

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

VIRTUAL HEARING

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

ITA Nos. 1 & 2/Jodh/2022
(ASSESSMENT YEAR- 2010-11 & 2011-12)

Sampat Lal Lodha Gandhi Road, Nathdwara	Vs	Income Tax Officer, Ward-02, Rajsamand
(Appellant)		(Respondent)
PAN NO. AATPL 6272 A		

Assessee By	Sh. Mukul Moondra, C.A.
Revenue By	Sh. S. M. Joshi, JCIT-DR
Date of hearing	04/07/2023
Date of Pronouncement	02/08/2023

ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These are two appeals filed by the assessee and is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as (NFAC)] dated 03.11.2021 & 27.12.2021 for the Assessment Years 2010-11 & 2011-12, which in turn arise out of an order passed by ITO, Ward-02, Rajsamand passed u/s. 147/143(3) of the Income Tax Act, 1961 [here in after referred to act "Act"] on 29.03.2016 & 30.12.2016.

2. We have heard these cases together and passing the order together with the consent of both the parties.

3. First we are taking the case of the assessee Shri Sampat Lal Lodha in ITA No. 01/Jodh/2022 for A. Y. 2010-11 and in this case the assessee has raised following grounds:-

"1. That on the facts and in the circumstances of the case, the Id. CIT(A), NFAC, Delhi without going into the entirety of the facts, has erred in confirming the action of the Assessing Officer in initiation of the proceedings u/s 147/148 of the Act.

2. That on the facts and in the circumstances of the case, the Id. CIT(A) has also erred in sustaining the addition of Rs. 13,00,000/- u/s 68 of the Act without going into factual matrix of the case.

3. That on the facts and in the circumstances of the case, the Id. CIT(A) has also erred in confirming the disallowance of Rs. 3,16,663/- out of interest expenses claimed from the rental income.

4. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing."

4. The fact as culled out from the records is that return declaring total income of Rs. 3,06,637/- was e-filed by the assessee on 28.07.2010 which was processed u/s 143(1). Thereafter, as per information received from the ADIT(Inv.)-II, Udaipur, it was gathered that the assessee has made investment of Rs. 48,80,350/- for construction of residential complex at Nathdwara during the financial year 2009-10 relevant to assessment year 2010-11. However, as per

return of income filed for the year, Id. AO noted that no sources of such investment were disclosed by the assessee in his return of income. As the assessee made investment of Rs. 48,80,350/- out of undisclosed sources therefore, income chargeable to tax amounting to Rs.48,80,350/- escaped assessment in terms of section 147 of the I.T. Act.

4.1 In the assessment proceeding the Id. AO noted that the assessee is proprietor of M/s. Mangal Jewellers and engaged in the business of trading of silver jewellery. During the year, gross profit of Rs. 7,53,503/- has been shown on total turnover of Rs 39,86,176/- declaring GP rate of 18.90% which is better than the G.P. rate of 15.22% declared for the just preceding year but lesser than the G.P. rate of 19.90% declared for the Assessment year 2008-09. During the course of assessment proceedings, the assessee was asked to furnish necessary details and to produce complete books of accounts and other records for verification of trading results declared. In compliance thereto the required details were furnished. Books of accounts consisting of cash book, ledger, bank books, purchase & sales vouchers, bills and vouchers for expenses, details of loans and advances etc. along with relevant documents were produced. The

details furnished and records produced were put to test check. After scrutiny of the records produced, trading results declared by the assessee are accepted without any further interference.

4.2 During the course of assessment proceedings, it was also noticed that during the year, the assessee has made investment of Rs. 48,80,350/- for construction of complex at Nathdwara. On examination of details with regard to sources of investment, it was noticed that during the year the assessee has received Rs. 22,00,000/- on account of unsecured loans. During the course of assessment mentioned. Further in all the affidavits, mode of payment was not mentioned. It was not mentioned that whether the amounts were paid in cash or through cheques. As the affidavits produced by the assessee were not completed due to the discrepancies mentioned above, therefore, the assessee was asked to prove creditworthiness of the creditors as well as genuineness of the transactions with regard to unsecured loans of Rs 22,00,000/- taken by him during the year relevant to assessment year under consideration. In compliance, following creditors were presented by the assessee for verification and their statements were recorded during the assessment proceedings:-

S. No.	Name & Address of the Creditor	Amount
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1	Shri Kailash Chandra Laxkar, Kandroli	Rs. 3,00,000/-
2	Shri Bal Krishna Khandelwal, nathdwara	Rs. 1,00,000/-
3	Shri Bhanwar Lal Lakhara, Nathdwara	Rs. 4,00,000/-
4	Smt. Premlata Lodha, Nathdwara	Rs. 2,00,000/-
5	M/s Bhanwar Lal Lakhara, HUF, Nathdwara	Rs. 4,00,000/-
6	Smt. Anita Devi Khandelwal, Nathdwara	Rs. 1,50,000/-
7	Smt. Veena Devi Khandelwal, Nathdwara	Rs. 5,00,000/-
8	Shri Natwar Lal Khandelwal, Nathdwara	Rs. 1,50,000/-
	Total	Rs. 22,00,000/-

4.3 During the course of statements of the above persons, it was noticed that the bank accounts of the above creditors were credited by way of cash deposits of the same amount of the loan just before the date on which they have paid the amount to the assessee except Shri Bhanwar Lal Lakhra in which Rs. 1,00,000/- and in the case of M/s Bhanwar Lal Lakhara, HUF in which Rs. 4,00,000/- were credited through "Transfer". During the course of statements, on being asked about the sources of cash deposits in their bank accounts just before the date of loan, all the above persons have replied that they have deposited cash in their bank accounts out of available cash balance and out of income earned by them during the year. However, on going through the balance sheets for the assessment year 2009-10 and as per return of income for the assessment year 2010-11, filed by them during the course of their statements, it was noticed that they were not having sufficient cash balance with them on the date of loan. In view

of these facts, the creditworthiness of the creditors amounting to Rs. 17,00,000/- was not justified, therefore, vide notice dated 16.03.2015, the assessee was asked to explain reasons that as to why the amount of Rs. 17,00,000/- (Rs. 22,00,000 - Rs. 5,00,000) may not be treated as unexplained credits and may not be added to his total income as per Provisions of Section 68 of the Act. In response, the A.R. of the assessee vide his written submissions dated 22.03.2016. Reply filed by the AR of the assessee has been considered during the course of assessment proceedings but not found acceptable in toto due to the reason that the following creditors were not having sufficient cash balance with them as per their balance sheet as well as they were not having immediate source of cash deposits in their bank accounts just before the date of loan to the assessee. In view of these facts, creditworthiness in respect of following credits stands unexplained.

S. No.	Name & Address of the Creditor	Amount
1	Shri Kailash Chandra Laxkar, Kandroli	Rs. 3,00,000/-
2	Shri Bhanwar Lal Lakhara, Nathdwara	Rs. 3,00,000/-
3	Smt. Premlata Lodha, Nathdwara	Rs. 2,00,000/-
4	Smt. Veena Devi Khandelwal, Nathdwara	Rs. 5,00,000/-
	Total	Rs. 13,00,000/-

In view of above discussion, credits in the names of above persons stands unexplained and therefore addition of Rs. 13,00,000/- added to

the total income of the assessee on account of unexplained credit u/s 68 of the I.T. Act.

4.4 During the course of assessment proceedings, on going through the computation of total income, it was gathered that during the year interest expenses of Rs. 4,46,980/- have been claimed out of rental income of Rs. 8,02,316/-. However, during the course of assessment proceedings, it was gathered that during the period under consideration the building for which loans were taken was under construction and therefore, the interest expenses were related to pre-construction period and were not allowable as per provisions of Income-tax Act. Therefore, vide notice dated 16.03.2016, the assessee was asked to explain that as to why interest expenses with regard to construction may not be disallowed and added to the total income. In response, the AR of the assessee vide his written submission dated 22.03.2016. The reply filed by the AR of the assessee has been considered during the assessment proceedings. From the reply of the assessee, it is amply clear that out of total interest payment of Rs. 4,46,980/-, interest amounting to Rs. 1,30,317/- only is related to rental income as under and the balance amount of Rs. 3,16,663/- is related to construction activities of the

assessee. As the interest expenses amounting to Rs. 3,16,663/- are related to pre-construction period and the same are capital in nature. Therefore, interest expenses of Rs. 3,16,663/- are disallowed and added to the total income of the assessee.”

4.5 Thus, finally the income of the assessee was assessed u/s 143(3) at Rs. 19,23,000/- by making an addition of Rs. 13,00,000/- u/s. 68 of the Act and disallowance of interest for an amount of Rs. 3,16,663/-.

5. Feeling dissatisfied from the order of the assessing officer assessee preferred an appeal before the Id. CIT(A). A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“7.1 In the case of appellant, by merely submitting confirmations, it cannot be treated that the assessee produced supporting evidence against loan shown in the books of account. Moreover, the AO recorded the statements of the creditors and found that they are not economically sound or creditworthy enough to lend money to others. Therefore, in view of the above and respectfully following the decision of the Delhi High Court in the case of M/s Siddharth Export vs. ACIT in ITA No. 917/2019 dated 24.10.2019 (supra) the ground No. 2 is dismissed.”

8.1. The deduction of expenses incurred should be claimed against the corresponding income earned during that year. In the assessee case there is no income earned so far as the construction of building is still under progress. However, the assessee incurred interest expenditure on the

loans taken for the purpose of construction of building. As there is no income generation at this point of time, there is no possibility of claiming of deduction of expenses that arise during the period in which there is no income generation. Therefore, the AO had rightly made addition of interest expenses claimed by the assessee. Thus, the ground no. 3 is dismissed."

6. As the assessee has not received any relief from the order of the Id. CIT(A). The assessee has preferred the present appeal before this tribunal on the grounds as raised here in above. The Id. AR appearing on behalf of the assessee has placed their written submission which is extracted here in below;

- 1] As regards ground of appeal No. 1 relating to validity of notice u/s 148 of the Act.
A.O. Order - Page 1 & 2
CIT (A) Order - Para 6.1 Page 5
 - a] That the appellant is an individual and engaged in the business of trading of silver jewelry etc. The appellant had also maintained day to day books of accounts, each & every transaction are duly recorded and supported from the documentary evidences.
 - b] That on 28/07/2010 the appellant had filed the return of income declaring total income of Rs. 3,06,637/- in respect of above referred sources. The return filed by the assessee was processed u/s 143(1) of the Act. No notice u/s 143(2) was issued by the Department.
 - c] That on 27/03/2015 the Id AO had issued the notice u/s 148 to the appellant. The reasons recorded while issuing notice u/s 148 was reproduced in the assessment order at Page No. 1 & 2 which reads as under: -
"Return declaring total income of Rs. 3,06,637/- was e-filed by the assessee on 28.07.2010 which was processed u/s 143(1). Thereafter, as per information received from the ADIT (Inv.)-II, Udaipur, it was gathered that the assessee has made investment of Rs. 48,80,350/- for construction of residential complex at Nathdwara during the financial year 2009-10 relevant

to assessment year 2010-11. However, as per return of income filed for the year, no sources of such investment were disclosed by the assessee in his return of income. As the assessee made investment of Rs. 48,80,350/- out of undisclosed sources therefore, income chargeable to tax amounting to Rs. 48,80,350/- escaped assessment in terms of section 147 of the I.T. Act."

- d] Perusal of the reasons recorded it is reveals the Id AO wants to reopen the assessment only for verification of source of investment which was duly disclosed and recorded. The investment made by the appellant are duly recorded in the books of accounts and also reflected in the financial statement as well as bank statement. The Id AO without analyzing the facts and evidences in right perspective and judicious manner and issued the notice u/s 148 of the Act which is not only against the principle of natural justice but also against the law settled by Hon'ble Courts in following cases: -
- i] In the case of 'CIT Vs Smt Maniben Valji Shah', 283 ITR 453 the Hon'ble Bombay High Court quashed assessment based on notice under section 148 of the Act where proceedings under section 147 was initiated to verify the source of Investment made in purchase of house. It was held by the Hon'ble High Court that: "Reassessment Reasons to believe fishing enquiry impugned notice clearly indicates that the AO merely wanted to know the details of sources of funds invested by the assessee in purchasing a flat AO had no basis to reasonably entertain a belief that any part of income of the assessee had escaped assessment and that such escapement was by reasons of any omission or failure on the part of the assessee to disclose fully and truly all material facts action of the AO in reopening the assessment was not valid."
- ii] In the case of 'Bakulbhai Ramanlal Patel Vs ITO', 56 DTR 0212 the Hon'ble Gujarat High Court held that: "Where the reasons recorded reflect that the matter requires detailed investigation and further verification, the AO has reason to suspect and not reason to believe that income chargeable to tax has escaped assessment and therefore, the assumption of jurisdiction by the AO is invalid and as such, the impugned notice under s. 148 is not sustainable and is quashed."
- iii] Hon'ble ITAT Surat Bench in the case of Ashish Natvarlal Vashi, ITA No.3522/AHD/2016 dated 19/04/2021:-
"13. Now, we shall analyze the above reasons recorded by the Assessing Officer. We note that in the reasons recorded by the Assessing Officer it is mentioned that assessee has deposited cash to the tune of Rs.22,77,550/- in ICICI Bank. The assessee did not file necessary evidence of cash deposit,

therefore assessing officer presumed that income has escaped assessment to the extent of cash deposit of Rs. 22,77,550/-.

We note that Assessing Officer has opined that an income of Rs. 22,77,550/- has escaped assessment of income because the assessee has Rs 22,77,550/- in his bank account but then such an opinion proceeds on the fallacious assumption that the bank deposits constitute undisclosed income, and overlooks the fact that the sources of deposit need not necessarily be income of the assessee. The amount deposited in the bank account may be out of sale proceeds of investments, property or agricultural income of the assessee which may be exempted under the Income Tax Act. Of course, it may be desirable, from the point of view of revenue authorities, to examine the matter in detail, but then reassessment proceedings cannot be resorted to only to examine the facts of a case, no matter how desirable that be, unless there is a reason to believe, rather than suspect, that an income has escaped assessment.

Thus, just to reopen the assessment, based on the cash deposits would not make the Revenue's case strong, because mere fact that these cash deposits have been made in a bank account, which according to us do not indicate that these deposits constitute an income which has escaped assessment. Such cash deposit may be out of past savings. The above reasons recorded for reopening the assessment do not make out a case that the assessee was engaged in some business and has not been filed return of income. Therefore, the cash deposit in the bank account could not be basis for holding the view that income has escaped assessment. The assessee may have deposited the cash out of his sale of capital asset, sale of property and sale of investment etc. Therefore, reasons recorded by the Assessing Officer are not valid and hence the reassessment proceedings initiated based on the reasons recorded is bad in law. We note that on the similar facts the Co-ordinate Bench of Surat in the case of Rinakumar A. Shah (in ITA No.172/AHD/2017 for AY.2007-08, order dated 30.04.2019, held the reassessment proceedings an invalid....."

- iv] On the identical facts the Hon'ble ITAT Agar Bench in the case of Shri. Raj Singh Vs ITO (ITAT Agra) ITA No. 408/Agra/2018 Date of Order : 22/03/2019

"29. The text of the reasons recorded do proves that virtually there has been no application of mind by the learned Assessing officer so as to form requisite satisfaction that investment in property is income of current year and which has escaped assessment; that the reasons recorded in the case in hand are no reasons in the eye of law, being completely barren and bald in nature as it is not mentioned that in what material terms the reply is lacking in nature; that the reasons do not show any mental exercise having

been done by him before arriving at the satisfaction for escapement of income and thus, the AO made his conclusions, leaving the reader to guess for the material on basis of which of belief of escapement is founded. The so called reasons instead of being reasons to believe are reasons to suspect and sought to extend the scope of enquiry from the stage where it was left vide enquiry letter. The investment need not necessarily come from the income. It may be out of income exempted from tax, past savings, loans, gifts, liquidation of investment or sale of another property etc., notice under section 148 cannot be issued for verification of information, but here the jurisdictional satisfaction is the essential requirement has to be shown that there has been reason to believe that there was income chargeable to tax. The reasons recorded by the Assessing officer should speak his mind and the basis for coming to conclusion that investment had been sourced from income, which should have been disclosed and had not been shown therefore, there was escapement of income. There must be direct nexus between the material and belief of escapement. This mental exercise must be self-evident from the reasons recorded. Reasons must be self-speaking and self-defending as held by the Hon'ble Delhi High Court in the case of CIT Vs Indo Arab Air Services 283 CTR 0092 (Del) that:

"There is a long distance to travel between a suspicion that income had escaped assessment and forming reasons to believe that income had escaped assessment. The purported reasons do not show any such exercise by the learned Assessing officer and hence we have no hesitation in holding that the learned Assessing officer has exceed his authority in wrongly acquiring the jurisdiction in the matter."

30. In view of the above discussion, we are of the considered view that the reasons recorded by the learned Assessing officer, are no reasons in the eye of law for assuming jurisdiction in this case for issuing notice under section 148 of the Act.

31. We therefore, quash the assessment orders u/s 144 read with section 147 of the Act dated 30.03.2016 passed in consequence to notice dated 03.2015 for Assessment Year 2008-09 in the present appeal."

- e] No additions was made by AO on ground based upon which the assessment was reopened
- i] It is submitted that the foundation of reopening was no source of investment of Rs. 48,80,350/- for construction of residential complex had been disclosed. However while finalized the assessment order the Id AO had made addition in respect of unexplained cash creditors. Since no addition in respect of undisclosed source of investment has been made which is the subject matter of reopening, however while passing the assessment order the Id AO made addition in respect unexplained cash credits. The Id AO had

changed the head of income i.e. foundation of belief was undisclosed source of investment (relevant provision of section 69A of the Act) and finally made the addition in the order in respect of unexplained cash credits u/s 68 of the Act.

- ii] It is relevant to mention here that undisclosed source of investment means the investment which has been made but not recorded in the books of accounts or out of undisclosed sources as per provisions of the section 69 of the Act. Whereas the provisions of section 68 is applicable where any credit appeared in the books of accounts which was not explained. Both are entirely different in legal meaning, The Hon'ble Telangana High Court in the case of Kishan Kothwal Vs ITO (Telangana High Court) Appeal Number : I..T.A. No. 99 of 2021 Date of Judgement/Order : 03/12/2021, held as under:

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"The principles governing cash credit under Section 68 of the Act cannot be extended to unexplained investments under Section 69A of the Act."

- iii] In view of above the reasons for reopening assigned and addition made by the Id AO are contrary each other and as such in light of decision of Hon'ble Jurisdictional High Court in th case of CIT v/s Shri Ram Singh (2008) 8 DTR 118/306 ITR 343(Raj HC), Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT (2011) 336 ITR 136 and Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom.).

- iv] Further also Hon'ble ITAT Jaipur Bench in case of Bansiwala Iron & Steel Rolling Mills Vs DCIT (ITAT Jaipur) ITA No. 1388/JP/2019 dated 15/09/2021, after following the decision of Hon'ble Jurisdictional High Court and other High Courts

CIT v/s Shri Ram Singh (2008) 8 DTR 118/306 ITR 343(Raj HC)
Hotel Regal International & Anr. Vs. ITO (2010) 320 ITR 573 (CAL),
CIT v/s Jet Airways (I) Limited (2011) 52 DTR 71/331 ITR 236 (Mum HC)
Ranbaxy Laboratories Ltd. v/s CIT (2011) 336 ITR 136/57 DTR 281 (Del HC)
CIT v/s Adhunik Niryat Ispat Ltd. (2011) 63 DTR 212 (Del HC)
ACIT v/s Major Deepak Mehta (2012) 344 ITR 641 (Chhattisgarh HC).
CIT v/s Mohmed Juned Dadani (2013) 355 ITR 172 (Guj HC)

The Hon'ble Tribunal held as under:-

"Therefore, the very basis and the supporting point, the reasons to believe does not exist anymore, therefore, the proceedings initiated U/s 147/148 deserves to be quashed at this stage and we quash the proceedings initiated U/s 147/148 of the Act."

In light of above, the notice u/s 148 issued by Id AO may kindly be quashed and oblige.

- 2] As regards ground of appeal No. 2 relating to addition of Rs. 13,00,000/- u/s 68 of the Act.
CIT(A) Order : Para 7 Page 5 to 9 (Finding Para 7.1 Page 9)
AO Order : Para 4 Page 3 to 5

- a] The observation made by the Id AO while passing the assessment order reads as under: - (Page 4 & 5 of assessment order)

"During the course of statements of the above persons, it was noticed that the bank accounts of the above creditors were credited by way of cash deposits of the same amount of the loan just before the date on which they have paid the amount to the assessee except Shri Bhanwar Lal Lakhra in which Rs. 1,00,000/- and in the case of M/s Bhanwar Lal Lakhra, HUF in which Rs. 4,00,000/- were credited through "Transfer". During the course of statements, on being asked about the sources of cash deposits in their bank accounts just before the date of loan, all the above persons have replied that they have deposited cash in their bank accounts out of available cash balance and out of income earned by them during the year. However, on going through the balance sheets for the assessment year 2009-10 and as per return of income for the assessment year 2010-11, filed by them during the course of their statements, it was noticed that they were not having sufficient cash balance with them on the date of loan. In view of these facts, the creditworthiness of the creditors amounting to Rs. 17,00,000/- was not justified, therefore, vide notice dated 16.03.2015, the assessee was asked to explain reasons that as to why the amount of Rs. 17,00,000/- (Rs. 22,00,000 - Rs. 5,00,000) may not be treated as unexplained credits and may not be added to his total income as per Provisions of Section 68 of the Act.

In response, the A.R. of the assessee vide his written submissions dated 22.03.2016 has submitted as under: -

वर्ष के दौरान लिया गया Unsecured Loans की राशि 22,00,000 रु. थी जो कि सभी व्यक्तियों से चेक द्वारा ली गई थी। उनके साक्ष्य स्वरूप उन सभी व्यक्तियों की पहचान पत्र, आयकर रिटर्न, AY. 09-10 एवं AY. 10-11 की कोपी, बैंक पास बुक की कोपी एवं धारा 131 के अर्न्तगत उनके बयान करवाये इस प्रकार लिए गए Unsecured Loans उनकी पूर्व वर्षों की बचत, Patty Cash एवं वर्ष के दौरान की गई बचत को ही बैंक में नकद जमा करा कर के चेक द्वारा लोन की राशि प्राप्त की गई है। जिन व्यक्तियों द्वारा Unsecured Loans लिए गए हैं वह राशि आज के जमाने में कोई ज्यादा नहीं है मसलन 1 लाख, 2 लाख रु. चंजल बै एवं 1 वर्ष की आय के बराबर ही है। जिन व्यक्तियों से ज्यादा लोन लिया गया है उनकी राशि पूर्व के वर्षों में की गई बचत एवं वित्त वर्ष के द्वारा की गई आय के स्रोत मे से बैंक में राशि नकद जमा करा कर के लोन के रूप में ली गई है।'

Reply filed by the A.R. of the assessee has been considered during the course of assessment proceedings but not found acceptable in toto due to the reason that the following creditors were not having sufficient cash balance with them as per their balance sheet as well as they were not having immediate source of cash deposits in their bank accounts just before the date of loan to the assessee. Further during the course of their statements, they have failed to produce any documentary evidence to substantiate their statements that they were having sufficient cash balance with them which they have deposited in their bank accounts on various dates just before the date of loan."

- b] The Id CIT(A) without considering the submission and legal & valid documentary evidences in support of genuineness of loan received by appellant in right perspective and judicious manner and has confirmed the finding of Id AO which is not only against the principle of natural justice but also highly disregarded the law decided by Hon'ble Courts. The finding recorded by Id CIT(A) at Para 7.1 Page 9 reads as under: -
"7.1 In the case of appellant, by merely submitting confirmations, it cannot be treated that the assessee produced supporting evidence against loan shown in the books of account. Moreover, the AO recorded the statements of the creditors and found that they are not economically sound or creditworthy enough to lend money to others. Therefore, in view of the above and respectfully following the decision of the Delhi High Court in the case of M/s Siddharth Export Vs ACIT in ITA 917/2019 (Supra) the ground no. 2 is dismissed."
- c] That the appellant had furnished the affidavit and other documentary evidences of such creditors before the authority below. The documentary evidences furnished by assessee were cross examination from the creditors by the Id AO. All the creditors had been accepted such loan given to appellant which was also reflected in their financial statement. Further also the creditors are assessed to tax and explained the nature & source of transaction. The transactions are through banking channel. The affidavit filed by appellant has not been disproved or brought on record any contrary evidences against the same by the Id AO.
- d] That the appellant had discharged his burden as all the creditors are assessed to tax and also appeared before the Id AO during the assessment proceeding in response to notice issued by him, therefore the identity of creditors cannot be doubted. The creditors had been examined by Id AO in

which they have explained the nature and source of the loan given to the assessee and also accepted such transactions. Further also the creditors have provided their ITR, financial statements etc before the Id AO during the assessment proceeding therefore the creditworthiness of the creditors cannot be doubted. The transactions are through banking channel and duly disclosed in the financial statement of appellant as well as creditors therefore the genuineness of the transactions cannot be doubted.

- e] That the Hon'ble Supreme Court in the case of Dhananjaya Reddy vs. State of Karnataka, 2001 (4) SCC 9 and the judgement in the case Kishan Chand Chela Ram vs. CIT, 125 ITR 713 (SC) submitted that where there is no material to destroy the identity and credit worthiness of the creditor and genuineness of the transaction and the creditors are being regularly assessed to income-tax and had produced their bank statements before the AO, then, it has to be held that the assessee has discharged its primary onus of proving the identity and credit worthiness of the creditor and genuineness of the transaction.
- f] Merely the creditors had deposited the cash in the bank account before the transferred the fund to appellant through banking channel, the genuineness of transactions cannot be doubted as held by Hon'ble jurisdictional High Court in various cases which has been followed by Hon'ble ITAT, Jaipur Bench & Jodhpur Bench. Therefore in light of following judicial decisions the addition made by the Id AO and sustained by the CIT(A) may kindly be deleted.
- g] From the above, it is crystal clear the appellant has discharged the burden to prove the transactions are genuine and also in accordance with provision of law. Therefore the allegation made by Id AO and confirmed by CIT(A) is apparently illegal, unsustainable and also contrary to the law laid down by Hon'ble Rajasthan High Court and Other Hon'ble Courts:-
- i] The Hon'ble Rajasthan High Court in the case of Labh Chand Bohra Vs ITO (2010) 189 TAXMAN 141 held as under: *"So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat Ram's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment runs contrary to the judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent judgment in Mangilal's case (supra) relying upon Daulat Ram's*

case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in Mangilal's case (supra)."

- ii] The Hon'ble Rajasthan Court, in the case of Kanhailal Jangid v. Asstt. CIT [IT Appeal No.85 of 2001, dated 2.1.2007] held that the burden does not go beyond to put the assessee under an obligation to further prove that where from the creditor has got or procured the money to be deposited or advanced to the assessee. The fact that the explanation furnished by the creditor about the source from where he procured the money to be deposited or advanced to the assessee is not relevant for the purposes of rejecting the explanation furnished by the assessee and make additions of such deposits as income of the assessee from undisclosed sources by invoking Sec.68 unless it can be shown by the department that source of such money comes from the assessee himself or such source could be traced to the assessee itself.
- iii] The Hon'ble Rajasthan Court, in the case of Aravali Trading Co. V ITO [2010] 187 Taxman 338 (Raj.) has gone to the extent of observing the fact that the explanation furnished by the four creditors about the sources where from they acquired the money was not acceptable by the revenue could not provide necessary nexus for drawing inference that the amount admitted to be deposited by these four persons belonged to the assessee. The assessee having discharged his burden by proving the existence of the depositors and the depositors owing their deposits, he was not further required to prove source of source.
- iv] The Hon'be Rajasthan High Court in the case of CIT vs. Jai Kumar Bakliwal 366 ITR 217 has held as under: - *"9. If there is direct evidence to show that the loan received by the assessee actually belong to the assessee, there will be no difficulty in assessing such amount as the income of the assessee from undisclosed source but if there is no direct evidence in this regard, then the indirect or circumstantial evidence has to be conclusive in nature and should point to the assessee as the person from whom the money has actually flown to the hands of the creditor and then from the hands of the creditor to the hands of the creditor.*
20. When we peruse the facts herein above, it is an admitted position that all the cash creditors have affirmed in their examination that they had advanced money to the assessee from their own respective bank accounts. Therefore, when there is categorical finding even by the AO that the money came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition cannot be sustained and has been rightly deleted by both the two appellate authorities. There is

no clinching evidence in the present case nor the AO has been able to prove that the money actually belonged to none but the assessee himself. The action of the AO appears to be based on mere suspicion.

21. Accordingly, in our view, the ITAT, after appreciation of evidence has rightly come to the aforesaid conclusion and when there is appreciation of evidence, then it is purely a finding of fact and no question much less substantial question of law can be said to emerge out of the said order of the Tribunal and we do not find any infirmity or perversity in the order of the ITAT so as to call for any interference of this Court. In our view, no substantial question of law arises out of the order passed by the ITAT.”

- v] The Gauhati High Court, in the case of Nemi Chand v. CIT [2003] 264 ITR 254/[2004] 136 Taxman 213 held that it is not the business of the assessee to find out the source or sources from where the creditor had accumulated the amount which he had advanced in the form of loan to the assessee and Section 68 cannot be read to show that in the case of failure of sub-creditors to prove their creditworthiness the amount advanced as loan to the assessee by the creditor shall have to be read as corollary as the income from undisclosed source of the assessee himself.
- vi] Hon'ble Gujarat High Court in the case of DCIT vs. Rohini Builders 256 ITR 360 (Guj) has held as under:- *“It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Ltd. vs. CIT [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques.”*
- vii] The Hon'ble Madhya Pradesh High Court in the case of CIT vs Metachem Industries 245 ITR 160 (MP) has held as under: *“Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee is over. Whether that person is an income-tax payer or not and where he had brought this money from, is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax.”*

- viii] The Hon'ble Gujrat High Court in the case of Commissioner of Income-tax v. Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 159 (Guj.) has held that:-

“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 having 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]”

- ix] The Hon'ble ITAT Jaipur Bench in the case of ITO Vs Mahesh Mordia in ITA No 545/JP/2019 dated 12/07/2019 held as under:-

“We found that the Id. CIT(A) has contraverted all the objections of the A.O. and after considering various documents placed on record before the A.O., the Id. CIT(A) recorded a finding to the effect that identity of lender is established beyond doubt by filing of PAN Card, Aadhar Card, TT return, affidavit confirming the transaction, loan confirmation duly signed by both the parties. The Id. CIT(A) also recorded finding to the effect that the genuineness of transaction is also proved as the loan amount is routed from lender's bank account to the assessee through RTGS noted by the AO himself. Thus, the loan transaction is through normal banking channels is a genuine transaction. After recording detailed findings with respect to the lender being Director in many companies, details of which were submitted before the A.O., which companies have substantial paid up capital and have also raised substantial funds, the Id. CIT(A) concluded that the creditworthiness of the lender was also established. With regard to the A.O's contention that the loan creditor was not produced before him, the Id. CIT(A) categorically observed that the A.O. has sufficient power U/s 131 of the Act or to issue commission U/s 131(1)(d) of the Act, which the A.O. completely failed. The Id. CIT(A) also observed that even the bank statement which was called by the A.O. directly from the bank clearly indicate that there was sufficient credit balance in the bank account of the lender. Thereafter the Id.

CIT(A) considered various judicial pronouncements and after applying the ratio of these judicial pronouncements to the facts of the instant case recorded finding to the effect that the assessee has discharged his onus to fulfill all the three ingredient of loan creditor i.e. identity, genuineness and creditworthiness. The detailed finding so recorded by the Id. CIT(A) are as per the material on record and it has not been controverted by the Id. DR by bringing any positive material on record. Accordingly, we do not find any reason to interfere in the findings recorded by the Id. CIT(A) resulting into deletion of addition of Rs. 2,08,45,000/- made by the A.O. U/s 68 of the Act”

- x] Hon'ble Apex Court in the case of Commissioner of Income-Tax (Central), Calcutta vs Daulat Ram Rawatmull: (1973) 87 ITR 349 *“The onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even through the receipt had been issued in the name of Biswanath, the burden lay on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of Biswanath. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the source is concerned, there is no material on the record to show that the amount come from the coffers of the respondent-firm or that it was tendered in Burrabazar Calcutta branch of the Central Bank, on November 15, 1944, on behalf of the respondent. As regards the destination of the amount, it has already been mentioned that there is nothing to show that it went to the coffers of the respondent. On the contrary, there is positive evidence that the amount was received by Biswanath on January 22, 1946. It would thus follow that both as regards the source as well as the destination of the amount, the material on the record gives no support to the claim of the department.”*
- xi] CIT Vs. Bhawani Oil Mills Ltd. (2011) 49 DTR (Raj) 212 In this case it has been held as under :-
“Mere non-appearance of eight persons in response to the notice given by the AO, by itself cannot be a reason to discard their version particularly when one of them had appeared and admitted advancement of loan. Even if others have subsequently filed their confirmations supported by their affidavits, it cannot be assumed that they would not have made same statements, if they had appeared in response to the notice issued by the AO. AO was required to have examined those confirmations and the contents of the affidavits on their merits treating as if they were statements given to him. Their version contained in the affidavits could not be treated as of a lesser importance than the statement given by one of the creditors before the AO.

Although, it is another matter that the AO would be entitled to evaluate reability of such version on its own merit. Tribunal in paras 7 and 8 of its judgment, has in detailed discussion dealt with the confirmations given by those creditors and observed that there was no reason to doubt correctness of the claimed cash credit amounting to Rs. 24,86,866 taken from the said creditors. The matter therefore touches upon appreciation and evaluation of evidence and does not raise any question of law, much less any substantial question of law, so as to justify interference by the Court in the matter.”

xii] CIT v/s H.S. Builders (P) Ltd. reported in 78 DTR 169 (Raj)

“It is at once clear from the perusal of the orders as passed by the CIT(A) and the Tribunal that so far the 25 creditors already assessed to tax [categories (B) to (E)] were concerned, the CIT(A) perused the entire record; and examined the explanations offered by the assessee and by the creditors in detail before accepting the same; and then, deleted the addition made by the AO with cogent reasons. The Tribunal has taken a holistic view of the matter on all the relevant aspects; and affirmed this part of the order of the CIT(A) after finding that the assessee had submitted the accounts of returns, the computations of income, and the balance sheets of creditors and also supplied all their particulars; that the money given to the assessee had been shown in the respective balance-sheets of the creditors; and that the creditors who were called by the AO did affirm the fact of giving money and explained the source.”

xiii] CIT vs. Ranchod Jeevabhai Nakhava (2012) 21 Taxman. Com. 159 (Guj).

“In our view, once the assessee has established that he has taken money by way of accounts payee cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial burden under Section 68 of the Act was discharged. It further appears that the assessee had also produced confirmation letters given by those lenders. 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 return 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, in our opinion, the Assessing Officer did not follow the principle laid down under Section 68 of the Income Tax Act. 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, we find that those lenders have made inconsistent statement as pointed out by the Commissioner of Income Tax (Appeals) and in such circumstances, we find that both the Commissioner of Income Tax (Appeals) and the Tribunal were justified in setting aside the deletion as the Assessing Officer, without taking step for verification of the Income Tax Return of the creditors, took unnecessary step 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.”

- xiv] CIT -1 v/s Apex Therm Packaging (P) Ltd., 222 Taxman 125 (Gujarat) (Mag.) Section 68 of the Income –tax Act, 1961 –
“Cash credit [Unsecured loan] – Assessment year 2007-08 – Whether when full particulars, inclusive of confirmation with name, address and PAN Number, copy of income tax returns, balance sheet, profit and loss account and computation of total income in respect of all creditors/ lenders were furnished and when it had been found that loans were furnished through cheques and loan account were duly reflected in balance sheet, Assessing Officer was not justified in making addition

In paragraph 11, ITAT has observed and held as under;

“We have heard the rival submissions and perused the material on record. It is an undisputed fact that during the year the assessee had received loan from 17 parties aggregating to 33,35,011/-. The details of which are listed at page 2 of Assessing Officer order. CIT(A) while deleting the addition has given a finding that the assessee had filed before Assessing Officer the confirmations with name, address, PAN Number, copy of ledger account, copy of balance sheet and profit and loss account, copy of Income Tax returns and computation of total income in respect of all the parties except two depositors. With respect to the two depositors, the assessee had filed confirmation, address and PAN Numbers and hence the assessee had also discharged the initial onus cast upon the assessee with respect to the two creditors. He has further noted that the loans were received through cheques and the loan account were duly reflected in the balance sheet of lenders CIT(A) has further held once the onus was fulfilled by the assessee, it was for the Assessing Officer to examine and bring any material on record

which may help in rebutting the onus of assessee. The Assessing Officer has not brought any material on record in its support CIT(A) while deleting the addition has also relied on the decision of the Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 and the decision of Hon'ble Supreme Court, in the case of Orissa Corporation Ltd. 153 ITR 78. Before us, nothing has been brought on record by the revenue to controvert the findings of CIT(A). Revenue has relied on the decision of Hon'ble Delhi High Court in the case of N.R. Portfolio (Supra). We however find that the ratio of the aforesaid Delhi High Court decision are distinguishable on facts and therefore cannot be applied to the facts of the present case. In view of the aforesaid facts, we find no reason to interfere with the order of CIT(A) and thus dismiss this ground of revenue."

6. We are in complete agreement with the reasoning given by the CIT(A) as well as the ITAT. When full particulars, inclusive of the confirmation with name, address and PAN Number, copy of the Income Tax Returns, balance sheet, profit and loss accounts and computation of the total income in respect of all the creditors/lender were furnished and when it has been found that the loans were received through cheques and the loan account were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition of Rs.33,55,011/-. Under the circumstances, no question of law, much less substantial question of law arises in the present Tax Appeal. Accordingly, the present Tax Appeal deserves to be dismissed and is accordingly dismissed"

xv] Mod Creation Pvt. Ltd. v/s ITO reported in 354 ITR 282 (Delhi)

"Income—Cash credit—Burden of proof—Assessee had raised unsecured loans from its directors and shareholders—Assessee filed copies of returns, statements of income, balance sheet, P&L a/c and bank statements, etc. of creditors—Affidavits of some creditors were also filed—Assessee had discharged initial onus placed on it—In the event the Revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it—A bald assertion by the AO that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, can be of no avail—Revenue was required to prove this allegation—Revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation— If it had any doubts with regard to creditworthiness, the Revenue could always bring it to tax in the hands of the creditors and/or sub-creditors— Addition in the hands of assessee was not sustainable"

3] As regards ground of appeal No. 3 relating to disallowances of interest.

CIT(A) Order : Para 8 to 8.1 Page 9 & 10
AO Order : Para 5 Page 5 to 7

That the appellant had claimed deduction of interest paid of Rs. 4,46,980/- against rental income in the computation of income. The loan received for construction of building which was given on rent and against such rental income the claim of deduction of interest paid is allowable deduction as per law. However the Id AO and Id CIT(A) without analyzing the real & true facts and also provisions of the law in right perspective and judicious manner and disallowance made on hypothetical way which is against the principle of natural justice. Therefore I humbly request kindly allow deduction claim by the assessee and oblige.

In light of above, the appeal filed by appellant may kindly be allowed and oblige.”

7. In addition to the written submission the Id. AR of the assessee submitted that the Id. AO has travelled beyond the reasons for scrutiny which was for the investment in property, whereas the additions were made of the unsecured loans and disallowance of interest which is beyond the scope of the assessment. As regards the unsecured loan he has submitted that the primary onus casted upon the assessee was established beyond doubt the disputed loan provider appeared before the Id. AO and has confirmed the fact that they have advanced money to me. So, based on the judicial decision cited by the Id. AR of the assessee submitted that both the addition sustained without following the principles of natural justice and thereby the order of the Id. AO is required to be quashed.

8. The Id DR is heard who has relied on the findings of the lower authorities and submitted that the contentions of the Id. AR that the case of the assessee was selected for investment and the same is out of the unsecured loan he supported the order of the assessing officer and the relief sought in this appeal on technical reasons has not merits as discussed by the lower authorities.

9. We have heard the rival contentions, perused the material placed on record and gone through the judicial cited upon to drive home to the contentions so raised by both the parties. Undisputedly the case of the assessee was selected for verification of investment of Rs. 48,80,350/-. It is also undisputed that the book results disclosed by the assessee for his business concerns were accepted by the Id. AO after verification. During the assessment proceeding while verifying the source of investment of Rs. 48,80,350/-. The Id. AO noted that the assessee has taken a sum of Rs. 22,00,000/- from 8 different parties as unsecured loans. To substantiate these credits assessee has filed the confirmations of these creditors and also filed the affidavits. As the affidavits were not complete the assessee was asked to produce all these depositors and their statements were also recorded. The Id.AO

noted that the bank accounts of some of the creditors were credited by way of cash deposits of the same amount before the date on which they have paid the amount to the assessee. Therefore, the assessee was given show cause notice of these observation and the assessee filed a detailed reply to that effect on 22.03.2016. The Id. AO observed that the explain of the assessee cannot be considered fully and therefore, out of 8 depositor he has in respect of 4 depositors considered that the assessee does not establish the credit worthiness of these depositors and thus, added a sum of Rs. 13,00,000 of these four depositors, as listed here in below :

S. No.	Name & Address of the Creditor	Amount
1	Shri Kailash Chandra Laxkar, Kandroli	Rs. 3,00,000/-
2	Shri Bhanwar Lal Lakhara, Nathdwara	Rs. 3,00,000/-
3	Smt. Premlata Lodha, Nathdwara	Rs. 2,00,000/-
4	Smt. Veena Devi Khandelwal, Nathdwara	Rs. 5,00,000/-
	Total	Rs. 13,00,000/-

9.1 The issue related to this addition were taken up by filling an appeal before the Id. CIT(A), who has without giving any finding related to these depositors and evidence filed by the assessee confirmed the action of the AO by observing as under:

“7.1 In the case of appellant, by merely submitting confirmations, it cannot be treated that the assessee produced supporting evidence against loan shown in the books of account. Moreover, the AO recorded the statements of the creditors and found that they are not economically sound or creditworthy enough to lend money to others. Therefore, in view of the

above and respectfully following the decision of the Delhi High Court in the case of M/s Siddharth Export vs. ACIT in ITA No. 917/2019 dated 24.10.2019 (supra) the ground No. 2 is dismissed.”

agitated As the assessee, in spite of these evidence placed on record

9.2 Before us, the Id. AR of the assessee vehemently argued that the Id. CIT(A) has not considered the merits of the case and has passed the order without dealing with the facts of the case on merits and has also not considered the judicial decision stating that the primary onus casted upon the assessee has already been discharged. The assessee has filed the confirmation and affidavits of having given the money to the assessee. Not only that all these 8 depositors appeared before the Id. AO and their statements were recorded, their bank statements were verified and after extensive verification he has considered 4 depositors for which the onus of depositor is considered as discharged and for balance 4 not considered and the amount were added. The evidence for the balance 4 depositors were same as that of the other 4 that has been accepted. All these balance parties have filed confirmation, affidavit and appeared before Id. AO and has confirmed having given loan to the assessee. If that assessee has deposited cash in his account the assessee cannot be hold responsible as the money was received by an account payee cheque

and the assessee thus proved the capacity, genuineness and identity of the creditors. No evidence filed by the assessee considered as not correct. Merely that depositors have deposited cash they were not considered and the related amount added as income of the assessee. Based on the discussion and finding recorded by the lower authority, the Id. DR did not question the action of the assessee in producing all the eight depositors out of that for four depositor based on the same set of facts the claim of the assessee was considered. But for the balance four creditors the Id. AO noted that these depositors immediate source of money was deposit of cash in their respective bank account. The bench also noted that there is no finding of the Id. AO in the statement recorded of these parties that the cash deposit by those depositors is given or pertains to the assessee. Thus, we are of the view that the assessee in respect of all eight depositors filed confirmations, affidavits, bank statement and their presence was also marked before the Id. AO which establish the onus casted upon the assessee. Once this primary onus is established the Id. AO cannot put the assessee under an obligation to further prove that where from the creditor got or procured money to deposited or advanced to the assessee. There is no material on record to disbelieve the explanation of the assessee so far as of these depositors. To support these

contentions the Id. AR of the assessee relied upon the various binding judicial decision of the Rajasthan High Court in his written submission. One of the decisions having similar set of facts of the jurisdictional high in the case of Labh Chand Bohra Vs. ITO [189 Taxman 141] (Rajasthan) has held that

6. In *Mangilal Agarwal's case (supra)*, this Court was considering the provisions of section 69A, where some gold was seized by the customs authorities, and addition about the value thereof was sought to be made in the income of the assessee. The precise facts were that a search was conducted at the premises of the assessee by customs authorities, and 11 pieces of primary gold and gold ornaments were recovered, which were seized by the customs authorities. The proceedings for confiscating the primary gold were initiated, however, the adjudicating authority did not find the assessee in possession of the gold ornaments in breach of Gold Control Act, or the Customs Act, and, therefore, the same were released. The explanation given by the assessee was that he received primary gold from three different goldsmiths, from whom ornaments were brought by Bhopal Singh, Om Prakash Gupta and Gauri Shanker Singhal respectively, for the purpose of making new ornaments, and since making of new ornaments required dye cutting of primary gold, which came into existence by melting gold, for the purpose of making new ornaments, were delivered to the assessee, for getting the primary gold dye cut, through some registered goldsmiths, having the facility of dye cut. This explanation was not accepted by the adjudicating authority, about gold being not belonging to him, except to the extent of 6.800 grams, and it is on these facts, when the matter was taken up by the Income-tax authorities, and the value of the gold was sought to be added in the income of the assessee for the assessment year 1988-89, it was found, that so far as finding that money and valuables owned by the assessee are concerned, the burden is clearly on the revenue, because it is only on reaching such finding, the opinion can be given about the source of its acquisition. Then, regarding explanation, it was considered, that the logic adopted by the authorities below, that the ornaments are not proved by the three persons as belonging to them, though it was admitted by each of them, that the attributed gold ornaments and primary gold, derived from such ornaments, belonged to them respectively, which belonged to the assessee, was found to be suffering from legal lacuna. It was held, that the finding cannot be considered to be a finding of fact, as it was found to be vitiated, not only by a wrong view of burden, in appreciating the evidence, but having no nexus between the finding about failure of the three persons to prove the ownership of the gold ornaments, which they admitted to have delivered to the respective goldsmiths through the assessee, for the purposes of making new ornaments. Then *Daulat Ram Rawat Mull's case (supra)* was also considered, and it was held, that on the parity or reasonings, which prevailed in *Daulat Ram Rawat Mull's case (supra)* it can well be said that merely because the explanation furnished by three persons Bhopal Singh,

Om Prakash and Gauri Shanker, about the purpose for which the gold ornaments were delivered, was found to be not acceptable, could not have provided any nexus between the facts and conclusions reached, by drawing inference therefrom, that the gold ornaments belonged to the assessee.

7. Really speaking, the judgment in *Daulat Ram Rawat Mull's case (supra)* is the authority, for the proposition, that assessee cannot be required to prove the source of the source. It was precisely held in *Daulat Ram Rawat Mull's case (supra)*, that the fact that lender has not been able to give satisfactory explanation regarding the source of the fund lent by him, would not be decisive, even of the matter, as to whether, the lender was the owner of that sum, even though the explanation furnished by him, regarding that source of money, is found to be not correct. From the simple fact, that the explanation regarding source of money, furnished by the lender, whose money is lying deposited, has been found to be false, it would be a remote and far-fetched conclusion to hold, that the money belongs to the assessee, and that, he would in such a case had any direct nexus between the facts and conclusions found therefrom. In our view, since *Mangilal Agarwal's case (supra)* is the judgment of this Court, and proceeds on the basis of judgment of the Hon'ble Supreme Court, we need not multiply the other judgments, taking the same view, and thereby encumber the judgment. So far as the judgments cited by the learned counsel for the revenue are concerned, in *R.S. Rathore's case (supra)*, as a matter of fact, it has been noticed, that the assessee had not produced all the creditors, in spite of opportunity being given to him, and a number of other factors were taken into consideration by the ITO, to come to the conclusion about the explanation offered by the assessee being not satisfactory. In that background, it was found, that the burden was to be discharged by the assessee, and all creditors were not produced, their addresses were not given, therefore, the ITO made additions. The learned CIT(A) held the additions plausible and probable. In these circumstances, it was found, that if the Tribunal was of the opinion that the investment is not genuine, it should not have upheld the order of the CIT(A), and should have set it aside with the direction to allow such amounts, for which the assessee has been able to prove satisfactorily, by giving opportunity of explaining the investment. It was noticed, that the Tribunal itself doubted about the correctness of its own conclusions, thus, this judgment is no authority for the proposition, that source of the source is required to be established by the assessee. Then, so far as judgment in *Kishorilal Santoshilal's case (supra)* is concerned, six requirements noticed by this Court read as under :—

(i)	that there is no distinction between the cash credit entry existing in the books of the firm whether it is of a partner or of a third party;
(ii)	that the burden to prove the identity, capacity and genuineness have to be on the assessee;
(iii)	if the cash credit is not satisfactorily explained, the ITO would be justified to treat it as income from 'undisclosed sources';
(iv)	the firm has to establish that the amount was actually given by the lender;
(v)	the genuineness and regularity in the maintenance of the account

(vi)	<p>have to be taken into consideration by the taxing authorities; and</p> <p>if the explanation is not supported by any documentary or other evidences, then the deeming fiction created by section 68 can be invoked.</p>
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8. Examining the present case even on these parameters, first requirement is not relevant. So far as second requirement is concerned, there is no doubt about initial burden being on the assessee. So far as third requirement is concerned, obviously if the explanation is not satisfactory, then it is added. Then fourth requirement is, that the firm has to establish that the amount was actually given by the lender. Fifth requirement is about genuineness and regularity in maintenance of the accounts, obviously of the assessee, and it is not the finding, that the accounts were not regularly maintained. Then sixth requirement is that if the explanation is not supported by any documentary or other evidence, then the deeming fiction created by section 68 can be invoked. In the present case, so far as 6th requirement is concerned, it is very much there in existence, inasmuch as the amount has been advanced by account payee cheques, through bank, and is duly supported by documentary evidence, as well as the evidence of the two lenders, and that satisfies the 2nd requirement also, about the discharge of burden on the part of the assessee to prove identity and genuineness of the transaction. So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in *Daulat Ram Rawat Mull's case (supra)*, and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment runs contrary to the judgment of the Hon'ble Supreme Court, in *Daulat Ram Rawat Mull's case (supra)*, while this Court in a subsequent judgment in *Mangilal Agarwal's case (supra)* relying upon *Daulat Ram Rawat Mull's case (supra)*, has taken a contrary view, we stand better advised to follow the view, which has been taken in *Mangilal Agarwal's case (supra)*.

10. Respectfully following the ratio of these decision we are of the view that the action of the lower authority addition a sum of Rs. 13,00,000 for the four depositors wherein the assessee has filed the confirmation, affidavits, bank statement and personal presence marked is sufficient to considered these depositors as genuine. As in the rest of the four depositors the assessee has given all the evidence which is supposed to be given by the assessee and the capacity of the

lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. Based on this observation we vacate the addition of Rs. 13,00,000/- made by the lower authorities. In terms of these observation ground no. 2 raised by the assessee.

11. In ITA No. 01/Jodh/2022, as regards the ground no. 3 raised by the assessee, we find from the order of the assessment that the assessee has offered rent income of Rs. 8,02,316/- received from the 3 tenants as under:-

(1) Received rent from basement	Rs. 3,50,000/-
(2) Rent from SBI Bank	Rs. 3,37,116/-
(3) Received total rent from reliance life insurance	<u>Rs. 1,15,200/-</u>
	Rs. 8,02,316/-

11.1 We also observe that the assessee has borrowed the money from LIC and from SBI bank in addition to the unsecured loan taken by the assessee. The interest paid by the assessee on these loans are as under:-

“Interest from bank loan	Rs. 3,57,218/-
Interest from LIC	Rs. 24,487/-
Interest from unsecured loan	Rs. 66,275/-
Interest from total loan	Rs. 4,46,980/-”

11.2 The Id. AO based on total area of building with that of area given on rent has allowed. The interest claim to the assessee contending that the balance property is not completed and therefore, proportionally, the Id. AO has disallowed the interest payment of Rs.3,16,663/-. The relevant computation made is as under:-

Total Area of the Building	18,237 Sq. Ft.
Total Area Rented out	5,317 Sq. Ft.
Total Amount of interest paid	Rs. 4,46,980/-
Interest related to rental income (4,46,980 x 5317/18237)	Rs. 1,30,317/-

11.3 A propose to these grounds, the bench noted that the Id. CIT(A) has not discussed the merits of the case of the assessee and has confirmed the disallowance of interest stating that there is no generation of income out of the said construction to set of expenses incurred on the loan for the purpose of construction of the building and therefore, the Id. CIT(A) also denied the claim of interest expenditure claimed by the assessee.

11.4 Before us, the Id. AR of the assessee vehemently argued that Id. AO from the Id. CIT(A) has not disputed borrowing the merely the balance portion of the building is not rented the denial of deduction of claim of interest is not justified to these facts. The Id. AR has relied

upon the submission made before Id. CIT(A) and has briefly stated as under:-

“That the appellant had claimed deduction of interest paid of Rs. 4,46,980/- against rental income in the computation of income. The loan received for construction of building which was given on rent and against such rental income the claim of deduction of interest paid is allowable deduction as per law. However the Id AO and Id CIT(A) without analyzing the real & true facts and also provisions of the law in right perspective and judicious manner and disallowance made on hypothetical way which is against the principle of natural justice. Therefore I humbly request kindly allow deduction claim by the assessee and oblige.”

11.5 On this issue, we have considered the rival submission and also gone through the contention raised by both the parties. We find from the record that there is no dispute about there is receipt of rent of Rs.8,03,316/-. It is also not disputed under the assessee has not taken loan from SBI bank, LIC and from unsecured creditors. Even the payment of interest to this party is not under dispute. The mere dispute is that the total area of the building is 18,237 sq.ft and total area of building for which rent is received at 5317 sq. ft. Therefore, lower authorities have not allowed the claim of the interest. On going through the provision of section 24, there are no such restriction that the assessee will be denied the deduction of interest payable of capital borrowed on which the income is offered. Since the dispute is not related to any of the other aspects. We are of the considered view

that the action of the lower authorities allowing the interest to the extent of area had not given on rent cannot be disallowed. Based on these observations, Ground No. 3 raised by the assessee is allowed.

12. In ITA No. 1/Jodh/2022 the ground no. 1 is related to the reopening of the case since we have considered appeal of the assessee on merits this ground becomes educative in nature. Ground no. 4 & 5 are general in nature and therefore, they not require any adjudication.

13. In terms of this observation the appeal of the assessee in ITA NO. 1/JODH/2022 is allowed.

14. Now we take up the appeal of the assessee in ITA No. 02/Jodh/2022 wherein the ground no. 1 related to reopening of the case and since we are dealing with the facts of the case. This ground becomes adjudicative in nature.

15. The fact of the case in ITA No. 02/Jodh/2022 is similar to the case in ITA No. 01/Jodh/2022 so far as ground no. 2 is concerned and we have heard both the parties and persuaded the materials available

on record. The bench has noticed that the issues raised by the assessee in this appeal No. 01/Jodh/2022 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 01/Jodh/2022 for the Assessment Year 2010-11 shall apply mutatis mutandis in ITA No. 02/Jodh/2022 for the Assessment Year 2011-12 in Ground no. 2 in terms of these observations, Ground No. 2 raised by the assessee is allowed.

16. As regards Ground no. 3 raised by the assessee, the fact is that the assessee sold immovable property for a consideration of Rs. 45,00,000/- and shown long term capital gain of Rs. 40,80,721/- and accordingly claimed exemption u/s 54F of the Act being the investment in residential house. During the assessment proceedings, on examination of purchase deed, the Id. AO noted that the property that the assessee purchased is agriculture land as it is evident from the purchase deed filed by the assessee. The Id. AO thus observed that the assessee had not invested the sale consideration for purchase/construction of residential house and therefore, taken a view that the assessee is not entitled for deduction u/s 54F of the Act. On

these issues, he has relied upon the report of the inspector dated 20.12.2016 wherein inspector categorically stated that on the impugned land, there is construction of building on the first floor, two rooms constructed on the ground floor, three rooms have been constructed and there is also construction of staircase on the building. The inspector also noted that there is provision for electricity and water. The inspector further noted that on these impugned building the agricultural and other equipment were found in one room. Based on this report, the Id. AO held that the assessee has not purchased residential land but an agriculture land. In appeal before the Id. CIT(A) this issue is also not considered. The assessee filed a detailed submissions and submitted that the land purchased being agriculture land and but it contains the residential house on it. Therefore, the benefit of section 54F claimed by the assessee cannot be denied to him.

17. Before us, the Id. AR of the assessee heavily relied upon the report of the inspector wherein he categorically confirmed that there are staircase, three rooms on ground floor and 2nd all the first floor found. Therefore, merely land and building constructed on agriculture

land the benefit of provision of section 54F of the Act cannot be denied.

18. On the other hand, the Id. DR relied upon the finding of lower authorities and submitted that section 54F of the Act is for residential accommodation and not agriculture land. He heavily relied upon the details finding of Id. CIT(A) on this issue has recorded in para 6.2 of his order, the same is also reiterated herein below:-

“6.2. The main point to be verified here is whether the assessee purchased agricultural land or house property. The assessee had sold an open land and stated to have purchased house property. The assessee had claimed deduction u/s 54F of the IT Act. Whether, the assessee is eligible for deduction u/s 54F of the IT Act is to be examined. On verification of assessment order and the submissions of the assessee it is extracted that the assessee had sold a land and purchased an agricultural land. The argument of the assessee is that a house was constructed in the said agricultural land. It is further argued that whether the house was built in an agricultural land or an open land is irrelevant for claiming deduction u/s 54F of the IT Act. As per the provisions of section 54F the person must sold an immovable property and purchased house property. And the other condition is that the person should not have more than one residential property. In this case, the assessee sold an immovable property and purchased an agricultural land with a house was built on it. The said purchase was registered as purchase of an agricultural land. Here the intention of the assessee is to purchase an agricultural land and not the house built on it. Further, the ITI was deputed to conduct field enquiry and to report. As reported by the ITI, the said house was not fit for dwelling purpose. Further, it was also brought on to the record by the AO that the assessee had more than one residential house properties. The points which grab the eligibility of claim of deduction u/s 54F

1. The assessee had purchased an agricultural land
2. The assessee had more than one residential house properties

Therefore, the claim of deduction u/s 54F of the IT. Act cannot be allowed.”

19. We have heard the rival contentions, perused the material placed on record. Before us it is not disputed that the assessee sold immovable property for a consideration of Rs. 45,00,000/- and shown on long term capital gain of Rs. 40,80,721/- and accordingly claimed exemption u/s 54F of the Act being the investment in residential house. During the assessment proceedings, on examination of purchase deed, the Id. AO noted that the property that the assessee purchased is agriculture land as it is evident from the purchase deed filed by the assessee. The Id. AO thus observed that the assessee had not invested the sale consideration for purchase/construction of residential house and therefore, not entitled for deduction u/s 54F of the Act. On these issues, he has relied upon the report of the inspector dated 20.12.2016 wherein inspector categorically stated that on the impugned land, there is construction of building on the first floor, two rooms constructed, on the ground floor, three rooms have been constructed and there is also construction of staircase on the building. The inspector also noted that there is provision for electricity and water, the inspector also noted that on these impugned building the agricultural and other equipments was found. Based on these reports, the Id. AO taken a view that the assessee has not purchased residential land but an agriculture land. On these issues, the Id.

CIT(A) has also not considered the submissions in detailed filed by the assessee and held that the land purchased being agriculture land and not residential on it. Therefore, the benefit of section 54F claimed by the assessee denied. Before us, the Id. AR of the assessee heavily relied upon the report of the inspector wherein he categorically confirmed that there are staircase, three rooms on ground floor and 2 room on the first floor. Therefore, merely land and building constructed on agriculture land the benefit of provision of section 54F of the Act cannot be denied to the assessee. The only contention of lower authorities while denying the benefit u/s 54F was that the land and building is situated in the agricultural land and the premises is not regular use of having residential nature as it is out of agricultural area. The Id. AR of the assessee heavily relied upon the written submission filed before Id. CIT(A) and the same is reiterated herein below:-

“Briefly stated, the assessee soon after sale of immoveable property has purchased a new residential property situated on agriculture land. Before the Id. AO, the document being purchase deed dated 22.022011 registered in favour of the assessee evidencing a house with a constructed area of 2750 sq.ft. was produced. It was duly submitted that the assessee has invested the entire sale consideration in acquiring the same. The Id. AO has not allowed the deduction u/s 54F for the reasons that the said house is not habitable as per field enquiry through inspector and the assessee owns more than one house property on the date of transfer of original asset. The Id. AO has held that as per report of the Inspector, the property in which investment made by the assessee is not in the nature of residential house but actually an agriculture land, which the assessee has shown in the balance sheet as 'Agriculture Mama Motors'

2. In this regard, it is respectfully submitted that this is beyond dispute that there exists substantial house construction on the said land, which evident from the registered purchase deed and the field enquiry made through Departmental Inspector. In the inspection report it is stated that there exists a two storied building, on ground floor of which there are three rooms and bathroom. There is a staircase also from ground floor to first floor. On the first floor also, there are two rooms and a small veranda. On corner, there are two rooms for storage of goods. There also exist facilities for drinking water & electricity. This shows that there exist all required amenities. It was also found that the said premises was being used for residence purposes, It is stated in the order that there is no kitchen and toilet. It is respectfully submitted that it is beyond comprehension that a house having five rooms, veranda, storage, light, water, etc. and actually being used as residence will not have kitchen and toilet. It is submitted that all amenities as may be required for residing are available. In this view of the matter, the contention of the Id, AO that the assessee has invested in purchase of agriculture land is not correct. He has drawn inference from the balance sheet that the assessee himself has shown the same as Agriculture Mama Motors, It is stated that since the nature of land on which the house is constructed is agriculture and being near to Mama Motors, it was so 'Mitten in the balance sheet. However, in the statement of affairs of the assessee furnished before the Id. A(), the description of the property is shown as "House at Mama Motors', It is respectfully stated that the nomenclature of the property used in the balance sheet is of no avail especially when the direct evidences of house property are available.

3. It may also be mentioned that the exemption u/s 5417 is available whether the residential house is constructed on agriculture land or non-agriculture land. There is no such condition in section 54F of the Act. In case of CIT vs. Om Prakash Goyal, the Jaipur Trib, has held that the benefit of section 54F cannot be denied on the ground that the land on which construction was done was agricultural in nature. The house constructed on agricultural land or on other land does not matter, but the fact that house should be constructed. The assessee has claimed deduction u/s 54F on such investment in purchase of new house property. From the text of the field inspection report, it is undisputed that the same is being used for habitation of servant, which itself shows that it is in habitable condition. There is no requirement in section 54/54F that the assessee himself should use the same as his residence. It is stated that the same is being used as residence since its acquisition. The field report clearly shows the actual use of the house as residence and also storing of some agriculture produce does not make it inhabitable. Even in a residential house, there remain stores or some storage space, The word 'house' has been defined in Blacks Law dictionary 7th edition, page 743 as a home, dwelling or residence'. The 'residential accommodation' is defined in Wharton's Concise Law dictionary 15th edition (concise) at page 909 as residential accommodation, simply means that the accommodation should be capable of being used as residence. Thus, in

other words, the property should be capable *. Thus, in other na of being 'habitable'

4. That as per section 54F, no where it is necessary that investment for house is to be made on non-agriculture land. It is stated that even farm house is considered as residential house. In Additional CIT vs. Narendra Mohan Unyal (2009) 34 SOT 152 (Del). it is held that there is no rider that no deduction would be allowed in respect of investment of sale proceed on acquisition of building and land appurtenant. What is necessary is that it should be capable of being used for habitation of people. It is not necessary that the assessee himself should reside in the house to call it a residential house for the purpose of section 54 or 54F of the Act.

5. In Amit Gupta vs. DCIT 6 SOT403 (Delhi), it is held that the requirement of law is that the property should be a residential house. The expression residential house has not been defined in the Act. The popular meaning of the word is a place or building used for habitation of people. It is used in contradistinction to a place which is used for the purpose of business, office, shop, etc. It is not necessary that a person should reside in the house to call it a residential house. In that case, even the basement was capable of being used as residence. The fact that the assessee did not actually use the same for his residence will not disentitle him to the claim of exemption u/s 5417

6. As held in case of Mahaveer Prasad Gupta vs. CIT (2006) 5 SOT 355 (Del), the use of the property is not the relevant criterion to consider the eligibility of section 54F benefit. The contention of improving the state of habitability is a subjective matter. The Id. AO did not spell out the reasons to consider the same as inhabitable. In inspection report also, there are general and vague statement that it appears that the same is not fit for habitation despite the fact that the same is actually been used for the same purpose. It may also be appreciated that the field inspection has been carried out after lapse of about 5 years. It is respectfully submitted that on the contrary, the facts gathered during the field enquiry substantiate assessee's claim. The description of any property in the balance sheet does not change its true character. However, in the statement of affairs of the assessee, the description of the property is shown as 'House at Mama Motors' and in fact, there is a house on land near Mama Motors.

7. As to the other condition of exemption u/s section 54F, it is reiterated that the income under the head income from house property' from the property situated at Near Bus Stand, Nathdwara is not in respect of residential house. In the show-cause issued by the Ids AO also, it is shown as hotel building and not a residential house. The assesssce has duly shown income from such property. It is submitted that the land on which Hotel Mangal Darshyn is constructed was earlier on residential plot, which was got converted for commercial use and during the year under consideration, the assessee has shown income from Hotel Mangal Darshan and also, the part of ground/first floor was leased to State Bank of India and Reliance Life Insurance

Company from which rental income is being earned. The Tourism Department, Jaipur vide their letter no F.9 (148) Hotel/pks/2009/21781 dated 16.10.2009 granted NOC for hotel and Municipality, Nathdwara also vide letter no 2346 dated 04.11.2010 recommended for land use as hotel to the Secretary, Urban Development, Jaipur. Thus, the very intent right from the beginning was to construct a hotel and not a residential house. The nature of construction itself shows that the property is for commercial use and actual use is also commercial as stated above. However, the Ids AO ignored these facts on records. Thus, it cannot be said that the assessee owned second house, which in fact is a hotel & commercial construction. Such rental income from lease to bank and insurance company is being disclosed as income from house property but that doesn't mean that the same is a house. No bank or insurance company will run in a house. It is stated that the assessee has fully complied with the conditions of section 54F and thus, is eligible for exemption claimed u/s 5417 of the Act. It is also humbly submitted that section 54 and 54F are benevolent provisions and should be liberally interpreted in favour of the exemption/deduction to the tax payer and the deductions should not be denied on hyper technical grounds in view Of the decision in Late Mir Gulam Ali Khan vs. CIT reported at (1987) 165 ITR 228(AP). If examined in view of the aforesaid facts and legal position, it is clear that no disallowance u/s 54F is warranted.

As to the alternative claim of the assessee for deduction u/s 548, the Id. AO stated that no documentary evidences in support have been produced. In this regard, it is respectfully submitted that as stated here-in-above the assessee is eligible for deduction u/s 54F but without prejudice, it is stated that the id AO himself has held that the new investment is in agriculture land. The inspection report also shows that the land is being used for agriculture purposes so the assessee must be held eligible for deduction u/s 548 of the Act."

20. We have gone the records and orders of lower authorities and perused the contentions raised. The Id. AO noted that the property which the assessee purchased is agricultural land but on the said land the building is found to have been constructed. This aspect is made clear in the report of the inspector confirming that on the ground floor constructed 3 rooms found and 2 rooms on first floor with stair case, the premises also having facility drinking water and electricity supply.

Therefore, this premise is though constructed on agricultural land has all the qualities of residential house. The similar view is taken by the Co-ordinate Bench of Jaipur in the case of Sh. Om Prakash Goyal in ITA No. 647/JP/2011 wherein the finding is reproduced for the sake of convenience: -

“8. We have heard rival submissions and considered them carefully. After considering the material on record, we find that there is no infirmity in the order of Id. CIT (A). The AO has examined the agreement of purchase of plot. The assessee has sold a property for a consideration of Rs. 5,60,00,000/- and assessee has purchased a property from Shri Ram Richpal Agarwal and Shri Beni Gopal Agarwal at Deepak Nagar Yogna property. This land was purchased consisting of 3300 sq. yards which is a part of agricultural land. The rate of land was Rs. 4550/- per sq. yard. Rs. 10,00,000/- was given in advance on 19.11.2007. An agreement was entered, copy of the same was filed before the AO. The remaining amount was paid on a later stage. The assessee claimed exemption under section 54F stating that the amount in question has been invested for purchase of land for constructing the house. However, AO did not accept the contention of the assessee on two grounds i.e. firstly, the land in question purchased through an agreement and the agreement has not been registered; secondly, it was opined by AO that the plot in question is an agricultural land and on purchase of agricultural land, deduction under section 54F cannot be allowed. However, the Id. CIT (A) considered the fact that there is no bar to purchase agricultural land on which house was to be constructed. The fact is that subject to provisions of sub-section (4) of section 54F, where, in the case of an assessee being an individual or a Hindu Undivided Family, the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or (two years) after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house, found that assessee has purchased a plot of land and has constructed a house on the same, then taking into consideration the case of Narendra Mohan Uniyal, 34 SOT 152 (Del.) and taking into consideration the decision of Hon'ble Rajasthan High Court in case of Vishnu Trading & Investment Co. (supra) and also the decision in case of Shyam Sunder Makhija (supra) found that assessee is eligible for exemption under section 54F. The AO's contention was that land purchased by assessee was agricultural land and, moreover, the property was not registered in his name. However, after taking into consideration the provisions of section 54F, the Id. CIT (A) found that the only condition for claiming exemption under section 54F is that the asset

transferred is long term capital asset, not being a residential house. The assessee has not transferred a residential house but a long term capital asset. This is an undisputed fact and the AO has not doubted this fact. Second condition is that residential house is purchased within one year before or two years after the date of transfer of original asset. This condition is not applicable on the assessee as assessee has not purchased any new house either one year before or two years after the transaction. Third condition is construction of the house should be completed within 3 years from the date of transfer and this condition was satisfied as explained by Id. CIT (A). The Board Circular no. 667 dated 18.10.93 was also taken into consideration by Id. CIT (A) whereby it was clarified that for the purpose of computing exemption under section 54 or 54F, the cost of the plot together with cost of the building will be considered as cost of new asset, provided the acquisition of the plot and also the construction thereon are completed within the period specified in these sections. These conditions were found satisfied by the Id. CIT (A) and, therefore, he has allowed the exemption to the assessee. We have seen a copy of valuation report which was obtained on 17.3.2011 and it is found that as per this report the house was constructed by assessee and the valuation of the construction is Rs. 16,29,600/-. It means, the exemption claimed by assessee which was at Rs. 1,20,50,000/- only. This consideration was paid for the purchase of plot and Rs. 16,29,600/- was also invested in construction of house of which the assessee has not claimed any deduction for the reason known to him. However, it is seen that house was constructed and, therefore, Id. CIT (A) has allowed the exemption to the assessee to the tune of Rs. 1,20,50,000/-. Since all the conditions for claiming exemption under section 54F have been found satisfied, therefore, in our view, it will be futile exercise if the matter is sent back to the file of AO. All the details are placed on record from which it is established that assessee purchased a plot of land and then constructed the house on it. The house constructed on agricultural land or on other land does not matter, but the fact that house should be constructed and from the report it is very much clear that a residential house was constructed as this fact has been mentioned by valuer in para 14 of his valuation report. In view of these facts and circumstances, we hold that Id. CIT (A) was justified in allowing the claim of the house. Accordingly, we confirm the order of Id. CIT (A).”

21. Respectively, following the finding of the Co-ordinate Bench and considering the fact that the assessee is in possession of house though on the agricultural land on which claimed u/s 54F of the Act cannot be denied. Merely, the same is constructed on agriculture land.

Based on these observations, Ground No. 3 raised by the assessee is allowed.

22. As regard the Ground No. 4 and 5, the same being general in nature does not required any adjudication.

In the result, both appeals of the assessee are allowed.

Order pronounced under rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-
(Dr. S. Seethalakshmi)
Judcial Member

Sd/-
(Rathod Kamlesh Jayantbhai)
Accountant Member

Dated : 02/08/2023

*Ganesh Kumar, PS

Copy to:

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

Assistant Registrar
Jodhpur Bench