

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, KOLKATA

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

**I.T.A. No. 1242 & 1243/Kol/2023**  
**Assessment Year: 2012-13 & 2018-19**

<b>Soubhik Exports Limited</b> "Lords", 7/1, Lord Sinha Road 4 <sup>th</sup> Floor, Room No. 409 Kolkata - 700071 <b>[PAN : AA ECS4250K]</b>	Vs	<b>Deputy Commissioner of Income Tax, Circle - 8(2), Kolkata</b>
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri P.K. Singh, A/R
Revenue by :	Shri Rakesh Kumar Das, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 31/01/2024  
घोषणा की तारीख /Date of Pronouncement: 19/03/2024

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER:**

The present appeals are directed at the instance of the assessee against the separate orders of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") of eveny dt. 12/10/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Years 2012-13 and 2018-19.

2. First, we take up ITA No. 1242/Kol/2023; Assessment Year 2012-13. The assessee has raised the following grounds of appeal:-

- "1. That the Appellate Order passed by the Ld. CIT (A), Income Tax Department, NFAC, Delhi is illegal, arbitrary and contrary to the facts and weight of evidence on record.*
- 2. That the impugned order is against the principles of natural justice.*

3. *That the order passed by the Ld. CIT (A), Income Tax Department, NFAC, Delhi is highly prejudiced and is based on presumption, assumption and surmises.*
4. *That the Ld. CIT (A), Income Tax Department, NFAC, Delhi erred in law as well as in fact in confirming addition of Rs.9,58,00,000.00 made by the Assessing Officer by treating unsecured loan from Mahalakshmi Vinimay Pvt Ltd as unexplained Gash Credit purportedly under Section 68 of the Income Tax Act, 1961.*
5. *That the Ld. CIT (A), Income Tax Department, NFAC, Delhi also erred in law as well as in fact in confirming addition of Rs.9,65,50,000.00 from Stoney Vinimay Pvt Ltd as unexplained Cash Credit purportedly under Section 68 of the Income Tax Act, 1961.*
6. *That similarly, the Ld. CIT (A), Income Tax Department, NFAC, Delhi erred in law as well as in fact in confirming addition of Rs.46,00,000.00 Soumyadeep Agro Food Products Pvt Ltd as unexplained Cash Credit purportedly under Section 68 of the Income Tax Act, 1961.*
7. *That the finding of the Assessing' Officer vis-a-vis receipt of unsecured loans from (a). Mahalakshmi Vinimay Pvt. Ltd., (b). Stoney Vinimay Pvt. Ltd. and (c). Soumyadeep Agro Food Products Pvt. Ltd. by the assessee / appellant company during the year as confirmed by the Ld. CIT (A), NFAC, Delhi is perverse and prejudiced.*
8. *That the case laws referred to and relied on by the Ld. CIT (Appeals) in the impugned appellate order in support of confirmation of additions u/s 68 of the I. T. Act, 1961 are distinguishable on facts and under the law and so the ratio of decisions of those cases is not at all applicable to the facts and circumstances of the particular case of the assessee.*
9. *That the Ld. CIT(Appeals) failed to consider and / or deal with any of the case-laws referred to and relied on by the appellant in support of its contention.*
10. *That the Ld. CIT(Appeals) failed to consider the additional corroborative documents filed by, and prayed for consideration thereof, by the appellant in course of first appellate proceedings.*
11. *That the Ld. CIT (Appeals) lost sight of the additional written submission dated 09.06.2023 and its attachments, viz, copy of Order dated*

*18th May, 2023 passed by Hon'ble ITAT, "B" Bench, Kolkata in the case of the lender, Mahalakshmi Vinimay Pvt Ltd and copy of Assessment Order dated 26.03.2010 passed under Section 143(3) read with Section 147 of the I. T. Act by Assessing Officer in the case of another lender, Stoney Vinimay Pvt Ltd of the appellant wherein even 'source' of source of finance to the appellant company was upheld to be genuine.*

*12. That the Ld. First Appellate Authority erred in law in confirming addition of the aforesaid unsecured loans of Rs. 19,69,50,000/- merely on the basis of "third party information" without affording opportunity of 'cross-examination' of such third party by the appellant."*

3. Facts in brief are that the assessee is a limited company engaged in the business of exporting goods and merchandise. Income of Rs.1,28,02,247/- declared in the e-return filed for Assessment Year 2012-13 filed on 27/09/2012. Case selected for scrutiny through CASS for the reason "Large interest expenses relatable to exempt investments u/s 14A, Large increase of unsecured loans, Low net profit or loss shown from large gross receipts." Notice u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The ld. Assessing Officer while examining unsecured loans, noticed that the assessee has received unsecured loans from various companies. However, on examining the unsecured loans taken from Mahalakshmi Vinimay Pvt. Ltd., Stoney Vinimay Pvt. Ltd., Swagatam Financial Consultant Pvt. Ltd. and Soumyadeep Agro Food Products Pvt. Ltd., he was not satisfied with the financials of these companies and was of the view that all these concerns are accommodation entry providers and assessee has taken benefit of accommodation entries from these concerns. Though the assessee filed complete details to prove the identity and creditworthiness of the loan providers and genuineness of the transactions but the ld. Assessing

Officer was not satisfied. The Id. Assessing Officer invoked provisions of Section 68 of the Act for the unexplained loans of Rs.19,69,00,000/- comprising of loan of Rs.9,58,00,000/-, taken from Mahalakshmi Vinimay Pvt. Ltd., Rs.9,65,50,000/- taken from Stoney Vinimay Pvt. Ltd. and Rs.46,00,000/- taken from Soumyadeep Agro Food Products Pvt. Ltd. Further the Id. Assessing Officer also invoked Section 14A of the Act and made disallowance of Rs.22,30,363/- and accordingly, assessed income at Rs.21,19,68,463/-.

4. Aggrieved the assessee preferred appeal before the Id. CIT(A) but even after making detailed submissions and placing evidence on record, could not succeed on the issue of addition u/s 68 of the Act and the addition for unexplained unsecured loan was confirmed. As far as the disallowance u/s 14A of the Act is concerned, the assessee got part relief.

5. Now, the assessee is in appeal before this Tribunal.

6. With regard to the addition u/s 68 of the Act referring to the paper book volume 1 and volume 2, containing 98 pages and 243 pages, the Id. A/R submitted that the assessee is engaged in the regular business and turnover during the year amounted to Rs.382.65 Crores. That the assessee is carrying out consistent business and also possesses fixed assets used in manufacturing business and is doing regular exports. For the business needs, unsecured loans were taken during the year and they have been repaid subsequently. As far as the unsecured loans from Mahalakshmi Vinimay Pvt. Ltd. is concerned, he submitted that this is the group/sister concern of the assessee company and has been

regularly assessed to tax and recently for the very same Assessment Year, additions made u/s 68 of the Act in the hands of Mahalakshmi Vinimay Pvt. Ltd. were under consideration before this Hon'ble Tribunal and the same were deleted and the revenue further failed to succeed before the Hon'ble Jurisdictional High Court. Similar arguments were made for other two cash creditor by referring to the documents filed in the paper book to prove that the assessee has furnished all relevant documents to explain the nature and source of funds as well as the source of source of the funds which have been taken by the assessee for the business purposes. He also submitted that all the alleged cash creditors have been scrutinised by the revenue authorities and all have sufficient funds in the form of share capital and share premium which have been brought forward from the preceding years and are sufficient enough to explain the investment of alleged sum. The ld. Counsel for the assessee further placed reliance on the following judgments:-

- (i) *CIT vs. Gagandeep Infrastructure (P) Ltd.* 80 taxmann.com 272 (Bombay)
- (ii) *Principal CIT vs. Sreeleathers* reported in [2022] 448 ITR 332 (Cal)
- (iii) *Mahalakshmi Vinimay (P) Ltd vs. ITO, Ward-4(2), Kolkata* in I.T.A No.35/Kol/2020; Assessment year: 2008-09, order dt. May 18, 2023
- (iv) *M/s. Inter Securities Pvt. Ltd. vs. ITO* in ITA No. 609/Kol/2018; Assessment Year 2012-13; order dt. 16/10/2023.

7. On the other hand, the ld. D/R, vehemently argued supporting the orders of the lower authorities 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. He relied on the various decisions referred by the ld. CIT(A) in its impugned order. He submitted that the addition u/s 68 of the Act be upheld.

8. We have heard rival contentions and perused the material placed before us. The first issue for our consideration is the addition u/s 68 of the Act made by the Assessing Officer, received from the following three parties:-

<i>Name</i>	<i>Amount</i>
1. Mahalakshmi Vinimay Pvt. Ltd.,	Rs.9,58,00,000/-
2. Stoney Vinimay Pvt. Ltd.	Rs.9,65,50,000/-
3. Soumyadeep Agro Food Products Pvt. Ltd.	<u>Rs.46,00,000/-</u>
<b>Total</b>	<b>Rs.19,69,50,000/-</b>

10. We observe that the assessee is a limited company and is engaged in the business of exporting goods and merchandise and turnover during the year is Rs.382.65 Crores in the preceding financial year 2010-11, the turnover stood at Rs. 571.66 Crores. As per the balance sheet as on 31/03/2012, the assessee had long term borrowings amounting to Rs.59.61 Crores which included secured loans amounting to Rs.2.94 Crores and remaining unsecured loans from body corporates at Rs.31.55

Crores approx. Out of the unsecured loans from body corporates, the ld. Assessing Officer was not satisfied only with regard to the unsecured loans amounting to Rs.19,69,50,000/-. So, the ld. Assessing Officer was satisfied with the remaining unsecured loans and the business activity regularly carried out by the assessee and that the assessee owns fixed assets as on the close of the financial year at Rs.2.78 Crores approx, trade receivables of Rs.13.66 Crores, stock-in-hand of Rs.54.02 Crores. So, admittedly this is a company which is engaged in regular business and also earning consistent profits as reserves and surplus which represents accumulated current profits amounting to Rs.15.97 Crores. Now, in the backdrop of these facts, we need to examine whether the ld. CIT(A) was justified in confirming the addition u/s 68 of the Act. Before us, the ld. Counsel for the assessee has filed various details which are compiled in the paper book no. 1 & 2 and for reference, index of these two paper books providing the details of documents filed before us are extracted below:-

*“TRUE PHOTOCOPIES OF:*

1. *Details and description of documents of lender companies referred to in List B and filed alongwith Written Submission dated 14.02.2022 before Ld. CIT(Appeals).*
2. *Further documents in proof of identity, creditworthiness and genuinely of loan transactions had with Mahalakshmi Vinimay Pvt Ltd being annexures D and E as referred to in List B forming part of Written Submission dated 14.02.2022 filed before Ld CIT (A):*
  - 2.(a). *Certificate of incorporation & (ii). Master Data of the Company as downloaded from website of ROC on 28.01.2022 showing 'Active' status of the company till date:*

2.(b). *Ledger Account of 'Sale of Shares' to companies from whom moneys were received during the year to generate fund for giving loans to the assessee alongwith Bank Statement of the lender company.*

2.(c). *Confirmations / certificates from 5 companies, namely, Sita Commo Trade Pvt Ltd, Dharmik Tradecom P Ltd, Keshav Vintrade Pvt Ltd, Swati Vintrade Pvt Ltd and Radha Ballabh Sales Pvt Ltd with Cheque details who paid Rs.4.79 Crores to the lender Co. during the year which, apart from others, constituted 'source' of source of fund advanced to appellant during the year ALONGWITH their respective bank statements showing the relevant transactions.*

2.(d). *Confirmations / certificates from 3 companies, namely, Patron Merchants P Ltd, Highgrowth Merchandise Pvt Ltd and Jeenmata Sales Pvt Ltd with cheque details who paid Rs. 1.45 Crores to the lender company during the year which, apart from others, constituted 'source' of source of fund advanced to appellant during the year ALONGWITH their respective bank statements showing the relevant transactions.*

3. *Further documents in proof of identity, creditworthiness and genuinity of loan transactions had with Stoney Vinimay Pvt Ltd being annexures F and G as referred to in List B forming part of Written Submission dated 14.02.2022 filed before Ld CIT (A):*

3. (a). *Certificate of incorporation & (ii). Master D ata of the Company as downloaded from website of ROC on 28.01.2022 showing 'Active' status of the company till date:*

3.(b). *Ledger Account of 'Sale of Shares' to companies from whom moneys were received during the year to generate fund for giving loans to the assessee alongwith Bank Statement of the lender company.*

3.(c). *Confirmations / certificates from 6 companies, namely, Jeenmata Sales Pvt Ltd, Patron Merchants Pvt Ltd, Sita Commo Trade Pvt Ltd, Dhanprayog Tradelind P Ltd, Keshav Vintrade Pvt Ltd and Swati Vintrade Pvt Ltd with Cheque details who paid Rs.5.45 Crores to the lender Co. during the year which, apart from others, constituted 'source' of source of fund advanced to appellant during the year ALONGWITH their respective bank statements showing the relevant transactions.*

4. *Further documents in proof of identity, creditworthiness and genuinity of loan transactions had with Soumyadeep Agro Food Products Pvt Ltd [formerly, Bhagwati Tracon Pvt Ltd] being annexure H as referred to in List*

*B forming part of Written Submission dated 14.02.2022 filed before Ld CIT (A):*

*4.(a). Certificate of incorporation & (ii). Master Data of the Company as downloaded from website of ROC on 28.01.2022 showing 'Active' status of the company till date:*

*4.(b). Ledger Account of 'Sale of Shares' to companies from whom moneys were received during the year to generate fund for giving loans to the assessee alongwith Bank Statement of the lender company.*

*5. Acknowledgement in respect of furnishing of Written Submission dated 14.02.2022 electronically.*

*6. Further Written Submission vide e-Acknowledgement dated 27.02.2022 filed before Ld. CIT(Appeals).*

*7. Annexure I being gist of case laws relied on by the appellant with citations as referred to in Written Submission dated 27.02.2022.*

*8. Additional Written Submission dated 09.06.2023 filed before Ld. CIT (Appeals).*

*9. Order dated 18th May, 2023 passed by Hon'ble ITAT, 'B' Bench, Kolkata in the case of one of the lenders, namely, Mahalakshmi Vinimay Pvt Ltd for Asst. Year 2008-09 filed before Ld. CIT(A) alongwith submission dated 09.06.2023.*

*10. Order dated 26th March, 2010 passed by ITO, Ward 11 (4), Kolkata under Section 143(3) / 147 of I.T. Act in the case of another lender, namely, Stoney Vinimay Pvt Ltd for Asst. Year 2008-09 filed before Ld. CIT(A) alongwith submission dated 09.06.2023.*

*11. Acknowledgement in respect of furnishing of Written Submission dated 09.06.2023 electronically.*

*SOUBHIK EXPORTS LIMITED Kindly refer to Written Submission dated 14.02.2022.*

1. For Mahalakshmi Vinimay Pvt Limited.

- (i). Certificate of incorporation,
- (ii). Master Data of the Company as downloaded from website of ROC on 28.01.2022 showing 'Active' status of the company till date,
- (iii). Ledger Accounts of 'Sale of Shares', 'Buyers of shares' and Borrowers from whom moneys were received during the year to generate fund for giving loans to the assessee and
- (iv). Confirmations / certificates from 5 companies with Cheque details who paid Rs.4.98 Crores to this Co. during the year which, apart from others, constituted 'source' of source of fund advanced to assessee during the year and
- (v). Copies of bank statements of those 5 companies showing the relevant transactions. D

2. For Mahalakshmi Vinimay Pvt Limited.

- (i). Confirmations / certificates from 3 companies with cheque details who paid Rs. 1.45 Crores to this company during the year which, apart from others, constituted 'source' of source of fund advanced to assessee during the year and
- (ii). Copies of bank statements of those 3 companies showing the relevant transactions.

3. For Stoney Vinimay Pvt Limited.

- (i). Confirmations / certificates from 6 companies with cheque details who paid Rs.5.45 Crores to this company during the year which, apart from others, constituted 'source' of source of fund advanced to assessee during the year and
- (iv). Copies of bank statements of those 6 companies showing the relevant transactions. F

[(i). Certificate of incorporation, (ii). Master Data of the Company as downloaded from website of ROC on 28.01.2022 showing 'Active' status of the company till date-These documents are included in Annexure B]

4. For Stoney Vinimay Pvt Limited.

- (i). Ledger Accounts of 'Sale of Shares' in books of Stoney Vinimay showing how much shares of which companies were sold to whom to generate funds for giving loan to the assessee company and corresponding ledger account in books

of the assessee alongwith bank statements of Stoney Vinimay showing reflection of those transactions.

5. For Soumyadeep Agro Food Products Pvt Limited, [Formerly, Bhagwati Tracon Pvt Ltd]

Ledger Accounts of 'Sale of Shares' in books of Stoney Vinimay showing how much shares of which companies were sold to whom to generate funds for giving loan to the assessee company alongwith bank statements of Soumyadeep Agro Food Products Pvt Ltd showing reflection of those transactions. – \ [ (i). Certificate of incorporation, (ii). Certificate of fresh Incorporation of the company consequent upon change of name of the company from Bhagwati Tracon Pvt Ltd to Soumyadeep Agro Food Products Pvt Ltd and (iii). Master Data of the Company as downloaded from website of ROC on 28.01.2022 showing 'Active' status of the company till date-These documents are included in Annexure C]"

11. Now, from going through all these details which includes the income tax return, audited balance sheet, income tax assessments, bank statements of the alleged cash creditors the copy of PAN Card, Ledger account and the details of source of source available with the alleged cash creditors at the time of providing unsecured loans to the assessee, we observe that the assessee has discharged its primary owners by providing the nature and source of the alleged sum as referred. Section 68 of the Act, which reads as follows:-

**“Cash credits.**

<sup>68</sup> 68. <sup>69</sup>Where any sum is found credited in the books<sup>70</sup> of an assessee maintained for any previous year, and the assessee offers no explanation<sup>70</sup> about the nature and source thereof or the explanation offered by him is not, in the opinion of the <sup>71</sup>[Assessing] Officer, satisfactory, the sum so credited may<sup>70</sup> be charged to income-tax as the income of the assessee of that previous year :

<sup>72</sup>[<sup>73</sup>**Provided** that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless, –

(a) *the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and*

(b) *such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

**Provided further that** where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless –

(a) *the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*

(b) *such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

<sup>74</sup>**Provided also** that nothing contained in the first proviso <sup>75</sup>[or second proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of [section 10.](#)]

12. Now, on going through the above provisions, we find that the assessee is first required to explain the nature and source and whatever best the assessee can procure to explain the nature and source of the alleged sum has been done and the burden has thereafter shifted over to the revenue authorities to examine such explanation given by the assessee and if not satisfied then the Id. Assessing Officer, needs to pinpoint the discrepancies and shortcomings in such explanation. On going through the findings of both the lower authorities, we notice that except giving general observations about accommodation entry providers, no specific discrepancies have been noticed in the documents of alleged cash creditor. However, we feel it necessary to go through the financials of each of the cash creditors in light of the ratio laid down by the Hon'ble Apex Court in 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.

12.1. First in the list is Mahalakshmi Vinimay Pvt. Ltd. - apart from the documents referred above which have been furnished we, on perusal of the balance sheet of the alleged cash credits notice that as on 31/03/2011, it had the share capital and reserves and surplus amounting to Rs.96.66 Crore and out of the accumulated balances, loans have been given to the assessee company on various dates during financial year 2011-12 and the transactions are appearing in page 46 to 47 of the paper book, which is a copy of the Ledger account. Also on perusal of the bank statement of this company, we notice that there is regular inflow and outflow of funds and the assessee has been receiving unsecured loans on various dates. There is no major cash deposit in the bank account of cash creditors immediately prior to the issuing of cheques/RTGS to the assessee company. We also notice that Mahalakshmi Vinimay Pvt. Ltd., which is regularly assessed tax, was also assessed for Assessment Year 2012-13 and an addition u/s 68 of the

Act, made in its hands and the matter travelled before this Tribunal and vide order dt. 18/05/2023 in ITA No. 35/Kol/2020, the addition was deleted and thereafter when revenue authorities approached the Hon'ble Jurisdictional High Court, the finding of the Tribunal was confirmed by the Hon'ble Court observing that the Id. Tribunal as rightly gone into the facts and has found that the subscribers have furnished all the documents pursuant to the notice issued by the Assessing Officer u/s 133(6) of the Act. Hon'ble Court also held that the audited financial statement, income-tax returns, bank statements were filed to prove the identity and creditworthiness of the creditors and genuineness of the transactions under these given facts and circumstances and ratio of law laid down by Hon'ble Court. We, therefore, find that Mahalakshmi Vinimay Pvt. Ltd., which is a group concern of the assessee, is a genuine company engaged in the regular business and in the course of which it has given unsecured loan to the assessee for which it had sufficient funds available with it and, therefore, the identity and creditworthiness of the cash creditor and genuineness of the transaction is proved and no addition is called for u/s 68 of the Act for the unsecured loan received from the alleged cash creditor, namely, Mahalakshmi Vinimay Pvt. Ltd.

13. The next creditor is M/s. Stoney Vinimay Pvt. Ltd., from which the assessee has taken unsecured loan of Rs.9,65,50,000/-, we have gone through the financial statements of this company and find that as on 01/04/2011 the accumulated share capital and reserves and surplus

amounted to Rs.9.87 Crores. This company is also claimed to be group concern of the assessee company. It is carrying out regular business transactions and loans have been taken through banking channels. A copy of master data of the company downloaded from the Registrar of Companies, also support the fact that the alleged cash creditor is an active company regularly furnishing its financial statements on the portal of Ministry of Corporate Affairs. Further it is brought to our notice that the immediate source of funds with M/s. Stoney Vinimay Pvt. Ltd., was from sale of shares held by it prior to providing unsecured loan to the assessee company. It is also noticed that M/s. Stoney Vinimay Pvt. Ltd., held equity shares of the assessee company for past many years and this supports the contention that it is a group concern because 4,00,000 equity shares of the assessee company are held by this alleged cash creditor at a face value of Rs.1/- each. It thus asserts the fact that prior to the alleged unsecured loan, M/s. Stoney Vinimay Pvt. Ltd. was part of the group concern of M/s. Soubhik Exports Limited, which this supports the genuineness of the transactions. We, therefore, find that the assessee has successfully discharged the onus and explained the source of source of the funds available with M/s. Stoney Vinimay Pvt. Ltd., for providing unsecured loan the assessee company and, therefore, no addition u/s 68 of the Act was called for.

14. The next cash creditor is Soumyadeep Agro Food Products Ltd., from which the assessee company had taken unsecured loans of Rs.46,00,000/-. From perusal of the audited financial statements of this

company, we notice that as on 01/04/2011 it possessed accumulated share capital and reserves and surplus of Rs.6.22 Crores. It carries on regular business and holds tangible assets, investments in loans and advances, return of income are regularly furnished and duly assessed to tax. Transactions have been carried out with the assessee through proper banking channel. This company also holds 17,74,000 equity shares of the assessee company. As on the opening of 01/04/2011, the investment in equity share of the assessee company is Rs.4.43 Crores approx. It, therefore, indicates that Soumyadeep Agro Food Products Ltd., is a group concern and the alleged transaction is the funds which were routed through group concern to the assessee company for business purposes. Soumyadeep Agro Food Products Ltd., was formerly known as Bhagwati Tracon Pvt. Ltd., and, therefore, against the alleged unsecured loans, major repayment has also been made and the closing balance is only Rs.16.90 Lakhs. Considering all these facts, we find that the assessee has successfully proved the three ingredients i.e., identity, creditworthiness and genuineness of the alleged transactions of unsecured loan with Soumyadeep Agro Food Products Ltd., and, therefore, no addition was called for u/s 68 of the Act.

15. We have examined the facts of each of the alleged cash creditor and have come to the conclusion that the assessee has successfully discharged its primary onus casted upon it and has furnished all relevant documents to prove the identity and creditworthiness of the cash creditor as well as the genuineness of the transactions and that the

alleged loan has been repaid subsequently and the revenue has failed to bring anything on record to controvert this factual position.

16. Our view is supported by the judgment of the Hon'ble Bombay High Court in the case of *CIT vs. Gagandeep Infrastructure (P) Ltd.* 80 *taxmann.com* 272 (Bombay) wherein it was held that *the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso.*

17. Further the Co-ordinate Bench of the ITAT in the case of *M/s Mahalakshmi Vinimay (P) Ltd vs. ITO, Ward-4(2), Kolkata* in I.T.A No.35/Kol/2020; Assessment year: 2008-09, order dt. May 18, 2023, while dealing with identical issue held as under:-

*"7. We have considered the rival submissions of the ld. representatives of the parties and also gone through the record. In this case a perusal of the Assessment order would reveal that the AO has duly acknowledged the receipt of the relevant documents/evidences not only from the assessee, but also from the subscriber companies. However, he insisted for personal appearance of the*

directors of the subscriber companies without even going through and discussing about the discrepancies, if any, in the documents furnished by the assessee as well as by the share subscriber companies to prove the identity and creditworthiness of the subscribers and the genuineness of the transaction. The AO has not pointed out in the Assessment Order as to what further enquiries he wanted to make from the directors of the subscribers to insist for their personal presence. The Assessee in this case, as noted above, explained about the identity, creditworthiness and financials etc. of each of the share subscriber company individually. However, we note that in the assessment order that the AO has not even mentioned the names of the share subscriber companies and even has not mentioned a word as to which of the share subscriber company or the corresponding transaction thereof was not genuine and on what grounds. The AO, in our view, could have taken an adverse inference, only if, he would have pointed out the discrepancies or insufficiency in the evidences and details received in his office and pointed out as to on what account further investigation was needed by way of recording of statement of the directors of the subscriber companies. Even if the directors of the subscriber companies have not come personally in response to the summons issued by the AO, in our view, adverse inference cannot be taken against the assessee solely on this ground as it is not under control of the assessee to compel the personal presence of the directors of the shareholders before the AO. The Ld. Counsel for the assessee has rightly placed reliance upon the decision of the Hon'ble Bombay High Court in the case of PCIT, Panji vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxman.com 58 (Bom) wherein the Hon'ble High Court has held that once the assessee has produced documentary evidence to establish the existence of the subscriber companies, the burden would shift on the revenue to establish their case. Further the jurisdictional Calcutta High Court in the case of "Crystal networks (P) Ltd. vs CIT" (supra) has held as under:

"We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT(Appeals) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the produce of the assessee or not. When it was found by the CIT(Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding."

8. It has to be further noted that though powers of the ld. CIT(A) are co-terminus with the AO and the ld. CIT(A) had all the plenary powers as that of the AO. The Hon'ble Delhi High Court in the case of Commissioner of Income-tax vs. Manish Build Well (P.) Ltd. reported in [2011] 16 taxmann.com 27 (Delhi) has held that the CIT(A) is statutory first appellate authority and has independent power of calling for information and examination of evidences and possesses co-terminus power of assessment apart from appellate powers. However, a perusal of the impugned order of the ld. CIT(A) shows that the ld. CIT(A) has not discussed anything about the material facts of the case. He has not pointed out any defect and discrepancy in the evidences and details furnished by the assessee but simply upheld the order of the Assessing Officer in mechanical manner. The order of the ld. CIT(A) is a non-speaking order. The same is not sustainable as per law.

9. In view of the above discussion we do not find justification on the part of the lower authorities in making the impugned additions and the same are accordingly ordered to be deleted."

18. Our view is further supported by the recent decision of this Tribunal in the case of *M/s Inter Securities Pvt. Ltd.*, where this Tribunal while adjudicating the identical issue and taking into consideration the settled judicial precedents, has held as follows:-

"6. We have heard rival contentions and perused the material placed on record.

7. Addition u/s 68 of the Act at Rs. 3.59 Crores is in dispute before us wherein both the lower authorities have held that the assessee had been unable to explain the nature and source of this share application money which included share capital and share premium totaling to Rs.3.59 Crores, on account of issue of share of face value of Rs.10/- and premium of Rs.90/- received from 14 share subscribers. We notice that the assessee has furnished following documents/information/evidence of all the alleged share subscribers:-.....

8. All the above details stood furnished before both the lower authorities. As far as assessee is concerned, in terms of provisions of Section 68 of the Act, it has discharged the primary onus by furnishing all the documents and details relevant/necessary to explain the identity, creditworthiness of share applicants and genuineness of the transactions.

Once these documents have been filed then, the burden shifts over the revenue authorities and they have to examine those details and find out any discrepancy in such documents and then confront the assessee. Perusal of the impugned order as well as the assessment order reveals that no such discrepancies have been noticed by the assessing authorities except giving general remarks about the income and business turnover. In the paper book, the assessee had filed the confirmation letters and all the share subscribers have stated to have given the share application money and the source of such share application money in the confirmation letter which the share applicants received before making the investment in the assessee company. In other words, source of source has been explained by the assessee company. We also notice that the summons u/s 131 of the Act were issued to the Directors of the assessee company who have appeared before the Assessing Officer and submitted all the documents to establish the identity and creditworthiness of the shareholders and genuineness of the transactions.

8.1. So far as the share premium of Rs.90/- charged by the assessee is concerned, we notice that as on 31/03/2011, the total of share capital & reserve surplus held by the assessee is Rs. 1,00,88,262/-. For computing the book value as on 31/03/2011, we need to divide total of share capital and reserve and surplus with 110000 equity shares issued upto 31/03/2011. Thus the book value as on 31/03/2011 would come to Rs.91.65 (Rs.1,00,81,262/- (÷) Rs.1,10,000/-). The share application money received during financial year 2011-12 is Rs.100/-, which comprises of share premium of Rs.90/- charged on equity shares of face value of Rs.10/-. Considering the book value, per share as on 31/03/2011 at Rs.91.65, we find that the assessee has not charged any exorbitant share premium from the share applicants and the share premium charged is not highly excessive in comparison to the book value. Therefore, on one hand, the share applicants have sufficient funds to explain the investment, so as to prove the identity and creditworthiness and on the other hand, the genuineness of the transaction is also proved as a fair investment has been made in the assessee company. Therefore, since the criteria to prove all the three ingredients i.e., the identity and creditworthiness of the share applicants and genuineness of the transactions have been fulfilled by the assessee so as to prove the nature and source of alleged sum, no addition is called for u/s 68 of the Act.

9. We find support from the various decisions as referred by the ld. Counsel for the assessee in the list of case-law (supra). We, find that this Tribunal in the case of DCIT, vs. Narsingh Ispat Limited; ITA No. 225/Kol/2023 order dt. 26/07/2023, under identical facts and issue held as under:-

"7. We have heard rival contentions and perused the material available on record. The revenue is aggrieved with the deletion of addition of Rs.19,14,50,000/- made by the assessing officer u/s 68 of the Act. We notice that the assessing officer when called for the details from the respective share applicants, namely, M/s. Honesty Dealers Pvt. Ltd. and M/s Seaview Agencies Pvt. Ltd., for the sum of Rs.10,52,00,000/- and Rs.8,62,50,000/-, received against the issue of equity capital during the year, both the share applicants of replied to the notice under section 133(6) of the Act and have filed complete details including bank statements, income tax returns, audited balance sheets, confirmation of accounts etc.. It was also submitted that the alleged share applicants are part of the assessee's group. However, when the summons under section 131 of the Act were not complied by the directors of the assessee company, the impugned additions were made under section 68 of the Act. Thereafter when the assessee preferred appeal before the ld. CIT(A), filing complete details and also stating that the source of source of the alleged sum is duly proved with the fact that both the alleged share applicants have received equity share capital and share premium in the preceding years and those years have been assessed to tax and even addition has been made in the hands of M/s. Honesty Dealers Pvt. Ltd., towards unexplained share capital at Rs.14,80,00,000/- in AY 2009-10. Based on these submissions, the ld. CIT(A), deleted the impugned addition by observing as follows:-

"3.1 I have carefully considered the facts of the case and submission of the appellant. I have also gone through the copies of the documents (order sheet etc.) submitted by the appellant. Perusal of the certified copy of the order sheet shows that the authorised representative of the assessee has attended before the AO on 25.07.2014, 05.12.2014, 06.02.2015, 17.02.2015, 25.02.2015 and 03.03.2015. Thus, AO's observation that appellant has not fully cooperated in the assessment proceedings is not correct. Further, appellant has also submitted the certified copy of the details submitted by M/s. Honesty Dealers Pvt. Ltd. and M/s. Seaview Agencies Pvt. Ltd. in the office of the Ld. Assessing Officer. Thus, it is apparent that the appellant and the said two shareholders had filed all the details during the assessment proceedings. AO's allegation that the said shareholders did not attend personally may be a matter of debate. Appellant submits that the Directors of the two investing companies had attended during assessment proceedings and as per AO's directions, details were filed in DAK.

*In any case, AO has not raised issue relating to non attendance of the Directors in the note sheet. Another crucial observation of the Assessing Officer that share capital has been received from outsiders is contrary to the facts. M/s. Honesty Dealers Pvt. Ltd., and M/s. Seaview Agencies Pvt. Ltd. are Group companies and the sister concerns of the assessee company. While questioning the motive of investments made by the said two companies, AO has observed that investment made by them were not justified on the basis of the performance of the assessee company. However, AO has overlooked the fact that assessee company had a genuine running business of manufacturing and trading of iron and steel and for the current year it had filed return showing total income of Rs. 1,74,09,340/-. Thus, the assessee company appears to have good performance record. In any case, investment decisions within the group concerns are not purely guided by the performance of the investee company. Rather, these are based on holistic and strategic view for the betterment of all the group concerns. Now coming to the identity and creditworthiness of the two shareholders, it is observed that their identities are not in doubt. These two concerns are companies having common Directors with the assessee company and they have been regularly filing their returns of income. Appellant has submitted assessment order for M/s. Honesty Dealers Pvt. Ltd. for assessment year 2009-10. Similarly, appellant has also submitted the assessment orders in the case of M/s. Seaview Agencies Pvt. Ltd. for AY: 2011-12 and 2012-13. This shows that both these companies have their separate existence and these have been verified independently by their respective AOS. Regarding creditworthiness of the two parties, it is notice that M/s. Honesty Dealers Pvt. Ltd. had received share capital of Rs. 1,4,80,00,000/- in AY: 2009-10 and in scrutiny order u/s 144/263/143(3)/147 dated 12.03.2015, entire receipt of share capital has been added in the hands of M/s. Honesty Dealers Pvt. Ltd. Further, perusal of the Balance-sheet of M/s. Honesty Dealers Pvt. Ltd. as on 31.03.2012 shows that major chunk of the share capital received in AY: 2009-10 has been invested in the shares of the assessee company in AY: 2012-13. Thus, the investments in the shares of assessee company, amounting to Rs.10,52,00,000/- has been out of the share capital raised in AY: 2009-10 and in AY: 2009-10, entire share capital raised by M/s. Honesty Dealers Pvt. Ltd. has been added in the hands of the party. Thus, the creditworthiness of M/s. Honesty Dealers Pvt. Ltd. vis- à-vis the investments in the shares of the assessee company gets established. There is a clear link between raising of share capital in AY: 2009-10 by M/s. Honesty Dealers Pvt. Ltd. and investing a major part of that share capital into the shares of assessee company in AY:*

2012-13. As addition has already been made in the hands of M/s. Honesty Dealers Pvt. Ltd. for the amount received as share capital, another addition for the same amount cannot be sustained in the hands of the assessee company when the linkages between the two are apparent from records.

Now coming to the M/s. Seaview Agencies Pvt. Ltd., it is noticed that this company had also raised huge share capital in AY: 2009-10 and the source of investments in the shares of the assessee company in the current year is the share capital raised by M/s. Seaview Agencies Pvt. Ltd. in AY: 2009-10. Although, there was no scrutiny in its case for AY:

2009-10 but in the subsequent years, i.e., AY: 2011-12 and AY: 2012-13, assessment proceedings were reopened on the basis of information received from the Investigation Wing and orders w/s. 147 read with section 143(3) have been passed on 21.12.2018 and 11.12.2018 respectively for assessment year 2011-12 and assessment year 2012-13. In the assessment year 2011-12 information was received from the Investigation Wing regarding unaccounted income of Rs. 3,00,000/- received by M/s. Seaview Agencies Pvt. Ltd. and accordingly addition of this amount was made by treating the same as unexplained cash credit u/s 68 of the Act. Similarly, for assessment year 2012-13, there was information from Investigation Wing regarding unaccounted income of Rs 20,00,000/- and accordingly this amount was added to the total income. Perusal of the assessment orders for these two years shows that AO has not made any adverse comments on the entries in the Balance-sheet. It also appears that even the Investigation Wing has not found any adverse evidence against share capital raised by M/s. Seaview Agencies Pvt. Ltd. in assessment year 2009-10. Otherwise, it would have informed the AO for necessary remedial measures, as has been done in assessment year 2011-12 and assessment year 2012-13. Thus, the Balance-sheet of M/s. Seaview Agencies Pvt Ltd. cannot be questioned without any adverse evidence. There is nothing on record to suggest that the share capital raised by M/s. Seaview Agencies Pvt. Ltd. in assessment year 2009-10 was not genuine. Under the circumstances, investments made in the shares of the assessee company in assessment year 2012-13 (current year) cannot be questioned, as the creditworthiness of M/s. Seaview Agencies Pvt. Ltd. has been established.

All the investments in the share capital of the assessee company have come through banking channels. The identities and creditworthiness of the investors are not in any doubt and the transactions are genuine. Thus, all the three ingredients of section 68, they are identity, creditworthiness and genuineness of

*transactions, gets established. Under the circumstances, there is no case for any addition u/s.68 of the Act. Hence, in view of the above discussion, AO is directed to delete the addition of Rs.19,14,50,000/-."*

8. On going through the above findings as well as the available records so far as the alleged sum of Rs.10,52,00,000/- received from Honesty Dealers Pvt. Ltd., is concerned, we find that the sum of Rs.14,80,00,000/- was raised by Honesty Dealers Pvt. Ltd., during the financial year 2008-09 towards share capital and share premium. Thereafter, Honesty Dealers Pvt. Ltd., was subjected to scrutiny proceedings and vide order dt. 12/03/2015, passed under section 144/263/143 (3)/147 of the Act, the said sum of Rs.14,80,00,000/- was added. Since the alleged sum has been added in the case of Honesty Dealers Pvt. Ltd., and the sum received by it was invested in the form of loans and advances and investments, during the year under consideration some of the funds have been received backed by Honesty Dealers Pvt. Ltd., and has been utilised for investing in the equity share capital of the assessee company. These details have gone uncontroverted at the end of the revenue authorities and it remains an admitted fact that the source of the source stands proved with the details filed before us and, therefore, making an addition again in the hands of the assessee would tantamount to double addition and, therefore, the addition in the year under consideration is not warranted and the ld. CIT(A) has rightly deleted the same.

9. We find support from the decisions of the ITAT, Kolkata in the case of M/s Happy Structure Pvt Ltd (ITA 1977/Kol/2016) wherein on similar facts it was held that:-

*"Applying the proposition of law laid down in the above referred cases to the facts of this case and keeping in view the fact for the share applicant company have been assessed to tax u/s 143 (3) of the Act and the source of money in question was brought to tax in their hands, we uphold the order of the ld. CIT(A) that no additions can be made in the case of the assessee company"*

10. The ld. CIT(A) duly perused the submissions of the assessee and noted that source of share application money received by the assessee from M/s Honesty Dealers Pvt Ltd has already been added in the hands of the share applicant. Hence, in view of the settled legal position, as the source has already been added, we uphold the action of the ld. CIT(A) in deleting the addition.

11. So far as the remaining addition towards alleged share capital of Rs.8.62 cr received from M/s Seaview Agencies Pvt Ltd, is concerned, we find that this company also raised equity share capital during the financial year 2008-09 and it has been assessed to tax u/s 143(3)/147 of the Act for AYs 2011-12, 2012-13 and 2014-15. Even for AY 2012-13, though the

case of M/s Seaview Agencies Pvt Ltd., was selected for the limited scrutiny for examining the unaccounted income of Rs.20,00,000/-and for this purpose all the details of M/s Seaview Agencies Pvt Ltd. including audited balance sheet and details of share capital were filed before the AO but except for the addition of Rs.20,00,000/- which was found to be income escaped from assessment, no other addition was made in the assessment order dated 11/12/2018. This proves that the source of funds utilised for making the alleged investment in equity capital of the assessee company was available with M/s Seaview Agencies Pvt Ltd., from AY 2009-10 onwards and that fund has been rotated but it was always available for investment and during the year under consideration part of that fund has been utilised for making investment in the equity capital.

11.1. At this juncture we also notice that the assessee company is having a huge turnover and for financial year 2012-13, the same is amounting to Rs.145.38 Crores and net profit from continuing operations is Rs.1.45 Crores (approx.). In the return of income, total income has been declared at Rs.1.74 Crores. We find that the genuineness of the transactions is proved since the investment which has been made by the alleged share applicants is in a profit making company and, therefore, since the future prospect of investments are good, this decision of the share applicant company to invest in the equity of the assessee company is prudent one and, therefore, the genuineness of the transactions is established.

11.2. So far as the identity and creditworthiness of both the share applicant companies are concerned, as discussed in the preceding paragraphs, it has been established again and again that identity and creditworthiness of both the share applicant companies have been established beyond doubt.

12. Our view is fortified by the decision of this Bench of the Tribunal in the case of ITO vs. Dharmvir Merchandise (P.) Ltd. reported in [2023] 149 taxmann.com 221 (Kolkata- Trib.), wherein dealing with the similar issue, this Tribunal considering the facts of the case and judicial precedents deleted the addition u/s 68 of the Act on similar grounds observing as follows:-

“9. We have heard rival contentions and perused the records placed before us. Addition u/s 68 of the Act for unexplained share capital and share premium of Rs. 1.40 Cr is in challenge before us. We notice that the assessee company issued fresh share capital during the year of face value of Rs. 10/- and premium of Rs. 240/- per share and received 1.40 Cr from following three companies:

Sr No.	Name of the Share Applicant	Amount Received
1	Everlike Projects Pvt Ltd	50,00,000/-
2	Mahashakti Vintrade Pvt Ltd	50,00,000/-
3	Satyam Plywood Merchandise Pvt Ltd	40,00,000/-

	TOTAL	1,40,00,000/-
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10. After the case being selected for scrutiny, ld. AO asked the assessee to explain the source of above referred sum of share capital and share application money. In response, the assessee submitted the following documents:

- i. Party Wise details of share capital raised during the year,
- ii. Form 2, Form 5 filed with ROC,
- iii. Memorandum and Article of Association,
- iv. Bank Statement for the year,
- v. Share Application Form,
- vi. Form 18 in support of registered office address of the company,
- vii. Audited accounts for the year,
- viii. Relevant Bank Statement for the year,
- ix. Form 18 in support of registered office address of these companies.

11. Thereafter, summons were issued to the Directors of the share subscriber companies as well as the Directors of the assessee company which were duly served upon the respective persons and the details as called for were filed which included the following:

- i. Photo Identity and Address Proof,
- ii. Narration of all debit and credit entries in relevant Bank statements,
- iii. Copies of all relevant ROC returns,
- iv. Sources of funds and utilisation of funds,
- v. Evidence of creditworthiness along with Income Tax Returns filed and
- vi. Copies of Audited Accounts and Tax Audit Report for the relevant AY.

12. We further, notice that ld. AO has not pointed out any defect and not questioned the correctness of any of the documents

filed by the assessee company, share subscriber companies as well as the Directors. The only ground for making the addition is that the Directors of the assessee company as well as the investor companies have not appeared personally before ld. AO in compliance to the summons issued u/s 131 of the Act and applying the decision of this Tribunal in the case of Bisakha Sales Pvt. Ltd. (supra).

13. So far as reliance placed by ld. AO on the decision of this Tribunal in the case of Bisakha Sales Pvt. Ltd. (supra) is concerned, we fail to find any merit as the facts of Bisakha Sales Pvt. Ltd. (supra) are distinguishable from the facts of the present case. Firstly for the reason that the case of Bisakha Sales Pvt. Ltd. (supra) was in connection of the revisionary order passed by ld. CIT(A) u/s 263 of the Act where it was alleged that ld. AO has not made proper enquiries with regard to the transaction of share application money received by the company, which however, is not the fact of the instant case where the issue relates to assessment proceedings carried out u/s 143(3) of the Act and complete and detailed enquiry has been conducted by ld. AO. In the assessment order, ld. AO has not brought any adverse material which could have remotely suggested that the unaccounted income of the assessee was brought in disguise of the share capital. Therefore, the decision of Bisakha Sales Pvt. Ltd. (supra) is not applicable on the present case.

14. So far as merits of the case are concerned, we find that the assessee has successfully discharged its onus by filing complete details of the share subscriber companies including their bank statement, audited financial statements, Form no. 18 in support of registered office address, source and utilization of funds, copies of ITRs, copies of all relevant company returns. Even the photo identity, address proof of the Directors of the assessee company and the subscriber companies have been filed directly by these Directors to ld. AO. On the basis of these facts undoubtedly the assessee has successfully discharged the onus which lay upon it by producing all the evidences for proving the identity and creditworthiness of the investors and the genuineness of the transaction. Merely non-appearance of the Directors cannot be a basis for treating the share application money as unexplained or non-genuine. We find support from the judgment of Hon'ble Gujarat High Court in the case of Rohini Builders (supra) relying on the judgment of Hon'ble Apex Court in the case of Orissa Corporation Pvt. Ltd. (supra) (relevant extract:

*“Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation (1986) 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would ^have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.”*

15. Our view is supported by *Tradelink Carrying (P.) Ltd. vs ITO* pronounced on 20.12.2019 reported in [2020] 113 taxmann.com 520 (Kolkata-Trib.), wherein the Hon'ble jurisdictional ITAT held that:

*“34. In this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus shifted to AO to disprove the documents furnished by assessee cannot be brushed aside by the AO to draw adverse view cannot be countenanced. In the absence of any investigation, much less gathering of evidence by the, Assessing Officer, we hold that an addition cannot be sustained merely based on inferences drawn by circumstance. Applying the propositions laid down in these case laws to the facts of this case, we are inclined to allow the appeal of the assessee.*

35. To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the

*assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly all the three conditions as required u/s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore we delete the addition of Rs 5,60,000/- and consequently the appeal of assessee is allowed.*

*36. In the result, the appeal of the assessee is allowed."*

16. *Similar view also taken in the case of Satyam Smertex (P.) Ltd vs DCIT reported in [2020] 117 taxmann.com (Kolkata - Trib.) pronounced on 29-05-2020 where the Hon'ble jurisdictional ITAT held that:*

*"30. To sum up section 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source, it shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. the PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record, including that of the directors and share holders of share subscribing entities as discussed supra. Accordingly all the three conditions as required u/s. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO and confirmed by Ld. CIT(A) are based on conjectures and surmises, so their impugned action cannot be justified. In*

*the facts and circumstances of the case as discussed above, no addition was warranted under Section 68 of the Act. Therefore, we do allow the appeal of assessee and direct deletion of addition of Rs 16 cr under section 68 of the Act."*

17. *From the above decision, we note that it has been held again and again by the jurisdictional ITAT, Kolkata that in a case, where the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, the onus shifts on ld. AO to disprove the documents furnished by assessee so as to draw adverse view and in the absence of any investigation, much less gathering of evidence by ld. AO, additions cannot be sustained merely based on inferences drawn by circumstance or made on surmises and conjectures.*

18. *Therefore, after going through the various details and documents placed before us, we find that assessee has successfully discharged primary onus casted upon it to explain the source of alleged share capital and share premium. Ld. AO did not find any fault or any shortcoming in the compliances made by the appellant company. It is also an evident fact that the only basis for making the alleged addition by ld. AO was non-appearance of the Directors of the share allotted company but as claimed by ld. Counsel for the assessee, the time allowed for compliance was too short and the assessee filed all the confirmations in respect of such share subscribers which were not doubted by ld. AO. Facts are brought to our notice out of the eight shareholders five have been assessed for the same assessment year u/s 143(3) of the Act and complete details of their financials and bank transactions have been examined by ld. AO in the scrutiny proceedings. This is also an admitted fact that each of the shareholders were duly served notice u/s 133(6) of the Act which is sufficient to prove the identity of such shareholders. As far as the genuineness of the transaction is concerned, the same have taken place through banking channel which is traceable from the origin to the destination of such payments and further confirmed from the documents furnished before us. All these transactions are duly recorded in the respective balance sheets of the shareholder companies. Creditworthiness of the transaction is also proved from the fact that all the shareholder companies were having more than sufficient share capital and reserve and surplus fund for giving share application money. Even otherwise ld. AO has not made the addition for charging of higher share premium and has made the addition of unexplained cash credit but still charging of share premium is a commercial decision and the same can be challenged only with sufficient documentary*

*evidence. It thus brings to a conclusion that since the assessee filed complete details of identity and creditworthiness of the share subscribers and genuineness of the transaction before ld. AO, the onus shifted to ld. AO to disprove the material placed before him and without doing so the additions made by ld. AO are based on conjectures and surmises and the impugned additions cannot be justified and therefore, the impugned action of ld. AO cannot be held to be justified.*

19. Our view is further supported by following judicial pronouncements:

*“i) CIT vs. Gagandeep Infrastructure (P) Ltd. 80 taxmann.com 272 (Bombay) wherein it was held by High Court that the proviso to section 68 of the Act has been introduced by the Finance Act 2012 with effect from 1st April, 2013. Thus it would be effective only from the Assessment Year 2013-14 onwards and not for the subject Assessment Year. In fact, before the Tribunal, it was not even the case of the Revenue that Section 68 of the Act as in force during the subject years has to be read/understood as though the proviso added subsequently effective only from 1st April, 2013 was its normal meaning. The Parliament did not introduce to proviso to Section 68 of the Act with retrospective effect nor does the proviso so introduced states that it was introduced "for removal of doubts" or that it is "declaratory". Therefore it is not open to give it retrospective effect, by proceeding on the basis that the addition of the proviso to Section 68 of the Act is immaterial and does not change the interpretation of Section 68 of the Act both before and after the adding of the proviso.*

*ii) PCIT vs. Chain House International (P) Ltd. 98 taxmann.com 47 wherein Madhya Pradesh High Court held that “The question raised by the revenue in regard to issuing the share at a premium is purely a question of fact. It is a 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 to shares at such a premium or not and moreover the section 68 does not envisages any law on share premium it only requirement is to identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants which same has been discharged by the respondent authority and the HIGH COURT OF M.P. BENCH AT INDORE Pg. No.--58-- (ITA No.112/2018 &*

Other connected matters) same has been accepted by the appellate authorities thus, the same cannot be reconsidered in these appeals as it is a pure question of fact." SLP preferred by revenue was dismissed by Hon'ble Supreme Court and the same is reported in 103 taxmann.com 435(SC).

iii) CIT vs. Kamdhenu Steel & Alloys Limited [ITA No.972 of 2009] dated 23.12.2011 wherein the Delhi High Court in a batch of 11 appeals was required to adjudicate on the very issue of addition made by the A.O u/s 68 in respect of share application monies received by the assessee as alleged unexplained cash credit. In all these cases, the Department had alleged that the share application monies were received from persons who were 'entry operators' and the monies received by way of share application was nothing but was routing of unaccounted money of assessee in the form of subscription to share capital. However, in the assessments made the A.Os had not brought on record any material or evidence to substantiate such finding. Accordingly, on appeal the appellate authorities had deleted the additions made u/s 68 of the Act.

iv) CIT vs. Orissa Corpn (P) Ltd. 159 ITR 78 where the Court held that "In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under [section 131](#) at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

20. We, therefore, respectfully following the judgments referred herein above by the Hon'ble Courts and also considering the facts and circumstances of the case, are of the considered view

*that since the assessee has placed sufficient documents and materials on record to prove the identity and creditworthiness of the shareholders and the genuineness of the transaction of receiving share capital and share premium, invoking the provisions of Section 68 of the Act was not justified in the instant case. We, therefore, reverse the finding of the CIT(A) and delete the addition of Rs. Rs.1.40 Cr made u/s 68 of the Act and allow all the grounds raised by the assessee.*

21. *In the result, the appeal filed by the assessee is allowed."*

13. *Our view is further supported by the judgment of the Hon'ble Jurisdictional Calcutta High Court in the case of Principal CIT vs. Sreeleathers reported in [2022] 448 ITR 332 (Cal) wherein Hon'ble Court 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."*

14. *We, therefore, respectfully following the ratio laid down in the above case laws and consistent with the view taken in the above referred decision of this Tribunal and also observing the fact that since the assessee has successfully proved the three necessary ingredients i.e., identity and creditworthiness of the share applicants and genuineness of the transactions as provided u/s 68 of the Act, are of the view that no interference is called for in the order of the ld. CIT(A) deleting the addition made by the Assessing Officer u/s 68 of the Act and the same is upheld.*

15. *In the result, appeal of the revenue is dismissed."*

10. *Considering the ratio laid down by the Co-ordinate Bench of this Tribunal in the case of Narsingh Ispat Limited (supra), we are satisfied that the same is squarely applicable on the facts of the instant case as before us, assessee has filed complete documentary evidence to explain the identity and creditworthiness of the share applicants and genuineness of the share transactions. We thus set aside the findings of the ld. CIT(A) and delete the impugned addition of Rs.3,59,00,000/- made u/s 68 of the Act and allow the effective grounds of appeal raised by the assessee.*

19. Therefore, under these given facts and circumstances of the case, as well as the ratio of law laid down in the decisions referred hereinabove, we find that the alleged transactions of unsecured loans which were taken for the purpose of business by the assessee which is a limited company and regular business turnover are achieved and the alleged loans have been taken from group concerns and repaid subsequently, therefore, there remains no reason to doubt the identity and creditworthiness of the cash creditors and the genuineness of the transactions. The finding of the Id. CIT(A) is thus set aside and the addition made u/s 68 of the Act at Rs.19,69,50,000/- is deleted.

20. Accordingly, appeal of the assessee for Assessment Year 2012-13 is allowed.

21. Now, we take up ITA No. 1243/Kol/2023; Assessment Year 2018-

19. The assessee has raised the following grounds of appeal:-

*"1. That the Ld. CIT (A), Income Tax Department, NFAC, Delhi erred in law as well as in fact in confirming addition of Rs.55,36,551.00 to Returned income of the assessee purportedly under Section 69C of I. T. Act, 1961 by wrongly treating it as bogus purchases from Mangalam Enterprises.*

*2. That the order passed by Ld. CIT (A), Income Tax Department, NFAC, Delhi confirming impugned addition of Rs.55,36,551.00 made by the Assessing Officer is highly prejudiced and is based on presumption, assumption and surmises by generalizing the alleged finding of the Investigation Wing of the Income Tax Department to all cases wrongly assuming that all transactions had with Mangalam Enterprises were bogus.*

*3. That the Appellate Order passed by the Ld. CIT (A), Income Tax Department, NFAC, Delhi is illegal, arbitrary and contrary to the facts and weight of evidence on record.*

4. *That the case laws referred to and relied on by the Ld. CIT (Appeals) in the impugned appellate order in support of confirmation of addition u/s 69C of the I. T. Act, 1961 are distinguishable on facts and under the law and so the ratio of decisions of those cases is not at all applicable to the facts and circumstances of the particular case of the assessee.*

5. *That genuinity of transactions could not be called in question as the purchases from Mangalam Enterprise had logical nexus with corresponding sales shown in books of accounts and stock register.*

6. *That the impugned order is against the principles of natural justice."*

22. Though the assessee has raised various grounds of appeal but the grievance of the assessee is only with regard to the addition of Rs. 55,36,551/- made u/s 69C of the Act alleging unsecured expenditure for bogus purchases from M/s. Mangalam Enterprises.

23. At the outset, the Id. Counsel for the submitted that it had failed to appear before the Assessing Officer and stated that it had made purchases from M/s. Mangalam Enterprises which are reflected in the books and payments have been made through banking channels. He also submitted that the assessee is into export business and turnover during the year is Rs.811.30 Crores approx, and the Assessing Officer has not doubted the genuineness of the transactions appearing in the books relating to purchase, sale and expenditure except for the alleged transactions of bogus purchases. He further submitted that if an opportunity is granted, all necessary details can be filed before the Assessing Officer to explain that the purchases from M/s. Mangalam Enterprises are genuine.

23.1. On the other hand, the ld. D/R though supported the order of the lower authorities, did not controvert to this contention of the ld. Counsel for the assessee.

24. We have heard rival contentions and perused the material placed before us. We notice that the assessee had declared income of Rs.3,33,18,550/- in the income tax return for Assessment Year 2018-19 furnished on 29/10/2018. The assessee was issued a showcause notice u/s 148(A)(d) of the Act alleging bogus bills of Rs. 55,36,551/- taken from paper concerns controlled by one Shri Naresh Israni. We notice that the assessee which is carrying out business of export of goods, having turnover to the tune of Rs.811.30 Crores was asked to explain the genuineness of purchases of Rs.55,36,551/- made from M/s. Mangalam Enterprises. Admittedly, the assessee did not appear before the Assessing Officer. However, before us, complete details have been filed about the alleged transactions of purchase along with ledger account of M/s. Mangalam Enterprises and copies of bank statements as well as tax audit report. Considering the prayer of the assessee, we deem it fit to restore this issue of unsecured expenditure u/s 69C of the Act at Rs.55,36,551/- for alleged bogus purchase from M/s. Mangalam Enterprise to the file of the Assessing Officer for *de novo* adjudication to consider the claim of the assessee, in light of the evidence/documents available on record as well as the evidences to be filed by the assessee in support of its claim. Needless to mention, the assessee be provided sufficient opportunity of being heard. Accordingly, the appeal of the assessee for Assessment Year 2018-19 is allowed for statistical purposes.

25. In the result, appeal of the assessee in ITA No. 1242/Kol/2023 for Assessment Year 2012-13 is allowed and ITA No. 1243/Kol/2023 for Assessment Year 2018-19 is allowed for statistical purposes.

**Order pronounced in the Court on 19<sup>th</sup> March, 2024 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 19/03/2024

*SC S.P.*

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

1. अपीलार्थी / The Assessee
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