

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.344/Ind/2023
(Assessment Year: 2017-18)

Aabhushan Dhamnod 1 st Floor, Ganpati Market AB Road Dhamnod MP	Vs.	ITO, Dhar
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: ABGFA0812K		
Assessee by	Shri Pranay Goyal & Shri S.N. Goyal, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	10.04.2024	
Date of Pronouncement	09.05.2024	

ORDER

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 16.08.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2017-18. The assessee has raised following grounds of appeal:

“On the facts and in the circumstances of the cases: -

1. *That, the appellate order passed by Ld. CIT-A is erroneous on the facts and in law.*
2. *That, the appellate order passed by Ld. CIT-A, is contrary to the weight of evidence on record, perverse, unjustified and, therefore the additions are liable to be struck down.*
3. *That, the CIT-A erred not to follow the principal of natural justice as Ld. CIT-A passed not considering the written submission made by the appellant in which proper explanation was furnished.*
4. *That, the Hon'ble CIT(A) has erred to confirm the addition u/s 68 of the Act made by Ld. AO on account of capital introduced of Rs. 2,00,54,089/- by partners in the firm without considering even a single of evidence furnished before Hon'ble CIT(A) to prove identity, genuineness and creditworthiness of all the partners and thus, such addition is liable to be struck down.*
5. *That, the Hon'ble CIT(A) as well as Ld. A.O. both grossly erred, both on facts and in law, in making the addition on account of unsecured loans to the extent of Rs.6,64,991/- u/s 68 of the Act, without considering the material fact that the appellant had duly discharged its initial onus of proving the identity of the loan creditors, the genuineness of the transactions and creditworthiness of loan creditors beyond all doubts by producing all the necessary documentary evidences.*
6. *That, the Hon'ble CIT(A) has erred to confirm the addition u/s 68 of the Act made by Ld. AO on account of the outstanding expenses of Rs. 1,17,267/- on account of salary payable and of Rs. 10,000/- on account of audit fees payable totalling to Rs. 1,27,267/-, without considering the fact that such expenses are duly explained and recorded in audited books of accounts and thus, such addition u/s 68 of the Act is liable to be struck down.*
7. *That, the Hon'ble CIT(A) has erred to confirm the addition u/s 68 of the Act made by Ld. AO on account of secured loan from Bajaj Finance Limited amounting to Rs. 63,768/- without*

considering the evidence furnished before Hon'ble CIT(A) and therefore, such addition is grossly wrong.

8. That, the Hon'ble CIT(A) has erred to confirm the addition of Rs. 5,28,542/- on account of estimation of net profit without rejecting the books of accounts, and without considering the fact that the books of accounts are duly audited and thus, such addition on estimation basis is perverse liable to be deleted.

9. That, the Hon'ble CIT(A) and Ld. AO has erred in applying higher rates u/s 115BB of the Act retrospectively without appreciating that substantive and penal provisions cannot be given retrospective effect and thus, addition of such higher rate is grossly wrong.”

2. Ground no.1 to 3 are general in nature and depending upon the outcome of the effective and specific grounds raised by the assessee therefore, no specific arguments were advanced by the parties and consequently no specific finding is required.

3. Ground no.4 is regarding addition of Rs.2,00,54,089/- made by the AO u/s 68 of the Act on account of capital introduced by the partners in the firm which has been confirmed by the CIT(A). The assessee is a partnership firm formed during the year under consideration. The assessee filed its return of income for the year under consideration on 21st September 2017 declaring loss of Rs.2,15,614/-. The case was selected for scrutiny through CASS and consequently the AO issued notice u/s 143(2) and notice u/s 142(1) along with questionnaire inter alia on introduction of capital of Rs.2,00,54,089/- during the year under consideration. The AO has stated in the assessment year that no evidence has been furnished by the assessee in respect of the capital introduced

during the year and consequently the amount of Rs.2,00,54,089/- was added u/s 68 of the Act. The assessee challenged the action of the AO before the CIT(A) and contended that the assessee firm was incorporated during the year under consideration and the partners of the assessee firm introduced capital contribution total amounting to Rs.2,00,45,002/-. The assessee produced the details of capital contribution by 11(eleven) partners along with their name, PAN, Address and amount of capital contributed. The assessee also relied upon various decisions on this point that the capital introduced by the partners cannot be added u/s 68 of the Act when the assessee has produced the record to show source of such capital contribution by the partners as the amount has been duly reflected in the books of accounts maintained by the partners and partners have confirmed such contribution. The CIT(A) did not accept the contention of the assessee on the ground that the assessee has not filed the complete details of the some of the partners and details furnished are not sufficient as well as the partners have borrowed funds for investments.

4. Before the Tribunal Ld. AR of the assessee has submitted that the AO issued notice u/s 142(1) on 10.12.2019 and passed the assessment order on 16.12.2019 therefore, the assessee was not given sufficient time and opportunity to produce relevant details and evidence. He has further submitted that before the CIT(A) the assessee filed additional evidence under Rule 46A of the Income

Tax Rules 1962. The evidence produced by the assessee is not disputed by the CIT(A) as recorded in para 6.3 and 6.4 of the impugned order however, the CIT(A) has confirmed the addition on the ground that the details and evidence produced by the assessee are not sufficient. He has submitted that once the partners have confirmed the introduction of capital then the same cannot be treated as unexplained cash credit and income of the assessee. Ld. AR has submitted that the assessee produced supporting evidence in respect of each and every partner which includes PAN, acknowledgment of ITR, computation of income, ledger account of partners in the books of the assessee firm, bank account statement of the assessee firm showing the transaction done through banking channel, balance sheet/statement of affairs of the partners in which the investment made in the assessee firm is appearing, bank account statement of the partners to show the capacity and genuineness of the transactions. Thus the Ld. AR has submitted that the identity of the partners are not in dispute who are also signatory of the partnership deed as well as their PAN and ITRs proves the identity of the partners. Since the transactions are through banking channels and partners have confirmed the

introduction of capital as reflected in the balance sheet/ statement of affair of the partners as well as in the books of accounts of the assessee and therefore, the genuineness of the transactions cannot be doubted. He has referred to the relevant documents of each of the partners and submitted that once the copy of ITR, computation of income, balance sheet and capital account of partners is produced then the assessee discharges its onus to establish the identity and creditworthiness of the partners as well as genuineness of the transactions. Ld. AR has submitted that though the CIT(A) has remarked that in respect of some of the partners the supporting documents were not filed however, he has referred to the details of the documents produced before the CIT(A) and submitted that the assessee has produced all the supporting evidence including copy of ITR, computation of income, balance sheet, capital account of partners along with bank account of the assessee as well as bank account of some of the partners. He has further submitted that when this is first year of the business of the assessee firm and the assessee firm was created during the year under consideration then the capital introduced by the partners cannot be assessed in the hands of the assessee. If the partners are

not able to explain the source of the capital introduced in the assessee firm then the addition can be made in the hands of the partners and not in the hands of the assessee firm. In support of his contention he has relied upon the following decisions:

(i).PCIT Vs. Vaishnodevi Refoils & Solvex [2018] 96 taxmann.com 469 (SC)

(ii).CIT Vs. Metachem Industries [2001] 116 Taxman 572 (M.P.)

(iii).CIT Vs. Pankaj Dyestuff Industries in Income Tax Reference nNo. 241 of 1993 (Gujrat HC)

(iv). Garima Polymers (P.) Ltd Vs. ACIT [2021] 131 taxmann.com 4 (Delhi-Trib.)

(v).CITVs. M/s Kewal Krishnan & Partners, DB ITA No. 185/08 (Rajasthan HC)

(vi). ACIT Vs. M/s Mayur Industries, Khandwa (2023) 34 ITJ Online 94 (Trib. - Indore),

(vii). M/s Ruhi Construction Vs. JCIT I.T.A No. 158/Ind/2013 & 169/Ind/2013

5. On the other hand, ld. DR submitted that the assessee has failed to discharge its onus during the assessment proceedings to prove the identity and creditworthiness of the creditors as well as genuineness of the transactions. Only before the CIT(A) assessee has filed some documents which were not sufficient to establish the identity, creditworthiness of the creditors/partners and

genuineness of the transactions. Now the assessee has filed certain documents which cannot be considered. He has relied upon the orders of the authorities below.

6. In the rejoinder Ld. AR has submitted that the assessee filed additional evidence before the CIT(A) due to insufficient time given by the AO however, the CIT(A) without appreciating the additional evidence and details produced by the assessee has confirmed the addition made by the AO. He has further submitted that the assessee even filed the supporting evidence to prove source of source which is not required to be proved. Therefore, the evidence produced before the CIT(A) was more than enough to discharge the onus to prove the identity, creditworthiness of the creditors and genuineness of the transactions.

7. We have considered rival submissions as well as relevant material on record. The AO has made an addition u/s 68 of the Act after issuing show cause notice u/s 142(1) on 10.12.2019. The finding of the AO in the assessment order is very brief and cryptic as under:

“1. Addition on account of capital introduction:- The assessee firm has introduced capital of Rs.2,00,54,089/- during the year under consideration.. However, no evidence has been furnished by the assessee Therefore the amount of Rs.2,00,54,089/- is being added to the total income of the assessee u/s 68 of the Income Tax Act, 1961. Hence, penalty proceedings u/s 271AAC of I. T. Act, 1961 is being initiated separately on this issue. Addition of Rs.2,00,54,089/-“

7.1 Ld. AR has pointed out that since the order was passed on 16.12.2019 and assessee was not given sufficient time to produce the supporting evidence. We agree with this grievance of the assessee that the AO has issued notice u/s 142(1) only on 10th December 2019 and thereafter, passed impugned order on 16th December 2019 thereby, the assessee was not given a proper and sufficient opportunity to response to the show cause notice issued by the AO and to produce the supporting evidence. It is pertinent to notice that the amount in question has been duly reflected in the books of the assessee firm as capital introduced by the partners. The partners accounts in the books of the assessee firm are also not in dispute reflecting the respective capital introduced by them. Before the CIT(A) the assessee has submitted the evidence in support of the amounts introduced by the partners as respective capital in the partnership firm. The additional evidence filed by the assessee is placed at page no.213 to 311 of the paper book. The details of the additional evidence are summarized by the assessee in the tabulation A to D as under:

TABLE-A

S. No.	Nature of document	Ashok Bansal		Rajendra Mahajan		Jai Prakash Patidar	
		Addition; Rs. 22,40,000/-		Addition; Rs. 32,00,000/-		Addition; Rs.20,77,280/-	
		Pg. No.	Remarks	Pg. No.	Remarks	Pg. No.	Remarks
I. FOR IDENTITY							
1	PAN	-	PAN - AIFPB1741E issued by Income Tax Department enclosed.	-	PAN - ABDPM0944M issued by Income Tax Department enclosed.	-	PAN - AWFPP5803R issued by Income Tax Department enclosed.
2	Acknowledgment of Income Tax Return and computation of Income	213-228	ITR and computation of income for A.Y. 2017-18 and preceding 2 assessment year enclosed	229-240	ITR and computation of income for A.Y. 2017-18 and preceding 2 assessment year enclosed	241-250	ITR and computation of income for A.Y. 2017-18 and preceding 2 assessment year enclosed
II. FOR GENUINENESS OF THE TRANSACTIONS							
1	Lodger Account of partner in books of the appellant firm.		Transaction done through banking channel proves genuineness.		Transaction done through banking channel proves genuineness.		Transaction done through banking channel proves genuineness.
2	Balance Sheet/SOA of the partner in which name of appellant firm is appearing in Investments		Thus, genuineness of the transaction gets proved beyond doubt as also partner being inextricably linked with the firm (SOA of AY 2017-18 & previous 2 assessment year enclosed)		Thus, genuineness of the transaction gets proved beyond doubt as also partner being inextricably linked with the firm (SOA of AY 2017-18 & previous 2 assessment year enclosed)		N.A.
3	Relevant Bank Statement of the appellant firm		Bank statement highlighting the amount credited		Bank statement highlighting the amount credited		Bank statement highlighting the amount credited

			through banking channel		through banking channel		through banking channel
4	Relevant Bank Statement of the Partner.	NA	Bank Account enclosed of such partner, no cash deposit before advancing capital.	NA	Bank Account enclosed of such partner, cash of only 4.5 lakhs deposit before advancing capital out of regular business sales.		Bank Account enclosed of such partner, cash of only 6 lakhs deposit before advancing capital out of regular business sales.
III. FOR CREDITWORTHINESS							
1.	Acknowledgment of Income Tax Return and computation of income		Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Rental income and Business Income from Kohinoor Palace, Dhamnod (Trading of Gold, Jewelry etc.)		Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Business activity running in the name of Anurag Jewelers.		Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Business activity running in the name of Yashodh Jewelers.
2	Statement of Affairs (SOA) of the partner		Own capital of Rs. 30,57,754/- and borrowed secured and unsecured funds of Rs. 52,30,667/- which in itself speaks in volume about creditworthiness of the partner		Own capital of Rs. 88,48,217/- and borrowed secured and unsecured funds of Rs. 34,08,000/- which in itself speaks in volume about creditworthiness of the partner		NA
3	Relevant Bank Statement of the Lender.	NA	As above	NA	As above	395-397	As above
4.	Documents to prove source of source in respect of unsecured loan obtained before advancing capital		i) 2,00,000 USL received from Agrawal Stationary Prop. Neha Agrawal – ITR, Bank Statement &		i) 15,00,000/- USL received from Anurag Mahajan – ITR, Bank Statement, balance sheet, confirmation,		i) 8,36,200/- USL received from Gauri Shankar Patidar – Bank statement, confirmation of

by partner	confirmation enclosed. ii) 8,00,000 USL received from Agrawal Services Prop. Ashok Agrawal – ITR, bank Statement, Balance Sheet & Confirmation enclosed. iii) 3,00,000/- USL received from Barchemeching center prop. Anil Barchi – ITR, Bank statement, Balance sheet & confirmation enclosed. iv) 3,00,000/- Received from Ankita Showroom Prop. Meenakshi Barchi -ITR, Bank Statement, Balance Sheet & confirmation enclosed. v) 5,00,000/- received from Kishanchand Patidar – Bank Statement and land details Khasra Form enclosed being agriculturist.	agriculture land holding details and money lending business certificate enclosed. ii) 10,00,000/- USL received from Anmol Mahajan – ITR, bank statement & confirmation enclosed. iii) 2,00,000/- USL received from Koyal Bai Mahajan – ITR, Bank statement & confirmation enclosed.	loan and land details such as khasra form enclosed being agriculturist, ITR of AY 2016-17 enclosed showing agricultural income and income from other source. ii) 6,50,000/- USL received from Narayan Patidar – Bank statement and land details such as khasra form enclosed being agriculturist. iii) 5,00,000/- USL received from Subhash Ganpat Patidar – Bank statement, confirmation of loan and land details such as khasra form enclosed being agriculturist
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TABLE-B

S. No.	Nature of document	Nandkishore Soni	Dinesh Patidar	Manish Patidar
		Addition; Rs. 13,35,000/-	Addition; Rs. 16,85,943/-	Addition; Rs.22,40,000/-

		Pg. No.	Remarks	Pg. No.	Remarks	Pg. No.	Remarks
I. FOR IDENTITY							
1	PAN		PAN – BCGPN0290L issued by Income Tax Department enclosed.		PAN – BDWPP4814R issued by Income Tax Department enclosed.		PAN – BGTPP83311H issued by Income Tax Department enclosed.
2	Acknowledgment of Income Tax Return and computation of Income		ITR and computation of income for A.Y. 2017-18 enclosed		ITR and computation of income for A.Y. 2017-18 and preceding 2 assessment year enclosed		ITR and computation of income for A.Y. 2017-18 and preceding 2 assessment year enclosed
II. FOR GENUINENESS OF THE TRANSACTIONS							
1	Ledger Account of partner in books of the appellant firm.		Transaction done through banking channel proves genuineness.		Transaction done through banking channel proves genuineness.		Transaction done through banking channel proves genuineness.
2	Balance Sheet/SOA of the partner in which name of appellant firm is appearing in Investments		Thus, genuineness of the transaction gets proved beyond doubt as also partner being inextricably linked with the firm (SOA of AY 2017-18 assessment year enclosed)		Thus, genuineness of the transaction gets proved beyond doubt as also partner being inextricably linked with the firm (SOA of AY 2017-18 & previous 2 assessment year enclosed)		Thus, genuineness of the transaction gets proved beyond doubt as also partner being inextricably linked with the firm (SOA of AY 2017-18 & previous 2 assessment year enclosed)
3	Relevant Bank Statement of the appellant firm		Bank statement highlighting the amount credited through banking channel		Bank statement highlighting the amount credited through banking channel		Bank statement highlighting the amount credited through banking channel
4	Relevant Bank Statement of the Partner.	NA	Bank Account enclosed of such partner 3,00,000/- cash deposit before	NA	Bank Account enclosed of such partner, cash of only 6.70 lakhs deposit		Bank Account enclosed of such partner, cash of only 1 lakhs

			advancing capital.		before advancing capital out of regular business sales.		deposit before advancing capital out of regular business sales.
III. FOR CREDITWORTHINESS							
1.	Acknowledgment of Income Tax Return and computation of income		Submitted above and on perusal of the same it can be seen regular income tax return filer offering Business Income from (Trading of Gold, Jewelry etc.)		Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Business activity running in the name of Ashwin Jewelers.		Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Business activity running in the name of OMKAR Jewelers.
2	Statement of Affairs (SOA) of the partner		Own capital of Rs. 19,19,508/- and borrowed secured and which in itself speaks in volume about creditworthiness of the partner		Own capital of Rs. 14,41,189/- and borrowed secured and unsecured funds of Rs. 13,93,369/- which in itself speaks in volume about creditworthiness of the partner		Own capital of Rs. 13,49,624/- and borrowed secured and unsecured funds of Rs. 23,69,180/- which in itself speaks in volume about creditworthiness of the partner
3	Relevant Bank Statement of the Lender.	NA	As above	NA	As above	395 - 397	As above
4.	Documents to prove source of source in respect of unsecured loan obtained before advancing capital by partner		i) House property of Rs. 9,36,768/- sold by spouse of the partner and transferred Rs. 9,00,000/- directly to the appellant firm on behalf of partner- copy of purchase and sale deed enclosed along with the bank statement of the spouse of the partner. Spouse of		i) 1,99,000/- USL received from Anurag Patidar – Bank Statement and confirmation enclosed. ii) Spouse of partner advanced Rs. 6,29,971/- directly to the appellant firm on behalf of partner, ITR, Bank Statement & confirmation of		i) 5,00,000/- USL received from Nimar Sakh Sahakari Sanstha Maryadit Dhar – Loan Statement & Confirmation enclosed ii) 5,00,000/- USL received from Govind Omkarlal Ji Patidar, who took loan of such amount from

		partner being house wife and Capital Gain Income was below maximum amount not chargeable to tax hence return of income not filed by spouse of the partner.	Spouse of partner enclosed.	Nimar Sakh Sahakari Sanstha Maryadit Dhar, Bank statement of lender to partner and loan statement of lender & confirmation enclosed. iii) 9,00,000/- USL received from Spouse of partner- Bank statement and details of Agricultural land held being agriculturist encl.
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TABLE-C

S. No.	Nature of document	Lalji Patidar Addition; Rs. 35,52,149/-		Kamlesh Patidar Addition; Rs. 20,05,000/-		Kailash Chandra Patidar Addition; Rs.4,15,230/-	
		Pg. No.	Remarks	Pg. No.	Remarks	Pg. No.	Remarks
I. FOR IDENTITY							
1	PAN	-	PAN – AQCPP0683Q issued by Income Tax Department enclosed.	-	PAN – ARTPP2566N issued by Income Tax Department enclosed.	-	PAN – AINPP7452L issued by Income Tax Department enclosed.
2	Acknowledgment of Income Tax Return and computation of Income	283-295	ITR and computation of income for A.Y. 2017-18 and preceding 2 assessment year enclosed	296-298	ITR and computation of income for A.Y. 2017-18 and preceding 1 assessment year enclosed	299-304	ITR and computation of income for A.Y. 2017-18 and preceding 1 assessment year enclosed
II. FOR GENUINENESS OF THE TRANSACTIONS							

1	Ledger Account of partner in books of the appellant firm.		Transaction done through banking channel proves genuineness.		Transaction done through banking channel proves genuineness.		Transaction done through banking channel proves genuineness.
2	Balance Sheet/SOA of the partner in which name of appellant firm is appearing in Investments		Thus, genuineness of the transaction gets proved beyond doubt as also partner being inextricably linked with the firm (SOA of AY 2017-18 assessment year enclosed)		NA		NA
3	Relevant Bank Statement of the appellant firm		Bank statement highlighting the amount credited through banking channel		Bank statement highlighting the amount credited through banking channel		Bank statement highlighting the amount credited through banking channel
4	Relevant Bank Statement of the Partner.	NA	Bank Account enclosed of such partner's prop. Firm in the name of Ambika Jewelers out of regular sales.	NA	Bank Account enclosed of such partner, cash of only 3 lakhs deposit before advancing capital out of regular Income.		Bank Account enclosed of such partner, cash of only 30,000/- deposit before advancing capital out of regular business sales.

III. FOR CREDITWORTHINESS

1.	Acknowledgment of Income Tax Return and computation of income		Submitted above and on perusal of the same it can be seen regular income tax return filer offering Business Income from Ambika Jewelers (Trading of Gold, Jewelry etc.)		Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Business activity running in the name of Gautam Jewelers.		Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Business activity running in the name of Patidar Jewelers. Further, family of the partner
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							agriculturist, land holding documents in the name of mother enclosed.
2	Statement of Affairs (SOA) of the partner		Own capital of Rs. 38,57,437/- and borrowed capital of Rs. 47,73,703/- which in itself speaks in volume about creditworthiness of the partner		NA		NA
3	Relevant Bank Statement of the Lender.	NA	As above	NA	As above	395 - 397	As above
4.	Documents to prove source of source in respect of unsecured loan obtained before advancing capital by partner		<p>i) 13,00,000/- USL received from Mamta W/o Rameshwar Patidar-Bank statement of lender to partner who in turn took loan from financial institution of Rs. 10,60,000/- enclosed. Also being agriculturist land holding documents enclosed.</p> <p>ii) 4,50,000/- USL received from Mahendra Patidar - Bank Statement, confirmation and land holding documents being agriculturist enclosed.</p> <p>iii) 4,50,000/- USL received from Shivraj Singh Bharat Singh Nikun - Bank statement,</p>		<p>i) 2,80,000/- USL received from Rajesh Rewa Ji Patidar - Bank Statement and confirmation enclosed.</p> <p>ii) 11,00,000/- USL received from Surbhi Sakh Sahakari Sanstha Maryadi Dhar - Loan Statement & Confirmation enclosed</p>		i) 1,00,000/- USL received from Amrit Patidar, Bank Statement enclosed and ITR of AY 2015-16 enclosed.

			confirmation and land holding documents enclosed.			
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TABLE-D

S. No.	Nature of document	Ajay Soni Addition; Rs. 4,49,400/-		Rakesh Patidar Addition; Rs. 8,45,000/-	
		Pg. No.	Remarks	Pg. No.	Remarks
1	PAN	-	PAN – AQUPS1359Q issued by Income Tax Department enclosed.	-	PAN – AXXPP6215E issued by Income Tax Department enclosed.
2	Acknowledgment of Income Tax Return and computation of Income	-	NA, since income was below taxable limits	305-311	ITR and computation of income for A.Y. 2015-16, 2016-17 and 2018-19 enclosed
3	Ledger Account of partner in books of the appellant firm.	-	Substantial transaction done through banking channel proves genuineness.	-	Substantial Transaction done through banking channel proves genuineness.
4	Balance Sheet/SOA of the partner in which name of appellant firm is appearing in Investments	-	NA	-	NA
5	Relevant Bank Statement of the	541-545	Bank statement highlighting the amount credited	537-539	Bank statement highlighting the amount credited

	appellant firm		through banking channel		through banking channel
6	Relevant Bank Statement of the Partner.	NA	Bank Account enclosed of such partner, cash of only 2 lakhs deposit before advancing capital out of regular Income.	NA	Bank Account enclosed of such partner, cash deposit before advancing capital out of regular Income.
7	Acknowledgment of Income Tax Return and computation of income	540-540	Small business of trading of jewelry in the name and style of Sagar Jewelers, proof of existence of business enclosed.	537-539	Submitted above and on perusal of the same it can be seen regular income tax return filer offering income from Business activity of trading in gold and jewelry.
8	Statement of Affairs (SOA) of the partner	-	NA	-	NA
9	Relevant Bank Statement of the Lender.	NA	As above	NA	As above
10.	Documents to prove source of source in respect of unsecured loan obtained before advancing capital by partner	-	NA	-	NA

7.2 The assessee produced before the CIT(A) copy of ITR acknowledgment for three years i.e. assessment years 2015-16 to 2017-18 along with computation of income, balance sheet, profit and loss account and capital account of the partners. The identity of the partners is otherwise not in dispute as the assessee produced all the details of the partners including PAN, ITR and address. The CIT(A) has also introduced the name, PAN address and amount reproduced by the partners at page no.19 as under:

Name of Partner	PAN	Address	Amount Introduced as capital
Rajendra Mahajan	ABDPM0944M	76, AB Road Dhamnod	3200000
Lalji Patidar	AQCPP0033Q	Dhamnod	3552149
Ashok Bansa	ATFPB1741E	01, AB Road, Dhamnod	2240000
Jalprakash Patidar	AWFPP5803R	54, Hatai Modalla, Dhamnod	2077280
Kamlesh Patidar	ARTPP2566N	Dhamnod	2005000
Manish Kumar Patidar	BGTPP8831P	01, AB Road, Dhamnod	2240000
Dinesh Kumar Patidar	BDWPP4814R	01, AB Road, Dhamnod	1685943
Nandkishore Soni	BCGPN0290N	Old AB Road, Dhamnod	1335000
Rakesh Patidar	AXXPP6215E	141, Dhamnod	845000
Kailashchandra Patidar	AINPP7452L	Dhamnod	415230
Ajay Soni	AQUPS1359Q	Dhamnod	449400
	Total		20045002

7.3 Therefore, the identity of the partners are not in dispute. The next onus on the assessee was regarding the creditworthiness of the partners to show the capacity of the partners to introduce respective amount of capital and the assessee has furnished the balance sheet and statement of affairs of the partners to show the

source of the capital introduced by each of the partners. Further the partners have confirmed the introduction of respective amount of capital in the assessee partnership firm. Even if any of the partners was not having sufficient source of the said capital or fails to explain the source then it is open to the department to take necessary action to assess the income in the hands of the partner(s). One more important aspect in the case in hand is that the assessee firm was formed during the year under consideration and this is first year of assessment as well as business of the assessee. Therefore, the capital introduced by the partners cannot be deemed to be income of the assessee when there was no business of the assessee prior to the said introduction of the capital by the partners. Where the assessee firm came into existence only during the year under consideration and capital was introduced by partners to facilitate business activity of the firm then the said amount of capital introduced by the partners cannot be treated as income under the deeming provisions of section 68 of the Act. We note that the assessee has discharged its onus to establish the identity and creditworthiness of the partners by producing the relevant evidence which including the ITRs, balance sheet/statement of affairs as well as bank account of the assessee firm and partners. Since all the transactions are through banking channel and assessee has produced the bank account and entries are duly recorded in the books of the assessee as well as in the books of the partners then being first year of the business of the assessee firm the genuineness of the transactions cannot be

doubted. In case of some of the partners have shown the source of capital introduced in the assessee firm as secured and unsecured loan obtained by them. Therefore, to the extent of secured loan taken by partners the same cannot be doubted as source of introduction for capital in the partnership firm. So far as the unsecured loan is shown by the partners in their books of account as a source to introduce the capital partnership firm is concerned it is subject matter of the assessment in the hands of such partner(s) and not in the hands of the assessee. The Hon'ble jurisdictional High Court in case of CIT vs. Metachem Industries 116 taxman 572 while considering an identical issue has held in para 3 to 6 as under:

“3. We have heard learned counsel for the parties. [Section 68](#) of the Act of 1961 says 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 Income-tax Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year. Therefore, according to [Section 68](#), the first burden is on the assessee to satisfactorily explain the credit entry in the books of account of the previous year. If the explanation given by the assessee is satisfactory, then that entry will not be charged with the income of the previous year of the assessee. In case the explanation offered by the assessee is not satisfactory or the source offered by the assessee-firm is not satisfactory, then [in that case](#), the amount should be taken to be the income of the assessee. In the present case, the Assessing Officer did not feel satisfied with the explanation given by the assessee and accordingly assessed all the three credit entries to the account of the assessee as the income.

4. On appeal, the Commissioner of Income-tax (Appeals) examined the matter in detail and found that Shri S. K. Gupta was the real owner of the business. The explanation given by the assessee was found to be satisfactory and he deleted the aforesaid three entries. The same finding of fact has been affirmed by the Tribunal. Once it is established that the amount has been invested by a particular person, be he a partner or an individual, then the responsibility of the assessee-firm is over. The assessee-firm cannot ask that person who makes investment whether the money invested is properly taxed or not. The assessee is only to explain that this investment has been made by the particular individual and it is the responsibility of that individual to account for the investment made by him. If that person owns that entry, then the burden of the assessee-firm is discharged. It is open to the Assessing Officer to undertake further investigation with regard to that individual who has deposited this amount.

5. So far as the responsibility of the assessee is concerned, it is satisfactorily discharged. Whether that person is an income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the firm gives a satisfactory explanation and produces the person who has deposited the amount, then the burden of the firm is discharged and in that case that credit entry cannot be treated to be the income of the firm for the purposes of income-tax. It is open to the Assessing Officer to take appropriate action under Section 69 of the Act, against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the Commissioner of Income-tax (Appeals) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries.

6. We are, therefore, of the opinion that the view taken by the Tribunal is correct and the aforesaid question is answered against the Revenue and in favour of the assessee.”

7.4 Once assessee established that the amount has been invested by partners then the responsibility of the assessee firm is over as

onus of the assessee is to explain that the investment has been made by the partners and it is the responsibility of the partners to account for the investment made by them. Undisputedly the partners have owned the entries and introduction of capital in the assessee firm therefore, the burden of the assessee firm is discharged. The Hon'ble High Court has observed that it is open for the AO to undertake the further investigation with regard the individual who has deposited the amount. A similar view has been taken by the Hon'ble Gujarat High Court in the case of CIT vs. Pankaj Dyestuff Industries in Income Tax Reference No.241 of 1993 vide judgment dated 06.07.2005(supra) in para 9 to 15 as under:

“9. As can be seen from the order of the Tribunal, the Tribunal has confirmed the findings of the Deputy Commissioner of Appeals, hence it would be necessary to advert to the findings recorded by the Deputy CIT (Appeals). Before the Deputy CIT (Appeals), it had been contended on behalf of the assessee that the source of monies in the hands of the partners had been explained by producing necessary supporting evidences by way of extract from panipatrak in Form 7/12 and record of rights in Form 8-A etc. That the Income Tax Officer had not disputed that the credits in the accounts of the partners were not deposits from the partners. It was pointed out that the credits in the accounts of partners are not in proportion to the profit sharing ratio. It was submitted that the partners had satisfactorily explained the credits in their accounts by necessary supporting evidence. Alternatively, it was contended that, in any view of the matter, the credits in the accounts of the partners are to be explained by the partners and not by the firm. Reliance was also placed upon the decision of the Allahabad High Court in case of Commissioner of Income Tax v. Jaiswal Motor Finance (1983) 141 ITR 706, wherein it has been held as follows:

"It appears to be well settled that if there are cash credit entries in the books of the firm in which the accounts of the individual partners exist and it is found as a fact that cash was received by the firm from its partners then in the absence of any material to indicate that they were profits of the firm, it could not be assessed in the hands of the firm."

10. The Deputy CIT (Appeals), upon consideration of the submissions of the appellant, found that the partners had produced sufficient evidence to show the source for deposit in their accounts. Accordingly, he deleted the addition. However, he left it open for the Income Tax Officer to consider the cash credits in the hands of the partners, if he was not satisfied with the source of investment of cash credits in the hands of the partners.

11. This Court in a recent decision dated 29th June 2005 rendered in case of C.I.T. v. Pragati Cooperative Bank Ltd., Income Tax Reference No.215 of 1993 has, while construing the provisions of section 68 of the Act, observed as follows:

"11. Section 68 of the Act requires that there has to be a credit in the books maintained by an assessee; such credit has to be of a sum during previous year; and the assessee offers no explanation about the nature and source of such credit; or the explanation offered by the assessee is not, in the opinion of the assessing authority, satisfactory, then the sum so credited may be charged to tax as income of the assessee of that previous year. The Apex Court in the case of Commissioner of Income Tax Vs. Smt.P.K.Noorjahan, (1999) 237 ITR 571 has laid down that the word "may" indicated the intention of the legislature that a discretion was conferred on the Assessing Officer in the matter of treating the source of investment / credit which had not been satisfactorily explained as income of an assessee, but it was not obligatory to treat such source as income in every case where the explanation offered was found to be not satisfactory.

12. Applying the aforesaid principle to the facts found, it is not possible to state that the Tribunal committed any error when it confirmed the findings of CIT (Appeals) deleting the addition. The assessee offered an explanation. The said explanation is not found to be false. The Assessing Officer merely does not

accept the explanation because he finds it not satisfactory. From that, legally there is no obligation, on the Assessing Officer, to treat the fixed deposits as income of the assessee."

12. The Bombay High Court in case of Narayandas Kedarnath v. Commissioner of Income Tax, Central, [1952] 22 ITR 18 has, while dealing with the question as to whether certain amounts standing to the credit of some of the partners of the assessee firm could be treated as undisclosed profits of the firm itself, observed thus:

"If the department was satisfied that moneys, although paid in in the names of the partners or strangers, were really undisclosed profits of the firm and were not individual contributions made by partners or strangers, then it would be legitimate for the department to draw an inference that those moneys represented the undisclosed profits of the firm. But here the only finding we have from the Tribunal is that these moneys were brought in by the partners from their native place and that no adequate explanation is forthcoming from the persons themselves as to where these moneys came from. Now it seems to me that the assessee firm has discharged the burden which was upon it to explain these credit entries and it has discharged the burden by satisfying the department that these entries represent genuine remittances received from Jaipur which have gone into the coffers of the firm. When that burden is discharged, it would be for the department to find that notwithstanding the fact that these moneys were actually brought in they do not represent the moneys of the partners but they represent the undisclosed profits of the firm which left the firm earlier and returned through the intermediary of the partners. If the department was not satisfied with the explanation given by the partners then it is legitimate for the department to draw an inference that these amounts represent undisclosed profits of the partners and to assess them in their own individual assessment."

The aforesaid decision in the case of Narayandas Kedarnath (supra) rendered by Bombay High Court on 28th March 1952 has precedential value equivalent to a decision of this Court and

hence, is equally binding on this Court. The said decision though rendered under the Indian Income Tax Act, 1922, would not make any difference. Section 68 of the Act was introduced for the first time in the Act and there was no corresponding provision in the 1922 Act. However, as per settled legal position, Section 68 of the Act only gives a statutory recognition to the principle that cash credits which are not satisfactorily explained might be assessed as income. (See CIT v. Orissa Corporation Pvt. Ltd. [1986] 159 ITR 78).

13. Applying the aforesaid principles to the facts of the present case, it is apparent that the assessee had furnished the details which would discharge the onus which lay on the assessee. It is not the case of the revenue that the partners of the assessee firm are fictitious. The Income Tax Officer has not disputed that the credits in the accounts of the partners were not deposits from the partners. Moreover, it is an admitted position that this was the second year of the firm, and that it was running in loss. It is true that the Income Tax Officer did not accept the explanation given on behalf of the assessee in respect of the new deposits or cash credits in the accounts of the partners. The mere non-acceptance of that explanation does not, however, provide material for finding that the said sum represented income of the assessee firm. As held by the Allahabad High Court in case of Commissioner of Income Tax, Allahabad v. Jaiswal Motor Finance (supra), in the absence of any material to indicate that there were profits of the firm, the amount credited to the partners' accounts could not be assessed in the hands of the firm. Once the partners have owned that the monies deposited in their accounts are their own, the Income Tax Officer is entitled to and may proceed against the partners and assess the same in their hands, if their explanation is not found satisfactory.

14. In the facts and circumstances of the present case, both the Deputy CIT (Appeals) and the Tribunal have found that the assessee had discharged the primary onus which was on it by offering explanation, which has not been found to be incorrect or false in any manner. The interest of the revenue is also safeguarded as the Income Tax Officer has been given the

liberty to consider the said credits in the hands of the partners if he is not satisfied with the sources of investment of cash credits in the accounts of the partners.

15. In these circumstances, it is not possible to find that the order of the Tribunal suffers from any infirmity which would require interference at the hands of this Court. Accordingly, it is held that the Tribunal was right in law and on facts in deleting the addition of Rs.87,250/- being deposits in the accounts of the partners. The question referred to this Court is, accordingly, answered in the affirmative i.e. in favour of the assessee and against the revenue.”

7.5 Thus, it is clear that if the assessee failed to offer the explanation about nature and source of credit in the books maintained by the assessee or the explanation offered by the assessee is not satisfactory then the sum so credited may be charged to tax as income of the assessee of that previous year. However, when the assessee has discharged its burden to prove the identity, creditworthiness of creditor as well as genuineness of the transactions then in absence of any facts or material to confront the explanation or prove otherwise the discretion concerned upon AO u/s 68 of the Act has to be exercised by accepting the explanation of the assessee. When all the partners have confirmed that they have introduced those amounts as capital contribution then it was for the partners to explain the source of deposit and if they fail to discharge the onus such credit can be credited in the hands of the partners and not in the hands of the assessee firm. Further when the capital contributed by the partners entered into books of account of the assessee prior to the commencement of the business then the same cannot be treated as income of the assessee firm. The Hon'ble

Rajasthan High Court in case of CIT vs. M/s Kewal Krishnan & partners (supra) has held in para 7 & 8 as under:

“7. It is not in dispute that the members of the AOP S/Shri Ali Mohd. deposited Rs.5,00,000/-, Amarnath deposited Rs.3,00,000/- and Kewal Krishan deposited Rs.50,000/- as capital contribution on the first day of commencement of the business by the firm i.e. 1.4.1989. All the partners have confirmed that they had introduced those amount as their capital contribution. Obviously, it was for the partners to explain the source of the deposits and if they failed to discharged the onus then, such deposits could be added in the hands of the partners only and not in the hands of the assessee firm. In any case, such capital contributions entered into the books of the accounts of the assessee firm prior to the commencement of the business cannot be treated to be the income of the assessee firm. In considered opinion of this Court, such unexplained credits may be added to the income of the partners concerned in terms of [Section 69](#) and not [u/s 68](#) of the Act of 1961.

8. For the aforementioned reasons, in our view, no substantial question of law arises out of the order impugned passed by the learned ITAT for consideration of this Court.”

7.6 This Tribunal in case of ACIT vs. Mayur Industries Khandwa, (supra) has considered an identical issue in para 12 to 16 as under:

“12. We find that the Ld. CIT(A) while allowing the appeal preferred by the assessee observed as follows:

"4.4. Ground Nos 1 to 4 for A.Y. 2018-19: - Through these grounds of appeal the appellant has challenged the addition made by the AO amounting to Rs: 2,59,28,791/- on account of capital introduced by the partners by treating the same as unaccounted and unexplained credit [u/s 68](#) of the I.T. Act, 1961 and charging of tax liability by invoking the amended provision of [section 115BBE](#) of the Act. The appellant firm received capital from its partners to the tune of Rs 2,59,28,791/-, since no explanation was provided by the appellant

firm. Hence, the said amount was added to the total income of the appellant firm. The assessing officer in the assessment order observed that the amount as introduced by Shri Rahul Bansal and Shri Rajendra Bansal was withdrawn from the firm M/s Motilal Gopikishan but transactions with the firm M/s Motilal Gopikishan was doubted by the assessing officer and entire amount of capital introduced by all the partners were added to the total income of the firm. During the course of appellate proceedings, it was stated by the appellant that no show cause notice was issued by the assessing officer prior to making addition in respect of capital as introduced by the partners. The details in respect of capital as introduced by the partner was provided by the appellant firm itself. Shri Rahul Bansal and Shri Rajendra Bansal was assessed by the same assessing officer and no addition was made in respect of capital introduced by them in the appellant firm. The appellant firm during the course of appellate proceeding provided complete details in respect of capital as introduced by the partners which was forwarded to the assessing officer for his comments. The assessing officer in his remand report challenged the legality of the acceptance of additional evidence as per Rule 46A of the Income Tax Rules but no reply on merit was filed. The assessing officer at the end of the remand report stated that additional evidence may be accepted in the appellate proceeding. In the interest of substantial justice, additional evidence as filed by the appellant was permitted and considered while adjudicating the ground of appeal.

4.4.1. The appellant firm filed confirmation of partner's capital duly signed, copy of bank account of the partner, Acknowledgement of income tax return as filed and ledger account in the book of the firm from where the partners received amount prior to introducing in form of capital in the appellant firm. On perusal of the documents as filed, I am of the considered view that the appellant firm has properly discharged onus lying on it. The identity of the partners were not doubted by the assessing officer. The creditworthiness and genuineness of the transactions have been proved by the appellant. Major amount of capital as introduced by the partners were withdrawal from the firm M/s Motilal Gopikishan which was also assessed by the same assessing authority. If the assessing officer was not satisfied with the source of amount paid by the firm M/s Motilal Gopikishan [in that case](#), necessary addition can be made in the assessment of that firm but no adverse view was taken in that firm. Similarly, assessment of two partners were also made by the

same assessing officer and if the assessing officer doubted about the creditworthiness and genuineness of the capital as introduced by these two partners viz Shri Rahul Bansal and Shri Rajendra Bansal, in that case necessary addition was to be made in their assessment but no such addition was made in their individual assessment order.

Considering the overall facts of the case, submissions and supporting documents as filed by the appellant firm, it is held that the AO has not justified in making addition. Therefore, the SS 212 of 2021 11 Mayur Ind.

addition made by the AO amounting to Rs: 2,59,28,791/- on account of capital introduced by the partners is Deleted. Thus, the appeal on these grounds is Allowed. Since the addition as made by the assessing officer on account of unexplained cash credit u/s 68 of the I.T. Act, 1961 have already been deleted on merit. Therefore, the charging of tax liability as per amended provisions of section 115BBE on these grounds is academic in nature and having no impact on the fate of these grounds."

13. The above findings of the Ld. CIT(A) have not been controverted by the Ld. DR. The facts discussed above squarely reveal that the Ld. AO made addition on account of capital introduced by the partners simply for the reason that the assessee did not furnish any documentary evidence during the course of assessment proceedings to justify the source of capital introduced by the partners. The Ld. CIT(A) rightly admitted the additional evidences furnished by the assessee during the course of appellate proceedings. Further, on perusal of the remand report annexed on Page No. 133-134 of the Paper Book, we find that the Ld. AO in the remand report merely challenged the acceptance of additional evidence as per Rule 46A but he utterly failed to comment on merits of the documentary evidences furnished by the assessee during the course of appellate proceedings to justify the identity and creditworthiness of the partners as well as genuineness of the transactions as entered into with them. Hence, we observe that there are no adverse remarks of the Ld. AO regarding source of capital introduced by the partners in the assessee firm except for the fact that no documentary evidences were furnished by the assessee during the course of assessment proceedings to justify the source of capital introduced by the partners.

14. On merits, we find that the assessee filed ample corroborative documentary evidences such as confirmation of accounts, bank statements and income-tax returns of the partners along with the copy of capital/ ledger account of the partners in the books of the firm, M/s Motilal Gopikishan and thus, the SS 212 of 2021 12 Mayur Ind.

assessee satisfactorily discharged the primary onus cast upon it under [section 68](#) of the Act. Accordingly, we of the considered opinion that there was no justification for making addition to the total income of the assessee on account of capital introduced by its partners since the assessee duly justified the identity and creditworthiness of the partners as well as genuineness of the transactions as entered into with them.

15. We also find force in the contentions of the Ld. Counsel that assessment in the case of two of the partners i.e. Shri Rahul Bansal and Shri Rajendra Kumar Bansal was also completed by the same Assessing Officer wherein the Assessing Officer did not take any adverse view in respect of the amount of capital introduced in the assessee firm which in itself justified that the Assessing Officer was satisfied with the source of capital introduced in the assessee firm. Further, assessment in the case of the partnership firm, M/s Motilal Gopikishan from where the partners of the assessee firm withdrew cash/ obtained loan and thereafter introduced capital in the assessee firm was also completed by the same Assessing Officer and that no adverse view was taken in the case of M/s Motilal Gopikishan in respect of the amount withdrawn by the partners for contributing capital in the assessee firm which further justified that the Ld. AO was satisfied with the source of capital introduced in the assessee firm. Hence, we found no reason to sustain addition to the total income of the assessee on account of capital introduced by partners since source of capital introduced by the partners stood duly explained.

16. The addition made by the Ld. AO on account of capital introduced by partners cannot be said to be justified in view of the observations made SS 212 of 2021 13 Mayur Ind. hereinabove. Hence, we do not find any infirmity in the findings of the Ld. CIT(A) and accordingly, the deletion of addition of Rs. 2,59,28,791/- made by the Ld. CIT(A) is found to be just and proper so as to warrant no

interference. Hence, this ground of appeal preferred by Revenue is found to be devoid of any merit and, thus, dismissed.”

7.7 Accordingly in view of the facts and circumstances of the case as discussed above wherein the assessee has produced relevant evidence to establish the identity, creditworthiness of the partners as well as genuineness of the transactions in the form of capital introduced by the partners of the assessee firm in the first year of the existence of the assessee and prior to the commencement of the business then the addition made by the AO u/s 68 and confirmed by the CIT(A) is not justified the same is deleted.

8. Ground No.5 is regarding the addition made by the AO on account of unsecured loan u/s 68 of the Act. During the scrutiny assessment the AO noted that the assessee has shown unsecured loan of Rs.6,64,991/- and in the absence of confirmation and other details the AO made addition of the same u/s 68 of the Act. The assessee challenged the action of the AO before the CIT(A) and filed confirmation from the loan creditor Shri Sukhdeo along with bank account statement. The CIT(A) did not accept the explanation of the assessee and held that the assessee has failed to prove the genuineness of the transactions.

8.1 Before the Tribunal the Ld. AR of the assessee has submitted that the CIT(A) has confirmed the addition made by the AO without considering material fact that the assessee has duly discharged its initial onus of proving the identity and creditworthiness of the loan creditor beyond any doubt as well as genuineness of the

transactions. He has further submitted that the assessee produced PAN of the loan creditor, copy of confirmation of ledger account, copy of bank account statement of the lender and declaration letter of the lender showing the source of the said amount as agricultural income and therefore, No R.01 was filed by the lender. He has further submitted that the assessee has also produced the land record with the revenue to show the land holding of the loan creditors. He has invited our attention to page no.555 to page no.557 of the paper book and submitted that the assessee produced bank account statement along with PAN of the loan creditor. The loan creditor has also confirmed the loan given to the assessee which is through banking channel. He has referred to the revenue record of land holding of the loan creditors placed at page no.558 to 562 and submitted that the loan creditor Sukhdev is holding .820 hectare of agricultural land. The entire land is under cultivation as this fact is recorded in the revenue record and therefore, declaration of the loan creditor placed at page no.68 of the paper book is supported by the land holding of the loan creditor that he was having source of loan advance as agricultural income and therefore, did not file any return of income. He has relied upon the judgment of Hon'ble Allahabad High Court in case of M/s Kesharwani Sheetalaya Sahsaon vs. CIT 116 taxmann.com 382. He has also relied upon the decision of Delhi Benches of the Tribunal in case of Garima Polymers P. Ltd. vs. ACIT 131 taxmann.com 4.

8.2 On the other hand, Ld. DR has submitted that the CIT(A) has noted from the bank account statement that it was open only for this transaction of loan to the assessee and just before lending the amount to the assessee. There was a transfer in the bank account of the lender just before the money was given to the assessee. Therefore, the capacity of the lender to provide loan of more than Rs.6 lakh has not been established. He has relied upon the orders of the authorities below.

9. We have considered the rival submissions as well as relevant material on record. The AO has made an addition on account of unsecured loan as under:

“1. Addition on account of unsecured loan: The assessee has shown unsecured loan at Rs.6,64,991/- in you audit report. However, no confirmation and details have been furnished by the assessee. Therefore unsecured loan of Rs.6,64,991/- is being added to the total income of the assessee u/s 68 of the Income Tax Act, 1961. Hence, penalty proceedings u/s 271AAC of I. T. Act, 1961 is being initiated separately on this issue.

Addition of Rs.6,64,991/-“

9.1 Thus it is clear that the AO has made this addition summarily for want of details and confirmation of the loan creditor. As we have already noted that the AO issued show cause notice u/s 142(1) at the fag end of the just five days before the assessment order was passed. Therefore, the assessee was not given an appropriate opportunity to furnish the requisite details. Thus, the assessee furnished the confirmation the bank account statement, PAN and declaration of the loan creditor before the CIT(A). The assessee also

produced the land record of the loan creditor maintained by the revenue department showing the land holding of more than 0.8 hectare which is under cultivation. The CIT(A) has rejected the documentary evidence produced by the assessee by giving reasons in para 6.13 to 6.15 as under:

“6.13 The above statement reflects that new bank account is opened and sum of Rs.6,60,000/- is received by Mr. Sukhdev from Ramesh Chandra and on-lend it to appellant on same day.

6.14 In view of the above, I am of the considerate view that the appellant has once again failed to prove the genuineness of the transaction. Mr. Sukhdev's undertaking is also not found to be correct. Therefore, the loan received form Mr. Sukhdev is not found to be genuineness and liable to be treated as unexplained. The addition made by the learned AO is liable to upheld.

6.15 Accordingly ground no.2 of the appellant is dismissed.”

9.2 Thus, the CIT(A) has doubted the creditworthiness and genuineness of the transactions without conducting any inquiry or verification of the correctness of the evidence produced by the assessee either himself or through remand report of the AO. The bank account statement, PAN and land holdings are the records maintained by the independent authorities and Government departments and therefore, the same cannot be doubted receiving an amount from another person by the lender before transferring the same to the assessee epso facto does not lead to inference that the lender was not having capacity to advance this amount of Rs.6,64,991/- to the assessee particularly when the source of income was produced before the CIT(A) as landholding of the lender which is under cultivation of the crop of soya bean. Hence, in

absence of any contrary fact or material to disprove the claim of the assessee the evidence produced by the assessee comprising bank account statement along with PAN, revenue record showing landholding of the loan creditor discharged the onus of the assessee to prove identity of the loan creditor beyond any doubt. Further when the amount was transferred from the bank account of the lender through banking channel and source of income was shown as agricultural income then in absence of any contrary material or fact the assessee discharged its primary onus to prove the creditworthiness and genuineness of the transactions. The Hon'ble Allahabad High Court in case of M/s. Kesharwani Sheetalaya Sahsaon vs. CIT (supra) after analysing all the relevant decisions on this point as well as relevant facts has held in para 19 to 32 as under:

“19. On the facts and circumstances of this case, we are of the considered opinion that the authorities below have committed error as they have failed to take into account that this was the first year of the business of the assessee firm. The partnership firm was formed on July 5, 1990 and on July 7, 1990, Master Shishir Garg deposited Rs.1,90,000 and Rs.72,000 as capital money with the Firm through bank clearance of two bank drafts. The accounting period being financial year, i.e., ending on March 31, 1991, the Firm could not have any income at the time of its formation. The identity of the depositor, i.e., Master Shishir Garg was not in issue at any point of time before the income-tax authorities. They treated the said deposit by Master Shishir Garg. This being so, if for one reason or the other, they were not satisfied with the financial capability of Master Shishir Garg, the amounts could have been added at the hands of Master Shishir Garg and not at the hands of firm.

20. The decision relied upon by the learned counsel for the Department is clearly distinguishable on facts as it was not in

respect of first year of the business and has no application whatsoever. The argument put by him that the income was liable to be added in the hands of firm as Master Shishir Garg being minor could not be prosecuted, has no substance.

21. It may be noted that the decision given in the case of [Jaiswal Motor](#) (supra) is being constantly followed by this court in the subsequent decisions. Reference can be made to [Surendra Mohan Seth v. CIT](#) [1996] 221 ITR 239 (All).

22. The Rajasthan High Court in [CIT Vs. Kewal Krishna and Partners](#) [2009] 18 DTR 121 (Raj) has also taken similar view."

27. [Section 68](#) requires the Assessing Officer to satisfy itself of the source of the credit and if during the course of enquiry undertaken, the entries are found to be not genuine then the sum represented by such credit entry is to be added as income of the assessee. The satisfaction of the Assessing Officer thus forms the basis for invocation of the provisions of [Section 68](#). The satisfaction in this regard, however, must not be illusory or imaginary but is required to be based on the facts and the evidence and on the basis of a proper enquiry of the material before the Assessing Officer. The enquiry envisaged under the provision is to be reasonable and just.

28. Under [Section 68](#), the onus is on the assessee to offer explanation where any sum is found credited in the books of account and where the assessee fails to prove to the satisfaction of the Assessing Officer, the source and nature of the amount of cash credits an inference may be drawn that the credit entries represent income taxable in the hands of the assessee. This does not however absolve the responsibility of the Assessing Officer to prove that the cash credits constitute the income of the assessee. The onus on the assessee has to be understood with reference to the facts of each case and if the prima facie inference on the basis of facts is that the assessee's explanation is probable, the onus shifts to the Revenue. It has been consistently held that once the assessee has proved the identity of its creditors, the genuineness of the transactions and the creditworthiness of the creditors vis-a-vis the transactions which it had with the creditors, the burden stands discharged and the burden then shifts to the Revenue to show that the amount in question actually belong to, or was owned by the assessee himself.

29. The question as to whether in a case where money has come from a partner, addition, if any, has to be made in the hands of the partner or of the firm came up for consideration upon the reference under [Section 256\(1\)](#) of the Act in the case of [Commissioner of Income Tax v Kishorilal Santoshilal](#)¹³, and referring to the language used under [Section 68](#) and various authorities on the point it was held that in this regard the following points are required to be noted:-

"On the basis of the language used under [section 68](#) and the various decisions of different High Courts and the apex court, the only conclusion which could be arrived at is :

(i) that there is no distinction between the cash credit entry existing in the books of the firm whether it is of a partner or of a third party,

(ii) that the burden to prove the identity, capacity and genuineness has to be on the assessee,

(iii) if the cash credit is not satisfactorily explained the Income-tax Officer is justified to treat it as income from "undisclosed sources",

(iv) the firm has to establish that the amount was actually given by the lender,

(v) the genuineness and regularity in the maintenance of the account has to be taken into consideration by the taxing authorities,

(vi) if the explanation is not supported by any documentary or other evidence, then the deeming fiction credited by [section 68](#) can be invoked."

30. It is therefore seen that in a case where a sum is credited in the books of account of a firm from a partner, the assessee firm could discharge its onus by proving three things: (i) identity of the creditor; (ii) creditworthiness of the creditor; and (iii) genuineness of transaction in question. Once the assessee proves all the three things its onus is discharged. It has also been consistently held that the assessee only needs to prove the source of credit entries and he is not required to prove the source of the source or the creditors' credit.

31. In a case where the integrity of the creditors is established and the entries are shown to be not fictitious, the burden would shift on the Revenue.

32. In the case at hand, the partners have shown the agricultural income in their personal returns of the past years which had been accepted by the department as such. The partners are all identifiable and separately assessed to tax. The source of investment having been explained, in the event the Assessing Officer was not satisfied the addition could have been considered in the hands of the partners and not in the hands of the firm. The burden of proving the source of the credits having been sufficiently explained the addition could not have been made in the hands of the firm in the facts of the present case.”

9.3 The Hon'ble High Court has observed that once the assessee has proved the identity of the creditor, genuineness of the transactions and creditworthiness of the creditor, the burden stands discharged and then shifts to the revenue to show that the amount in question actually belongs or was owned by the assessee himself. It was further observed that where the partners have shown the agricultural income in their personal returns the source of investment stands explained and in the event the AO was not satisfied the addition could have been considered in the hands of the partners of the creditors and not in the hands of the firm. The Delhi Benches of the Tribunal in case of Garima Polymers P. Ltd. vs. ACIT (supra) has considered this issue in para 8.2 as under:

“8.2 It is also well settled Law assessee need not to prove the source of the source. We rely upon the Judgment of the Hon'ble Delhi High Court in the case of (1) Dwarakadhish Investment (P.) Ltd. (supra) (2) Dy. CIT v. Rohini Builders [2003] 127 Taxman 523/[2002] 256 ITR 360 (Guil) and Zafa Ahmed & Co. v. CIT [2013] 30 taxmann.com 267/214 Taxman 440 (All). It

may also be noted here that the ITAT restored the appeals of assessee to the file of Ld. CIT(A) for A.Ys. 2009-2010 and 2010-2011. In A.Y. 2010-2011 the same Ld. CIT(A) passed the Order on 6-7-2020 and on production of the sale deed found that creditworthiness of the creditor is established. It is held in this year that mere non-compliance of the summon is not sufficient to make the addition under section 68 of the Income-tax Act, 1961, where identity, genuineness and creditworthiness stands established. Thus, there was no reason for the Ld. CIT(A) to take a different view in assessment year under appeal i.e., 2009-2010. Considering the totality of the facts and circumstances, we are of the view that initial burden upon the assessee to prove identity of the creditors, their creditworthiness and genuineness of the transaction have been discharged. The A.O. did not bring any evidence on record to disbelieve the explanation of the assessee or the documentary evidence filed on record. In view of the above, we set aside the Orders of the authorities below and delete the addition of Rs. 1.50 crores on account of 05 creditors above. This ground of appeal is allowed. No other ground is argued. Appeal of the Assessee is partly allowed.”

9.4 Accordingly in the facts and circumstances of the case as discussed above as well as the decision cited (supra) we hold that the assessee has discharged its onus to prove identity and creditworthiness of the creditor as well as the genuineness of the

transactions with the supporting documentary evidence and therefore, in absence of any contrary material or fact brought on record the addition made by the AO and sustained by the CIT(A) is not justified the same is deleted.

10. Ground No.6 is regarding the disallowance of salary, interest and audit fee. In the assessment the AO has made an addition of Rs. 1,27,267/- being on account of sundry creditors, customer advances and provision. On appeal the CIT(A) has confirmed the addition made by the AO.

10.1 Before the Tribunal Ld. AR of the assessee has submitted that the AO has made an addition Rs.1,17,267/- towards salary payable and Rs.10,000/- on account of auditor fees payable total amounting to Rs.1,27,267/-. The said addition has been confirmed by the CIT(A) without considering the fact that such expenses are duly explained and recorded in the audited books of account. The assessee firm is following mercantile method of accounting which is evident from point 13a of the Tax Audit Report placed at page no.62 to 82 of the paper book. A sum of Rs.1,17,267/- pertains to the salary payable to the employees of the firm and Rs.10,000/- was towards the auditor fee paid to the tax auditor which is duly recorded in the books of account and particularly ledger account of audit fee placed at page no.571 & 572 of the paper book. Ld. AR has further submitted that the assessee also produced an invoice raised by the Chartered Accountant towards the audit fee. The

ledger account of the salary payable to the employees was also produced and placed at page no.570 of the paper book. Thus the assessee has discharged its onus to claim these expenses therefore, the addition made by the AO and confirmed by the CIT(A) is not justified and liable to be deleted.

11. On the other hand, Ld. DR has submitted that the assessee did not file any other details of invoice, appointment of employees, pay slip and therefore, the assessee failed to discharge to prove the claim of expenses.

12. We have considered rival submissions as well as relevant material on record. The assessee has claimed a sum of Rs.1,17,267/- as salary payable to the employees which was disallowed by the AO for want of any details and confirmation. The assessee has also claimed audit fee charges of Rs.10,000/- and the same was also disallowed by the AO and confirmed by the CIT(A). So far as the audit fee is concerned the assessee has produced tax audit report on record as well as the bill raised by the auditor towards the audit fee and therefore, the assessee has produced the supporting evidences of claim of audit fee of Rs.10,000/- payable to the auditor. As regards the salary payable to the employees of Rs.1,17,267/- the assessee has produced the ledger account as well as the audit report and audited accounts in support of the claim. The assessee has also produced confirmation of salary paid and payable to various employees placed at page no.562 to 569 of the

paper book. In any case the salary expenditure is inevitable in the nature of business of the assessee and the AO has not questioned the reasonableness of expenditure. Once the expenditure is not exaggerated or inflated and business of the assessee of selling jewellery cannot be run without the help of the employees then the claim of the assessee cannot be disallowed by treating the same as deemed income of the assessee u/s 68 of the Act. Neither the AO nor the CIT(A) has conducted any inquiry to bring any fact or material contrary to the claim of the assessee. Once the assessee has produced supporting evidences and the expenditure is inevitable in the business activity of the assessee then the disallowance made by the authorities below is highly arbitrary and unjustified the same is deleted.

13. Ground no.7 is regarding the addition made by the AO on account of unsecured loan of Rs.63,768/- shown in the audit report however, no evidence furnished by the assessee and the entire amount is added u/s 68 of the Act. On appeal the CIT(A) has confirmed the said addition for want of any evidence.

13.1 Before the Tribunal Ld. AR of the assessee has submitted that the assessee has taken this loan from Bajaj Finance Limited a non-banking financial institution and ledger of loan from Bajaj Finance was duly produced before the CIT(A) however, the CIT(A) has confirmed the addition without considering the fact and evidences. Ld. AR of the assessee has submitted that the assessee taken a

consumer durable loan for purchase of Air-conditioner for its showroom of jewelry business. The loan was taken from Bajaj Finance Ltd. and the assessee produced the copy of statement of account of Bajaj finance Ltd. along with ledger account of Bajaj Finance in the books of the assessee before the CIT(A). The same are placed at page no.573 to 579 of the paper book. Thus when the loan was taken from the Bajaj Finance Ltd. and assessee has produced loan account statement as well as confirmation of the Bajaj Finance Ltd. then the addition sustained by the CIT(A) is not justified and the same is liable to be deleted.

14. On the other hand, ld. DR has relied upon the orders of the authorities below.

15. We have considered rival submissions as well as relevant material on record. At the outset, we note that the assessee has produced statement of loan account and confirmation of the outstanding closing balance as on 31.03.2017 placed at page no.577 as under:

577

To : Bajaj Finance Ltd.,

From: Abhushan , Dhamnod
Near Bus Stand
Teh Dharampuri, Dist. Dhar (M.P.)
TIN : No. 23699200861

Dear Sir/Madam,

Sub: Confirmation of Accounts
1-Apr-16 to 31-Mar-17

Date :

Given below is the details of your Accounts as standing in myour Books of Accounts for the above mentioned period.
Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

Date	Particulars	Debit Amount	Date	Particulars	Credit Amount
			21-Oct-16	Mahakali Electronics,Dhamnod	68,600.00
			21-Oct-16	Mahakali Electronics,Dhamnod	26,300.00
			21-Oct-16	Insurance Exp.	1,016.00
5-Dec-16	Bank	8,037.00			
5-Jan-17	Bank	8,037.00			
6-Feb-17	Bank	8,037.00			
6-Mar-17	Bank	8,037.00			
	Closing Balance	32,148.00			
		63,768.00			
		95,916.00			
					95,916.00
					95,916.00

We hereby confirm the above

Yours faithfully,



15.1 Further as per the ledger account the transactions of loan in respect of purchase of AC is also produced at page no.578 of the paper book. All the receipts and repayment of the loan are duly reflected in the ledger account and transactions are through banking channel. Therefore, in view of the supporting documentary evidences produced by the assessee the addition made by the AO is not sustainable and the same is deleted.

16. Ground No.8 is regarding addition made by the AO by estimating the net profit of the assessee @ 8%. The AO has made an addition of Rs.5,28,542/- as under:

*“1. Addition on account of NP:- In absence of any submission and evidence NP is being estimated @8% of the gross turnover, which comes at Rs. 15,23,630/-. • As the assessee has already claimed profit of Rs.9,95,088/- (after deducting remuneration and salary to partner), the amount of Rs.5,28,542/- (Rs.15,23,630-9,95,088/-) is being added to the total income of the assessee. Hence, penalty proceedings u/s 270A of I. T. Act, 1961 is being initiated separately for under reporting of income.
Addition of Rs.5,28,542/-“*

On appeal the CIT(A) has confirmed the said addition.

16.1 Before the Tribunal Ld. AR of the assessee has submitted that the assessee is maintaining regular books of accounts which are duly audited by the CA as per provisions of section 44AB of the Act. The AO has made an addition by estimating the net profit @ 8% without rejection of books of account or without pointing out any defect in the books of account. When the books of account are regularly maintained are duly audited by the qualified auditor then

the same cannot be doubted without having an adequate reasons indicating the defect or unreliability of the same. Thus, ld. AR has submitted that when the books of account of the assessee are not rejected u/s 145(3) of the Act then the estimation of income is not justified and the same may be deleted.

16.2 In support of his contention he has relied upon the decision of Hon'ble Allahabad High Court in case of CIT vs. Ballabh Das and Sons (supra) as well as decision of Hon'ble Delhi High Court in case of CIT vs. Paradise Holidays 325 ITR 13 and submitted that Hon'ble High Court has held that accounts which are regularly maintained in the course of business and are duly audited free from any qualification by the auditors, should normally be taken as correct unless some defect is found or there are adequate reasons to indicate unreliability of the accounts. The onus is on the revenue to show that either books of account maintained by the assessee were incorrect or incomplete or that method of accounting adopted by the assessee is such that the true profits of the assessee cannot be derived therefrom. Ld. AR has also relied upon decision of the Rajkot Tribunal in case of ITO vs. Girish M Mehta 296 ITR 125.

17. On the other hand Ld. DR has relied upon the orders of the authorities below.

18. We have considered rival submissions as well as relevant material on record. As it is manifest from the assessment order that the AO has not invoked the provisions of section 145(3) or given any

reason to doubt to correctness of the accounts of the assessee which are duly audited by the qualified auditor. The AO has straight away proceeded to estimate the income of the assessee by adopting net profit @ 8%. Once the accounts of the assessee are duly audited and income is declared based on the regular books of account maintained by the assessee then without binding out any defect either in the accounts itself or method of accounting adopted by the assessee it is open to the AO to estimate the income of the assessee. When the books of account of the assessee are not rejected by the AO then the correctness of the accounts are even not questioned by the AO and therefore, the estimation of the income by adopting arbitrary net profit at 8% is contrary to the fact as well as law empowering the AO to make the assessment. The Rajkot Bench of this Tribunal in case of ITO vs. Girish M. Mehta (Supra) has held in para 8 to 13 as under:

“8. We have considered the rival contentions, carefully gone through the orders of the authorities below and also deliberated on the case laws cited by the learned Authorised Representative, Mr. D.M. Rindani. From the record, we found that the assessee for the first time entered into the business of bullion and diamond on wholesale basis. We also found that during the course of hearing, the assessee has furnished day-to-day purchases, sales and stock register according to which, the GP of each and every transaction could be ascertained. No defect has been pointed by the AO either in the books of account or with respect to quantitative details furnished by the assessee, nor in the method of accounting followed by the assessee for computing its business income. We also found that the assessee has furnished day-to-day rate prevailing in Ahmedabad Bullion Merchant Association, day-to-day gold and silver bullion purchases and sales details and also details of profit and GP on day-to-day basis. The AO was unable to find anything wrong in the impugned statement furnished before him. The case of M/s Gayatri

Bullion indicates GP at 0.41 per cent was not comparable to the case of the assessee, insofar as M/s Gayatri Bullion was long standing in the business and because of its past track record and antecedents it was capable to get the goods on better terms from the market, whereas the assessee was a new entrant in the line of business and because of shortage of funds could not hold the stock and because being a new entrant, was not able to get long credits on the purchases.

9. As per our considered view before rejecting the books of account, the Department has to prove that accounts are unreliable, incorrect or incomplete. The accounts regularly maintained in the course of business, duly audited under the provisions of [IT Act](#) and free from any qualification by the auditors, should be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. Even though, it is not possible to lay down the exact circumstances in which accounts should be rejected as unreliable or incorrect, yet the accounts may be rejected as unreliable if important entries and transactions are omitted therefrom or if proper particulars and vouchers, bills, etc. are not forthcoming or if they did not include entries relating to particular class of business transaction. The assessee should invariably be given opportunity for offering explanation regarding defects in accounts and on his failure to satisfactorily explain the defects, the Department would be justified in rejecting the books of account. Thus, books of account should not be rejected light-heartedly. The duty of the AO is to administer the provisions of the Act in the interest of public revenue and to prevent evasion or escapement of tax legitimately due to the State. At the very same time, the duty of the appellate authority is to ensure not only that the provisions of the Act are administered in the interest of public revenue so as to prevent evasion/escapement of tax, but at the very same time to ensure that only the tax legitimately due to the State is collected.

10. An assessment under [Section 144](#) r/w [s. 145](#) is an assessment in which the AO can estimate the assessee's income after rejecting the books of account and for rejecting the books of account, it is the Revenue's onus to prove that either the books of account maintained by the assessee are not correct and complete or the method of accounting adopted is such that true profit cannot be deduced therefrom. From these legal provisions, what flows is that if the Revenue doubts the correctness of GP declared by the assessee,

it first of all should reject the assessee's books of account after satisfying the mandatory requirements of [s. 145](#) which can be done only after pointing out a specific defect in the books of account. As the onus to make out a case for rejection of books of account is on the Revenue, so the assessee cannot be burdened with the responsibility of proving a negative aspect of the matter meaning thereby, the assessee cannot be held responsible for not having earned the profit at a particular rate. As per the income-tax laws, the assessee has to substantiate his return and if he furnishes or produces necessary evidence, which in the normal course of things is known as books of account, bills, vouchers, etc. in support of his return, then in order to rebut the assessee's reliance/submissions when the return is substantiated, by such books of account, it is the Revenue's duty to carry on proper investigation and verification from such books of account and must call for any other explanation or evidence, if so required. After production of books of account and submission of explanation by the assessee, if any asked for, with respect to the contents of the return and books of account, the Revenue may accept the same or after pointing out the specific defect may reject the books of account and proceed to determine the assessee's income as per the provisions of [s. 145](#). Income-tax provisions nowhere either authorize the AO or cast an obligation on the assessee to prove a negative result, i.e., to prove as to why he failed to make a profit at a particular rate. In disposing of an appeal from against any order under [Section 143\(3\)/144](#), the first appellate authority need not confine itself only to the materials on record at the time of assessment. It may make such enquiries as it thinks fit. The first appellate authority has all the powers which the original authority may have. In the absence of any statutory provisions to the contrary, the appellate authority is vested with the plenary powers, which the subordinate authority has in the matter. In this case, the CIT(A) himself has looked into audited accounts as well as quantitative statement of daily sales and purchases and compared it with the rate prevailing in Ahmedabad Bullion Merchant Association and found that the profit arrived at in each and every transaction was correct. All this exercise was done by the CIT(A) in the presence of the AO. No ground has been taken by the Revenue with regard to any additional materials relied on by the CIT(A) in contravention of Rule 46A, while reaching to such conclusion.

11. Where the AO makes estimations, he has to provide evidence and proof as to the falsity of the books of account, etc. where he failed to do so, he should not reject the books of account.

12. The Hon'ble Supreme Court in [Brij Bhushan Lal Praduman Kumar v. CIT](#) , categorically observed that while making "best judgment assessment" the AO should keep in mind what honestly he believes to be fairly estimated or the proper figure of assessment. Furthermore, Hon'ble Calcutta High Court in the case of [CIT v. Popular Electric Co. \(P\) Ltd.](#) observed that while making "best judgment", the AO should make independent and well grounded estimate and such estimate may be based on adequate and relevant materials.

13. As per our considered view, "best judgment assessment" is not a provision to penalize the assessee, but is a machinery provision to enable the Revenue to assess a person when situation warrants an assessment. The order under [Section 144](#) is to be made to the best of the judgment of the AO which means, the order has to be rational and is to be best on an honest guesswork for which some valid basis is available to the AO. The order involves exercise of 'judgment' by the officer. A fair estimation of income has to be made, the AO should take into consideration the totality of the facts and circumstances of the case in addition to proper evaluation of the material furnished by the assessee and collected by him by his own efforts. Where "best judgment assessment" power has been conferred, the limits of the power are implicit in the expression "best of his judgment assessment". The judgment is vital to decide the matter with wisdom, truly and legally. Judgment does not depend upon the arbitrary capricious of the AO, but on settled and invariable principle of justice. Though there is an element of guesswork in "best judgment assessment", it shall not be a wild one, but shall have reasonable nexus to the available material and circumstances of each case. While estimating the GP, the AO should be fair and reasonable and should keep into account the turnover and the GP of earlier years along with all the facts and circumstances of the case. By rejecting book result, the AO does not get absolute and unbridled powers to estimate whatever profit he wants, as per his sweet-will."

18.1 In view of the facts and circumstances as discussed above as well as various decisions relied upon by assessee, we are of the

considered opinion that the estimation of income by adopting net profit @ 8% by the AO is highly arbitrary and unjustified. Accordingly the addition made by the AO on this account is deleted.

19. Ground no.9 is regarding applicability of section 115BBE of the Act. This issue emanates only after addition is made and once the addition itself is deleted the question of applying provisions of section 115BBE of the Act does not arise. Hence it becomes infructuous.

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

Order pronounced in the open court on 09.05.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 09 .05.2024

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*