

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM

AND

SHRI RAHUL CHAUDHARY, JM

ITA No. 2420/Mum/2023

(Assessment Year: 2018-19)

The Income Tax Officer
Ward- 12(3)(1),
Mumbai-400020

Vs. M/s Next Avenue Ventures
Pvt. Ltd.
(Earlier known as KBJ
Ventures Pvt. Ltd.)
3rd Floor, Raheja Chambers,
Link Road main Avenue,
Santacruz (W),
Mumbai-400 054

(Appellant)

(Respondent)

PAN No. AAGCK8343R

CO No. 74/Mum/2023

(Arising in ITA no.2420/Mum/2023 for 2018-19)

Vs.

M/s Next Avenue Ventures
Pvt. Ltd.
(Earlier known as KBJ
Ventures Pvt. Ltd.)
3rd Floor, Raheja Chambers,
Link Road main Avenue,
Santacruz (W),
Mumbai-400

The Income Tax Officer
Ward- 12(3)(1),
Mumbai-400020

(Cross Objector/ Appellant)

(Respondent)

Assessee by : Shri Satyaprakash Singh, AR
Revenue by : Shri S Srinivasu, CIT DR



Date of hearing: 22.12.2023
Date of pronouncement : 12.02.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Income Tax Officer, Ward 12(2)(1), Mumbai against appellate order passed by National Faceless Appeal Centre (NFAC), Delhi dated 11th May, 2023, for A.Y. 2018-19, wherein the appeal filed by the assessee against assessment order passed under Section 143(3) read with section 144(b) of the Income-Tax Act, 1961 (the Act) dated 21st April, 2021, by national e-assessment centre, Delhi, under e-assessment scheme, 2019, was partly allowed.
02. The Revenue is aggrieved with that appellate order and has raised following grounds of appeal:-

"1. On the facts and in the circumstance of the case and in law, the Ld.CIT(A) is justified in admitting the additional evidence furnished by the assessee under rule 46A, without appreciating the fact that none of the exception mentioned in rule 46A(1) is satisfied."

2. On the facts and in the circumstance of the case and in law, the Id. CIT(A) is justified in deleting the addition of Rs.24,99,99,000/- made by AO under section 68 of the IT. Act,

without appreciating the fact that the assessee failed to prove the genuineness and creditworthiness of Creditor in light of the glaring fact that source of fund were borrowed from other parties by the Creditor and same was invested in the form of share capital.

3. On the facts and in the circumstance of the case and in law, the Ld. CIT (A) is justified in deleting the addition of Rs. 198, 10,59,501/- made by AO under section 68 of the I.T. Act without appreciating the fact that the assessee failed to prove the genuineness and creditworthiness of Creditor in light of the fact that the source of fund was borrowed from various parties by the Creditor and the same was given to the assessee company in the form of unsecured loan.

03. Assessee has also filed cross objections challenging the assessment order raising following grounds of appeal:-

i. The appellant prays that the order passed under section 143 (3) read with section 144B of the income tax act, 1961 is without following the procedure laid down for conduct of assessment under section 144B of the act and therefore the assessment

order is bad in law, illegal and invalid and therefore the same should be classed.

ii. The assessment order was passed without issue of draft assessment order as required by provisions of section 144B (a)(xii) and therefore the assessment order passed is non est and bad in law in view of the provisions of section 144B (9) of the act

04. Brief facts of the case shows that assessee is a company incorporated on 6th November, 2017. It filed return of income on 4th October, 2018, declaring a loss of ₹27,24,474/-. Return of income was picked up for scrutiny under e-assessment scheme, 2019. The learned Assessing Officer issued notice under Section 143(2) of the Act on 22 September 2019.
05. Assessee was incorporated with authorized share capital of ₹25 crores. During the course of assessment proceedings, the learned Assessing Officer noted that the company has two shareholders by the name of Mrs. Aksha Khamboj and Mr. Sukumar Shetty. The query was raised regarding the issue of share capital to Ms. Aksha Kamboj, who subscribed ₹24,99,99,000/- as share capital.
06. Assessee submitted the copies of the income tax return for A.Y. 2016-17, 2017-18 and 2018-19, bank statement of Kotak Mahindra Bank and Yes Bank and profit and loss account, balance sheet of the



investors. The learned assessing officer asked to justify the investment made by the investor that why she has invested in this company. AO was also of the view that the income tax return of the investor shows that the income of the investor is ₹ 1,826,150/-, ₹ 49,920/- and ₹ 6,410,640/- for the respective assessment years which is not justifiable to support the investment of ₹ 25 crores share capital. The learned AO also noted that investor has two permanent account numbers allotted to her. The AO also asked to show the source of investment by the investor. AO issued notice under section 133 (6) on 9/4/2021 to the investor who is also director of the company which was not replied to. Therefore the learned assessing officer invoked provisions of section 68 of the income tax act and held that assessee company has shown a receipt by way of share capital from Ms Aksha Khamboj , director of the company amounting to ₹ 249,999,000/- but failed to provide the genuineness and creditworthiness. The analysis of the returns of income of the investor or reveals that the investment is not in consonance with the income of the directors/shareholder. Therefore, the said amount was added to the total income of the assessee under section 68 of the income tax act to be charged at rates specified under section 115 BBE of the act.

07. Assessee has also made short term borrowing from one company M/s Nisiddh Vision Pvt. Ltd. of ₹ 198,10,59,501/-. The assessee furnished the date and mode of receipt of the above sum from the company. However, the assessee did not file further reply to the queries such as furnishing the annual accounts, income tax return et cetera and the bank statement, The learned Assessing Officer further issued notice under Section 133(6) of the Act but same was not replied and therefore, the learned Assessing Officer made an addition under section 115BE by invoking provisions of section 68 of the income tax act.
08. Thus the assessment order under section 143 (3) read with section 144B of the income tax act was passed on 21/4/2021 wherein the learned assessing officer assessed the loss of ₹ 2,724,474/- and made an addition of ₹ 2,231,058,500/- under section 68 of the act to be charged to tax under section 115BBE of the act.
09. The assessee preferred the appeal before the National Faceless Appeal Centre, Delhi [the learned CIT (A)] passed the order dated 11 May 2013.
010. Before the learned CIT (A), the assessee submitted that due to lockdown the assessee could not furnish the details before the learned Assessing Officer along. Before AO, assessee has applied for the

adjournment but without disposing off the adjournment request, the learned Assessing Officer passed the assessment.

011. Assessee also filed the additional evidences, which could not have been filed before the learned Assessing Officer. Assessee submitted that in view of the Covid pandemic prevailing in the country the assessee's staff was working from home. The staff was not having access to the assessee's Office so, documents and other information asked by the learned assessing officer could not be submitted. In absence of any facilities available, the assessee provided the details called for electronically on 15/1/2021 and 16/1/2021. The AO issued another list of queries on 8/4/2021 required the assessee to provide the reply on or before 13/4/2021 within four days. The assessee filed an application seeking adjournment on 10/4/2021 but same was not responded to and assessment order came to be passed on 21/4/2021. It was further stated that due to lockdown, office of the assessee was closed and there was a lockdown declared by the government of Maharashtra and office of assessee was sealed as it was in containment zone. Necessary Government orders were also produced. Therefore, assessee could not file the relevant details. Hence it was pressed that such additional evidences mayt be admitted.



-
012. The learned CIT – A noted that it was a fact that due to lockdown imposed in the state of Maharashtra due to 2nd wave of Covid 19 pandemic since April 21 the place where the assessee's office is located was sealed since it was identified as a containment zone. This resulted in the assessee being unable to furnish the information and details in response to notice issued by the learned assessing officer. Further Assessee applied for adjournment when details were asked within four days, such adjournment request was neither rejected nor acceded to. Therefore, he was of the view that assessee was prevented because of sufficient cause in not furnishing the information. Thus, he asked the learned assessing officer to furnish the remand report on the admissibility of additional evidence furnished and on the merits of those additional evidences.
013. The learned Assessing Officer submitted remand report on 21/2/2023, He objected the admission of additional evidence stating that assessee was given enough opportunities [para 2 of Remand Report] However, the learned CIT (A) applying the provisions of Rule 46A of Income Tax Rules, admitted the evidence.
014. The learned Assessing Officer also commented on the merits of the additions by that remand report on both the additions u/s 68 of the Act.

015. On the issue of addition under section 68 of ₹ 25 crores with respect to the share capital introduced by the director of the company, the learned Assessing Officer on the evidences submitted by the assessee issued notice under Section 133(6) of the Act on 16th December, 2022 to the director of the company who introduced the share capital. In the 133(6) information, the learned Assessing Officer asked for (i) her bank statement and the source of investment along with documentary proof to justify the source of such investment, genuineness and creditworthiness, (ii) balance sheet and profit and loss account as well as income tax returns for four years, (iii) the entry and source of money deposited in Kotak Mahindra bank and Yes Bank, (iv) to explain ₹25 crores invested in the assessee company along with the form no.16 and form no.26As for four different years.
016. This 133(6) was replied by the depositor director on 4 January 2023, through system as well as by filing hard copies. With respect to the source of deposits ₹25 crores in KBG ventures Pvt. Ltd, assessee, she submitted the copy of the account, wherein the amount is deposited in the assessee company. The bank account shows that in Kotak Mahindra Bank account on 28th March, 2018, assessee has transferred of Rs 20 Crore which were received by her as a loan from Nisiddh Vision Pvt. Ltd. by the



director lender along with annual accounts in the balance sheet of the lender to the director lender. It was submitted that the company is dealing in Gold and Diamonds as trader and has turnover of more than Rs. 500 crores and unsecured loan of ₹400 crores. It has depositor of more than Rs 50 crores and the short-term loans and advances of ₹400 crores. The assessee produced the confirmation of accounts along with bank account with Kotak Mahindra Bank account no. 0.912393443. The return of income of that entity was also filed. Assessee also submitted that Rs 5.96 Crore is received from Mr Nimish Chokshi whose ITR , Bank Statement, Annual Accounts and confirmation was submitted. Therefore, with respect to the addition of ₹24.99 crores, the assessee substantiated before the learned Assessing Officer about the share capital issued to the director company. Assessee and Depositor produced confirmation, bank account, return of income, source of deposits of money by the shareholder with the company, confirmation of that company which has given money to the shareholder which was in turn deposited with the assessee, confirmation of the lender to the investor along with income tax returns, balance sheets and bank account of the lender to the investor. Thus, assessee has explained the source as well as source of the source of the investment.



017. The Id AO also issued notice u/s 133 (6) of the Act to Nisiddh Vision Private Limited and Mr Nimish Chokcshi who also replied by submitting the details of ITR, bank Statement, Annual Reports and Accounts and confirmation.
018. With respect to another addition of Rs.198,10,59,501/-, of loan availed from Nisiddh Vision Pvt. Ltd., Assessee submitted PAN, Confirmations, Annual Accounts, ITR copies and bank statements of the lender. The learned Assessing Officer issued notices under Section 133(6) of the Act to that company; a reply was received on 4th January, 2023. It was submitted that Nisiddh Vision Pvt. Ltd. is now known as Golden Wealth Advisory Pvt. Ltd. To substantiate the source of investment the lender submitted the ledger account along with address, permanent account number, the income tax return, the bank statements, ledger copy of account of assessee in its books. For source of the fund received by the lender , it was stated to be from eight different entities. For All these entities, that company furnished the necessary bank account, bank statement and the return of income and annual accounts and Income tax Assessment orders of those entities. Thus, the lender also furnished the source of the source of loans given to the assessee.

019. The learned Assessing Officer, to cross verify the above claim of loan given to the lender , issued 133(6) to the lender of golden wealth advisory Pvt. Ltd. [Nisiddh Vision Private Limited] . Eight parties also responded by filing their copy of return of income, bank statements, confirmation etc. However, one party SCG Exports Pvt. Ltd., who has advanced loan of ₹9 crores did not respond, assessee was confronted. The assessee immediately obtained the reply from that party along with the loan confirmation, bank statement, income tax return and copy of the assessment order passed under Section 143(3) of the Act dated 6 June 2021 for A.Y. 2018-19 directly to the Id Ao. The Assessing Officer examined all these details.
020. The learned Assessing Officer with respect to the share capital of ₹24.99 crores noted that the director of the company has obtained a loan of ₹20 crores from Nisiddh Vision Pvt. Ltd. and further a loan of ₹5.96 crores from Nimesh Choksi. Both the parties have filed their confirmation, bank statement, Return of the income, etc to show that the loan given by them to the director of the company who in turn invested in the assessee company. However, he noted that the director has received salary of ₹1.20 crores and her income from other sources was only ₹72 lacs for the impugned assessment year and Further, creditworthiness of the lender to the director



is doubtful. The learned Assessing Officer also called for the income tax returns of the directors from the learned Assessing Officer and the directors, which was received. With respect to the deposit of ₹5.96 crores from Mr. Nimesh Choksi to the director, the learned Assessing Officer wrote a letter to the learned Assessing Officer of Nimesh Choksi, asking for the return of income to the Asst. Commissioner of Income Tax, Central Circle 2(4), Mumbai for which response was not received. He further held that on perusal of the income tax return of Mr. Nimesh Chokshi for assessment year 2018-19 submitted by the director, Mr. Nimesh Chokshi has filed ITR and has offered taxable income of Rs. 264,000 only, which is very low to establish the creditworthiness of the lender.

021. With respect to the loan received from the Golden Advisors Pvt. Ltd, the learned Assessing Officer was of the view that the return of income for A.Y. 2018-19 and 2019-20 showed a loan of ₹82 crores and Rs. 29 crores respectively. The learned Assessing Officer further verified that entire loan amount has been repaid by the assessee through account payee cheque in the subsequent years for which bank statement were also produced. Therefore, the learned Assessing Officer stated that though the assessee could not produce the details during the course of assessment proceedings and therefore, it



was not verified during the course of assessment proceedings and now in the remand proceedings, the evidences were produced which were verified and based on such verification, remand report is submitted. He referred to the annual accounts of various companies noted that two of those companies have given loan to Nisiddh Vision private limited in initial year FY 2012 – 13. With respect to the other 7 depositors who gave money to Nisiddh Visions Private Limited he noted that those parties have enclosed the bank statement reflecting the payment and the Ledger confirmation of the amount deposited with Nisiddh vision private limited. However, he looked at the income of those parties and noted that for assessment year, 2018 – 19 in case of one party loss is declared and in case of one party, the income is low. With respect to SCG exports private limited which did not respond to notice under section 133 (6) of the act, assessee has filed the return of income of that party along with the copy of assessment order for assessment year 2018 – 19 of that company. He further examined that the entire loan amount has been repaid by the assessee to the Nisiddh vision private limited in the subsequent year for which ledger copies and bank statements were examined. He further noted that the balance sheet of Nishiddh Vision private limited has loans and advances to the tune of ₹ 441.76 crores out of which a sum of ₹ 198.10 crores have



been lent to the assessee. With respect to the borrowings by Nisiddh Vision Private Limited of ₹ 398.88 crores he submitted that sum of ₹ 207.94 crores are procured by that company from the those and eight entities.

022. He further reiterated that during the course of the assessment proceedings before the faceless assessing officer the assessee had not submitted the requisite details therefore verification of the same could not have been done during the course of assessment proceedings. Now the assessee has filed various details, the same are perused, and addition/disallowance Wise report is submitted.
023. Remand report submitted by the learned assessing officer dated 21/2/23, the learned CIT (A) directed the assessee to file its comments on the remand report.
024. Assessee reiterated the submissions made before the learned Assessing Officer in remand proceedings. The assessee submitted with respect to the additions of ₹25 crores on share capital issued to the directors of the company, (i) bank account of the director, (ii) return of income, (iii) the confirmation along with the details of investment.(iv) availability of the source of funds with the directors, assessee explained the source of income of the directors as well as submitted the confirmation of the lenders wherefrom



Ms Akhsa Khamboj obtained the loan, (v) confirmation of those third parties along with the return of income, confirmation, bank statement. The learned Assessing Officer has issued 133(6) notices to the lenders to the director, who have confirmed and gave all the necessary evidences to the learned Assessing Officer independently. Thus, not only the source of the fund available with the directors but where the directors has got the money from and the source of funds of those persons was also produced before the learned Assessing Officer. Therefore, the assessee has proved the identity, creditworthiness and genuineness of not only the sources of the funds but also the sources of the source of the funds invested. He submitted that Id AO in remand report has also made inquiry with the ao of one of the lender to MS Alkksha Khamboj , but no response is received. Such no response cannot go against the assessee.

025. With respect to the loan received from Nisiddh Vision Private Limited assessee submitted that in the remand report the learned assessing officer has categorically noted that assessee has obtained a loan from Nisiddh vision private limited of ₹ 1,981,059,500/- for which the assessee has submitted the copy of the Ledger account of the parties, bank statement, confirmation, income tax return of the lender. Further assessee has also given



complete details of sources of funds available with the issue in the vision private limited. The assessing officer was given complete details of nine parties from whom source of the funds were arranged by the lender. With respect to all these 9 parties assessee has submitted their income tax detail, their confirmation, the date of giving loan to initiate vision private limited substantiated with bank details and statement copies. Their annual accounts are also provided. The assessing officer in the remand report has accepted that those parties have enclosed a bank statement reflecting payments and Ledger confirmation with respect to the loans advanced by them to Nisiddh vision private limited. The learned assessing officer has also enquired independently about all these nine investors in the lender company by issuing notices under section 133 (6) of the act. All these parties out of nine except one party responded to those notices and submitted the identical details. With respect to the party, which could not submit the notice, as soon as the assessee was informed, the information was furnished by that party to the assessing officer. The assessing officer has completely examined the details and accepted the same. Assessee further submitted that the repayment of loan has also been made by the assessee to Nissidh vision private limited and therefore in the remand report, the learned assessing officer has accepted these facts, therefore,



the assessee has discharged the onus of bringing the identity, creditworthiness and genuineness of the world transaction. It was further stated that in case of loan the assessee is not obligated to prove the source of the source under section 68 of the act, however despite this fact, with respect to the loan obtained and its subsequent repayment, the assessee has also established the source of the source of the amount invested by Nissidh vision private limited in the assessee company. Further, the networth of the lender company Nissidh vision private limited has also been examined by the learned assessing officer from the annual accounts of that company. From the source available with that lender, sum amount of loan has been advanced to the assessee. Assessee has also submitted the assessment orders of the various parties from whom that lender has received the sum, which is in turn advanced to the assessee company. Assessee further submitted that merely because in case of one or two companies the income is lower does not so that they do not have creditworthiness, their balance sheets produced before the assessing officer prove that they have the enough sources of funds available with them. Assessee further relied upon several judicial precedents. Therefore, the addition deserves to be deleted.



-
026. The learned CIT – A on the above basis decided both the issues in favour of assessee.
027. with respect to the deletion of addition of ₹ 24,99,99,000/- of share capital received from one of the director Mrs. Akhsa Kamboj the learned CIT – A held that:-
- i. Appellant during the appellate proceedings has submitted complete details i.e. a) copy of the appellant PAN including name address and jurisdiction b) copy of ITR acknowledgement deposited, c) copy of the composite application form in relation to share application, d) copy of the board resolution.
 - ii. In remand proceedings director of the company Ms Aksha khamboj has submitted complete details in response to notice under section 133 (6) of the act i.e. a) Ledger account of the amount invested in KBJ venture private limited along with bank statement highlighting transactions of amount invested, e) Ledger account of parties from whom loan was availed along with bank statement highlighting the transaction of loan availed from those parties and f) ITR acknowledgement of the parties from whom loan was availed along with annual return.



-
- iii. As per remand report assessing officer has issued notices under section 133 (6) of the act to the parties from whom director of the company has obtained the advance/loan.
- iv. In his view, the onus cast upon the assessee is only to establish three things necessary to obviate attraction of section 68 of the act such as identity, creditworthiness of the party and genuineness of the transaction which has been discharged by the assessee by submitting all the necessary documents during the course of appellate proceedings as well as remand proceedings.
- v. Due to the lockdown imposed in the state of Maharashtra in the second wave of Covid 19 pandemic since Apple 2021 the necessary details could not be submitted by the assessee as the office of the assessee is located in a containment zone which resulted into the any ability from the side of the assessee as well as from the director of the company in submitting the details.
028. With respect to the addition of ₹ 1,981,059,501/- being unsecured loan availed from Nissidh vision private limited, addition was deleted after considering the remand report and submission of the assessee giving following reasons :-



-
- i. assessee has submitted the confirmation of the lender, permanent account number, income tax return acknowledgement along with annual return, confirmation of loan, bank statement highlighting the transaction of loan
 - ii. proof of repayment of the entire loan amount to the lender by showing the confirmation of repayment and bank statement highlighting the transaction of loan
 - iii. Assessee has submitted the source of fund available with Nissidh vision private limited from nine different companies. For all these nine entities assessee has submitted their bank account, permanent account number, return of income, annual accounts, annual return and confirmation of giving loan to Nissidh vision private limited.
 - iv. The learned assessing officer issued notice under section 133 (6) of the act to the lender Nissidh Vision private limited who responded by submitting its annual return, annual accounts, bank statement, return of income and confirmation of giving loan. The lender also proved the source by giving the name of nine entities from whom initiate



-
- the reason private limited has received the loan. It also provided the confirmation that the loan has been repaid by the assessee.
- v. The learned that assessing officer issued notice under section 133 (6) of the act to all those nine entities to submit the necessary details. Out of the nine entities, eight entities responded to the notice under section 133 (6) of the act by submitting their income tax return, confirmation, the account copy, Ledger's, the annual reports, bank statements et cetera.
- vi. One more entity which did not responded to notice under section 133 (6) of the act initially, on confronting the same to the assessee, assessee intimating that party, that party and then submitted the complete details of the confirmation, income tax return, the copy of account, annual reports and bank statement to show the loan provided by it to the lender.
- vii. In the remand report the learned AO held that assessing officer has examined all these details and did not furnish any adverse comment with respect to creditworthiness of the parties or genuineness of the transaction.

-
029. Thus, when both the above additions are deleted by the learned CIT – A, the learned assessing officer is aggrieved and is in appeal before us.
030. The learned CIT DR vehemently submitted that during the course of the assessment proceedings the assessee was given several opportunities but assessee did not furnish the requisite information therefore at the time of assessment assessee failed to submit those details and accordingly the learned assessing officer is aggrieved violation of the additional evidences by the learned CIT – A.
031. With respect to the ground of appeal number 1, the learned AR submitted that it was a Covid period and assessee could not submit the details because the office of the assessee was situated in a containment zone declared by the government of Maharashtra. In these circumstances, the staff of the assessee could not access the record in the office of the assessee and therefore it could not be submitted. He submitted that there is no infirmity in the admission of the additional evidences by the learned CIT – A.
032. We have carefully considered the rival contention and perused the orders of the lower authorities. It is an admitted fact that the assessee could not submit some information before the assessing officer. Before the learned CIT – A assessee submitted the copy of response from the e-filing portal placed at



page number 14 – 19 of the paper book assessee has also submitted the copy of Maharashtra government order declaring that the office of the assessee is situated in containment zone and therefore the information could not be provided. The learned CIT – A has categorically noted that due to lockdown in second wave of Covid – 19 pandemic since April 2021 the office premises area of the assessee as containment zone and same was sealed. This resulted in the assessee being unable to furnish the information and details in response to various notices. Therefore, he admitted the additional evidences. In paragraph number two of the remand report dated 21/2/2023 the Id AO has merely stated that several notices were issued but all such notices were in the second wave of the Covid 19 pandemic. Even the notices under section 133 (6) dated 9/4/2021 to the other parties were also issued in that period. In the remand report, the learned assessing officer did not contest the admission of the additional evidences but has stated admission of fresh evidence was objected to. We find that when the assessee was prevented by sufficient cause to produce necessary details before the assessing officer, the appellate authorities are empowered to admit such additional evidence in the proper administration of justice. In the present case, the claim of the assessee is not disputed that office of the assessee was situated in containment zone

declared by the government of Maharashtra. Therefore we do not find any infirmity in the order of the learned CIT – A in admitting the additional evidences. It is also not the case of the revenue that after admitting the additional evidence the assessing officer was not given any opportunity to rebut the same. In fact, he has given a direction to the assessing Officer to carry out all the enquiries on those additional evidences. The learned assessing officer has carried out inquiries from the assessee, from the lenders, from the parties who have lent money to those lenders by issuing notices under section 133 (6) of the act. In view of this, we do not find any infirmity in the order of the learned CIT – A in admitting the additional evidences and no prejudice is caused to the assessing officer. Therefore, ground number 1 of the appeal is dismissed.

033. With respect to ground number two the learned AO is aggrieved by the action of the learned CIT – A in deleting the addition of ₹ 249,999,000/- made by the assessing officer under section 68 of the act without appreciating the fact that the assessee failed to prove the genuineness and creditworthiness of creditor in light of the glaring fact that the source of funds were borrowed from other parties by the creditor and same was invested in the form of share capital.



034. The learned CIT DR vehemently submitted that the amount of ₹ 25 crores invested by one of the director of the assessee company has borrowed the funds from other parties and same are invested in the assessee company. The assessee has failed to prove the genuineness and creditworthiness of the creditors who have provided money to the director of the company for the purpose of investment in the assessee company. He referred to the fact that when the money is received in the bank account of the director, the same money has been invested by her as share capital in the company. Therefore, assessee has failed to prove the creditworthiness and genuineness of the parties who provided money to the director of the assessee who in turn is invested money in the assessee company as share capital.
035. The learned authorized representative submitted that assessee has provided the income tax return of the sum deposited by the director in the assessee company as share capital. He submits that assessee has given the income tax return for four different assessment years to show that the director is earning substantial sum. He further referred to the statement of the director with Kotak bank Ltd wherein the amount was shown to have been deposited in the assessee company. He referred to the bank statement placed at paper book page number 27 and 28 which shows that when the



money was received by the assessee from the director in share capital, same was borrowed by her from Nissidh Vision private limited. He further referred to the share application form wherein the complete information of the depositor (director) along with her bank account is placed. He further stated that about the source of fund received by the director, confirmation of the Nissidh provision private limited and mr Nimish Choksi is provided along with confirmation, bank statement, income tax return, annual balance sheet. He further submitted that Nissidh Vision private limited has annual turnover of approximately Rs 500 crores for the year ended on 31st of March 2018 which was Rs. 300 crores in the earlier year. He further referred to the bank accounts of the lender to the director. He further referred to the copy of confirmation of the Nissidh Vision private limited and Nimish Chokshi issued to KBJ venture private limited placed at page number 49 of the paper book to show that there are transaction with that company of Rs. 347,97,46,677 which are accepted by the AO is undisputed. Therefore, he submitted that the identity, creditworthiness of the amount of share application money of ₹ 249,999,000/- deposited by one of the director of the assessee company with the assessee is completely proved. The shares have been allotted to the director and therefore the genuineness of the transaction cannot be doubted. He further relied



upon the order of the learned CIT – A. It was further claimed that when all such details are submitted during the course of remand proceedings by the assessee and the director which have been independently verified by the learned assessing officer by issuing separate 133 (6) to them, which were also complied with. The learned assessing officer has nothing adverse against the assessee in the remand report. It was further stated that on the issue of amount received from Mr. Chokshi, the learned assessing officer has also made request to the assessing officer of the lender to the director, for which confirmation has not been received at the time of remand proceedings. Even otherwise, today, the learned CIT DR did not produce any adverse inferences. In view of this there is no infirmity in the order of the learned CIT – A in deleting the above addition as assessee has conclusively proved the identity, creditworthiness and genuineness of the share application money of the directors and also proved source of the funds available with a direction the internal invested in the assessee company. He referred to several judicial precedents cited before the learned CIT – A.

036. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also considered remand report submitted by the learned assessing officer and paper book filed by



the assessee before us. This ground relates to the addition under section 68 of the act for share capital issued to the director of the company Ms Akhsa Khamboj of ₹ 249,999,000. Admittedly during the course of assessment proceedings the assessee could not submit the necessary details and therefore the additional evidences were submitted before the learned CIT – A. Such additional evidences were admitted and sent to the learned assessing officer for examination. During the course of examination, assessee company submitted confirmation, bank statement, balance sheet and profit and loss account of the director and income tax returns for four assessment years. The return of income of the director shows the receipt of salary from several other companies and other income. The assessee also submitted that the director in turn received the above sum from one company Nissidh Vision Private Limited [NVPL] which is engaged in the business of trading in gold and diamond. That company has also several other transactions directly with the assessee company. The money was received by the director from this company i.e. NVPL and is invested in the assessee company. The trail of the funds received by the director from NVPL and subsequent deposited with the assessee company is also shown by producing the bank account. To prove the source of source in accordance with the provisions of section 68 of the act as the amount in question is share



capital, assessee also produced the confirmation of NVPL, its return of income, bank statement and balance sheets and profit and loss account along with the annual report. As per the annual report for assessment year 2018 - 19, the assessee has turnover of approximately ₹ 500 crores in gold and diamond. It has also the loans and advances of ₹ 498 crores. The learned assessing officer on submission of this information by the assessee, in turn issued notice under section 133 (6) of the act to the director/depositor/shareholder. She submitted all such details which was submitted by the assessee i.e. confirmation, bank account, balance sheets and profit and loss account, Ledger account and source of funds from NVPL. The assessing officer further issued a notice under section 133 (6) of the act to NVPL which also in turn submitted all those details to the assessing officer directly. It was also submitted that a small loan was also taken by the director from one Shri Nimesh Chockshi. Identical details were submitted by the director about this person. When 133(6) issued to that person, he also replied submitting all the necessary details. The assessing officer also wrote to the assessing officer of all those parties. However in case of Mr Nimesh such details have not been received from the assessing officer of Mr Nimesh. No such information is also shown to us at the time of hearing that any such adverse information is received from the assessing officer. In



view of the above facts according to the provisions of section 68, initial onus is cast upon the assessee to show the identity, creditworthiness of the parties who have deposited such sum with the assessee and genuineness of the transaction. If such sum is deposited as share application, share capital or share premium then in such circumstances if the assessee is not a company in which public is interested then, the assessee company has also to prove the source of source of the money available with the shareholder. In this case, the assessee has also complied with those provisions. Therefore, in the remand proceedings the assessee has discharged its onus in accordance with provisions of section 68 of the act. With respect to the genuineness, it is the director of the company who is also the major shareholder, has been allotted the shares, therefore, the genuineness of the transaction cannot be doubted. It is not the case where a stranger is depositing money with the company as a shareholder. In the remand report also the learned assessing officer has not drawn any adverse inference with respect to the evidences submitted by the assessee, by the depositor, by the persons who deposited money with the depositor to prove the source of source. Therefore, we do not find any infirmity in the order of the learned CIT – A in deleting the above addition for the reason that identity, creditworthiness of the person and

genuineness of the transaction is established. The learned departmental representative also did not show us any evidence about any of the three ingredients adversely. Accordingly we do not find that the learned CIT – A has erred in deleting the addition under section 68 of the income tax act with respect to the share capital of ₹ 249,999,000/- in the name of Mrs Aksha Khamboj. Accordingly, ground number 2 of the appeal is dismissed.

037. With respect to ground number 3 of the appeal the learned CIT DR stated that the learned CIT – A is not justified in deleting the addition of ₹ 1,981,059,501 without appreciating the fact that the assessee has failed to prove the genuineness and creditworthiness of the creditors. He submitted that the amount is received by the assessee from Nissidh Vision private limited, initial provision private limited income received the above amount from nine different entities. Also those nine entities, some of them have incurred the losses and some of them have low income and therefore the creditworthiness of those parties who deposited income the money with initial provision private limited which the Internet been deposited by that company with the assessee company lacks creditworthiness of the transaction. The learned CIT – A has not considered this aspect and therefore the order of the learned CIT – A is not sustainable.



038. The learned authorized representative vehemently submitted that assessee has submitted confirmation, bank statement, return of income, annual accounts, and annual return of the lender. The assessee has also submitted the source of funds received by the lender i.e. Source of funds received by the lender from nine different entities. To prove the identity, creditworthiness and genuineness of transaction of loan of those nine entities to Nissidh Vision private limited, assessee has submitted the confirmation, bank statement, annual return, return of income, annual accounts before the assessing officer. The confirmation is also provided. The learned assessing officer also exercise the powers vested with him under section 133 (6) of the act and he issued notices to Nissidh Vision private limited and all those nine entities. Out of those nine entities, eight entities responded to submitting their confirmation, bank account, return of income, their balance sheets and profit and loss account. Some of the companies also submitted their assessment orders for the respective years. Some of the companies have provided the funds to NVPL in earlier years. This has also been verified by the assessing officer and has confirmed in his remand report. Out of those nine entities, one entity could not submit the details called for by the assessing officer as it did not receive the notice. The assessee was called upon by the assessing officer about the same and immediately the party was



informed. That party independently submitted confirmation, bank account, annual reports, and income tax return along with the income tax assessment order for assessment year 2018 – 19 to the assessing officer. The assessing officer has merely doubted about the last entity which could not submit the confirmation in response to notice under section 133 (6) to the AO. It was submitted that there is no reason to doubt when the same party has also submitted its assessment order, which has been recorded by the learned assessing officer in the remand report. He further submitted that out of those nine entities all of them are regularly assessed to income tax. With respect to SCG exports private limited for which the learned assessing officer has expressed its doubt has filed return of income for assessment year 2018 – 19 of ₹ 57,190,890/- and has in turn advanced ₹ 90,026,105/- to the Nissidh Vision private limited. The whole those parties bank statement has been verified by the learned assessing officer with the confirmation. It was further stated that though initiate the venture has incurred losses on account of trading but as the sources of funds have been established by the assessee that that entity has granted advances to the tune of ₹ 441 crores whereas the assessee has received out of that only ₹ 198.10 crores, merely looking at the profitability does not lead to conclusion that lender is not credit the advancing the sum. He further referred



to paragraph number 8 of the remand report, which clearly shows that the assessee has entirely repaid the above loan amount in subsequent year to the lender by producing the Ledger copies in the bank statement, which has been verified by the learned assessing officer.

039. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also considered the remand report furnished by the assessing officer before the learned CIT – A. We have also considered the paper book submitted before the learned CIT – A and also the several judicial precedents relied upon by the parties.
040. The fact clearly shows that the learned assessing officer has made an addition under section 68 of the income tax act with respect to the loan received by the assessee company from another company Nisidh vision Private Limited as during the course of assessment proceedings the assessee failed to produce the necessary evidences. Before the learned CIT – A assessee submitted additional evidences which were admitted and sent for the verification before the learned assessing officer. The additional evidences were in the form of confirmation, bank statement, annual balance sheet and profit and loss account, income tax return of NVPL. The learned assessing officer examines those evidences submitted. He issued notice under section 133 (6) of



the act to NVPL. NVPL submitted the details of confirmation, its bank statement, its annual accounts, its income tax return with respect to the above loan transactions. It also submitted that in turn received loan from 9 different entities. For all those nine entities it submitted confirmation, bank statement, annual accounts, income tax return. It was stated that NVPL and all other nine companies are separately assessed to income tax, they have their independent source of income. Therefore, the identity, creditworthiness of NVPL and genuineness of the transaction was proved. It was also stated that the above loan amount has further been repaid by the assessee to NVPL in subsequent year. To substantiate the same, confirmation as well as the bank statement of assessee as well as NVPL were produced. The learned assessing officer issued notice under section 133 (6) of the act to only nine entities from which NVPL is stated to have received the sum. Out of those nine entities, eight entities responded by submitting their annual accounts, confirmation, bank statements and income tax returns along with assessment orders. One entity did not respond. Learned AO confronted the assessee with these facts. Immediately assessee contacted that party and that entity in turn submitted the relevant details identically before the AO. The learned AO has also verified the bank statement of each of those companies who deposited money with NVPL and



bank statements of NVPL, which deposited money with the assessee company. Undisputed fact is that such sum has been repaid in the subsequent year. Thus in this case, the assessee has proved the identity, creditworthiness and genuineness of the loan received from NVPL. It has also shown the source of source of such loan. Though for this relevant assessment year proviso to section 68 applied only with respect to share application money, share premium and share capital. Amendment including loan also for such transaction is with effect from 1/4/2023. Nevertheless, in the remand report the assessing officer has accepted the above fact. The AO has raised doubt with respect to the one entity which did not furnish information under section 133 (6) of the act. Even the assessment order of that entity is furnished before the AO. Therefore, such doubt also does not have any basis. Further, with respect to declared losses of some of the entity, it is evident that in the balance sheets filed by NVPL, which is trader in gold and diamond has turnover of approximately ₹ 500 crores. It is a loan and advances also of RS 500 crores. Now it is interesting to note that as per the confirmation placed at page number 49 of the paper book for a period from 1 April 2017 to 31 of March 2018, NVPL has placed money with the assessee of ₹ 3,479,746,677. Out of this the assessee has repaid to the assessee are sum of ₹ 1,498,687,176. Thus an



outstanding closing balance of ₹ 1,981,059,501 is outstanding payable by the assessee to the above company. All these transactions are of the loan transaction. The assessing officer has made the addition of closing balance of ₹ 1,981,059,501 under section 68 of the act with respect to this company. There is no doubt expressed by the assessing officer wherein the credit from this company is to the tune of ₹ 348 crores approximately. Thus what the assessing officer has done is made the addition under section 68 of the closing balance of that account. The closing balance in the result of some received from that particular party by the assessee and sum paid during the year. Thus it is apparent that when the AO has accepted the credit of ₹ 348 crores but has doubted and made addition only of ₹ 198 crores out of the total sum credited in the books of accounts of the assessee in the name of NVPL itself shows that addition is not sustainable. This is for the reason that when ₹ 150 crores credited in the books of the assessee in the name of the same party has been accepted by the assessing officer, in absence of any other evidence, the addition of balance ₹ 198 crores cannot be sustained. Even otherwise on the merits and looking at the facts and circumstances of the case, the learned CIT – A on consideration of the remand report wherein the assessing officer himself has accepted the fact of the transaction because of overwhelming evidences



produced by the assessee. Thus the learned CIT – A has correctly deleted the addition where the assessee has proved with respect to the sum credited as a loan such as identity and creditworthiness of the depositor as well as the genuineness of the transaction. No such evidences are produced before us by the learned departmental representative to show that the view taken by the learned CIT – A and the assessing officer in the remand report are incorrect or even remotely suggest the addition. In view of this, we do not find any infirmity in the order of the learned CIT – A – in the addition made by the assessing officer under section 68 of the income tax act of ₹ 198 crores on account of loan received from NVPL. In the result ground number 3 of the appeal is dismissed.

041. In the result appeal filed by the AO is dismissed.
042. Now we come to the cross objection filed by the assessee wherein it has been challenged that the assessment order is bad in law for the reason that the provisions of section 144B (9) of the act have not been followed. When questioned by the bench that such provision has been omitted with effect from 1/4/2021 and the impugned assessment order is passed on 21/4/2021, the learned authorised representative submitted that he does not want to press the cross objection in view of the above amendment where the provisions of section 144B (9)



are omitted. In view of submission of the learned AR,
cross objection filed by the assessee is dismissed.

043. In the result appeal filed by the AO and cross
objection of the assessee are dismissed.

Order pronounced in the open court on 12.02. 2024.

Sd/-
(RAHUL CHAUDHARY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 12.02. 2024

Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai