assessment Centre, Delhi / Assessing Officer under section 143(3) r.w.s. 144B of Income Tax Act, 1961 (‘the Act’) on 11.09.2021. The Revenue has raised the following grounds of appeal:

*“1. On the facts and circumstances of the case and in law, the ld. CIT(A)-NFAC has erred in deleting the addition of*

*Rs.73,98,85,739/- without considering the finding of the AO in its entirety.*

*2. The ld. CIT(A)-NaFAC has erred in granting relief to the assessee accepting the versions, submissions and documents filed by the assessee before him without getting them verified from the AO, in violation of provisions of section 250(4) of the Act.*

*3. It is, therefore, prayed that the order of CIT(A)-NaFAC be set aside and that of the Assessing Officer be restored.*

*4. The appellant craves to add, modify or alter any grounds during the course of appeal proceedings.”*

2. Brief facts are that assessee is a company engaged in trading of agricultural commodities metal (both precious and other metals), wholesale trade in other products, derivatives etc. The assessee filed its return of income on 22.10.2018 for assessment year 2018-19 declaring income of Rs.8,14,410/- . The case was selected for complete scrutiny under e-assessment Scheme, 2019 on the issue of unsecured loans and business expenses. During assessment on perusal of tax audit report, the Assessing Officer noted that assessee has shown huge amounts of loans from various parties and also repaid major of amounts to those parties in a short period. The assessee has taken a loan of Rs.2553.13 crores and repaid loans of Rs.2479.14 crores during the year. The Assessing Officer asked details of the loans and confirmation. The assessee furnished the required details to the Assessing

Officer. The Assessing Officer prepared a summary of loan received and repaid, different / outstanding and returned income of lenders for current assessment year *i.e.*, 2018-19 as per summery recorded in **para-4.1** of assessment order in the following manner.

Name of parties	Amount of loan availed	Amount of loan paid	Difference	Income of the lender as per ITR
Aavim Trading services	8536335	8536335	0	(-)36,85,468
Abnas Broking Services Pvt Limited	2764097862	2789365204	-25267342	74,50,270/-
Abanas Commodities (I) Private Limited	2674064448	2994110099	-320045651	2,49,85,610/-
Abans Finance Private Limited	3148665558	2810721248	337944310	78,65,970/-
Abans Realty and infrastructure Private Limited	76590000	38233915	38356085	20,90,580/-
Abans Securities Private Limited	7981349800	8427462718	-446112918	17817330/-
Abans Textiles Private Limited	69450000	79053419	-9603419	4,94,170/-
Asterpetal Trade & Services Pvt. Ltd	2356690000	1463651000	893039000	9,20,940/-
Manmish Traders Pvt.Ltd.	636900000	636900000	0	11,14,850/-
Mavaiya Enterprises Pvt. Ltd.	4116014174	4038900500	77113674	(-) 29,47,330/-
Trishna Trading Services Pvt. Ltd.	1674222000	1479760000	194462000	7,91,960/-
Yogdarshna Commercial Trading Pvt. Ltd	24800000	24800000	0	(-) 51,13,263/-
	25531380177	24791494438	739885739	

3. The Assessing Officer doubted the creditworthy and genuineness of the loan transaction and issued detailed show cause notice dated 06/09/2021 as to why difference of loan amount should not be added back to the income of assessee as unexplained credit under section 68 of the Act. The Assessing Officer recorded that in response to show cause notice and questionnaire, the assessee furnished return of income (ITR) of parties for assessment years 2017-18 and 2018-19, along with their confirmations letters with bank statements and details of repayment of such loans. On verification of such details furnished by assessee from the ITRs of the parties, the Assessing Officer was of the view that they have shown very low income and has given such huge loans to assessee. The Assessing Officer was of the view that creditworthiness of some of the parties are not proved beyond doubt and reasons of huge transactions were not known. The Assessing Officer was of the view that assessee has given an amount of Rs.5.70 crores to Abans Finance Pvt. Ltd. and availed loan of Rs.5.50 crores and Rs.6.00 crores from the same party on 07.09.2017, in other example assessee taken loan from Mavaya Enterprises Pvt. Ltd. and repayment of

Rs.5.00 crores on same day. The Assessing Officer held that there was no economic rationale of any kind behind such banking transactions. The Assessing Officer proposed to add back such amount and issued final show cause notice along with draft assessment order to assessee. The Assessing Officer the assessee requested for video conference meeting but due to technical issues a video conference could not be given to assessee. The assessing officer recorded that he issued another notice to the assessee for furnishing further documents. The assessee again requested for video conference, which was conducted on 06.09.2021. The assessee also furnished its submission, which was taken on record.

4. On considering the submission of assessee, the Assessing Officer recorded that assessee has explained that loan was availed for working capital requirement and was repaid when there was no requirement of such funds. The turnover of assessee during the year was at Rs.416 crores and Rs.422 crores were incurred for purchase. The assessee also furnished purchase and sale registers, summary of which are compiled in para-5 of assessment order. On the basis of such

summery, the Assessing Officer was of the view that assessee did not undertake any business activity in the month of July, August and December 2017. Further on perusal of bank statements and ledger furnished by assessee there are huge transactions receipt and repayment and purpose of loans could not be ascertained. On creditworthiness, the assessee submitted bank statements of those parties and their financial positions, on which the Assessing Officer took his view that the parties have no enough balance in their respective account to provide loan to assessee and they have received funds from other parties in their bank accounts and then same was transferred to assessee. Same pattern was found in all bank statements of the respective parties. The transactions are circulated in nature. The Assessing Officer recorded that notices under section 133(6) of the Act issued to the parties. All the parties filed their respective reply in the same manner that loans were given to the assessee out of the working capital. The assessing officer recorded that none of the parties provided their bank accounts. On the basis of such observation, the Assessing Officer held that assessee has not discharged its onus in proving the creditworthiness

of the parties beyond doubt. The Assessing Officer added Rs.73.98 crores under section 68 to the income of assessee in the assessment order passed on 11.09.2021 and initiated penalty under section 271AA(C)(1).

5. Aggrieved by the additions in the assessment order, the assessee filed appeal before Ld. CIT(A). The appeal of assessee was migrated to NFAC/Ld. CIT(A) in terms of Notification No. 76/2020 dated 25.09.2020. Before ld CIT(A), the assessee filed its detailed written submission. The submission of assessee recorded in different paragraphs of the order of NFAC/Ld. CIT(A). The assessee in its submission in sum and substance submitted that Assessing Officer invoked provision of section 68 of the Act and made addition that source of credit is unexplained. To explain the nature and source of such transaction, the assessee is required to prove the identity of lender, genuineness of such transaction and creditworthiness of such persons in whose names such credit /loans were recorded in the books of assessee. To prove the identity, the assessee has furnished ITR acknowledgement of all the lenders. To prove the creditworthiness, the assessee submitted that all the lenders were filed their ITR for last so

many years and their financial position, audited report were filed with ITR and their annual accounts / returns were filed with the Registrar of Company every year. In compliance of Company's Act, all the lenders are complied with the provision of GST and filing monthly / quarterly basis. The lenders have recorded the transactions in their books of account and ultimately reflected in the balance-sheet, profit and loss account filed with Registrar of Companies / Income Tax Department. The assessee furnished financial statement of all the lenders, in the form of Annexure-N-1 to N-12. For genuineness of such transaction, the assessee stated that the transactions were made through banking channel or by way of electronic clearing system were furnished with regard to all the lenders. The lenders-companies also confirmed that they have given interest bearing loan to assessee and loan confirmations of lenders were clearly established genuineness of transaction. The interest income has been duly recorded in their respective books of account, which goes to prove the genuineness of loan transaction between assessee and the lenders. To prove the creditworthiness of the lenders, the assessee furnished copy of ITR, loan

confirmations and bank statements showing the entry through RTGS or through proper banking channels.

6. The assessee submitted that once the assessee has discharged its initial onus and explain circumstances about obtaining the loan, the burden shifted on the Department as to why the contention of assessee cannot be accepted. The Assessing Officer failed to bring any material on record. To prove that deposits in the names of creditors are unexplained and there cannot be one general or universal proposition of law which could be the guiding yardstick in the matter, each case has got to be decided on the facts and circumstances of that case. The addition made by Assessing Officer is without any tangible material to suspect the receipt by way of income and without recording a finding of conclusion that such credit was assessable as income was fully untenable. The Assessing Officer made addition half-heartedly, so that, it may be income of the assessee or may not be and no definite finding has been made. In the draft order The Assessing Officer only made the addition in respect of unpaid (difference) amount of loan. The assessee stated that unpaid loan as on 31.03.2018 have also been repaid by assessee in subsequent year,

thereby total loan was repaid. Once the loan was repaid during the year, section 68 should not be invoked on unpaid loan which got fully repaid during financial year 2018-19 and copy of bank statements of subsequent year, evidencing the said repayments were furnished with highlighting the repayment. Thus, section 68 is not applicable in the present case of assessee.

7. On the objections of assessing office that the assessee is engaged in trading in agriculture commodities, metal (both precious and other metals), wholesale trade in other products, derivatives etc. and not in the business of financing, therefore no need to take and repay such huge loan during the year as the assessee did not carry out any business activities for whole year but only for 4-5 months. And the assessee many times used barter system for setting transaction for which there was no genuine purpose for taking and repaying loan. The assessee explained that their company was incorporated in financial year 2016-17 and doing operation since then. They are trading in Gold, Silver and agriculture commodities such as cotton seeds, Guar seeds, Jeera etc. The trade of assessee is difficult and require

domain knowledge and understanding of market, therefore they have to be very careful in their operation. Their trade require huge capital and capital condition in which assessee does its business in volatile. The market condition is being changed every minute of day and assessee has to be aware of any opportunity available in the market. So fulfil its capital requirement in assessee's business, the assessee sought loan from the lender-companies. The said loan was utilized by assessee in its business and any additional funds unutilized was advanced to assessee's clients to earn interest income. The assessee has shown total income of Rs. 8,14,410/- and paid taxes thereon. In the process of mobilising the funds for requirement of trading activities and have lent on interest, in such process, the assessee earned interest of Rs. 1.65 Crore, which have been shown in the return of income and offered to tax. There is no room for treating the loan as unexplained credit, all funds are legitimate and are from identified and creditworthy entities. The assessee also explained each and every objections of the assessing officer in its submissions and furnished its purchase register as well as sale register, showing the details of month-wise purchases and sales on

specific objection of creditworthiness of the lender-companies. The assessee explained the creditworthiness of each and every lender-company in the following ways;

- (i) For Abans Finance Pvt. Ltd against whose loan addition of more than Rs. 33 crores were made, the assessee submitted that it is a reputed NBFC, whose business is of lending of funds having net worth more than Rs. 168 crores and advance loan of Rs.125 crores as on 31.03.2018 to various parties.
- (ii) For Abans Reality & Infrastructure Pvt. Limited, the assessee stated that this company is part of Anabas group of companies, involved in business of renting and purchase of property and sale of commodities had a net worth of more than Rs.27.00 crores as on 31.03.2018.
- (iii) For Asterpetal Trade and Services Pvt. Ltd. had assets including inventories/trade receivables of more than Rs.157 crores, gross revenue of more than Rs.700 crores in financial year 2017-18, so its creditworthy cannot be questioned.
- (iv) For Trishna Trading Services Private Ltd, the assessee explained that the assessing officer alleged that some

debits were not found in the bank statement of lenders. Thus, the assessing officer inferred that assessee did not submit statement of bank account from which it received funds. The assessee submitted that complete bank statement was provided in response to notice dated 03.02.2021, vide reply dated 18/02/2021. Hence, the objection of the assessing officer is incorrect. The assessing officer passed the assessment order without giving sufficient opportunity to rebut such allegation. The assessee has obtained loan of Rs. 50.00 lakhs and not Rs. 57.00 lakhs and noted by assessing officer. The assessee furnished the statement of Kotak Bank Account No. 1012078742 showing the date of transaction on 30/08/2017 as of Rs. 50.00 lakhs.

- (v) For Yogdarshan Commercial Trading Private Limited, the assessee submitted that assessing officer alleged that some debits were not found in the bank statement of lenders. Thus, the assessing officer inferred that assessee did not submit statement of bank account from which it received funds. The assessee submitted that complete bank statement was provided in response to notice dated

03.02.2021, vide reply dated 18/02/2021. Hence, the objection of the assessing officer is incorrect. The assessing officer passed the assessment order without giving sufficient opportunity to rebut such allegation. The assessee furnished the statement of Bank Account of lender highlighting the transactions in Kotak Bank Account No. 871129.

(vi) For Manmish Ventures Private Limited, the assessee explained that the assessing officer took objections that funds lent were taken from third parties. The assessee submitted that the funds received by these entities from third parties can be because of transaction with them as such trade receivables, capital borrowing. No adverse can be inferred on the basis of these transactions. The assessee confirmed that they availed loan of Rs. 1.06 Crore from this lender and the loan was repaid in due course.

(vii) For Mavaiya Enterprises Private Ltd., the assessee submitted that Assessing Officer alleged that this lender received Rs.2.00 crore from entity namely Mavaiya Marketing Pvt. Ltd., who turn received Rs.4.00 crores from

Pantua Warehousing and Logistic Pvt. Ltd. on 26.02.3018.

The assessee explained that Mavaiya Enterprises Pvt. Ltd., and Mavaiya Marketing Pvt. Ltd., are the same entity, the name of the company was changed on 22.12.2016, the certificate of name change was furnished. The fund received by lender party can be because of any transaction between them such as trade receivable, capital, borrowing etc., and no adverse inference can be inferred on the basis of such transactions. The assessee confirmed the advance of Rs.2.00 crores from explained sources. The said loan was paid in due course.

- (viii) For Abans Reality & Infrastructure Pvt. Ltd., the assessee submitted that Assessing Officer objected on the ground that funds were taken from third-parties. The assessee submitted that the funds received by these entities from third-party can be because of any transaction between them such as trade receivable, capital, borrowing etc., and no adverse inference can be inferred on the basis of such transactions. The assessee confirmed the advance of Rs.5.00 crores from explained sources. The said loan was paid in due course.

(ix) For Abans Broking Services Pvt. Ltd., the assessee submitted that Assessing Officer inadvertently mentioned remark of “Abans Commodity (I) Pvt. Ltd.” on the basis of this inferred that creditworthiness cannot be proved without beyond doubt, which is without any basis and in fact it is an error by Assessing Officer by copying and pasting the “adverse remark”.

(x) For Abans Commodity (I) Pvt. Ltd., the assessee submitted that Assessing Officer mentioned that this lender received same amount from its another account, the other statement of account was not submitted. The assessee submitted that assessment order was passed without giving sufficient opportunity to the assessee to rebut this allegation. The another account of the lender is and overdraft (OD) account from Kotak Bank, which required no further details, through which lender advanced money to assessee. Copy of Kotak Bank overdraft account was furnished.

8. The assessee further submitted that Assessing Officer made addition under section 68 of the Act relying upon the report furnished in Form-3CD, relating to transaction covered

under section 269SS and 269ST. The addition was made on different amount between loan taken during the year and total quantum of loan repaid. Where, the difference was positive figures, the quantum was considered as unexplained loan taken from the entities during the year, whereas the difference is negative, in the sense the repayment of loan was greater than the loan taken, the difference amount was reduced from total addition. The assessee was also given the details of additions and where no addition regarding the loan was made. The assessee also explained about each and every lender of respective figure and repayment of loan along with loan confirmation, audited financial, bank statement along with the assessment order of respective lenders under section 143(3) of the Act wherever available.

9. The Ld. CIT(A) after considering the assessment order, submission of assessee along with various evidences furnished by the assessee held that assessee submitted all relevant documents, such as, PAN/ITR statements, GST related documents, Registrar of Companies related documents / bank statement / Ledger account / Loan confirmation and fully discharged its onus for the purpose of

Section 68 of the Act. Once, the assessee discharged its onus the burden shifts to Assessing Office who proved the creditworthiness of the lender is not established. For that purpose, the Assessing Officer had to make some enquiry by bringing adverse materials to say that assessee's contention is not true. The Assessing Officer had not made any enquiry nor presented any documentary proof that creditors did not have any necessary funds for giving to assessee. *Secondly*, the Assessing Officer has not made any addition under section 68 on account of creditor to whom the assessee repaid the loan during the financial year 2017-18 itself. Meaning thereby repayment of loan is accepted. The Ld.CIT(A) further held that assessee has repaid the said loan in financial year 2018-19, there was no ground for making addition under section 68 by following same logic. The contention of the assessee is that it was not the case where the loans remained outstanding in its books for years together, which could be argued that loans were in the nature of income. On such contention, the Ld. CIT(A) held that all the loans were repaid back in subsequent financial year, thus, there was no question of adding such amount under section 68. *Thirdly*,

Ld. CIT(A) held that low income of the lenders cannot be a ground to reject the explanation of assessee for invoking section 68. Loan can be funded not only by Revenue or income alone, there may be other way to fund loan i.e., by taking loan, or if the lender has capital / results etc. The capital and results and other liability of the lenders should be examined to verify the creditworthiness of the lenders. There is no restriction for using legitimately borrowed fund for further lending. Low income creates an initial doubt about the creditworthiness of the lenders but cannot be a definite proof. The Assessing Officer should have carried out a scrutiny of the lender's statement furnished by the assessee. On careful perusal, the Ld. CIT(A) held that financial documents of the creditors establish the creditworthiness of the creditors. The Ld. CIT(A) referred in details about each and every creditor in para-8.8 of his order. *Fourthly*, the Ld. CIT(A) held that assessee contended that Assessing Officer got swayed by huge amount of loan availed by assessee. Such figure was borrowed from the report in 3CD, in fact, the actual loan was quite less. *Fifthly*, the Ld. CIT(A) held that assessee was not required to prove source of source but the

assessee has proved all necessary financial with documentary evidences to establish the creditworthiness of the creditors. On the basis of aforesaid findings, the Ld. CIT(A) held that assessee has discharged the onus and prove the identity and creditworthiness of creditors and genuineness of loan transactions and allowed the appeal of assessee. Aggrieved by the order of Ld. CIT(A) the Revenue has filed present appeal before the Tribunal.

10. We have heard the submissions of the Ld. Commissioner of Income-Tax-Departmental Representative (Ld.CIT-DR) for the Revenue and the Ld. Authorized Representative (Ld. AR) for the assessee. The Ld. CIT-DR for the Revenue supported the order of Assessing Officer and would submit that Ld. CIT(A) granted relief to the assessee in accepting various submissions of assessee filed before him without getting such documents and submissions verified from Assessing Officer. The action of Ld. CIT(A) in accepting such submissions are in violation of provisions of Section 250(4) of the Act. During assessment, the Assessing Officer clearly held that creditworthiness of lenders from whom loans were taken, were not proved. The assessee was indulging in taking and

repaying huge loans to the same date to the same party. Some of the transactions were made throughout the years. The Assessing Officer reasonably asked the assessee to explain as to why the difference amount of Rs.73.98 crores is not added to the income of the assessee. The Assessing Officer on perusal of purchase & sale registers found that no business was conducted by assessee in the month of July, August & December, 2017. However, there was a repeated transactions of loan during such period. The transactions were circular in nature. In response to notice under section 133(6) each and every party provided same answer that loans were given out of their working capital. The bank statements were not provided. The Ld. CIT(A) accepted the genuineness of transactions and their identities. The Ld. CIT-DR further submits that assessee was granted relief on the plea that entire loan was paid in subsequent year and transactions are genuine, without appreciating the fact that principal of *res judicata* is not applicable in the income tax proceedings. The Ld. CIT(A) failed to give his finding on the observation of Assessing Officer that many times used barter system of settling the transaction, which cannot be a genuine loan

transaction. There is no economic rationale behind this transaction.

11. On the other hand, the Ld. AR for the assessee supported the order of Ld. CIT(A). The Ld. AR for the assessee submits that assessee discharged its primary onus in providing PAN, confirmation, ledger account and bank statement of all the parties. The Assessing Officer issued notice under section 133(6) to all the lenders. All the lenders were served with the notice and complied by filing their respective reply, the copy of notice under section 133(6) along with reply of all the lenders are filed on record. The Ld.AR for the assessee submits that assessee vide reply dated 19.05.2021 furnished complete details of all the lenders, which includes loan confirmation, bank statement, ITR, the assessee also filed their PAN, GST No. ROC No., copy of reply dated 19.05.2021 is filed on record at pages No.184 to 201 of the paper book. The assessee in its reply specifically stated that outstanding / difference of loan amount as on 31.03.2018 was repaid by assessee in subsequent year thereby making totally repaid loans. Thus, Section 68 should not be invoked on repaid loan. The assessee also furnished copy of their bank statement

highlighting repayment, the assessee explained that it is not the case that loan has been taken by assessee and remained outstanding in its books of account for years together, rather loan has been subject to repayment, which has been paid. The Ld. AR for the assessee submits that no finding against such submission was given by Assessing Officer. The Ld.AR for the assessee further submits that most of the lender-companies are engaged in trading in derivatives market and physical trading of various commodities. The bullion markets are volatile. The profit margin is very thin despite huge transactions, margin in the business ranges from 0.1% to 0.75%. The Ld. AR for the assessee submits that assessee was not required to prove the source of source, however, to clarify the question in the mind of Assessing Officer, the assessee furnished substantive creditworthiness of source by furnishing financial statements of all the lenders.

12. The Ld. AR for the assessee submits that Assessing Officer accepted the repayment of outstanding of loan in subsequent assessment year (2018-19) in the order passed under section 143(3) dated 15.09.2021 (copy of which is filed on record). The Assessing Officer has made addition on the basis of

statement reported in Form-3CD. The addition was made on the difference amount between the loan availed during the year and total quantum of loan repaid. The Assessing Officer for making addition used the table / details furnished by assessee along with its audit report in Form-3CD. Only net amount was added. The Ld. CIT(A) on his satisfaction after proper verification of fact and evidence granted relief to assessee. On the objection of Assessing Officer and the submission of Ld. CIT-DR for the Revenue about transaction via “barter exchange”, the Ld. AR for the assessee submits that most of the parties, through which transaction were done, were in the same business of trading or in commodities and it is a normal practice, wherein purchase of a particular commodity is done from a party and it is possible that sale of some other commodities are done to that party, in such situation, account is obviously settled on a net basis instead of cross basis, which is quite normal in the business of assessee. There is no barter of goods in this case but only a net settlement of goods. On the objection of Ld. CIT-DR for the Revenue that Ld. CIT(A) accepted the submission of assessee without giving opportunity of Assessing Officer, the

Ld. AR for the assessee submits that Ld. CIT(A) has co-terminus power with that of Assessing Officer. The Ld. CIT(A) has all power to consider material which is necessary for deciding the issue. It is not mandatory in all cases, wherein, the evidence is clear, unambiguous and does not require cross-verification. In such situation, it serves no purpose to getting it verify again by Assessing Officer. All depend upon the facts and the nature of evidence. The Ld. AR for the assessee submits that in fact no new evidence or material was filed before the Ld. CIT(A). To support such submission, the Ld. AR for the assessee relied upon the decision of Hon'ble jurisdictional High Court in the case of Poddar Swadesh Udyog P. Ltd. (2007) 295 ITR (Guj) in the case of CIT Vs Vamchampiugon & Agro Products (2006) 284 UTR 408 (Del) and International Tractor Ltd. vs. DCIT (2021) 435 ITR 85 (Del), Hyderabad Tribunal in ACIT vs. M.A Sattar in ITA No. 1752/Hyd/2013 dated 13.06.2014, DCIT vs. N.E Technologies India (P.) Ltd. (2014) 47 taxmann.com 405 (Hyderabad – Trib.)

13. We have considered the submissions of both the parties and have gone through the order of lower authorities carefully.

We have also deliberated on various case laws relied by lower authorities as well as by learned representatives. We find that the Assessing Officer made addition that assessee has shown huge amount from various parties and also repaid major amounts to those parties within a short period. The assessee availed a loan of Rs.2553.13 crores and repaid loan of Rs.2479.14 crores during the year. The Assessing Officer prepared a summary of such amount of loan availed, amount of loan paid and difference thereof. The Assessing Officer found that aggregate of difference was of Rs.73.98 crores. The Assessing Officer further took his view that in the month of July, August and December, 2017 the assessee has not undertaken any business activities despite that there was huge transaction of received and repayment of loan during such period. The Assessing Officer was of the view that lender-parties have no enough balance in their respective bank account, lenders have received fund from other parties and then same was transferred to assessee. Similar patterns were found in each bank statement. The Assessing Officer also held that none of the parties provided their bank account, thus the assessee has not discharged

its onus in proving creditworthiness of those parties beyond doubt.

14. We find that Ld. CIT(A) deleted the additions by taking view that no enquiry was made by assessing officer to disprove documentary evidence of creditors that they have did not have necessary funds for lending to assessee. *Secondly*, the assessing officer has not made any addition under section 68 on account of creditor to whom the assessee repaid the loan during the financial year 2017-18 itself, thus, repayment of parts of loans was accepted. Further remaining outstanding loans were paid in financial year 2018-19, thus, there was no ground for making addition under section 68 by following same logic. The Ld. CIT(A) *thirdly* held that low income of the lenders cannot be a ground to reject the explanation of assessee for invoking section 68. It was noted that loan can be funded not only by revenue or income alone, there may be other way finance the loan amount i.e., by taking loan, or if the lender has capital / results etc. The capital and results and other liability of the lenders should have been examined by assessing officer to verify the creditworthiness of the lenders. There is no

restriction for using legitimately borrowed fund for further lending. Low income creates an initial doubt about the creditworthiness of the lenders but cannot be a definite proof. The Ld. CIT(A) also held that financial documents of the creditors establish the creditworthiness of the creditors. *Fourthly*, the Ld. CIT(A) held that assessee contended that Assessing Officer got swayed by huge amount of loan availed by assessee. Such figure was borrowed from the report in 3CD, in fact, the actual loan was quite less. *Fifthly*, the Ld. CIT(A) held that assessee was not required to prove source of source but still the assessee has proved all necessary financial with documentary evidences to establish the creditworthiness of the creditors. On the basis of aforesaid findings, the Ld. CIT(A) held that assessee has discharged the onus and prove the identity and creditworthiness of creditors and genuineness of loan transactions.

15. We find that about the identify of creditors and genuineness of transaction no adverse finding was given except making reference that transaction is circular in nature. The Assessing Officer has not given the chain of circular transaction. As recorded above before Ld. CIT(A), the

assessee filed detailed written submission. The assessee also explained about the creditworthiness of each and every lender. The assessee reiterated that they have discharged their onus in proving identity, creditworthiness and genuineness of transaction. No addition on opening balance of loan was made. Further, the assessee has availed loan of bigger amount and substantial part was paid during the year and remaining amount of loan was repaid in subsequent assessment year. Surprisingly, we find that the Assessing Office neither doubted the opening balance of loan amount nor doubted the repayment of remaining outstanding in subsequently year and only a difference of amount due at the end of financial year was added. We further find that such figure of difference amount was borrowed by Assessing Officer from the audit report in From-3CD.

16. We find that the addition was made on different amount between loan taken during the year and total quantum of loan repaid. Where, the difference was positive figures, the quantum was considered as unexplained loan taken from the entities during the year, whereas the difference is

negative, in the sense the repayment of loan was greater than the loan taken, the difference amount was reduced from total addition and the figure of addition was worked out by assessing officer. Thereby the assessing officer doubted only part of the transactions of loans.

17. The Hon'ble Jurisdictional High Court in Ayachi Chandrashekar Narsangji (42 taxmann.com 251-GuJ) held that when loan amount has been repaid by the assessee in the immediately next year and the department has accepted the repayment of such loan without proving it, no addition can under section 68 can be made. Further, in CIT Vs Ranchod Jivabhai Nakhava (2012) 21 taxmann.com 159 (Gujarat), the Hon'ble jurisdictional high court held that where the lenders of the assessee are income tax assessee whose PAN have been disclosed, the assessing officer cannot not ask assessee to further prove genuineness of the transaction without first verifying such facts from income tax returns of lenders.

18. We also find that the assessee furnished all such details of the lenders/ depositors. There is no allegation of assessing officer that any of such lenders/ creditors are part of

syndicate of accommodation entry provider. There is no evidence that credit/ advance in the books of assessee was result of some circular transactions. We find that before granting relief to the assessee, the ld CIT(A) examined the facts of the present case on fifth different angles. Thus, we do not find any infirmly or illegality in the order, which we affirm.

19. So far as objection of ld CIT-DR for the revenue that the ld CIT(A) accepted the submissions of the assessee, without giving any opportunity to the assessing officer to cross verify the evidence or to make comment on the submissions of the assessee, we do not find any force in such submission, as the assessee has neither filed any additional evidence or not brought new facts for consideration before ld CIT(A). Even if it is presumed that the assessee has brought such facts which were not before the assessing officer, the ld CIT(A) has to consider such facts which are necessary for deciding the real controversy. It is not mandatory that in each and every case, the ld CIT(A) has to obtain a remand report by giving opportunity to the assessing officer. If the evidence filed by the assessee are self-explanatory, it will serve no purpose by getting it verified by the assessing officer. Hence, the

objection raised by ld CIT-DR for revenue is convincing. In view of the aforesaid factual and legal discussions the grounds of appeal raised by the revenue are dismissed.

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

Order pronounced in the open court on 13/07/2023.

Sd/- Sd/-  
**(Dr ARJUN LAL SAINI)** **(PAWAN SINGH)**  
[लेखा सदस्य/ACCOUNTANT MEMBER] [न्यायिक सदस्य JUDICIAL MEMBER]  
Surat, Dated: 13/07/2023  
*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Sr. Private Secretary /Private  
Secretary /Assistant Registrar,  
ITAT, Surat