

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 599/JPR/2023
निर्धारण वर्ष/Assessment Year : 2013-14

Creative Realmart Pvt. Ltd. 67, Shivraj Niketan Colony, NR Vaishali Nagar, Jaipur.	बनाम Vs.	ITO, Ward-3(5), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCC 1019 P		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P.C. Parwal (CA)
राजस्व की ओर से/ Revenue by : Sh. A.S. Nehra (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 02/11/2023
उदघोषणा की तारीख/Date of Pronouncement: 04/01/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi [Here in after referred as (NFAC)] for the assessment year 2013-14 dated 17.08.2023, which in turn arises from the order passed by the AO, passed under Section 144 r.w.s. 147 of the Income tax Act, 1961 (in short 'the Act') dated 26.12.2019.

2. The assessee has taken following grounds in this appeal;

“ 1. The Ld. CIT(A), NFAC has erred on facts & law in upholding the validity of order passed by AO u/s 144 r.w.s. 147 of IT Act.

2. The Ld. CIT(A), NFAC has erred on facts & law in confirming the addition of Rs. 1,38,00,000/- u/s 68 of the act by treating the loan raised from following parties as unexplained:- (a) Icharaj Retails Pvt. Ltd. – Rs. 15,00,000/- (b)- Icharaj Vinimay Pvt. Ltd.- Rs. 20,00,000/-(c) Ladymoon Project Pvt. Ltd. – Rs. 28,00,000/- (d) Lifewood Trexim Pvt. Ltd.- Rs. 75,00,000/-

3. The Ld. CIT(A), NFAC has erred on facts & law in confirming the addition of Rs. 4,26,000/-, being 2% of Rs. 2,13,00,000/- on account of alleged commission paid for obtaining the accommodation entry. He has further erred in ignoring that when loan amount is only Rs. 1,38,00,000/-, addition cannot be with reference to the loan amount of Rs. 2,13,00,000/- wrongly taken by the AO.

4. The appellant craves to alter, amend and modify any ground of appeal.

5. necessary cost be awarded to the assessee.”

3. The fact as culled out from the records is that the assessee is a Private Limited company engaged in the business of real estate and builders. The original return of income was filed on 10.09.2013 declaring total loss of (-) Rs. 10,03,902/-, and the same was stand processed u/s 143(1) of the Act on return of income.

3.1 In this case information was received from office of the Deputy Director of Income Tax (Inv.) Unit-1(3), Kolkata that some

persons/entities were indulged in providing accommodation entries in the form of bogus unsecured loans or in other forms in a planned manner, in lieu of some commission. Looking to these fact assessment proceedings were initiated u/s 147 of the Act after recording proper reasons and accordingly a notice u/s 148 of the Act dated 29.3.2019 was issued to the assessee, after taking necessary approval from the competent authorities.

3.2 Pursuant to notice so issued assessee filed return of income of income on 26.4.2019 wherein total of Rs. Nil has been declared and loss were shown at (-) Rs. 4,83,324/-

3.3 In this case based on the searches conducted by the Investigation Wing of the Department in the case of Banka Group, information was received after thorough investigation. In the said search it was discovered that various syndicates have arranged accommodation entry in the form of unsecured loans and in other forms. The modus operandi found is that the beneficiaries routed its on money layering through various bank accounts to these operators and they provided back the money so received to the

beneficiaries. These facts were confirmed by the stake holders viz. operators / syndicate members, which were providing accommodation entries in statements recorded during action u/s 133A of the I.T. Act. It has been manifestly accepted by them that they are the conduit for converting untaxed money brought on record by paying no taxes in the garb of unsecured loans through various company having no means of worth and they have very small capital base, which does not commensurate with it business activities.

3.4 As per details available it has been found that the assessee has received unsecured loans through the persons/ entities as detailed here under:

Account Name Mukesh Chand Bank Company	Unsecured Loan Amount (Rs.)
ICHARAJ Retails Pvt. Ltd.	1500000
ICHRAJ Vinimay Pvt. Ltd.	2000000
Ladymoon Projects Pvt. Ltd.	2800000
Lifewood Trexim Pvt. Ltd.	2500000
Lifewood Trexim Pvt. Ltd.	2500000
Lifewood Trexim Pvt. Ltd.	2500000
Lifewood Trexim Pvt. Ltd.	2500000
Lifewood Trexim Pvt. Ltd.	2500000
Lifewood Trexim Pvt. Ltd.	2500000
Lifewood Trexim Pvt. Ltd.	2500000
	21300000

3.5 During the course of investigation in respect to search carried out by the Investigation Wing of Kolkata, statements of entry operator Shri Mukesh Banka who is the key person of such syndicate, along with other entry operators, were recorded u / s 131 of the Act on oath by the Investigation Wing, Kolkata. In their statements, they admitted that they earned commission for facilitating prearranged accommodation entries as per the demand of the client. For this they had made various paper/bogus/shell companies which are being managed/controlled by them. The impugned Pvt. Ltd. companies are also companies, which were promoted and managed by Shri Mukesh Banka and its associates for the impugned transactions in the instant case. The modus operandi is that fund has been deposited into the account of the exit providing company for taking such entries in the form of unsecured loans or otherwise. These funds after layering through various companies of the said group transferred from the account of these companies to the real beneficiaries. Shri Mukesh Banka S/o Shri Babu Lal Banka and his associates accepted that they manage around Five Hundred Fifty Five (555) companies. Based on the detailed statements and investigation revenue hold that the

stake holders involved in these transactions were either bogus or devoid of any financial capabilities to make such investment and were conscious parties in this entries scheme and provided exit to the beneficiaries of the scheme i.e. the persons who received money in the form unsecured loans or otherwise. Thus, the Id. AO hold that these transactions were not genuine, were result of meticulously planned activities and the entities involved in these were part of the exercise in an effort to create documentary evidences for a pre-planned scheme for converting unaccounted money in the form of loans or otherwise. In the assessment order it is noted that the assessee has received Rs. 2,13,00,000/- in respect of unsecured loans which are not genuine. The assessee only provided copy of confirmation in respect of the amount received from these companies. Since the genuineness of these transactions was found to be not proved. These lenders were asked to give various details as well as to prove the genuineness of the impugned transactions. Though they again sent copy of ITR, copy of relevant bank statements, and confirmations. However, they failed to give any evidence regarding the genuineness of the transactions held with them. As all these companies have very

nominal capital as well as income during FY 2012-13 and the bank statements reveals that a pattern of continuous receipt from some source and immediate transfer of found to some companies. Therefore, these bank statements confirm that these companies are only conduit to give entries to different companies without having any substantial business of their own. In view of entire factual and legal aspects it is held that assessee has failed to discharge the onus lying upon it u/s 68 to satisfactory prove the nature and source of the unsecured loans of Rs. 2,13,00,000/- received from the above companies during FY 2012-13. Accordingly, credit entry for total amount of Rs. 2,13,00,000/- on account of the unsecured loans etc. is managed by the assessee itself and involved funds were out of his own unaccounted income, which has nowhere been declared in his return of income either in the original return or in response to notice u/s. 148. Accordingly, the said amount was added to the income of the assessee as deemed income u/s 68 of the IT Act, 1961.

4. Aggrieved from the said action of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos

to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:-

9.1 The fundamental question involved is that whether or not the AO was justified in making the addition of Rs 2,13,00,000/- as unexplained credit under section 68 in the hands of the assessee, and the most critical thing to be examined in this regard is explanation of the assessee with respect to these credits. There is no, and there cannot be any, dispute on the fundamental legal position that the onus is on the assessee to prove 'bonafides' or 'genuineness' of the share application money credited in his books of accounts. This approach finds support from the scheme of Section 68, which provides that where any sum is found credited in the books of an assessee maintained for any previous year. and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer. satisfactory, the sum so credited may be charged to income tax as the income of that assessee for that previous year. The burden is thus on the assessee to prove the nature and source thereof, to the satisfaction of the Assessing Officer. Everything thus hinges on the explanation given by the assessee and on how acceptable is the explanation so given by the assessee. The next question is as to what the kind of explanation that the assessee is expected to give.

9.2 As noted by Hon'ble Delhi High Court, in the context of issuance of share capital and in the case of PCIT Vs Youth Construction Pvt Ltd [(2013)357ITR197 (Del)], "it involves three ingredients, namely, the proof regarding the identity of three applicants, their creditworthiness to purchase the shares and the genuineness of the transaction as a whole".

9.3 That is the approach adopted by Hon'ble Courts above all along. In the case of CIT v. United Commercial and Industrial Co (P.) Ltd [1991] 187 ITR 596 (Cal)], Hon'ble Calcutta High Court has held that under the scheme of Section 68 "it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions".

9.4 Similarly, in the case of CIT v. Precision Finance (P.) Ltd [1994] 208 ITR 465 (Cal)], it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions".

9.5 It is thus also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. The genuineness of the transaction as a whole is thus a very important and critical factor in the examination of explanation of the assessee, as required under section 68, with respect to the share application monies received by an assessee.

9.6 It would thus appear that the appellant is not really right in approaching on the basis as if the onus is on the Assessing Officer to prove the alleged money laundering racket an onus that may perhaps be relevant only when the money laundering racket is being prosecuted, but that is not an issue at hand. As far as the issue involved in appeal is concerned, one need only to remain confined to the narrow issue of onus on the assessee to prove 'bonafides' or 'genuineness' of the share application money credited in his books of accounts, and that is the call needs to be taken in the light of facts available on record and the ground realities of the commercial world. While proceeding to deal with the genuineness aspect, it is also important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-a-vis the ground realities. The facts of the case cannot be considered in isolation from the ground realities.

9.7 The main allegation of the AO is that the assessee has received funds/ money through a pre-meditated plan by involving complex web of shell entities and multiple layering of the transfers from one company to another.

It will, therefore, be useful to understand as to how the shell entities, which the share applicants are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with

high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity, but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients. or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even laymen, much less the responsible public servants like revenue officers and very well educated and very well- informed people like the learned counsel(s), cannot be oblivious of these ground realities.

9.8 While examining the issue of genuineness of the transactions entered into by the assessee, it is also important to keep in mind Hon'ble Supreme Court's observation, in the case of CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)]. to the effect that "Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities".

9.9 Similarly, in a later decision in the case of Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)], Hon'ble Supreme Court rejected the theory that it is for the alleged to prove that the apparent and not real, and observed that, "This, in our opinion is as superficial approach to the problem. The matter has to be considered in the light of human probabilities. Similarly the observation..... that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleged to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes place in secret and direct evidence about such purchase would be rarely available.....In our opinion, the majority opinion after considering surrounding circumstances and

applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably."

9.10 It would be a superficial approach to examine the claim of the assessee solely on the basis of documents filed by the assessee and overlook the clear unusual pattern in the documents filed by the assessee and pretend to be oblivious of the ground realities. As Hon'ble Supreme Court has observed, in the case of Durga Prasad More (supra). "it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents".

9.11 An Appellate Authority cannot be superficial in its assessment of the genuineness of a transaction, and this call is to be taken not only in the light of the face value of the documents sighted / placed by the appellant on the record but also in the light of all the surrounding circumstances, the preponderance of human probabilities and ground realities. There may be a difference in subjective perception on such issues, on the same set of facts, but that cannot be a reason enough for the appellate authorities to avoid taking subjective calls on these aspects, and remain confined to the findings on the basis of irrefutable evidence. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact-finding authority is made conclusive by law. This faith in the appellate authorities by Hon'ble Courts above makes the job of the appellate authorities even more onerous and demanding and, it does require an appellate authority to take a holistic view of the matter, in the

light of surrounding circumstances, the preponderance of probabilities and ground realities, rather than being swayed by the not so convincing, but apparently in order, documents and examining them, in a pedantic manner, with the blinkerson

9.12 It would not be out of place to mention here that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of the financial world, about modus operendi of entry operators running shell entities. There were, therefore, not many questions raised about the genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation as well.

9.13 As Hon'ble Supreme Court has observed in the case in *Mumbai Kamgar Sabha v. Abdul bahi Faizulla bhai* AIR 1976 SC 1455 "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark".

Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent.

9.14 The above approach has met the judicial approval as recently as 2018 when one of the decision of the Tribunal, in the case of Pawan kumar M Singhvi came up for consideration before Hon'ble Gujarat High Court, and Their Lordships of Hon'ble Gujarat High Court, in the judgment reported as *Pawan kumar M Sanghvi VS ITO* [(2018) 90 taxmann.com 386 (Guj)] approved the said approach and declined to interfere in the matter by observing that "the Tribunal has minutely examined the position of the lenders, the circumstances under which,

the amounts were allegedly loaned to come to the conclusion that the transactions were not genuine ".The genuineness of the transactions and examination of circumstances in which money was received was thus approved to be the determinative factor. The matter did not end there. The assessee brought the matter before Hon'ble Supreme Court in a special leave petition, and Their Lordships of Hon'ble Supreme Court, in the judgment reported as Pawan kumar M Sanghvi Vs ITO [(2018) 97 taxmann.com398 (SC)], dismissed the SLP and declined to interfere as well.

9.15 What essentially follows is that genuineness of a transaction is one of the most important, foundational and critical factors in determining whether explanation given by the assessee is acceptable or not is its genuineness and this genuineness is to be examined in the light of ground realities, rather than random extracts from judicial precedents isolated from their true context as an exposition of law on standalone basis. Undoubtedly, that is a subjective exercise, but that cannot be excuse enough to not to probe the matter properly for taking a well-considered call on whether the impugned share application monies received, in this case, a genuine transaction or not.

9.16 On a somewhat similar note, and particularly in the context of issuance of shares at high premium to the companies which are seemingly shell companies, Hon'ble Supreme Court has, in the case of PCIT Vs NRA Iron and Steel Pvt Ltd [(2019) 412ITR161 (SC)] observed that "The practice of conversion of un- accounted money through the cloak of Share Capital/ Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under illegal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee".

Taking note of these words of guidance of Their Lordships, it is clear that a superficial and pedantic approach would not suffice, and it is essential to examine the facts of the case in order to take a call on the genuineness of these transactions.

10. With these observations as made above, the actual facts of these cases are to be examined. The assessee has received funds/ monies

totalling to Rs 2,13,00,000/- as unsecured loan from certain companies which are managed and controlled by group of Kolkata based accommodation entry operators.

10.1 Undoubtedly, the legal existence of the creditor company is not in doubt. The assessee has produced sufficient evidences about its existence.

10.2 When we look at the financial statements of M/s. ICHARAJ Retails Private Limited from whom the impugned funds as unsecured loans have been received. the questioner is, whether this entity had the means to enter in to this transaction and whether the transaction as a whole, could be said to be genuine. It is noted that the year ending 31st March 2013, the entire share capital of the company is Rs 3.73 lakhs, and on this amount of share capital, share premium account is shown at a total of Rs. 18,59,26,500/-. The entire of this amount is invested into the share capital and premium of other companies (Rs. 181.1 Lakhs). The only other entries in the balance sheet are small amounts of Rs 1.19 lakhs as "Other current assets". Effectively, thus. Rs 181.1 lakhs of the total funds of Rs. 189 lakhs received by the company has been passed to the other companies, which work out to more than 95% of the total funds received. It is also interesting to note that the company has not carried out much other business activity during the relevant period. The total revenue receipts for the F.Y. 2011-12 & F.Y. 2012-13 was shown at meagre amount of Rs. 7,000/- and Rs. 11.40 Lakhs with the profit for these years at Rs. 301/- and Rs. 1,946/-. This is difficult to believe that a company handling investments in excess of Rs 180 lakhs and making such aggressive investments as buying shares, at huge premium in other private limited companies, will operate in such a modest manner. The M/s. ICHARAJ Retails Private Limited thus has primarily acted as a conduit company, raising Rs 189 lakhs at high share premium and siphoning Rs 182 lakhs out of the same to other companies in similar manner by subscribing to shares at high premium, and has no independent business activities on its own.

10.3 The position about transaction of M/s. ICHARAJ Vinimay Private Limited does not seem to be any better, who has also advanced unsecured loans to the assessee. It is noted that for the year ending 31st March 2013, the entire share capital of the company is Rs 4.99 lakhs, and this amount, along with Rs 249 lakhs received on account of share premium is invested, almost entirely into the loans & advances, share capital and premium of other companies (Rs 248.19 lakhs). The

only other entries in the balance sheet are small amounts of Rs 1.23 lakhs as "Other Current Assets". Effectively, thus, Rs 248.19 lakhs of the total funds of Rs 249 lakhs received by the company has been passed to the other companies, which works out to more than 99.6% of the total funds received. It is also interesting to note that the company has not carried out much other activity during the relevant period. The revenue from operation during the F.Y. 2011-12 & F.Y. 2012-13 are shown at Rs. 7,200 & Rs. 12.28 Lakhs with the taxable income for these years at meagre amount of Rs. 269/- and Rs. 3,211/- respectively. This is difficult to believe that a company handling investments in excess of Rs 249 lakhs and making such aggressive investments as buying shares, at huge premiums, in the private limited companies and giving huge amount of unsecured loans to a totally unconnected company, like the assessee company-without any management control, will operate in such a modest manner. It is clear that even this entity namely M/s. ICHARAJ Vinimay Private Limited too has acted as a conduit company, raising Rs 249 lakhs at high share premium and siphoning Rs 248.19 lakhs out of the same to other companies in similar manner by subscribing to shares at high premium and giving loans and advances, and has no independent business activities on its own.

10.4 In an identical manner the entity namely M/s. Ladymoon Projects Private Limited, who has also advanced unsecured loans to the assessee. It is noted that for the year ending 31st March 2013, the entire share capital of the company is Rs 3.66 lakhs, and this amount, along with Rs 181.28 lakhs received on account of share premium is invested, almost entirely into the loans & advances, share capital and premium of other companies (Rs 179.74 lakhs). The only other entries in the balance sheet are small amounts of Rs 49,594/- as "Other Current Assets". Effectively, thus, Rs 179.74 lakhs of the total funds of Rs 181.28 lakhs received by the company has been passed to the other companies, which works out to more than 99.15% of the total funds received. It is also interesting to note that the company has not carried out much other activity during the relevant period. The revenue from operation during the F.Y. 2011-12 & F.Y. 2012-13 are shown at Rs. 7,200 & Rs. 4.4 Lakhs with the taxable income for these years at meagre amount of Rs. 269/- and Rs. 939/- respectively. This is difficult to believe that a company handling investments in excess of Rs 181.28 lakhs and making such aggressive investments as buying shares, at huge premiums, in the private limited companies and giving huge

amount of unsecured loans to a totally unconnected company, like the assessee company-without any management control, will operate in such a modest manner. It is clear that even this entity namely M/s. Ladymoon Projects Private Limited too has acted as a conduit company, raising Rs 181.28 lakhs at high share premium and siphoning Rs 179.74 lakhs out of the same to other companies in similar manner by subscribing to shares at high premium and giving loans and advances, and has no independent business activities on its own.

10.5 In an identical manner the entity namely M/s. Lifewood Trexim Private Limited, who has also advanced unsecured loans to the assessee. It is noted that for the year ending 31st March 2013, the entire share capital of the company is Rs 9.2 lakhs, and this amount, along with Rs 183.28 lakhs received on account of share premium is invested, almost entirely into the loans & advances, share capital and premium of other companies (Rs 182.5 lakhs). The only other entries in the balance sheet are small amounts of Rs 1.62 Lakhs as "Other Current Assets. Effectively, thus, Rs 182.5 lakhs of the total funds of Rs 192 lakhs received by the company has been passed to the other companies, which works out to more than 94.79% of the total funds received. It is also interesting to note that the company has not carried out much other activity during the relevant period. The revenue from operation during the FY. 2011-12 & FY 2012-13 are shown at Rs. 8000 & Rs. 16.74 Lakhs with the taxable income for these years at meagre amount of Rs. 168/- and Rs. 2,893/- respectively. This is difficult to believe that a company handling investments in excess of Rs 192 lakhs and making such aggressive investments as buying shares, at huge premiums, in the private limited companies and giving huge amount of unsecured loans to a totally unconnected company, like the assessee company-without any management control, will operate in such a modest manner. It is clear that even this entity namely M/s. Lifewood Trexim Private Limited too has acted as a conduit company, and has no independent business activities on its own.

10.6 Hence, it is clear that there were no business operations in any of these entities who have advanced unsecured loans to the appellant's company, unless, of course, routing the monies to other companies, or being a conduit company facilitating financial manoeuvrings, per se is treated as main business operations of the company. In any case, it is difficult to understand what business can assessee carry on when it

passes on 99% of its capital base in giving unsecured loans and subscribing to shares in the other companies- and all these investments are in private limited companies, and in none of the companies the investing company has acquired any management participation.

10.7 There is not even whisper of an idea about who are the persons behind these shell companies and other associated companies constituting this complex web of companies, indifferent tiers, and transferring monies from one company to another manner in almost a mechanical manner. There is complete opacity so far as the individuals behind this funding and the complex web of companies are concerned. The entities involved in the transactions only provide different layers to the transaction and de facto hide the true investor.

10.8 All these factors regarding analysis of financial statements, analysis of bank account transactions and the funds given this shell company to the appellant company, does not seem to bonafide transaction. In view of the detailed analysis above, it is difficult to accept the plea of the appellant that it is a genuine transaction.

10.9 A shell entity, as have noted earlier, is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions-to give it colour of a normal business entity, used as a vehicle for various financial manoeuvres. A shell entity, by itself, is not an illegal entity but it is their act of abatement of, and being part of, financial manoeuvring to legitimize illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. The three companies investing in the share capital of the appellant clearly fit this description. Given these facts, and given the ground realities of

shell companies facilitating such manoeuvrings, the plea of the assessee cannot be accepted.

10.9 It is again retreated that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of the financial world, about modus operandi of shell entities. There were, therefore, not many questions raised about the genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation. As Hon'ble Supreme Court has observed in the case in *Mumbai Kamgar Sabha v Abdulbahi Faizullahai AIR 1976 SC 1455* "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark".

Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent.

10.10 Having considered entire facts of the case and evidences brought on record I find no infirmity in the order of AO, hence, addition made u/s 68 on account of unexplained cash credits is confirmed. However, it is submitted by the appellant that the total unsecured loans taken by them from the group companies operated by Mukesh Banka is only to the extent of Rs. 1,38,00,000/- instead of Rs. 2,13,00,000/-. Since, the claim made by the assessee is only a matter of verification and accordingly the AO is directed to calculate the correct amount of unsecured loans taken by the assessee from the impugned shell companies managed and operated by Mukesh Banka group of concerns and brought the same to tax. To that extent, Ground no. 6 to 8 are partly allowed.

11. Ground No. 9 of the appeal is in respect of addition of Rs. 4,26,000/- u/s 69C of the Act as unexplained expenditure on account of payments made by the assessee in order to obtain accommodation entries from the shell companies. The AO has adopted the commission rate @ 2%, which appears to be fair charges taken by the persons providing accommodation entries. Accordingly, the ground no. 9 of the appeal is dismissed.

12. In the Ground no. 10, the appellant is claiming that the current year losses as per the return of income filed by him are of Rs. 10,03,902/- whereas the AO has considered the current year losses only to the extent of Rs. 4,83,324. Again, this issue is simply a matter of verification from the records, which needs no separate adjudication. The AO is directed to verify from the records and allow the correct amount of current year losses returned by the Assessee in their ITR. To that extent, this ground of appeal is partly allowed.

13. Ground No. 11 & 12 of the appeal are general and consequential in nature. which need no separate adjudication and are treated as dismissed for statistical purposes.

14. In the result, appeal is dismissed. Order passed u/s.250 r.w.s 251 of the Act.”

5. As the assessee has not received favour from the order of the Id. CIT(A) has preferred this appeal on the grounds as stated here in above in para 2. The Id. AR appearing on behalf of the assessee has placed their written submission on record and the same is extracted here in below:-

Submission:-

1. At the outset it is submitted that the reasons recorded by AO are vague, incorrect and suffers from following infirmity:-

- (a) According to the reasons AO received information from DDIT(Inv.), Kolkata vide letter dt. 26.02.2016 whereas search in case of M/s Banka Group was conducted on 21.05.2018. The nature of information received from DDIT(Inv.), Kolkata is not borne out from the reasons recorded. Further when the search was conducted on Banka Group on 21.05.2018, then what is the live link between the information received on 26.02.2016 and the search dt. 21.05.2018 is not specified.
- (b) In the extract of statement of Sh. Mukesh Banka u/s 132(4) reproduced in the reasons recorded, name of the assessee is not mentioned though in the statement name of Sh. Arvind Agarwal, Vimal Kumar Jajodia and Naresh Kumar Banka are mentioned. Further how the companies mentioned in the reasons recorded are of Sh. Mukesh Banka Group is not specified.
- (c) In the reasons recorded, the nature of accommodation entries whether it is unsecured loan or share capital or any other mode is not specified.
- (d) In the reasons recorded, the amount of accommodation entries from the companies is taken at Rs.2,13,00,502/- whereas the assessee has raised loan of only Rs.1,38,00,000/- from these companies which is also repaid in the subsequent years.
- (e) In the reasons recorded, it is stated that return is filed declaring total income of Rs.50,099/- whereas the return was filed declaring Nil income. The audit report is not required to be filed as the turnover of assessee is less than the prescribed limit for conducting audit u/s 44AB.
- (f) In the reasons recorded, AO presumed that whatever amount is reflected under unsecured loans at Rs.2,37,83,567/- and other current liabilities at Rs.1,26,43,767/- are accommodation entries from Banka Group whereas he only took Rs.2,13,00,502/- as income escaping assessment.
2. Thus from the plain reading of the reasons recorded, it can be noted that notice u/s 148 is issued solely on the basis of information received from Investigation Wing, Kolkata. The primary condition for initiating action u/s 147 is that AO must have reason to believe that any income chargeable to

tax has escaped assessment. This satisfaction must be of AO himself and not a borrowed satisfaction. Reason to believe cannot be at the instance of audit party or investigation conducted by others or third party statement etc. In the present case, the reasons states that assessee has obtained accommodation entries of Rs.2,13,00,502/- but the nature of accommodation entries as to whether it is in form of loan or share capital or purchase/sale or any other mode is not specified whereas in the present case, assessee has only received the loan which is also repaid. The whole exercise shows a predetermined mind on part of the AO to issue notice u/s 148 without any application of mind. The AO has not examined the information received by him to verify the nature and quantum of alleged accommodation entry rather he mechanically and blindly acted upon the information received from the Investigation Wing, Kolkata without applying his own mind to arrive at believe that income of the assessee has escaped assessment. Hence, the reopening of assessment only at the instance of Investigation Wing, Kolkata and that too on vague reasons is illegal and bad in law. For this purpose, reliance is placed on the following cases:-

Smt. Sudesh Rani Vs. ACIT (2023) 225 DTR 1 (Chd.) (Trib.)

For assumption of jurisdiction u/s 147 the AO has to form a prima facie opinion on the basis of tangible material that there is an escapement of income. Reasons recorded and/or the documents available on record must show a nexus and relevancy to the opinion formed by the AO regarding escapement of income. In the instant case, information was received from Principal Director of IT (Inv.) regarding entry of bogus long-term capital gains at platform of Calcutta Stock Exchange and basis the same the AO recorded the reasons to believe that income of the assessee has escaped assessment. What information is available with the AO is neither stated nor enclosed with the reasons so recorded by him and thus not discernible from the reasons so recorded. Mere fact that the assessee sold certain shares with certain value on the stock exchange cannot by itself be held as tangible material. Further the AO has not just recorded a reason to believe rather recorded a conclusive finding that assessee is involved in manage trading of penny stock to convert his undisclosed income into exempt income. AO has to record reasons as to why the transaction reflected in the return of income and claimed exempt is liable for taxation which has escaped assessment and such reasons to believe must be based on tangible material. Whole exercise shows a predetermined mind on the part of the AO to issue notice u/s 148 and complete lack of application of mind. AO has simply relied upon the report

and conclusion drawn upon by Investigation Wing without carrying out any preliminary enquiry and investigation and establishing the necessary nexus between material and formation of belief that income has escaped assessment. There is clearly no independent application of mind by the AO. Thus, the notice issued u/s 148 and consequent reassessment proceedings are set aside.

M/s Safe Infra Projects Pvt. Ltd. ITA No.1293/JP/2018 order dt. 06.12.2019 (Jaipur) (Trib.) (Case laws compilation PB 1-16)

The relevant findings at Para 10, 11 &13 of the order reads as under:-

10. We have heard the rival contentions and perused the material available on record. It is a settled legal proposition that the reasons are required to be read as they were recorded by the Assessing officer. No substitution or addition is permissible. It is for the Assessing officer to disclose and open his mind through the reasons recorded by him and he has to speak through the reasons. The material on basis of which belief has been formed that income chargeable to tax has escaped assessment had to find place in reasons itself and there has to be a nexus between the material and formation of belief that income has escaped assessment. In the instant case, in the reasons so recorded, the Assessing officer stated that on verification of record, it is found that assessee has taken accommodation entries in the nature of loan/advance/purchase bills from five entities. It has been stated therein that the assessee company is a beneficiary who has taken accommodation entry in the nature of loans and advances which is not genuine as the lender was not carrying on any genuine business activity and was providing accommodation entries in lieu of cash obtained from the beneficiaries. Firstly, what is relevant to determine is the material that is available on record on the basis of which the belief has been formed that income has escaped assessment. We find that the same has not been specified by the Assessing officer in the reasons so recorded, therefore what is the material in possession of the Assessing officer basis which the belief has been formed is not discernable from the reasons so recorded. The Id DR has submitted that there is credible information which has been received by the Assessing officer, however, as we have stated above, the said material has to be reflected in the reasons so recorded and the reasons cannot be supplemented as held by the Hon'ble Gujarat High Court in case of VarshabenSanatbhai Patel Vs. ITO (supra) wherein under similar fact pattern, it has been held as under:-

.....

11. Further, we find that the transactions with the four entities which have been listed in the reasons so recorded are the transactions where these four entities have subscribed to the share capital of the assessee company and has thus contributed the money towards the share capital, a fact which is apparent from the assessment order wherein the addition has been made towards the unexplained share capital. However, in the reasons so recorded by the Assessing officer, it has been stated that the assessee has taken accommodation entries in the nature of loan/advance/purchase bill. The same thus reflects nonapplication of mind by the Assessing officer and lack of even basic verification before recording the reasons more so where the return of income is already on record and thus a case of borrowed satisfaction and not that of the Assessing officer. In case of PCIT-5, Mumbai v/s M/s. Shodiman Investments P Ltd. (ITA No. 1297 of 2015 – Mumbai HC vide order dated 16.04.2018), the Hon'ble Bombay High Court has held as under:-

.....

As held by the Bombay High Court, the material in possession of the AO has to be further linked by any reason to come to conclusion that the assessee has indulged in any activity which could give rise to reason to believe that income chargeable to tax has escaped assessment. In other words, unless the AO carries out the further examination after receipt of initial information, how can he conclude that income has escaped assessment. It is a fact that the assessee has filed its return of income and the AO should therefore have examined its return of income and carried out initial investigation before coming to the conclusion that income has escaped assessment. Even the IdCIT(A) has stated that stubble distinction of credit entries are not adequately appreciated by the AO. Similar view has been taken by the Coordinate Benches in case of Merta Oil Mills Company (supra), Meta Plast Engineering Pvt. Ltd (supra) and Balaji health Care Pvt ltd (supra).

13. In light of above discussions and in the entirety of facts and circumstances of the case, we are of the considered view that basic requirement for assumption of jurisdiction u/s 147 is not satisfied in the instant case and consequent reassessment proceedings deserve to be set-aside. The grounds on merits thus become academic and are dismissed as infructuous.

ITO Vs. On Exim (P) Ltd. (2013) 94 DTR 140 (Del.) (Trib.)

The only information received by the AO from the Investigation Wing was that ASB Ltd. was providing accommodation entries in the form of bogus share transactions, bogus share capital etc. However, the details given only state the name of the bank, ledger account number and amount. Nature of the transaction made by the assessee is not stated, much less anything to establish that the said transactions are in the nature of accommodation entries. Accordingly, it was held that the reasons forming the basis of reopening of assessment do not satisfy the requirement of sec. 147.

DCIT Vs. Alembic Merchants Pvt. Ltd. (2021) 188 ITD 289 (Kol.) (Trib.) (Case laws compilation PB 17-39)

Where AO issued reopening notice against assessee on basis of information of DDIT (Investigation) about modus operandi adopted by bogus accommodation entry providers, since this information per se was general information/ modus operandi of entry operators and there was no specific inputs connecting it with case of assessee and AO had not specified nature of accommodation entry like whether it was income/expenses/capital/share/loan etc., impugned reopening notice on basis of such information was unjustified.

Smt. Anshita Vimal Jain Vs. ITO (2023) 199 ITD 168 (Surat) (Trib.) (Case laws compilation PB 40-49)

Where AO merely on basis of information received from Investigation wing, Mumbai with reference to search carried out in case of one 'GJ' reopened assessment on ground that assessee had taken accommodation entries of bogus purchase bills from 'GJ', since AO had not recorded his own satisfaction and had not made any effort to examine and to discuss material received from Investigation wing, reassessment so made was to be quashed.

Pioneer Town Planners Pvt. Ltd. Vs. DCIT (2018) 170 DTR 237 (Del.) (Trib.)

AO having formed the belief that assessee's income has escaped assessment only on the basis of some material received from the Investigation Wing without making any effort to examine and discuss the material received from the Investigation Wing and without application of the mind to the same, it follows that he initiated the reassessment proceedings on the basis of borrowed satisfaction without application of

his own mind and therefore, reassessment proceedings and all consequent proceedings and orders including impugned reassessment are bad in law and not sustainable.

Deepraj Hospital Pvt. Ltd. Vs. ITO (2018) 65 ITR 663 (Agra) (Trib.)

If the reopening is based on information received from the investigation dept., the reasons must show that the AO independently applied his mind to the information and formed his own opinion. The AO in the reasons has just stated the information received and his conclusion about the alleged escapement of income. As to what the AO did with the information made available to him is not discernible from the reasons. The reasons must also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the AO thereon as also the conclusions thereof. Further where the reasons make a reference to any document, such document and / or relevant portion thereof must be enclosed along with the reasons. Therefore, reasons recorded by the AO are found to be not in accordance with law. Consequently, the reassessment proceedings, culminating in the order under appeal, are also not sustainable in the eye of law and they too are cancelled. Nothing further survives for adjudication. In the absence of the link between the information available with AO and formation of belief by AO for reassessment, reassessment proceedings are not valid.

Smt. Sunita Jain Vs. ITO (2017) 49 CCH 0330 (Ahd.) (Trib.)

The Hon'ble ITAT after relying on the decision of Gujarat High Court in case of Harikishan Sunderlal Virmani Vs. DCIT, quashed the assessment framed u/s 147. The Hon'ble High Court in its case held that the material on the basis of which the AO seeks to assume the jurisdiction under section 147 of the Act is the information received from the external source viz. the Principal Director of Income Tax (Investigation), Ahmadabad. It cannot be disputed that on the basis of the information received from another agency, there cannot be any reassessment proceedings. However, after considering the information/ material received from other source, AO is required to consider the material on record in case of the assessee and thereafter is required to form an independent opinion on the basis of the material on record that the income has escaped assessment. Without forming such an opinion, solely and mechanically relying upon the information received from other source, there cannot be any reassessment for the verification.

PCIT Vs. RMG Polyvinyl (I) Ltd. (2017) 249 Taxman 610 (Del.) (HC)

Where information was received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information could not be said to be tangible material per se and thus, reassessment on said basis was not justified.

M/s Devansh Exports Vs. ACIT (2019) 176 DTR 17 (Kol.) (Trib.)

The information given by DIT(Inv.) can only be a basis to ignite/ trigger "reason to suspect". The AO has to carry out further examination to convert the "reason to suspect" into "reason to believe". If the AO acts on borrowed satisfaction and without application of mind, the reopening is void.

Balaji Health Care Pvt. Ltd. Vs. ITO (2019) 55 CCH 0168 (Jaipur) (Trib.)

The AO cannot reopen without establishing prima facie that assessee's own money has been routed back in form of share capital. While he can rely on the report of the Investigation Wing, he has to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment. In absence thereof, the assumption of jurisdiction u/s 147 has no legal basis and resultant reassessment proceedings deserve to be set-aside.

3. It may be noted that the infirmity in the reasons recorded by AO was also communicated by the assessee to AO vide letter dt. 30.09.2019 (PB 9-20). The AO, however, has not dealt with any of these infirmity and after relying on the various case laws disposed the objections raised by the assessee vide order dt. 19.12.2019 (PB 21-25). It is a settled law that the order disposing of the objections should deal with each objection and give proper reasons for the conclusion. For this purpose, reliance is placed on the following cases:-

Tata Capital Financial Services Ltd. Vs. ACIT&Ors.(2022) 443 ITR 127 (Bom.) (HC)

The Hon'ble High Court at Para 5 of the order held as under:-

5. Therefore, the order dt. 17th Dec., 2021 impugned in this petition is quashed and set aside. The matter is remanded for de novo consideration. The concerned officer shall keep in mind that the exercise of considering the assessee's objections to the reopening of assessment is not a mechanical ritual but a quasi judicial function. The order disposing of the objections should deal with each objection and give proper reasons

for the conclusion. He shall also grant a personal hearing to petitioner and the notice of personal hearing shall be communicated atleast seven working days in advance. If the said officer is relying on any judgment or order of any Court or Tribunal, a list thereof shall be provided to petitioner alongwith notice of personal hearing so that petitioner will be able to deal with or distinguish these judgments/orders in the personal hearing. The AO shall deal with all previous submissions while considering the assessee's objections, deal with each objections and give proper reasons for its conclusion.

Hitech Corporation Ltd. Vs. ACIT 2022 ITL 1101(Bom.) (HC)
The Hon'ble High Court at Para 10 of the order held as under:-

10. Before we part, we have to observe that the order disposing the objections, though running into almost 21 pages, does not deal with any of the submissions made by petitioner on merits. The Faceless Assessing Officer, though has listed some 68 orders/judgments to justify why the notice was issued, has not made any effort to set out how those judgments/orders were applicable to the facts and circumstances of the case. He has also not even made an effort to deal with the submissions of petitioner on the facts that these two issues were subject matter of consideration during earlier assessment proceedings. In our view, the Faceless Assessing Officer has only wasted his time in writing such unsustainable order on objections.

Sabh Infrastructure Ltd. Vs. ACIT (2017) 398 ITR 198 (Del.) (HC)

The exercise of considering the assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.

4. The Ld. CIT(A) has also not dealt with the objections raised by the assessee but has only mentioned the principle of law from the various judgments of the courts at Para 8.1.2 to 8.1.4 and thereafter in Para 8.1.5 only states that AO has taken into consideration all legal steps before initiating action u/s 148 whereas assessee has specifically pointed out that the reasons are vague, suffers from various infirmities and is only a borrowed satisfaction.

In view of above, notice issued u/s 148 is illegal and bad in law and consequently order passed u/s 147 be quashed.

Ground No.2

The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.1,38,00,000/- u/s 68 of the Act by treating the loan raised from following parties as unexplained:- (a) Icharaj Retails Pvt. Ltd.- Rs.15,00,000/- (b) IcharajVinimayPvt. Ltd.- Rs.20,00,000/- (c) Ladymoon Project Pvt. Ltd.- Rs.28,00,000/- (d) LifewoodTreximPvt. Ltd.- Rs.75,00,000/-

Ground No.3

The Ld. CIT(A), NFAC has erred on facts and in law in confirming the addition of Rs.4,26,000/-, being 2% of Rs.2,13,00,000/- on account of alleged commission paid for obtaining the accommodation entry. He has further erred in ignoring that when loan amount is only Rs.1,38,00,000/-, addition cannot be with reference to the loan amount of Rs.2,13,00,000/- wrongly taken by the AO.

Facts:-

1. The AO at Pg 3 of the order observed that during the year assessee has raised unsecured loan of Rs.15 lacs from Icharaj Retails Pvt. Ltd., Rs.20 lacs from IcharajVinimayPvt. Ltd., Rs.28 lacs from Ladymoon Project Pvt. Ltd. and Rs.1.50 crores from LifewoodTreximPvt. Ltd., totalling to Rs.2.13 crores. The assessee vide letter dt. 30.09.2019 (PB 19-20) filed the details of unsecured loan for FY 2012-13 (PB 28) which shows that it has raised unsecured loan of Rs.1.38 crores only from these parties. Further it also filed the confirmation of account of lender, ITR of lender, bank statement of lender, its own bank statement showing the transaction and its TDS return showing tax deducted on payment of interest. Thereafter vide letter dt. 23.12.2019 (PB 26-27) assessee submitted that the loan to said parties have been repaid through banking channel from time to time for which it filed the ledger account of said parties showing the payment made and copy of bank statement reflecting the payment made.
2. The AO observed that assessee has only provided copy of confirmation in respect of the amount received from these companies. Since genuineness of these transactions was found to be not proved, these lenders were asked to give various details to prove the genuineness of

the impugned transactions. Though they again sent copy of ITR, copy of relevant bank statement and confirmation, however, they failed to give any evidence regarding genuineness of transaction held with them. All these companies have very nominal capital as well as income during FY 2012-13. The bank statement reveals a pattern of continuous receipt from some source and immediate transfer of fund to some companies. Therefore, these bank statements confirm that these companies are only conduit to give entries to different companies without having any substantial business of their own. These companies have invested in the assessee company without any justification for the same despite not having substantial income of their own. How it can be presumed that a company situated at a faraway place at Kolkata will lend substantial amount in a company at Jaipur as such without any guarantee of genuine return because no interest was paid to these lenders. This is against business prudence and concept of human probability. As a matter of fact these loan transactions are nothing but a colourable device to dodge the revenue by bringing unaccounted money in the garb of bogus loans. Accordingly AO made addition of Rs.2.13 crores u/s 68 of the Act by holding that assessee has failed to discharge the onus lying upon it to satisfactorily prove the nature and source of the unsecured loans. The credit entry on account of unsecured loan is managed by the assessee itself and involved funds were out of his own unaccounted income which has nowhere been declared in his return of income. He further made addition of Rs.4,26,000/-, being 2% of Rs.2,13,00,000/- on account of alleged commission paid for obtaining the alleged accommodation entry.

3. The Ld. CIT(A) after relying on various case laws at Para 9.2 to 9.16 of the order, at Para 10 to 10.9 of the order held that it is clear that there were no business operations in any of these entities who have advanced unsecured loans to the appellant's company, unless, of course, routing the monies to other companies, or being a conduit company facilitating financial manoeuvrings, per se is treated as main business operations of the company. In any case, it is difficult to understand what business can assessee carry on when it passes on 99% of its capital base in giving unsecured loans and subscribing to shares in the other companies- and all these investments are in private limited companies, and in none of the companies the investing company has acquired any management participation. Accordingly at Para 10.10 of the order he confirmed the addition made by AO by directing the AO to calculate the correct amount of unsecured loans taken by the assessee from the impugned shell

companies managed and operated by Mukesh Banka group of concerns and at Para 11 of the order confirmed the addition of Rs.4,26,000/-, being 2% of Rs.2,13,00,000/- on account of alleged commission paid for obtaining the accommodation entry.

Submission:-

1. Section 68 provides that if any sum is found credited in the books of accounts then the assessee has to prove the identity & creditworthiness of the party from whom amount is received and the genuineness of the transaction. In the present case, assessee has not only proved the identity of lender but also creditworthiness as well as genuineness of the transaction by filing ITR acknowledgment, financial statements, confirmation, bank statement and bank statement showing repayment made to the company. All these companies are assessed to tax and the amount is received by cheque. The summarised position of the various evidences filed are tabulated as under:-

Name of the lender	Amount of loan taken	Evidences filed & explanation
Icharaj Retails Pvt. Ltd.	Rs.15,00,000/-	<ul style="list-style-type: none"> - ITR Acknowledgment (PB 29) - Financial Statements (PB 30-31) - Confirmation of accounts (PB 32) - Bank statement (PB 33) - Ledger account in assessee's books of accounts (PB 34) - Bank statement of assessee showing repayment made to the company (PB 35)
Icharaj Vinimay Pvt. Ltd.	Rs.20,00,000/-	<ul style="list-style-type: none"> - ITR Acknowledgment (PB 36) - Financial Statements (PB 37-38) - Confirmation of accounts (PB 39) - Bank statement (PB 40) - Ledger account in assessee's books of accounts (PB 41) - Bank statement of assessee showing repayment made to the company (PB 42)

Ladymoon Project Pvt. Ltd.	Rs.28,00,000/-	<ul style="list-style-type: none"> - ITR Acknowledgment (PB 43) - Financial Statements (PB 44-45) - Confirmation of accounts (PB 46) - Bank statement (PB 47) - Ledger account in assessee's books of accounts (PB 48) - Bank statement of assessee showing repayment made to the company (PB 49)
LifewoodTreximPvt. Ltd.	Rs.75,00,000/-	<ul style="list-style-type: none"> - ITR Acknowledgment (PB 50) - Financial Statements (PB 51-52) - Confirmation of accounts (PB 53) - Bank statement (PB 54-55) - Ledger account in assessee's books of accounts (PB 56) - Bank statement of assessee showing repayment made to the company (PB 57-58)

From the above, it can be noted that assessee has discharged his onus to prove the loan creditors u/s 68. All the above four loan creditors have furnished copy of ITR, copy of relevant bank statement and confirmation in support of the loan advanced by them as accepted by the AO at Para 9.1, Pg 32 of the assessment order. On the loan amount so raised, assessee has paid interest. The interest expenditure was not claimed in the P&L A/c as during the year assessee was developing a building project and the amount of interest paid was capitalized to its cost under the head inventories as detailed at Pg 51-52 of CIT(A) order. On the interest amount, assessee has deducted TDS and deposited the same as evident from the TDS return for the quarter ending 31.03.2013 (PB 59-66). The observation of AO that bank statement of creditors reveals a pattern of continuous receipt from some source and immediate transfer of fund to some companies cannot lead to an inference that such receipt originated from the assessee company more particularly when the entire loan was subsequently repaid by the assessee. The AO at Pg 11-26 of the order has reproduced the statement of Sh. Mukesh Banka recorded u/s 131 of the Act on 30.05.2018 but neither name of any of the company from whom assessee raised the loan nor the name of assessee company is appearing therein. Further assessee was not provided any opportunity

to cross examine Sh.Mukesh Banka. Hence such statement has no relevance. The Ld. CIT(A) at Para 10.1 accepted that assessee has produced sufficient evidences about the existence of creditor company but at Para 10.2 to 10.5 of the order has analysed the financial statement of each of the companies to allege that there was no business operation in any of the entities except giving unsecured loan and subscribing to the shares in other companies without acquiring any management participation. Thus when the Ld. CIT(A) has accepted the existence of creditors, transactions are through banking channel and the loan has been repaid, it is not the concern of assessee as to how the creditor company operate more particularly when the creditors have directly confirmed the transaction to the AO. It may also be noted that even the AO, Ward-6(2), Kolkata has passed the assessment order u/s 143(3) in case of lcharajVinimayPvt. Ltd. for AY 2017-18 on 10.02.2019 (PB 67-68). In these circumstances, genuineness of the transaction & the creditworthiness of the creditor cannot be doubted & the addition confirmed by the Ld. CIT(A) be deleted.

2. Reliance in this connection is placed on following cases:-

CIT Vs. Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)

The gist of the case is as under:-

Income—Cash credit—Burden of proof—Assessee had given the names and addresses of the creditors—It was in the knowledge of the Revenue that the said creditors were income-tax assesseees—Their index number was in the file of the Revenue—Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further—Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the allowed loans—Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence—High Court was therefore, right in refusing to refer the questions sought for.

Pr. CIT, Udaipur Vs. Shubh Mines Pvt. Ltd. DBITA No.96/15 order dt.03.05.2016 (Raj.) (HC)(Case laws compilation PB 50-53)

The relevant facts are that the assessee company introduced share application money to the tune of Rs.75 lacs including the sum of Rs.50 lacs allegedly taken from the entry provided namely, Moderate Credit

Corporation Limited, Delhi. The AO observed that the assessee could not substantiate necessity for obtaining the huge share application money only after few months of promoting the company. The AO on the basis of the statements of one Shri Aseem Kumar Gupta concluded that the money deposited in the bank accounts of the assessee company is bogus entry. Accordingly, treating the money received as belonging to the assessee company, same was added u/s 68 of the Act. The Ld. CIT(A) deleted the addition made by the AO and the order of CIT(A) was confirmed by Hon'ble ITAT. The Hon'ble High Court confirmed the order of lower authorities by giving the following findings at Para 7 of its order:-

"7. A bare perusal of the assessment order reveals that the AO has made the addition on suspicion which is based on the statements of third party Shri Aseem Kumar Gupta, admittedly, recorded in the back of the assessee. It has come on record that the share application money of Rs.50,00,000/- was received from Moderate Credit Corporation Ltd., a listed company. It is not disputed before this court that the investment made was received by account payee cheque and the same was refunded by an account payee cheque when the company dropped its project. In the considered opinion of this court, in absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been held not sustainable in the eyes of law. Suffice it to say that the finding arrived at by the CIT (A), affirmed by the ITAT, which remains a finding of fact, cannot be said to be capricious or perverse."

PCIT Vs. AmbeTradecorp (P) Ltd. (2023) 290 Taxman 471 (Guj.) (HC)(Case laws compilation PB 54-55)

Assessee received loan from two parties. AO treated same to be sham for reason that creditworthiness of loan givers was not established and accordingly made addition u/s 68. It was held that assessee had furnished details such as copy of ledger account, bank statements, income tax returns, balance sheet, etc. of loan givers. Notice u/s 133(6) was issued to said loan givers which were duly responded by them, therefore, identity of parties could not be disputed. Assessee was not beneficiary as loan was repaid by assessee in subsequent year. Since identity and creditworthiness of parties and genuineness of loan transactions were well established, therefore, impugned addition made u/s 68 on account of said loan amount was unjustified.

ITO Vs. Smt. PratimaAshar (2019) 183 DTR 137(Mum.)(Trib.)(Case laws compilation PB 56-64)

On query raised by AO about veracity of loans raised by assessee from six companies, assessee placed on record (i) copies of the returns of the lender companies; (ii) copies of their audited financial statements; (iii) copies of the bank accounts of the lender companies; and (iv) the affidavits of the principle officers of the lender companies wherein they had confirmed the loan transactions. The primary burden cast on assessee u/s 68 stood discharged, hence without bringing on record any contra evidence addition u/s 68 made by AO was rightly deleted by CIT(A). Order of AO was solely based on report of Dy. Director of IT that all those companies were controlled by one J who was engaged in providing accommodation entries without any independent enquiry as regards loans acquired by assessee. The assessee had deducted tax at source from interest payments to those companies and had also repaid the loans. The notices which were issued by the AO u/s 133(6) to the aforementioned companies wherein they were called to share certain information were duly complied with by the said concerns and the requisite documents were placed on the record of the AO by the said companies. Thus, no interference is called for with the order of CIT(A).

M/s Harivardhan Steel & Alloys Pvt. Ltd.Vs. ITO ITA No.3302/Mum/2019 order dt.24.01.2022 (Mum.)(Trib.)(Case laws compilation PB 65-80)

The facts in brief are that during the course of assessment proceedings assessee has received share capital including share premium from two entities namely M/s Sampada Chemicals Ltd. & M/s P. Saji Textiles Ltd. and unsecured loan from M/s Shyam Alcohol Chemical Ltd. According to the AO these entities belong to Vipul Vidur Bhatt who during the course of search u/s 132 of the Act admitted during the course of recording of statement u/s 132(4) of the Act on 09.02.2016 that he and his associate concerns were providing bogus accommodation entries only. Accordingly, he treated the same as non genuine and added the same to the income of assessee as unexplained cash credit u/s 68 of the Act. The Ld. CIT(A) in the appellate proceedings dismissed the appeal of the assessee. The Hon'ble ITAT held that during the course of assessment proceedings the assessee has filed the ITRs, confirmations, bank statements of the investors/ lender and share application forms etc. The AO has issued notices u/s 133(6) of the Act to these investors/ lender in order to verify the genuineness of the transactions which have been responded to by these investors/ lender by filing all the evidences before the AO and

admitting that the transactions are genuine. Further Shri Vipul Vidur Bhatt has filed an affidavit which stated that investments were made in the case of M/s Sampada Chemicals Ltd. out of repayments of loans received from M/s SIL Retails Pvt. Ltd. whereas the investment by M/s P. Saji Textile Ltd. was made out of OD facility of the investor with Bank of Maharashtra. The AO/ Ld. CIT(A) have not pointed out any defect/deficiencies in these evidences filed by the assessee and merely relied on the statement recorded u/s 132(4) of the Act of Shri Vipul Vidur Bhatt during the course of search which has even been retracted by him later on. The reliance on his statement which has been retracted is not correct as it has no evidentiary value in the eyes of law. If these investments are made by bogus investors, then the AO is free to proceed against those investors as the assessee has provided all the details such as addresses, PAN numbers etc. of the investors to the AO. Accordingly, no addition can be made u/s 68 of the Act in the hands of assessee as it has proved all three ingredients of section 68 of the Act i.e. identity, creditworthiness of the investors/ lender and genuineness of the transactions.

M/s Noble Tradelink Pvt. Ltd.Vs. ITO ITA No.302 & 303/JP/2021 order dt. 10.10.2022 (Jaipur) (Trib.)(Case laws compilation PB 81-95)

The relevant Para 4.5 of the order reads as under:-

4.5 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the AO while making the assessment in the case of the assessee observed that during the year under consideration the assessee company had taken credit entries in the form of unsecured loan from the entities which are managed by Shri Vipul Vidur Bhatt for providing accommodation entries and rotated unaccounted money of Rs.80 lacs in its bank through the these companies. Thus the AO added unaccounted money of Rs. 80 lacs to the total income of the assessee company for the year under consideration and the Id. CIT(A) has confirmed the action of the AO. The Bench noted that if any sum is found credited in the books of account of the assessee then the assessee has to prove the identity and creditworthiness of the party from whom the amount is received and the genuineness of the transaction. From the record, it is noted that identity of the creditor is established from the company master data downloaded from MCA Portal. The genuineness of the transaction is established from the confirmation of accounts, affidavit of Director of loan creditor companies and bank statement from where it can be seen that the transaction had been carried out through banking channel and the loan amount is repaid during the year itself. It is also

noted from the records that the creditworthiness of the creditor is established from the balance sheet from where it can be seen that the net worth of of M/s Lukand Textiles Pvt. Ltd. is Rs.2.08 crores (PB 49), M/s P Saji Textiles Ltd. is Rs.3.09 crores (PB 79), M/s Sampada Chemicals Ltd. is Rs.10.20 crores (PB 114) and M/s Santoshima Tradelink Ltd. is Rs.45.78 crores (PB 139-140). Further the Directors of these companies in their affidavits have stated that source of funds for loan given to assessee is out of repayment of loan given to other parties. Thus, assessee has discharged its onus to establish the identity of creditors, genuineness of the transaction and creditworthiness of the creditors. The Id. AR of the assessee further submitted that having discharged its onus, it is the duty of the AO to disprove the evidence filed by the assessee. The AO except referring to the report of Investigation Wing has not brought any material on record to rebut the evidences filed by the assessee. It is not the case of lower authorities that in search of Mr. Vipul Vidur Bhatt any evidence is found that assessee has given any cash for taking the alleged accommodation entry. Had these loans were accommodation entries, the same would not have been repaid within such short duration. The Ld. CIT(A) has incorrectly held that assessee has not demonstrated that these entities are doing genuine business ignoring that the same is verifiable from the financial statements of these creditors and their return of income filed before him which otherwise is not the onus of the assessee. The case laws and the report relied upon by the Id. DR are with reference to the LTCG claimed exempt u/s 10(38) of the Act which are not relevant to the facts of the assessee's case where he took loan and also repaid during the same financial year. Hence, these cases are of no help to the revenue. As against this, the ratio laid down by the assessee are squarely applicable to the facts of the assessee.

1. ITO vs Om Shanti Realtors (ITA No. 5615/Mum/2017 dated 01-03-2019 wherein the Bench observed as under:- "7. After having gone through the facts of the present case and perusal of the documents and after hearing both parties at length we find that the assessee had already placed on record all the documentary evidence in order to show the identity and creditworthiness of the lender and genuineness of the transactions. We have perused the confirmation filed by the parties, copies of acknowledgement of return of income filed by the lenders for the year under consideration, copies of bank statement of lenders, which establish that the payment towards loans were received during the year under consideration. Therefore, the identity of the lender was not in

dispute. We have also considered all the documents placed on record by the assessee in the shape of statement of accounts and documents to show that the transactions were carried out through banking channels and the confirmations which were filed in the form of ledger accounts which reflect that the assessee had received the amount through RTGS. All those documents prove the genuineness of the transactions. Now as far as creditworthiness of the lenders are concerned, we have perused the audited accounts of the lenders which shows the creditworthiness of the lenders to grant loans and advances. Further, we also noticed upon the records that Id. CIT(A) had rightly pointed out in its order that the AO made the additions by holding that as the declared income by the respective loan creditors was less, therefore, they were not capable of lending. However, the AO ignored the fact that the lenders had substantial turnover and had a very large basis of assets as is reflected in the respective balance sheet.”

2. Pr. CIT, Udaipur vs Shubh Mines Pvt. Ltd. (DBITA No. 96/15 order dated 03-05-2016 (Raj. H.C.) wherein the Hon'ble Court observed at para 7. “7. A bare perusal of the assessment order reveals that the AO has made the addition on suspicion which is based on the statements of third party Shri Aseem Kumar Gupta, admittedly, recorded in the back of the assessee. It has come on record that the share application money of Rs.50,00,000/- was received from Moderate Credit Corporation Ltd., a listed company. It is not disputed before this court that the investment made was received by account payee cheque and the same was refunded by an account payee cheque when the company dropped its project. In the considered opinion of this court, in absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been held not sustainable in the eyes of law. Suffice it to say that the finding arrived at by the CIT (A), affirmed by the ITAT, which remains a finding of fact, cannot be said to be capricious or perverse.”

3. Aravali Trading Co. vs ITO (2008) 8 DTR 199 (Raj) wherein the Hon'ble Court observed that ...Once the existence of the creditors is proved and such persons own the credits which are found in the books of the assessee, the assessee's onus stands discharged and

the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him either in terms of sec. 68 or on general principle. Merely because the depositors explanation about the sources of money was not acceptable to the AO, it cannot be presumed that the deposit made by the creditors is money belonging to assessee itself. If the creditors explanation about the source of deposits is not found to be acceptable, the investment owned by such persons may be subjected to proceedings for inclusion of the amounts as their income from undisclosed sources or if they are found benami the real owner can be brought to tax. In the absence of anything to establish that the sources of the creditors deposits flew from the assessee, the cash credits cannot be treated as unexplained income of the assessee.”

4. KanhaialalJangid vs ACIT (2008) 8 DTR 38 (Raj) wherein the Hon'ble Court observed that –“ While it is the assessee's burden to furnish the explanation relating to cash credits, the assessee's burden does not extend beyond proving the existence of the creditor and further proving that such creditor owns to have advanced the amount credited in the account of assessee. However, the burden does not go beyond to put the assessee under an obligation to further prove as to wherefrom the creditor has got or procured the money to be deposited or advanced to the assessee. The explanation furnished by the creditor about the source from where he procured the money to be deposited or advanced to the assessee is not relevant for the purpose of rejecting the explanation furnished by the assessee and making additions of such deposits as income of the assessee from undisclosed sources by invoking section 68 unless it can be shown by the department that the source of such moneys come from the assessee himself or such source could be traced to the assessee itself. In the present case, while the existence of the creditor is not in doubt & he has admitted to have advance the loan to the assessee, the fact that the explanation furnished by the creditor about his source of such advancement has not been accepted by the revenue authority cannot lead to any presumption that the source of such advancement by creditor emanated from the assessee. Therefore, the addition in the income of the assessee as cash credit cannot be sustained.”

5. Labchand Bohra vs ITO (2008) 219 CYR 571 (Raj) wherein the Hon'ble Court observed that - Identity of the creditors having been established who have confirmed the credits by making statements on oath and the amounts having been advanced by account payee cheques, impugned addition in respect of the entries in the names of said creditors cannot be sustained. Capacity of the lender to advance money to the assessee is not a matter which could be required to be established by the assessee, as that would amount to calling upon him to establish source of the source

In view of the above deliberations, the decisions relied on above, we find that disallowance made of Rs.80 lacs u/s 68 of the Act by the lower authorities has no merit and we do not concur with the findings of the Id. CIT(A) as the assessee has proved the identity and creditworthiness of the party from whom the amount was received and genuineness of the transaction. In this view of the matter, the ground Nos. 2.1 to 2.4 of the assessee are allowed.

3. The AO has made addition of Rs.4,26,000/- on account of alleged commission paid on the alleged accommodation entry of Rs.2.13 crores. The Ld. CIT(A) though accepted that the loan taken is only Rs.1.38 crores but still confirmed the addition of Rs.4,26,000/- made by AO on account of unexplained expenditure. It is submitted that once the Ld. CIT(A) has accepted that the loan raised by assessee company is only Rs.1.38 crores, addition confirmed of Rs.4,26,000/- is arithmetically incorrect. Further as explained above, the assessee has genuinely raised the loan on which interest is paid and the loan has been repaid, such loan cannot be alleged to be accommodation entry so as to justify any addition for alleged commission.

In view of above, addition made by AO and confirmed by Ld. CIT(A) be directed to be deleted.”

6. In addition the Id. AR of the assessee has also relied upon the following judicial decision to support the contentions so raised:-

- M/s Safe Infra Projects Pvt. Ltd. vs. ITO in ITA No. 1293/JP/2018 dated. 06.12.2019.
- DCIT vs. Alembic Merchants Pvt. Ltd. (2021) 188 ITD 289 (Kolkata Trib.)

- Smt. Anshita Vimal Jain vs. ITO (2023) 199 ITD 168 (Surat Trib.)
- Pr. CIT vs. M/s Shubh Mines Pvt. Ltd. in DB ITA No. 96/15 dated. 03.05.2016.
- PCIT vs. Ambe Tradecorp (P) Ltd. (2023) 290 Taxman 471 (Gujarat H.C.)
- ITO vs. Smt. Pratima Ashar (2019) 183 DTR 137.
- M/s Harivardhan Steel & Alloys Pvt. Ltd. vs. ITO ITA No. 3302/Mum/2019 dated 24.01.2022.
- M/s Noble Tradelink Pvt. Ltd. vs. ITO ITA No. 302 & 303/JP/2021 dated 10.10.2022.

7. The Id. AR of the assessee also filed a detailed paper book in support of the order of the Id. CIT(A) The index of the document submitted by the Id. AR of the assessee are as under:-

S. No.	Particulars	Pg No.	Filed before AO/ CIT(A)
1.	Copy of original return of income dt. 10.09.2013 filed u/s 139 of IT Act	1	Both
2.	Copy of return of income dt. 26.04.2019 filed in response to notice u/s	2	Both
3.	Copy of Balance Sheet and P&L A/c	3-5	Both
4.	Copy of reasons recorded for issuance of notice u/s 148	6-8	Both
5.	Copy of assessee's reply dt. 30.09.2019 objecting the notice issued u/s	9-20	Both
6.	Copy of order dt. 19.12.2019 passed by AO disposing the objections	21-25	Both
7.	Copy of reply dt. 23.12.2019 filed during the course of reassessment	26-27	Both
8.	Details of unsecured loan for the FY 2012-13	28	Both
9.	Copy of following documents in case of Icharaj Retails Pvt. Ltd.:-		
	- ITR Acknowledgment	29	
	- Financial Statements	30-31	
	- Confirmation of Accounts	32	Both
	- Bank statement	33	
	- Ledger account in assessee's books of accounts	34	
		35	

10.	Copy of following documents in case of Icharaj Vinmay Pvt. Ltd.: - ITR Acknowledgment - Financial Statements - Confirmation of Accounts - Bank statement - Ledger account in assessee's books of accounts - Bank statement of assessee showing repayment made to the company	37-38 39 40 41 42	Both
11.	Copy of following documents in case of Ladymoon Projects Pvt. Ltd.: - ITR Acknowledgment - Financial Statements - Confirmation of Accounts - Bank statement - Ledger account in assessee's books of accounts - Bank statement of assessee showing repayment made to the company	43 44-45 46 47 48 49	Both
12.	Copy of following documents in case of Lifewood Trexim Pvt. Ltd.: - ITR Acknowledgment - Financial Statements - Confirmation of Accounts - Bank statement - Ledger account in assessee's books of accounts - Bank statement of assessee showing repayment made to the company	50 51- 52 53 54- 55 56 57-58	Both
13.	Copy of TDS return for the quarter ending 31.03.2013	59-66	Both
14.	Copy of assessment order dt. 20.02.2019 passed u/s 143(3) in case of Icharaj Vinmay Pvt. Ltd.	67-68	Reference

8. The Id. AR of the assessee vehemently argued that the Id. AO and CIT(A) has not correctly appreciated even the facts while making / confirming the addition. Even the figure of the loan taken and added are different and the Id. CIT(A) has not appreciated that

facts and directed to delete the addition which is not in the book but directed to verify the same which is not correct when all the evidence placed on record the Id. CIT(A) should have decided the ground of the assessee about the amount to be added at least and considering the evidences placed on record since the assessee has discharged the burden placing all the evidence on record the additions made are required to be deleted. The Id. AR of the assessee also submitted that even the loan are repaid and therefore, the same cannot be considered as unexplained.

9. The Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR also drawn our attention to the fact that order of the Id. AO is passed under section 144 of the Act and therefore, no relief of the amount can be given without verifying the contention of the AO. Even considering the information received the addition is made and the Id. CIT(A) also directed the Id. AO to make verification the matter be prayed to remanded back to the Id. AO to be decided based on the provision of the law and evidence placed on record.

10. We have heard the rival contentions, perused the material placed on record and gone through the judicial precedent cited by both the parties to drive home to their respective contentions. The appeal of discord in this case is that the revenue based on the information received that the assessee has received accommodation entries / bogus unsecured loans in a planned manner. The said information was backed by the detailed investigation done on account of the search carried out by the Investigation Wing in the case of Banka Group wherein it was discovered that various syndicates have arranged accommodation entry in the form of unsecured loans and in other forms. The modus operandi found that the beneficiaries routed its on money layering through various bank accounts to these operators and they provided back the money so receive to the beneficiaries. These facts were confirmed by way of detailed statement recorded and as reproduced in the assessment order. The bench noted that the Id. AO noted that in this case the assessee has availed the loan of Rs. 2,13,00,000/- from the companies as listed at page 9 of the assessment order. Whereas before the Id. CIT(A) the assessee contended that the finding of the Id. AO was wrong and on that

aspect of the matter the relevant finding of the Id. CIT(A) is as under:

10.10 Having considered entire facts of the case and evidences brought on record I find no infirmity in the order of AO, hence, addition made u/s 68 on account of unexplained cash credits is confirmed. However, it is submitted by the appellant that the total unsecured loans taken by them from the group companies operated by Mukesh Banka is only to the extent of Rs. 1,38,00,000/- instead of Rs. 2,13,00,000/-. Since, the claim made by the assessee is only a matter of verification and accordingly the AO is directed to calculate the correct amount of unsecured loans taken by the assessee from the impugned shell companies managed and operated by Mukesh Banka group of concerns and brought the same to tax. To that extent, Ground no. 6 to 8 are partly allowed.

Whereas the Id. DR argued that the Id. AO has made addition after detailed finding given in the order. It is also contended by the Id. AR of the assessee that loans have also been repaid so it since there is no finding till now placed on record it would be in the interest of the justice to set a side the matter to the file of the Id. AO as the order has been passed under section 144 of the Act as ex-parte and the assessee was not given an opportunity to substantiate the various facets of the dispute and even the amount of loan taken or given both added or one is not sure and not coming out from the facts placed on record. In the light of these facts and considering the facts it would be in the interest of justice to be decided the fact that how much amount to be added in the case of the assessee

based on the legal provision and various decision cited by both the parties and let the issue be examined in the light of the arguments advanced which remain to be tested by the Id. AO. Based on this observation the ground no. 2 & 3 is set aside to the file of the Id. AO.

11. As regards the ground no. 1 the bench noted that the Id. AR of the assessee mainly argued that reasons recorded are vague incorrect and suffers infirmity. In the reasons recorded the amount of accommodation entries were considered at Rs. 2,13,0,502/-, whereas the same is raised for an amount of Rs. 1,38,00,000/-. The Id. AR of the assessee further contended that the return is filed at income of Rs. 50,099/- but the same was filed at nil income. Even the figure of alleged entry taken is incorrect. The bench noted that the reasons recorded are based on the overall aspect of the case and it is not under dispute that the assessee has not taken the unsecured loans from the entry operator who have been searched and various records and a detailed statement was recorded. Thus, considering the arguments of both the parties we are of the considered view that there is no merits in the ground no.

1 raised by the assessee and the same is dismissed. The ground no. 4 & 5 being general in nature does not require any adjudication.

In the result, the appeal of the assessee is allowed statistical purpose.

Order pronounced in the open court on 04/01/2024.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04/01/2024

*Ganesh Kumar, PS

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

1. अपीलार्थी / The Appellant- Creative Realmart Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-3(5), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 599/JPR/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar