

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.996/Mum/2023
(A.Y. 2018-19)**

DCIT, Central Circle-2(3) Room No. 803, 8 th Floor, Pratishtha Bhavan, (Annexe), M.K.Road, Churchgate, Mumbai - 400020	Vs.	M/s Sidh Granites Pvt. Ltd., 2 nd Floor, Room No. 21, 155B, Rabindra Sarahi Burra Bazar, Kolkata - 400007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAECs2639G		
Appellant	..	Respondent

Appellant by :	Anil Kumar Das
Respondent by :	Vimal Punamiya

Date of Hearing	15.06.2023
Date of Pronouncement	31.08.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the revenue is directed against the order passed by the Id. CIT(A)-48, Mumbai, dated 06.01.2023 for A.Y. 2018-19. The revenue has raised the following grounds before us:

- “1. Whether, on the facts and in the circumstances of the case and in law, The Ld. CIT (A) has erred in deleting the addition on account of bogus unsecured loan of Rs. 8,82,00,000/- treated as unexplained cash credit in the books of the assessee u/s 68 of the Act.*
- 2. The appellant craves leave to add, delete, alter, modify, rectify, substitute or otherwise any or all of the grounds of appeal at or before the time of hearing of the appeal.*
- 3. The appellant, therefore, prays that on the grounds stated above, the order of the Ld. CIT (A), Mumbai, may be set aside and that of the Assessing Officer restored.”*

2. Fact in brief is that assessee company is engaged in the business of trading and import of marble blocks and granites. The assessee filed return of income for the year under consideration declaring total loss of Rs.12,51,225/-. A search and seizure action u/s 132 of the Act was carried out in the case of Marble Group including M/s Trident Marble Group and other related entities on 14.02.2019. A survey action u/s 133A of the Act was conducted in the case of the assessee company on 14.02.2019 at its office premise at Mumbai and Silvasa. During the course of survey action it was found that the assessee company had taken unsecured loan from various parties mostly based in Kolkata. Therefore, assessment was reopened by issuing of notice u/s 148 of the Act on 20.03.2020. In response the assessee filed return of income declaring total income of Rs.50,05,740/-. The detail of loan taken in assessment year 2018-19 is reproduced as under:

<i>Sr. No.</i>	<i>Name of the loan party</i>	<i>Loan taken in A.Y. 2018-19</i>	<i>Loan taken in A.Y. 2019-20</i>
1.	<i>Amrutya Vaniya Pvt. Ltd.</i>	<i>4700000</i>	<i>-</i>
2.	<i>Akryta Vanijay Pvt. Ltd.</i>	<i>6000000</i>	<i>-</i>
3.	<i>Balramimpexpvt. Ltd.</i>	<i>4100000</i>	<i>-</i>
4.	<i>DayanidhiVanijaypvt. Ltd.</i>	<i>4300000</i>	<i>-</i>
5.	<i>Murli Vinimay Pvt. Ltd.</i>	<i>1500000</i>	<i>-</i>
6.	<i>Prabhu Deal Trade Pvt. Ltd.</i>	<i>9800000</i>	<i>-</i>
7.	<i>Shivam Tradevinpvt Ltd.</i>	<i>6000000</i>	<i>-</i>
8.	<i>Sri HariVinimaypvt Ltd.</i>	<i>2500000</i>	<i>-</i>
9.	<i>Tribhuvan Trading Pvt. Ltd.</i>	<i>3500000</i>	<i>-</i>
10.	<i>Benchmark Buildconpvt.Ltd.</i>	<i>45800000</i>	<i>2500000</i>
	<i>Total</i>	<i>8,82,00,000</i>	<i>25,00,000</i>

During the course of post survey proceedings the assessee was asked to furnish the detail of loan taken along with their ledger confirmation, bank statements and to establish identity, creditworthiness and genuineness of the above loan transactions. In the statement recorded on 11.04.2019, the director of the assessee company explained that the assessee company had legitimately taken loan and repaid the same in

due course through banking system and also paid interest and deducted applicable TDS on the same on 14.04.2019.

The assessing officer also stated that these were the paper/shell companies which was not found at the registered address on field verification by his inspector. The assessing officer issued notice u/s 133(6) of the Act to the aforesaid loan lenders calling information relating to the unsecured loan advanced by them to the assessee such as detail of loan given to the assessee note on business activity, copies of ITR along with annexures, financial capacity to the loans source of funds and rate of interest etc. The assessing officer stated that the said notices issued u/s 133(6) of the Act have been dispatched by speed post and have been delivered at the addresses (loan creditors as per the details available on the postal department website). The AO further stated that in response to the said notices the detail were received. However, the AO stated that loan creditors companies were engaged in providing accommodation entries to different beneficiaries in the form of loan, share application money, purchases etc. and these facts were stated in their statement recorded during the course of investigation. The AO stated that assessee has failed to prove the genuineness of the unsecured loan and creditworthiness of the loan companies, therefore, treated the same as unexplained u/s 68 of the Act.

3. Aggrieved, the assessee filed the appeal before the Id. CIT(A). however, the Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of CIT(A) is reproduced as under:

“6. 1 I have carefully considered the above submission of the appellant in the light of findings in the assessment order. It is observed that in the re-assessment proceedings, the genuineness of the loans received by the appellant amounting to Rs. 8,82,00,000/- from ten concerns have been questioned. Since, the impugned transaction of receiving the loan from the ten companies are not doubted by the AO; what has been doubted is the bonafide or genuineness of the ten companies, as these have been termed as "Kolkata based listed shell/paper companies" at different places of the assessment order.

6.2 The A.O., in para 7.1 of the assessment order has made the following observation:-

“7.1 During the course of post search enquiry and verification, it is seen that the assessee has taken unsecured loans from various parties, which are Kolkata based listed shell I paper companies. During the course of investigation prior to search, the financial profiling of the above shell/ paper companies and their analysis were done and other information was gathered from various sources. It is seen from the details that these loan creditor companies are appearing in the list of business associates belonging to various entry providers who are involved in providing various types of accommodation entries, of various means, through their several entities in Mumbai/ Kolkata.”

The list of the companies, the extract of the financials and remarks have been mentioned in para 7.5 and 7.6 of the order. The report of the Inspector dated 08.04.2019 is mentioned in para 7.9 where the Inspector has reported that these companies are not found in existence at the available address at the time of his visit.

6.3 From the above observation of the A.O., it appears that his inference of these ten companies being paper/ shell companies primarily lie on three aspects, ie, these are Kolkata based companies sharing same addresses having poor financials and found non existent at the time of visit of the Inspector in April, 2019. In my considered view, these are aspects which raise doubts about the conduct of these leader companies but to establish the loan transactions as bogus (the transactions were done through banking channel, repaid later on, paid interest and TDS being deducted on it as confirmed by Shri Rajesh Kumar Agarwal, Director of the appellant company in the statement recorded on 11.04.2019), the onus is on the Assessing Officer to establish it with evidences or find lacuna or discrepancies in the evidences submitted before him, by the appellant. Nothing to that effect has been brought on record by the A.O. in this regard.

6.4 It is further observed from para 7.11 of the assessment order that the A.O. had issued notices u/s 133(6) to the loan lenders calling for information viz., details of loans given to the assessee, notes on business activity, copies of ITRS, financial capacity to raise the loan, source of funds, rate of interest, etc. It is clearly mentioned in the order that the notices have been delivered to the addresses (loan creditors). It is further mentioned in para 7.12 that:-

**”7.12 In response to the said notices, replies have been received from the parties. After verification of credentials of these replies, it is noticed that these companies are shell companies”*

6.5 From the above comment of the A.O., it is observed that the A.O. has concluded upon verification of the replies of the loan creditors that these companies are shell companies. However, the A.O. has not elaborated the reasons for arriving at this conclusion. It is not explained as to how he has reached to this conclusion. What details in the financials of the loan creditors prompted him to arrive at this conclusion, is not elaborated in the order.

6.6 It is also observed from the submission of the Id. AR that in order to prove identity of the lenders copy of PAN cards, IT acknowledgement, ROC

master data, etc. were submitted before the A.O. In order to prove genuineness of loan transactions, confirmation of loan account with address, PAN, cheque numbers, bank details and appellant's bank details are submitted. In order to prove credit worthiness of the lenders, bank statement of the lenders disclosing source of the fund and balance sheet of the lenders are filed. No adverse comment has been given by the A.O. with respect to these documentary evidences submitted during the assessment proceedings

6.7 In the written submission, the appellant has also highlighted the following facts:-

6.7.1 that the AO has failed to appreciate that the assessee company itself has registered office address at Kolkata situated at 02nd Floor, Room No. 21, 1558, Rabindra Sarani Burra Bazar, Kolkata 700007. Merely an assumption that loans have Kolkata nexus cannot be a reason for such additions as assessee company also is Kolkata based company and has taken genuine loans from such business acquaintances in Kolkata for business purposes (acquisition of Factory premises)

6.7.2 that the directors Mr. Rajesh Agarwal and Mr. Mahendra Agarwal belong to Kolkata only and their brothers Mr. Ashok and Naresh Agarwal are staying in Kolkata for last 45 decades and carrying out Italian marble business (same line of business which assessee company also carries out). Hence assessee is having a close business relation and exclusive approach in Kolkata business circle wherein temporary business finance can be arranged and raised.

6.7.3 that the AO failed to appreciate that such funds were taken to acquire/invest in factory premises at Silvassa from M/s. Mour Marble and such can be reflected from Bank statements and balance sheet of assessee company as such factory premises is reflected under Fixed Assets.

6.7.4 that the bank statements of the lenders disclose the source of their funds made through banking channel. The appellant had furnished the relevant bank statements of the lenders corresponding to the disputed loans and is not required to prove the source of the lenders funds. In any case, as verifiable from the bank statement the loans are not sourced out of cash deposits. The A.O. had not brought any contrary material on record even to doubt the intermingling of funds.

6.8 In my considered view, looking to the overall facts and circumstances of the issue involved and evidences brought on record by the AO/appellant, the addition of Rs. 8,82,00,000/- as unexplained cash credit u/s 68 of the IT. Act is unjustified and unsustainable. There are ample judicial authorities supporting the above conclusion, some of which are highlighted by the appellant in his written submission. Hence the impugned addition is directed to be deleted. Thus, grounds of appeal no. 1, 2, 3 and 4 are allowed.”

4. During the course of appellate proceeding before us the ld. D.R referred the assessment order and submitted that assessee has failed to

establish that the loan creditors were genuine. The ld. D.R placed reliance on the order of assessing officer.

On the other hand, the ld. Counsel vehemently submitted that assessee has discharged the onus to prove the identity, genuineness of the loan and creditworthiness of the loan lenders. The assessee company had filed various documents to prove the genuineness and creditworthiness of the lender company at the time of assessment proceedings, however, the assessing officer has failed to prove contrary and the addition had been made purely on the basis of assumption and surmises. The ld. Counsel further contended that assessing officer has carried out independent inquiry by issuing notices u/s 133(6) of the Act which has been responded by the lenders along with required submission. He also submitted that all documentary evidences to establish the identity and creditworthiness and genuineness of such transactions have been submitted vide letter dated 18.12.2022, 23.12.2022 and 26.02.2021 and 05.03.2021. However, the AO has not disproved the genuineness of the said evidences and made additions on assumption basis. It is also submitted that assessee had also furnished the relevant bank statement of the lenders corresponding to the loan however the AO has not brought any contrary material on record but doubt intermingling of the fund. The ld. Counsel has also referred the various judicial pronouncements which were also submitted before the ld. CIT(A).

5. Heard both the sides and perused the material on record. Without reiterating the facts as discussed supra in this order the ld. CIT(A) after considering the facts and material on record stated that AO has not doubted the loan received from the lenders but doubted the bonafide or genuineness of the lenders. The ld. CIT(A) further stated that loans transactions were done through banking channel, repaid later on, paid interest and TDS was deducted which has been also confirmed by Shri

Rajesh Kumar Agarwal director of the assessee company. The Id. CIT(A) has referred the finding of the assessing officer given at para 7.11 of the assessment order wherein the AO stated that notice u/s 133(6) were issued to the loan lenders calling for information i.e detail of loan given to assessee, notes on business activities, copies of ITR, financial capacity to raise loan, source of fund and rate of interest etc. The assessing officer has mentioned in the order that the notices have been delivered to the addresses of loan creditors. Further, in order to prove the identity of the lenders copy of PAN card, IT acknowledgment, ROC master data were submitted before the AO. In order to prove the genuineness of the loan transaction confirmation of the loan account with addresses, PAN, cheque no. bank detail of lenders and assessee's bank detail were submitted. In order to prove the creditworthiness of the lender, bank statement of the lenders disclosing sources of the funds and balance sheet of the lenders were filed. The Id. CIT(A) also stated that no adverse comments has been given by the AO with respect to these documentaries evidences submitted during the assessment proceedings. The Id. CIT(A) in his finding also discussed that AO has not brought any contrary material on record but just doubted the genuineness of the loans. During the course of assessment as required by the assessing officer the following information and copies of documents pertaining to the loan creditors were submitted: -

- (i) copies of PANs of lenders
- (ii) copies of ROC companies, master data
- (iii) copies of ITR acknowledgments
- (iv) copies of confirmation of account in the books of lenders and ledger account of the lender in the books of account of the assessee;
- (v) copies of the assessee's bank statement showing receipt of loan from lenders;

- (vi) copies of lender bank statement showing payment to the assessee;
- (vii) copies of balance sheet and accounts of the lenders for 30.03.2018;
- (viii) copies of submission made by lenders in response to notice issued u/s 133(6) of the Act.

The notices u/s 133(6) were served to all loan lenders and reply were furnished on assessment record on income tax portal. The assessee has submitted before the Id. CIT(A) that all documentary evidences to establish the identity creditworthiness and genuineness of loan transaction in respect of all parties have been duly submitted vide letter dated 18.12.2020, 23.12.2020, 26.02.2021 and 05.03.2021. However, the AO has not brought any material on record to disprove the supporting documentary evidences and concluded on general assumption that such loan transactions were ingenuine. During the course of appellate proceedings before the Id. CIT(A) the assessee made detailed submission and extracts of the same is reproduced as under:-

Ground No.1-2. Addition u/s.68 of Unsecured loans accepted during the year of Rs8,82,00,000/-

Section 68 of the Act reads as under

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

It is settled position that to prove the genuineness of the transaction, the burden lies on

the assessee and to discharge the onus, the assessee must prove the following

- 1. Identity of the Creditor*
- II Capacity of the Creditor*
- III. Genuineness of the Transaction*

Once the above conditions are proved prima facie by the assessee and the assessee has adduced evidence to establish prima facie the aforesaid, the onus shifts on the department. Three conditions enshrined in section 68 are clearly

proved by the documents submitted during the assessment proceedings as under:

1.1 The appellant, during course of assessment, had filed the exhaustive documents to prove the identity, genuineness and credit worthiness of the loan transactions, stated as under:

CIT (A148/17

To prove the identity of the Lenders

a) Copy of PAN Card

b) IT acknowledgement receipts of PAN and add of the dec

c) Copy of the ROC Master data indicating the Active of the Company

AO details of the loan lenders duplying the jurisdiction where such lenders are assessed To prove the Genuineness of the loan transactions

e) Confirmation of loan account with their address PAN, cheque numbers, bank details

1 Appellant's bank statement evidencing the receipt of loans through banking channel To prove the Credit worthiness of the Lenders

g) Bank statement of the Lenders disclosing the source of their funds (Not sourced out of cash deposits

h) Balance sheet of the Lenders and reflection of the loan recoverable from the appellant

1.2 The appellant had thor discharged the onus to prove the identity genuineness of the loans and credit worthiness of the loan lenders The appellant company had duly disclosed the said loan transactions and the books of the Lenders is duly audited alongwith various documents were submitted to prove the genuineness as well as the credit worthiness of the lenders company at the time of assessment proceedings. However, Ld AO severely failed to discharge the heavy onus casted upon him to prove contrary the facts in absence of which the additions us.68 is unjustified

1.3 The entire addition had been made purely on the basis of assumption and surmise. The Ld. AO erred in ignoring the above stated documentary evidences and made the additions on report of investigation wing. Further the Ld AO also carried an independent enquiry to adjudge the loan transactions by issuing notice us 133(6) of the Act to which response have been received and complied from all lenders

1.4 The Ld. AO, as per para of the assessment order, stated that purely based on the report of investigation wing which linked such lenders as have Kolkata nexus and in absence of any reporting documentary evidences to prove satisfactorily, the identity and creditworthiness and genuineness of such transactions, such loan transactions are bogus and hence sec 68 is applicable.

The appellant respectfully submits that the above stated findings of Ld. AO is erroneous and is not relevant for the reasons that: a) The notices u/s. 133(6)

were served to all loan lenders and reply were furnished on assessment record on income tax portal

b) All documentary evidences to establish the identity and creditworthiness and genuineness of such transactions in respect of all parties have been duly submitted vide letter dated 18th Dec 2020, 23rd December 2020, 26th Feb 2021 and 05th March 2021

c) The Ld. AO has not taken cognizance of such documents in its assessment order which shows that no examination of such documents were made and purely considering it a Kolkata nexus and wild assumptions, concluded that such loan transactions are ingenuine and bogus

d) The Ld. AO failed to appreciate that assessee company itself has registered office address at Kolkata situated at 02nd Floor, Room No. 21, 155B, Rabindra Sarani Burra Bazar, Kolkata 700007. Merely an assumption that loans have Kolkata nexus cannot be a reason for such additions as assessee company also is Kolkata based company and has taken genuine loans from such business acquaintances in Kolkata for business purposes (acquisition of Factory premises)

e) The Directors Rajesh Agarwal and Mahendra Agarwal belong to Kolkata only and their brothers Mr. Ashok and Naresh Agarwal are staying in Kolkata for last 4-5 decades and carrying out Italian marble business (same line of business which assessee company also carries out). Hence assessee is having a close business relation and exclusive approach in Kolkata business circle wherein temporary business finance can be arranged and raised

f) The Ld AO failed to appreciate that such funds were taken to acquire/invest in factory premises at Silvassa from M/s Mour Marble and such can be reflected from Bank statements and balance sheet of assessee company as such factory premises is reflected under Fixed Assets

g) The bank statements of the lenders (filed on assessment record) discloses the source of their funds made through banking channel. In any case, the appellant is not required to explain the source of source of funds. The appellant had furnished the relevant bank statements of the lenders corresponding to the disputed loans and is not required to prove the source of the lenders funds. In any case, as verifiable from the bank statement the loans are not sourced out of cash deposits. The Ld AO had not brought any contrary material on record even to doubt the intermingling of funds.

h) The Ld. AO's allegation that the loan lender's worth is nominal is incorrect since their own capital of each lenders exceeds the loans given to the appellant; stated as under: is context, the appellant relies on understated direct judicial decisions:

a) M/S NISARG LIFE SPACE LLP VERSUS ITO 28 (2) (3) MUMBALITA

No. 629/Mum/2020 June 11, 20211

3.1. We have heard the rival submissions and perused the materials available on record We find that the assessee is engaged in the business of builders and developers. The return of income for the Asst Year 2013-14 was filed by the

assessee LLP on 24.9.2013 declaring total loss of 13,36,999/- This return was duly processed u/s 143(1) of the Act accepting the same. Thereafter, the case was selected for scrutiny by issuance of notice u/s 143(2) of the Act on 3.9.2014. Various details and documents that were called for by the Ld AO were duly submitted by the assessee during the course of assessment proceedings. The Ld AO observed that on perusal of tax audit report for the year under consideration, it was seen that assessee had taken unsecured loans of 4 crores from 4 parties. A search and seizure action u 132 of the Act was conducted by the investigation wing of Income tax department on Shri Praveen Kumar Jain and the concerns managed by him on 1.10.2013, wherein it was unearthed that they were found to be indulged in the business of providing accommodation entries of bogus sales/purchases/ loans and advances to many parties. The Id AD alleged that the assessee had taken accommodation entries of bogus loans from the concerns used by Shri Praveen Kumar Jain group to run its business

3.2. We find Page that the assessee had received unsecured loans during the year under consideration from the following parties for the purpose of its business, apart from other parties together with the details of interest paid to these parties are as under:

<i>Name of the Loan Creditor</i>	<i>Loan Amount</i>	<i>Interest Amount</i>
<i>Sumukh Commercial Pvt. Ltd.</i>	<i>50,00,000</i>	<i>4,81,667</i>
<i>Olive Overseny Pvt. Ltd.</i>	<i>1,00,00,000</i>	<i>10,21,667</i>
<i>Josh Trading Co Pvt. Ltd.</i>	<i>1,00,00,000</i>	<i>9,01,667</i>
<i>Casper Enterprise Pvt Ltd.</i>	<i>50,00,000</i>	<i>5,45,000</i>
<i>Nakshatra Business Pvt. Ltd.</i>	<i>1,00,00,000</i>	<i>10,20,000</i>

3.3. We find that the id AO had observed that the aforesaid concerns were operated by Shri Praveen Kumar Jain and belong to his group. During the course of search action u/s 132(1) of the Act on 1.10.2013, Shri Praveen Kumar Jain had given statement on oath that his concerns are engaged in the business of providing accommodation entries and that his concerns do not indulge in real business activities. Accordingly, the Id AO issued a show course notice to the assessee as to why the aforesaid loans should not be treated as unexplained cash credit u/s 68 of the Act and consequential disallowance of interest thereon should not be made,

3.4. We find that the assessee had responded to the hd AO by stating that a general confession mode by a third party that all his transactions are bonus or that he had indulged only in bogus transactions cannot be the basis for addition in the hands of the assessee. It was specifically pointed out that in none of the statements given by Shri Praveen Kumar Jain or his accomplices, the name of the assessee had been mentioned. It was pleaded that the AO had not found any material pointing that the transactions of the assessee with the aforementioned loan parties are not genuine. It was also pointed out to the id AO that Shri Praveen Kumar Jain had retracted his statement subsequently on 15.5.2014 by way of an affidavit filed before the income tax department. The assessee filed a copy of the said affidavit before the lid AO Accordingly, it was pleaded that the sole basis for proposal for addition u/s 68 of the Act is only statement of Shri Praveen Kumar Jain, which stool subsequently retracted by him. We find that the assessee from its part, had duly discharged its onus, by

furnishing the following documents before the Id AO for all the 5 loan creditors:
a) Confirmation letter from the companies (loan creditors) duly confirming the amount of loan given by them

b) Master data of the companies (loan creditors) extracted from the website of the registrar of companies (ROC) showing that the compliance have been made by them with ROC and that the company is fully active

c) Copy of the financial statements of the companies (loan creditors) for the financial year 2012-13,

d) Copy of ITR acknowledgement of the companies (loan creditors) for the Asst Year 2013-14. e) Extracts of the bank statements of the companies (loan creditors) showing the amounts paid by them to the assessee.

1) Declaration given by the companies (loan creditors) duly confirming the loan transactions

g) Copy of the letter filed by the said companies (loan creditors).

3.5. It was pleaded that based on the aforesaid documents, the loans taken by the assessee from the aforesaid 5 parties are genuine loans taken for commercial expediency for business purposes and not accommodation entries. The assessee also sought for cross-examination of Shri Praveen Kumar Jain before the Id. AO, which was not provided by the Id AO.

3.6. We find that the Id AO completely ignored the aforesaid contentions of the assessee and the documentary evidences filed hereinabove and concluded that the assessee had not been able to satisfactorily explain the nature and source and creditworthiness of the unsecured loan credits totalling to 4 crores purported to have been taken from those 5 parties and accordingly treated the same as unexplained cash credit u/s 68 of the Act. Since the loans were added as income, the interest paid on such loans amounting to 39,70,001/- was sought to be disallowed by the Id AO in the assessment. This action of the Id AO was upheld by the Id CITA

3.7. From the perusal of the assessment order, we find that the Id AO had given more emphasis in the entire assessment order to discuss the modus operandi adopted by Shri Praveen Kumar Jain and his group which had been unearthed during the search action carried out on him on 1.10.2013, We find that the assessee had submitted before the Id AO that nowhere in the statements of Shri Praveen Kumar Jain or his accomplices, the name of the assessee LLP had been mentioned. This fact has not been controverted by the id DR before us. Moreover, the assessee had also sought for cross-examination of Shri Praveen Kumar Jain, which was never afforded to the assessee either by the Id AO or by the Id CITA. Hence we hold that the entire addition made by the id AO and confirmed by the id CITA, merely based on the statement of Shri Praveen Kumar Jain (third party) (which also stood subsequently retracted by him by way of an independent affidavit), deserve to be deleted on this count itself. No other corroborative evidence was brought on record by the revenue to even remotely suggest that the loan transactions carried out by the assessee with the aforesaid 5 loan creditors to be ingenuine.

3.7.1. It is pertinent to note that the assessee had duly discharged its onus by submitting all the relevant details (as listed supra) that are available with it before the ld AO. All these documents clearly prove the identity of the loan creditors, creditworthiness of the loan creditors and genuineness of transactions. We find that the ld AO had not even bothered to issue notice u/s 133(6) of the Act to the loan creditors to verify the veracity of the documents submitted by the assessee. In other words, the ld AO simply remained silent after receiving all the documentary evidences from the assessee. It is settled law that when documentary evidences are submitted by the assessee, the ld AO is duty bound to examine its veracity by making further enquiries in the manner known to law. Without testing such documents by making proper enquiries, no adverse inference could be drawn by the ld AO on those documents. We hold that once all the relevant documents are submitted by the assessee regarding the loan creditors together with the latest addresses available with it supported by confirmations from them, the onus cast on the assessee u/s 68 of the Act stands duly discharged and no addition could be made in its hands. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Orchid Industries P Ltd reported in 397 ITR 136 (Bom). We further hold that no addition could be made on mere presumption that the assessee routed its own cash in the form of unsecured loans without any concrete evidence to this effect. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Aquatic Remedies P ltd in ITA No. 83 of 2016 affirming the tribunal decision in ITA No 6356/Mum/2014. We further find that all the loans were duly repaid by the assessee either in the same assessment year or in the immediately succeeding assessment year with interest after subjecting the interest to due deduction of tax at source. These facts are not controverted by the revenue before us. Hence the addition made u/s 68 of the Act deserve to be deleted on merits also. Correspondingly, the interest paid on such loans would become allowable expenditure u/s 36(1XW) of the Act as there is no dispute that the monies received in the form of loans had been utilised by the assessee LLP for its business purposes

3.8. Moreover, we also find that all the aforesaid loan parties had been accepted to be genuine and additions made u/s 68 of the Act had been directed to be deleted by this tribunal in the following cases: a) DCIT vs D.N.H.Spinners Pvt Ltd in ITA Nos. 6315 & 6316/M/2017 for Asst Years 2013-14 & 2014-15 dated 8.8.2019 (Mumbai Tribunal) b) ACTT vs Hetali Enterprises in ITA No. 421/Mum/2018 for Asst Year 2013-14 dated 9.4.2021 (Mumbai Tribunal)

3.9 In view of aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we direct the ld AO to treat the loans received from aforesaid 5 parties as genuine and delete the addition made u/s 68 of the Act. Correspondingly, the interest paid on such loans also should be allowed as deduction. Accordingly, the grounds 2 to 4 raised by the assessee in this regard are allowed 4, in the result, the appeal of the assessee is partly allowed."

b) Bharti Lifestyle Pvt Ltd vs ITO 92X1) (ITAT-Mum) dated 29/00/2022-ITA No. 2416- 2420/Mum/2021

15. On the merits of the case this issue is covered by the decision of Coordinate bench

M/S NISARG LIFE SPACE LLP VERSUS ITO 28 (2) (3) MUMBAI (TTA No. 620/Mum/2020 June 11, 2021 where the some party on identical facts and circumstances was considered and addition was deleted"

e) ACII vs. M/s. H.K. Pujara Builders in ITA.No. 930/Mum/2017 dated 31.10.2018 held as under

"6. We have heard the rival submissions, perused the orders of the authorities below. Assessing Officer made addition by placing reliance merely on the statements of Shri Praveen Kumar Jain Group and Shri Bhanwarlal Jain Group which were recorded us. 132(4) of the Act. No independent enquiry was carried out by the Assessing Officer, he has not brought any corroborative evidence to substantiate that the transactions are non-genuine. Assessee provided various evidences to establish that the transactions are genuine, creditors are identifiable and credit worthiness is proved. Following information is furnished by the

(1) Confirmation of Ale, by the parties

(2) Income tax returns of the parties for 4.Y 2012-13, (3) Bank Statements of the parties showing the loan transactions. ITA NO.930/MUM/2017 (4.Y: 2007-08) M/S I.K. Pujara Builders

7. By providing all this information to the Assessing Officer the assessee has discharged the initial onus of proving genuineness of the transactions w/s, 68 of the Act. Even the assessee requested Assessing Officer for issue of notices w/s 133(6) of the Act to the lenders to find out the genuineness of the transactions with the assessee. Therefore, once the initial onus is discharged by the assessee the burden shifts to the Revenue to disprove the claim of the assessee. We notice that all the loans were taken through banking channels and the repayments for the same was also made through banking channels. The Assessing Officer ignored the documentary evidences submitted by the assessee and has exclusively relied on statements of third party in making the addition In spite of request by the assessee the Assessing Officer did not provide any cross- examination of the parties who have made the submissions. All these aspects have been considered by the LA CITA) and deleted the addition observing as under

5.9. From the assessment order, transpires that the 40 has solely relied upon the statement of Mr. Pravin Kumar Jain and did not carry out any worthwhile independent inquiry in the matter. He has totally ignored the documentary evidences submitted by the appellant. The 40 in the assessment order has admitted existence of these details. The 40 has not pointed out any defect in the above mentioned documentary evidences submitted during assessment proceedings. Without pointing and any lacuna in the evidences submitted by the appellant, the sources and the genuineness of transaction cannot be doubted Once evidences related to a transaction is submitted before the 4.0, the onus shifts on him to prove these as non-genuine. The 4.0. has not discharged the onus casted on him. In my opinion, merely based on the statement of a third person without any corroborative evidence will not make the loan transactions, in question, as accommodation entries. As such, in the absence of any contrary evidence placed on record, the transaction cannot be treated as accommodation entries

ITA NO 950/MUM/2017 (AY 2007-08) M/s K. Pujara Builders 3.10 As for as the question of validity of the transaction done through JPK Trading (0) Pvt 11d and New Planet Trading Co Pvt. Ltd are concerned, even if some of the transactions entered into by Shri Pravin Kumar Jain are found to be not genuine. it does not lead to the conclusion that all the transactions were non genuine including the transactions related to the appellant. There is no evidence brought in the assessment order to prove the above conclusion, by the AO. The outcome of investigation carried out in the case of Mr.Pravin Kumar Jain the conclusions drawn therein cannot be applied ipso facto to all other cases. Simply relying on the report of the DGFT(nv), Mumbai and statement the AO cannot conclude that all transactions are accommodation entries. 5.11. The case of the appellant is covered by the decision of ITAT, I Bench, Mumbai, in the case of Satish N. Doshi HUF V. ITO, Ward 21(2)(4), Mumbai in ITA No-2329/Mum/2009 and the decision of ITAT, E Bench, Mumbai in the case of Shaf Broadcast Pvt. Ltd Vs ACIT, Cir- 9(3), Mumbai in ITA No.1819/Mum/2012. Both the cases relate to re opening of assessment on the basis of statements of Mr. Mukesh Choksi and Mr. LC. Choksi and associated brokerage companies The Hon'ble ILAT on the analysis of the findings made in the assessment orders has reached to the conclusion that the re-opening itself is bad in law and quashed the orders accordingly. The ratio of these judgments is applicable to the facts of the instant case. This is confirmed by the Delhi Bench of the Income Tax Appellate Tribunal in the case of DCTT v. Nipun Builders & Developers P Lid (ITA No 557/DE1/2010) wherein the Tribunal dismissed the Revenue appeal by holding that the Assessing Officer has primarily relied upon the Report of the Investigation wing which cannot conclusively prove that assessee's own money was invested in the form of share application money

5.12 Further, in the recent judgment of Shri Jafferli K Rattsonsey V. DCIT reported in 5068/Mum/209, the Mumbai Bench of the Income Tax Appellate Tribunal has also held that the mere statement of a person cannot be a deciding factor for rejecting the genuineness of the purchase of shares by the assessee specially when all other supporting evidences filed by the assessee were neither proved to be false or untrue. The Hon'ble ITAT Mumbai in the case of ITO vs Anand Shelters Pvt Ltd (2012) 20 Taxmann.com 153 has enumerated certain principles which would be extremely useful in understanding the issue in hand. It has been stated in the said judgment that over the years, law regarding cash credits have evolved and has taken a definite shape. A few aspects of law w/ 1.68 can be enumerated

1. Sec. 68 can be invoked when there is a credit of amounts in the books maintained by the assessee, such credit is a sum of money during the previous year and either the assessee offers no explanation about the nature and source of much credits or the explanation by the assessee in the opinion of the AO is not satisfactory.
2. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be formed objectively with reference to the material on record.
3. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a canal manner.
4. The onus of proof is not static. The initial burden lies on the assessee to establish the identity and the credit worthiness of the creditor as well as the genuineness of Transaction.

5. The identity of creditors can be established by either furnishing their PANS or assessment orders. The genuineness of the transaction can be established by ITA NO.930/MUM/2017 (AY: 2007-08) M/s. HK. Pujara Builders proved if it was shown that the money was received by Account payee Cheque Creditworthiness of the lender can be established by attending circumstances.

5.13. During the assessment proceedings, the appellant has submitted Loan Confirmations, Copy of Acknowledgement and Copies of the Bank Statements of these two parties. If the above referred principles are applied to the facts of the case under consideration, it can be seen that the identity of the creditors has been established as they are having PAN and they are regularly filing return of income. The genuineness of the transaction is established from the fact that both the acceptance and repayment of loan has been through banking channels. The creditworthiness of the lenders can be established from the statements. In the assessment order, the A.O did not at all discuss the merit of submission made by the appellant and casually brushed aside the details filed by the appellant. Further, the appellant has stated that he had furnished all the relevant details during the course of the assessment proceedings and accordingly had duly discharged its onus by furnishing the identity and address of the parties. Further, the source of receipt through banking channels to substantiate the genuineness of the credits reflected in its books of Account.

5.14. Further, it may be pointed out that section 68 under which the addition has been made by the Assessing Officer reads as under: "68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."

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

3.16. After considering the totality of facts, the rival submissions, the applicable law and on the basis of discussions mentioned above, I have come to the conclusion that nature and source of credit in the books of account of appellant stands explained. Consequently, addition w/s. 68 cannot be sustained. Therefore, AO is directed to delete the addition of Rs. 1,27,50,000/-. This ground of appeal is allowed"

8. On a careful reading of the order of the LACITA), we do not find any infirmity in the order passed in deleting the addition made u/s. 68 of the Act and the consequential interest on the credits. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue

d) Jurisdictional Hon'ble ITAT, Mumbai for an identical case *Le. Arceli Realty Limited Vs. The Income Tax Officer 1511) (1), Mumbai pronounced on 21.04.2017 ITA 6492/Mum/2016-17, the summary of the case is outlined as unders.*

A.O. merely relied upon the information provided by the office of DGIT(Inv.), Mumbai and did not made any independent enquiry. The papers filed by the assessee do demonstrate the identity, credit worthiness, genuineness, Source of Source of the transaction. AO did not provide Opportunity to Cross Examine the concerned person and also the department has not provided authenticity of the information to the person against whom such information is used. The addition is made merely on surmises and conjectures: The statement recorded at the back of the Respondent cannot be utilized ignoring other venfiable evidences. The Id. Assessing officer has made the addition of Rs. 20,00,000/- disregarding the evidences on record and without discharging her onus and without establishing anything contrary to the agreement of the Respondent and without verifying the Bank Account, existence of Investor and without making fruitful investigation, thus the demand was directed to be deleted."

e) Jurisdictional Hon'ble ITAT, Mumbai for an identical case *Le, M/s Shree Laxmi Estate PM. Ltd. V/s. Income Tax Officer 15(33) On 29.12.2017 IITA-5954/Mum/2016, the summary of the case is outlined as under*

"We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The AO made addition towards unsecured loans received from Josh Trading Company Pvt. Ltd and Viraj Mercantile Pvt. Ltd on the basis of information received from Investigation Wing which revealed that the assessee is beneficiary of bogus accommodation entries provided by Shri Praveen kumar Jain through his bogus companies. The AO has brought out facts in the light of statement of Shri Pravin kumar Jain deposed before the Investigation Wing to make addition Except this there is no contrary evidence in the possession of the AO to disprove the loan transaction from Josh Trading Company Pvt. Ltd. and Viraj Mercantile Pvt. Ltd. On the other hand, the assessee has furnished various details including confirmation letters from the parties, their bank statements along with their financial statements to prove identity, genuineness of transactions and creditworthiness of the parties. The assessee also furnished evidences to prove that the parties have responded to the notices issued u/s 133(6) by AQ by filing various details"

It is well settled legal position that the assessee has to discharge 3 main ingredients in order to discharge the initial burden of proof, Le. the identity of the creditor, the genuineness of transaction and creditworthiness of the creditors. Once the assessee discharges initial burden placed upon him, then the burden to disprove the said claim shifts upon the AO

"Coming to the case laws relied upon the assessee, the assessee has relied upon the decision of Hon'ble Bombay High Court in the case of CII vs Gagandeep Infrastructure Pvt. Ltd (2017) 394 ITR680 (Bom). We have gone through the case laws relied upon by the assessee in the light of facts of the present case and find that the Hon'ble High Court categorically observed that the three essential tests while confirming the pre proviso Section 68 of the Act laid down by the Courts namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the

Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders ie. they are bogus The Apex Court in Lovely Exports (P) Ltd. (supra) in the context to the pre amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit"

f) DM/s. KP.Manish Global Ingredients 2451/CHNY/2017 (ITAT-Chennai) Pvt Ltd.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The Assessing Officer has made additions towards unsecured loan received from three firms belongs to assessee group on the ground that said loan transactions are nothing but accommodation entries of assessee own unaccounted income in form of unsecured loans. Therefore, in order to ascertain whether transactions of unsecured loans received from three companies are genuine transactions which pass test of ingredients provided u/s.68 of the Act or not, one has to understand provisions of section 68 of the Act. The provisions of section 68 of the Act deals with cases where any sum found credited in books of account of the assessee for any previous year for which the assessee fails to establish identity, genuineness of transactions and creditworthiness of parties, then said sum found in the books of account of the assessee shall be treated as income of that year. Therefore, to come out of shadow of provisions of section 68 of the Act, one has to prove identity of the creditor, genuineness of transaction and creditworthiness of parties. Once initial burden of proving all three ingredients are discharged, then burden shifts to the Revenue to prove otherwise that the said unsecured loans are unaccounted income of the assessee.

9. In this legal background, if you examine facts of this case, we find that the assessee has received a sum of Rs.1,75,00,000/ from M/s. Mehts Motors & General Finance Company, a proprietary concern of Mr. Umed Mohta (HUF) The assessee has filed various details including bank statement and financial statement of creditor From the details filed by the assessee, we find that a sum of Rs. 1,75,00,000/- was received from Umed Investments & Marketing Co Pvt. Ltd on 03.11.2008 by cheque No.932791. The said sum was received from M/s. Kowarlal & Sons by Umed Investments & Marketing Co Pvt. Ltd Further, the said sum has been finally paid to the assessee by Umed Investments & Marketing Co Pvt Ltd. All these transactions are routed through proper banking channel The assessee has also proved source of income for said sum of Rs. 1,75,00,000/, which is out of commission received from M/s. Kawarlal & Sons by Umed Investments & Marketing Co. Pvt. Ltd. Therefore, from the above details, it is very clear that the assessee has proved identity, genuineness of transaction and creditworthiness of loan creditors. Coming to unsecured loan received from M/s. C.K. Exports of Rs. 50,00,000/-, the assessee has explained that a sum of Rs.50.00 lakhs was received from M/s. Vim Mines & Minerals vide cheque No.336605. Further, said sum was ultimately received from Kesaria Marketing Pvt.Ltd. out of commission income received from Kawarlal & Sons. All these evidences are part of paper book filed by the assessee. Therefore, it is incorrect on the part of the Assessing Officer to allege that unsecured loans received from M/s. CK Exports was not explained with necessary evidences

Similarly, unsecured loan received from M/s. Swastic Trading Corporation amounting to Rs.85,00,000/- was received out of commission income from Kawarlal & Sons and routed through M/s. Swastic Trading Corporation, a proprietary concern of Monica Mehta, daughter of Mr. Umed Mohta. The assessee has filed necessary evidences including financial statement and bank statement of M/s Swastic Trading Corporation. From the details filed by the assessee, we find that transaction was routed through Kawarlal & Sons out of commission income. Further, the assessee has also filed necessary evidences to prove that Kawarlal & Sons has received commission income from various group companies, which is part of findings recorded by the Income Tax Settlement Commission in their order dated 31.05.2016 ws.245D(4) of the Act. Therefore, we are of the considered view that the assessee has discharged its burden cast upon u/s 68 of the Income Tax Act, 1961 by filing various details including financial statement of creditors, their bank statements and confirmation letters to prove transactions. Once an assessee discharged its burden, then burden shifts to Assessing Officer to prove otherwise that said transaction was nothing but undisclosed income of the assessee. In this case, the Assessing Officer has not brought on record any evidence to prove that said sum was undisclosed income of the assessee. Therefore, we are of the considered view that the Assessing Officer was completely erred in making additions towards unsecured loans received from three companies of assessee group. We further noted that the Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports (2008) 216 CTR 198 has clearly held that once initial burden of identity was proved, then the Assessing Officer is at liberty to proceed on the creditors in accordance with law, but said sum cannot be treated as unexplained credit of the assessee. A similar view has been expressed by the Hon'ble Supreme Court in the case of M/s Steller Investments Ltd 115 taxmann.com 99(SC).

10. In so far as case law rolled on by the learned CITA in the case of M/s. Kachwala Gems Vs, JCTT (supra), we find that no doubt more payment by cheque is not sufficient enough to prove genuineness of transactions, but what is relevant is whether transactions are passed the test of three ingredients provided u/s 68 of the Act in this case, it is not only transactions are routed through proper banking channels, but also other ingredients including identity and creditworthiness of parties has been satisfactorily explained. Therefore, we are of the considered view that the case law relied upon by the learned CIT(A) is not applicable to facts of present case. 11. In this view of the matter and considering facts and circumstances of the case and also by following judicial precedents discussed heremabov, we are of the considered view that assasson has discharged burden cast upon u/s 68 of the Act to prove unsecured loans received from M/s.C.K.Exports, M/s Mehta Motors & General Finance Company and M/s. Swastic Trading Corporation. The Assessing Officer as well as learned CIT(A) without appreciating the evidences filed by assessee has simply made additions on suspicious ground that said sum was undisclosed income of the assessee. Hence, we set aside the order of learned CIT(A) and direct the Assessing Officer to delete additions made towards unsecured loans received from three entities. 12 In the result, appeal filed by the assessee is allowed. 1) CIT vs. Tania Investments (P) Ltd (2010) 322 ITR 394 (Bom HC)

Held that tribunal was right in deleting the addition made by the AO towards unexplained cash credits as the Books of Accounts itself indicate the capacity to advance loan, the parties are identified and there is no further need to prove

the creditworthiness of the creditors” h) *Yash Developers v. DCI (2018) 159 TR(A) 415(Mum-Trib)*

"Transactions had duly been proved by assessee by furnishing various evidences I copy of loan Confirmation, copy of bank statement, copy of return of income filed by these parties, copy of audited financial statements of the aforesaid 12 parties in view of the availability of the Pan, copy of Acknowledgement of returns, identity of the parties was established. Further the assessee has also filed confirmation letters in this regard. Therefore the creditworthiness of these parties was also placed upon under section 60. Therefore, addition made under section 68 was not justified

1) *Aravali Trading Co. vs ITO (2008) 220 CTB(R) 622*

"It has been held that once the existence of the creditors is proved and such persons own the credits which are found in the books of assessee, the assessee's onus stands discharged and the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him and therefore, addition under section 68 cannot be sustained in the absence of anything to establish that the sources of the creditors deposits flew from the assessee toel mer, following legal position/ judicial rulings on the subject under consideration must Onsidered before arriving at any conclusion

j) Similarly as held in the case of CII v. Metachem Industries (2000) 245 TTR 150 (MP) where a credit is shown to have come from a person other than the assessee there is no further responsibility of the assessee to show that it has come from accounted source of the lender, as long as the fact that he had made the advance and was capable of making the advance are established.

k) It was held by the Hon'ble Madras High Court in Hastimal (5) v. CIT (1963) 49 ITR 273 that after a lapse of decade, the assessee should not be placed upon the rack and called upon to explain not merely the origin and source of a capital contribution but also the origin of origin and source of the source.

1) Recently in a similar identical case that of the Assessee, The honorable ITAT Delhi in the case of ITO, Ward 15 (2) vs. M/s. Rakam Money Matters P. Ltd. has held that AO has to bring on record any valid material or evidence to discredit the evidences and the explanation given by the assessee company and cannot rely only on statement of third parties recorded by the investigation wing.

m) As held in the case of R.B. Matal v, CIT 246 ITR 283 (AP) in an enquiry is 68 the rule of audi alteram parform has to be observed and the Assessee must be given fair and reasonable hearing to discharge the burden cast on him u/s 68 of the Act Further, it is settled lave that in the matter of cash credit, the initial anus les on the Assessee to prove the genuineness of the transaction along with the identity of the lender investor and his creditworthiness. Having done so the Respondent in the instant case has discharged the onus cast spon & Beyond this, for the charge of unexplained cash credit to slick, the onus ties on the AO to disprove the case of the Assessee by establishing that the evidence filed by the assessee was false and by bringing new material on record and failure to do so would vitiate the addition made on this count

n) It was also held in the case of CIT v Bedi & Co. P. Ltd. (1998) 230 ITR 580 (SC) that where prima facie the inference on facts is that the assessee's

explanation is probable, the onus will shift to the revenue to disprove it and the assessee's explanation in such case cannot be rejected on mere surmises Other similar judiciary ruling are as under

Khandelwal Constructions v. CIT (1997) 227 ITR 900 (Gau)

CIT v Orissa Corporation Pvt. Ltd. 158 ITR 78 (SC)

IT v. Rohini Builders 256 ITR 360 (Guj).

Other similar identical judgments are as under

o) Smt. Ritu Kamal Singhal vs ITO (2019) (TTAT-MUM)

p) DCIT Vs Bairaga Builders Pvt Ltd (2017) 51 CCH 107 in IIA No 4691 and 4692/Mum/2015

q) M/s. Shree Laxmi Developers v. JCIT in ITA-No.6090/Mum/2017

r) Sudhanshu Suresh Pandhare vs. ITO (ITA No. 5185/Mum/2012) (TAT Mum)

s) Dilsa Distributors Combines vs IIO ITA No 5849/Mum/2011 dated 06 09 2013 (Mumbai)

1) ACIT vs Hetali Enterprises in ITA No. 421/Mum/2018) for Asst. Year 2013-14 dated 9.4.2021 (Mumbai Tribunal)

u) Further also Reliance Place on following case Laws: In terms of the above, we would request your honour to delete the addition made by Ld. AO.”

The Id. CIT(A) held that merely on the basis of visit made by the inspector and general observation like location etc. the AO had taken adverse view without establishing that the loan transactions were not genuine. The Id. CIT(A) in his finding also referred at para 6.2 various judicial pronouncements referred by the assessee as reproduced supra in this order. Before the AO and the Id. CIT(A) the assessee has claimed that identity of the creditors has been established on the basis of PAN card, return of income account confirmation, genuineness of the transaction have been established on the basis of account confirmation and bank statement where all the loan were taken by account payee cheques and creditworthiness of the creditors were established on the

basis of the balance sheet and bank statement of the parties. The AO has not brought on record any concrete material to controvert such supporting evidences furnished in the case of the assessee. The assessee has placed reliance on various judicial pronouncements in its submission which are reproduced in the order of Id. CIT(A).

The assessee has referred the case of M/s Nisarg Life Space LLP Vs. ITO 28(2)(3) Mumbai ITA No. 629/Mum/2021 11.06.2021 wherein it is held that the assessing officer simply remained silent after receiving all the documentary evidences from the assessee. The assessing officer is duty bound to examine its veracity by making further inquiries in the manner known to law. It is also held that without testing documents by making proper inquiries no adverse inference could be drawn by the AO on those documents.

The assessee has also referred the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Orchid Industries Pvt. Ltd. reported in 397 ITR 136 (Bom) wherein held that no addition could be made on mere presumption that the assessee routed its own cash in the form of unsecured loan without any concrete evidence to this effect. The assessee has also placed reliance on the decision of jurisdictional High Court in the case of PCIT vs. Aquatic Remedies P. Ltd. vide ITA No. 83 of 2016 affirming the decision of the Tribunal held that all the loans were duly repaid by the assessee either in the same assessment year or in the immediately succeeding assessment year with interest after subjecting the interest to due deduction of tax at source and these facts were not controverted by the revenue. The Id. Counsel also referred various judicial pronouncement mentioned in the submission made before the Id. CIT(A). The Id. Counsel also referred following judgment:

- i. DCIT (CC) 1(3) Vs. M/s Jainam Investments ITA No. 6099/Mum/2016*
- ii. DCIT 25(1) Vs. M/s YRV International ITA No. 1414/Mum/2017*
- iii. Shri Ashok Nagraj Mehta Vs. ACIT Circle 19(1) ITA No. 2100/Mum/2016 and ITA No. 1645/Mum/2017*

- iv. *Asst. CIT-19(1) Vs. Shri Dilip Chimanlal Gandhi ITA No. 707o/Mum/2016*
- v. *ITA No. 7049 & 7050/Mum/2016 Jitendra M. Kitawat Vs. ITO 18(1)(5)*
- vi. *Smt. Ritu Kamal Singhal Vs. ITO-24(3)(4)*
- vii. *ITA No. 7047/Mum/2016 Jitendra M Kitawat (HUF) Vs. ITO 18(1)(5)*
- viii. *(2015) 58 taxmann.com 226 (Madras) High Court of Madras Commissioner of Income Tax Vs. Mark Hospitals (P) Ltd.*
- ix. *(2014) 42 taxmann.com 473 (Gujarat) High Court of Gujarat CIT-1 Vs. Apex Therm Packaging (P) Ltd*
- x. *(2013) 36 taxmann.com 429 (Madhya Pradesh) High Court of Madhya Pradesh Commissioner of Income tax-II, Indore Vs. Vaibhav Cotton (P) Ltd.*

In spite of the fact that case of the assessee was under scrutiny assessment but neither the AO has initiated any enquiry to enforce the attendance of any person by issuing of summons u/s 131 of the Act to examine such person or compelling the production of books of account and other documents nor asked the assessee to produce the lenders parties for examination and verification on any material evidences to reach at any conclusion contrary to the claim of the assessee.

6. After taking into the consideration the aforesaid facts and finding of Id. CIT(A) and various judicial pronouncements referred in the submission we don't find any reason to interfere in the decision of Id. CIT(A), therefore, all the ground of appeal of the revenue 1-3 are dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 31.08.2023

Sd/-

(Sandeep Singh Karhail)
Judicial Member

Place: Mumbai

Date 31.08.2023

Rohit: PS

Sd/-

(Amarjit Singh)
Accountant Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.