

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1842/Del/2022 : Asstt. Year : 2019-20

Ankit Sharma, KA-5, Kavi Nagar, Ghaziabad-201001 (APPELLANT)	Vs	DCIT, Central Circle, Ghaziabad (RESPONDENT)
PAN No. CWCP54668A		

ITA No. 2125/Del/2022 : Asstt. Year : 2016-17

ACIT, Central Circle, Ghaziabad-201002 (APPELLANT)	Vs	Ankit Sharma, KA-5, Kavi Nagar, Ghaziabad-201001 (RESPONDENT)
PAN No. CWCP54668A		

ITA No. 2124/Del/2022 : Asstt. Year : 2016-17

ACIT, Central Circle, Ghaziabad (APPELLANT)	Vs	Smt. Nidhi Sharma, 17/32, Shakti Nagar, New Delhi-110007 (RESPONDENT)
PAN No. AJTPB9404D		

ITA No. 2126/Del/2022 : Asstt. Year : 2016-17

ITA No. 2127/Del/2022 : Asstt. Year : 2017-18

ACIT, Central Circle, Ghaziabad-201002 (APPELLANT)	Vs	Shri Jaipal Singh Sharma Trust, 40-41, Maliwara Chowk, Addl. Sihani Gate, Ghaziabad-201011 (RESPONDENT)
PAN No. AANTS7037E		

**Assessee by : Sh. Rajiv Khandelwal, CA &
Sh. Gagan Khandelwal, Adv.
Revenue by : Mr. Waseem Arshad, CIT-DR**

Date of Hearing: 10.08.2023	Date of Pronouncement: 16.10.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assesses and the Revenue against the orders of Id. CIT(A)-4, Kanpur dated 27.06.2022.

2. In ITA No. 1842/Del/2022, following grounds have been raised by the assessee:

"1. That on the facts of the case, in law and under the circumstances, the Commissioner of Income Tax (Appeal)-4, Kanpur erred in confirming the action of the assessing officer to make an addition of Rs. 20,44,870/- (1/3 of Rs. 61,34,610/- treated as unexplained jewellery) to the income of the appellant in respect of the alleged unexplained gold ornaments found at the time of search by invoking the provisions of section 69A read with section 115BBE of the Act. The addition confirmed is unjustified and bad in law.

2. That on the facts of the case, in law and under the circumstances, the Commissioner of Income Tax (Appeal)-4, Kanpur erred to confirm the action of the assessing officer to make an addition of Rs. 20,44,870/- (1/3" of Rs. 61,34,610/- treated as unexplained jewellery) by invoking the provisions of section 69A read with section 115BBE of the Act under section ignoring the plea that jewellery belonging to the daughter is also kept in the house. The addition confirmed by Hon'ble Commissioner of Income Tax (Appeal)-4, Kanpur is unjustified, unwarranted based on surmises, conjectures, and the same is bad in law.

3 That on the facts of the case, in law and under the circumstances, the Commissioner of Income Tax (Appeal)-4, Kanpur erred to confirm the action of the assessing officer to make an addition of Rs 92,00,000/- to the incomer of the appellant for the alleged loan figures jotted on the rough paper bearing number Z-1, of Annexure LP-3, page number 27 by invoking the provisions of section 69A of the Act, while no such loan was ever received but these were only figures jotted to show higher cost. The addition confirmed by the Hon'ble Commissioner of Income Tax (Appeal) 4, Kanpur is based on surmises, conjectures and on mere hypothetical reasonings and the same is unjustified unwarranted and bad in law

4 That on the facts and in law and under the circumstances, the assessing officer erred to issue the

penalty notice under section 271AAB and also the interest charged under section 234A, 234B, 234C and 234D is thus illegal and bad in law."

3. In ITA No. 2124/Del/2022, following grounds have been raised by the Revenue:

"1. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 75,00,000/- on account of unexplained loan u/s 68 of the IT Act, 1961 without considering that lender company i.e. M/s Sarvottam Securities Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 1,50,00,000/- to the assessee as the lender company had declared income of Rs 9,99,730/- only during the year. Further, enquiries were made by the Investigation Wing and it was found that the lender company is a bogus entity and merely working for providing accommodation entries to various entities. Thus, the creditworthiness of lender and genuineness of the loan received by the assessee from M/s Sarvottam Securities could not be proved.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 50,00,000/- on account of unexplained loan u/s 68 of the IT Act, 1961 without considering that lender company i.e. M/s Aspire Sales Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 50,00,000/- to the assessee as the lender company had declared income of Rs 6,36,870/- only during the year. Besides, from the perusal of balance sheet of the lender company for the period ending 31.03.2016, it is seen that it has shown total loan and advances given (short term and long term) of only Rs. 1,83,359/- during the year and no other loans and advances have been mentioned in the balance sheet. Further, during assessment proceedings, summon u/s 131 was issued to the lender company to verify the claim of the assessee but no response was made by it. Since the assessee failed to prove the genuineness of his receipt of loan from M/s Aspire Sales Pvt. Ltd., addition of Rs. 50,00,000/- made by the AO as unexplained loan u/s 68 of the Act, is justified.

3. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 25,00,000/- on account of unexplained loan u/s 68 of the IT Act, 1961 without considering that lender company namely M/s Moral Sales

Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 25,00,000/- to the assessee as the lender company had declared income of Rs. 1,05,690/- only during the year. Only transaction through banking channel does not make a transaction genuine. Further, the assessee had not shown the amount of loans forwarded to the assessee in its balance sheet. Since the assessee failed to prove the genuineness of her receipt of loan from M/s Moral Sales Pvt. Ltd., addition of Rs.25,00,000/- made by the AO as unexplained loan u/s 68 of the Act, is justified."

4. In ITA No. 2125/Del/2022, following grounds have been raised by the Revenue:

"1. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 1,50,00,000/- on account of unexplained loan u/s 68 of the IT Act, 1961 without considering that lender company i.e. M/s Sarvottam Securities Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 1,50,00,000/- to the assessee as the lender company had declared income of Rs 9,99,730/- only during the year. Further, enquiries were made by the Investigation Wing and it was found that the lender company is a bogus entity and merely working for providing accommodation entries to various persons/entities. Thus, the creditworthiness of lender and genuineness of the loan received by the assessee from M/s Sarvottam Securities could not be proved.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 50,00,000/- on account of unexplained loan u/s 68 of the IT Act, 1961 without considering that lender company i.e. M/s Aspire Sales Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 50,00,000/- to the assessee as the lender company had declared income of Rs 6,36,870/- only during the year. Besides, from the perusal of balance sheet of the lender company for the period ending 31.03.2016, it is seen that it has shown total loan and advances given (short term and long term) of only Rs. 1,83,359/- during the year and no other loans and advances have been mentioned in the balance sheet. Further, during assessment proceedings, summon u/s 131 was issued to the lender company to verify the claim of the assessee but no response was made by it. Since the assessee failed to prove the genuineness of his receipt of loan from M/s Aspire Sales Pvt. Ltd., addition of Rs.

50,00,000/- made by the AO as unexplained loan u/s 68 of the Act, is justified."

5. In ITA No. 2126/Del/2022, following grounds have been raised by the Revenue:

"1. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 2,55,00,000/- on account of unexplained loan u/s 68 of the 1.T Act, 1961 without considering that the lender company namely M/s KG Fivest Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 2,55,00,000/- to the assessee as the lender company had declared income of Rs 28,47,920/- only during the year. Further, enquiries were made by the Investigation Wing and it was found that the company is a bogus entity and merely working for providing accommodation entries to various entities. In such facts and circumstances, the creditworthiness of lender and genuineness of the loan received by the assessee from M/s KG Finvest Pvt. Ltd. could not be proved.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 37,00,000/- on account of unexplained loan u/s 68 of the I.T Act, 1961 without considering that as the lender company M/s Sarvottam Securities Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 37,00,000/- to the assessee as the lender company had declared income of Rs 9,99,730/- only during the year. Further, enquiries were made by the Investigation Wing and it was found that the company is a bogus entity and merely working for providing accommodation entries to various entities. In such facts and circumstances, the creditworthiness of lender and genuineness of the loan received by the assessee from M/s Sarvottam Securities could not be proved.

3. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 80,00,000/- on account of unexplained loan u/s 68 of the IT Act, 1961 without considering that the lender company namely M/s Upaj Leasing and Finance Company Pvt. Lid does not have the creditworthiness to pay huge amount of loan i.e. Rs. 80,00,000/- to the assessee as the lender company had declared income of Rs 13,63,530/- only during the year. Further, enquiries were made by the Investigation Wing

and it was found that the company is a bogus entity and merely working for providing accommodation entries to various entities. Since the assessee failed to prove the genuineness of his receipt of loan from M/s Upaj Leasing and Finance Company Pvt. Ltd., addition of Rs. 80,00,000/- made by the JAO as unexplained loan u/s 68 of the Act, is justified.

4. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 50,00,000/- on account of unexplained donation u/s 68 of the IT Act, 1961 without considering that the donor company namely M/s Amsoft Global Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 50,00,000/- to the assessee as the donor company had declared income of Rs 1,40,880/- only during the year. It had also not furnished its financial statement to prove its net worth and capital to forward loans. Further, enquiries were made by the Investigation Wing and it was found that the company is a bogus paper company and the transaction of giving loan to the assessee trust is bogus. It is also note worthy here that during search proceedings, the said amount of donation were accounted as corpus donations in the books of the assessee, however, after filing the return in consequence of notice u/s 153A, it converted the same from corpus donation to volunatry donation. Whereas the donor company had categorically stated that it had provided corpus donations to the assessee. In such facts and circumstances, the creditworthiness of donor company and genuineness of the donation received by the assessee from M/s Amsoft Global Pvt. Ltd. could not be proved."

6. In ITA No. 2127/Del/2022, following grounds have been raised by the Revenue:

"1. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 1,00,00,000/- on account of unexplained loan u/s 68 of the I.T Act, 1961 without considering that the lender company namely M/s Sarvottam Securities Pvt. Ltd. does not have the creditworthiness to pay huge amount of loan i.e. Rs. 1,00,00,000/- to the assessee as the lender company had declared income of Rs 19,89,470/- only during the year. Further, enquiries were made by the Investigation Wing and it was found that the company is a bogus entity and merely working for providing accommodation entries to various entities. In such facts and circumstances, the

creditworthiness of lender and genuineness of the loan received by the assessee from M/s Sarvottam Securities could not be proved.

2. On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by Assessing Officer of Rs. 3,30,00,000/- on account of unexplained donation u/s 68 of the I.T Act, 1961 without considering that the donor companies namely M/s Moral Sales Pvt. Ltd. & M/s Amsoft Global Pvt. Ltd. do not have the creditworthiness to pay huge amount of loan i.e. Rs. 2,80,00,000/- & Rs. 50,00,000/- respectively to the assessee as the donor companies had declared very low incomes during the year. It had also not furnished its financial statement to prove its net worth and capital to forward loans. Further, enquiries were made by the Investigation Wing and it was found that the company is a bogus paper company and the transaction of giving loan to the assessee trust is bogus. It is also note worthy here that during search proceedings, the said amount of donation were accounted as corpus donations in the books of the assessee, however, after filing the return in consequence of notice u/s 153A, it converted the same from corpus donation to voluntary donation. Whereas the donor company had categorically stated that it had provided corpus donations to the assessee. In such facts and circumstances, the creditworthiness of donor companies and genuineness of the donations received by the assessee from M/s Moral Sales Pvt. Ltd. & M/s Amsoft Global Pvt. Ltd. could not be proved."

ITA No. 1842/Del/2022 (Assessee Appeal)

Ankit Sharma Vs. ACIT

Unexplained Jewellery – Rs.20,44,870/-:

(1/3rd of Rs.61,34,610/-)

7. Keeping in view the similarity of facts, the adjudication in the case of Sh. Ankur Sharma applies *mutatis mutandis*.

8. For the sake of ready reference, the order of Sh. Ankur Sharma in ITA No.1843/Del/2022 vide order dated 03.10.2023 is reproduced hereunder:

"Unexplained Jewellery – Rs.20,44,870/-:*(1/3rd of Rs.61,34,610/-)***3. Proceedings before the Assessing Officer:**

"During the course of search & seizure operation conducted u/s 132 of the Income Tax Act, 1961 at the residential premises of the assessee at KA-5, Kavi Nagar Ghaziabad, gold jewellery weighing 3877.5 Grams amounting to Rs. 1,46,15,635/- was found. During the course of search proceedings, the assessee could not explain the source of the above jewellery. In this regard, the assessee vide notices u/s 142(1) of the Income Tax Act, 1961 dated 20.10.2020, 05.01.2021 and 16.01.2021, was required to explain the above cash, along with supporting documents and was also required to explain the source of the above cash, along with supporting documents. However no reply was received. Hence, the assessee, vide show cause notice dated 23.02.2021, was specifically required to explain the above said cash, along with documentary evidences and was required to explain the sources of the above said cash, along with documentary evidences. In response to the show cause, the AR of the assessee vide reply furnished on 06.08.2021, has stated that the jewellery has been inherited and received in marriages of the family members. However, the source of jewellery has not been properly explained by the assessee. In order to follow principles of natural justice, the CBDT's instruction no. 1916 dated 11/05/1994 and press release dated 01/12/2016 regarding the eligible amount of jewellery that can be kept by the family members is applied. The family of the assessee consists of the following members who are eligible to claim benefit of above said jewellery to the extent of limit as prescribed in the above said circular.

Sl. No.	Name of the family member	Eligible Weight of jewellery to be claimed
1.	Sh. Ganga Saran Sharma (Father)	100 GMS
2.	Smt. Shashi Sharma (Mother)	500 GMS
3.	Sh. Ankur Sharma (Brother)	100 GMS
4.	Smt Nidhi Bansal (Sister in law)	500 GMS
5.	Sh. Ankit Sharma (Self)	100 GMS
6.	Smt Neha Goel (Wife)	500 GMS

7.	<i>Kiaara Sharma (Daughter)</i>	<i>250 GMS</i>
8.	<i>Advay Sharma (Nephew)</i>	<i>100 GMS</i>
9.	<i>Adyant Sharma (Nephew)</i>	<i>100 GMS</i>
	<i>Total</i>	<i>2250 GMS</i>

The remaining gold jewellery of 1627.5 Grams amounting to Rs.61,34,610/- remains unexplained. Therefore, considering the facts of the case and CBDT's instruction no. 1916 dated 11.05.1994 and press release dated 01.12.2016, the remaining jewellery of 1627.5 GMS for the total value of Rs. 61,34,610/- (as on date of search) is treated as unexplained jewellery. The amount of Rs.20,44,870/- (1/3 share) is added to the total income of the assessee for the year under consideration u/s 69A r.w.s. 115BBE of the Income Tax Act, 1961. The remaining amount is added in the income of Sh. Ganga Saran Sharma, father of assessee and Sh. Ankur Sharma, Brother of assessee.

4. Proceedings before the Id. CIT(A):

"Before the Id. CIT(A), the appellant submitted that it had been explained that the major amount of gold ornaments were inherited by Shri Ganga Saran Sharma on the death of his mother, besides Shri Ganga Saran Sharma was married in equally rich and business class family and received gold jewellery in marriage. Subsequently, both the sons namely Shri Ankur Sharma and Shri Ankit Sharma also got married in equally well-placed business class families and received gold ornaments in marriage and also in subsequent ceremonial functions that took place in both the families. It is customary to offer gold items and silver wares in marriage/ceremonial functions to the daughters in the family, specially to the married daughters. The family is in the business since generations and doing good business, besides the family has established a charitable Hospital. That proves the financial status of the family. It was further submitted that house-ladies are further very systematic and intelligent enough to make savings from the money received by them for managing house hold. The house-ladies spend money with a tight hand and whatever they save, it is invested by them very wisely in buying gold items and/or cloths. The AR submits that the appellant and his family members have good financial status and there are total net drawings of more than 13.50 crores during the period of nine years and the small value of jewellery found during search stands fully covered and very well explained being

merely of the total value of Rs. 1,46,15,635/- and as such, no part of the jewellery be treated as unexplained.

After going through the submissions of the assessee, the Id. CIT(A) held that the appellant has relied on withdrawals of various family members in last 10 years but only withdrawals cannot explain the use of the cash in purchase of jewellery. Complete analysis of withdrawals as well as deposits of cash in various bank accounts of the family members, use of drawings for other household expenses has not been taken into consideration while making a claim that total withdrawals of Rs. 13.50 crores have been made by various family members in their bank accounts. Therefore, the Id. CIT(A) held that the submission is quite vague and lacks specificity in providing the evidence and proving the source of the jewellery found in the residential premise. The bills of purchase, the wealth tax evidences, valuation certificates along with date of purchase could not be furnished in case of jewellery found in the residential premise, which are considered as clinching evidences to prove the time as well as source of the purchase of jewellery. The Id. CIT(A) held that the AO has already considered as explained the jewellery of 2250 grms in accordance to CBDT Instruction No. 1916 dt. 11.05.1994 pertaining to all male and female members of the family and has been reasonable enough to add only 1627.5 grms jewellery valuing Rs. 61,34,610/- and divided the same in the hands of main family members i.e. the appellant, his father and brother. The Id. CIT(A) held that with regard to the jewellery belonging to daughter of Smt. Shashi Sharma i.e. the sister of the appellant, the appellant could not furnish the requisite evidence, which may conclusively prove that the jewellery belonging to his sister was also kept in the residential premise of the appellant. Therefore, the Id. CIT(A) was of the opinion that this submission as an afterthought and since the same was held to be devoid of merit, the arguments of the assessee were summarily dismissed. In effect, the order of the AO has been confirmed."

9. The addition of Rs.61,34,610/- has been made in the hands of Sh. Ganga Saran Sharma, the patriarch of the family and the siblings Sh. Ankit Sharma and Sh. Ankur Sharma at the rate of 33.33% each.

10. Aggrieved, the assessee filed appeal before the Tribunal.

11. During the hearing before us, the Id. AR relied on the submissions and the arguments taken up before the revenue authorities and the Id. CIT DR relied upon the orders of the authorities below.

12. Heard the arguments of both the parties and perused the material available on record. We have gone through the facts of the case and the judgments of various Courts on this issue.

13. At the outset, we hold that CBDT's instruction no. 1916 dated 11.05.1994 and press release dated 01.12.2016 pertains to seizure of jewellery. It postulates that by going through the archetypal Indian family standard, a persons of an Income Tax payee of considerable amount could have had the prescribed amount of jewellery in the circular. It was brought into force after a series of due deliberation and its impact on taxation. It is never envisaged that the Assessing Authority should restrict the amount of eligible jewellery to the quantity mentioned in the circular. The assesses were trustee of a medical college and also have the returned income in the range of Rs.21.27 lacs to 49.34 lacs as per the returns.

14. The statement showing the incomes of the assessess is as under:

<i>Name</i>	<i>AY 20-21</i>	<i>AY 19-20</i>	<i>AY 18-19</i>	<i>AY 17-18</i>	<i>AY 16-17</i>	<i>AY 15-16</i>
<i>Ganga Saran Sharma</i>	<i>64,85,556</i>	<i>49,44,669</i>	<i>46,68,812</i>	<i>44,59,800</i>	<i>37,43,180</i>	<i>35,00,511</i>
<i>Ankit Sharma</i>	<i>22,92,434</i>	<i>23,08,783</i>	<i>24,27,493</i>	<i>20,56,646</i>	<i>19,79,056</i>	<i>19,96,871</i>
<i>Ankur Sharma</i>	<i>36,78,301</i>	<i>29,59,519</i>	<i>20,18,119</i>	<i>22,99,113</i>	<i>29,74,995</i>	<i>25,33,227</i>

15. The total withdrawals of the family over the period of assessments was to the tune of more than Rs.10 Cr. The assessee stated that the income for all the years had fallen into the highest tax bracket which shows that the assessee has

been earning substantial Income clearly establishing the status. It has time and again been held that due credit of the same has to be allowed by the assessing officer looking and appreciating the status, customs, and traditions relating to the family. Reliance is being placed upon following decisions:

- *Ashok Chaddha vs. ITO, 14 taxmann.com 57 (Delhi)*
- *Vibhu Aggarwal vs. DCIT, 93 taxmann.com 275 (Delhi - Trib.)*
- *Tara Devi Goenka vs. CIT 122 ITR 14 (Cal)*
- *Ms. Pooja Shree Chouksey Vs. ACIT in ITA No. 572/Ind/2018*
- *CIT Vs. Kailash Chand Sharma 198 CTR 201 (Raj)*
- *Suneela Soni Vs. DCIT in ITA No. 5259/DEL/2017*
- *DCIT Vs. Shri Haroon Mohd. Unni in ITA No.463/M/2012*
- *Susan Suresh Chandra Tilwa Vs. DCIT in ITA No.270/RJT/2015*
- *DCIT, CC-8(3), Mumbai Vs. Shri Manekchand Kothari ITA No. 194/Mum/2018*

16. The Hon'ble Delhi High Court in the case of Ashok Chaddha vs. Income-tax Officer 14 taxmann.com 57 (Delhi) held that collecting jewellery of 906.900 gms by a woman in a married life of 25 years in form of stree dhan or on other occasions is not abnormal. The operative part of the judgment is reproduced below:

"3. Learned Counsel for the respondent on the other hand relied upon the reasoning given by the authorities below. After considering the aforesaid submissions we are of the view that addition made is totally arbitrary and is not founded on any cogent basis or evidence. We have to keep in mind that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of a child etc. Collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and

treat the other as "unexplained". Matter would have been different if the quantum and value of the jewellery found was substantial.

4. We are, therefore, of the opinion that the findings of the Tribunal are totally perverse and far from the realities of life. In the peculiar facts of this case we answer the question in favour of the assessee and against the revenue thereby deleting the aforesaid addition of Rs. 3,87,364."

17. The Hon'ble Delhi High Court in the case of Suneela Soni Vs. DCIT in ITA No. 5259/DEL/2017 held as follows:

"6.1 After perusing the aforesaid decision of the Hon'ble Delhi High Court, I am of the considered view that facts and circumstances of the present case are similar to the aforesaid decision of the Hon'ble Delhi High Court and hence, the issue in dispute is squarely covered by the aforesaid decision.

6.2 Keeping in view of the aforesaid facts and circumstances of the case as well as the status of the family and on the anvil of the judgement of the High Court of Delhi in the case of Ash ok Chadha vs. ITO reported in 14 taxmann.com 57 (Delhi.)/202 Taxman 395, the explanation given by the assessee's counsel is accepted. Accordingly the orders of the authorities below are cancelled and addition made by the AO and confirmed by the Ld. CIT(A) amounting to Rs. 10,65,312/- on account of purported unexplained Jewellery claimed by the assessee is deleted.

7. In the result, Assessee's appeal is allowed."

18. The Co-ordinate Bench of ITAT Delhi in the case of Vibhu Aggarwal vs. DCIT 93 taxmann.com 275 (Delhi - Trib.) held that where Assessing Officer under section 69A made addition on account of jewellery found in search of assessee, since assessee belonged to a wealthy family and jewellery was received on occasions from relatives, excess jewellery was very much reasonable and, thus, no addition under section 69A was called for. The operative part of the judgment is reproduced below:

"2. The brief facts of the case are that a search & seizure operation under section 132 of the IT Act was conducted at the business premises of M/s Best Group and as well as in the residential premise of the Directors on 28.03.2011, in consequence to which the case of the assessee was taken up for scrutiny. The AO has completed the assessment by making an addition of 30,73,373 on account of unexplained investment in jewellery and addition of Rs. 1.87,082/- on account of unexplained investment in property. The total jewellery found during the course of search was 2531.5 gms, out of which the AO has given assessee the benefit of 950 gms, as per the CBDT Instruction No. 1916 dated 11.4.1994 on account of wife and two children of the assessee. The Ld. CIT(A) in appeal has further allowed the benefit of 600 gms. Of jewellery on account of mother and father of the assessee, holding that the same was allowable to the assessee as per the CBDT Instruction No. 1916, but however, sustained the balance addition made by the AO, vide order dated 22.12.2014 treating the balance jewellery weighting 1050 gms of gold as unexplained.

6.3 Keeping in view of the aforesaid facts and circumstances of the case as well as the status of the family and on the anvil of the judgement of the High Court of Delhi in the case of Ashok Chaddha (Supra) & of Sushila Devi (supra) and the IT AT Delhi decision in the case of Suneela Soni (supra), the explanation given by the assessee's counsel is accepted. Accordingly the orders of the authorities below are cancelled and addition made by the AO and partly confirmed by the Ld. CIT(A) on account of balance jewellery weighting 1050 gms of gold as unexplained is hereby deleted."

19. Hence, keeping in view the facts and circumstances of the instant case and also the jewellery found, the total income declared and in view of the various judgments cited above, we direct that the addition made on this account be deleted.

20. Owing to the facts narrated above, the appeal of the assessee is allowed.

Unsecured Loans:

Sh. Vaibhav Tyagi and Sh. Vibhor Tyagi

21. Proceedings before the Assessing Officer:

“During the course of search & seizure action at the residential premise KA-5, Kavi Nagar, Ghaziabad, a hand written and typed written page containing the details of loans as on 21.09.2018 was found and seized which was inventoried as Z-1, LP-3, Page 27.

On going through this page, it is seen that this page contains the details of unsecured and secured loans taken from various persons and entities at different rates of interest. Vide Notice u/s 142(1) dated 20.10.2020 and show cause notice dated 23.02.2021, the assessee was specifically asked to explain the above document and furnish the details of loans mentioned in the above documents alongwith documentary evidences. Vide reply dated 14.06.2021, the AR of the assessee has stated that:

“That vide this query, a document has been scanned in the notice, bearing page number 27 of Annexure LP-3, the assessee has been required to explain the nature and contents of this document, and in this regards, it is stated that this document is an estimate seem to be finalized on 21.09.2018 and as such pertains to the assessment year 2019-20. It is explained that the family trust by the name of Jai pal Singh Sharma Trust had been in the process of establishing and running medical college at Pilukhwa since 2013-14. However, in spite of best efforts, the society could not get medical seats for pretty long time and had been running in to heavy losses as will be apparent from the Income Tax returns filed by the trust year after year. It was somewhere for the end of financial year 2018 the trustees were approached by group of persons through a common family friend to work out a proposal to take over the college on 'as and where' basis. The trustees' held several round of meetings and an estimated proposal was being worked out on the sheet alleged to

be page number 27 and after considering losses suffered, the investment was required for around 130 crores inclusive of bank liabilities. However, the proposal could not get through, because still, the allocation of medical seats was yet to be approved. The real estate sector had been passing through heavy recession and looking to the quantum of investment required, the proposal could not get final nod of the investors and as such, it is only a dump document and has nothing to do with the assessee and the trust. Moreover, there is no name written on the document to connect the same with the assessee in any manner and as such, cannot be used to make addition without proper bringing corroborative evidence of records."

Alternatively, it is stated that this document has been confronted to almost all the family members by scanning the same in the show cause notice issued to them. Though, as stated above it does not belong to any particular entity but is an overall proposal for the sale of college. By going through the entries as contained in the document, the following facts can be note.

The above has been perused and examined. The AR of assessee has explained that the page also contains details of secured loans from different bank loans whose details, sanction letters, repayment schedules and bank statements have been furnished. Regarding the other loans, the AR of assessee has stated that these are already reflected in the books of the Shri Jaipal Singh Sharma trust and the family members of Dr. Ankit Sharma. The names against these loans in the document are of people who helped to arrange the loans from different persons, entities and NBFCs. The reply of the assessee has been considered alongwith its supporting evidences. The secured loans and their agreements alongwith repayments schedule, sanction letters and bank statements have been examined. The unsecured loans as mentioned in the above seized documents have been dealt in the separate assessments of the Shri Jaipal Singh Sharma trust and Dr. Ankit Sharma and his family members.

However, no documentary evidence has been furnished in case of loans received from Sh. Vaibhav Tyagi - Rs.30,00,000/- and Sh. Vibhor Tyagi - Rs 62,00,000/- as mentioned in the above page. These loans have also not been reflected in the books of the trust and the family members of Dr. Ankit Sharma. Also, no details in respect of these loans have been filed. Hence, in absence of any explanation and documentary evidences the loans received from Sh. Vaibhav Tyagi - Rs.30,00,000/- and Sh. Vibhor Tyagi - Rs.62,00,000/- amounting to a total of Rs.92,00,000/- are added to the income of the assessee u/s 69A of the IT Act, 1961."

22. Proceedings before the Id. CIT(A):

"Before the Id. CIT(A), the appellant has submitted that addition of Rs. 92,00,000/- based on the seized paper Z-1, LP-3, page no. 27, is unjustified since no such loan was ever received by the appellant. In this regard the AO observes that this page contains the details of unsecured and secured loans taken from various persons and entities at different rates of interest. Almost all the loans were found as reflected in the books of Sh. Jaipal Singh Sharma Trust and only two amounts were found in the books of Sh. Ankur Sharma (loans from Sh. P. C. Sharma and Sh. Ankit Vijn) and one amount in the books of Sh. Ganga Saran Sharma (loan from Sh. P. C. Sharma). However loan amounts of Rs. 30,00,000/- from Sh. Vaibhav Tyagi and Rs. 62,00,000/- from Sh. Vibhor Tyagi were not found reflected in the books of any of the group entities, therefore Rs. 92,00,000/- were added as unaccounted income u/s 69A of IT Act in the hands of Sh. Ankit Sharma, secretary of the trust. In this regard the AR submits that this document is just a proposal prepared by the family to sell the hospital and the college on account of heavy losses suffered by the trust during this period and further a setback of not getting approval for the college. He claims that whatever is jotted on this paper, the same is not in reference to any particular person in the family but is a mere sale-proposal and as such, no addition is

called for on the basis of the figures jotted on this paper being a mere dumb document. Thus the AR concludes that any addition made on the basis of a rough proposal based on the document/loose sheet prepared by the family as sale proposal for college taking its value as on 21.09.2018, cannot be sustained.

Before the Id. CIT(A), the Id. AR further submitted that this document (page no 27 of Annexure LP-3) is an estimate which was finalized on 21.09.2018 and as such pertains to the assessment year 2019- 20. He claims that this was explained to the AO that the family trust i.e. Shri Jaipal Singh Sharma Trust had been in the process of establishing and running medical college at Pilkhuwa since 2013-14, however, in spite of best efforts, the college could not get medical seats for pretty long time and had been running in to heavy losses as is apparent from the Income Tax Returns filed by the trust, year after year. It was at the end of financial year 2018 the trustees were approached by group of persons through a common family friend to work out the proposal to take over the college on "as is where is" basis. The trustees held several round of meetings and an estimated proposal was being worked out on the sheet alleged to be page number 27 and after considering losses suffered, the investment was required for around Rs. 130 crores inclusive of bank liabilities. However, the proposal could not get through, because still, the allocation of medical seats was yet to be approved. The real estate sector had been passing through heavy recession and looking to the quantum of investment required, the proposal could not get final nod of the investors. The Id. AR submitted that the appellant has explained the contents of this page to AO and the AO has accepted that this contains the details of loans from various persons and also the secured and unsecured loans from banks and other institutions by Sh. Jaipal Singh Sharma Trust. However the loans amounting to Rs. 92,00,000/- taken from Mr. Vaibhav Tyagi and Vibhor Tyagi were added in the hands of the appellant. The Id. AR submitted that there is no logic to consider this amount as income of Sh. Ankit Sharma since no loan has been

taken by him. It is also submitted that the search was also conducted in the official and residential premises of Sh. Vaibhav Tyagi and Sh. Vibhor Tyagi on 03.11.2016 and no corroborative evidences could be found which may link these entries with Sh. Ankit Sharma, i.e. the appellant.

The Id. CIT(A) held that the presumption of section 132(4A) and 292C of IT Act applies in case of a seized paper which means that the contents of this paper i.e. page no. 27 of Annexure LP-3 are correct. The Id. CIT(A) held that from the facts of the case it is clear that the seized page contains overall situation of loans taken from Banks and other persons by Sh. Jaipal Singh Sharma trust. The Id. CIT(A) held that the AR successfully explained all the entries of this page but the two entries appearing in serial no. 10 & 11 in the names of Mr. Vaibhav Tyagi (Rs. 30,00,000/-) and Mr. Vibhor Tyagi (Rs. 62,00,000/-) which sum-up to Rs. 92,00,000/- could not be successfully explained by the appellant.”

23. Aggrieved, the assessee filed appeal before the Tribunal.

24. During the hearing before us, the Id. AR relied on the submissions and the arguments taken up before the revenue authorities and the Id. CIT DR relied upon the orders of the authorities below.

25. Heard the arguments of both the parties and perused the material available on record. We have gone through the facts of the case and the judgments of various Courts on this issue.

26. The entries as contained in the document reveals the following:

P. C. Sharma - Amount written Rs. 3,70,00,000/-

- Loan reflected in the books of the trust Rs. 2,03,60,000/-
- Loan reflected in the books of Ankit Sharma Rs. 89,40,000/-
- Loan reflected in the books of Sh. G. S. Sharma Rs. 63,09,700/-

Anil Kumar Garg :- Rs. 1,87,00,000/-

- Loan reflected in the books of the trust Rs. 77,00,000/- only,
- Loan reflected in the name of Vigour Finvest Pvt. Ltd. Rs. 25,00,000/-
- Loan reflected in the name of Kisley Promoters Pvt. Ltd. Rs. 5,00,000/-
- Loan reflected in the name of Karnak Exim Pvt. Ltd. Rs. 50,00,000/-
- Loan in the name of Free Bird Industries Pvt. Ltd. Rs. 15,00,000/-
- Loan reflected in the name of Kiran Devi Rs. 15,00,000/-

27. The aforesaid deposit to be received from the group comprising of Sh. Anil Kumar, Sh. Vibhor Tyagi and Sh. Vaibhav Tyagi had helped in getting settlement of loan and interest payable with Sarvottam Securities Pvt. Ltd.

Ankit Vij:- Rs. 20,00,000/-

- Loan reflected in the books of the trust Rs. 12,80,000/-
- Loan reflected in the books in the name of Veerbala Rs. 7,20,000/-

28. We have also gone through the statement of Sh. Vibhor Tyagi and Sh. Vaibhav Tyagi produced by the Id. DR wherein they have categorically denied in the statement recorded u/s 131 of giving any loan to Dr. Ankit Sharma. They stated that they were trying to open a petrol pump a partnership of wife of Dr. Ankit Sharma and due to non-allotment of petrol pump the business could not start. On the other hand, the revenue has not brought anything on record to prove that the loan has been extended to Dr. Ankit Sharma. The Id. CIT(A) at para 8.3 also observes that the loans have been taken by Sh. Jaspal Singh Sharma Trust. Even on that count also, the addition ought not to have been made in the hands of the assessee. Thus, keeping in view that the above twin facts into consideration, we hold

that no addition can be made in the hands of the assessee. The appeal of the assessee on this ground is allowed.

ITA No. 2125/Del/2022 (Revenue Appeal)
ACIT Vs. Ankit Sharma

Unsecured Loans:

29. During the year, the assessee received loans from two entities namely, M/s. Sarvottam Securities Pvt. Ltd. and M/s. Aspire Sales Pvt. Ltd. The AO held that the amounts received from these entities are bogus, conversely the Id. CIT(A) held that they cannot be considered so.

30. Proceedings before the Assessing Officer:

M/s. Sarvottam Securities Pvt. Ltd.

“On perusal of details available on the system, it was seen that Sh. Ankur Goel, CA of M/s NJ & Associates, F-36, Gali No.-1, Madhu Vihar, Patparganj, Delhi has audited the books of accounts of this company for the AY-2017-18. Accordingly, on 19.02.2019, summons were issued, by the Investigation wing, in his name and got served. In response to this Sh. Ankur Goel attended this office on 10.06.2019 and his statement was recorded u/s 131(1A) of IT Act, 1961. He stated that he had audited the books of accounts of M/s K.G. Finvest Pvt. Ltd., M/s Sarvottam Securities Pvt., Ltd. and M/s Upaj Leasing and Finance Pvt. Ltd. during the FY-2015- 16 & 2016-17. When he was asked about the various directors of these companies during different FYs, he stated that he did not know these persons. He accepted that he had audited books of accounts of above three companies without knowing the directors of these companies. Sh. Ankur Goel was asked to state whether all loan agreements of above three NBFCS were put before him during audit of the books of accounts of these companies. In response to this he

stated that loan agreements made by these companies were not put before him during the audit of books of accounts of these companies. From the statement of Sh. Ankur Goel, it is also seen that the directors are not the shareholders of the company. It is also observed that the directors appear to be only for namesake as they have low income ITRS. Shri Ankur Goel has further stated that all directors are dummy for namesake and are there only to sign documents. From the ongoing, it is clearly seen that these companies are bogus. When Sh. Ankur Goel was asked about the nature of entries made by the above mentioned NBFCs to Shri Jaipal Singh Sharma Trust, he clearly stated that these entries were Bogus.”

31. The salient features of the statement of Sh. Ankur Goel are that,

- The authorized signatories in three companies namely, M/s. Sarvottam Securities Pvt. Ltd., M/s. KG Finvest Pvt. Ltd. and M/s. Upaj Leasing & Finance Pvt. Ltd. are respective Directors but these Directors are dummy for name sake only and all banking or cash transactions are handled by persons namely, Sh. Himanshu Verma and Sh. Hari Shankar Yadav.
- M/s. Sarvottam Securities Pvt. Ltd., M/s. KG Finvest Pvt. Ltd. and M/s. Upaj Leasing & Finance Pvt. Ltd. are bogus NBFCs which provides accommodation entries in the form of loans to various entities on commission basis.
- Accommodation entries of bogus loan are given in lieu of cash from the client, cash is received including commission from client and money is transferred to the account of client through RTGS, NEFT from the accounts of these three NBFCs.

- Blank cheques are signed by the Directors of the companies and kept with Sh. Hari Shankar Yadav.

32. The Assessing Officer held that,

“In his statement Shri Ankur Goel accepted that the loans advanced by M/s Sarvottam Securities Pvt. Ltd., also M/s Upaj Leasing and Finance Company Limited and M/s KG Finvest Private Limited are bogus. He also stated that the directors of the companies are dummy directors and actual beneficial owners of the company are two other persons, namely, Sh. Himanshu Verma and Sh. Hari Shankar Yadav.

Through the above, statement recorded, the auditor of the company Sh. Ankur Gupta has himself admitted, in reply to Q.40, that the entities M/s Sarvottam Securities Private Ltd, M/s Upaj Leasing and Finance Company Ltd. and M/s KG Finvest Pvt. Ltd. provide accommodation entries to various entities.”

33. The AO held that the statements have not been retracted or withdrawn during the search, post search or assessment proceedings. The AO held that the declared income of the loan party was Rs.9,99,730/-. Hence, he treated the amounts received of Rs.1.50 Cr. as bogus.

Aspire Sales Pvt. Ltd.:

34. With regard to the loan received from, the AO held that the entity has declared returned income of Rs.6,36,870/- and the NBFCs has issued total loan of Rs.1 Cr. to the assessee as well as to Ms. Nidhi Sharma the other family member. This NBFCs has no other business activity and in the succeeding year, the loans given were of Rs.1,83,359/- and in the preceding year it was Rs.3,07,520/- and hence, the credibility of the loan party is not proved.

Proceedings Before the Id. CIT(A):

35. The submissions of the assessee before the Id. CIT(A) are as under:

SARVOTTAM SECURITIES PVT LTD.

A. The appellant has been required by your honour to explain as to why the summons issued by the Investigation wing could not be served upon the company to prove their identity, and creditworthiness with supporting evidence. The assessing officer has recorded that summons could not be served on Ankur Gupta and Premnath both Directors of the company at 246/68, Second Floor, East School Block, Mandwali, Delhi-92.

A1. In reply it is stated that the copy of the balance sheet of the company Sarvottam Securities Private limited is has been filed before your honour for the year under consideration. The aforesaid Ankur Gupta and Premnath are not the directors of the company during the year. The directors are Shri Rishi Jindal and Shri Ashok Kumar. Accordingly, it has no relevance if the summons could not be served on these persons even at their residence. As far K.G. Finvest, it shall be dealt with in their case separately, it is however clarified that the office of the company is situated on the first floor of the same premises and not on the second floor where the letter seems to have been sent. The address can be verified from the copy of the ITR.

A2. It is further stated that this place was taken on rent from Dimple Verma vide rent agreement dated 21.05.2016. Copy of the rent agreement and copy of the electricity bill in the name of Dimple Verma is enclosed in evidence. From the copy of the rent agreement and electricity bill, the address 246/68, First Floor, East School Block, Mandawali, Delhi-110092 stands proved. It clearly establishes that the correct address was not explored either through post or through Income Tax Inspector and/or as the case may be. It is submitted that the investigation wing never informed the appellant in regard to the fact that summons could not be served. And it cannot be presumed that in one premises, there cannot be more than one tenant more so, the letters were wrongly addressed to

second floor while the office of the company had been functioning from the first floor.

A3. It is further stated that company had again shifted its office in the year 2019 to the new address and proper rent agreement was executed finally on 18.02.2019 with Shri K. Pandey son of Shri R. D. Pandey owner of the property bearing unit number 114, Vardhman, Mayur Market, CSC, Mayur Vihar, Phase-3, Kondli, Gharoli, Delhi-110096. Copy of rent agreement in respect of this property is also enclosed. Unfortunately as is well known, rental market operates in such a way that the owners do not rent out the property under an agreement for a period of more than 11 months fearing title disputes in long period agreements.

A4. The company had shifted its office to the other address and copy of the rent agreement between the company and the land lord is enclosed in evidence. How could the company foresee, the issue of any notice from the department and further, the appellant had never been informed as to 'which address, the Income Tax Inspector had visited. Accordingly, the contention of the investigation wing as incorporated in the body of the assessment order is based on mere assumptions and whims of the officer concerned and thus cannot be relied upon to doubt the genuineness of the lender company.

B. The appellant has been further required to explain the contents of last paragraph at page 3 of the assessment order where it is rendered that the investigation wing had summoned and examined Shri Ankur Goel, the Chartered Accountant who has claimed to have audited the books of account of the company for the year under consideration. The appellant on the last date of hearing had been also required by your Honour to explain the contention of the Auditor Ankur Goel that the directors are not known to him and the company is a bogus entity engaged in providing accommodation entries only and that the directors being dummy, the beneficial directors are Himanshu Verma and Hari Shankar Yadav.

B1. In reply, at the very outset, it is explained that for the year under consideration relevant to the assessment year 2016-11, the books of account of the company were audited by Shri Shenu Aggarwal, Chartered Accountant, Proprietor of M/S Shenu Aggarwal & Company. The books of account of the company were never audited by Shri Ankur Goel, Chartered

Accountant and there is no evidence on record to prove that Ankur Goel may be partner of Shenu Aggawal. Accordingly, all his assertions that the lender company is bogus and entry provider is totally false statement seems to be given out of professional jealousy only. Since, books are not audited by Ankur Goel, Chartered Accountant for the year under consideration, all the assertions made by him and incorporated in the body of the order are meaningless. Moreover, the investigation wing has failed to summon and record the statement of Himanshu Verma and Hari Shankar Yadav and as such the contention of CA Sh. Ankur Goel lacked corroborative evidence and is accordingly, nothing more than a dump document and cannot be relied upon the answer to question number 40 given by Ankur Goel these are entities providing accommodation entries is without any authority and being neither an auditor nor director and is marred by professional jealousy only.

Regarding other two entities, Upaj Leasing and Finance Company Ltd and K.G. Finvest Pvt. Ltd., necessary reply shall be filed in the relevant year.

C. On the other hand, the assessing officer has personally conducted discreet enquiries on the issue and at page number 2 of assessment order admitted that total information in respect of unsecured loan raised from these entities has been submitted in compliance to notice issued under section 133(6) of the Act and summons issued under section 131 of the Act in the name of the Company/Directors that has been served as well that goes to prove the identity, genuineness and creditworthiness of the loans received. The loan confirmation, copy of bank account, ITR, balance sheet and audit report has been already filed before your honour. It is thus explained that once, the assessing officer has made independent enquiries, he cannot brush aside the material information collected by her simply to follow the agenda set by investigation wing.

C1. The evidence filed had been complete in all respects and no defect was pointed out in the documents submitted on records by the respective lender companies in compliance to notice served under section 133(6) of the Act nor any further query is raised. The balance sheet of the company Sarvottam Securities Pvt. Ltd. for the assessment year 2016-17 reflects total assets of Rs. 107,60,35,346/- and an amount of Rs. 105,85,84,049/- is shown as short term loan and advances. The trading account of the company shows total revenue receipts of Rs.1,70,73,910/-. Accordingly,

the requirement of section 68 stands fully complied with, the identity of the company is proved, the genuineness of transaction stands proved and the creditworthiness of the company is proved beyond any doubts.

REGARDING ASPIRE SALES PRIVATE LIMITED

D. On the last date of hearing, appellant was required to explain the objections recorded by the assessing officer at page number 7 of the assessment order, where it is observed that to enquire about the genuineness of the loan summons were issued to the lender company on 08.09.202. However, in response, neither the director of the company nor any authorized representative of the company appeared.

D1. It is explained that the summons issued by the assessing officer were properly served upon the company but non compliance can be for obvious reasons. It was the period, when on account of COVID- 19, people prone to the infection preferred to remain indoors. The copies of balance sheet and ITR had been sent along with copies of the loan agreements and other supporting documents and the copies have been also enclosed for the perusal by your Honour.

D2. It is further explained to your Honours query that the net income declared in the ITR is not the sole criteria to judge the creditworthiness of any lender company. The trading account of the lender company shows Revenue from operations at Rs. 9,54,76,041/- and the balance sheet reflects total assets/investments at Rs. 5,21,41,882/- that includes trade receivables at Rs. 1,63,85,283/- besides Rs. 1,83,359/- reflected under short term loan and advances and every auditor has its own system of indicating advances and/or receivable in the balance sheet. And that the loan received stands reflected in the list of Trade Receivable and necessary confirmation is enclosed. The assessing officer in the body of the assessment order has intentionally mentioned the figure of Rs. 1,83,359/- only to indicate the financial health of the company. Accordingly, it is stated that the financial health of the entity is very sound and the bank account does not reflect any cash deposit at all and the assessing officer has not made out the case of entry in lieu of cash with sufficient documents and corroborative evidence on record.

36. After going through the entire evidences, the Id. CIT(A) deleted the addition. For the sake of ready reference and brevity, the relevant part of the order of the Id. CIT(A) is reproduces as under:

"I have carefully perused the observations of the AO and the submission of the appellant. In the assessment order, the issues of unsecured loans of Rs. 75,00,000/- taken from M/s. Sarvottam Securities. Pvt. Ltd., Rs. 50,00,000/- taken from M/s. Aspire Sales Pvt. Ltd. and Rs. 25,00,000/- taken from M/s. Moral Sales Pvt. Ltd. have been examined separately. In the matter of unsecured loan of Rs. 75,00,000/- taken from M/s. Sarvottam Securities Pvt. Ltd. the AO observes that as per ITR this loan creditor has shown the income of only Rs. 9,99,730/-. The AO observes that the loan creditor lacks the creditworthiness. In the assessment order, the AO records that during post search proceedings, summons were issued in the name of Sh. Ankur Gupta and Sh. Prem Nath, both directors in M/s. Sarvottam Securities Pvt. Ltd., however the inspectors could not find the given address at Plot No. 246/68, SF East School Block, Mandawali Delhi-92. The AO further observes that the summons could also not be served at the residential address of Sh. Ankur Gupta at D-1/245, Block D-1, Buddha Vihar, Phase-1, Delhi. It is observation of the AO that Sh. Ankur Goel CA of M/s. NJ and Associates, F-36, Gali No. 1, Madhu Vihar, Patpad Ganj, Delhi has audited the books of this company for AY 2017-18 and his statement was recorded u/s 131(1A) of IT Act on 10.06.2019 and he stated that he had audited the books of M/s. KG Finvest Pvt. Ltd., M/s. Sarvottam Securities Pvt. Ltd. and M/s. Upaj Leasing and Finance Pvt. Ltd. for FY 2015-16 and FY 2016-17. Sh. Ankur Goel stated that he audited books of these three concerns without knowing their directors and that loan agreements made by these companies were not put before him during the audit of books of these companies. He claimed that the directors of these companies appear to be only for name-sake and that these companies are bogus. The AO observes that Sh. Ankur Goel stated that the directors of these three companies are dummy and actual beneficial owners are Sh. Himanshu Verma and Sh. Hari Shankar Yadav. Thus the AO concludes that these three entities i.e. M/s. KG Finvest Pvt. Ltd., M/s. Sarvottam Securities Pvt. Ltd. and M/s. Upaj Leasing and Finance Pvt. Ltd. provide accommodation entries. The AO further observes that the directors of M/s. Sarvottam Securities Pvt. Ltd. did not appear personally

during the assessment proceedings. The creditworthiness of M/s Sarvottam Securities Pvt. Ltd. was also concluded to be insufficient due to its meager income of Rs. 9,99,730/- in AY 2016-17 against the loan of Rs. 75,00,000/-.

6.5 On the other hand the AR submits that the copy of the balance sheet of the loan creditor company i.e. M/s. Sarvottam Securities Private limited has been filed and from the same, it can be verified that Sh. Ankur Gupta and Premnath are not the directors of the company during the year. The directors are Shri Rishi Jindal and Shri Ashok Kumar, therefore, it has no relevance if the summons could not be served on these persons even at their residences. The AR submits that the office of the lender company is situated on the first floor of the same premise and not on the second floor where the letter seems to have been sent. The address can be verified from the copy of the ITR. The AR further submits that this place was taken on rent from Smt. Dimple Verma vide rent agreement dated 21.05.2016, copy of the rent agreement and copy of the electricity bill in the name of Smt. Dimple Verma has been enclosed in evidence. From the copy of the rent agreement and electricity bill, the address 246/68, First Floor, East School Block, Mandawali, Delhi-110092 stands proved. It clearly establishes that the correct address was not explored either through post or through Income Tax Inspector and/or as the case may be. It is submission of the AR that the investigation wing never informed the appellant in regard to the fact that summons could not be served. More so, the letters were wrongly addressed to second floor while the office of the company had been functioning from the first floor. The AR brings to the notice that the lender company had again shifted its office in the year 2019 to the new address and proper rent agreement was executed finally on 18.02.2019 with Shri K. Pandey son of Shri R.D. Pandey owner of the property bearing unit number 114, Vardhman, Mayur Market, CSC, Mayur Vihar, Phase-3, Kondli, Gharoli, Delhi-110096. Copy of rent agreement in respect of this property has also been enclosed.

6.6 The AR claims that in AY 2016-17, the books of this loan creditor i.e. M/s. Sarvottam Securities Pvt. Ltd. have been audited by Shenu Aggarwal, chartered accountant, prop, of M/s. Shenu Aggarwal and Company and the books of the creditor' company were not audited by Sh. Ankur Goel, chartered accountant and there is no evidence on record to prove that Ankur Goel may be partner of Shenu Aggarwal. The AR claims

that all the assertions of Sh. Ankur Goel that lender company is bogus and entry provider are totally false and seem to be given out of professional jealousy. He submits that the investigation wing failed to confirm the statement of Shri Ankur Goel from Sh. Himanshu Verma and Sh. Hari Shankar Yadav, who have been claimed to be main persons controlling the loan creditor. The AR claims that the AO has personally conducted discreet enquiries on the issue and at page number 2 of assessment order admitted that total information in respect of unsecured loan raised from these entities has been submitted in compliance to notice issued under section 133(6) of the Act that goes to prove the identity, genuineness and creditworthiness of the loans received. The loan confirmation, copy of bank account, ITR, balance sheet and audit report has been already filed. It is thus explained that once, the assessing officer has made independent enquiries, he cannot brush aside the material information collected by her simply to follow the agenda set by investigation wing. The AR claims that balance sheet of the lender company M/s. Sarvottam Securities Pvt. Ltd. for AY 2016-17 reflects total assets of Rs.107,60,35,346/- and an amount of Rs. 105,85,84,049/- is shown as short term loans and advances. It is the submission of the AR that the trading account' of the company shows total revenue receipts of Rs. 1,70,73,910/- and this turn-over cannot be brushed aside to claim that company is a bogus entity. Thus the AR concludes that the requirement of section 68 stands fully complied with, since the identity of the company is proved, the genuineness of transaction stands proved and the creditworthiness of the company is proved beyond any doubts. He further claims that this NBFC has given loans to so many large number of other persons and the same can be verified from the schedules of balance sheet. The AR further claims that the relied statement of Sh. Ankur Goel, who was neither the director nor the auditor of the concern, has also not been provided by the Investigation Wing or by the AO to the appellant. He claims that there was no partnership between two professional chartered accountants i.e. Shenu Aggarwal and Ankur Goel and Sh. Shenu Aggarwal was prop, of M/s. Shenu Aggarwal and Company and he only audited the books of M/s. Sarvottam Securities Pvt. Ltd. therefore the statement of Sh. Ankur Goel is false and prejudiced and marred with professional rivalry and thus the same cannot be relied to fasten the appellant with tax liability of those loans which have been substantially returned by various concerns of appellant Group.

6.7 From the records it has been found that Sh. Ankur Goel has not audited the books of accounts of M/s. Sarvottam Securities Pvt. Ltd. in the year under consideration. Infact the books have been audited by Shenu Aggarwal, Chartered accountant who is prop, of Shenu Aggarwal and Company. Further the notices issued by the AO have been complied and all the requisite details have been filed on behalf of loan creditor M/s. Sarvottam Securities Pvt. Ltd. From the return of income it has been found that the address of M/s. Sarvottam Securities Pvt. Ltd. is Plot No. 246/68, 1st Floor, East School Block, Mandawali, Delhi-110092. The appellant has also furnished the registered rent agreement between Smt. Dimple Verma and M/s. Sarvottam Securities Pvt. Ltd. dt. 21.05.2016 as an evidence. The AR claims that the inquiry was conducted on the 2nd floor of this premise as is mentioned in the assessment order. The AR further claims that the office of the company was shifted in 2019 at 114, Vardhman, Mayur Market, CSC, Mayur Vihar, Phase-3, Kondli, Gharoli, Delhi-110096. The copy of rent agreement of this premise is also furnished. Therefore the AO cannot claim that the identity of this loan creditor could not be proved. From the balance sheet of this NBFC company it has been found that this has share capital of Rs. 3,01,87,000/- and reserve and surplus of Rs. 65.09 crores. From the Schedule of Short term Loans and advances, it is found that loans are given to various persons. Loans have been received by the appellant through banking channel and relevant bank statements have been filed. This company has earned interest income of Rs. 1.39 crores and achieved the sales turn-over of Rs. 39.50 Lacs. It is found that the net income of Rs. 9,99,732/- has been offered for tax but the income of current year cannot be made a criteria of creditworthiness of the loan creditor. The statement of Sh. Ankur Goel suffers from factual incorrectness and the same has also not been taken to logical conclusion by verifying the same from the affected parties. This statement has also not been provided to the appellant. Further all the three limbs of genuine cash credit i.e. identity, creditworthiness and genuineness of transaction, have been proved by furnishing all the relevant details. The reliance placed by the appellant on various judicial renouncements has been found correct in the sense that the appellant has discharged his onus by proving identity and creditworthiness of the loan creditor along with genuineness of transaction, which is proved since all the loans of advanced through banking channels.

6.8 From the details furnished by the appellant in the assessment proceedings and also filed in the appellate proceedings, it has been found that at the time of accepting loan, an agreement was executed, the appellant also executed promissory note as security and the appellant issued undated crossed cheque in the name of the lender company as additional security. Further the submission of the AR has been found correct that overall analysis of accounts various-years i.e. AY 2015-16 to 2018-19 of Sh. Jaipal Singh Sharma Trust and of various family members leads to the conclusion that whatever loans were raised by the appellant and other family members, the major portion of the amount is transferred and deposited with the trust to meet the charitable goal of the trust. It had been specifically stipulated in the loan document that if the loan is not repaid within the time frame, the interest element shall come in to play that stand added to the document/promissory notes .and further with advance assurance for repayment of loan amount by issuing undated cheques. It has been emphasized that trust had been facing grave financial crisis in the absence of sanction of medical batches and the trust had been extending its medical facilities on the OPD slip of Rs. 10/- only. The trust had been following and pursuing its charitable objectives and due to the same, the trust had suffered losses to the tune of around more than Rs. 20 Crores. Therefore the circumstances indicate that, the trust needed actual money to run the hospital smoothly in view of the mounting losses and not mere accommodation entries. There is force in the argument of the AR that the circumstantial evidences lead to the conclusion that the Trust needed actual money and there was no such big cash generating other business activity from which excess cash was being generated for which family members of the searched group would have resorted to accommodation entries to introduce the unaccounted income. The statement given by Sh. Ankur Goyai, CA after more than 5 months of the search, has been found incorrect in the light of the fact that the books of the accounts of M/s. Sarvottam Securities Pvt. Ltd. have not been actually audited by him and the same have been audited by Sh. Shenu Aggarwal, prop. of Shenu Aggarwal and Company, (membership No. 527267 and prop, concern registration no. 026501N). Further the AR has brought into fore the fact that no cash trail could be established by the investigation wing or by the AO. The statement was not confronted to the AR and the same was also not taken to its logical conclusion by examining Sh. Himanshu Verma and Sh. Hari Shankar Yadav, who have been claimed

as controllers of these three NBFCs. These NBFCs are regulated by RBI laws. The objectivity of statement of Sh. Ankur Goyai could also not be examined when the questions were raised by the appellant that the same is recorded after the 5 months of the search action and he has not been auditor of the NBFC lender in the year under consideration, in-fact he was partner of NJ Associates and M/s. NJ Associates has been auditor of this lender company in FY 2016-17 only and as per his clarification in the statement on oath. Sh. Ankur Gupta has just signed the audited records and has not been involved in the actual audit process.

6.9 In the matter of unsecured loan of Rs. 50,00,000/- taken from M/s. Aspire Sales Pvt. Ltd., the AO observes that this entity has declared income of only Rs. 6,36,870/-, however the total loan of Rs. 1,00,00,000/- is advanced to the appellant and his family members during the year. The AO accepts that the notice issued u/s 133(6) of IT Act has been complied. However the AO observes that from the balance sheet of this lender company it has been found that it has shown total loans and advances of only Rs. 1,83,359/- hence the total loans of Rs. 1,00,00,000/- given to the appellant and his family does not appear genuine. The AO observes that summons u/s 131 of IT Act were issued and the same were not complied. Therefore the AO concludes that the lender suffers from creditworthiness and hence the genuineness of loan of Rs.50,00,000/- given by M/s. Aspire Sales Pvt. Ltd. has not been accepted by the AO.

6.10 On the other hand the AR submits that in the matter of M/s. Aspire Sales Pvt. Ltd., the notices issued u/s 133(6) of IT Act were duly complied, however the summons issued u/s 131 could not be complied due to Covid-19 situation throughout the country. The AR submits that copies of the balance sheet and ITR had been furnished along with copies of loan agreements and other supporting documents. The AR further omits that the net income declared in the ITR is not the sole criteria to judge the creditworthiness of any lender company, the trading account of the lender company shows Revenue from operations at Rs. 9,54,76,041/- and the balance sheet reflects total assets/investments at Rs. 5,21,41,882/- that includes trade receivables at Rs. 1,63,85,283/- besides Rs. 1,83,359/- reflected under 'short term loan and advances'.

The AR explains that every auditor has his own system of indicating advances and/or receivables in the balance sheet, he clarifies that the loan received stands reflected in the list of Trade Receivable' and necessary confirmation is enclosed. The assessing officer in the body of the assessment order has wrongfully mentioned the figure of Rs. 1,83,359/- only to indicate the financial health of the company. Accordingly, it is stated that the financial health of the entity is very sound and the bank account does not reflect any cash deposit at all and the assessing officer has not made out the case of entry in lieu of cash with sufficient documents and corroborative evidence on record.

The AR explains that loans and advances given to Sh. Ankit Sharma and Smt. Nidhi Sharma have been shown under trade receivables in schedule 10 which sums up to Rs. 1,63,85,283/- and the bifurcation of the same is as under:

Name of Parties	Amount
Bright View Telecom Pvt. Ltd.	24,39,177.00
ID Pearl India	39,46,106.00
Ankit Sharma Loan A/c	50,00,000.00
Nidhi Sharma Loan A/c	50,00,000.00
	1,63,85,283.00

Thus the AR submits that the AO has wrongly concluded that the loans and advances given to the appellant group amounting to Rs. 1,00,00,000/- are way more than the Short term loans and advances shown by the lender at Rs. 1,83,359/-, which is shown in schedule 12 of the balance sheet. The AR submits that the opportunity of explaining the balance sheet before reaching to any conclusion has not been given and wrong conclusions have been drawn.

6.11 The AR further submits that financial health of the entity is very sound and bank account does not reflect any cash deposit at all and the assessing officer has failed to prove the allegation of entry in lieu of cash with sufficient documents and corroborative evidence on record excepting that the AO has tried to toe the line drawn by investigation wing. The AR further submits that income of current year is not a criteria to judge the creditworthiness of the lender. He pointed out from the balance sheet and

profit and loss account that lender company i.e. M/s. Aspire Sales Pvt. Ltd. had share' capital and reserves of more than Rs. 5.21 crores on 31.03.2016 and the company has revenue from operations of Rs. 9.54 crores in FY 2015-16. He claims that company with such a huge turn-over and such a good creditworthiness cannot be claimed as Bogus by the AO."

37. The Id. CIT(A) has diligently relied upon the following case laws as applicable to the facts of the cases before us:

- Abhijavala developers (P.) Ltd. vs ITO 9(1)(1), Mumbai, [2021] 124 taxmann.com 72 (Mumbai - Trib.)/[2021] 187 ITD 222 (Mumbai - Trib.)[03-12- 2020],
- Moongipa Dev. & Inf. Ltd. vs DCIT, Mum. [2021] 127 taxmann.com 808 (Mumbai – Trib.)/[2021] 189 ITD 388 (Mumbai – Trib.) [03-05-2021]
- PCIT-5 vs Laxman Industrial Resources Ltd., [2017] taxmann.com 648 (Delhi)/(2017) 397 ITR 106 (Delhi[14-03-2017]
- Bini Builders (P) Ltd. vs DCIT, Central range-7(3), [2020] 118 taxmann.com 447 (Mumbai-Trib [2020] 185 ITD 236 (Mumbai-Trib.[12-03-2020)
- Ancon Chemplast (P) Ltd. vs ITO, Ward-2(4), New Delhi, [2021] 127 taxmann.com 150 (Delhi - Trib.)2022) 93 ITR(T) 167 (Delhi - Trib.).[2021] 189 ITD 156 (Delhi-Trib [30-04-2021]
- PCIT vs. E Smart Systems (P) Ltd. (2019) 105 taxmann.com 158 [Del.-HC].
- PCIT vs. Hi-Tech Residency (P) Ltd., [2018] 96 taxmann.com 402 [Del-HC]
- Mod Creations (P.) Ltd. vs. ITO [2013] 354 ITR 282 [Del.-HC]
- Flourish Builders & Developers (P) Ltd. vs. DCIT (2019) 176 ITD 409 [Del Tribe]

- ACIT vs. Vikrant Puri [2015] 47 ITR (T) 708 [Delhi-Tribu.]
- Rajesh Bhatia vs. DCIT [2017] 88 taxmann.com 350 (Delhi-Tribu.)
- CIT vs. Diamond Products Limited [2009] 177 Taxman 331 [Delhi-HC).
- Prayag Tendu Leaves Processing Co. vs. CIT [2017] 88 taxmann.com 23 [Jharkhand HC)
- PCIT vs. Veedhata Tower Pvt. Ltd. [2018] 403 ITR 415 [Bombay-HC]

38. We have gone through evidences collected by the Assessing Officer, the reply submitted by the assessee before the AO and the Id. CIT(A), examination of each issue and contention raised by the revenue with reference to the facts relied upon by the Id. CIT(A) and reports of the investigation. The Id. CIT(A) cogently brought on record that the loans received by the assessee could not be treated u/s 68 as the identity, genuineness and creditworthiness of the parties has been duly proved. In view of the above facts and the ratio given by the Id. CIT(A), no interference is called in the well reasoned order of the Id. CIT(A).

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39. The assessee has received loans from M/s Moral Sales Pvt. Ltd. in addition to Sarvottam Securities Pvt. Ltd. and Aspire Sales Pvt. Ltd. The adjudication in the case of Ankit Sharma in ITA No. 2125/Del/2022 applies *mutatis mutandis* with reference to the unsecured loans received from M/s Sarvottam Securities Pvt. Ltd. and M/s Aspire Sales Pvt. Ltd.

40. M/s Moral Sales Pvt. Ltd. During the year, the assessee has received loan of Rs 25,00,000/- from the lender entity. The

entity has declared income of Rs. 1,05,690/- during the year. Further, the entity has forwarded total loan of Rs. 80,00,000/- to the assessee and his family members, during the year, namely Sh. Ankur Sharma and Smt. Shashi Sharma.

41. Notice u/s 133(6) was issued to the company, in response to which it furnished reply. The AO held that the company does not have creditworthiness to forward such huge amount of loans. However, from the perusal of Balance sheet of the entity for the period ending 31.03.2016, it was seen that it has shown total loans and advances given of only Rs. 52,97,148/- during the year. No other loans and advances have been mentioned in the balance sheet. Also, no additional investments has also been shown by the company. Henceforth, the total loans of Rs.80,00,000/- which has been forwarded to the assessee and his family members is not reflected in the Balance sheet of the lender company during the year under consideration which does not prove the genuineness and creditworthiness of the above loan transaction.

42. Hence, Summons u/s 131 were also issued to the company on 08.09.2021. In response the authorized representative of the company Sh. Santosh Gupta, CA and internal auditor in the company appeared alongwith copy of power of attorney issued by the Director of the company Sh. Har Dayal and copy of loan agreements. He stated that the source of loans was out of accumulated profits and loans of the company. However, as mentioned in the preceding paras the company has not shown the amount of loans forwarded to the assessee and her family members in its balance sheet. Thus, the AO held that the genuineness of the transaction is not established.

43. The AO held that during the post search proceedings, summons were issued by the investigation wing in the name of Sh. Vivek Dutta and Sh. Har Dayal both Directors in M/s Moral Sales Pvt. Ltd for compliance. However summon could not be served at the registered office of the company in this case as the premises were found locked and no whereabouts of the company could be known. Since, the office of the company as reported by the ITIs was locked, accordingly, ITIs were again directed to serve these summons and submit their report. Again the summons could not be served and it was reported that the premises is the office of M/s Rajesh Vipin and Associates CA. And, Sh. Bijendra Chauhan working in their office told that neither there is any person with the name Sh. Hardayal nor M/s Moral Sales Pvt. Ltd., exists at this address. Summon was also sent, by the investigation wing, through speed post. In response to summon, the authorized signatory of the company submitted the written submission through speed post. In this reply the authorized signatory of M/s Moral Sales Pvt. Ltd. submitted that the matter is old and they need 15 days more to collect the requisite documents/information. However, after that none attended nor any written reply from M/s Moral Sales Pvt. Ltd. was received.

44. The details of Gross Total income of the company declared in the ITRs during different FYs are obtained and are summarized as under:-

Sl. No.	F.Y.	Gross Total Income (Rs.)
1.	2014-15	1,10,673/-
2.	2015-16	1,05,685/-
3.	2016-17	1,64,632/-
4.	2017-18	2,04,312/-

45. M/s Moral Sales Pvt. Ltd. has given substantial loan to the assessee and her family members and donations to M/s Shri Jaipal Singh Sharma Trust. The loans given by the company are not getting reflected in the Balance sheet of the company. From the perusal of above table, it is seen that the maximum gross total income of the company during the period from FY 2015 to 2017-18 is Rs.2,04,312/- only in FY-2017-18. Further, juxtaposition income profile to the outcome of enquiries made regarding genuineness of the company make it amply clear that such loans and donations received by the assessee and her family members from M/s Moral Sales Pvt. Ltd. are bogus.

46. Hence, the AO treated the loan as unexplained money of the assessee that has been routed as loan and added to the income of the assessee.

47. Before the Id. CIT(A), the assessee submitted as under:

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"E. On the last date of hearing, the appellant had been required to explain the reason as to why during post search enquiry, the summons issued by the investigation wing in the name of Shri Vivek Dutta and Shri Har Dayal, both Directors of the company Moral Sales Private Limited could not be served at their registered office that was found to be locked.

E1. It is respectfully explained that the report/observation of the investigation wing is absolutely wrong and mis-conceived. It is stated that neither Shri Vivek Dutta nor Shri Har Dayal is the director of the company Moral Sales Private Limited. The copy of the balance sheet audited by CA Deepak Jain has been already submitted before your honour. The name of the directors as incorporated on the balance sheet are Shri Arun Kumar Sharma and Vishal Jain.

It clearly proves that the investigation wing has messed up the number of cases in their appraisal report in order to demonstrate their might. Further if the office is found locked, how does this prove that the

company does not exist. Further, the address where the inspectors were sent by the investigation wing too is not mentioned at all. As such, it does not lead to a negative conclusion by the assessing officer.

E2 It is further noted in the second last para at page 10 of the order, that the notices were again sent through ITI but it could not be served. Finally in the last para at page number 10, it is recorded that the summons were sent through speed post by the investigation wing and reply received through authorized signatory of the company Moral Sales Private Limited that matter being of the old, period, need 15 days time- to furnish information. From observation recorded in last paragraph at page 10 of the assessment order, it has become absolutely clear that the notice stands served on the company Moral Sales Private Limited, how the investigation wing has concluded that it is a paper entity with no office and engaged in providing accommodation entries only.

E3. To sum up, the assessing officer had also issued notice under section 133(6) of the Act to the lender Moral Sales Private Limited. The notice had been properly received by the company and in response, the lender company furnished reply. This fact stands admitted by the assessing officer in last paragraph at page number 2 of the assessment order. It is further explained that the trading account of the lender company Moral Sales Private Limited shows Revenue from operations at Rs. 5,21,45,340/- and balance sheet reflects total investments at Rs. 5,03,45,177/- that includes accumulated profits/reserve and surplus at Rs. 4,94,41,908/- and trade receivables at Rs. 1,44,23,653/- besides short term-long term loan, and advances at Rs. 52,97,148/- and every auditor has its own system of indicating advances and/or receivable in the balance sheet. The breakup of the figure of loan and advances declared at the net amount of Rs. 52,97,148/- is enclosed.

E4. Further, summons under section 131 was issued to the company on 08.09.2021, in response, the authorized representative of the company Shri Santosh Gupta, CA and internal auditor of the company appeared along with copy of the power of attorney issued by the Director and he had filed the copies of the loan agreement and further explained to the assessing officer that the source of loan was out of accumulated profits and loan of the company. Accordingly, it is stated that financial health of the entity is very sound and bank account does not reflect any cash

deposit at all and the Assessing Officer has failed to prove the allegation of entry in lieu of cash with sufficient documents and corroborative evidence on record excepting that the AO has tried to toe the line drawn by investigation wing.

F. How any CA like Ankur Goel who is not auditor of any of the aforesaid companies for the relevant year can give statement that it is a mere paper company. It is for this reason that neither of the two, investigation wing and the assessing officer took steps to provide the copy of the statement of Shri Ankur Goel to the appellant before using the same to complete the assessment after making uncalled for additions.

F1. Accordingly, it is explained that Shri Ankur Goel has given only self serving statement to damage the professional work of others in the field. Shri Ankur Goel has not at all audited the balance sheet of Savottam Securities Pvt. Ltd. for the year under consideration and that books for this company were audited by Shenu Aggarwal, being the proprietor of his company namely Shenu Aggarwal & Company and books of other two companies Amsoft Global Private Limited and moral sales private limited have been audited by Deepak Jain, chartered accountant. Necessary evidence in support of this contention is enclosed and as such there is no partnership between the two professional chartered accountants namely Shenu Aggarwal and Ankur Goel. the statement is a mere in professional jealousy and deserves to be discarded.

It is strange that the assessing officer relied upon the statement of some CA Shri Ankur Goel's recorded by the investigation wing, not to the knowledge of the appellant, but regretfully, the mandatory notice under section 142(1) of the Act is not served, the statement of the said third person never confronted to the appellant before using the same against the appellant for making addition nor the said witness/person was allowed to be cross-examined to arrive at the bottom of the matter. The recording of the statement was kept under wraps fearing the truth may not surface, if the copy of the statement is provided to the appellant.

Reference is invited to the judgment delivered by the Income Tax Appellate Tribunal Chandigarh Bench, Chandigarh in the case of Nirmal Rani Vs. Deputy Commissioner of Income Tax, Ambala, reported in 163 ITD 491; where assessee had adequately discharged her onus of proving

identity of donor, capacity of donor as also genuineness of transaction, addition could not be made under section 68 of the Act and by asking assessee to file their income tax return and bank statement, revenue was verifying source of source which could not be done.

Reference is invited to the judgment delivered by the High Court of Bombay, in the case of Commissioner of Income Tax vs Harsh D Mehta, reported in 251 Taxman 346: where assessee proved loan transactions from various parties by providing details like copy of PAN card, copy of return of income, balance sheet and copy of the bank statement of the creditors, tribunal was justified in deleting additions made by Assessing Officer under section 68 in respect of said transaction.

Reference is invited to the judgment delivered by Delhi High Court, in the case of Pr. Commissioner of Income Tax vs Manoj Hora, reported in 402 ITR 175; search and seizer- assessment in search cases, statement of third party recorded under section 132(4) of the Act, no incriminating material attributable to assessee found during search to corroborate statement-' addition made by assessing officer unsustainable.

*322 ITR 396; Delhi High Court; Commissioner of Income Tax vs. Ashwani Gupta; Search and Seizure-Block assessment-copies of seized material not proved to assessee nor assessee given an opportunity to cross examination of person on whose statement assessing officer relied upon-violation of natural justice-fatal to proceedings-Income Tax Act, 1961
The tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals) which held the entire addition made by the assessing officer to be invalid and had to be deleted it on the ground of the assessing officer had passed the assessment order in violation of the principles of natural justice in as much as he had neither provided copies of the seized material to the assessee nor had he allowed the assessee to cross examine the person on the basis of whose statement the addition was made.*

The alleged statement of Shri Ankur Goei CA recorded by the investigation wing had been not taken to its logical conclusion by bringing corroborative evidence on record to support the self-serving statement. Further it is not out of place to stress upon the fact that the assessing officer had made discreet enquiries by sending notices under section 133(6) of the Act The

notices were served and received by the lender companies and the desired documents, confirmations, balance sheets and copies of the bank statements were furnished in compliance to the requirements as raised in the notice issued under section 133(6) of the Act.

48. The Id. CIT(A) after examination of the loan held that the matter of unsecured loan of Rs. 25,00,000/- taken from M/s. Moral Sales Pvt. Ltd., the AO observes that this entity has declared income of only Rs. 1,05,690/-, however the total loan of Rs. 80,00,000/- is advanced to the appellant and his family members during the year. The AO accepts that the notice issued u/s 133(6) of IT Act has been complied. However the AO observes that from the balance sheet of this lender company it has been found that it has shown total loans and advances of only Rs. 52,97,148/- hence the total loans of Rs. 80,00,000/- given to the appellant and his family does not appear genuine. The AO observes that summons u/s 131 of IT Act were issued and in compliance to the same Sh. Santosh Gupta CA attended and furnished the copies of loan agreements and explained that the loans have been given out of accumulated profits and loans of the company. The AO further mentions that summons were issued by Investigation Wing in the names of Sh. Vivek Datta and Sh. Hardayal, directors of M/s. Moral Sales Pvt. Ltd. however the summons could not be served at the registered office of the company and it was reported by the inspectors that the given premise belongs to M/s. Rajesh Vipin and Associates. The AO states that Sh. Bijendra Chauhan present in that office claimed that neither there is any person with the name of Sh. Hardayal nor M/s. Moral Sales Pvt. Ltd. exists at that address. However it is stated by the AO in the assessment order itself that in response to the Summons the authorized signatory of the company submitted the written submission through the speed post. Further the AO has given details of

returned income of four years of the lender company which is very less and the maximum income of these four years is only Rs. 2,04,312/- in FY 2017-18. Therefore the AO concludes that the lender suffers from creditworthiness. On the other hand the AR submits that in the matter of M/s. Moral Sales Pvt. Ltd. the report/observation of the investigation wing is absolutely wrong since neither Shri Vivek Dutta nor Shri Har Dayal was the director of the company Moral Sales Private Limited. The copy of the balance sheet audited by CA Deepak Jain has been submitted as an evidence, from the same it is claimed that the names of the directors are Sh. Arun Kumar Sharma and Vishal Jain. The Id. CIT(A) was in conformity with the argument of the Id. AR that in the assessment order itself the AO has accepted that the summons sent through speed post by the investigation wing were duly served and reply received through authorized signatory of the company i.e. M/s. Moral Sales Private Limited. It is claim of the AR that the assessing officer had also issued notice under section 133(6) of the Act to the lender Moral Sales Private Limited and this notice had been properly received by the company and in response, the lender company furnished reply. This fact stands admitted by the assessing officer in last paragraph at page number 2 of the assessment order. The AR claims that the trading account of the lender company M/s. Moral Sales Private Limited shows Revenue from operations at Rs. 5,21,45,340/- and balance sheet reflects total investments at Rs. 5,03,45,177/- that includes accumulated profits/reserve and surplus at Rs. 4,94,41,908/- and trade receivables at Rs. 1,44,23,653/- besides short term-long term loan and advances at Rs. 52,97,148/-. The AR clarifies that every auditor has his own system of indicating advances and/or receivable in the balance sheet. The breakup of the figure of loan and advances declared at the net amount of Rs. 52,97,148/- is provided with

the clarification of auditor Sh. Deepak Jain that this is net amount of advance to others/ receivables of Rs. 2,32,68,050/- less unsecured loan/ payables of Rs. 1,80,00,000/- and TDS amount of Rs. 29,098/-. Thus the AR submits that the AO has wrongly concluded that the loans and advances given to the appellant group amounting to Rs. 80,00,000/- are way more than the loans and advances shown by the lender at Rs. 52,97,148/- with the following gross situation of the advances and receivables as net off to loans/ payables:

49. In the FY15-16, in the balance sheet of Moral Sales Private Limited, short term loans and advances was shown after netting off of unsecured loan payable/receivable.

Advance to others & Receivables	Rs.2,32,68,050/-
Less: Unsecured Loan Payables	Rs.1,80,00,000/-
Net Amount	Rs.52,68,050/-
Add: TDS (as shown in BS)	Rs. 29,098/-
Amount	Rs. 52,97,148/-

50. The Id. CIT(A) held that in compliance to the summons issued under section 131 on 08.09.2021, the authorized representative of the company Shri Santosh Gupta CA and internal auditor of the company appeared along with copy of the power of attorney issued by the Director and he had filed the copies of the loan agreement and further explained to the assessing officer that the source of loan was out of accumulated profits and loan of the company. Accordingly, it was held that financial health of the entity is very sound and bank account does not reflect any cash deposit at all and the assessing officer has failed to prove the allegation of entry in lieu of cash with sufficient documents and corroborative evidence on record excepting that the AO has tried to toe the line drawn by investigation wing. The Id. CIT(A) relied on the

balance sheet and profit and loss account that lender company i.e. M/s. Moral Sales Pvt. Ltd. had share capital and reserves of more than Rs. 5 crores on 31.03.2016 and the company has revenue from operations of Rs. 5.21 crores in FY 2015-16. He claims that company with such a huge turn-over and such a good creditworthiness cannot be claimed as Bogus by the AO. Holding thus, the Id. CIT(A) deleted the addition.

51. Having gone through evidences collected by the Assessing Officer, the reply submitted by the assessee before the AO and the Id. CIT(A), examination of each issue and contention raised by the revenue with reference to the facts relied upon by the Id. CIT(A) and reports of the investigation, the Id. CIT(A) cogently brought on record that the loans received by the assessee could not be treated u/s 68 as the identity, genuineness and creditworthiness of the parties has been duly proved. In view of the above facts and the ratio given by the Id. CIT(A), no interference is called in the well reasoned order of the Id. CIT(A).

Jaipal Singh Sharma Trust

ITA No. 2126/Del/2022 : A.Y. 2016-17

ITA No. 2127/Del/2022 : A.Y. 2017-18

52. The amounts received by the trust are as under:

For the A.Y. 2016-17

1. Loan from Sarvottam Securities Pvt. Ltd.
2. Loan from K.G. Finvest Pvt. Ltd.
3. Loan from Upaj Leasing & Finance Company Pvt. Ltd.
4. Donation from Amsoft Global Pvt. Ltd.

For the A.Y. 2017-18

1. Loan from Sarvottam Securities Pvt. Ltd.
2. Donation from Amsoft Global Pvt. Ltd.
3. Donation from Moral Sales Pvt. Ltd.

53. The issue of receipt of monies from Sarvottam Securities Pvt. Ltd. and Moral Sales Pvt. Ltd. have already been dealt above in the case of Nidhi Sharma in ITA No. 2124/Del/2022. With regard to K.G. Finvest Pvt. Ltd., the facts and the arguments of the revenue and the assessee are similar to that of Sarvottam Securities Pvt. Ltd. Hence, the same ratio applies in the case of Jaipal Singh Sharma Trust.

54. Hence, receipt of monies from Amsoft Global Pvt. Ltd. and Upaj Leasing & Finance Company Pvt. Ltd. are being dealt now.

M/s Upaj leasing and Finance company Pvt. Ltd.

55. The relevant part of the Assessment Order is as under:

“During the year, the assessee has received loan of Rs. 80,00,000/- from the company. The lender company has declared income of Rs. 13,63,530/- during the year. In respect of the above, firstly the lender company does not have the creditworthiness to pay huge amount of loan to assessee and its family members. Only transacting through banking channel does not make a transaction genuine.

In this case Notice u/s 133(6) was issued to the lender company on 18.12.2020. In response to which the lender company furnished reply alongwith confirmation, ITR and Bank statement. Further, summon u/s 131 was issued to the company on 08.09.2021. In response the authorized representative of the company Sh. Pankaj Walia, Advocate appeared alongwith copy of power of attorney issued on e-stamp paper by the Director of the company Sh. Shree Ram Yadav, copy of loan agreement with the trust. He stated that he provides consultancy tax and civil

matters to M/s Upaj Leasing and Finance Private Limited. He stated that the source of loan was out of accumulated profits and loans received back by the company. He further stated that the loans have been repaid by the trust.

Further, during the post search investigation, enquiries were made by the Investigation wing and it was found that the company is a bogus paper entity.

To enquire about the genuineness of such loans, on 10.05.2019, summon was issued in the name of Sh. Ravinder Kumar Yadav & Sh. Prem Nath both directors in this company. These summons neither could be served at the registered office of the company nor at the residential address of the directors. Sh. Ankur Goel, CA of M/s NJ & Associates, F-36, Gali No.- 1, Madhu Vihar, Patparganj, Delhi has audited the books of accounts of this company also for the AY -2017-18. Accordingly, summons was served upon him. The statement of Shri Ankur Goel was recorded wherein he has accepted that the loans advanced by M/s Upaj Leasing and Finance Co. (P), Ltd. are bogus.

On perusal of details available on the system, it was seen that Sh. Ankur Goel, CA of M/s NJ & Associates, F-36, Gali No.-1, Madhu Vihar, Patparganj, Delhi has audited the books of accounts of this company for the AY 2017-18. Accordingly, on 19.02.2019, summons were issued, by the M/s Shri Jaipal Singh Sharma Trust -A. Y. 2016-17

Investigation wing, in his name and got served. In response to this Sh. Ankur Goel attended this office on 10.06.2019 and his statement was recorded u/s 131(1A) of IT Act, 1961. He stated that he had audited the books of accounts of M/s K.G. FinvestPvt. Ltd., M/s Sarvottam Securities Pvt., Ltd. and M/s Upaj Leasing and Finance Pvt. Ltd. during the FY 2015-16 & 2016-17. When he was asked about the various directors of these companies during different FYs, he stated that he did not know these persons. He accepted that he had audited books of accounts of above three companies without knowing the directors of these companies. Sh. Ankur Goel was asked to state whether all loan agreements of above three NBFCs were put before him during audit of the books of accounts of these companies. In response to this he stated that loan agreements made by these companies were not put before him during the audit of books of

accounts of these companies. From the statement of Sh. Ankur Goel, it is also seen that the directors are not the shareholders of the company. It is also observed that the directors appear to be only for namesake as they have low income ITRS. Shri Ankur Goel has further stated that all directors are dummy for namesake and are there only to sign documents. From the ongoing, it is clearly seen that these companies are bogus. When Sh. Ankur Goel was asked about the nature of entries made by the above mentioned NBFCs to Shri Jaipal Singh Sharma Trust, he clearly stated that these entries were Bogus. The relevant portion of his statements is as under:

.....

In his statement Shri Ankur Goel accepted that the loans advanced by M/s Sarvottam Securities Pvt. Ltd., also M/s Upaj Leasing and Finance Company Limited and M/s KG Finvest Private Limited are bogus. He also stated that the directors of the companies are dummy directors and actual beneficial owners of the company are two other persons, namely, Sh. Himanshu Verma and Sh. Hari Shankar Yadav.

Through the above, statement recorded, the auditor of the company Sh. Ankur Gupta has himself admitted, in reply to Q.40, that the entities M/s Sarvottam Securities Private Ltd, M/s Upaj Leasing and Finance Company Ltd. and M/s KG Finvest Pvt. Ltd. provide accommodation entries to various entities.

In view of the above, the assessee's reply has not been found to be satisfactory.

Without prejudice to the above, the creditworthiness of the above company was also analyzed by examining the ITR. The company has only declared income of Rs.13,63,530/- for the AY 2016-17 against the loan of Rs.80,00,000/-.

Further, during the assessment proceedings also, the Directors did not appear personally while summons were issued for confronting the above facts unearthed during the search investigation. From the above discussions, it is very much clear that M/s Upaj Leasing and Finance Company Ltd., has provided accommodation entries in the form of loan of Rs.80,00,000/- during the year, to Shri Jaipal Singh Sharma Trust. The

creditworthiness of lender and genuineness of the loan received by the assessee from M/s Sarvottam Securities Pvt. Ltd. is not proved.

In connection with the above lenders, the statements recorded as mentioned above in all the three cases have not been retracted or withdrawn during the search, post search and assessment proceedings. Further the statements recorded have a nexus with the surrounding circumstances of the case wherein the creditworthiness has not been proved in case of the above parties.

In case of B. Kishore Kumar Vs. Deputy Commissioner of Income Tax, Central Circle-IV (1), Chennai (2014) 52 taxmann.com 449[madras) HC has ruled that where income, same was to be levied tax on basis of admission without scrutinizing documents, This decision has been confirmed by apex court vide order dated July, 02, 2015 [2015] 62 tamxamnn.com 215(SC). Further, in the case Sterline Machine Tools Vs. CIT 122 ITR 926 the court held that the legal value of an admission is that is the best evidence that an opposite party can rely upon and though not conclusive, is decisive of the matter unless unsuccessfully withdrawn or proved erroneous.

4.1 From the above discussion on the unsecured loans received by the assessee trust during the FY 2015-16, it is clear that undisclosed funds have been routed through different entities and ultimately received by assessee. Thus the unsecured loans received by the assessee during the year are not genuine and received as loan which is a colourable device. Thus, the bogus unsecured loans to the tune of Rs.3,72,00,000/- are added to the income of the assessee under section 68 of IT act, 1961."

56. Before the Id. CIT(A), the assessee filed written submission which are reproduced as under:

"C. It has been recorded by assessing officer that during year under reference, assessee has received loan of Rs. 80,00,000/- from M/S Upaj Leasing and Finance Company Pvt. Ltd. and the lender company has declared income of Rs. 13,63,530A only for the year. In respect of the above, the assessing officer without first looking at her own investigation recorded that the lender company does not have the creditworthiness to pay huge amount of loan to assessee.

C1. It is explained in compliance to the specific query raised by your Honour on the last date of hearing that notice under section 133(6) was issued to the lender company on 18.12.2020 by the assessing officer to verify the genuineness of the loan received by the company. In response to which, the lender company furnished reply along with confirmation, ITR, and bank statement Further summons under section 131 was issued to the company on 08.09.2021, in response, the authorized representative of the company Shri Pankaj Walia, Advocate appeared along with copy of the power of attorney issued on e-stamp paper by the Director of the company Shri Shree Ram Yadav and the copy of the loan agreement with the trust. He stated that the source of loan was out of accumulated profits and loan has been partly repaid by the trust to the company.

C2. It is further recorded by the assessing officer that on 10.05.2019 summons was issued by the Investigation Wing, in the name of Sh. Ravinder Kumar Yadav and Shri Prem Nath both directors in the company. These summonses could not be served.

IT IS EXPLAINED THAT PREM NATH IS NOT THE DIRECTOR OF THE COMPANY. FURTHER IT IS NOT MENTIONED AS TO WHICH ADDRESS, THE SUMMONS WERE SENT WHILE THE AS PER ITR OF THE RELEVANT YEAR, THE ADDRESS OF THE COMPANY IS NOTED AS 224, SECOND FLOOR, VARDHMAN CITY CENTRE, GULABI BAGH, SHAKTI NAGAR, NEAR RAILWAY UNDER BRIDGE, DELHI-110052.

C3 Sir, in continuation it is further explained that the trading account of the lender company shows Revenue from operations at Rs. 6,97,44,205/- and balance sheet reflects total assets/investments at Rs. 137,51,20,593/- that Includes accumulated profits/reserve and surplus at Rs. 64,23,32,817/ and also short term loan and advances at Rs. 135,56,29,534/-. Accordingly, it is stated that the financial health of the entity is very sound and the bank account does not reflect any cash deposit at all and the assessing officer has failed to prove the allegation of entry in lieu of cash with sufficient documents and corroborative evidence on record excepting, that AO has tried to toe the line drawn by investigation wing.

D. The appellant during the course of the appellate proceedings has been further required to explain the contents of last paragraph- at page 3

of the assessment order where it is recorded that the investigation wing had summoned and examined Shri Ankur Goel, the Chartered Accountant who has claimed to have audited the books of account of the company for the year under consideration. The appellant on the last date of hearing had been also required by your Honour to explain the contention of the Auditor Ankur Goel that the directors are not known to him and the company is a bogus entity engaged in providing accommodation entries only and that the directors being dummy, the beneficial directors are Himanshu Verma and Hari Shankar Yadav.

D1. Respected Sir, it is explained that for assessment year 2016-17, the books of account of the company were Audited by Shri Shenu Aggarwal, Chartered Accountant, Proprietor of M/s Shenu Aggarwai & Company. The books of account of the company were never audited by Shri Ankur Goel, Chartered Accountant and there is no evidence on record to prove that Ankur Goel may be partner of Shenu Aggarwal. Necessary confirmation from Shenu Aggarwal, CA is enclosed and if desired, Shenu Aggarwal can be examined.

Accordingly, all the assertions by Ankur Goel that lender company is bogus and entry provider is totally false and seems to be given out of professional jealousy only. Since, books are not audited by Ankur Goel, CA for the year under consideration, all the assertions made by him and incorporated in the body of the order are meaningless. MOREOVER, THE INVESTIGATION WING HAS FAILED TO SUMMON AND RECORD THE STATEMENT OF HIMANSHU VERMA AND HARI SHANKAR YADAV AND AS SUCH THE CONTENTION OF CA Sh. ANKUR GOEL LACKED CORROBORATIVE EVIDENCE AND IS NOTHING MORE THAN A DUMP DOCUMENT AND CAN NOT BE RELIED UPON. THE ANSWAR TO QUESTION NUMBER 40 GIVEN BY ANKUR GOEL THAT THESE ARE ENTITIES PROVIDING ACCOMODATION ENTRIES IS WITHOUT ANY AUTHORITY AND BEING NEITHER AN AUDITOR NOR DIRECTOR AND IS MARRED BY PROFESSIONAL JEALOUSLY ONLY.

D2. How any CA like Ankur Goel who is not auditor of any of the aforesaid companies for the relevant year can give statement that it is a mere paper company, it is for this reason that neither of the two, investigation wing and the assessing officer took steps to provide the copy of the statement of Shri Ankur Goel to the appellant before using the same to complete the assessment after making uncalled for additions.

D3. It may be pointed out that the trust had been facing grave financial crises to run the hospital for charitable objects while the medical college did not get sanction of the medical seats and thus day by day, the financial situation was getting bad to worst while the trust had been extending its medical facilities on the OPD slip of Rs. 10/- only. The trust had been following and perusing its charitable objective in true spirits.

THE MOTIVE WAS TO RAISE MONEY FOR MEETING CHARITABLE OBLIGATIONS UNDERTAKEN BY THE FAMILY. THE ACTUAL MONEY WAS NEEDED AND NOT ACCOMODATION ENTRIES THAT ARE GENERALLY TAKEN IN THE EVENT OF HEAVY SURPLUS INCOME THAT MAY BE NEEDED TO BE BRTOUGHT BACK TO THE BOOKS OF ACCOUNT HERE THE TRUST AND THE FAMILY HAD BEEN RUNNING IN TO HEAVY LOSSES IN EXCESS OF MORE THAN Rs. 20 CRORES. Since the actual funds/money were needed to run the hospital, and it is absolutely wrong to allege that the appellant trust raised accommodation entries only. In the run up to mounting losses of more than Rs. 20 crores, how the trust can be labelled to be engaged in accepting accommodation entries only.

F1. Accordingly, it is explained that Shri Ankur Goel has given only self serving statement to damage the professional work of others in the field. SHRI ANKUR GOEL HAS NOT AT ALL AUDITED THE BALANCE SHEET OF THE LENDER COMPANIES FOR THE YEAR UNDER CONSIDERATION AND THAT BOOKS FOR THESE COMPANY WERE AUDITED BY SHENU AGGARWAL, BEING THE PROPRIETOR OF HIS COMPANY NAMELY SHENU AGGARWAL & COMPANY. NECESSARY EVIDENCE IN SUPPORT OF THIS CONTENTION IS ENCLOSED AND AS SUCH THERE IS NO PARTNERSHIP BETWEEN THE TWO PROFESSIONAL CHARTERED ACCOUNTANTS NAMELY SHENU AGGARWAL AND ANKUR GOEL THE STATEMENT IS A MERE IN PROFESSIONAL JELOVSY AND DESERVES TO BE DISCARDED.

It is strange that the assessing officer relied upon the statement of some CA Shri Ankur Goel s recorded by the investigation wing, not to the knowledge of the appellant, but regretrfully, the mandatory notice under section 142(1) of the Act is not served, the statement of the said third person never confronted to the appellant before using the same against the appellant for making addition nor the said witness/person was allowed to be cross-examined to arrive at the bottom of the matter. The recording

of the statement was kept under wraps fearing the truth may not surface, if the copy of the statement is provided to the appellant."

57. The Id. CIT(A) after going through the submissions of the assessee deleted the addition made by the Assessing Officer. For the sake of ready reference and completeness, the relevant part of the order of the Id. CIT(A) is reproduced below:

"8.1 In the matter of unsecured loan of Rs. 80,00,000/- taken from M/s. Upaj Leasing and Finance Company Pvt. Ltd., the AO observes that as per ITR this loan creditor has shown the income of only Rs. 13,63,530/-. The AO observes that notice u/s 133(6) of IT Act was issued to this lender company and reply was furnished along with confirmation, ITR and Bank Statement. The AO further records that in response to the summons issued u/s 131 of IT Act, the AR of the company Sh. Pankaj Walia Advocate attended and copy of loan agreement with the trust was filed. The AR also submitted that the source of the loan was out of accumulated profits and loans received by the company. It is also brought to the fore that the loan has been paid back by the trust However in the assessment order the AO has recorded findings of the investigator wing and observed that the post search investigation inquiries concluded that the lender company was bogus paper entity. In the assessment order, the AO records that during post search proceedings, summons were issued in the name of Sh. Ravinder Kumar Yadav and Sh. Premnath, both directors in M/s. Upaj Leasing and Finance Company, however the inspectors could not serve the summons either on the registered office of the company or at the residential address of the directors. It is observation of the AO that Sh. Ankur Goel CA of M/s. NJ and Associates, F-36, Gali No. 1, Madhu Vihar, Patpad Ganj, Delhi has audited the books of this company for AY 2017-18 and his statement was recorded u/s 131(1 A) of IT Act on 10.06.2019 and he stated that he had audited the books of M/s. KG Finvest Pvt Ltd., M/s. Sarvottam Securities Pvt. Ltd. and M/s. Upaj Leasing and Finance Pvt. Ltd. for F.Y. 2015-16 and F.Y. 2016-17. Sh. Ankur Goel stated that he audited books of these three concerns without knowing their directors and that loan agreements made by these companies were not put before him during the audit of books of these companies. He claimed that the directors of these companies appear to be only for name-sake and that these companies are bogus. The AO observes that Sh. Ankur Goel stated that

the directors of these three companies are dummy and actual beneficial owners are Sh. Himanshu Verma and Sh. Hari Shankar Yadav. Thus the AO concludes that these three entities i.e. M/s. KG Finvest Pvt. Ltd., M/s. Sarvottam Securities Pvt. Ltd. and M/s. Upaj Leasing and Finance Pvt. Ltd. provide accommodation entries. The creditworthiness of M/s. Upaj Leasing and Finance Company Pvt. Ltd. was also concluded to be insufficient due to its meager income of Rs. 13,63,530/- in A.Y. 2016-17 against the loan of Rs.80,00,000/-.

8.2 On the other hand the AR submits that notice under section 133(6) was issued to the lender company on 18.12.2020 by the assessing officer to verify the genuineness of the loan received by the company and in response to the same, the lender company furnished reply along with confirmation, ITR, and bank statement. Further summons under section 131 were issued to the company on 08.09.2021 and, in response, the authorized representative of the company Shri Pankaj Walia, Advocate appeared along with copy of the power of attorney issued on e-stamp paper by the Director of the company Shri Shree Ram Yadav and the copy of the loan agreement with the trust and he stated that the source of loan was out of accumulated profits and loan has been repaid by the trust to the company. The AR submits that the AO mentioned that the summons issued by the Investigation Wing, in the name of Sh. Ravinder Kumar Yadav and Shri Prem Nath both directors in the company, could not be served but the matter of fact is that Premnath is not the director of the company and as per ITR of the relevant year, the address of the company is noted as 224, second floor, Vardhman City Centre, Gulabi Bagh, Shakti Nagar, near railway under bridge, Delhi-110052 but it appears that the summons were not issued to the correct address by Investigation Wing. The AR further explains that the trading account of the lender company shows Revenue from operations at Rs.6,97,44,205/- and balance sheet reflects total assets/investments at Rs.137,51,20,593/- that includes accumulated profits/reserve and surplus at Rs. 64,23,32,8172/- and also short term loan and advances at Rs. 135,56,29,534/-. Based on the same, he claims that the financial health of the entity is very sound and the bank account does not reflect any cash deposit at all and the assessing officer has failed to prove the allegation of entry in lieu of cash with sufficient documents and corroborative evidence on record excepting that AO has tried to toe the line drawn by investigation wing.

8.3 The AR submits that for AY 2016-17, the books of account of the company were audited by Shri Shenu Aggarwal, Chartered Accountant, Proprietor of M/S Shenu Aggarwal & Company and that the books of account of the company were not audited by Shri Ankur Goel, Chartered Accountant and there is no evidence on record to prove that Ankur Goel may be partner of Shenu Aggarwal, as an evidence, confirmation from Shenu Aggarwal, CA has been enclosed. The AR claims that all the assertions by Ankur Goel, CA that lender company is bogus and entry provider is totally false and seems.-to be given put of professional jealousy since, books are not audited by him. The AR submits that the investigation wing even failed to summon and record the statement of Himanshu Verma and Hari Shankar Yadav and as such the contention of CA Sh. Ankur Goel lacked corroborative evidence. The AR draws attention based on accounts of the trust and searched family members that the trust had been facing grave financial crisis to run the hospital for charitable objects while the medical college did not get sanction of the medical seats and thus day by day, the financial situation was getting bad to worst while the trust had been extending its medical facilities on the OPD slip of Rs. 10/- only. He claims that the Trust had been following and perusing its charitable objective in true spirits and for the same, the motive was to raise money for meeting charitable obligations and therefore actual money was needed and not accommodation entries that are generally taken in the event of heavy surplus income that may be needed to be brought back to the books of account. He claims that the Trust and the family had been running in to heavy losses in excess of more than Rs.20 crores and since the actual funds/money were needed to run the hospital, there was no cause to indulge into accommodation entries.

8.4 From the records it has been found that Sh. Ankur Goel has not audited the books of accounts of M/s. Upaj Leasing and Finance Company Pvt Ltd. in the year under consideration. In-fact the books have been audited by Shenu Aggarwal, Chartered accountant who is prop, of Shenu Aggarwal and Company. Further the notices and summons issued by the AO have been complied and all the requisite details have been filed on behalf of loan creditor M/s. Upaj Leasing and Finance Company Pvt. Ltd. Therefore the AO cannot claim that the identity of this loan creditor could not be proved. From the balance sheet of this NBFC company it has been

found that this has equity and liabilities of Rs.137.51 crores. From the Schedule of Short term Loans and advances, it is found that loans of Rs. 135.58 crores are given to various persons. Loans have been received by the appellant through banking channel and relevant bank statements have been filed. The income of current year cannot be made a criteria of creditworthiness of the loan creditor. The statement of Sh. Ankur Goel suffers from factual incorrectness and the same has also not been taken to logical conclusion by verifying the same from the affected parties. This statement has also not been provided to the appellant. Further all the three limbs of genuine cash credit i.e. identity, creditworthiness and genuineness of transaction, have been proved by furnishing all the relevant details and the loans have been paid back by the trust. The reliance placed by the appellant on various judicial pronouncements has been found correct in the sense that the appellant has discharged his onus by proving identity and creditworthiness of the loan creditor along with genuineness of transaction, which is proved since all the loans of advanced through banking channels.

9.1 From the details furnished by the appellant in the assessment proceedings and also filed in the appellate proceedings, it has been found that at the time of accepting loans from these concerns, an agreement was executed, the appellant also executed promissory note as security and the appellant issued undated crossed cheque in the name of the lender company as additional security. Further the submission of the AR has been found correct that overall analysis of accounts of various years i.e. AY 2015- 16 to 2018-19 of Sh. Jaipal Singh Sharma Trust and of various family members leads to the conclusion that whatever loans were raised by the appellant and other family members, the major portion of the amount is diverted and deposited with the trust to meet the charitable goal of the trust. It had been specifically stipulated in the loan document that if the loan is not repaid within the time frame, the interest element shall come in to play that stand added to the document/promissory notes and further with advance assurance for repayment of loan amount by issuing undated cheques. It has been emphasized that trust had been facing grave financial crises in the absence of sanction of medical batches and the trust had been extending its medical facilities on the OPD slip of Rs. 10/- only. The trust had been following and perusing its charitable objectives and due to the same, the trust had suffered losses to the tune

of around more than Rs. 20 Crores. Therefore the circumstances indicate that, the appellant trust needed actual money to run the hospital smoothly in view of the mounting losses and not mere accommodation entries. There is force in the argument of the AR that the circumstantial evidences lead to the conclusion that the Trust needed actual money and there was no such big cash generating other business activity from which excess cash was being generated for which family members of the searched group would have resorted to accommodation entries to introduce the unaccounted income. The statement given by Sh. Ankur Goyal, CA after more than 5 months of the search, has been found incorrect in the light of the fact that the books of the accounts of these three concerns i.e. M/s. Sarvottan Securities Pvt. Ltd., M/s. K G Finvest Pvt. Ltd. and M/s. Upaj Leasing and Finance Company Pvt. Ltd. have not been actually audited by him and the same have been audited by Sh. Shenu Aggarwal, prop, of Shenu Aggarwal and Company (membership No. 527267 and prop, concern registration no. 026501N). Further the AR has brought into fore the fact that no cash trail could be established by the investigation wing or by the AO. The statement was not confronted to the AR and the same was also not taken to its logical conclusion by examining Sh. Himanshu Verma and Sh. Hari Shankar Yadav, who have been claimed as controllers of these three NBFCs. These NBFCs are regulated by RBI laws. And the loans, taken by trust have been returned back completely. The objectivity of statement of Sh. Ankur Goyai could also not be examined when the questions were raised by the appellant that the same is recorded after the 5 months of the search action and he has not been auditor of the NBFC lenders in the year under consideration, in-fact he was partner of NJ Associates and M/s. NJ Associates has been auditor of these lender companies in FY 2016-17 only and as per his clarification in the statement on oath, Sh. Ankur Gupta has just signed the audited records and has not been involved in the actual audit process.

9.2 The appellant has explained the 'source' of the creditor in its books by filing the confirmation and financial statement of loan creditor. As per the financial statements/ Bank Statements of the loan creditor, it had the availability of the fund. Under section 68 of the Act, what is material in the 'source' of the fund. The source need not to be from the current year's income only. The source can be income, owned funds, borrowed funds or other funds available with the creditors. Under such situation, if the AO

still .doubts the source of loan given by the loan creditors, adverse inference can be drawn in the case of loan creditor and not in case of the appellant company.

The AR has concluded his submission by placing reliance on the following judgments:

- *Abhijavala developers (P.) Ltd. vs ITO 9(1)(1), Mumbai, [2021] 124 taxmann.com 72 (Mumbai - Trib.)/[2021] 187 ITD 222 (Mumbai - Trib.)[03-12-2020],*
- *Moongipa Dev. & Inf. Ltd. vs DCIT, Mum. [2021] 127 taxmann.com 808 (Mumbai-Trib.)/[2021] 189 ITD 388 (Mumbai - Trib.) [03-05-2021],*
- *PCIT-5 vs Laxman Industrial Resources Ltd., [2017] taxmann.com 648 (Delhi)/[2017] 397,ITR 106 (Delhi)[14-03-2017],*
- *Bini Builders (P.) Ltd. vs DCIT, Central range-7(3), [2020] 118 taxmann.com 447 (Mumbai - Trib.)/[2020] 185 ITD 236 (Mumbai - Trib.)[12-03-2020].*
- *Ancon Chemplast (P.) Ltd. vs ITO, Ward-2(4), New Delhi, [2021] 127 taxmann.com 156 (Delhi - Trib.)/[2022] 93 ITR(T) 167 (Delhi - Trib.).[2021] 189 ITD 156 (Delhi - Trib.)[30-04-2021],*
- *PCIT vs. E Smart Systems (P.) Ltd., [2019] 105 taxmann.com 158 [Del.-HC],*
- *PCIT vs. Hi-Tech Residency (P) Ltd., [2018] 96 taxmann.com 402 [Del.-HC],*
- *Mod Creations (P.) Ltd. vs. ITO [2013] 354 ITR 282 [Del.-HC],*
- *Flourish Builders & Developers (P.) Ltd. vs. DCIT [2019] 176 ITD 409 [Del. Tribu.].*
- *ACIT vs. Vikrant Puri [2016] 47 ITR (T) 708 [Delhi-Tribu.].*
- *Rajesh Bhatia vs. DCIT [2017] 88taxmann.com 350 [Delhi-Tribu.]*
- *CIT vs. Diamond Products Limited [2009] 177 Taxman 331 [Delhi-HC].*
- *Prayag Tendu Leaves Processing Co. vs. CIT [2017] 88 taxmann.com 23 [Jharkhand HC].*
- *PCIT vs. Veedhata Tower Pvt. Ltd., [2018] 403 ITR 415 [Bombay-HC]*

58. Having gone through evidences collected by the Assessing Officer, the reply submitted by the assessee before the AO and the Id. CIT(A), examination of each issue and contention raised by the revenue with reference to the facts relied upon by the Id. CIT(A) and reports of the investigation, the Id. CIT(A) cogently brought on record that the loans received by the assessee could not be treated u/s 68 as the identity, genuineness and creditworthiness of the parties has been duly proved. In view of the above facts and the ratio given by the Id. CIT(A), no interference is called in the well reasoned order of the Id. CIT(A).

Amsoft Global Pvt. Ltd.

59. The relevant portion of the Assessment Order on this issue is as under:

"M/s Amsoft Global Pvt Ltd. The assessee has received donation of Rs. 50,00,000/- from M/s Amsoft Global Pvt. Ltd. However, after filing the return in consequence of notice u/s 153A, the assessee converted the same from corpus donations to voluntary donations and filed amended Form 10B. The same was confronted to the assessee. In this regard, vide reply dated 26.03.2021, the assessee has stated that the donation was voluntary donation and not corpus donation.

To verify the above contention of the assessee, Notice u/s 133(6) was issued to the donor company. As per the reply filed, the donor company has categorically stated that it has provided 'corpus donations' to the assessee. Henceforth, the contention of the assessee is not acceptable as corpus donations are given for a specific purpose and with a specific clause of going towards corpus fund of the trust. During the course of search the donation was shown as received as corpus donation. The assessee cannot arbitrarily change the nature of donations from corpus to voluntary at his whims and fancies.

Further the creditworthiness and genuineness of the above transaction was also analyzed During the AY 2017-18, the donor company has filed

ITR of only Rs. 82,120/- while it has given donation of Rs.50,00,000/- to the assessee trust. Thus, clearly the company does not have creditworthiness to forward such huge amount of loans and donations. It has also not furnished its financial statement to prove its net worth and capital to forward loans.

Hence, Summons u/s 131 were also issued to the company on 08.09.2021. However, in response neither the directors nor any authorized representative of the company appeared, despite providing ample time to appear. Thus, from the foregoing discussion it is clear that the donation and loans received by assessee and his family members from this company M/s Amsoft Global Pvt. Ltd. are not genuine.

Also, during post search investigation, enquiries were made by the investigation wing and it was found that the company is a bogus paper company and the transaction of giving loan to the assessee trust is bogus.

To enquire about genuineness of such corpus donation, on 06.02.2019, summons were issued, by Investigation wing, in the name of Ms. Mamta Pandey and Mrs. Sweta Saurabh Gupta both directors in Amsoft Global Pvt. Ltd. for compliance on 13.02.2019.

The ITIs who were sent to serve the summon reported that the office was locked and after making enquiries from Sh. Ramesh Kalra, CA, present in the same building in his office told that in this locked office Sh. Deepak Ji, Chartered Accountant works here but he does not know more about M/s Amsoft Global Pvt. Ltd. Thus summons in this case could not be served.

On going through the details obtained from the system, it is seen that Sh. Deepak Jain, M/s Jain Deepak & Company, 2, Narinder Bhawan, 448, Ring Road, Azadpur, Delhi has audited the books of M/s Amsoft Global Pvt. Ltd. during the FY 2016-17 and 2017-18. Accordingly, on 11.02.2019, summon was issued in his name, by the Investigation wing. This summon also could not be served. In their report the ITIS reported that on making enquiries from the neighborhood it is found that this is office of M/s Vipin and Associates, CA.

The details of Gross Total income of the company declared in the ITRS during different FYs are obtained from ITBA and are summarized as under:

Sl. No.	F.Y.	Gross Total Income (Rs.)
1.	2014-15	1,38,135/-
2.	2015-16	1,40,884/-
3.	2016-17	82,122/-

M/s Amsoft Global Pvt. Ltd. has made corpus donation to the tune of Rs. 50 lacs to M/s Shri Jaipal Singh Sharma Trust while gross total income of the company is as low as Rs. 82,120/- in AY 2017-18. This is beyond common comprehension that a company having very low income of it will make any genuine donations of such huge amounts. The financial statements of the company have also not been produced to establish the net worth and creditworthiness of the company.

Substantial donations of Rs. 50 lakhs in each year were made to Shri Jaipal Singh Sharma Trust in FY 2015-16 and FY 2016-17. From the perusal of above table, it is seen that the gross total income of the company during FY 2014-15 to 2016-17 is below Rs. 1.5 lakhs in each FY. Further, juxtaposition of income profile to the outcome of enquiries made regarding genuineness of the company make it amply clear that such donations received by Shri Jaipal Singh Sharma Trust from M/s Amsoft Global Pvt. Ltd. are bogus and liable to be added to the income of assessee.

Thus, the total donation of Rs.3,30,00,000/- received by the trust from abovementioned entities are bogus and liable to be added to the income of the assessee u/s 68 r.w.s 115BBE of IT Act, 1961."

60. After going through the submission, the Id. CIT(A) deleted the addition made on account of the donation received from Amsoft Global Pvt. Ltd. holding as under:

"In the matter of donation of Rs. 2,80,00,000/- taken from M/s. Moral Sales Pvt. Ltd, and donation of Rs. 50,00,000/- taken from M/s Amsoft Global Pvt. Ltd., the AO observes that these donations were accounted for as corpus donations, however after filing the return in consequence to the notice issued u/s 153A of IT Act the assessee converted the same from corpus donations to voluntary donations and filed amended Form no. 10B. The AO further observes that vide reply dt. 26.03.2021, the assessee

stated that this donation was voluntary donation and not corpus donation. The AO observes that in compliance to the notice issued u/s 133(6) of IT Act, the donor companies have claimed that these were corpus donations. The AO has also brought to the fore that M/s. Moral Sales Pvt Ltd. had meager income of Rs. 1,64,630/- in this year but gave donation of Rs. 2,80,00,000/- and further M/s Amsoft Global Pvt. Ltd. had meager income of Rs. 82,120/- but gave donation of Rs. 50,00,000/-. The AO further observes that in compliance to the summons issued u/s 131 of IT Act, the director of M/s. Moral Sales Pvt Ltd, complied but did not furnish specific details however the director of M/s. Amsoft Global Pvt. Ltd., did not comply. The AO has also produced the findings of investigation wing to make a case that these donor companies are bogus and lack creditworthiness since they had very small incomes in FY 2014-15, 2015-16 and 2016-17.

On the other hand the AR submits that all the donations received were utilized strictly to achieve the objects of the appellant Trust to provide free treatment to poor irrespective of caste, creed and colour and donation in complete were taken to the income and expenditure account and as such, the same amount of donation cannot be taxed twice by making addition to the income. The AR further explains that the assessee trust during the year under consideration had received donations which were inadvertently declared as 'corpus fund', however, on re-examination of the state of affairs, the donation being voluntary donations have been incorporated in the income and expenditure account and the copy of the re-casted income and expenditure account and balance sheet had been also filed during assessment proceedings with the assessing officer and the copies of the balance sheet and receipt and expenses account had been enclosed with the Income Tax Return submitted in response to the notice issued under section 153A of the Act and this return had been made basis for completing cases after search. Necessary details about the donations transferred from the corpus fund to the voluntary donation in the Receipt and Expenditure account had been also submitted with the assessing officer. The assessing officer has made these documents such as Balance Sheet, Receipt and expenses account as the base for the completing case. Accordingly, the voluntary donations form part of the income.

The AR submits that during the year under reference, the appellant had received total donations to the tune of Rs 5,95,36,000/- and these donations at the time of submitting return originally inadvertently and under bonafide belief were adjusted under the corpus donations but after the receipt of notice under section 153A of the Act, the appellant scanned all the documents connected with the donations received, the language in most of the confirmation were not very specific and took a prudent decision to consider and consequently declare all the donations aggregating to Rs. 5,95,35,000/- to the revenue account for which the return has been already filed based on the re-casted Income and Expenses account and also re-casted Balance Sheet attached with the return. The AR submits that the appellant had received total amount of Rs. 3,30,00,000/- towards donation from these donor companies i.e. M/s. Moral Sales Pvt. Ltd. (donation of Rs. 2,80,00,000/-) and M/s. Amsoft Global Private Limited (donation of Rs. 50,00,000/-). He claims that copies of confirmation letters along with copy of the bank account of the company and ITR has been enclosed giving therein complete address and PAN of the companies. It is submission of the appellant that even if the observation made by the assessing officer in assessment order is considered to be correct for the sake of argument, the appellant has not played any fraud upon the revenue system, the appellant has transferred corpus donation to receipt account as voluntary donation and not otherwise The 'corpus donation' represents 'capital receipt while, the voluntary donations' are always part of the 'revenue receipts' and if the conditions laid down in section 11 and 12 are not complied with, the 'revenue receipts' in the form of 'voluntary donations' if any, would become taxable. In view of this legal proposition, the appellant has not committed any fraud upon the revenue and that too in the back ground of the fact that there was no specific direction attached to 'corpus donation' and no such narration has been pointed out by the assessing officer after deep examination of the confirmations and certificate of corpus donations submitted by the donors. In this case, the verifications of the records have been made by calling for the records from the Olo DCIT Central Circle, Ghaziabad and it has been found that these amounts have already been credited as revenue receipts', therefore the submission of the appellant has force that further addition of these amounts as deemed income would be nothing but the double addition of the same amounts.

In the matter of donation of Rs.2,80,00,000/- given by M/s. Moral Sales Pvt. Ltd. and donation of Rs. 50,00,000/- given by M/s. Amsoft Global Pvt. Ltd., since the appellant i.e. Sh. Jaipal Singh Sharma Trust has itself considered these donations of Rs. 3,30,00,000/- as revenue receipts, by considering the donations as 'voluntary donations, there is no need to further add the same in the income as 'deemed income as per the provisions of section 68 of IT Act. Infact making this addition u/s 68 of IT Act again, is nothing but the double addition. In the light of these observations, the addition of Rs. 3,30,00,000/- made u/s 68 of IT Act is hereby deleted."

61. Having gone through evidences collected by the Assessing Officer, the reply submitted by the assessee before the AO and the Id. CIT(A), examination of each issue and contention raised by the revenue with reference to the facts relied upon by the Id. CIT(A) and reports of the investigation, the Id. CIT(A) cogently brought on record that the loans received by the assessee could not be treated u/s 68 as the identity, genuineness and creditworthiness of the parties has been duly proved. In view of the above facts and the ratio given by the Id. CIT(A), no interference is called in the well reasoned order of the Id. CIT(A).

62. In the result, the appeal of the assessee is allowed and the appeals of the Revenue are dismissed.

Order Pronounced in the Open Court on 16/10/2023.

Sd/-

(C. M. Garg)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 16/10/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR