

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
Dr ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**आ.अ.सं./ITA No.257 & 375/SRT/2023** (AY 2018-19)  
(Hearing in Physical Court)

Rajgreen Infralink LLP 29-30, Sai Baba Shraddha Nagar, Nr. Choksi Wadi, New Rander Road, Adajan, Surat-395009 <b>PAN No. AAVFR 8064 N</b>		Deputy Commissioner of Income Tax, Circle-1(3) Surat, Aaykar Bhavan, Majura Gate, Surat-395001
Assistant Commissioner of Income- tax, Circle-1(3), Surat, Room No. 301, 3 <sup>rd</sup> Floor, Anavil Business Centre, Hazira Road, Adajan, Surat-395009	Vs	Rajgreen Infralink LLP 29-30, Sai Baba Shraddha Nagar, Nr. Choksi Wadi, New Rander Road, Adajan, Surat-395009 <b>PAN No. AAVFR 8064 N</b>
<b>अपीलार्थी</b> /Appellant		<b>प्रत्यर्थी</b> /Respondent

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, C.A
राजस्व की ओर से /Revenue by	Shri SM Keshkamat, CIT-DR
<b>अपील पंजीकरण</b> /Appeal instituted on	26.05.2023
सुनवाई की तारीख /Date of hearing	14.09.2023
उद्घोषणा की तारीख /Date of pronouncement	26.10.2023

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

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. These are cross-appeals by assessee and Revenue are directed against the common order of NFAC [for short to as “NFAC/Ld. PCIT(A)”] dated 30.03.2023 for the assessment year 2018-19, which in turn arises out of common assessment order passed by National e-Assessment Centre, Delhi / Assessing Officer under section 143(3) r.w.s. 144B of Income Tax Act, 1961 (hereinafter referred to as ‘the Act’ for the sake of brevity) on 22.04.2021. Therefore, both appeals were clubbed, heard together

and are decided by consolidated order to avoid conflicting decisions.

The assessee in its appeal has raised the following grounds of appeals:

*“1. On the facts and circumstances of the case as well as the law on the subject, the learned CIT(a), Surat has erred in partly confirming the action of ld. Assessing Office by sustaining the addition to the tune of Rs.26,42,30,416/- made u/s 68 of the I.T. Act, 1961.*

*2. On the facts and circumstances of the case as well as the law on the subject, the learned CIT(A), Surat has erred in sustaining the addition as above although assessee has filed complete documentary evidences of all the lenders & clearly discharged the burden cast on it u/s 68 of the I.T. Act, 1961.*

*3. Appellant craves leave to add, alter or delete ground(s) either before or in the course of hearing of appeal.”*

2. The Revenue in its cross-appeal in ITA No.375/SRT/2023 has raised the following grounds of appeal

*“1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.27,72,98,000/- without appreciating the facts that the assessee failed to furnish the cogent evidences in respect of advances given to Rameshwar Developers for purchase of land in the course of assessment proceedings.*

*2. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition even though no opportunity was given to the AO to examine the additional evidence furnished by assessee during appeal proceedings with respect to the addition of Rs.27,72,98,000/-.*

*3. On the basis of the facts and circumstances of the case and in law, the ld. CIT(A) ought to have upheld the order of the Assessing Officer.*

*4. It is, therefore, prayed that the order the Ld. CIT(A) may kindly be set aside and that of the Assessing Officer be restored.*

*6. The appellant craves leave to add, alter amend and/or withdraw any ground of appeal either before or during the course of hearing of the appeal”*

3. Brief facts of the case are that assessee is a Limited Liability Partnership (for short to as “LLP”), engaged in the of real estate development. The assessee was established in the assessment year 2018-19 and it was its first year for its business activities. The assessee undertaken two residential projects namely “The Bluebell” and “Vanilla Sky”. The assessee filed its return of income for the year under consideration *i.e.*, 2018-19 in time, declaring income at Rs.4,80,530/- . The case of assessee was selected for scrutiny, on the issue of “investment in immovable property, sales turnover/ receipts and share capital/other capital”. During assessment year, the Assessing Officer noted that assessee has made advances in Ramesh Developers for purchase of land of Rs.27.72 crores. The Assessing Officer also noted that assessee has claimed unsecured loan of Rs.26.42 crores from various persons in its profit and loss account for the year ended on 31.03.2021. The Assessing Officer issued show cause notice to substantiate the genuineness of such lenders/ unsecured loans. The Assessing Officer noted that no details were furnished by assessee to prove genuineness and creditworthiness of loan amount of Rs.26.42 crores and it was added to the income of assessee under section 68 of the Act and taxed under section 115BBE of the Act. Against the advance to Ramesh/ Rameshwaram Developers of Rs.27.42 crores, the Assessing Officer noted that assessee in its reply stated that advances were given to Rameshwaram Developers for purchasing land for undertaking projects. The Assessing Officer recorded that assessee has not furnished any agreement with the parties and only copy of ledger

was furnished, which do not justify the payment of huge amount without any registered document. The Assessing Officer recorded that assessee failed to prove “genuineness and creditworthiness” and amount of Rs.27.72 crores was also treated as unexplained credit under section 68, in the assessment order passed under section 143(3) r.w.s 144B of the Act on 22.04.2021.

4. Aggrieved by the addition made in the assessment order, the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A) the assessee filed detailed statement of fact as well as written submission. To substantiate the transaction of loan, the assessee furnished particulars of identity of lenders, creditworthiness and genuineness of such transaction. Against the addition of advance, the assessee submitted that Assessing Office not appreciated the fact and despite furnishing documentary evidence in support of advance given for purchase of land, the Assessing Officer simply jump on the conclusion and made addition under section 68 by holding that “appellant- assessee has failed to prove genuineness and creditworthiness” but such addition treated under section 68 is absolutely incorrect. On the addition against advance to Rameshwaram Developers, the assessee submitted that assessee has made payment for purchasing of land from Rameshwaram Developers and payment was made through account payee cheque. The conveyance deed of land was executed in subsequent year. The assessee also submitted that against loan, the assessee discharged its onus by filing confirmation of lender, copy of ledger account, copy of ITR and the bank statements of all the

lender/depositors. The Assessing Officer made addition simply on his presumption, without verifying the details in bank statement and in a single line concluded that “*ITR of the different parties and bank accounts withdrawal do not match and do not prove the creditworthiness*” and made addition of Rs.26.42 crores. The assessee has complied all the directions and has discharged his onus, the assessing officer has not independently investigated the facts. The assessee also furnished the details of all the lenders, details of their ITR, amount of loan of all the lenders.

5. On the submission of assessee, the ld. CIT(A) directed the assessing officer to furnish his obtained remand report. The Assessing Officer furnished his remand report dated 21.02.2023. In the remand report, the Assessing Officer mentioned that assessment order passed under section 143(3) on 22.04.2021, after making addition of Rs.26.46 crores under section 68 on account of unsecured loan and Rs.27.72 crores under section 68 on account of loan and advance given to Rameshwaram Developers. During assessment proceedings, various notices issued under section 142(1) vide notice dated 16.02.2020, 04.01.2021 and 31.03.2021 were issued to the assessee. The assessee failed to submit proper reply with respect to issue raised by assessing officer. The assessee in its reply submitted that due to second wave of Covid-19 pandemic, the assessee could not collect the requisite contra-confirmation and sought short adjournment upto 17.04.2021. The Assessing Officer vide show cause notice dated 15.04.2021 fixed the hearing on 17.04.2021. The assessee simply filed objection against

proposed addition. No details were furnished by assessee. The Assessing Officer thus, objected for admission of additional evidence.

6. However, the Assessing Officer in his without prejudice contention submitted that he has verified the issue of unsecured loan and prepared party-wise report. The Assessing Office furnished party-wise report with respect of 44 lenders / investors. In respect of all lenders Assessing Officer accepted that their ITRs and bank statements were furnished. With respect to lenders, namely, Rajgreen Infrastructure, who has given loan of Rs.24.04 crores, the Assessing Officer commented that various entries routed through concerned group. For Sai developers, who has given loan of Rs.1.00 crores, the Assessing Officer remarked that there were credit entries in the bank account of lender doubt before lending money. For Srushti Developers, who was given loan of Rs.60.00 lakh, the Assessing Officer commented that ITR, confirmation and bank statement have been verified. With regard to remaining other 41 lenders, from whom the amount of loans ranges from Rs.5.00 lakh to Rs. 10.00 lakh, the Assessing Officer reported that either their contra-conformations were not furnished, confirmation was furnished from assessee's own account / or credit entry in their bank accounts within week or the same day before lend the money to the assessee.
7. The copy of remand report was furnished to the assessee for its comment. The assessee vide its reply / rejoinder filed on 13.03.2023 filed their detailed reply. In the reply, the assessee submitted that on the submission of assessee, remand report was sought from Assessing

Officer. In the remand report, the Assessing Officer incorrectly reported that no proper details regarding unsecured loan were given. The assessee has filed various details, asked by the Assessing Officer during assessment proceedings on 05.04.2021 and 17.04.2021 respectively, vide letter dated 21.04.2021. The assessee stated that due to second wave of Covid-19 pandemic, they could not compile all the required contra-confirmation as well as bank statement. The Assessing Officer in his remand report, contended that assessee failed to file detailed with documentary evidence. The assessee has already furnished all details in the comprehensive sheet mentioned; the name of the lender, PAN, amount of loan, repayment of loan, interest paid and Tax Deducted at Source (TDS in short) and the closing balance as on 31.03.2018 and complete pdf folder consisting of duly signed of confirmation of ITR, relevant bank statement of the depositors were furnished. On furnishing such details, the Assessing Officer has not made any enquiry of his own either issuing notice under section 133(6) or 131 of the Act. The assessee has discharged its onus. The Assessing Officer without making any independent verification or enquiry prepared to make huge addition in Crores of rupees, which he clearly tantamount to travesty of justice. There is no merit in the observation of Assessing Officer. Further, the assessee objected that CBDT in Circular No.74/2021 and 75 of 2021 both dated 25.06.2021 and Hon'ble Apex Court in *Suo Motu* Writ Petition (C) No.3 of 2020 dated 10.01.2022 has extended the period of limitation under general or special laws as well as before *quasi-judicial* authorities. On merit, the

assessee reiterate that unsecured loan was obtained during the year the assessee filed confirmation of lenders, ITR, bank statement and accounts confirmation and clearly discharged their onus in proving identity of lenders, capacity of lender and genuineness of such transaction. The Assessing Officer failed to give any reason for justification of addition. He has made just a general remark. In para-3 of assessment order, the Assessing Officer observed that assessee claimed unsecured loan of Rs.26.42 crores from various persons in profit and loss account in the year ending on 31.03.2021. This fact was factually wrong. The amount of loan is not credited in profit and loss account but shown in the liability side of balance sheet. The assessee availed that total loan of Rs.28.12 crores out of which Rs.24.04 crores were obtained from Rajgreen Infrastructure which is associate concern of assessee. Both the firms have many common partners. The assessee filed copy of ITR, audited financial statements, with bank statement and showing income approximately Rs.21 crores and paid tax almost of Rs.8.00 crores. The Assessing Officer has not made any adverse inference no discrepancy was pointed out by Assessing Officer against such transaction. For other two major lenders, *i.e.*, M/s Sai Developers of Rs.1.00 crores and MS Shrushti Developers of Rs.60 lakhs. The assessee has already filed their ITR, bank statements highlighting the transactions and contra-confirmation all the funds were obtained through banking channel. Moreover, for Shrushti Developers, the Assessing Officer in his remand report accepted that he has verified ITR confirmation, bank statement. The major component of loan

received from 3 lenders of Rs.25.64 crores which has not been appreciated by the Assessing Officer. The assessee stated that there is no evidence that deposit in the bank of lenders were received from assessee. The assessee cannot be asked to explain the manner in which lender managed their financial affairs. So far as assessee is concerned, it has discharged its onus by furnishing complete details. To support assessee's contention, assessee relied various case law of Hon'ble jurisdictional High Court in the case of DCIT vs. Rohini Builders 256 ITR 230 (Guj) on the ratio that where assessee established identity of creditors by furnishing their complete address, PAN as well as confirmation with copies of assessment order, the assessee discharged its onus. In case of CIT vs. Ranchhod Jivabhai Nakhava in Tax Appeal No.50 of 2011 dated 20.03.2012, Hon'ble Delhi High Court in CIT vs. Value Capital Services Pvt. Ltd. in ITA No.348/Del/2008, Hon'ble Apex Court in the case of CIT vs. Orissa Corporation Pvt. Ltd. 159 ITR 78(SC). The assessee also relied on the decision of Hon'ble Apex Court in the case of CIT vs. Daulatram Rawatmal 87 ITR 349 (SC), in Dhirajlal Girdharilal vs. CIT (1954) 26 ITR 736 (SC), Hon'ble Guwahati High Court in Jalan Timbers vs. CIT 223 ITR 11 (Gau) and Hon'ble jurisdictional High Court in the case of CIT vs. Pragati Co-Operative Bank Ltd. 278 ITR 170 (Guj). The assessee also submitted that it is settled law that addition made under section 68 cannot be made if source-of-source is not explained. To support such view, the assessee relied upon various decisions including Hon'ble Guwahati High Court in the case of Nemichand Kothari vs. CIT 264 ITR 254 (Gau).

8. For the addition of Rs.27.72 crores, the assessee submitted that Assessing Officer grossly erred in making such addition under section 68. The fact relating to said transaction is that assessee has given advance to Rameshwaram Developers in the year under consideration i.e., assessment year 2018-19 and same was shown on the asset side of the balance-sheet. The Assessing Officer in his observation in para-4 of assessment order made addition under section 68. The addition of section 68 can only be made, when some funds are credited in the books of account maintained by assessee for any previous year. Thus, for making addition, there must be credit in the books of assessee. The transaction is not related to receive of fund, but on the other hand it is case of advance. Such advance shown in the books of account on the asset side of balance-sheet. Consequently, neither section 68 nor section 69 is not applicable on such transaction. The assessee also given the details of advance with date, amount and the bank account from which such amount was paid to Rameshwaram Developers. The assessee further stated that in assessment year 2019-20 purchases was completed and two sale deeds for land were executed on 02.07.2018 vide document No.11863 respectively. Copy of such sale deed was also furnished. The assessee in its without prejudice submissions submitted that Assessing Officer added source of fund being unsecured loan as income under section 68. And once again, the Assessing Officer added application of said source as advance for land of Rs.27.73 crores by turning as unexplained cash credit for the reasons known. The assessee also objected the manner in which

assessment order was drafted “*in violation of principle of natural justice*” and making double addition of the same amount. On the basis of such submission, assessee prayed for deleting both the additions.

9. The NFAC/Ld. CIT(A) after considering the submission of assessee, remand report furnished by the assessing officer and the rejoinder objections of the assessee, confirmed the addition as unsecured loan under section 68 of Rs.26.42 crores. The ld. CIT(A) while giving his finding categorised the lenders in three tables; in table-1, the Ld. CIT(A) considered the loan received from Amba V. Pandav, Bharat Ghoghari and Jyotshna Ghoghari of Rs.5.00 lakh each and noted that all three persons have filed their ITRs by showing taxable income below Rs.2.50 lakhs and has given the loan of Rs.5.00 lakh respectively, it is not known whether their money have been advanced after depositing in cash in their account or not. All three persons have given loan amount on the same day. Thus, their creditworthiness is in doubt. In table-2, the Ld.CIT(A) referred 13 lenders and mentioned their ITRs, amount of loan and the ratio of returned income vis-à-vis the ITRs and the loan given and made remark that money in their bank accounts were received a few days before the amount was transferred to assessee. For lender, Jabbar Singh L. Rajput (HUF) shown at Sl.No.8 in table-2, the ld. CIT(A) noted that he has given loan of Rs.13.50 lakh and received fund of Rs.15.50 lakhs and paid Rs.13.50 lakhs and have returned income at Rs.2.38 lakhs. Similarly, from Jignesh C Mehta (HUF) who given loan of Rs.5.85 lakhs having returned of income of Rs.2.36 lakhs and before giving loan received amount Rs.5.80 lakh in his bank

account. With respect to lenders mentioned in table-3, the ld. CIT(A) noted that those persons have paid normal tax and advanced beyond their capacity. In table-4, Ld. CIT(A) complied details of lenders who were showing income under section 44AD. For three other main creditors, i.e. Rajgreen Infrastructure, the ld. CIT(A) on the basis of remand report concluded that funds are doubtful as there is yet another layer of loan were raised and no explanation was given. The Rajgreen Infrastructure has given loan of Rs.22.04 crores and in their balance-sheet raised unsecured loan of Rs.39.73 crores. For loan from Sai Developers, who has given loan of Rs.1.00 crores, before loan they had received Rs.1.00 crore in their bank account in HDFC Bank on 29.09.2017. For loan of Rs.60.00 lakh from Srushti Developers, the Ld.CIT(A) noted that before giving loan they had received Rs.62.60 lakh in their bank account in Axis Bank on 13.03.2018 and loan was given on 26.03.2018. On the basis of such observation, the NFAC/Ld.CIT(a) by referring the decision of Delhi Tribunal in the case of Harsh W Chadda Vs DDIT [201] 9 taxmann.com 1, (Delhi), Hon'ble Apex Court in the case of CIT vs. Durga Prasad More [1971] 82 ITR 540 (SC) and in the case of Sumathy Dayal Vs CIT 214 ITR 801 (SC) held that in such cases, principle was laid down that where entry of loan in a set of entities, mere furnishing certain details and payment made account payee cheque is not sacrosanct and held that loan are not explained, thereby upheld the addition.

10. However, on the addition of Rs.27.72 crores on account of advance given to Rameshwaram Developers, the ld. CIT(A) noted that assessee

has given details about advance given for purchase of land. The dates of advance correspond with the arrangement of loan from various entities, the Ld. CIT(A) was of the view that once the addition of loan has been confronted as unexplained loan, the application of that income cannot be sustained and deleted the entire addition.

11. Aggrieved by the order of Ld. CIT(A) both the parties have filed their respective appeal before the Tribunal. The assessee has challenged the correctness of impugned order in upholding the addition of unsecured loan *whereas* the Department has questioned order in deleting the addition on account of investment in land paid to Rameshwaram Developers.
12. We have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Commissioner of Income Tax- Departmental Representative (Ld. CIT-DR) for the Revenue and have gone through the order of lower authorities carefully. The Ld. AR for the assessee submits that it was the first year of commencement of business of assessee, the assessee being a builder has arranged the fund for managing his business affairs. The assessee has arranged funds for their projects by way loan. During assessment assessee furnished the details of all the lenders including their name, PAN, bank statement and ITR to prove the identity, creditworthiness and genuineness of loan transactions. All the parties are genuine and assessee has furnished complete details of all the lenders. The Assessing Officer was insisted for filing contra-confirmation of the lenders. The assessee merely requested to grant some more time for

filing contra-confirmation due to second wave of Covid-19 but Assessing Officer instead of considering the peculiar situation passed assessment order without making any investigation from the lenders and made the addition on his presumption basis. The assessee obtained more than 95% of loan from his associates Rajgreen Infrastructure of Rs.22.04 crores and Rs.1.00 crores from Sai Developers and Rs.60.00 lakhs from Srushti Developers. The Assessing Officer has not made any adverse comment against three major lenders. Similarly, for remaining lenders, the assessing officer also not commented, except making remark that *ITR of the different parties and bank accounts withdrawal do not match and do not prove the creditworthiness*". No independent investigation was carried out by Assessing Office either during assessment proceedings or in the remand proceedings despite the fact that all the persons are local. There was no allegation of Assessing Officer that assessee get money routed through unsecured loan. The assessee has made TDS against interest paid all the loans. The TDS was credited in the account in Government coffer. The assessee clearly stated that some of the loan amount were paid however, no credit of such paid given. For Srushti Developers who has paid Rs.60.00 lakh, the Assessing Officer clearly accepted that he has verified the evidence furnished by assessee. The Assessing Officer or Ld. CIT(A) *nowhere* disputed the identity of the lenders, genuineness of transactions merely disputed the creditworthiness of some of the lenders on their own presumption without bringing any adverse evidence on record. The Ld. AR for the

assessee submits that he has duly discharged his primary onus as per the decision of Hon'ble jurisdictional High Court in the case of Ranchod Jivabhai Nakhava (supra), once the assessee has discharged their onus the burden shift on the assessing officer to prove otherwise or to bring adverse evidence on record or to make further investigation. In absence of adverse addition, the additions of loan under section 68 is not sustainable. The Ld. AR for the assessee in his other submission reiterated all the submission made before Ld. CIT(A) which we are not reproduced for the sake of brevity. At the end of submissions, the ld AR for the assessee submits that he has filed a list of all lenders, at page No. 324 of paper book, showing the name of lenders, PAN, amount of loan, interest paid, TDS made, closing balance, amount repaid till date, amount repaid and the bankers of lenders. Out of all 44 lenders, the loans of 14 lenders have been fully repaid. Once, the repayment is made and accepted by the department no addition for such loan is to be made. To support of all his submissions, the ld AR for the assessee, besides relying on the decisions relied before ld CIT(A), also relied on the following decisions;

- ❖ CIT Vs Orrisa Corporation Pvt Limited (159 ITR78 SC),
- ❖ CIT Vs Daulat Ram Rawatmal (87 ITR 349 SC),
- ❖ DCIT Vs Rohini Builders (182 ITR CTR 373 Guj),
- ❖ CIT Vs Pragati Co-operative Bank Ltd (278 ITR 170 Guj),
- ❖ Murlidhar Lahorimal Vs CIT (280 ITR 512 Guj),
- ❖ CIT Vs Ayachi Chandrashekhar 42 taxmann.com 251 Guj.

13. So far as deletion of addition against payment to Rameshwaram Developers, the Ld. AR for the assessee submits that once the assessee

has given advance for purchase land for developing project and furnished the registered sale deed and discharged his onus, however, the Assessing Officer made addition in highhandedness without understanding the facts of the case and submission. The ld AR for the assessee submits that when the source of fund was already taxed, its application could not be taxed again. The Ld. AR for the assessee submits that Ld.CIT(A) on appreciation of fact granted relief to assessee. the copy of the sale deed of land, against which the advances was made is placed on record. The Ld. AR for the assessee prayed for dismissal of appeal of Revenue.

14. On the other hand, Ld. CIT-DR for the Revenue vehemently defended the order of assessing officer and CIT(A) on the additions of unsecured loans except three major lenders, i.e., Rameshwaram Developers, Sai Developers and Srushti Developers. For remaining lenders, the ld CIT-DR for the revenue submits that the assessee failed to prove the creditworthiness of all the remaining lenders. The creditworthiness of remaining lenders on the basis the evidence furnished by assessee is not established. The ld CIT-DR for the revenue submits that verification of evidence required only to corroborate evidence. In the present case, the evidence furnished by assessee itself suggest that all the lenders except three major lenders were not having sufficient means, so there was no need to seek further clarification directly by issuing the notice under section 133(6) or summon under section 131. The Ld. CIT-DR for the Revenue prayed for upholding the findings of Ld. CIT(A) on the additions of unsecured loan.

15. On the additions on account of loan and advance for investment in land, which is the subject matter in the appeal filed by revenue, the Id CIT-DR for the revenue submits that during the assessment the assessee failed to provide complete details of land and only ledger accounts of payment was furnished, which was not sufficient to prove the huge investment in the land. The Id CIT-DR for the revenue submits that he supports the order of assessing officer on this issue.
16. We have considered the rival submission of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case law relied by Ld. AR for the assessee and Ld. CIT-DR for the Revenue. First, we are dealing with the grounds of appeal raised by the revenue. The assessing officer made addition of advance paid to Rameshwaram developers by taking view that the assessee has not furnished any agreement with the parties and only copy of ledger was furnished, which do not justify the payment of huge amount without any registered document. The Assessing Officer recorded that assessee failed to prove genuineness and creditworthiness and amount of Rs.27.72 crores was also treated as unexplained credit under section 68. We find that the assessing wrongly invoked the provision of section 68, when such amount was not credited in the books of account of assessee, rather it was a clear case of advance. Such investments are shown in the assets side of the balance sheet. The real issue before the assessing officer was, if the advance or investment made by the assessee are from the known sources or from unexplained sources. We find that before Id CIT(A) the

assessee filed detailed written submissions, which are not recorded here for the sake of brevity. We further find that the ld CIT(A) on appreciation of such submissions recorded that source of advance to Rameshwaram developers was from the loan availed by the assessee. The ld CIT(A) appreciated the fact that once, entire loan was added under section 68, the application of fund by way of investment cannot be added again, which is otherwise double additions. We further find that stand of the assessee right from the beginning is that the assessee made advance for purchase of land for development. The land was ultimately transferred in favour of assessee in assessment year 2019-20 purchases by way of two sale deeds on 02.07.2018 vide document No.11863 respectively, copy of such sale deed is available on record. All the payment for purchase of land was made by way of account payee cheques. The assessing officer has not brought adverse material on record to doubt the transaction of land which was in consequence of the advance payment of the land. Hence, we do not find any infirmity or illegality in the order of ld CIT(A) in deleting the addition of Rs. 27.72 Crore, which is affirmed. In the result, the grounds of appeal raised by the revenue are dismissed.

17. In the result, the appeal of the revenue is dismissed.
18. Now adverting to the appeal of the assessee. the assessing officer made addition under section 68 of Rs. 26.42 Crore and taxed the same under section 115BBE by taking view that on issuing show cause notice the assessee failed prove genuineness and creditworthiness of loan amount of Rs.26.42 crores. We find that before ld CIT(A) the assessee filed

detailed written submission contending that complete details of lenders were furnished before assessing officer. The assessee again furnished the name address, PAN, return of income, details of TDS made on payment of interest and details of the repayment of certain loan amount. The assessee in its submissions specifically contended that majority of the loan amount is received from three party namely; Rajgreen Infrastructure of Rs.22.04 crores and Rs.1.00 crores from Sai Developers and Rs.60.00 lakhs from Srushti Developers. On the submissions of assessee, the Id CIT(A) directed the assessing officer to furnish his remand report. The assessing officer furnished his remand report on 21.02.2023.

19. We find that the assessing officer initially raised objection on the detail submissions of the assessee on the pretext that despite granting sufficient time the assessee has not furnished complete details. However, in his without prejudice contention, the assessing officer submitted that he has verified the issue of unsecured loan and prepared party-wise report. On perusal of such report, which is referred in the order of Id CIT(A), we find that assessing officer accepted that ITRs and bank statements of all the lenders were furnished. We find that in with regards to lenders, namely, Rajgreen Infrastructure (sister concern of assessee), who has given loan of Rs.24.04 crores, the assessing officer simply commented that various entries routed through concerned group. No specific entry was pointed out by the assessing officer as to how he took his view, that various entry was routed through group. We find that from Rajgreen Infrastructure has

shown income of Rs. 21.00 Crore approximately and had paid tax of Rs. 8.00 Crore. Both the firms have common partners. The Assessing Officer has not made any adverse inference no discrepancy was pointed out by Assessing Officer against such transaction. No independent investigation is made by assessing officer to prove his allegation that loan was routed through various layers of transactions. Similarly, for Sai developers, who landed loan of Rs.1.00 crores, the Assessing Officer remarked that there were credit entries in the bank account of lender doubt before lending money. No such evidence that any credit entry was routed through or part of circular transaction was brought on record. No investigation of facts was carried out by assessing officer. For Srushti Developers, who was given loan of Rs.60.00 lakh, the Assessing Officer commented that ITR, confirmation and bank statement have been verified. Thus, for Srushti Developers, the assessing officer has made no allegation, rather accepted the transaction. Still the ld CIT(A) confirmed the addition of loan from such lenders. We may note that during the hearing before us, the ld CIT-DR for the revenue in his submissions, by going through the financial statements of these three lenders, impliedly accepted the facts that the transaction of these lenders are in order.

20. However, with regard to remaining other 41 lenders, from whom the amount of loans ranges from Rs.5.00 lakh to Rs. 10.00 lakh, the Assessing Officer reported that either their contra-conformations were not furnished, confirmation was furnished from assessee's own account / or credit entry in their bank accounts within week or the

same day before lend the money to the assessee. The assessing made such remark on his own observation, without making any investigation of facts or bringing any adverse evidence on record to disregards the evidences furnished by the assessee in discharging its primary onus. The assessee in his rejoinder refuted all the allegations of the assessing officer, which we have recorded above and are not repeated here for the sake of brevity.

21. We find that the assessee has already furnished all details in the comprehensive sheet mentioned; the name of the lender, PAN, amount of loan, repayment of loan, interest paid and Tax Deducted at Source (TDS in short) and the closing balance as on 31.03.2018 and complete pdf folder consisting of duly signed of confirmation of ITR, relevant bank statement of the depositors was furnished, even on furnishing such details, the Assessing Officer has not made any enquiry of his own either issuing notice under section 133(6) or 131 of the Act. The assessee has discharged its onus. The Assessing Officer without making any independent verification or enquiry prepared to make huge addition in Crores of rupees, which he clearly tantamount to travesty of justice. While making submissions before us, the ld AR for the assessee vehemently argued that the assessee has already repaid the entire loan amount of 14 lenders, the details of whom were furnished by assessee in a chart, showing the amount, date of repayment and the details of banks of lenders. Such facts were not disputed before us. We also find that the assessee furnished all such details of the lenders/ depositors. There is no allegation of assessing officer that any of such

lenders/ creditors are part of syndicate of accommodation entry provider. There is no evidence that credit/ advance in the books of assessee was result of some circular transactions.

22. The Hon'ble Apex Court in CIT Vs Daulat Ram Rawatmull (supra) held that the onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though the receipt had been issued in the name of B, the burden laid on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of B. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the source was concerned, there was no material on the record to show that the amount came from the coffers of the respondent-firm or that it was tendered in B Calcutta branch of the Central Bank, on behalf of the respondent. As regards the destination of the amount, there was nothing to show that it went to the coffers of the respondent. On the contrary, there was positive evidence that the amount was received by B. It would thus follow that both as regards the source as well as the destination of the amount, the material on the record gave no support to the claim of the department.

23. The Hon'ble Jurisdictional High Court in CIT Vs Ranchod Jivabhai Nakhava (2012) 21 taxmann.com 159 (Gujarat), the Hon'ble jurisdictional high court held that where the lenders of the assessee are income tax assessee whose PAN have been disclosed, the assessing

officer cannot not ask assessee to further prove genuineness of the transaction without first verifying such facts from income tax returns of lenders. Further, in Ayachi Chandrashekhar Narsangji (42 taxmann.com 251-Guj), the Hon'ble High Court held that when loan amount has been repaid by the assessee in the immediately next year and the department has accepted the repayment of such loan without proving it, no addition can under section 68 can be made. Further,

24. In view of the aforesaid factual and legal discussions, we do not find any justification in making the addition of unsecured loan amount as unexplained credit under section 68 by assessing officer and confirmed by Id CIT(A) hence, the same is deleted. In the result, the ground No. 1 & 2 of appeal raised by the assessee are allowed.

25. In the result, appeal of the assessee is allowed.

Copy of this order be placed in both the appeal folder. File be consigned to record room as per rules & practice of Tribunal.

Order pronounced in the open court on 26/10/2023.

**Sd/-**  
**(Dr ARJUN LAL SAINI)**  
**[लेखा सदस्य/ACCOUNTANT MEMBER]**

**Sd/-**  
**(PAWAN SINGH)**  
**[न्यायिक सदस्य JUDICIAL MEMBER]**

Surat, Dated: 26/10/2023  
*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

// True Copy //

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