

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 79/Kol/2021
Assessment Year: 2012-13

Income Tax Officer, Ward-8(1), Kolkata	Vs	M/s. Maninya Comfin Pvt. Ltd. 9, Lal Bazar Street Lal Bazar Kolkata - 700001 [PAN : AADCM5088N]
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अपीलार्थी/ (Assessee)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Vinod Kr. Jain, A/R
Revenue by :	Shri Vijay Kumar, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 13/07/2023
घोषणा की तारीख /Date of Pronouncement: 03/08/2023

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-4, Kolkata (hereinafter referred to as the ld. CIT(A)"), passed u/s 250 of the Income-tax Act, 1961 (hereinafter the 'Act'), dated 26/09/2018 for the Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

"1. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made u/s. 68 of Rs. 7,96,16,343/- on account of unexplained cash credit in the form of share capital with premium.

2. Whether on the facts and circumstances of the case the Ld. CIT(A)-4, Kol., is erred in deleting the addition without considering the facts that the source of fresh share capital amount was not properly explained by the assessee during the course of assessment proceedings and the director of the assessee company did not appear against summon u/s. 131 to substantiate the claim of the assessee with documentary evidences.

3. Whether on the facts and circumstances of the case the Ld. CIT(A), failed to appreciate that when the sums are credited in the books of accounts

of the assessee, the onus lies on the assessee to prove three criteria viz. Identity of the creditworthiness of the creditor and genuineness of the transaction.

4. *Whether on the facts and circumstances of the case the Ld. CIT(A), failed to appreciate that the assessee claimed that no amount has been received but the same was not disclosed under the head of Amount receivable rather it has been shown as investment in unquoted.*

5. *Whether the Ld. CIT(A) Is erred in interpreting the meaning of section 68 of the I.T. Act, 1961 that no money has been received by the assessee during the year under consideration and thus no addition u/s. 68 is applicable in this case. In this instant case the assessee credited sum totalling Rs. 7,96,16,343/- in its books of accounts in the year under consideration and thus the provision of section 68 of the I.T.Act, 1961, squarely applicable in this case with the perception of the Double Entry System of Accountancy.*

6. *Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition made u/s. 68 of Rs. 6,85,77,614/- on account of unexplained unsecured loan as the credibility of the loan providers were not established.*

7. *Whether on the facts and circumstances of the case the Ld. CIT(A) erred in not considering the remand report submitted by the A.O.*

8. *The appellant craves the leave to make any addition, alteration, modification of grounds at the appellate stage."*

3. Brief facts of the case are that the assessee is private limited company engaged in the investment business. Loss of Rs. 8,800/- declared for Assessment Year 2012-13 filed on 29/03/2014. Case selected for scrutiny through CASS for the reason "large share premium received by the company" and the same was followed by serving of notice u/s 143(2) and 142(1) of the Act. In the course of assessment proceedings, the Id. Assessing Officer observed that the assessee company has received share capital and share premium during the year has also received unsecured loans. The summons

issued u/s 131 of the Act to the assessee company came bank unserved. In spite of the request by the Assessing Officer, addresses and PAN of the shareholding companies, were not submitted. The Id. Assessing Officer, thus, observed that the entire share applicant companies from whom the assessee claims to have received loans and share capitals are bogus companies and they have been formed to provide accommodation entries through other such paper companies for layering of the transactions which can be subsequently used to provide bogus entries in the form of loan or share capital. Accordingly, the Id. Assessing Officer made addition of Rs. 7,96,16,343/- for unexplained share capital and share premium and addition of Rs.6,85,77,614/- for unexplained unsecured loan u/s 68 of the Act and assessed the income at Rs. 14,81,85,157/-.

3.1. Aggrieved the assessee preferred appeal before the Id. CIT(A) and filed complete details of allotment of shares, consideration received during the year and the consideration outstanding to be received. The assessee also filed details of the group concern BMW Industries Ltd., which advanced loan to one of the alleged share subscriber and thus pleaded that the source of the source is duly explained and thus addition u/s 68 of the Act is uncalled for. The assessee also filed complete details including addresses, PAN Nos., financial statements of the alleged share subscriber and cash creditors to prove the identity and creditworthiness of these transactions and also the genuineness of the transaction. Id. CIT(A) deleted the impugned additions.

4. Aggrieved, the revenue is now in appeal before this Tribunal challenging the finding of the Id. CIT(A) deleting the addition for unexplained share capital and share premium as well as unexplained unsecured loans.

5. The Id. D/R vehemently argued supporting the finding of the Assessing Officer and further submitted that the assessee has miserably failed to file the details before the Assessing Officer and also the summons u/s 131 of the Act remained uncomplied and even the Inspector, who was assigned the work to serve the summon failed to do so as he was unable to find the assessee company at the given address and people of the building were unaware of that company. The Id. D/R further submitted that the alleged share applicants and cash creditors have shown meagre income and no regular business activity is carried out and perusal of the transactions appearing in the bank statements of these parties shows that they are only engaged in *jamakharchi* business and frequent movement of funds is there, which are from one accommodation entry provider company to another.

6. On the other hand, Id. Counsel for the assessee referring to the paper book containing 518 pages and also taking us through the detailed finding of the Id. CIT(A) and while placing reliance on various judicial pronouncements made the following written submissions:-

7. We have heard rival contentions and perused the material placed before us. The revenue is aggrieved with the deletion of addition made by the Id. CIT(A) which was made by the Assessing

Officer on account of unexplained share capital and share premium at Rs.7,96,16,343/- and unexplained unsecured loan of Rs.6,85,77,614/-.

8. First we will take up the issue of unexplained share application and share premium of Rs.7,96,16,343/- which is received from the following four parties:-

Name of the company	Amount (Rs.)
Bleweet Finvest Pvt. Ltd.	28,194
Torrid Findtra Pvt. Ltd.	15,66,483
Tricom Investment P. Ltd.	7,11,74,384
Merrit Fintrade Pvt. Ltd.	68,47,282

8.1. It was pleaded before the ld. CIT(A) that no money was actually received during the financial year 2011-12 and it was merely a journal entry and the amount was outstanding to be received during the subsequent year and, therefore, since no actual sum has been received and, therefore, no addition is called for. The ld. CIT(A) accepted this contention of the assessee and on the ground that, there is no cash receipt or credit of any money during the year and hence section 68 of the Act cannot be invoked. So far as this finding of the ld. CIT(A) is concerned, we fail to find any merit because though Section 68 of the Act, comes under the heading 'cash credit' but the Section provides that where any sum is found credited in the books of the assessee maintained for any previous year and the assessee provides no explanation about the nature or source thereto 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. In this provision, the words 'any sum as found credited' is mentioned and the ld. CIT(A)

has adopted the view that such sum co-relates to the actual sum received in the bank account. However, the situation is that in the double entry system of accounting, entries are of the three categories:-

- (i) Those entered through cash books.
- (ii) Those entered through bank books.
- (iii) Those entered through journal entries.

8.1.1. Mercantile system of accounting takes into account the entries both in the nature of cash/bank and journal entries and for the purpose of making any entry in the books of accounts, an amount has to be assigned. Thus, in our humble understanding, where there is any journal entry in the books, which of course is denominated in an amount, is found credited in the books and the explanation for the same is not been given by the assessee to the satisfaction of the Assessing Officer, then Section 68 of the Act comes into operation. We also find it pertinent to mention that credit entries can be in the nature of liabilities as well as income and, therefore, if any credit entry is shown by the assessee as a liability, but the assessee is unable to explain its nature and source satisfactorily, Section 68 of the Act changes its colour to income.

9. Now examining the facts of the instant case, we notice that the assessee has allotted equity shares during the year to some share applicants as referred above. All the formalities of issuing of shares have been completed during the year. Necessary entries in the books have been made and there is a credit entry under the head "share capital and share premium" in the name of alleged share subscribers. Therefore, since there is a credit entry, the Id. Assessing Officer was

justified in examining the said transactions in the light of the provisions of Section 68 of the Act. We, therefore, are of the considered view that just for the reason that actual money through bank account has not been received during the year, the assessee cannot be exonerated from complying to the provisions of Section 68 of the Act and to this extent, the finding of the Id. CIT(A) is reversed.

10. Now, once we have held that the alleged transactions in the shape of credit entry in the books has rightly been examined by Id. Assessing Officer u/s 68 of the Act in the year under appeal, then the issue comes that whether the assessee has been able to prove the identity and creditworthiness of the share subscribers and the genuineness of the transactions. We notice that the assessee has filed the following details of the share subscribers before the lower authorities and before us, which *interalia* includes the response of the notice u/s 133(6) of the Act, copies of the assessment orders for Assessment Year 2012-13 for the scrutiny proceedings carried out in the course of alleged share subscribers, details of bank statement, ITRs, audited financial statements, article and memorandum of association and also the proof that these share subscribers are Non-banking Financial Companies duly registered with the Reserve Bank of India. The details filed in the paper book of these share subscribers are as follows:-

<i>Torrid Fintrade Private Limited</i>	<p>(i) Notice u/s 133(6) in remand proceedings to Torrid Fintra Private Limited</p> <p>(ii) Reposne to Notice u/s 133(6) by the Torrid Fintra Private Limited thereon</p> <p>(iii) Response filed to u/s 143(2) of the</p>
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	<p><i>Appellant with the followings:-</i></p> <p><i>A. List of shareholder of the company as on 31st March, 2012</i></p> <p><i>B. Certificate of Incorporation</i></p> <p><i>C. Article and Memorandum of Association</i></p> <p><i>D. Copy of ITR Acknowledgment for A.Y. 2012-13</i></p> <p><i>E. Audited annual accounts as on 31.03.2012</i></p> <p><i>F. List of directors as on 31.03.2012</i></p> <p><i>G. Bank statement for the period and bank book for the period</i></p> <p><i>H. Declaration by the company on Investment in equity shares of appellant, with details of payments made afterwards and supporting bank statement</i></p> <p><i>I. Details of Investment in equity shares</i></p> <p><i>J. NBFC registration certificate</i></p>
<p><i>Merrit Fintrade Private Limited</i></p>	<p><i>(i) Notice u/s 133(6) in remand proceedings to Merrit Fintrade Private Limited</i></p> <p><i>(ii) Repose to Notice u/s 133(6) by the Merrit Fintrade Private Limited thereon</i></p> <p><i>(iii) Response filed to proceeding u/s 143(2) of the Appellant with following enclosures:-</i></p> <p><i>A. List of shareholder of the company as on 31st March, 2012</i></p> <p><i>B. Certificate of Incorporation</i></p> <p><i>C. Article and Memorandum of Association</i></p>

	<p>D. Copy of ITR Acknowledgment for A.Y. 2012-13</p> <p>E. Audited annual accounts as on 31.03.2012</p> <p>F. List of directors as on 31.03.2012</p> <p>G. Bank statement for the period and bank book for the period</p> <p>H. Declaration by the company on Investment in equity shares & money due</p> <p>I. Details of Investment in equity shares</p> <p>J. NBFC registration certificate Copy of assessment order for A.Y. 2012-13, in appellate & remand proceeding</p>
<p><i>Bleweet Finvest Private Limited</i></p>	<p>(i) Notice u/s 133(6) in remand proceedings to Bleweet Finvest Private Limited</p> <p>(ii) Reposne to Notice u/s 133(6) by the Bleweet Finvest Private Limited thereon</p> <p>(iii) Response filed to proceeding u/s 143(2) of the Appellant with following enclosures:-</p> <p>A. List of shareholder of the company as on 31st March, 2012</p> <p>B. Article and Memorandum of Association</p> <p>C. Certificate of Incorporation</p> <p>D. Copy of ITR Acknowledgment for A.Y. 2012-13</p> <p>E. Audited annual accounts as on 31.03.2012</p> <p>F. List of directors as on 31.03.2012</p> <p>G. Bank statement for the period and bank book for the period</p>

	<p><i>H. Declaration by the company on Investment in equity shares & money due</i></p> <p><i>I. Details of Investment in equity shares</i></p> <p><i>J. NBFC registration certificate</i> <i>Copy of assessment order for the A.Y. 2015-16</i></p>
<i>Tricom Investment Private Limited</i>	<p><i>Response filed to proceeding u/s 143(2) of the Appellant with following enclosures:-</i></p> <p><i>A. List of shareholder of the company as on 31st March, 2012</i></p> <p><i>B. Article and Memorandum of Association</i></p> <p><i>C. Certificate of Incorporation</i></p> <p><i>D. Copy of ITR Acknowledgment for A.Y. 2012-13</i></p> <p><i>E. Audited annual accounts as on 31.03.2012</i></p> <p><i>F. List of directors as on 31.03.2012</i></p> <p><i>G. Bank statement for the period and bank book for the period</i></p> <p><i>H. Declaration by the company on Investment in equity shares & money due</i></p> <p><i>I. Details of Investment in equity shares</i></p> <p><i>J. NBFC registration certificate</i> <i>Copy of assessment order for the A.Y. 2012-13</i></p>

11. Further we notice that all the alleged share subscribers are active companies as appearing on the master data of the Ministry of Corporate Affairs and non-banking financial companies having made

alleged investments in the regular course of business. Further, we notice that in para 7 of the impugned order, the Id. CIT(A) has examined the factual details of the share subscriber companies and also observed that the shareholders in these subscribing companies are body corporates and they are group companies of BMW Group which is a company having turnover of Rs. 750 Crores. The finding of Id. CIT(A) examining the identity, capacity and genuineness of the transactions in respect of share subscribers reads as follows:-

"7. Without prejudice to above, if we look at the identity, capacity and genuineness of transactions w.r.t. share subscribers, (even though received in subsequent year), following can be observed:-

***i. Tricom Investments (P) Ltd.** - 7,11,74,384. It is seen that most of the share capital has come from this company.*

***Identity-** The company is an NBFC, registered with RBI. The directors of the company Mr. Partho' Ghosh, Anand Saraf, and Ashok Kumar Agarwal are senior employees of BMW Group of companies. This company belongs to BMW group. The company had filed relevant documents with Assessing Officer and also in remand proceeding. The share holders are mainly body corporate, the shareholders companies, namely Manchest Finpro (P) Ltd, Rolex Fintrade (P) Ltd, Concord Dealcom (P) Ltd and Parakram Tracpm (p) Ltd are group companies of BMW group; holding nearly 78% of paid up share capital. The registered office of the company is at 12/2, Park Mansion, 57A, Park Street, Kolkata-700016, which is the BMW group head quarters in Kolkata. In view of the above identity of this company has been proved by the assessee.*

***Capacity and genuineness-** The company is assessed with Income tax under PAN- AABCT8472F. The source of fund paid in next financial year with supporting also filed. The company earned dividend of Rs. 323550 during the year and have investments in Land (Rs. 42.69 Lac). The Bank statement for the period:*

01.04.2011 to 31.03.2014 reflects transaction with BMW industries Ltd and other group companies. Therefore assessee has been able to submit proof of capacity and genuineness of the share subscriber.

ii. Torrid Fintrade Private Ltd.

It is one of the share subscribers during the year. The company is an NBFC, registered with RBI. The directors of the company Mr. Anand Saraf & Mr. Suresh Kumar Kedia are senior employees of BMW Group of companies. This company belongs to BMW group a listed entity. The company had filed relevant documents with Assessing Officer, and also in remand proceeding. The share holders are mainly body corporate, the shareholders companies, namely Bleweet Finvest (P) Ltd. Rolex traffin (P) Ltd. Manchest Finpro, (P) Ltd. Shakti Vaipyaar (P) Ltd. and Concord Dealcom (P) Ltd. are group companies of BMW group; holding nearly 71% of paid up share capital. The registered office of the company is at 12/2, Park BMW group head Mansion, 57A, Park Street, Kolkata-700016, which is the quarters in Kolkata. The company is assessed with Income tax under PAN- AABCT8473E. The source of fund paid in next financial year with supporting also filed. The company owns a residential unit also. The Bank statement for the period 01.04.2011 to 31.03.2014 reflects transaction with BMW industries Ltd and other group companies. Therefore assessee has been able to submit proof of identity, capacity and genuineness of the share subscriber.

iii. Merrit Fintrade (P) Ltd.

It is one of the share subscribers during the year. The company is an NBFC, registered with RBI. The directors of the company Mr. Partha Ghosh, Mr. Anand Saraf, Mr. Suresh Kumar Kedia and Mr. Ashok Kumar Agarwal are senior employees of BMW Group of companies. This company belongs to BMW group a listed entity. The company had filed relevant documents with Assessing Officer and also in remand proceeding. The shareholders are mainly body corporate, the shareholders companies, namely Manchest Finpro (P) Ltd, Rolex Fintrade (P) Ltd, Shakti Vanijya (P) Ltd, Torrid Fintrade (P) Ltd. are group companies of BMW group; holding nearly 76% of paid up share capital. The registered office of the company is at 12/2, Park Mansion, 57A, Park Street, Kolkata-700016, which is the BMW group headquarters in Kolkata. The company is assessed with Income tax under PAN- AADCM5090L

The source of fund paid in next financial year with supporting also filed. The company earned dividend of Rs. 389450 during the year and have investments in shares of BMW Industries Ltd. (Rs. 80.85 Lac) and Mutual Fund (Rs. 2.26 Lac). The Bank statement for the period 01.04.2011 to 31.03.2014 reflects transaction with BMW industries Ltd and other group

companies. Therefore assessee has been able to submit proof of identity, capacity and genuineness of the share subscriber.

iv. Bleweet Finvest (P) Ltd.

It is one of the share subscribers during the year. The company is an NBFC, registered with RBI. The directors of the company Mr. Avijit Naskar, Anand Saraf, Suresh Kumar Kedia are senior employees of BMW Group of companies. This company belongs to BMW group. The company had filed relevant documents with Assessing Officer and also in remand proceeding. The share holders are mainly body corporate, the shareholders companies, namely Manchest Finpro (P) Ltd, Rolex Fintrade (P) Ltd, Merrit Fin trade (P) Ltd are group companies of BMW group; holding nearly 76% of paid up share capital. The registered office of the company is at 12/2, Park Mansion, 57A, Park Street, Kolkata-700016, which is the BMW group head quarters in Kolkata. The company is assessed with Income tax under PAN-AACCB1369G. The source of fund paid in next financial year with supporting also filed. The company earned dividend of Rs. 165900 during the year and have investments in shares of BMW Industries Ltd. (Rs. 82.49 Lac). The Bank statement for the period 01.04.2011 to 31.03.2014 reflects transaction with BMW industries Ltd and other group companies. Therefore assessee has been able to submit proof of identity, capacity and genuineness of the share subscriber.

The AO failed to consider the replies filed by the each of the shareholders in response to notices. The entire details of the share applicants, proving their identity, creditworthiness and genuineness of transactions were duly provided by the assessee during the course of assessment proceedings. The AO had thus erroneously stated that identity, creditworthiness and genuineness of the transactions have not been proved the assessee.

8. The Ld AR has also relied on the decisions of CIT (A)-4 in the case of Rolex Trafim (p)Ltd. for A.Y.2012-13 where the assessee is a group concern of BMW Industries Ltd and it had credited the share capital account by Rs.6.55 crores and the money was received in subsequent year. Ld CIT appeal has allowed relief to the assessee under similar set of facts. Further in case of Manchest Finpro (p) Ltd. A.Y.2012-13 where the assessee is a group concern of BMW Industries Ltd and it had credited the share capital account by Rs.7.77 crores and the money was received in subsequent year. Ld CIT appeal-5 has allowed relief to the assessee under similar set of facts. It is seen that the facts of present case are identical to these two cases where the assessee has got relief.

In view of the above it is clear that the assessee has not received any share capital during the year and therefore addition during AY 2012-13 is not justified on this count. Further it is seen that all the share subscribers in whose name credits have come during the year are associate companies of the assessee (BMW group, a listed entity). The assessee has been able to show the source of share capital in the hands of the share allottees. First of all the AO has not been able to prove that the share subscribers are doubtful. Further even if the share subscribers had any doubtful source of funding the additions should have been made in the hands of the share applicants and not the assessee concern.

In view of the above discussion, invoking the provisions of section 68 by the AO is not justified in the circumstances. Accordingly, the AO is directed to delete the addition made on this account. This ground of appeal is allowed."

12. From going through the above finding of the Id. CIT(A) as well as the details submitted by the assessee in the paper book which in itself is sufficient to indicate that the assessee has filed all necessary details to explain the nature and source of alleged transactions of receiving share capital and share premium and also to prove that these are transactions carried out with the group concerns which are registered with the Reserve Bank of India as Non-Banking Financial Companies and the source of fund is from the key group company BMW Group and, therefore, the identity and creditworthiness of the share applicants and genuineness of the transactions is proved.

13. So far as the issue of addition u/s 68 of the Act at Rs. Rs.6,85,77,614/- is concerned, we note that the said amount was noticed by the assessing officer on the basis of the increase in unsecured loans during the year. However, from the details filed by the assessee before the lower authorities we notice that the said addition is mainly on account of sum of Rs.6,95,00,000/- received from Gourav Commerce Pvt. Ltd. (on 10/03/2012 at Rs.4,00,00,000/- and on

29/03/2012 at Rs. 2,95,00,000/-). The only other company present in the list of unsecured loan is Murray Financial Pvt. Ltd. having closing balance of Rs.3,44,164/- but the same is brought forward balance from preceding year, therefore, for the purpose of adjudicating the issue of unexplained unsecured loans u/s 68 of the Act, the only party to be examined is Gourav Commerce Pvt. Ltd., from which the assessee received Rs.6.95 Crores, during the year. The finding of the Id. CIT(A) on this issue reads as follows:-

"9. Ground No.2 is regarding addition of unsecured loan of Rs.6,85,77,614. AO just made the addition of quantum increase in the unsecured loan during the year by deducting opening balance of Rs. 12,66,550 from the closing balance of Rs.6,98,44,164. The AO did not identify which of the loan creditor in his knowledge is bogus and remained unexplained. The AR filed the following table on unsecured loans appearing in the balance sheet of the appellant:-

Name	Particulars	Opening balance	Transaction during the year		Closing balance
			Rupees Dr	in Rupees Cr	
Gourav Commerce Pvt. Ltd.	Inter corporate deposit taken by cheque 10.03.2012 29.03.2012			40000000 29500000	69500000
Murray Financial Pvt. Ltd.	Unsecured loan taken in earlier years	344164			344164
BMW Industries Ltd.	Unsecured loan taken in earlier years	332386	332386		
Merrit Fintrade Pvt. Ltd.	Unsecured loan taken in earlier years	590000	590000		
TOTAL AS PER BALANCE SHEET		1266550	922386	69500000	69844164

From the above table it can be seen that only addition in the unsecured loan has been on account of loan taken from M/s Gaurav Commerce Pvt. Ltd. of Rs.6.95 crores. I find in such cases, apart from Rs. 69500000, there is no real cash entry on the credit side of the cash book. The question of inclusion of the amount of the entry unexplained cash credit cannot arise.

9.1 In the remand letter following was asked from the AO –

With respect to unsecured loan - it was stated that some of the loans have been received from Group Companies; therefore; no addition for the same could have been done. Further some of the loans were old loans; therefore, no addition could have been done in this year. For the same in the light of these two arguments and the evidences submitted."

Please submit your remand report within 30 days."

9.2. In reply the AO has stated the following-

With respect of Unsecured Loans a reference was made from this office to M/s. Murray Financial Services Pvt. Ltd. & to M/s. Gourav Commerce Pvt. Ltd. But the letter of M/s. Murray Financial Services Pvt. Ltd. has returned back to this office with the postal comments "Insufficient address" and no reply has yet been received from M/s. Gourav Commerce Pvt. Ltd. till date. Therefore, the unsecured loans could not be verified. Moreover on perusal of the evidences as filed by the assessee company before the Ld. GIT(A)-4, Kol., it reveals that as per confirmation of accounts & a certificate given by M/s. Gourav Commerce Pvt. Ltd. that a sum of Rs.6,95,00,000/- has been given as advance to the assessee company i.e. M/s. Maninya Comfin Pvt. Ltd. but the source of such advance as explained by M/s. Gourav Commerce Pvt. Ltd. in its certificate (page No.126) was out of the advance received by it from BMW Industries Ltd. Therefore, it is evident that the loan provider was no capability to provide loan to the assessee company. In respect of loan provider of M/s. Murray Financial Services Pvt. Ltd. no details was provided at the appeal stage except of confirmation of accounts. As per confirmation of accounts opening balance was shown of Rs.3,44,164/-, but the date of payment and mode of payment was not mentioned anywhere and no bank statement was filed in this respect. Moreover from the balance sheet of the above two loan providers it could not be established that advance given to the assessee company were included in schedule of Loans & Advances of their balance sheets. In view of the above it may be stated that the credibility & genuineness of the loan could not be established."

a. It is seen that M/s Gaurav Commerce Pvt Ltd (GCPL) complied with notice u/s 133(6) and filed confirmation of loan and filed copy of ITR.

Identity of creditor- It is also seen that GCPL is showing 12/2 Park Mansion, 57A Park street as its city office. This is also the address of BMW Industries a listed

group concern of the assessee group. Therefore the assessee has been able to provide proof of identity of the lender.

Capacity of creditor - It is seen that the AO has acknowledged that the money has been received by Gaurav Commerce Pvt Ltd from BMW Industries Ltd. BMW industries is a listed company of the assessee group with turnover of Rs.750 Crores and profit of Rs.27.13 Crores. Therefore Source of source for the loan transaction is genuine and verifiable and belonging to the assessee group. Therefore Capacity of the creditor has been established.

Genuineness of transaction- From the paper book filed it is seen that M/s Gaurav Commerce Pvt Ltd has received money from BMW industries Ltd. On different dates through HDFC bank Ltd., and this fund has been lent to the assessee. In view of the above, assessee has been able to prove genuineness of the transaction.

Since the assessee has been able to prove the identity, capacity of the loan creditor and the genuineness of the transaction therefore, I hold that the impugned addition made by invoking the provisions of section 68 by the AO is directed to delete the addition made on this account. This ground of appeal is allowed."

14. On going through the above finding of the Id. CIT(A) and also perusing the details filed by the assessee in the paper book, we notice that there was a proper response from M/s. Gourav Commerce Pvt. Ltd., to the notice issued u/s 133(6) of the Act and necessary details including statement of account, audited financial statements, income tax return and bank statements were directly submitted to the Assessing Officer and no discrepancy has been observed specifically in these details. The explanation was also filed by the said creditor in the form of a certificate stating that the source of the alleged sum was the loan received by it from another group concern M/s. BMW Industries Ltd. on 09/03/2012 at Rs.16.02 Crores. Further we notice that the information was also called by the Assessing Officer from BMW Industries Ltd., which is annexed at pages 514 to 518 of the paper book and all the necessary compliance was made by the said company. It is also brought to our notice that M/s. BMW Industries is a listed

company and further the alleged cash creditor M/s. Gourav Commerce Pvt. Ltd. is a group concern of M/s. BMW Group, meaning thereby that these are common directors and shareholders and funds which were given by BMW Industries to M/s. Gourav Commerce Pvt. Ltd., part of the same has been utilized for giving unsecured loans to the assessee company. So all these details are sufficient enough to indicate that the assessee has explained the nature of source of the alleged sum and the source of source of the alleged sum to our satisfaction and it also proves the creditworthiness of the cash creditor, namely, M/s. Gourav Commerce Pvt. Ltd., and the genuineness of the transactions. The ld. CIT(A) has rightly examined these facts and deleted the said addition. Our view is further supported by the recent decision of the co-ordinate bench in the case of *ITO vs. Forceful Estates Pvt. Ltd.* in ITA No. 2558/Kol/2018; Assessment Year 2012-13, order dt. 08/02/2023, and for necessary reference, the facts and findings of the Tribunal read as follows:-

"5. The ld. counsel has further invited our attention to the impugned order of the CIT(A) to submit that the ld. CIT(A) has categorically noted that the assessee during the year had raised share capital including share premium amounting to Rs.7,60,00,000/- from six share subscribers. The Assessing Officer had issued notices u/s 133(6) of the Act to the share applicants and in response, they all confirmed the transactions and furnished details/documents as called for including source of fund in their hands. The ld. CIT(A) has considered the evidences and details on record and found that the assessee has been able to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction. The relevant part of the order, for the purpose of ready reference, is reproduced as under:

"5. Conclusion:

Ground No.1 & 2

I have considered the order of the A.O as well as the submission of the appellant. I have also considered the judicial decisions relied upon by the appellant. The facts of the case have already been discussed as above. It is observed that in the year under consideration the appellant company had

raised share capital of Rs.7,60,00,000/-from 6 parties. In the course of the assessment proceedings, to verify the receipt of share capital, the AO issued notices u/s.133(6) to all the 6 share applicants and in response, they all confirmed the transactions submitted the details/document in respect of the subscription of shares of the appellant. In the course of the appellate proceedings, the appellant filed copy of each of the assessment orders passed in all the 6 cases of the shareholders for that year in which the share subscription amount has been received by the assessee company. Besides, the income-tax return filing acknowledgment, Audited Balance and sheets as on 31.03.2012, relevant bank, copy of the notices issued u/s 133(6) to the shareholders and reply thereof were also submitted.

It is observed from the details & documents furnished by the appellant that in the cases of 2 share holders, namely 1) M/s Alfort Merchants Private Limited, 2) M/s Sharekhan Merchants Private Limited, the Assessment Orders u/s 143(3) for Lne AY 2012-13 were passed u/s. 143(3) without taking any adverse view. Therefore, it can be assumed that the respective Assessing Officers have all verified the accounts and therefore any amount that is credited from these two companies to the assessee company is fully explained. The assessment in the case of the other 4 share holders, namely, 1) M/s. Dhanamrit Commercial Private Limited, 2) M/s Jealous Commercial Private Limited, 3) M/s Mutual Merchants Private Limited, 4) Winsom Vanijya Private Limited were also passed u/s.143(3) where additions u/s 68 & u/s.14A of the Act were made. Therefore, the entire capital of all the above mentioned share holders had been added in its hands u/s 68 of the I.T. Act Thus, once an amount is already taxed, whatever investment is being made out of it in the assessee company can be treated as explained and the Same cannot be taxed again. Further, it is apparent from the records that the notices u/s.133 (6) issued to the shareholders were served on the their respective address by the postal authorities and in response, they confirmed the transactions and also submitted the details of the source of funds for making investment. Hence, the identity & creditworthiness of the shareholders are not in doubt. Further, all the share application money was received through banking channels. Therefore, the issue for my consideration now is -whether the share capital of Rs.7,60,00,000/- raised during the year by the appellant can be treated as unexplained cash credit u/s. 68 of the I.T Act or not.

When the identity & creditworthiness of the shareholders have been clearly established because all of them were scrutinized u/s 143(3) and thus the source of the share capital and the share premium are clearly established and the transactions have all taken place through banking channels, merely for failure of the directors of the assessee and the shareholders to appear before AO in person in response to the summons issued to them u/s.131 of the Act, the addition cannot be in my considered opinion, unjustified. Where the

corpus becomes technically explained in the eyes of law, how can, the credits arising out of the same corpus can be viewed as unexplained u/s 68 of the IT Act.

In view of the facts & circumstances of the case it is held that the addition of Rs.7,60,00,000/- for the share capital raised by the appellant from 6 share applicants as unexplained cash credit u/s 68 of the Act was not justified and the same is directed to be deleted. The appeal of the assessee company on Grounds No.1 & 2 are treated as allowed.

Ground no. 3 is general in nature, which does not require adjudication.

6. In the result, the appeal of the assessee is treated as allowed."

6. A perusal of the above concluding part of the order of the CIT(A) reveals that the Id. CIT(A) has not only taken note of the accounts of the share subscribers but also, noted that all the six share subscribers were assessed u/s 143(3) of the Act. Out of which, no additions were made in case of two share subscribers. However, in the case of other four share subscribers, the additions were made regarding their source of income. Now, it is settled law, once the addition has been made in the hands of the share subscribers, the investments by which share subscribers in the hands of the other company whose shares have been subscribed stood explained then no additions in such a case would be warranted in the hands of the assessee company as it would amount to double additions of the same amount. Even if the said addition stand confirmed in the appeal or stand deleted, in both the instances, the investment in the hands of the assessee company will stand proved.

Reliance has been placed in this respect on the decision of the Coordinate Kolkata bench of the Tribunal in the case in the case of DCIT vs. M/s Maa Amba Towers Ltd. in ITA No.1381/Kol/2015 vide order dated 12.10.2018. The aforesaid decision has been further relied upon by the coordinate Kolkata bench of the Tribunal in the case of "Steelex India (P) Ltd vs. ITO, Ward-3(2), Kolkata" I.T.A. No.2666/Kol/2019 decided vide order dated 09.09. 2022.

7. Further, a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence.

The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company

individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

8. As the ld. CIT(A), in this case, has not only duly examined the facts and explanation as furnished by the assessee but also has given a categorical finding that the identity and creditworthiness of the share subscribers and genuineness of the transaction stood established.

9. The ld. DR could not point out any distinct facts warranting our interference in the order of the CIT(A).

10. In view of the above, we accordingly upheld the order of the CIT(A). The appeal of the revenue is, therefore, dismissed."

15. Our views are further fortified by the judgment of the Jurisdictional Calcutta High Court in the case of Principal CIT vs. Sreeleathers reported in [2022] 448 ITR 332 (Cal) has held as follows:

"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that 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. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could

be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

16. We, therefore, respectfully following the ratio of law laid down in the above case laws and consistent with the view taken in the above referred decision of the ITAT and in the facts and circumstances of the case, hold that the assessee has successfully discharged its onus by proving the identity and creditworthiness of the share applicants and cash creditors and genuineness of the alleged transaction of receiving share application and unsecured loans and, therefore, the addition made u/s 68 of the Act is uncalled for and is hereby deleted. Thus, Ground Nos. 1, 2, 3 and 6 raised by the revenue are dismissed. Ground Nos. 4 and 5 raised by the revenue are allowed and Ground No. 7 and 8 are general and consequential in nature which require no adjudication.

17. In the result, appeal of the revenue is partly allowed as per terms indicated hereinabove.

Order pronounced in the Court on 3rd August, 2023 at Kolkata.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 03/08/2023

**SC Sp/2*

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

1. अपीलार्थी / The Assessee
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata