

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.1035/Bang/2023
Assessment Year : 2017-18

Bharath Hi-Tech Builders Pvt. Ltd., 304 and 306 Gold Tower, 3 rd Floor, Gold Residency Road, Bangalore-560 025. PAN : AAACK 8043 N	Vs.	The Asst. Commissioner of Income Tax, Circle-1(1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Inder Paul Bansal & Shri Vivek Bansal, Advocates
Revenue by	:	Shri Nilanjan Dey, Addl. CIT (DR)

Date of hearing	:	07.03.2024
Date of Pronouncement	:	04.04 .2024

ORDER

PER SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order passed by the NFAC, New Delhi on 03/11/2023 in DIN No.ITBA/NFAC/S/250/2023-24/1057669565(1) for the assessment year 2017-18 with the following grounds of appeal:-

“1. That under the facts and circumstances of the case, Ld. NFAC in the order dated 22-11-2023 generated through DIN & Order. no.ITBA/N `AC/S/250/2023-24/10581.52338(1) passed in the aforementioned case has erred in law as much as in fact in upholding the addition of Rs.1,60,00,000/-- added by the AU u/s 68 of the Income Tax Act, 1961("the Act") in respect of following credits.

a)	Amit Shah- HUF	25,00,000
b)	Anil Kumar M	10,00,000
c)	Kalpana A	12,00,000
d)	Mr. Srinivasa Murthy SN	25,00,000
e)	Muralidhar N/Nirmala M	13,00,000
f)	Navin Bhai R Soni	20,00,000
g)	Visweshwara S	30,00,000
h)	Vitalink Wealth Advisory	25,00,000
TOTAL		1,60,00,000

2. That under the facts and circumstances of the case, while upholding the above addition of.R.s. 1,60,00,000/- Ld. NFAC has failed to appreciate that the ..d. AO did not discuss the facts relating to each of the creditors separately and the evidence submitted by the assessee in respect of each of the creditors separately and it has not been made clear that how the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. Ld. NFAC has also failed to discuss facts relating to the case of each of the creditors separately and also the evidence and explanation offered by the assessee relating to the case of each of the creditors separately so as to hold that these credits attract the provision of section 68 of the Act.

3. That under the facts and circumstances of the case, Ld. NFAC has failed to appreciate that the explanation offered by

the assessee and evidence submitted by the assessee in respect of each of the creditors separately was satisfactory to the opinion of the AO and thus, addition u/s 68 of the Act in respect of each of the creditors separately and aggregating to Rs.1,60,00,000/- was liable to be deleted in its entirety.”

2. The brief facts of the case are that the assessee filed the return of income on 31/10/2017 declaring total income at Rs.27,35,410/- and book profit was shown at Rs.6,47,185/-. The case was selected for scrutiny and statutory notices were issued. The assessee submitted reply on 06.09.2018, 12.10.2018 and 04.02.2019. The assessee was show caused on 28.11.2019 calling for details as per para No. 3.2 of his order

On the issue of unsecured loan received during the year the assessee was asked to prove the source in the hands of the lender along with the return of income. The AO noted that as per the Audit report, the loan was not received by cheque/e.mode, it means i.e loan was received in cash, therefore, the AO asked to submit the mode of transaction of loan received and paid during the year. The AO also noted that the assessee has purchased the new property through loan from Union Bank which is only 16 crores and the cost of the property was Rs.23 crores and in this regard, the assessee was asked to submit the investment for difference of amount

and how it has been recorded it in the books of account. Further, it was also observed that the assessee has claimed interest expenses and borrowing cost to profit and loss account incurred for purchasing of asset. In response to the above query of the AO, the assessee submitted reply on 09/12/2019. The submission of the assessee was examined and accepted except unsecured loan. The AO further asked the assessee to furnish the details of loan received during the year, amount if interest paid along with the return of income of the lender and source on income in the hands of lender. In response, the assessee submitted details of the loan received from the banks and other persons during the assessment year 2017—18. It was noted that the amount was received in cheque and copy of ledger of the lenders were submitted from the ledgers. The AO noted that the assessee received loan of Rs.1.60 crore from various parties and other banks and also noted that the only copy of the ledger of the creditors have been submitted. The assessee failed to provide return of income and proof of source in the hands of the lenders. Hence, the AO concluded that the assessee is not able to prove the acceptance and creditworthiness of the creditors and as per sec. 68, it is on the assessee to prove the genuineness of transaction and credit

worthiness. Since the assessee failed to prove the same, the amount of Rs.1,60,00,000/- was considered as unaccounted cash credit and added u/s 68 of the Act and taxed u/s 115BBE of the Act. Accordingly, the AO assessed the income at Rs.1,87,35,410/-.

3. Aggrieved from the above order, the assessee filed appeal before the CIT(A) along with the detailed submissions. The CIT(A) dismissed the appeal of the assessee relying on the orders of the AO.

4. Aggrieved from the above order, the assessee filed appeal before the ITAT.

5. The ld.AR reiterated the submission made before the lower authorities, which is as under:-

“3) The issue regarding unsecured loans is discussed by the AO in para 4.1 to 4.5. it is observed by the AO that the assessee has received loan amounting to Rs. 1,60,00,000/- from various parties other than banks and assessee has provided only ledger of the creditor, therefore, the assessee has failed to provide return of income and prove source in the hands of the lenders, therefore, Ld. AO presumed that the assessee is not able to prove existence and creditworthiness of the creditor.

4) It is also pertinent to note that while making the addition, the Ld. AO has reproduced first proviso to section 68 of the Act which is only applicable in respect of share application money, share capital, share premium or any such amount by whatever name called and is not applicable to ordinary loans and in reproduction of the proviso in para 4.4, Ld. AO has conveniently and intendedly ignored the phrase "share

application money, share capital, share premium or any such amount by whatever name called". Therefore, also the addition made by the AO is vitiated in law. In this manner, the AO has made addition of Rs. 1,60,00,000/- to the returned income of Rs. 27,35,410/- and the income of the assessee has been assessed at a sum of Rs. 1,87,35,410/-.

5) That aggrieved by the aforementioned assessment order the assessee filed an appeal before CIT(A) contending therein that the assessee was not provided with proper and sufficient opportunity to explain the credits which have been added u/s 68 of the Act. It was submitted that all the creditors are identifiable and their identity is established by the valid identity proof. All the creditors are creditworthy and have the capacity to advance the amount credited in the books of account of the assessee and they are assessed to tax and are PAN holders. All the credits are through banking channels, therefore, the genuineness of these credits cannot be doubted. It was also submitted that the addition made by the AO is uncalled for and wherever applicable the TDS was also deducted. The evidence being made part of the paperbook was also placed before CIT(A) and reliance was placed on the decision of Hon'ble Supreme Court in the case of CIT Vs Orrisa Corporation 1986 159 ITR 78 (SC). To say and contend that in case where the assessee had given the name and address of the alleged creditors, it was in the knowledge of the revenue that the said creditors were the income tax assessees. Their index number was in the file of the revenue, the revenue apart from issuing notices u/s 131 of the Act at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no efforts made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In these circumstances the Tribunal had held that the assessee had discharged the burden that lay on him and such conclusion of the Tribunal could not be said to be 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.

6) However, Ld. CIT(A) ignoring such submissions relying upon the decisions which are not applicable to the facts of the present case has upheld that addition. The decisions relied

upon by CIT(A) have no application to the facts of the present case and are distinguishable as under: -

a) PCIT Vs Bikram Singh Delhi High Court [2017] 399 ITR 407 (Delhi).

a@ This decision has no binding force as this decision has been set aside by Hon'ble Supreme Court as per decision dated 29-08-2023 in the case of Bikram Singh Vs PCIT [2023] 458 ITR 684 (SC) since the Hon'ble Delhi High Court did not follow procedure contemplated u/s 260A of the Act. Further after set aside, the appeal filed by the revenue the appeal has been closed by Hon'ble Delhi High Court as per order dated 03-11-2023. Therefore, the decision relied upon by Ld. CIT(A) for upholding the addition does not exist and is not applicable.

b) CIT Vs Empire Builtech (P.) Ltd Delhi High Court 120141 366 ITR 110 (Delhi).

The decision in this case is also not applicable to the facts of present case as this case relates to share capital and premium thereon, the AO issued notices u/s 133(6) of the Act to the investors and some of the investors had responded and furnished particulars elicited and assessee disclosed identity of all the investors and in these facts it was held that addition could be made only for amounts which pertains to those subscribers/investors whose particulars could not be verified and who did not respond to notices issued by the AO. Firstly the present case is not of any share application or premium thereon and secondly, the AO has not made any verification despite the fact that the assessee had submitted the confirmation and PAN of each of the creditors, therefore, this case has no application to the facts of the present case.

c) Rick Lunsford Trade & Investment Ltd Vs CIT Calcutta High Court [2016] 385 ITR 399 (Cal).

This case also relates to share application money which was a sum of Rs. 24,90,000/- and Tribunal upheld addition only to the extent of Rs. 8,77,500/- and it was claimed that the order of the Tribunal is perverse and no question of law was framed. It is a case where no law has been laid down by Hon'ble Calcutta High Court. Therefore, this case is also not applicable to the facts of the present case.

d) Roshan Di Hatti v. CIT Supreme Court 119921 2 SCC 378.

This case is also not applicable to the facts of the present case as it is held by Hon'ble Supreme Court that while upholding the part of the addition the Tribunal has acted without any material or, in any event, the finding of fact reached by the

Tribunal was unreasonable or such that no person acting judicially and properly instructed as the relevant law would come to such a finding and the appeal was decided in the favor of the assessee by Hon'ble Supreme Court. Therefore, none of the above cases, as relied upon by Ld. CIT(A) is applicable to the facts of the present case and it is a case where the required particulars of the creditors were submitted by the assessee as per decision of Hon'ble Supreme Court in the case of CIT Vs Orrisa Corporation(supra), the AO did not make any enquiry and the assessee had discharged the initial onus laid upon it. Moreover, the center point of making addition in the show cause notice issued by AO was that whether or not the loans were accepted in cash. The assessee explained the same and thereafter, the AO did not either make any enquiry or asked the assessee to furnished further details.

7) That it is the case of the assessee that in view of the evidence submitted by the assessee no addition Rs. 1,60,00,000/-, as has been made by the AO and upheld by the CIT(A), is called for. The details of credits and evidence submitted in respect of each credit is described in the following part of the submissions.

8) In the present appeal the assessee has assailed the addition of Rs. 1,60,00,000/- in respect of loan taken from following persons/entities: -

a) Amit Shah-HUF (K)	25,00,000
b) Anil Kumar Loan	10,00,000
c) Kalpana A	12,00,000
d) Mr. Srinivasa Murthy SN (K)	25,00,000
e) Muralidhar N/Nirmala M(K)	13,00,000
f) Navin Bhai R Soni	20,00,000
g) Visweshwara S (K)	30,00,000
h) Vitalink Wealth Advisory (K)	<u>25,00,000</u>

Total	1,60,00,000
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9) That the submissions of the assessee are that the addition has wrongly been made by the AO and upheld by Ld. CIT(A) of NFAC without proper appreciation of the facts and evidence

placed by the assessee before them with regard to each of the creditor and thus, addition has wrongly been made and wrongly been upheld by Ld. CIT(A) of NFAC. For the completeness of facts, the evidence submitted by the assessee with regard to each of the creditor is as under: -

AMIT SHAH-HUF (K)

10) The credit of this creditor is a sum of Rs. 25,00,000/- credited on 18-02-2017 in the bank account of the assessee in State Bank of India (SBI) Account No. 32870611909. The confirmation of this creditor was filed on which the full address of the creditor is mentioned as " Plot No. 6, Flat no. 405, Shrinidhi Apartments, Vasavi Nagar, Karkhana, Secunderabad, Hyderabad- 500015". Copy of PAN was also given and PAN is "AAPHA6576A". The amount was paid by him through RGTS UTR No. HDFCR52017021890693193. The copy of above bank account of the assessee in SBI was also filed wherein this amount has been reflected. Apart from this the assessee has been paying interest on regular basis and total interest paid by the assessee to this creditor from 18-02-2017 to 04-01-2018 is a sum of Rs. 3,69,124/-. All these interest payments are made through bank accounts of the assessee existing in SBI (above mentioned bank account) and Vijaya Bank A/c No. 118400301000587. These interest payments are also duly reflected in these accounts. That on the interest paid the assessee also deducted the tax at source. The repayment of this amount of Rs. 25,00,000/- is made from 13-11-2017 to 01-01-2018 as reflected in the ledger of the creditor and these entries are also reflected in the respective bank account of the assessee. The repayments are as follow: -

13-11-2017	Cr	VIJAYA BANK C/A NO 118400301000587 CH NO 739624	Payment	2357	5,00,000.00
14-12-2017	Cr	STATE BANK OF INDIA A/C 32870611909 Chq No : 651805 issued to Mr. Amit shah towards repayment of loan	Payment	2645	10,00,000.00
1-1-2018	Cr	STATE BANK OF INDIA A/C 32870611909 Chq No : 651807 issued to Mr. Amit shah towards repayment of loan	Payment	2827	10,00,000.00

Anil Kumar M

11) The credit of this creditor is a sum of Rs. 20,00,000/- credited on 26-10-2016 in the bank account of the assessee in Vijaya Bank Account No. 118400301000587 (Vijaya Bank Account). The confirmation of this creditor was filed on which the full address of the creditor is mentioned as "Flat No. 85, KH Road, Bengaluru- 560027". Copy of PAN was also given and PAN is "ABDPA293 1 L". The amount was paid by him through RGTS. The copy of above bank account of the

assessee in Vijaya Bank was also filed wherein this amount has been reflected. During the year under consideration the assessee has repayment of Rs. 10,00,000/- from 26-11-2016 to 26-03-2017 and all these repayments are also reflected in Vijaya Bank account of the assessee. A sum of Rs. 10,00,000/- was outstanding as on 31-03-2017 and the same was also repaid from 26-04-2017 to 26-08-2017 and now no balance is outstanding. All these repayments are also reflected in the bank account of the assessee in Vijaya Bank. The copy of income tax return filed by the creditor for AY 2017-18 is also enclosed wherein as per return filed on 08-07-2017 the returned total income is a sum of Rs. 37,51,100/- and exempt income is Rs. 9,93,494/-. All these repayments are made through bank accounts of the assessee existing in Vijaya Bank A/c No. 118400301000587.

Kalpana A

12) The credit of this creditor is a sum of Rs. 15,00,000/- credited on 11-01-2017 in the bank account of the assessee in Vijaya Bank Account No. 118400301000587 (Vijaya Bank Account). The confirmation of this creditor was filed on which the full address of the creditor is mentioned as " Flat No. 85, KH Road, Bengaluru- 560027".

Copy of PAN was also given and PAN is "AEUPK3029F". The amount was paid by her through RGTS. The copy of above bank account of the assessee in Vijaya Bank was also filed wherein this amount has been reflected. During the year under consideration the assessee has repayment of Rs. 3,00,000/- from 11-02-2017 to 11-03-2017 and these repayments are also reflected in Vijaya Bank account of the assessee. A sum of Rs. 12,00,000/- was outstanding as on 31-03-2017 and the same was also repaid from 11-04-2017 to 11-11-2017 and now no balance is outstanding. All these repayments are also reflected in the bank account of the assessee in Vijaya Bank. The copy of income tax return filed by the creditor for AY 2017-18 is also enclosed wherein as per return filed on 07-07-2017 the returned total income is a sum of Rs. 16,06,030/- and exempt income is Rs. 9,93,240/-. All these repayments are made through bank accounts of the assessee existing in Vijaya Bank A/c No. 118400301000587.

Srinivas Murthy S N

13) The credit of this creditor is a sum of Rs. 25,00,000/- credited on 18-02-2017 in the bank account of the assessee in State Bank of India (SBI) Account No. 32870611909. Copy of PAN was also given and PAN is "ASGPS598OD". The amount

was paid by him through RGTS UTR No. SBINR52017021800002498. The copy of above bank account of the assessee in SBI was also filed wherein this amount has been reflected. Apart from this the assessee has paid interest and interest paid by the assessee to this creditor from 17-02-2017 to 30-06-2017 is a sum of Rs.1,36,644/- out of which TDS is deducted at a sum of Rs 13,664/-. The repayment of Rs. 25,00,000/- on 30-06-2017 as per cheque no. 943848 which is also duly reflected in Vijaya Bank of the assessee being A/c No. 118400301000587. The interest payments are also paid by cheque no. 943850 which is also duly reflected in this Vijaya Bank account of the assessee. The repayments are as follow: -

1-4-2017	Dr	Opening Balance			25,00,000.00
30-6-2017	Cr	VIJAYA BANK CIA NO 118400301000587 Chq No : 943848 issued to mr. Srinivasa Murthy S N towards repayment of loan	Payment	1008	25,00,000.00
1-7-2017	Cr	VIJAYA BANK CIA NO 118400301000587 Chq No : 943850 issued to mr. Srinivasa Murthy S N towards interest amount @ 15 % per annum for the period 17-02-2017 to 30-06-2017	Payment	1011	1,22,980.00
	Cr	TDS-Interest(194A) - Being TDS on interest amount payable ie Rs 136644 @ 10%	Journal	963	13,664.00
9-2-2018	Dr	Interest on Loan Being interest payable to Srinivasa Murthy S N for loan of 45 lakhs from 17-2-17 to 30.6. 17 @ 15%	Journal	3116	1,36,644.00
					26,36,644.00
					26,36,644.00

Muralidhar. N / Nirmala M

14) The credit of this creditor is a sum of Rs. 13,00,000/- credited on 23-03-2017 in the bank account of the assessee in State Bank of India (SBI) Account No. 32870611909. Copy of PAN was also given and PAN is "AAJPN7648C" and "ABBPM5016G". The amount was paid by creditor through cheque no. 286357 which is duly reflected in the bank account of the assessee. The repayment of loan was made by the assessee on 01-04-2019 through cheque no 466821 from Vijaya Bank Account of the assessee being a sum of Rs. 14,82,000/- (Rs. 13,00,000/- on repayment of loan and Rs. 1,82,000/- on account of interest). Such repayment is reflected in the ledger as under: -

1-4-2019	Dr	Opening Balance			13,00,000.00
1-4-2019	Cr	VIJAYA BANK CIA NO 118400301000587 Chq no : 466821 issued to Mrs. Nirmala towards Principal amount (1300000+ 182000) towards interest	Payment	2	14,82,000.00
4-6-2019	Dr	Interest on Loan INT	Journal	318	1,82,000.00
					14,82,000.00
					14,82,000.00

Naveen Bhai R Soni.

15) The credit of this creditor is a sum of Rs. 20,00,000/- credited on 27-02-2017 in

the bank account of the assessee in State Bank of India (SBI) Account No. 32870611909. Copy of PAN was also given and PAN is "AGSP7152B". The amount was paid by him through RGTS UTR No. HDFCR52017022791100868. The copy of above bank account of the assessee in SBI was also filed wherein this amount has been reflected. Apart from this the assessee has been paying interest on regular basis and total interest paid by the assessee to this creditor from 27-02-2017 to 24-11-2017 is a sum of Rs. 2,65,314/-. All these interest payments are made through bank accounts of the assessee existing in SBI (above mentioned bank account) and Vijaya Bank A/c No. 118400301000587. These interest payments are also duly reflected in these accounts. That on the interest paid the assessee also deducted the tax at source. The repayment of this amount of Rs. 20,00,000/- is made from 24-11-2017 as reflected in the ledger of the creditor and these entries are also reflected in the respective bank account of the

1-4-2017	Dr	Opening Balance				20,00,000.00
21-6-2017	Dr	Interest on Loan Being interest amount payable @ 18% for Rs 20 Lakhs upto 30.06.2017	Journal	818		1,22,301.00
	Cr	TDS-Interest(194A) - Being TDS Deducted on interest amount payable @ 18% for Rs 20 Lakhs upto 30.06. 2017 ie. Rs 122301	Journal	819	12,230.00	
22-6-2017	Cr	VIJAYA BANK CIA NO 118400301000587 Chq no 676811 Amount transfer to Navin R soni - Interest amount	Payment	904	1,10,071.00	
10-10-2017	Dr	Interest on Loan Being Interest amount payable @ 18% for Rs 20 Lakhs from July 1st to Sep 30th	Journal	1808		89,753.00
	Cr	TDS-Interest(194A) - Being TDS Deducted on interest amount payable @ 18% for Rs 20 Lakhs upto 30.09. 17 ie. Rs 89753 x10%	Journal	1809	8,975.00	
	Cr	VIJAYA BANK CIA NO 118400301000587 Chq no 739571 Amount transfer to Navin R soni - interest amount	Payment	2057	80,778.00	
24-11-2017	Cr	STATE BANK OF INDIA A/C 32870611909 Chq no : 651803 utilised to make RTGS transfer to mr. Navin Bhai R Soni towards repayment of loan	Payment	2479	20,00,000.00	
15-12-2017	Cr	VIJAYA BANK CIA NO 118400301000587 Chq No : 188918 issued to mr. Navin Bhai R Soni towards interest payment from 1-10 -2017 to 24-11-2017 @ 18% after deducting TDS	Payment	2656	47,934.00	
	Cr	TDS-Interest(194A) - TDS DEDUCTED	Journal	2625	5,326.00	
	Dr	Interest on Loan Being interest amount payable @ 18% for Rs 20 Lakhs from Oct 1st to Dec 15th in full and final	Journal	2630		53,260.00
					22,65,314.00	22,65,314.00

Visweshwara S

16) The credit of this creditor is a sum of Rs. 30,00,000/- credited on 27-02-2017 in

the bank account of the assessee in State Bank of India (SBI) Account No.32870611909. Copy of PAN was also given and PAN is "ACCPV8356N". The amount was paid by him through RGTS UTR No. CNRBR52017022700712551. The copy of above bank account of the assessee in SBI was also filed

wherein this amount has been reflected. The assessee has been making repayment in the next FY i.e. FY 2017-18 and total amount repaid is an aggregate sum of Rs. 4,52,500/- leaving a outstanding balance of Rs. 25,47,500/-. The next year ledger of the creditor is as under: -

1-4-2017	Dr	Opening Balance			30,00,000.00
1-4-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929746 issued to Mr. Visweshwara S	3	40,000.00	
1-5-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929728	308	37,500.00	
1-6-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929729	661	37,500.00	
1-7-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929730	1012	37,500.00	
1-8-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929731	1340	37,500.00	
1-9-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929732	1659	37,500.00	
1-10-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929733	1961	37,500.00	
7-11-2017	Cr	STATE BANK OF INDIA A/C 32870611909 Payment Chq No : 686856 utilised to make NEFT to Mr. Visweshwara S against the returned cheque No : 929734 of Vijaya Bank + Bank Charges	2295	37,500.00	
14-12-2017	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 188907 Amount paid to Mr. Vishweshwara S in lieu of cheque No. 929735	2640	37,500.00	
1-1-2018	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929737	2824	37,500.00	
1-2-2018	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929738	3088	37,500.00	
1-3-2018	Cr	VIJAYA BANK C/A NO 118400301000587 Payment Chq No : 929739	3379	37,500.00	
				4,52,500.00	30,00,000.00
	Cr	Closing Balance		25,47,500.00	
				30,00,000.00	30,00,000.00

The above mentioned repayments are duly reflected in the bank account of the assessee in Vijaya Bank and State Bank of India.

Vitalink Wealth Advisory

17) The credit of this creditor is a sum of Rs. 25,00,000/- credited on 10-02-2017 in the bank account of the assessee in State Bank of India (SBI) Account No. 32870611909. The confirmation of this creditor was filed on which the full address of the creditor is mentioned as "Plot No. 36, Sri Sai Nagar C, Near Saibaba Temple Lothkunta. Awal Trimulgherry, Hyderabad 500015". Copy of PAN was also given and PAN is "AABCV4837C". The amount was paid by him through RGTS UTR No. ICICR42017021000771293 through bank account no. 3199860044304 of the creditor as mentioned in the bank statement of the assessee. The copy of above bank account of the assessee in SBI was also filed wherein this amount has been reflected. The amount is still outstanding.

18) It is further submitted that it is a case where the simple loans have been taken by the assessee for the reasons of purchase of property. The details as asked for during the course of assessment proceedings were submitted. Thorough scrutiny was made by AO and AO has accepted all other issues except the aforementioned credits for which the necessary evidence is on record. From the evidence submitted it can be seen that each of the creditor is having PAN and address of each of the creditors is also available. Despite placing such material on record the addition has been made without making any verification. The assessee had discharged the onus. The onus of the assessee was limited to prove the source and not to prove the source of source. Section 68 of the Act as applicable to AY 2017-18 reads as under; -

"Cash credits.

68. 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:

[Provided 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:

Provided further that nothing contained in the first 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.]"

19) That it can be seen from above provision that the onus to prove source of source

is applicable only in respect of the sum so credited consists of share application money, share capital, share premium or any

such amount by whatever name called and it is not extended to ordinary loans. Therefore, the onus was discharged by the assessee in the light of decision of Hon'ble Supreme Court in the case of CIT Vs Orrisa Corporation(supra), the relevant observations are as under: -

"13. 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 the 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 has 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) In the present case the assessee has given name and address of the creditors and their PAN also along-with confirmations. The AO did not make any enquiry in to the same and also did not issue notices to the creditors to examine the facts stated in the confirmations. All of them have explained their creditworthiness, therefore, the assessee has discharged the burden laid on it. Therefore, the addition made by the AO was uncalled for and it has wrongly been upheld by Ld. CIT(A) and addition of Rs. 1,60,00,000/- made by the AO and upheld by CIT(A), in view of the above submission of the assessee, is prayed to be deleted.

"GROUND NO. 1

1. The assessee has agitated the upholding of addition made u/s 68 of the Act amounting to R.s. 1,60,00,000/-.

GROUND NO. 2

2. It is urged that neither AO not CIT(A) discussed about the facts relating to each of the creditors separately and also evidence submitted in this regard and it is not made clear that how the explanation

offered by the assessee in the opinion of the AO is not satisfactory.

GROUND NO. 3

3. It is urged that CIT(A) has failed to appreciate that the explanation offered by the assessee and evidence submitted by the assessee in respect of each of the creditors was satisfactory to the opinion of the AO and addition was liable to be deleted.

Arguments

The details of the credits obtained by the assessee during the year under consideration and the particulars of evidence submitted with regard to each of the creditors is described in the following table :-

Bharat Hi-Tech Builders Private Limited								
AY 2017-18								
Name of the Person	Amount of Loan	Loan Repayment through banking channel as per ledger account	Outstanding Balance	Confirmation	PAN	Ledger Account	Bank Statement	Acknowledgement of ITR
Amit Shah-HUF	25,00,000	25,00,000	-	57	58	59-60	61-67	-
Anil Kumar	10,00,000	10,00,000	-	68	69	71	72-78	70
Kalpana A	12,00,000	12,00,000	-	79	80	82	83-91	81
Mr. Srinivasa Murthy SN	25,00,000	25,00,000	-	92	93	94	95-97	-
Muralidhar N/Nirmala M	13,00,000	13,00,000	-	98	99	100	101-102	-
Navin Bhai R Soni	20,00,000	20,00,000	-	103	104	105	106-110	-
Visweshwara S	30,00,000	4,52,500	25,47,500.00	111	112	113	114-125	-
Vitalink Wealth Advisory	25,00,000	0	25,00,000.00	126	127	128	129	-
Total	1,60,00,000	1,09,52,500	50,47,500					

It can be seen from the above details that the evidence submitted by the assessee in respect of each of the creditors consists of confirmation; PAN; Ledger in the books of the assessee; and bank statement of the assessee where the amount is credited or repaid. It is not a case where the assessee has not offered any explanation or explanation submitted by the assessee is non-satisfactory. The law relating to section 68 of the Act has been explained by Hon'ble Gujrat High Court in the case of CIT vs Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 159 (Gujarat) wherein it has been held that once the assessee has established that he has taken money by way of accounts payees cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial burden u/s 68 of the Act was discharged and in the case of that assessee the confirmation letters from the lenders were also submitted and considering these facts it has been held by Hon'ble Gujrat High Court that once the AO gets hold of the PAN of the lenders, it was his duty to ascertain from the AO of those lenders, whether in their respective return they had shown existence of such amount of money and has further shown that those amount of

money has been lend to the assessee. If the addition is made without verifying the income tax return of the creditors, the addition was rightly deleted by the Tribunal.

Further in the case of Rohini Builders Vs. Dy. CIT Equivalent/Neutral Citation: (2002)76TTJ(Ahd)521 MANU/IB/5040/2000. It has been held that assessee shall be considered to have discharged the initial onus which lay on it in terms of section 68 of the Act by proving the identity of the creditors by giving their complete address, PAN etc. and capacity was proved by showing the amounts received by account payee cheques drawn from bank account of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank account of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source and the genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of loan by the assessee to the depositors is made by account payee cheques. These observations are contained in para 7 and law in this regard is explained in para 8 and 8.1 of the order of the Tribunal and this decision of the Tribunal has been confirmed by Hon'ble Gujrat High Court in (2002) 256 ITR 360. It can be seen that in the present case the assessee has made the repayments through banking channels only which are duly described in the bank accounts of the assessee.

In this regard the assessee is also placing reliance on the following decisions :

- a. JCIT Vs M/s. Shalimar Housing & Finance Ltd. in I.T.A. No. 4079/Mum/2019.*
- b. DCIT Vs Shri Asit Surendrabhai Shah in ITA No. 945/Ahd/2018 AY 2009-10.*

6. In addition to the written synopsis, the ld.AR of the assessee submitted during the course of assessment proceedings that the entire documents were submitted before the AO viz., confirmation from lenders and

complete address, copy of ledgers account and bank statements, PAN, proof of TDS on interest payments were submitted of the lenders and income-tax return filed in the case of Anil Kumar M and Kalpana A. He further submitted that the AO had all the information and the assessee discharged the duty as per sec. 68 of the Act and the AO also had the details of the lenders. He could have asked the lenders, if he had any doubt in their identity, creditworthiness and genuineness of the transaction but he kept quiet and disallowed the loans received from the lenders. He further referred to the confirmations submitted by the lenders in which they have accepted that the amount has been remitted out of self generated income and given the address of the lenders. He further submitted that the interest have been paid on the loan taken in which, the TDS has also been deducted. The assessee has claimed interest as finance cost in the profit and loss account which is accepted by the AO. The proof for source of source is not applicable in the case of loans which is clear from the section 68 , it is applicable for share capital, share premium.

7. He submitted as per the above table, the repayment of the loan through bank has been made in subsequent years. He relied on the following judgments:-

- 1) CIT Vs. Empire Buildtech Pvt. Ltd., [2014] 43 taxmann.com 269 (Delhi)
- 2) Rick Lunsford Trade & Investment Ltd., Vs. CIT [2017] 77 taxmann.com 99 (Calcutta)
- 3) Rick Lunsford Trade & Investment Ltd., [2017] 77 taxmann.com 110 (SC)
- 4) Roshan Di Hatti Vs. CIT [1977] 107 ITR 938 (SC)

8. He further submitted that the case law relied by the revenue authorities are not applicable in the present facts of the case. During the course of appellate proceedings, the CIT(A) also could have issued letter if he had any doubt but he did not do so. He relied on following decisions.

- 1) CIT Vs. Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 169 (Guj)
- 2) Rohini Builders Vs. Dy. CIT in ITA No.3860/Ahd/1992 15/09/2000
- 3) JCIT Vs. M/s Shalimar Housing & Finance Ltd.,
- 4) DCIT Vs. Shri Asit Surendrabhai Shah in ITA No.945/Ahd/2018 and others

9. Further, the ld.AR also submitted on 07/12/2019 the entire details were submitted during the course of assessment proceedings and he referred to the letter, which is placed at paper book page nos. 40-41. It is not understood why the AO has mentioned in his order that the details were not submitted and these facts were also available with the CIT(A).

10. On the other hand, the ld. DR relied on the orders of the lower authorities and submitted that the order passed by the Revenue authorities should be upheld. The assessee was not able to discharge the liability as per u/s 68 of the Act for providing the cash credit found in the books of account of the assessee. The lower authorities have rightly pointed out that the assessee has not submitted the documents as per sec. 68 of the Act. The assessee did not prove genuineness of the transactions, credit worthiness of the lenders and identity of the lenders. The case law referred by the ld. CITA) is squarely applicable in the present facts of the case.

11. Considering the rival submissions, we note that during the assessment year, the assessee has received Rs.1.60 crore from 8 lenders as per the above table to

which the AO has added u/s 68 of the Act and applied tax rate u/s 115BBE of the Act. The AO noted in his order that the assessee not filed documents for substantiating its case in terms of sec. 68 of the Act. However, during the course of hearing before us, the ld.AR of the assessee has filed paper book, in which it has been submitted that the copy of confirmation, ledger account and bank statement of lenders were provided to the AO, which is evident from the page nos.40 and 41 which is in pursuance to the notice u/s 142(1) of the Act dated 07/12/2021 and 28.11.2019. It is clear that the assessee has furnished details as noted above and from the written submission, we also noted that the copy of income tax return is also filed in respect of Anil Kumar and Kalpana. We also noted from the copy of confirmations that the lenders have stated that the transactions have been done through banking channel and copy of bank account is attached in which, the transactions are reflecting and they have confirmed that the balance was outstanding and source of genuineness and copy of PAN card have also been enclosed. We also noted from the copy of lender's ledger the amount has been received through banking channel and in some cases the assessee has returned the loan taken. It is clear from the assessment order at para No.4.1, the

assessee was asked to furnish the details of loan received during the year, amount interest paid along with the return of income and source of income in the hands of the lenders. The assessee furnished details as per the written synopsis quoted supra. The assessee has also paid interest to the lenders which has been allowed by the AO. We note from the Note No.19 of the Financial Statement there is interest of secured loan and other borrowing costs, which has been accepted by the AO. On one side the AO has not accepted the loan taken by the assessee and it has been treated as income u/s 68 of the Act as income from other sources. However, the interest payment on such loan has been allowed as revenue expenditure under the head 'profit and loss account of the assese. The AO has applied dual policy for allowing the interest/finance cost on unsecured loan and disallowing loan taken. We further find substance in the argument of the ld.AR that the source of source is not required to be proved in the case of loan taken. Since the assessee had submitted the details of lenders and if he had any doubt he could have asked further enquiry from the lenders but he did not make further enquiry. During the course of appellate proceedings, the CIT(A) also did not do so, therefore, case law relied by the ld.AR of the assessee supports the case of the assessee.

12. In the case of CIT Vs. Ranchhod Jivabhai Nakhava [2012] 21 taxmann.com 159 (Guj) relied by ld. AR, it has been held as under:-

“14. After hearing Mrs. Bhatt, the learned advocate appearing on behalf of the appellant and after going through the materials on record, we are unable to accept her contention that in this case the Revenue has discharged its onus and it was for the assessee to further prove the genuineness and creditworthiness of the creditors.

15. In our view, once the assessee has established that he has taken money by way of accounts payee cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial burden under Section 68 of the Act was discharged. It further appears that the assessee had also produced confirmation letters given by those lenders.

16. Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, in our opinion, the Assessing Officer did not follow the principle laid down under Section 68 of the Income Tax Act.

17. If on verification, it was found that those lenders did not disclose in their income tax return the transaction or that they had not disclosed the aforesaid amount, the Assessing Officer could call for further explanation from the assessee to prove the genuineness of, the transaction or creditworthiness of the same. However, without verifying such fact from the income tax return of the creditors, the action taken by the Assessing Officer in examining the lenders of the assessee was a wrong approach. Moreover, we find that those lenders have made inconsistent statement as painted out by the Commissioner of

Income Tax (Appeals) and in such circumstances, we find that both the Commissioner of Income Tax (Appeals) and the Tribunal were justified in setting aside the deletion as the Assessing Officer, without taking step for verification of the Income Tax Return of the creditors, took unnecessary step of further examining those creditors. If the Assessing Officers of those creditors are satisfied with the explanation given by the creditors as regards those transactions, the Assessing Officer in question has no justification to disbelieve the transactions reflected in the account of the creditors. In other words, the Assessing Officer had no authority to dispute the correctness of assessments of the creditors of the assessee when a coordinate Assessing Officer is satisfied with the transaction.”

13. In the case of Rohini Builders Vs. Dy.CIT in ITA No.3860/Ahd/1992 15/09/2000, it has been held as under:-

(7) Shri Manojkumar R. Acharya had deposited sum of Rs. 60,000 on 6-9-1988. He stated on oath that he has been doing diamond assorting since last 10 years. He is assessed to tax also. Immediate source stated to be savings and cash on hand. He has bank account since 1987 and it does not reflect his saving a sum of Rs. 60,000 was deposited in cash and a cheque of like amount was issued to the assessee. This cannot be believed that the depositor would keep Rs. 60,000 in hand for nothing despite having bank account. Therefore, the deposit is not considered as genuine.

(8) Smt. Neelam Kantilal Shah, Surat, had deposited Rs. 60,000 on 2-9-1988. She stated that she is assessed to tax and does sewing and embroidery work. She has bank account and she has stated that deposit was out of her savings. Her capital account does not show sufficient cash in hand and no immediate source of Rs. 60,000 was provided. She had received back Rs. 15,000 from one party and was deposited to the extent of Rs. 15,000 is treated as explained. The receipt of Rs. 45,000 is treated as unexplained and capacity to advance money was not proved.

(9) Shri R.K. Prajapati Surat, had deposited Rs. 70,000 on 30-9-1988, with the assessee. Notice under section 131 was

issued to the depositor which came bank from the postal authority with the remark "not known". Therefore, this is treated as explained credit."

14. The above judgment of the ITAT in the case of Rohini Builders was upheld by the Hon'ble Gujarat High Court reported in [2003] 127 TM 523 (Guj).

15. In the case of JCIT Vs. M/s Shalimar Housing & Finance Ltd.,, it is held as under:-

"14. We have carefully considered the submissions. We note that assessing in this case has submitted the following documents.

- 1. Confirmation from the lenders*
- 2. Bank statement of lenders*
- 3. Financial statement of lenders*
- 4. Copy of acknowledgement of Return of Income.*
- 5. Download of company master data from the MCA website.*
- 6. Statement of loan repayment.*

15. The Assessing Officer has duly issued notice u/s 133(6) to the above said parties. All the necessary confirmation and compliances have been made. The assessing officer thereafter has not brought on record result of any further enquiry made. The AO's observation from the financials of lenders submitted are in the nature of AOs surmise, devoid of any cogent enquiry.

16. The documents mentioned above with regard to all the lenders are also submitted before us, by way of paper book. We note that the identity of the lenders is duly proved. They have duly responded to assessing officers notice issued u/s 133(6) and have made due compliances.

It is not even the case of—' the assessing officer that these parties are non-existent. The lending companies are also active companies as evident from the documents furnished from the website of Ministry of Corporate Affairs. The bank statement of the lending companies have also been furnished. Loan is granted through bank. No adverse inference has been noted by the assessing officer from the bank statement.

17. The grievance of the assessing officer is that these companies do not have substantial income and hence are not capable of giving loans. He has also expressed doubt about the position of reserves and fund position without bringing on record any cogent material from any further enquiry made by bench. We find that the funds position of the companies as noted by the 1d.CIT(A) is quite capable of granting loans. The adverse inference drawn from the financial statement of lending companies is only a surmise by the assessing officer without making any enquiry. In this regard, we note that honorable jurisdictional High Court in the case of Pr.CIT vs Veedhata Tower Pvt.Ltd, order dated 21.04.2018 has held that when all the necessary details of the fund provider was available with the assessing officer, he was free to make the necessary enquiry and addition under section 68 in the hands of the recipient were unjustified. Furthermore, assessee has also paid interest to the lenders. It has also deducted tax at source. Loan have been duly repaid, some part has been repaid even in the present assessment year. In these circumstances, in our considered opinion assessee has discharged the onus. The assessing officer has not brought on record any cogent material to make the addition as unproved cash credit. Hence, the addition made by the assessing officer is not sustainable.

18. The case laws relied upon by the Ld. Departmental Representative are not at all applicable on the facts of the present case. In the case of Precision Finance(P.) Ltd (supra), the parties were found to be non-existent. In the case, we are dealing with it is nobody's case that the parties are non-existent. In Navodaya Castles(P.) Ltd (supra), share subscribers were found to be paper company. This is not at all the case here. In E.Ummer Bava (supra), the issue was gift from NRI where the

creditworthiness of the donor was not proved. In Shantananda Steels(P.) Ltd (supra), the issue was share capital and huge share premium from entry providers from Kolkatta. In NRA Iron & Steel(P.) Ltd (supra), the issue was non-existent share applicants. In Synergy Finlease(P.) Ltd(supra), the issue was share capital and improbable share premium from accommodation entry providers. In Blessings Commercial(p.) Ltd(supra), the issue was share capital and huge share premium, where the providers had minimum balance in their bank account. Accordingly, we note these case laws do not help the case of the revenue.”

16. In the case of DCIT Vs. Shri Asit Surendrabhai Shah in ITA No.945/Ahd/2018 and others, it is held as under:-

“9. We have given our thoughtful consideration and perused the materials available on record including the Paper Books and compilation of case laws filed by the assessee. In all the above appeals, the unsecured loan given by Smt. Hansaben M. Patel was doubted by the Assessing Officer on the ground that on sale of lands at Sanand District, Ahmedabad for Rs. 149 crores, but she failed to file the computation of Short Term Capital Gain. On completion of the exparte assessment order dated 23-12-2016 in the case of Smt. Hansaben M. Patel, wherein the A.O. determined the Short Term Capital Gain of Rs. 103.02 crores for the Assessment Year 2009-10 the same was also neither paid by Smt. Hansaben M. Patel nor filed any appeal against the assessment order. Thus the sale of the lands and execution of sale deeds by Smt. Hansaben M. Patel was not doubted by the Revenue, but as her whereabouts are not known, thereby the loan transactions to various parties is doubted by the Revenue. Since the respondent assessee herein provided Copies of the Ledger account, confirmation, Bank Details, PAN and Income Tax Return of Smt. Hansaben M. Patel and contra entry and Bank Statements of Smt. Hansaben M. Patel, etc. After considering the above details we are of the considered view the assessee has discharged its initial onus cast upon him u/s. 68 of the Act and the Revenue failed to disprove the above transaction as bogus. Therefore both the Ld. CIT(A)

and the Co-ordinate Benches of this Tribunal deleted the additions made u/s. 68 of the Act.

9.1. Further it is the case of the assessee that the unsecured loan availed was repaid in the next financial year to the creditor namely Smt. Hansaben M. Patel through cheque payments and the bank statement also filed before the Lower Authorities. Therefore we are of the considered opinion, the provisions of section 68 does not attract in the above transaction and thereby we uphold the order passed by the Ld. CIT(A) deleting the addition made u/s. 68 of the unsecured loans availed from Smt. Hansaben M. Patel. Thus the grounds raised by the Revenue are devoid of merits and the same are liable to be rejected and ITA No. 945/Ahd/2018 filed by the Revenue is hereby dismissed.

10. Following the above decision of ours, we hereby delete the addition made on account of unsecured loans from Smt. Hansaben M. Patel by the respective assessee in ITA Nos.1249/Ahd/2018, 1252/Ahd/2018, 1253/Ahd/2018, 1254/Ahd/2018, 457/Ahd/ 2020, 477/Ahd/2020 8s IT(SS)A No. 54/Ahd/2021 are hereby deleted and the respective grounds raised by the Revenue are held to be devoid of merits. Thus the appeals filed by the Revenue are dismissed.”

17. Respectfully following the above judgments and our above noted observations, we allow the appeal of the assessee.

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

Order pronounced in court on 4th day of April, 2024

Sd/-

(GEORGE GEORGE K)

Vice President

Sd/-

(LAXMI PRASAD SAHU)

Accountant Member

Bangalore,

Dated : 04.04.2024

Vms

Copyto:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.