

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 580/Kol/2022
Assessment Year: 2015-16

Deputy Commissioner of Income Tax, Central Circle - 1(3), Kolkata	Vs	M/s. Navin Constructions & Credit Pvt. Ltd. 12, Government Place East, Dalhousie Kolkata - 700069 [PAN: AAACN9084E]
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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C.O. No. 17/Kol/2023
Assessment Year: 2015-16

M/s. Navin Constructions & Credit Pvt. Ltd. 12, Government Place East, Dalhousie Kolkata - 700069 [PAN: AAACN9084E]	Vs	Deputy Commissioner of Income Tax, Central Circle - 1(3), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Akkal Dudhewala, A/R
Revenue by :	Shri Abhijit Kundu, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 01/11/2023
घोषणा की तारीख /Date of Pronouncement: 31/01/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the revenue against the order of the National Faceless Appeal Centre [hereinafter the "Id. CIT(A)"] dt. 22/03/2022, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2015-16. The assessee has filed cross-objection bearing C.O. No. 17/Kol/2023.

2. The revenue has raised the following grounds of appeal:-

"1. Whether on the facts and circumstances of the case, the CIT(A) erred in law in deleting the addition of Rs. 10,07,00,000/- made u/s 68 of the Act.

2. Whether on the facts and circumstances of the case, the CIT(A) erred in law in holding that the AO did not make any independent inquiry whereas the AO issued notices u/s 133(6) and also financial statements were analysed by him which established that loan creditor's identity were not genuine and they had not creditworthiness and transactions were not genuine.

3. Whether on the facts and circumstances of the case, the CIT(A) erred in law in holding that the assessee had established the identity and creditworthiness of the loan creditors and genuineness of loan transaction which is contrary to observations of the Hon'ble Apex Court in case of *NRA Iron & Steel P Ltd 103 Taxmann.com* 48, as the inquiry and analysis made by the AO established the opposite,

4. Whether on the facts and circumstances of the case, the CIT(A) erred in law in deleting the addition of Rs. 63,00,000/- made as bogus donation as expenditure claimed u/s 35(l)(ii) of the I.T. Act, 1961, as on the same ground of similar nature of disallowance *M/s Deesha Vinimay, Pvt. Ltd, (amalgamated with M/s. Navin Construction & Credit Pvt. Ltd.)* accepted default by submitting petition under *The Direct Tax Vivad Se Viswas Act, 2020* dated 01.03.2021.

5. Whether CIT(A) erred in law by ignoring the facts that CBDT vide notification dated 15.09.2016 and 06.09.2016 withdrew the recognition given to *M/s. School of Human Genetic and Population Health, Kolkata and Matrivani Institute of Experimental Research & Education, Kolkata* to grant approval u/s 35(l)(ii) of the Income Tax Act, 1961 as such the alleged donation is a fake one as the Donee has no authority to receive donation.

6. Whether on the facts and circumstances of the case, the ld. CIT(A) erred in law in restricting the addition by Rs.2,81,903/- from Rs.30,37,525/- u/s 14A of the I.T. Act. 1961 ignoring the facts that the A.O. has made the addition under the provision of Rule 8D of the Income Tax Rule, 1962.

7. That department carves leave to add, alter or modify any or all grounds of appeal either before or during course of Appellate Proceedings."

3. The assessee has raised the following grounds of appeal in the cross-objection:-

"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) also ought to have held that the additions made u/s 35(1)00 & 14A of the Act amounting to Rs.63,00,000/- & Rs.30,37,525/- respectively were legally untenable as the AO had acted in excess of jurisdiction by examining these issues which were outside the scope of the issues of 'limited scrutiny' for which the case of appellant was selected under the CASS guidelines.

2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have held that the AO was unjustified in examining those issues which were beyond the scope of 'limited scrutiny' and in that view of the matter the additions aggregating to Rs.93,37,525/-made u/s 35(l)(ii) and 14A of the Act ought to have also been deleted for being legally unjustified.

3. For that on the facts and circumstances of the case, the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before."

4. The registry has informed that the cross-objection filed by the assessee is delayed by 301 (three hundred one) days. An application seeking condonation of delay has been filed. Reason for the said delay is that there were certain issues on which the ld. Assessing Officer has made the addition which were beyond the reasons for limited scrutiny and there are various judicial pronouncements in favour of the assessee. There was no *malafide* intention of the assessee to delay the filing of the cross-objection. Reliance has also been placed on the judgment of the Hon'ble Apex Court in the case of *Improvement Trust vs. Ujagar Singh & Ors.* (2010) 6 SCC 786 (SC) as well as in the case of *Collector, Land Acquisition vs. Mst. Katiji* (1987) 1987 taxmann.com 1072 (SC). Though the ld. D/R opposed the request of admitting the cross-

objection, we find merit in the contention of the Id. Counsel for the assessee and hence condone the delay and admit the cross-objection for adjudication.

5. Facts in brief are that the assessee is a private limited company. Income of Rs. 45,44,400/-, was declared in the e-return for Assessment Year 2015-16 filed on 29/09/2015. The same was subsequently revised. The case of the assessee was selected for limited scrutiny for the reason *Unsecured loans from persons who have not filed their Return of Income*. For this reason, notice u/s 143(2) and 142(1) of the Act was issued. The Id. Assessing Officer came to notice that four companies, namely, Sagar Vincom Pvt Ltd., Padmavati Vinimay Pvt Ltd., Tirumala Suppliers Pvt. Ltd., and Deesha Vinimay Pvt Ltd., have been amalgamated to the assessee company. On examining the post amalgamation financial affairs, Id. Assessing Officer noticed that out of the total loan of Rs.16,52,37,464/- there were fresh loan taken from promoters, shareholders and other parties. Leaving the fresh loans take from promoters and shareholders, other fresh loans received from other parties amounting to Rs.10,07,00,000/-. Notice u/s 133(6) of the Act were sent to the alleged cash creditors. As per the postal department address were 'not known' but due compliances were made by the assessee. Various documents in order to explain the nature and source of the alleged unsecured loan were filed but the same could not satisfy the Assessing Officer and he held the alleged cash creditors as paper

/shell companies and made addition u/s 68 of the Act of Rs.10,07,00,000/-. Apart from this, the Id. Assessing Officer also disallowed the claim of deduction u/s 35(1)(ii) of the Act made towards expenditure for scientific research. The Id. Assessing Officer also made disallowance u/s 14A of the Act at Rs. 30,37,525/-. Along with other minor disallowances, income assessed at Rs.17,38,73,378/-. Aggrieved the assessee preferred appeal before the Id. CIT(A) but partly succeeded.

7. Now, the revenue is in appeal before this Tribunal and the assessee has filed cross-objections.

8. We notice that the assessee has raised legal issue in the cross objection. We are aware of the fact that this new ground raised by the assessee for the first time before this Tribunal. However, keeping in view the judgment of the Hon'ble Supreme Court in the case of *National Thermal Power Co. Ltd. v. Commissioner of Income-tax* [1998] 229 ITR 383 (SC), wherein it has been held that... "*Both the assessee as well as the Department have a right to file an appeal/cross-objections before the Tribunal. There is no reason why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier*", admit the legal grounds for adjudication.

9. The grievance of the assessee is that the assessee's case was selected for limited scrutiny to examine the unsecured loans but the Id.

Assessing Officer has exceeded its jurisdiction and without taking prior approval of the Pr. Commissioner of Income Tax (PCIT), had enlarged the scope of scrutiny which is bad in law and, therefore, the disallowance made u/s 35(1)(ii) of the Act and u/s 14A of the Act deserves to be deleted.

9.1. On the other hand, the Id. D/R, though opposed to the contentions made by the assessee but failed to controvert this fact that the Id. Assessing Officer has not taken prior approval from the concerned PCIT for enlarging the scope of limited scrutiny.

10. We have heard and rival contentions and perused the material placed before us. We have also gone through the decision in the case of *Tirumani Investment Private Limited (Formerly Baccate Securities and Marketing Private Limited), Kolkata v. Dy. commissioner of Income Tax, Circle-13(2), Kolkata* in ITA 2130/KOL/2019 Assessment Year 2015-2016, order dt. 08-01-2023, which has been relied on by the Id. Counsel for the assessee in support of its contention that in case of limited scrutiny, the Id. Assessing Officer cannot make addition/disallowance on issues other than those taken up for limited scrutiny, without first obtaining prior permission from the PCIT. It remains an uncontroverted fact that the case of the assessee was selected for limited scrutiny for the reason *Unsecured loans from persons who have not filed their Return of Income*. Apart from this there is no mention of any other approval taken by the

Assessing Officer to examine the issues of donation for scientific research expenditure as well as disallowance u/s 14A of the Act. It is discernible from the fact that the two issues relating to scientific research expenditure and disallowance u/s 14A of the Act are not connected to the issue of unsecured loans. It is also not the case that while examining the issue of unsecured loans the Id. Assessing Officer found some connection with the issues of scientific research expenditure or disallowance u/s 14A of the Act. Thus it is an admitted fact that the Id. Assessing Officer exceeded his jurisdiction provided for limited scrutiny by disallowing the claim of scientific research expenditure u/s 35(1)(ii) and disallowance under section 14A of the Act. This Tribunal in the case of *Tirumani Investment Private Limited (supra)*, has dealt with this issue and held as under:-

"7. We have heard the rival submissions and gone through the record. A perusal of the assessment order reveals that the assessee has submitted the revised return revising total income to Rs.1,31,03,060/-. However, the Assessing Officer has taken up the returned income as per the original return of income only on the ground that the case was selected for scrutiny of the original return of income. In our view, the above action of the Assessing Officer is not justified at all. The original return of income of the assessee was substituted by the revised return of income which was filed within the prescribed time period. The case was selected for scrutiny on two issues, which the assessee successfully explained before the Assessing Officer. The Assessing Officer, therefore, was supposed to assess the income as per the revised return of income. If the Assessing Officer wanted to scrutinise any other issue also including the withdrawal of interest income, which the assessee claimed to be erroneously offered, the Assessing Officer could have got converted the limited scrutiny assessment into full assessment by getting permission from the competent authority. Even otherwise, the Assessing

Officer has merely taken the returned income as per original return of income without making any disallowance in respect of above issue in the revised return of income. Therefore, the action of the lower authorities in taking the returned income as per original return of income is not justified as the assessee had already filed a valid revised return within the statutory period and has also explained the issues satisfactorily to the Assessing Officer for which the return was selected for limited scrutiny. In view of this, the impugned order of the CIT(A) is set aside and the Assessing Officer is directed to accept the income of the assessee as per the revised return of income.

11. Respectfully following the above decision and in view of the given facts, we are of the considered view that in absence of any prior permission from competent authority for enlarging the scope of limited scrutiny or changing the same to complete scrutiny, the Id. Assessing Officer was not within his jurisdiction to make the disallowance u/s 35(1)(ii) and 14A of the Act. Thus, Ground Nos. 1 & 2 raised in the cross-objections are allowed.

12. Ground No. 3 is general in nature and needs no adjudication.

13. In the result, the cross-objection raised by the assessee are allowed.

14. Now, we take up the revenue's appeal in ITA No. 580/Kol/2022.

15. Though the revenue has raised seven grounds but Ground Nos. 4, 5 & 6 relate to scientific research expenditure regarding deduction u/s 35(1)(ii) and disallowance u/s 14A of the Act respectively. But since we have already dealt with these two issues while adjudicating

the cross objection filed by the assessee, and have already held that the ld. Assessing Officer exceeded his jurisdiction provided for limited scrutiny while making the addition/disallowance u/s 35(1)(ii) and 14A of the Act. Thus Ground Nos. 4, 5 & 6 raised by the revenue are dismissed.

16. As far as Ground Nos. 1 to 3 are concerned, there are against the finding of the ld. CIT(A) deleting the addition made u/s 68 of the Act for unexplained unsecured loans at Rs.10,07,00,000/-.

17. The ld. D/R, vehemently argued supporting the orders of the ld. Assessing Officer and further stated that the notice u/s 133(6) of the Act, could not be served on any of the cash creditors and their financial statements indicates that they are paper/shell companies engaged in *jamakharchi* and the assessee has routed its unaccounted income by way of unsecured loans. Reliance further placed on the judgment of *NRA. Iron & Steel (P) Ltd (103 Taxmann.com 48) (2019) (SC)*.

17.1. On the other hand, the ld. Counsel for the assessee, apart from placing heavy reliance on the finding of the ld. CIT(A), further submitted that complete documents including ledger, loan confirmations, source of funds, audited financial statements and bank statements of the alleged cash creditors stands filed. All the cash creditors are duly assessed to tax. It was submitted that the loans were

taken for business purposes and nature and source of the alleged sum stands duly explained and the assessee has discharged its primary owners casted u/s 68 of the Act. Reliance further placed on various decisions referred to by ld. CIT(A) in the impugned order.

18. We have heard rival contentions and carefully gone through the material placed before us as well as case-laws relied upon by both the sides. The revenue is aggrieved with the deletion of addition u/s 68 of the Act at Rs.10,07,00,000/- made by the ld. Assessing Officer towards unexplained unsecured loans. We observe that during the year, assessee took a fresh unsecured loans from various private limited companies amounting to Rs.10,07,00,000/-. Before us, the ld. Counsel for the assessee stated that all necessary documents required to explain the identity and creditworthiness of the cash creditors and genuineness of the transactions, have been placed before the lower authorities. It was also submitted that most of the alleged cash creditors have also finally merged with the assessee group companies. However, no documentary evidence has been filed to prove that most of such cash creditors have been merged with the group creditors/assessee company. We further notice that the ld. CIT(A) after considering the facts of the case and details filed by the assessee explaining the source as well as the source of source of the alleged unsecured loan and deleted the addition of observing as follows:-

"7. I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. The moot point for adjudication is whether the AO was justified in treating the unsecured loans of Rs. 10,07,00,000/-raised by the appellant company, and the amalgamating companies, from certain bodies corporate, as unexplained cash credits under section 68, in the light of evidence brought on record. I find that the appellant, in the course of assessment proceedings, has brought on record the particulars of loan creditor companies including name, complete address and PAN; the mode of receipt of each loan; the bank statement of the appellant company; supporting documents relating to each loan creditor company viz. respective ledger accounts, loan confirmations, explanation as to source of funds, ITR acknowledgement, audited financial statements, and banks statement of the loan creditors. On a careful perusal thereof, I find that the appellant has satisfactorily discharged the primary onus cast upon it to substantiate the unsecured loan transactions during the year, by furnishing all the relevant and material evidence. The identity of the loan creditor companies is established as these are having PAN, CIN and are regularly filing return of income. The creditworthiness of the loan creditors is established from the audited balance sheets and profit and loss accounts, which show that the lender companies have adequate own funds (share capital and reserves) and are also having substantial operating income during the relevant period, to advance the loans. The genuineness of the transaction is established from the fact that both the acceptance and repayment of loan has been through banking channel, as evidenced from the bank statements of the loan creditors and the appellant company, and interest has been paid by the appellant company (or the amalgamating company, as the case maybe) to the loan creditors, in respect of each of the loan transaction, for the relevant period, after duly deducting TDS thereon.

7.1 In the assessment proceedings, AO has merely doubted identity of the lenders as the notices had returned unserved. However, AO has also recorded in the assessment order that the notices were later complied with by the Authorised Representative of the loan creditors. AO has also doubted the creditworthiness of lenders, on the basis that "source of loans given" in the hands of loan creditor companies was not satisfactorily explained, and has brushed aside the plethora of documentary evidence furnished by the appellant. However, AO on his part has not made any independent enquiry from the loan creditors to verify the genuineness of loan transactions. AO has not reverted any factual finding in the assessment order that there are cash deposits reflected in the bank statements of the loan creditors AO has only made certain general observations regarding modus operandi of shell companies. However, in view of the specific, relevant and material evidence adduced by the appellant to

substantiate the loan transaction, I am not inclined to agree with the adverse findings of the AO regarding genuineness of loan transactions.

7.2 I find considerable force in the plea taken by the appellant that the appellant could not be expected to have continued relationship with the lender companies, and have information about "source of source of funds" in the hands of lenders, or their present addresses, particularly so when the loans have already been repaid. In this context, it is pertinent to refer to the proviso to section 68, which provides that in cases where assessee is a closely held company, and any sum is found credited by way of share capital, share application money, share premium etc., the "source of source of such credits" is also required to be explained satisfactorily. It is noteworthy that this statutory obligation to explain not only the credit in the hands of the assessee, but also source of such credit in the hands of the creditor, is applicable only for credits in the nature of share capital, share application money etc., where it is reasonable to presume a continued relationship with the creditor; and not in respect of credits by way of loans.

7.3 It is well-established that the onus lies on the assessee to adduce necessary documentary evidence so as to prove all the three ingredients of section 68 viz. identity and creditworthiness of the creditor, and genuineness of the transaction, as the relevant facts are within the special knowledge of the assessee. It has also been held that the evidence adduced by the assessee have to be examined not superficially but in depth and having regard to the test of the human probabilities and normal course of human conduct.

7.4. Hon'ble ITAT, Mumbai Bench, Mumbai in case of ITO v. Anant Shelters Pvt Ltd (20. taxmann.com 153) (2012) (Mum) has enumerated certain legal principles regarding taxation of cash credits under section 68 as under :-

- "(i) Section 68 can be invoked when following three conditions are satisfied -(a) when there is credit of amounts in the books maintained by the assessee, (b) such credit has to be a sum of money during the previous year, (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year.
- (ii) The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. **The opinion of the AO is required to be formed objectively with reference to the material on record file.** Once the explanation of the assessee is

found unbelievable or false the AO is not required to bring positive evidence on record to treat amount in question as income of the assessee. While considering the explanation of the assessee, the AO has to act reasonably-application of mind is the sine qua non for forming the opinion.

- (iii) *Phrase appearing in the section - nature and sources of such credits -should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a causal manner. Assessee cannot be asked to prove impossible. Explanation about 'source of source' or 'origins of the origin' cannot and should not be called for while making inquiry under section.*
- (iv) *In the matters related to section 68, burden of proof cannot be discharged to the hilt -such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under Section 68.*
- (v) *Confirmatory letters or A/c payee cheques do not prove that the amount in question is properly explained for the purpose of section 68. Assessee has to establish identity and creditworthiness of the creditor as well as the genuineness of the transaction. All the three ingredients are cumulative and not exclusive. '*
- (vi) *In matters regarding cash credit the onus of proof is not a static one. As per the provisions of the section the initial burden of proof lies on the assessee. Amount appearing in the books of a/cs. of the assessee is considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of the transaction can be proved by showing that the money was received by an account payee cheque or by draft. Creditworthiness of the lender can be established by attending circumstances. Once the assessee produces evidences about identity, genuineness and credit worthiness of the lender onus of proof shifts to the Revenue.'*

7.5 In the light of the aforesaid legal principals, I find that in the instant case the appellant has been able to discharge the primary onus placed on him under section 68 of the Act. The appellant has furnished name, address and PAN of loan creditors, loan confirmations duly signed, ledger accounts, copies of audited financial statements of lenders, relevant bank statements, etc. The loan transactions are duly reflected in the books of accounts and bank statements of the loan creditor companies. The appellant company is a registered NBFC and the

loans have been taken (and later repaid in some Gases) in regular course of business. The appellant company (or the amalgamating company, as the case may be) has paid interest on the loans raised to the loan creditors, after duly deducting TDS thereon. There is no finding that any sum by way of cash was deposited in the bank account of loan creditors immediately prior to the issue of cheques. In such circumstances, I find that the appellant had discharged the initial onus cast upon it to establish the identity and creditworthiness of the loan creditors as well as genuineness of the loan transactions. Thereafter, the onus shifted to the AO to bring facts on record, which could prove the contrary. If the AO was not satisfied, he had the option of taking inquiries from the loan creditors by summoning them. It is a fact that no independent verification has been carried out by the AO with loan creditors, by way of issue of summons under section 131, or in any other manner. AO has not recorded any statement of the lenders to verify the genuineness of loan transactions. There is no finding by the AO that the documentary evidences produced by the appellant were untrustworthy or lacked credibility. Thus, the appellant's contention that it had discharged onus of establishing the identity; and creditworthiness of the loan creditors and genuineness of the transactions with the help of relevant supporting evidences is found to be in order.

7.6 On similar facts, Hon'ble Bombay High Court in the case of **Rushabh Enterprises Vs ACIT** (60 taxmann.com 134) (2015) (Bombay) has held that loans taken in the regular course of business through account payee cheques were ordinarily to be treated as bonafide. Though the judgement has been rendered on validity of reassessment proceedings, Hon'ble High Court has observed at Para 8 of its judgment as under-

"8. . On behalf of the revenue, Mrs. Bharucha submitted that all the four parties concerned had facilitated accommodation entries. They were not genuine and bona fide loans advanced to the Petitioner. She has supported the order of the Assessing Officer. The Commissioner of Income Tax while rejecting the objections on 19th December, 2012 once again reiterated that the Petitioner has routed unaccounted cash through bogus loans and has been found in the books of account of the Petitioner. According to her, the revenue has received information from the Director General of Income Tax (Inv) that the assessee has taken unsecured loans from the above parties by way of unaccounted cash/accommodation entries. We are unable to agree since the Petitioner has clearly stated that **all the payments were made by account payee cheques which were encashed in the bank account of the Petitioner in the regular course of business. We find that the Petitioner has also paid interest on this loans after deduction of tax at source "and TDS returns are also accordingly filed.** There is no dispute in

regard to the above. We find nothing to support the said contentions of the revenue. The revenue's contention in the affidavit in reply has no merit. On the other hand, the loans appear to be taken in the regular course of business and were found amongst the 45 members in respect of which all particulars have already been furnished by the assessee to the Assessing Officer. The fact remains that the Assessing Officer had power to reopen the assessment provided there was some tangible material on the basis of which he has reason to believe that income chargeable to tax had escaped assessment.

7.7 The Hon'ble Supreme Court in the case of **CIT Vs Lovely Exports** (216 CTR 195) (2008) (SC) has held that "If the share application money is received by the assessee company; from alleged bogus share holders whose name are given to the Assessing Officer then the department is free to proceed to reopen their individual assessments in accordance with law but it cannot be regarded as undisclosed income of assessee company".

7.8 On similar facts, Hon'ble Bombay High Court in the case of **CIT Vs Creative World Telefilms Ltd** (2011) (333 ITR 100.) (Bombay) has relied on the Apex Court decision in case of **CIT Vs Lovely Exports** (supra) and held as under:-

"In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PAN/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement "not traceable". In our considered view, the Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal cannot be faulted. No substantial question of law is involved in the appeal. In the result, the appeal is dismissed in limine with no order as to costs."

7.9 On similar facts, Hon'ble Bombay High Court in the case of **CIT vs. Gagandeep Infrastructure Pvt. Ltd** (394 ITR 680) (2018) (Bombay), has relied on the Apex Court decision in case of **CIT Vs Lovely Exports** (supra) and held as under,-

"In any view of the matter the three essential tests while confirming the proviso Section 68 of the Act laid down by the Courts namely the genuineness of

the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on facts it was found satisfied. Further it was a submission on behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders i.e. they are bogus. The Apex Court in Lovely Exports (P.) Ltd. (supra) in the context to the pre-amended Section 68 of the Act has held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit."

7.10 It is pertinent to mention that the facts of present case are completely distinguished from the facts in the case of **NRA. Iron & Steel (P) Ltd (103 Taxmann.com 48) (2019) (SC)**. In that case, AO had issued summons and also conducted independent field enquiries with respect to the investor companies, which revealed that identity of the investor companies and genuineness of the transaction was clearly not established. In the instant case, however, no such enquiry has been conducted by the AO, to bring on record any fact which could controvert the facts contained in the documentary evidence adduced by the appellant to substantiate the loan transaction. Therefore, the ratio of Supreme Court judgement in case of **NRA Iron & Steel (P) Ltd (supra)** is not applicable on the facts of present case.

7.11 In view of the facts and circumstances of the case, and the prevailing position of law applicable on such facts, I find that the appellant has, established the identity and creditworthiness of the loan creditors and genuineness of the loan transactions, in respect of the unsecured loans aggregating to Rs.10,07,00,000/-, received during the year, by the appellant company, together with the amalgamating companies. Thus, the appellant has satisfactorily explained the nature and source of the credits to the extent of Rs.10,07,00,000/- by way of unsecured loans. The Jurisdictional Assessing Officer (J.A.O) is directed to delete the addition of unexplained cash credits under section 68 of the Act to the extent of Rs. 10,07,00,000/-, representing the aggregate of unsecured loans received during the year by the appellant company, and the amalgamating companies, from various loan creditor companies. Accordingly, this ground of appeal is **allowed."**

19. Further we notice that the ld. D/R apart from making general submissions about the *jamakharchi/accommodation entry/paper/shell*

company about the alleged companies could not place any other evidence to support its case. So far as the reliance of the Ld. D/R on the decision of the Hon'ble Supreme Court in the case of "*PCIT v/s NRA Iron & Steel (P) Ltd.*" (supra) is concerned, we note that the Hon'ble Supreme Court in the said case has taken note of the observations made by the Supreme Court in the "*the land mark case of Kale Khan Mohammed Hanif v. CIT [1963] 50 ITR 1 (SC) and Roshan Di Hatti v. CIT [1977] 107 ITR 938 (SC) laying down the proposition that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the Assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source.*"

Thereafter the Hon'ble Supreme court summed up the principles, which emerged after deliberating upon various case laws, as under:

"11. The principles which emerge where sums of money are credited as Share Capital/Premium are :

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

iii. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

19.1. The Hon'ble Supreme Court, thus, has held that once the assessee has submitted the documents relating to identity, genuineness of the transaction, and credit-worthiness of the subscribers, then the AO is duty bound to conduct an independent enquiry to verify the same. However, as noted above, the Assessing Officer in this case has not made any independent enquiry to verify the genuineness of the transactions. The assessee having furnished all the details and documents before the Assessing Officer and the Assessing Officer has not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. As observed above, the assessee having discharged initial burden upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidences furnished and even made independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the

assessee and confronting with the same to the assessee. In view of this, even applying the ratio laid down by the Hon'ble Supreme Court in the case of *PCIT vs. NRA Iron and Steel Pvt. Ltd. (supra)*, impugned additions are not warranted in this case.

20. We also find that in the judgment of the Jurisdictional Calcutta High Court in the case of *Principal CIT vs. Sreeleathers reported in [2022] 448 ITR 332 (Cal)*, wherein the Hon'ble Court has held as follows:

"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states 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 the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not

absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

21. We, therefore, under the given facts and circumstances of the case and respectfully following the judicial precedents referred hereinabove and those relied by Id. CIT(A) are inclined to hold that since the assessee has duly discharged its primary onus by filing all necessary evidence which in our considered view are sufficient enough to prove the identity and creditworthiness of the share subscriber and genuineness of the transaction to explain the nature and source of the alleged cash credit. We fail to find any infirmity in the finding of the Id. CIT(A) holding that the assessee has established the identity and creditworthiness of the loan creditors and genuineness of the loan transactions received by the assessee as well as the amalgamated companies during the year. Thus, no interference is called for in the finding of the Id. CIT(A) on this issue of addition u/s 68 of the Act. Ground Nos. 1, 2 & 3 raised by the revenue are hereby dismissed.

22. In the result, appeal of the revenue is dismissed and cross-objection of the assessee is allowed.

Order pronounced in the Court on 31st January, 2024 at Kolkata.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 31/01/2024

**SC S.P.*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata