

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI**

**BEFORE,
SHRI DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.90 & 91/Del/2021
(A.Y. 2011-12 & 2012-13)**

M/s. Dreamtech Constructions Pvt. Ltd. C/o. Kapil Goel Advocate, F-26/124, Sector-7, Rohini Delhi-110085 PAN : AABCD4752C	Vs.	DCIT, Circle 10(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Kapil Goel, Adv.
Respondent by	Sh. Amit Katoch, Sr. DR

Date of Hearing	14/02/2023
Date of Pronouncement	16/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

Both appeals by Assessee are filed against the order of Learned Commissioner of Income Tax (Appeals)-34, New Delhi ["Ld. CIT(A)", for short], dated 22/07/2019 for Assessment Year 2011-12 & 2012-13 respectively.

2. Grounds taken in this appeal are as under:

ITA No. 90/Del/2021, A.Y. 2011-12

“1. That in the given facts order of Ld AO and Ld CIT-A are incorrect in so far as Ld AO passed the impugned assessment order without authority of law and wrongly exercised the jurisdiction under the Act so as to make the impugned assessment.

2. That in the given facts order of Ld AO and Ld CIT-A are incorrect in so far as addition made /sustained u/s 68 of the Act amounting to Rs 55,00,000 on account alleged unexplained share capital without appreciating that no meaningful/objective enquiry at any stage is made by Ld AO on details made available at asst stage and merely on basis of extraneous and irrelevant reasons addition is sustained by Ld CIT-A.

3. That in the given facts order of Ld AO and Ld CIT-A are incorrect in so far as addition made /sustained u/s 68 of the Act amounting to Rs 147,50,000 on account alleged unexplained unsecured loan without appreciating that no meaningful/objective enquiry at any stage is made by Ld. AO on details made available at asst stage and merely on basis of extraneous and irrelevant reasons addition is sustained by Ld. CIT(A).

4. That in the given facts order of Ld AO and Ld CIT-A are incorrect in so far as addition made /sustained of Rs 100,000 on account of buyback related expenses.

5. That in the given facts order of Ld. AO and Ld. CIT-A are incorrect in so far as addition made/ sustained u/s 68 of the Act amounting to Rs. 203,50,000 without issuing any valid show cause notice at end of Ld. AO, which is mandatory as per CBDT instructions.

6. That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.”

ITA No. 91/Del/2021, A.Y. 2012-13

“1. That in the given facts order of Ld AO and Ld CIT-A are incorrect in so far as Ld AO passed the impugned assessment order without authority of law and wrongly exercised the jurisdiction under the Act so as to make the impugned assessment.

2. *That in the given facts order of Ld AO and Ld CIT-A are incorrect in so far as addition made /sustained u/s 68 of the Act amounting to Rs 307,21,000 on account alleged unexplained cash credit without appreciating that no meaningful/objective enquiry at any stage is made by Ld AO on details made available at asst stage and merely on basis of extraneous and irrelevant reasons addition is sustained by Ld CIT-A.*

3. *That in the given facts order of Ld. AO and Ld. CIT-A are incorrect in so far as addition made/sustained u/s 68 of the Act amounting to Rs. 307,21,000 without issuing any valid show cause notice at end of Ld. AO, which is mandatory as per CBDT instructions.*

4. *That the appellant craves leave to add /alter any/all grounds of appeal before or at the time of hearing of the appeal.”*

ITA No.90/Del/2021 A.Y. 2011-12

3. Brief facts of as mentioned in the order of the Ld. CIT(A) are that the assessee Company engaged in the business of construction of residential houses to acts as builders, civil and constructional contractors and real estate agent activities. Return declaring an income of Rs.2,49,969/- was filed on 04.03.2013. The case was selected for scrutiny. The AO completed the assessment u/s 143(3) vide order dated 31.03.2014 after making addition of Rs.18,31,16,000/- on account of share capital and share premium, Rs.1,47,50,000/- on account of unsecured loan u/s 68 and Rs.1 lac on account of expenses claimed for buy back. Total income of the Assessee assessed at Rs. 19,82,15,970/-. As against the

assessment order dated 31/03/2014, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 22/07/2019 dismissed the Appeal filed by the assessee by confirming the additions made by the A.O. Aggrieved by the order of the Ld. CIT(A) dated 22/07/2019, the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ground No. 1 & 6 are general in nature which requires no adjudication. In Ground No. 5, Assessee contended that no show cause notice has been issued to the assessee before making the addition, therefore, the additions made by the A.O. is liable to be quashed. The Ld. Counsel for the assessee vehemently submitted that the addition made by the A.O. without issuing show cause notice is erroneous therefore, the same is liable to be set aside.

5. Per contra, the Ld. Departmental Representative submitted that there is no requirement under law to issue show cause notice before passing the order u/s 143(3) of the Act. The assessee who has participated in the assessment proceedings, produced the documents on service of notice and questionnaires issued by the A.O. regarding the receipt of share application money and also the

unsecured loans availed by the Assessee. The Ld. A.O. made additions only on the subject matter of the questionnaires and the notice issued to the Assessee, therefore, it cannot be called that assessment order passed against the principles of natural justice.

6. We have heard both the parties and perused the material available on record. The Assessee Company has shown contract receipt of Rs. 31,76,030/- rental income of Rs. 1,22,850/- and other income of Rs. 1,62,000/-. During the year, the Assessee received Rs. 1,97,43,200/- as share capital and Rs. 16,33,72,800/- as share premium. The case of the assessee was selected for scrutiny and the notice u/s 143(2) dated 08/08/2013 was issued. On 26/09/2013 a notice u/s 142(1) of the Act along with detailed questionnaire was also issued. In response, the Representative of the assessee appeared and submitted that the payment have been received from two parties namely BIJ Bulcon India Private Ltd. and Raj Rani Securities Pvt. Ltd. The AR of the Assessee was asked to submit the identity, creditworthiness of both the parties from whom share capital and share premium were received. The Assessee's Representative in turn filed the acknowledgement of

return filed by both the parties. As per the A.O., the clarifications and the documents produced by the assessee is not satisfactory, therefore, made the addition of Rs. 18,31,16,000/- u/s 68 of the Act. Further, the A.O. has also asked the assessee to submit genuineness and creditworthiness of the parties from whom the assessee received unsecured loans. In response to the same, the assessee submitted confirmation of few parties and copy of their ITR for various Assessment Years. As per the A.O. as the documents provided by the Assessee's Representative and the clarifications of the Assessee's Representative were not satisfactory, thus made addition of Rs. 1,47,50,000/- u/s 68 of the Act. As per the A.O., the assessee failed to prove the genuineness and creditworthiness of the lenders. Further, consequential expenses of Rs. 1,00,000/- has also been disallowed. It is found that the Assessee was well aware regarding the enquiry conducted by the A.O. on which proposed addition would be made, having been participated in the assessment proceedings, also replied to the notice by producing documents, Assessee cannot claim that the Assessment Order has been passed without issuing the show cause notice, thus the assessment order is violation of natural justice.

7. During the first appellate proceedings before the CIT(A), the assessee also filed additional evidence in support of the Assessee's claim to substantiate the genuineness and the transaction and prove the identity of the parties made in respect of share application/premium money and the unsecured loans. The Ld. CIT(A) has called for Remand Report as per Provisions of Rule 46A of the Rules. The A.O. examined the documents produced by the Assessee and filed the Remand Report supporting the additions. The Ld. CIT(A) has considered the contention of the assessee along with the Remand Report and the rejoinder filed by the assessee and ultimately confirmed the addition. It is to be noted that there is no requirement under law to issue show cause notice before passing the order u/s 143(3) of the Act. The assessee has participated in the assessment proceedings and specific questionnaires have been issued on specific issues and addition has been made only on the issues involved in the Notice and the questionnaires. Apart from the same, the assessee has also filed additional documents before the CIT(A) which being a first fact authority and after calling for the Remand Report, the documents produced by the Assessee has been taken into consideration and the contention of the assessee has

been negated by the Ld. CIT(A). Thus, considering the above facts and circumstances, we find no merit in the argument of the Ld. Assessee's Representative that the additions have been made in violation of the principles of natural justice. The issuance of show cause notice is not mandatory u/s 143(3) of the Act and non issuance of show cause notice will not be fatal to the Assessment Order, accordingly, we dismiss the Ground No. 5 of the assessee.

8. The Ld. Counsel for the assessee arguing on the merit on Ground No. 2 to 4, submitted that Assessee has produced the various documents during the assessment proceedings to prove the identity and the creditworthiness of the share application i.e. BIJ Buildocn Pvt. Ltd. and Raj Rani Securities Pvt. Ltd. and also produced confirmation of the parties and acknowledgement of the ITRs for various years to prove the genuineness and the creditworthiness of the lenders. Apart from the same, the assessee has also produced additional evidence during the first appellate proceedings, Remand Report has been called for by the Ld. CIT(A), but the Ld. A.O. either during the assessment proceedings or during the Remand Proceedings, made no independent enquiry u/s

133(6)/133(1) of the Act. The Ld. A.O. chose to remain sit idle without making such enquiry. The Assessee who has discharged the burden as required u/s 68 of the Act, the authorities below have failed to appreciate that the assessee has proved the source of share application money and also the loans. The year under consideration being assessment year 2011-12, the assessee need not prove source of source as per law. Therefore, the addition made by the A.O. which has been confirmed by the CIT(A) is liable to be deleted.

9. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities submitted that the Assessee has failed to discharge the onus cast upon him as per Section 68 of the Act, therefore, the addition made by the A.O. which was sustained by the CIT(A) requires no interference at the hands of the Tribunal.

10. We have heard both the parties and perused the material available on record. During the assessment proceedings, the A.O. observed that the assessee Company has received Rs. 1,97,43,200/- as share capital and Rs. 16,33,72,800/- as share premium. As per the assessee, the said payments have been

received from two Companies namely BIJ Builcon Pvt. Ltd. and Raj Rani Securities Pvt. Ltd. The Assessee's Representative was asked to prove the identity and creditworthiness of both the parties.

11. As per the Assessment Order, the assessee has produced acknowledgment of return filed by the BIJ Buildcon Pvt. Ltd. for Assessment Year 2012-13 and Raj Rani Securities for Assessment Year 2009-10, the assessee has not filed any bank account statement of the Companies or any financial for the relevant year and also not filed confirmation from the parties. The Ld. A.O. accordingly made addition of Rs. 18,31,16,000/-, the assessee filed an application u/s 151 of the Act and vide order dated 09/05/2014, considering the fact the assessee has received an amount of Rs. 25 lacs and 30 lacs respectively from two parties, the addition has been restricted to 55,00,000/- instead of Rs. 18,13,16,000/-. Aggrieved by the addition of Rs. 55,00,000/- made u/s 68 of the Act, the assessee preferred an Appeal before the CIT(A). During the first appellate proceedings, the assessee filed an application for admission of additional evidence by producing the balance sheet of the share applicants from 2007-08 to 2012-13,

share application form, Form 2, Challan, bank statement, ITR for FY 2008-09, list of Directors, master data and copy of PAN card in respect of M/s Accord Sales and Tradex Pvt. Ltd. and M/s Raj Rani Securities Ltd. whereas appellant has received share application money from M/s BID Buildcon Pvt. Ltd. and Raj Rani Securities Pvt. Ltd. As the documents are filed by the assessee as additional evidence, the Remand Report has been called from the A.O. as per the provision of Rule 46A of the Rules. The details of the documents produced by the assessee before the CIT(A) are as under:-

Sl. No.	name	Addition amount	Nature	PAN No. & Address	Documents
1	Accord Sales & Tradex Pvt. Ltd.	Rs. 30,00,000/-	Share application money	AAGC3435N & D-111, South Ganesh nagar, Mandawali, New Delhi-92	1. Balance Sheet (From 2007-08 to 2012-13) 2. Share application form 3. Form-2 4. Challan 5. bank statement 6. ITR F.Y 08-09 7. List of directors 8. Master Data 9. Copy of PAN card
2	M/s Raj Rani Securities Pvt. Ltd.	Rs. 25,00,000/-	Share application money	AACCR1681B & 121-A, Pocket-D, Deep Enclave, Ashok vihar, Ph-3, Delhi-52	1. Balance Sheet (From 2005-06 to 2015-16) 2. share application form 3. List of Directors 4. Master Data 5. copy of Pan card
3	Jaipuria Buildcon Pvt. Ltd.	Rs. 36,00,000/-	Loan	AABCJ7177M & 16, Shankar Vihar, Vikas Marg, New Delhi	1. Balance Sheet (From 2006-07 to 2010-11) 2. ITR (f.Y 2010-11) 3. List of Directors

					4. Master Data
4	Suresh Sharma	Rs. 8,70,000/-	Loan	ALEPS9338L & C-7, Kaushambi, Ghaziabad	1. bank statement 2. Confirmation of accounts (2010-11) 3. ITR (F.Y 2010-11)
5	Yogender Kumar	Rs. 6,00,000/-	Loan	AHBPK6797Q & B-127, Vivek Vihar, Delhi	1. Confirmation of accounts (2010-11) 2. ITR (F.Y 2012-13)
6	Global Estates	Rs. 22,25,000/-	Loan	AAHPS9513R & A-14, Mathura Road, Mohan Industrial Estate, Delhi	1. Confirmation of accounts (2010-11) 2. ITR (f.Y 2011-12 to 2014-15)
7	Santosh Devi	Rs. 41,00,000/-	Loan	273, BG, Phase-6, Aya Nagar, New Delhi	1. Bank Statement (2011to 13) 2. Confirmation of accounts (2011-12)
8	Meditech International	Rs. 20,00,000/-	Loan	AHNPRA3057L & Plot No. 24 & 25, Burgees Park, Dilshad Garden, Delhi	1. Bank statement (f.Y 2010-11) 2. confirmation (F.Y 2010-11) 3. ITR (f.Y 2010 to 2014-15)

During the assessment proceedings admittedly the assessee has produced the ITR, acknowledgement and during the appellate proceedings the assessee has produced detailed documents mentioned above in respect of share application and the loan by providing PAN Card and Address of the parties, balance sheet, confirmation etc. The A.O. neither during the assessment proceedings nor during the remand proceedings made any enquiry u/s 133(6)/133(1) of the Act. The application filed by the assessee along with additional documents have been allowed by the Ld. CIT(A). Thus, in our opinion, the assessee has discharged the onus

cast upon him u/s 68 of the Act. It is seen that all the transactions have been made through banking channel though the assessee has produced the documents in support of its claim, the Ld. A.O. has not made any enquiry after the assessee discharged its initial burden cast upon u/s 68 of the Act. The Hon'ble Bombay High Court in the case of Gaurav Triyogi Singh Vs. ITO (22) 423 ITR 531 held that once the assessee discharges its onus to prove the creditworthiness of the investor companies and the genuineness of the transaction, the onus will shift on the Department to refute the assertion made by the Assessee. In the present case, the Lower Authorities have not brought anything on record to prove otherwise or to disprove the claim of the assessee and in such circumstances; the authorities are precluded from making any other addition on this count in the absence of contrary materials.

12. Further, we place reliance on the judgment of the Supreme Court in the case of Principal Commissioner of Income Tax Vs. Rohtak Chain Co. (P) Ltd. reported in 59 (SC)/[2019] 110 taxmann.com, wherein the Apex Court held that once the genuineness, creditworthiness and identity of investors are

established, no addition could be made as cash credit on the ground that the shares are issued at excess price. The relevant portions are as under:-

“51. The learned ITAT after due examination of the order of CIT (Appeals) and the documents on record insofar as identity creditworthiness, genuineness of transaction of M/s. Aadhaar ventures (I) Ltd, M/s. Dhanush Technologies Ltd, M/s. Emporis Projects Ltd and M/s. L.N. Industries Ltd (formerly known as L.N. Polyster Ltd) came to the conclusion that the assessee company having receipt share application money through bank channel and furnished complete details of bank statements, copy of accounts and complied with notices issued and the directors of subscriber company also appeared with books of accounts before the appellate authority and confirmed the investment made by them with the assessee company, therefore, the identity and creditworthiness of investor and genuineness of transaction of the share applicant has been proved in the light of the ratio laid down by the M.P. High Court, Delhi High Court and the Hon’ble Supreme Court and were of the opinion that the onus cast upon the assessee as provided under Section 68 of the Act has been duly discharged by the assessee the identity of the share subscriber, creditworthiness and genuineness of the transaction is not to be doubted. The learned ITAT considered the case of the each company in great detail in para 85 to 110 of the impugned order and recorded its finding. The aforesaid finding of fact recorded by the ITAT are based on the material available on record which is a finding based on appreciation of evidence on record.

52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the shares at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.

53. Once the genuineness, creditworthiness and identity are established, the revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case.”

13. In the case of CIT Vs. Kamdhenu Steel and Alloys Ltd. reported in 361 ITR 220 the Jurisdictional High Court held that no addition can be made in respect of share capital received from shareholders when the evidence has been placed on record and the Ld. AO has not led any material to the contrary. The relevant portion of the same are as under:-

“35. The important question which arises at this stage is as to whether on the basis of these facts, could it be said that it is the assessee which has not been able to explain the source and receipt of money. According to the assessee, he had given the required information to explain the source and was not obligated to prove the source of the money. It is the submission of the assessee that even in case there is some doubt about the source of money in giving into coffers of the share applicants which they invested with the assessee, it would not automatically follow that the said money belongs to the assessee and becomes unaccounted money. According to us, the assessee appears to be correct on this aspect. We feel that something more which was necessary and required to be done by the AO was not done. The AO failed to carry his suspicions to a logical conclusion by further investigation. After the registered letters sent to the investing company had been received back undelivered, the AO presumed that these companies did not exist at the given address. No doubt, if the companies are not existing, i.e., they have only paper existence, one can draw the conclusion that he assessee had not been able to disclose the source of amount received and presumption under s. 68 of the Act for the purpose of addition of amount at the hands of the assessee. But is has to be conclusively established that the company is non-existence.”

14. The similar view has been expressed and the similar ratio has also been laid down in following judicial pronouncements:-

- *(Principal Commissioner of Income Tax v Agson Global (P.) Ltd. (Delhi HC) [2022] 441ITR 550 134 taxmann.com 256 (Delhi)/[2022] 441 ITR 550 (Delhi)[19-0L2022]*
- *Principal of Income Tax v Manoj Kumar Vipin Kumar (Rajasthan HC)/[2022] 441 ITR 632 138 taxmann.com 103 (Rajasthan)/[2022] 441 ITR 632 (Rajasthan)[15-ll-2021]*

- *[2022] 137 Deputy Commissioner of Income Tax v Gandhi Capital (P.) Ltd. 75 (Surat-Trib.)/[2022] 194 ITD 396.*
- *10 Principal Commissioner of Income Tax v Rohtak Chain Co. 59 (SC) [2019] 110 taxmann.com 59 (SC)/[2019]266 Taxman 459 /(SC)[05-08-2019]*

15. Applying the above judicial principles to the cases in hand, since the Assessee herein filed detailed documentary evidences in the form of duly signed confirmation of investors/lenders (parties), details of PAN, copies of ITR, duly establishing the identity of the parties and genuineness of the transactions and the bank statements of the parties, establishing the creditworthiness of the parties to invest in the share capital of or advance loans to the Assessee Companies, in our opinion, the Assessee effectively discharged the initial burden cast upon them u/s 68 of proving identity of the investors/lenders, the genuineness of the transactions and the creditworthiness of the parties with respect to the transactions that took place between the Assessee and the investors/lenders. Since the Assessee filed the bank statements of the parties conclusively proving that the impugned sums were received through normal banking channels from the bank accounts of the parties, the burden of proving the genuineness of the transactions between the Assessee and the parties and the

creditworthiness of the parties to invest in the share capital of the Assessee Companies stood discharged.

16. We find from the record that the Assessee has duly produced all the documents to prove the identity, genuineness and creditworthiness for the share applicants and loan parties. Thus, the Assessee can be said to have discharged the primary onus casted upon U/s 68 of the Income Tax Act, 1961.

17. On the other hand, the Revenue had no pre information by the way of any enquiries conducted by the Investigation Wing or by the way of any search & seizure operation either on the Assessee or on the share applicants/loan providers. The Assessing Officer has not issued notice U/s 133(6) to the parties whereas the Assessee itself has provided all the relevant material before the Ld. CIT(A) who has also called for a remand report from the Assessing Officer. Even, during the remand proceedings, the Assessing Officer has failed to do any enquiries to prove that the share applicants are neither genuine nor bogus. The Assessing Officer has not issued summons U/s 131 to the Directors of the parties not asked the assessee to produce the parties. The Assessee, once discharged

their onus of proving the genuineness of the transaction, it is for the Revenue to dispute the submissions of the Assessee by way of bringing tangible evidence on record by conducting due enquiries. The Revenue failed to bring any concrete material on record to prove the share applicants are bogus or the assessee was a beneficiary of any entry operation or received entries from the established entry operators of the Department. As held in the cases cited above, before fastening any liability upon the Assessee, the A.O is required to show by bringing on record tangible material that the amounts received as share capital/loans from the investors/lenders actually emanated from the coffers of the Assessee or represented the undisclosed income of the Assessee. Therefore we find merit in the Ground No. 2 to 4 of the Assessee. Accordingly, the Ground No. 2 to 4 of the Assessee are allowed and addition made u/s 68 of the Act which was sustained by the CIT(A) is hereby deleted.

18. In the result, Appeal filed by the Assessee in ITA No. 90/Del/2021 is partly allowed.

ITA No.91/Del/2021 A.Y. 2012-13)

19. In the year under consideration, the A.O. found that the assessee has received unsecured loan during the Financial Year 2011-12 relevant to Assessment Year 2012-13 from 22 entities. The assessee was asked to establish the genuineness and creditworthiness of the parties. In response to the same, the assessee filed confirmation of parties, copy of acknowledgment of ITR for various Assessment Years and the relevant page of bank statement. As per the A.O., the assessee has not filed any bank account statement in some cases. The A.O. observed that out of 22 unsecured loans the transactions entered with and creditworthiness of M/s All Time Data Pvt. Ltd., M/s G-Trading India Pvt. Ltd., M/s ASV Garments Pvt. Ltd., M/s KD Trend Wear Pvt. Ltd., M/s Kirti Advertisement Pvt. Ltd., M/s Porter Buildcon Pvt. Ltd., M/s Saggi Traexin Pvt. Ltd., M/s Shakti Builders, M/s SLB Finlease Pvt. Ltd., M/s Sunstar Infrabuild Pvt. Ltd., M/s Sunvision Advertising & Marketing Pvt. Ltd., M/s Synergy Info Data Pvt. Ltd., M/s Visit India Voyages Pvt. Ltd., M/s Jaipuria Buildcon Pvt. Ltd., M/s Mediatech International Pvt. Ltd. and M/s Shiv

Shakti Infra Developers Pvt. Ltd. has not been satisfactorily explained by the assessee in terms of Section 68 of the Income Tax Act, 1961. Therefore, disallowed an amount of Rs. 3,07,21,000/- u/s 68 of the Act which was credited in the books of account of the assessee as unsecured loan. Aggrieved by the assessment order dated 15/07/2019, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) dismissed the Appeal filed by the assessee on the ground that the assessee failed to establish creditworthiness and genuineness of the transaction, wherein the Ld. CIT(A) confirmed the addition of Rs. 3,28,21,000/-. Aggrieved by the order of the Ld. CIT(A), the assessee preferred the present Appeal on the ground mentioned above.

20. Ground No. 1 & 4 are general in nature. The Ground No. 3 is regarding non issuance of show cause notice during the assessment proceedings qua the subject addition u/s 68 of the Act. The above said issue has already been adjudicated for the Assessment Year 2011-12. Considering the fact that there is no necessity under law to issue show cause notice before making addition u/s 143(3) of the Act, wherein the assessee has participated, had full opportunity of

submitting the documents and considering the fact that the notice and the questionnaires have been issued on the subject addition and the addition has also made on the subject of questionnaire and the notice issued by the A.O. Following the decisions made in Assessee's own case for Assessment Year 2011-12 we find no merit in Ground No. 3 of the assessee.

21. In so far as, Ground No. 2 is concerned, the Ld. Counsel for the assessee submitted that the assessee has filed confirmation of all the parties from whom the loan is availed, copy of the acknowledgement of their ITR for various Assessment Years and relevant page of the bank statement but the A.O. is not made any enquiry as enquired under law. The assessee has proved the initial burden in respect of genuineness and the creditworthiness of the transaction but the A.O. ignored the documents without making any independent enquiry made the addition. Therefore submitted that, the addition made by the A.O. which was sustained by the Ld. CIT(A) requires to be deleted.

22. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities submitted that no interest payment

was made to the depositors and the depositors have shown negligible income in their returns and the assessee has failed to prove the burden cast upon him u/s 68 of the Act, therefore, the addition u/s 68 of the Act has been rightly made which has been confirmed by the Ld. CIT(A).

23. We have heard both the parties and perused the material available on record. During the assessment proceedings, the assessee was asked to prove the genuineness of unsecured loan received by the assessee during the Financial Year 2011-12 relevant to Assessment Year 2012-13. The assessee filed five replies before the A.O. on 04/03/2015, 26/02/2015, 10/02/2015, 02/02/2015 and 05/01/2015 by providing the requisite details the evidence to discharge the burden cast upon on the assessee u/s 68 of the Act. The assessee also submitted complete set of audited financial account with ITR etc of the assessee for the subject period. The Ld. Assessee's Representative has filed paper book by reproducing those documents in following manners in the paper book:-

<i>Sl No.</i>	<i>Description of document in brief</i>	<i>Page No.</i>
1	<i>Reply dated 04.03.2015 submitted before Ld. A.O.</i>	<i>25 to 35</i>
2	<i>Reply dated 26.02.2015 submitted before the Ld. A.O.</i>	<i>36 to 49</i>
3	<i>Reply dated 10.02.2015 submitted before ld. A.O.</i>	<i>50 to 171</i>
4	<i>Reply dated 02.02.2015 submitted before Ld. A.O. 02.02.2015 some misc documents</i>	<i>172 to 257 258 to 262</i>
5	<i>Reply to Ld. A.O. dated 05.01.2015</i>	<i>263 to 280</i>
6	<i>Full complete set of audited final accounts with ITR etc of appellant for subject period.</i>	<i>281 to 304</i>

24. It is evident from the assessment order that after receipt of the voluminous documents produced by the assessee, the Ld. A.O. has not made any independent enquiry u/s 133/131 of the Act. The addition has been made on the ground that the source's source has not been proved or not genuine. Admittedly, the assessee during the assessment proceedings itself produced basic documents to prove the burden cast upon it u/s 68 of the Act. All the transactions have been made by cheque through proper banking channel, there is no adverse and incriminating material in exist to discredit the documentary evidence filed by the assessee i.e. confirmation and positive reply u/s 133(6) of the Act. The Assessing Officer has not made any meaningful enquiry to contradict the claim of the assessee. As we have already held that, once the

assessee discharges its onus to prove the creditworthiness of the investor companies and the genuineness of the transactions, the onus will shift to the Department to refute the assertion made by the assessee and by following the ratio laid down by the Hon'ble Supreme Court and the Jurisdictional High Court, finding the parity and relying on the findings, and conclusions made in the Assessment Year 2011-12, in our view, as the assessee has discharged its initial onus cast upon it u/s 68 of the Act and the Ld. A.O. committed error by making addition without holding any independent enquiry. Accordingly, the Ground No. 2 of the assessee is allowed and the addition made u/s 68 of the Act, which was sustained by the CIT(A) is hereby deleted.

25. In the result, Appeal filed by the assessee in ITA No. 91/Del/2021 is partly allowed.

Order pronounced in open Court on 16th February, 2024

Sd/-

(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Dated: 16/02/2024
B.R./R.N, Sr. Ps.

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI