

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्रीसंदीप गोसाई, न्यायिक सदस्य एव श्रीराठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 509/JP/2023
निर्धारणवर्ष / Assessment Year : 2013-14

Chordia Safe deposit and Vaults Pvt Ltd. 1632, Chordia Bhawan, Sonthli Walon Ka Rasta, SMS Highway, Jaipur	बनाम Vs.	ITO Ward 7(2) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAACC 7511 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurav Harsh, Advocate
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 26/10/2023
उदघोषणा की तारीख / Date of Pronouncement: 18 /01/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A)-4, Jaipur dated 08-05-2023, or the assessment year 2013-14 wherein the assessee has raised following grounds of appeal.

“1. That on the facts and in circumstances of the case, the Id. lower authority grossly erred in confirming the addition of Rs. 18,01,000/- of the amount received from:-1) Shri Kamal Kumar Kanstiya 4,30,000/- 30.04.2012 ii) Smt. Raj Kumari Kanstiya

4,00,000/- 30.04.2012 iii) Smt. Nayan Tara Chordia 3,50,000/- 30.04.2012 iv) Shri Umraomal Chordia 6,21,000/- 30.04.2012 .

1.1. That the ld. Assessing Officer grossly erred in not considering the facts that all these four persons are the debtors of the company. Earlier amount has been given to them by company received back through account payee cheques on 30.4.2012. Rs.4,30,000/- from Kamal Kumar Kanstiya, Rs. 4,00,000/- from Smt. Raj Kumari Kanstiya, Rs. 3,50,000/- from Smt. Nayan Tara Chordia and Rs. 6,21,000/- from Umraomal Chordia. Their detailed confirmed copies of accounts has been given, all are income tax assessees provided their PAN Nos.

1.2. That the ld. Assessing Officer grossly erred in not considering the facts that these Shri Kamal Kumar Kanstiya, Smt. Raj Kumari Kanstiya, Smt.Nayan Tara Chordia and Umraomal Chordia are sundry debtors and not creditors of the company. The amount given earlier received back through account payee cheques.

1.3. That the ld. Assessing Officer grossly erred in not considering the facts that the company has not explained the immediate source of deposit of Rs. 1 8,01,000/- on 30.4.2012 when duly explained by the company.

2.1 It may be noted that the ld. AR of the assessee vide application dated 25th Sept. 2023 filed an application for revised grounds of appeal praying that in Form 36, the assessee mistakenly and advertently taken the word debtors in grounds of appeal. Therefore, the assessee is filing the revised Grounds of appeal and the same may be kindly allowed. The Bench considered the application of the assessee and allowed the revised grounds of appeal hereunder for which ld.DR has no objection.

“1 That on the facts and in circumstances of the case, the Id. lower authority grossly erred in confirming the addition of Rs. 18,01,000/- of the amount received from:-1) Shri Kamal Kumar Kanstiya 4,30,000/- 30.04.2012 ii) Smt. Raj Kumari Kanstiya 4,00,000/- 30.04.2012 iii) Smt. Nayan Tara Chordia 3,50,000/- 30.04.2012 iv) Shri Umraomal Chordia 6,21,000/- 30.04.2012 .

1.1. That the Id. AO grossly erred in not considering the fact that to all these four persons loans and advances were given by the company. Earlier amount has been given to them by company received back through account payee cheques o 30-04-2012, Rs.4,30,000/- from Kamal Kumar Kanstiya, Rs.4,00,000/- from Smt Raj Kumari Kanastiya, Rs.3,50,000/- from Smt. Nayan Tara Chordia and Rs.6,21,000/- from Umraomal Chordia. Their detailed confirmation copies of accounts has been given, all are income tax assessee provided their PAN Nos.

1.2 That the Id.AO grossly erred in not considering the fact that these Kamal Kumar Kanstiya, Smt Raj Kumari Kanastiya, Smt. Nayan Tara Chordia and Umraomal Chordia are not creditors of the company but persons to whom loans and advances were given in earlier yearssss. The amount given earlier received back through account payee cheques.

1.3. That the Id. Assessing Officer grossly erred in not considering the facts that the company has not explained the immediate source of deposit of Rs. 1 8,01,000/- on 30.4.2012 when duly explained by the company.

3.1 Apropos Ground No. 1 to 1.3 of the assessee, brief facts of the case are that the assessee E-filed the return on 27-09-2013 declaring nil income which was processed u/s 143(1) of the Act. In this case, Notice u/s 142(1) alongwith show

cause notice was issued on 30-11-2016 by the AO asking the assessee to file source of loan of Rs.18.01 lacs made to Shri Vaibhav Chordia on 30-04-2012 with supporting evidence. However, the assessee failed to make the compliance of such notice of the AO on given date. Therefore, the assessee was asked to show case as to why the loan amount of Rs.18.01 lacs should not be considered as unexplained and added back in the total income of the assessee for the year under consideration. To this effect, the Id. AR of the assessee filed the written submission on 15-12-2016 which has been taken on record by the AO at page 2 & 3 in the assessment order. However, the submissions filed by the Id AR of the assessee had been considered but it was not found acceptable by the AO for the reason that the assessee had explained to receive back immediate amount from Shri Kamal Kumar Kanstilya, Smt. Raj Kumar Kanstiya, Smt Nayan Tara Chordia and Shri Umraomal Chordia on 30-04-2012 and filed confirmation of account thereof. The AO in the assessment order noted that the onus lies upon the assessee to prove genuineness of transactions and creditworthiness of the above mentioned parties. In order to examine the nature and genuineness of transactions, the assessee was asked to produce the above mentioned four persons. Conclusively, the AO made an addition of Rs. 18.01 lacs in the hands of the assessee by observing as under:-

“4. I have considered all the facts and material available on records that merely filing the confirmation of the parties are not sufficient to explain the creditworthiness of such parties. The onus

was upon the assessee to prove the nature and genuineness of transactions and creditworthiness of such parties with corroborative evidences. Therefore, I rebut the confirmation filed at the last stage of scrutiny proceedings. Further, on examination of addresses given in the confirmation of Smt. Nayan Tara Chordia and Sh. Umrao Mal Chordia ie. 1632, Chordia Bhawan, Sothliwalon Ka Rasta, Choura Rasta, Jaipur and **the address of the assessee is the same which is under scrutiny**. Thus, the assessee has deliberately acted to produce such parties for examination for the reasons best known by him. The plea of assessee that before giving loan/ advances of Rs. 18,01,000/- on 30.04.2012 he received back immediate amount from the above parties as debtors. I have gone through the detail of debtors filed in balance sheet as on 31.03.2012 where an amount of Rs. 5,53,325/- was shown in as 'Trade receivable' in the books of the assessee. Therefore, it cannot be said that the assessee received back amount immediately from debtors. Further, the above persons belong to family members of the assessee which they can be produced or obtained requisite details from them. It is the case of facts that the assessee advanced loan of Rs. 18,01,000/- on 30.04.2012 and prior to its bank account was credited by Rs. 4,30,000/, 4,00,000/-, Rs. 3,50,000/- and Rs. 6,21,000/- on 30.04.2012 but the assessee failed to explain the nature of **these credit entries and business relevancy thereto. Moreover, the assessee failed to file copy of bank statements, copy of capital account and balance sheet of the above four persons/parties. Thus, the assessee failed to file corroborative evidence regarding creditworthiness of the parties. Therefore, the source of loan amount of Rs. 18,01,000/- given to Sh. Vaibhav Chordia has not been explained as discussed in foregoing paras. Hence, the same is treated as unexplained and added to the total income of the assessee.** This would result in an addition of Rs. 18,01,000/-.

3.2 In first appeal, the ld. CIT(A) confirmed the action of the AO by observing as under:-

“ 4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The

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contentions/submissions of the appellant are being discussed and decided as under:-

(i) It is fact that as per information available with the Department, the appellant had advanced a loan of Rs.18,01,000/- to Sh. Vaibhav Chordia on 30.04.2012. The appellant was asked to furnish the nature and source of the loan advanced

(ii) This is the fact that the immediate source of the loan advanced is on account of payments received from the following entities on 30.04.2012 itself.

Shri Kamal Kumar Kanstiya	Rs.4,30,000/-
Smt. Raj Kumari Kanstiya	Rs.4,00,000/-
Smt.Nayan Tara Chordia	Rs.3,50,000/-
Shri Umraolal Chordia	Rs.6,21,000/-

(iii) The appellant claimed that the source of loan was the amounts received back from:-

Shri Kamal Kumar Kanstiya	Rs.4,30,000/-
Smt. Raj Kumari Kanstiya	Rs.4,00,000/-
Smt.Nayan Tara Chordia	Rs.3,50,000/-
Shri Umraolal Chordia	Rs.6,21,000/-

(iv) The appellant failed to prove with evidence the date/purpose of the amounts given originally, the genuineness of the transaction and creditworthiness of the said persons during the assessment proceedings, as well as during the appellate proceedings.

(v) It is a fact, which has duty been observed by the AO, in the assessment order that as per the details of the debtors filed in the Balance Sheet as on 31.03.2012, trade receivables are reported at Rs. 5,53,325/- only whereas the claim of the appellant is that it had

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received back an amount of Rs. 18,01,000/- from the above said persons, being debtors of the company.

(vi) This is also a fact that the appellant has not been able to rebut the observations/findings of the AO that these persons do not appear as debtors as on 31.03.2012.

(vii) The only inference that can be drawn from above is that the appellant has failed to give any cogent explanation viz-a-viz the source of loan advanced to Sh. Vaibhav Chordia. The case laws cited by the appellant are on different facts and not applicable on the facts of the present case. In view of the above, I do not find any reason to differ with the addition made by the AO and the addition of Rs. 18,01,000/- is upheld and the Ground of Appeal No. 1 to 1.3 is treated as dismissed.

3.3 Being aggrieved by the order of the Id. CIT(A), the assessee carried the matter before this Bench with the prayer to delete the addition confirmed by the Id. CIT(A) for which the Id. AR of the assessee filed the following written submission.

1. assessee is a Private Limited Company register under the Companies Act. The business of the assessee is providing safety deposit services and vaults services. Basic service of the income is locker rent from customers and interest on bank deposit.
2. That proceedings u/s. 148 of the Act were initiated on the ground that the assessee appellant has given a Loan & Advance (*wrongly referred as debtors*) of Rs. 18,01,000/- to its Director Shri Vaibhav Chordia and the source of the same is not explained. Subsequently the Assessing Officer made an addition of Rs 18,01,000/- in the hands of the company.
3. The Assessing Officer grossly erred in making an addition of Rs. 18,01,000/- and in not considering that the amount given to its Director Shri Vaibhav Chordia was received from the following persons:

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SNo.	Name	PAN No.	Amount(Rs)
1.	Kamal Kumar Kanstiya	ABPPK5965N	4,30,000/-
2.	Raj Kumari Kanstiya	AFNPK4086J	4,00,000/-
3.	Nayan Tara Chordia	ABQPC7730A	3,50,000/-
4.	Umraomal Chordia	ABCPC2363D	6,21,000/-
Total			18,01,000/-

4. That the above persons to whom advances had been given by the assessee appellant company in the earlier years was received back during the year under consideration as per following chart.

SNo.	Name	Opening Balance	Amount Received during the year under consideration
1.	Kamal Kumar Kanstiya	8,14,993/-	4,30,000/-
2.	Raj Kumari Kanstiya	10,62,435/-	4,00,000/-
3.	Nayan Tara Chordia	3,50,000/-	3,50,000/-
4.	Umraomal Chordia	6,21,000/-	6,21,000/-
Total		28,48,428/-	18,01,000/-

5. That amount of Rs. 18,01,000/- was received back through account payee cheques only. Their confirmed copies of accounts have been provided and all are income tax assessee's provided their PAN numbers. The opening balances are also duly reflected in the Audited Balance Sheet of the Company from year to year.
6. That the Assessing Officer grossly erred in making addition on the ground that assessee company could not produce these lenders. That section 133(6) of the Act empowers the Assessing Officer to call the person for any information. That section 131 of the Income tax empowered the Assessing Officer to call the person for recording the statement. The Assessing Officer failed to issue either summons u/s. 131 of the Act or notice u/s. 133(6) of the Act. Specific request was made by the assessee appellant vide letter dated 19.12.2016, however, for the reasons best known to him, he did not issue the same.
7. That assessee has discharged his burden of proof by submitting the PAN and confirmation of the persons to whom advances has been given. It is settled law that the Assessing Officer cannot bound the assessee to produce the person when Assessing officer is himself empowered to do the same.

8. That during the year under consideration assessee appellant company has given the advances of Rs 26,47,000/- to its Director Shri Vaibhav Chordia and same was given after the Company recovered Rs 18,01,000/- from the abovesaid parties and also recovered Rs 8,46,289/- from one the lender Mehta Book Distributers. However, addition of Rs. 1801000/- was made out of Rs. 2647000/- given to its Director Shri Vaibhav Chordia.
9. That further CIT(A) erred in confirming the addition on the ground that assessee appellant company has not given any cogent explanation of the source of loan and advances to Shri Vaibhav Chordia.
10. We wish to place reliance upon:
 - a. Hon'ble Jurisdictional Rajasthan High Court in **Labh Chand Bohra v. ITO** (2010) 189 Taxman 141 (Raj.) has held:

So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat Ram Rawat Mull's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source.
 - b. Hon'ble Jurisdictional Rajasthan High Court in **Aravali Trading Co. v. ITO** (2010) 187 Taxman 338 (Raj.) has held:

Whether once existence of persons in whose names credits are found in books of assessee is proved and such persons own such credits with assessee, assessee is not required to prove sources from which creditors could have acquired money to be deposited with it Held, yes Whether merely because depositors' explanation about sources wherefrom they acquired money is not acceptable to Assessing Officer, it cannot be presumed that deposits made by such creditors are moneys of assessee itself - Held, yes Whether in order to fasten liability on assessee by including such credits as its incomes from unexplained sources, a nexus has to be established by revenue that sources of creditors' deposit flow from assessee
 - c. Hon'ble Jurisdictional Rajasthan High Court in **Kanhaiyalal Jangid v. ACIT** (2008) 217 CTR 354 (Raj.) has held:

Where existence of creditor was not in doubt and he had admitted to have advanced loan to assessee, fact that explanation furnished by him about his source of such advancement had not been accepted by revenue authority could not lead to any presumption that source of such advance by creditor emanated from assessee
 - d. Hon'ble Jurisdictional Rajasthan High Court in CIT v. **Jai Kumar Bakliwal** (2014) 366 ITR 217 has held:

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When we peruse the facts herein above, it is an admitted position that all the cash creditors have affirmed in their examination that they had advanced money to the assessee from their own respective bank accounts. Therefore, when there is categorical finding even by the AO that the money came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition cannot be sustained and has been rightly deleted by both the two appellate authorities. There is no clinching evidence in the present case nor the AO has been able to prove that the money actually belonged to: none but the assessee himself. The action of the AO appears to be based on mere suspicion.

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

- e. Hon'ble Jurisdictional Rajasthan High Court in CIT v. **Deen Dayal Choudhary** (DBITA 58/2015 dated 15.07.2016) has held:

In our view, the facts on record clearly prove that the assessee did prove from where he has received the credits and once the assessee disclosed identity of a person who has advanced money, the amount is advanced by bank transactions, the cash creditor is assessed to income tax, then the burden laid down on the assessee is duly discharged and onus then shifts on the AO.

- f. Hon'ble ITAT Bangalore Bench in **Suraj Stones Corporation Ltd. v. ITO** (2021 (2) TMI 741 dated 18.02.2021) has held:

Income from undisclosed sources - money deposited in the bank account - HELD THAT:- *It is clear from the orders of the revenue authorities that they not made any reference to the documentary evidence filed by the assessee. The case of the Revenue appears to be that M/s. Sneha International was rotating cash by transferring funds to various entities. M/s. Sneha International received cash and thereafter transferred funds to M/s. Sherawali Corporation and M/s. Venkata Industries who in turn transferred funds to the Assessee in the form of RTGS bank Transfer.*

The claim of the Assessee was that the receipts by the Assessee from the aforesaid two parties was for sale of shares of a company by name Mag Impex Ltd., was not disbelieved either by the AO or the CIT(A). As far as the assessee is concerned, he has filed confirmation of Sherawali Corporation and Venkata Industries.

*CIT(A) has ignored this confirmation on the ground that the signature of the confirming parties were barely visible. The address of the confirming parties are very much available in the confirmation and **if any doubt persisted on the veracity of the confirmation, then the proper course would have been to issue summons to the confirming parties to find out the truth or otherwise of the transactions on sale of shares on account of which monies were received by the assessee through banking channels.***

CIT(A) has confirmed the addition made by AO ignoring the evidence available on record. In my view the evidence filed by the assessee satisfactorily explains the credits in question and the impugned addition has been made ignoring the material on record on the basis of surmises and conjectures. There is an allegation that it is Assessee's money which went to Sneha International and that was deposited by Snehal International in a bank account and from that bank account funds were transferred to M/S.Sherwali Corporation and M/S.Venkata Industries, but there is no evidence to substantiate such allegation.

Assessee has produced material evidence to show that the sum in question was received on account of sale of shares and no evidence has been brought on record to counter the plea of the assessee.

*No such evidence has been brought on record in the present case except to make an allegation that Sneha International was involved in rotating cash and the bank transactions in question had been made by Sneha International in favour of M/S.Sherwali Corporation and M/S.Venkata Industries after depositing such cash in their bank account. **The learned Counsel has rightly placed reliance on the decision in the case of Orissa Corporation Pvt. Ltd., [1986 (3) TMI 3 - SUPREME COURT] and case of ACIT Vs. Hanuman Agarwal [1983 (9) TMI 25 - PATNA HIGH COURT] for the proposition that without issuing summons under section 131 of the Act to a party who filed confirmation, no adverse inference can be drawn by the AO - Appeal by the assessee is allowed.***

- g. Hon'ble ITAT Chandigarh Bench in **Jagmohan Kaur Bajwa v. ITO** (2021 (9) TMI 1114 dated 23.07.2021) has held:

Addition u/s 69A - additions made in appellant's capital account - As per assessee it already stood disclosed in the books of accounts - HELD THAT:- *In the instant case the entries relating to the advances received from Shri Hardev Singh and his son Shri Maninder Singh Sahi from Canada were recorded in the books of accounts and the assessee also explained that this amount was received as an advance for making the investment in the property by the said persons and the assessee was engaged in the property business.*

A.O. therefore was not justified in invoking the provisions of Section 69A of the Act particularly when the entries were recorded in the books of accounts maintained by the assessee and the explanation relating to the purpose of receiving the advances was given, identity of the person from whom amount was received, was not in doubt, the entries were through banking channel and it is not the case of the A.O. that the assessee went to Canada then put his money in the account of the depositor i.e; Shri Hardev Singh and Shri Maninder Singh Sahi which was remitted back, therefore, the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified particularly when the credit in the similar circumstances from Shri Hardev Singh had been accepted but the advance received from his son Shri Maninder Singh Sahi was doubted and added to the income of the assessee. In our opinion the A.O. was not justified in blowing hot and cold in the same wind pipe.

*Assessee received the impugned amount through banking channel from Shri Maninder Singh Sahi of Canada for making the investment in the property. **The assessee also furnished the relevant details to the A.O. and also requested to summon the concerned***

parties under section 131 of the Act but the A.O. did not accede to the request of the assessee and made the addition, therefore, the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified.

Entries were made in the books of account maintained by the assessee and the entries in question appeared in the ledger account of the assessee, those were appearing in the bank account. The assessee also furnished an affidavit, the statement made therein - the addition made by the A.O. and sustained by the Ld. CIT(A) was not justified. We therefore, delete the addition made by the A.O. and sustained by the Ld. CIT(A) - Decided in favour of assessee.

That addition confirm by the lower authority is baseless without any cogent reason on the basis of assumption and presumption and same is deserves to be deleted. ‘

3.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

3.5 We have heard both the parties and perused the materials available on record. The crux of the issue is that ld CIT(A) has confirmed the addition of Rs.18.01 lacs holding that the assessee has failed to give any cogent explanation as to the source of loan advanced to Shri Vaibhav Chordia and also mentioned in his order that the assessee had not been able to rebut the observations/ findings of the AO that these persons do not appear as debtors as on 31-03-2023 and he did not find any reason to differ with the addition made by the AO and thus upheld the ground No. 1 to 1.3 of the assessee. Brief facts of the case are that the assessee is a private limited company registered under the Companies Act. The assessee is a Private Limited Company registered under the Companies Act. The business of the assessee is providing safety deposit services and vaults services. Basic service of the income is locker rent from customers and interest on bank deposit. The

proceedings u/s. 148 of the Act were initiated on the ground that the assessee had given a Loan & Advance (*wrongly referred as debtors*) of Rs. 18,01,000/- to its Director Shri Vaibhav Chordia and the source of the same is not explained. Subsequently the Assessing Officer made an addition of Rs 18,01,000/- in the hands of the company. It is noticed from the available record that the assessee had given advanced to the above mentioned persons which was received back from them through account payee cheques. The confirmation copies of refund of advances are available at pages 27-30 of the paper book and the all these persons are income tax assessee having PAN. It may be noted that opening balances are reflected in the audited balance sheet of the company from year to year. It is also imperative to mention that AO had the powers u/s 133(6) to call these four persons to enquire into the matter and also recording the matter but it has not been done by the AO. We have also seen from the records that the ld. AR of the assessee vide his letter dated 19-12-2016 made a specific request to the AO to issue to these persons but it was not done which is available at Page 31 of the paper book. However, for the sake of convenience the copy of the letter dated 19-12-2016 is reproduced is as under:-

N.K. Baid, Advocate

31 RANKA CHAMBERS

Siddharth Ranka, Advocate

C-12A, SURYA PATH NEW
COLONY NEAR PANCH BATTI,
MIROAD JAIPUR-302 001 (RAJ)

December 19,2016

To,
The Income Tax Officer,
Ward-1(1), JAIPUR

In the matter of assessment proceedings in case of M/s Chordia Safe Deposit and Vaults Pvt. Ltd., 1632, Chordia Bhawan, Sonthli Walon Ka Rasta, SMS Highway, Jaipur for the assessment year 2013-14. PAN: AAACC 7511K

Sir,

In response to your different queries in continuation to our earlier replies further wish to submit as under:-

That we already submitted the confirmed copies of A/cs with detailed addresses of Smt. Nayantara Chordia, Umraomal Chordia, Kamal Kumar Kanstiya and Raj Kumari Kanstiya, amount received through A/c Payee Cheques, Bank A/c provided where cheques encashed, all the persons are debtors of the company earlier amount was lying with them of the company received back the amount, all are existing assesseees, if further verification if desired may be made directly issuing notices u/s 133(6) or by summons u/s 131 of the I.T. Act, otherwise all material is on record. These are not the creditors but are debtors of the company.

We hope that it shall be to your entire satisfaction and shall enable you to accept the returned income.

Thanking you,

Yours faithfully,

Sd/-''

It is noted that by this way the assessee has discharged his burden of proof by the submitting the PAN and confirmation of the persons to whom advances have

been given. The Bench has gone through the orders of the lower authorities in the case of the assessee as to the addition of Rs.18.01 lacs made in the hands of the issues. It may be noted from the record that the assessee company had given advances of Rs.26,47,400/- to its Director Shri Vaibhav Chordia and the same was given after recovery of Rs.18.01 lacs from the above mentioned and also recovery of Rs.8,46,289/- from one of the lender M/s. Mehta Book Distributor. However, the addition of Rs.18.01 lacs was made out of Rs.26,47,000/- given to its Directors . The Bench has taken into consideration the decisions relied upon by the Id. AR of the assessee but the decision of ITAT Bangalore in the case of M/s. Suraj Stones Corporation Ltd. vs ITO, ward 6(1), Jaipur (ITA No.52/Bang/2020 dated 18-02-2021) is squarely applicable in the case whose concluding para in this case is mentioned as under:-

“9. I have carefully considered the rival submissions. It is clear from the orders of the revenue authorities that they not made any reference to the documentary evidence filed by the assessee. The case of the Revenue appears to be that M/s. Sneha International was rotating cash by transferring funds to various entities. M/s. Sneha International received cash and thereafter transferred funds to M/s. Sherawali Corporation and M/s. Venkata Industries who in tum transferred funds to the Assessee in the form of RTGS bank Transfer. The claim of the Assessee was that the receipts by the Assessee from the aforesaid two parties was for sale of shares of a company by name Mag Impex Ltd., was not disbelieved either by the AO or the CIT(A). As far as the assessee is concerned, he has filed confirmation of Sherawali Corporation and Venkata Industries. Copies of which are at pages 32 and 33 of the Paper Book. The CIT(A) has ignored this confirmation on the ground that the signature of the confirming parties were barely

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visible. The address of the confirming parties are very much available in the confirmation and if any doubt persisted on the veracity of the confirmation, then the proper course would have been to issue summons to the confirming parties to find out the truth or otherwise of the transactions on sale of shares on account of which monies were received by the assessee through banking channels. Without resorting to such process, I am of the view that the CIT(A) has confirmed the addition made by AO ignoring the evidence available on record. In my view the evidence filed by the assessee satisfactorily explains the credits in question and the Impugned addition has been made ignoring the material on record on the basis of surmises and conjectures. There is an allegation that it is Assessee's money which went to Sneha International and that was deposited by Snehal International in a bank account and from that bank account funds were transferred to M/S.Sherwali Corporation and M/S.Venkata Industries, but there is no evidence to substantiate such allegation.

10. As far as the decision cited by the learned DR is concerned in the decision rendered in the Je of Mohana Kala (supra), the Hon'ble Supreme Court here emphasized that there is no contention with the material and circumstances available on record not justifying credit being treated as income. In the present case, I am of the view that the assessee has produced material evidence to show that the sum in question was received on account of sale of shares and no evidence has been brought on record to counter the plea of the assessee. In the case of Vikram Singh (supra), the Hon'ble Delhi Court held that the facts and circumstances of the case established that transactions were dubious. As already stated, no such evidence has been brought on record in the present case except to make an allegation that Sneha International was involved in rotating cash and the bank transactions in question had been made by Sneha International in favour of M/S.Sherwali Corporation and M/S. Venkata Industries after depositing such cash in their bank account. The learned Counsel has rightly placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of Orissa Corporation Pvt. Ltd., 159 ITR 78 (SC) and Hon'ble Patna High Court in the case of ACIT Vs. Hanuman Agarwal 151 ITR 150 (Patna) for the proposition that without issuing summons under section 131 of the Act to a party who filed confirmation, no adverse inference can be drawn by the AO. In the light of the facts and circumstances of the case, I am of the view that

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the addition made by the AO and sustained by the CIT(A) deserves to be deleted and the same is directed to be deleted. Appeal of the assessee is accordingly allowed.

11. In the result, appeal by the assessee is allowed.”

Hence taking into consideration all the above facts and circumstances of the case, the Bench finds that the issue raised by the assessee is covered by the decision of ITAT Bangalore Bench in the case of M/s. Suraj Stones Corporation Ltd. vs ITO, ward 6(1), jaipur (ITA No.52/Bang/2020 dated 18-02-2020. Hence, the appeal of the assessee is allowed

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

Order pronounced in the open court on 18 / 01/2024.

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 18/01/2024

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Chordia Safe Deposit Pvt Ltd., Jaipur
2. प्रत्यर्था / The Respondent- ITO, Ward 7(2), Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.509/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar