

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. Nos.1170 to1173/Kol/2023

Assessment Years: 2010-11, 2012-13, 2014-15 & 2015-16

Sundip Kumar Gupta.....Appellant
Fort Oasis Complex, Flat No.040903,
Block-436B, Panditya Road,
Kolkata – 700029.
[PAN: AEBPG7187B]

vs.

DCIT, Circle-47, Kolkata..... Respondent

Appearances by:

Shri Abhishek Bansal, AR, appeared on behalf of the assessee.

Shri B. K. Singh, JCIT-Sr. DR, appeared on behalf of the Revenue.

Date of concluding the hearing : April 23, 2024

Date of pronouncing the order : July 02, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The captioned are bunch of four appeals preferred by the assessee against the separate orders dated 06.09.2023, 06.09.2023, 15.09.2023 & 06.09.2023, respectively, of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). Since the facts and issues involved in all the appeals are identical, hence, these appeals have been heard together and are being disposed of by this common order. At the request of ld. representatives of the parties, ITA No.1170/Kol/2023 is taken as the lead case for the purpose of narration of facts.

2. **ITA No.1170/Kol/2023** – The sole issue raised by the assessee through grounds of appeal is relating to the confirmation of addition of Rs.80,00,000/- made by the Assessing Officer u/s 68 of the Act treating

the unsecured loans claimed by the assessee as unexplained income of the assessee.

3. The brief facts of the case are that the Assessing Officer received information from the Investigation Wing that the assessee's proprietorship concern, namely M/s Deep Steel, has received funds to the tune of Rs.70,00,000/- during the year from three shell companies namely M/s Anmol Commerce Pvt. Ltd., Avenue Dealcom Pvt. Ltd. and Mangalam Trade Fin Pvt. Ltd. The Assessing Officer observed that as per the information received, the amount was routed through various shell companies and the pattern of transactions indicated that there was possibility of routing unlawful money after getting used in the same account and probably with the intention of converting black money into white. On the basis of the said information, the Assessing Officer reopened the assessment in the case of the assessee u/s 147 of the Act. During the assessment proceedings, the Assessing Officer noted that the assessee had received loans aggregating to Rs.80,00,000/- from three companies i.e. Vanilla Tieup (P) Ltd. (Rs.10,00,000/-), Popular Vintrade (P) Ltd. (Rs.20,00,000/-) and Anmol Commerce (P) Ltd. (Rs.50,00,000/-). That all the three shell companies were having common directors. He, therefore, formed the belief that the assessee had routed his own unaccounted money through the aforesaid shell companies. He accordingly reopened the assessment u/s 147 of the Act. Further, the Assessing Officer referred to the information of Investigation Wing and also reproduced a chart of cash trail and observed that the amount was routed through various companies, which ultimately received into the accounts of the beneficiaries including the assessee. The assessee furnished various documents to prove the identity, creditworthiness and genuineness of the transaction

such as loan confirmation from the creditors, documents to prove their creditworthiness and further submitted that the amount was received through banking channel. The assessee further pleaded that the total amount received of Rs.80,00,000/- was a loan from the aforesaid three creditor companies, which was repaid during subsequent assessment years. However, the Assessing Officer relied on the information of Investigation Wing and treated the said amount of Rs.80,00,000/- as unexplained income of the assessee and added the same to the taxable income of the assessee u/s 68 of the Act.

4. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A). However, the Id. CIT(A) confirmed the addition so made by the Assessing Officer. Being aggrieved by the said order of the CIT(A), the assessee has come in appeal before us.

5. At the outset, the Id. counsel for the assessee has submitted that the reopening of assessment in this case was bad in law. That the Assessing Officer, on the basis of information received from the Investigation Wing, suspected that there was a possibility of routing of unexplained/unaccounted money into the account of the assessee. That the said information received from the Investigation Wing was at the most reason to suspect and that the said information was not enough to form the belief of escapement of income of the assessee. He has submitted that various courts of law have held that addition cannot be made on the basis of mere suspicion of the Assessing Officer and the Assessing Officer must be in possession of credible information to form the belief that the income of the assessee has escaped assessment. The Id. counsel has further submitted that as per the information received from the Investigation Wing that the assessee was alleged to have

received funds of Rs.70,00,000/- only, whereas, in the assessment order, the Assessing Officer has noted that the assessee had received an amount of Rs.80,00,000/-. He in this respect has submitted that after receipt of information from the Investigation Wing, the Assessing Officer did not correlate the said information with the accounts/assessment records of the assessee to form belief that the income of the assessee has escaped assessment. That the Assessing Officer has reopened the assessment merely on the basis of information received from the Investigation Wing and therefore, the satisfaction derived by the Assessing Officer of escapement of income was a borrowed satisfaction. The ld. counsel has submitted that even on merits, the assessee had furnished all the relevant documents to prove the identity and creditworthiness of the creditors and genuineness of the transaction. He referring to the assessment order has submitted that the Assessing Officer has not discussed about a single document furnished by the assessee to prove the identity and creditworthiness of the creditors and genuineness of the transaction. He has submitted that the Assessing Officer has made the addition in a mechanical manner by simply relying upon the report of the Investigation Wing without any discussion on merits of the documents and evidences furnished by the assessee and without pointing out any defect or discrepancy in the same. The ld. counsel has further referred to the various documents placed in the paper-book. He in this respect has referred to page 9 of the paper-book to submit that in response to notice issued u/s 142(1) of the Act, the assessee had duly furnished the copy of ITR, Audited Balance Sheet and Profit & Loss account for the year under consideration along with Tax Audit Report of proprietorship concern of assessee namely M/s Deep Steels, and further that the details of unsecured loan in desired format including details of interest paid and TDS deducted thereupon

along with loan confirmations from the creditors were furnished and also the details of bank accounts of the proprietorship concern were furnished. The ld. counsel has further referred to page 10 of the paper-book to submit that the necessary documents were filed in the case of major loan creditor i.e. M/s Anmol Commerce Pvt. Ltd. (loan of Rs.50,00,000/-), which included loan confirmations from the said creditor, return filing acknowledgement for A.Y 2010-11, audited annual accounts, bank statement and declaration about source of loan payments. The ld. counsel has further referred to page 14 of the paper-book, which is a reply to the show-cause notice, wherein, it has been stated that apart from asking the assessee to furnish the relevant documents, the Assessing Officer has directly communicated with the creditors to verify the loan transactions. It has also been mentioned in the said reply that the aforesaid loans have been repaid to the creditors in subsequent years along with interest after deduction of tax at source u/s 194A of the Act. The ld. counsel thereafter has relied upon the various documents which were furnished before the Assessing Officer to prove the identity, creditworthiness of the creditors and genuineness of the transaction. The ld. counsel in this respect has also referred to pages 65 to 92 of the paper-book to submit that copy of financial statements, acknowledgement of unsecured loan of creditors was duly furnished before the Assessing Officer. That loan confirmations from the creditors were also furnished. The ld. counsel has further referred to pages 104 to 116, which is the details of repayment of unsecured loans and submitted that all the loans were repaid and squared off during the subsequent assessment years. The ld. counsel has further referred to assessment order dated 28.12.2019 passed u/s 147/143(3) of the Act in the case of M/s Anmol Commerce Pvt. Ltd. for assessment year 2012-13. He referred to the observation made in the said

assessment order to submit that the identical information was received from Investigation Wing in the case of M/s Anmol Commerce Pvt. Ltd., M/s EnpieeFinall Services Pvt. Ltd., M/s Fast-N-Perfect Commercial Pvt. Ltd., M/s Mangalam Tradefin Pvt. Ltd. As per the information, M/s Anmol Commerce Pvt. Ltd. had raised a share amounting to Rs.30.07 crores. The assessment was reopened and ultimately after examination of the documents and considering the submissions, no additions were made in the case of M/s Anmol Commerce Pvt. Ltd. by the Assessing Officer. The ld. counsel referring to the said assessment order has submitted that though the said assessment order was relating to the assessment year 2012-13 but the credit entries in the said year were duly examined by the Assessing Officer and the credibility of the M/s Anmol Commerce Pvt. Ltd. was admitted by the Assessing Officer in the said case. The ld. counsel has further referred to the assessment order to submit that the Assessing Officer has mentioned that the said M/s Anmol Commerce Pvt. Ltd. had received a sum of Rs.2,00,000/- from Vanilla Tieup P Ltd. which has also been mentioned as conduit company in the case of the assessee. The Ld. Counsel has submitted that the 'Return Of Income' of the said Anmol Commerce Pvt. Ltd. having been accepted after scrutiny assessment u/s147/143(3) of the Act for the subsequent year despite the fact that the reopening has been made on the identical allegations, proves that the allegation of the Assessing Officer that M/s Anmol Commerce Pvt. Ltd. was a shell company, were wrong and false. That the said company was an active compliant company and regular income tax assessee. The ld. counsel has further submitted that even the assessee has duly produced the explanation regarding the source of funds of the creditor. He has further submitted that the assessment year involved in this case is A.Y 2010-11 and that the amendment in section 68 of the Act casting

burden upon the assessee to prove the source of source has been brought into effect vide Finance Act 2012 w.e.f. 01.04.2013 and the said Proviso is not applicable for the assessment year under consideration. The ld. counsel has further submitted that the assessee however, has also proved the source of the source of the funds also.

6. The ld. DR, on the other hand, has relied on the findings of the lower authorities.

7. We have heard the rival submissions and gone through the record. In this case, firstly, the reopening has been made merely on suspicion and solely on the basis of report of Investigation Wing by the Assessing Officer without correlating the said information with the accounts/assessment records of the assessee. As pointed out, had the Assessing Officer correlated the information with the accounts of the assessee, he would have mentioned in the reasons recorded that the assessee had received a fund of Rs.80,00,000/- instead of Rs.70,00,000/- as mentioned in the reasons recorded. Secondly, the Assessing Officer himself has mentioned in the reasons recorded that the pattern of the transaction indicated that there was a possibility of routing of unlawful money and probably with intention to convert black money into white money. Thus even in the investigation report, there was suspicion only. Hence, the information from the investigation wing, at the most can be said to be a reason to suspect only. The Assessing officer did not correlate the said information with the accounts of the assessee. There was no credible information available with the Assessing Officer to form the belief that the income of the assessee has escaped assessment. It has been held time and again that the reasons to believe regarding the escapement of the income should be based on certain tangible material and it should not be mere pretence of the

Assessing Officer. The reasons to believe does not mean reason to suspect. Reopening of the assessment is not permitted for making fishing and roving enquiries. The Assessing Officer, after receipt of alleged information received from the Investigation Wing was supposed to correlate the same with the records and other facts of the case and thereafter should have satisfied himself of escapement of income. Reopening is not permissible on the basis of borrowed satisfaction of the Assessing Officer. Therefore, reopening of the assessment in this case is held as bad in law. Reliance in this respect can be placed on the decision of Hon'ble Supreme Court in the case of 'ITO vs. Lakhmani Mewal Das' reported in (1976) 103 ITR 437 (SC), of the Hon'ble Delhi High Court in the case of 'PCIT Vs. Meenakshi Overseas Ltd.' reported in 395 ITR 677 (Del.) and in the case of 'CIT vs. Atul Jain' reported in [2008] 299 ITR 383 (Delhi), further of the Hon'ble Punjab and Haryana High Court in the case of 'CIT vs. Paramjit Kaur' reported in (2009) 311 ITR 38 (P&H).

7.1. Even on merits, in the assessment order, the Assessing Officer has merely relied on the report of the Investigation Wing. That the Assessing Officer has not discussed a single evidence/document furnished by the assessee and has not pointed out any defect or discrepancy in the evidence furnished by the assessee to prove the identity, creditworthiness and genuineness of the transaction. The ld. counsel for the assessee has duly demonstrated from the record that all the creditors had sufficient net worth to give loan to the assessee. The ld. counsel in this respect has referred to page 77 of the paper-book to show that M/s Anmol Commerce (P) Ltd. was having a share capital of Rs.18.10 crore and reserves and surpluses of Rs.282.27 crores and that the loan and advances given by the said M/s Anmol Commerce (P) Ltd.

as shown on the balance sheet were only of Rs.39.30 crores, out of which the assessee was advanced a sum of Rs.50,00,000/- only. He has further referred to page 69 of the paper-book to submit that in the case of M/s Vanilla Tie Up Pvt. Ltd., the said company was having a share capital of Rs.13.95 lakh and reserves and surplus of Rs.61.26 crores as on 31.03.2010. That the assessee had advanced loan of Rs.10,00,000/- only. The ld. counsel has further referred to page 89 of the paper-book to show that the creditor, M/s Popular Vintrade Pvt. Ltd. had share capital and reserves & surplus as on 31.03.2010 was Rs.92.01 lakhs and that a total sum of loan and advances was Rs.20 lakh only advanced to the assessee. The ld. Counsel, therefore, has duly demonstrated that the loan creditors were having sufficient net worth to advance loan to the assessee company. Further, the ld. counsel has duly demonstrated that the entire loans were repaid during the subsequent assessment years. As noted, the loans duly carried interest, TDS was duly deducted on the interest expenditure, the interest income has been accounted by lender and the same forms part of the income of the lender. Interestingly, the Assessing Officer has not made any disallowance in respect of interest expenditure incurred by the assessee on the aforesaid loan amount. Moreover, the assessment was reopened in the case of major loan provider i.e. M/s Anmol Commerce (P) Ltd., though in the subsequent assessment year, but on the similar allegations and the returned of income of the said concern has been accepted. Moreover, in this case, the Assessing Officer has given the cash trail, wherein, the name of only two companies has been mentioned i.e. M/s Anmol Commerce (P) Ltd. and M/s Vanilla Tie Up Pvt. Ltd. There was no mention even of the third creditor namely M/s Popular Vintrade Pvt. Ltd. I the said list. Moreover, the assessee has duly furnished all the documents to prove the identity and

creditworthiness of the creditors and genuineness of the transaction. Neither the Assessing Officer, in our view, nor the Id. CIT(A) has pointed out any defect or discrepancy in the evidence furnished by the assessee. The additions have been made solely on the basis of unsubstantiated information received from the Investigation Wing and the said uncorroborated information has been duly rebutted by the assessee by producing the sufficient evidences on the file.

7.2. The Id. counsel has placed reliance in the decision of the Coordinate Bench of the Tribunal in the case of 'Poddar Realtors vs. ITO' in ITA No.265/Kol/2023 decided on 22.06.2023, in which further, reliance has been placed on the various other decisions including the decision of the Jurisdictional Calcutta High Court in the case of 'PCIT vs. Sree Leathers Pvt. Ltd.' reported in 448 ITR 332 and of the Hon'ble Gujarat High Court in the case of 'PCIT vs. Ambe Tradecorp Pvt. Ltd.' reported in 145 taxmann.com 27. The relevant part of the order of the Tribunal in the case of 'Poddar Realtors vs. ITO' is reproduced as under:

"8. In view of the above facts, the reliance placed by the Ld. Counsel for the assessee on the decision of the jurisdictional Calcutta High Court in the case of Pr.CIT vs. Sreeleathers (supra) is found to be applicable, wherein on similar facts and circumstances, the Hon'ble Court had held as follows:

"Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are "the assessee offers no explanation". This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an

explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

9. As noted earlier, the loan was repaid in 2014-15 and, therefore, the allegation of the AO that assessee was a beneficiary of the loan cannot be sustained on these facts and is liable to be deleted. We gainfully refer to the judgment of the Hon'ble Gujarat High Court in the case of PCIT vs. Ambe Tradecorp (P.) Ltd (supra) where it has been held as follows:

"The Tribunal rightly recorded in para 29 of the judgment. "Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries being carried out in the later years. Thus, in the given facts and circumstances, were hold that there is no infirmity in the order of the Ld. CIT(A)."

10. We, therefore, under the given facts and circumstances of the case, are of the considered view since the assessee has successfully discharged its onus of proving the identity of the loan creditor, which in the instant case duly registered with Ministry of Corporate Affairs, having PAN and had filed return of income as well. Further creditworthiness of the transaction is proved with the fact that they have been carried through banking channel and sufficient funds were available with the loan creditors to explain the amount of loan given and the genuineness of the transaction is proved with the fact that the assessee company is carrying out regular business activity and the loan was obtained at commercial rate of interest which was also repaid at a later date in subsequent year, interest was paid on the loans and tax at source has been deducted and duly reflected by the loan creditor in their income tax return. Therefore, we fail to find any justification in the action of ld. AO invoking the provisions of Section 68 of the Act. We, thus, set aside the finding of ld. CIT(A) and delete the addition of Rs.25,00,000/- made u/s 68 of the Act."

8. The aforesaid decisions referred to by the Tribunal is squarely applicable to the facts and issues involved in this case. In view of our discussion made above, we do not find any justification on the part of the lower authorities in making/confirming the impugned addition and the same is accordingly ordered to be deleted.

9. **ITA No.1171/Kol/2023** – The sole issue raised by the assessee through grounds of appeal is relating to the confirmation of addition of Rs.35,00,000/- made by the Assessing Officer u/s 68 of the Act treating the unsecured loans claimed by the assessee as unexplained income of the assessee.

10. The brief facts of the case are that the Assessing Officer received from the Investigation Wing that the money was routed to the accounts

of various beneficiaries through shell companies. As per the information, the assessee received funds amounting to Rs. 35,00,000/- during the year from three shell companies namely M/s Anmol Commerce Pvt. Ltd., Avenue Dealcom Pvt. Ltd. and Mangalam Trade Fin Pvt. Ltd. having the same directors. The Assessing Officer observed that as per the information received, the amount was routed through various shell companies and the pattern of transactions indicated that there was possibility of routing unlawful money after getting used in the same account and probably with the intention of converting black money into white. On the basis of the said information, the Assessing Officer reopened the assessment in the case of the assessee u/s 147 of the Act. However, during the assessment proceedings, it was found that the amount of Rs.35,00,000/- was received by the assessee from one company only namely M/s Mangalam Tradefin Pvt. Ltd. The Assessing Officer observed that the said M/s Mangalam Tradefin Pvt. Ltd. had negligible income. He further referred to the information of Investigation Wing and also reproduced a chart of cash trail and observed that the amount was routed through various companies, which ultimately reached to the bank account of the assessee.

The assessee, however, pleaded that the amount of Rs.35,00,000/- was received as unsecured loan from M/s Mangalam Tradefin Pvt. Ltd., which was repaid during subsequent assessment years. The assessee furnished various documents to prove the identity, creditworthiness and genuineness of the transaction such as loan confirmation from the creditor and also submitted the documents to prove the creditworthiness of the creditor and further submitted that the amount was received through banking channel. However, the Assessing Officer relied on the information of Investigation Wing and treated the said

amount of Rs.35,00,000/- as unexplained income of the assessee and added the same to the accounts of the assessee u/s 68 of the Act.

11. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the ld. CIT(A). However, the ld. CIT(A) confirmed the addition so made by the Assessing Officer. Being aggrieved by the said order of the CIT(A), the assessee has come in appeal before us.

12. At the outset, the ld. counsel for the assessee has submitted that the Assessing Officer has made the addition solely relying upon unsubstantiated report of the Investigation Wing. That the Assessing Officer has not discussed about a single document furnished by the assessee to prove the identity and creditworthiness of the creditors and genuineness of the transaction. He in this respect has submitted that after receipt of information from the Investigation Wing, the Assessing Officer did not correlate the said information with the accounts/assessment order of the assessee to form belief that the income of the assessee has escaped assessment. He has submitted that in the reasons recorded, the Assessing Officer has noted that as per the information received from Investigation Wing, the assessee has received the aforesaid amount of Rs.35,00,000/- from three shell companies namely Anmol Commerce (P) Ltd., Avenue Dealcom Pvt. Ltd. & Mangalam Trade Fin Pvt. Ltd., however, as per the assessment order, the assessee during the year had received Rs.35,00,000/- from one company only namely M/s Mangalam Tradefin Pvt. Ltd. He, therefore, has submitted that the Assessing Officer did not correlate the aforesaid information with the accounts/records of the assessee and that the assessment has been reopened on the basis of borrowed satisfaction.

He, therefore, has pleaded that the reopening in this case was bad in law.

12.1. The ld. counsel has further referred to the various documents placed in the paper-book. He in this respect has referred to page 9 of the paper-book to submit that in response to notice issued u/s 142(1) of the Act, the assessee had duly furnished the copy of ITR, Audited Balance Sheet and Profit & Loss account of the proprietorship concern i.e. M/s Deep Steels and further the details of unsecured loan in desired format including details of interest paid and TDS deducted thereon along with loan confirmations from the creditors were filed and also the details of bank accounts of the proprietorship concern were also furnished. The ld. counsel has further referred to page 10 of the paper-book to submit that vide letter dated 21.08.2017, the necessary documents/evidences pertaining to the loan creditor i.e. M/s Mangalam Trade Fin Pvt. Ltd., were furnished to the Assessing Officer which included loan confirmations from the said creditor, return filing acknowledgement for A.Y 2012-13, audited annual accounts, bank statement and declaration about source of loan payments. The ld. counsel has further referred to page 14 of the paper-book, which is a reply to the show-cause notice, wherein, it has been stated that apart from asking the assessee to furnish the relevant documents, the Assessing Officer has directly communicated with the creditor to verify the loan transaction. It has also been mentioned in the said reply that the aforesaid loans have been repaid to the creditors in subsequent years along with interest after deduction of tax at source u/s 194A of the Act. The ld. counsel thereafter has relied upon the various documents which were furnished before the Assessing Officer to prove the identity, creditworthiness of the transaction. The ld. counsel in this

respect has also referred to pages 62 of the paper-book, which is the copy of balance sheet of M/s Mangalam Tradefin Pvt. Ltd. to show that as per the balance sheet, there was a share capital of Rs.26.02 crore and reserves & surplus amounting to Rs.212.286 crore. That the short-term loans and advances were amounting to Rs.24.35 crore only, out of which an amount of Rs.35,00,000/- was given to the assessee. He, therefore, has submitted that the creditworthiness of the said share subscriber was proved beyond doubt. The ld. counsel has further referred to page 69 & 70 that even source of funds of the creditor was also furnished. He has further referred to page 73 of paper book to submit that the aforesaid transaction was duly confirmed by the creditor. The ld. counsel has finally referred to page 77, which is a copy of assessment order dated 30.12.2017 passed u/s 143(3) of the Act in the case of M/s Mangalam Tradefin Pvt. Ltd. for A.Y 2015-16 to submit that in the said assessment order only an addition u/s 14A of the Act of Rs.352031/- has been made. The ld. counsel in this respect has submitted that the said M/s Mangalam Tradefin Pvt. Ltd. has been duly assessed to Income Tax and that from the said assessment order, it is not only proved that no addition on account of any unexplained source of funds has been made in the case of the said creditor but also the observation of the Assessing Officer that the said company was a shell company, was wrong and false.

13. We have heard the rival submissions and gone through the record. In this case, firstly, the reopening has been made merely on suspicion and solely on the basis of report of Investigation Wing by the Assessing Officer without correlating the said information with the accounts/assessment records of the assessee. The Assessing Officer himself has mentioned in the reasons recorded that the pattern of the

transaction indicated that there was a possibility of routing of unlawful money and probability of converting black money into white money. Even the assessing Officer has mentioned the name of three companies from whom the assessee allegedly received funds, whereas there was only a single loan creditor. The reasons recorded and discrepancies pointed out therein in the present case are identical to that has been discussed above in the assessee's appeal ITA NO. 1170/2023 . In view of our discussion made and findings given in para 7 above, the reopening of the assessment is held as bad in law.

13.1 Even on merits, in the assessment order, the Assessing Officer has merely relied on the report of the Investigation Wing. That the Assessing Officer has not discussed a single evidence/document furnished by the assessee and has not pointed out any defect or discrepancy in the evidence furnished by the assessee to prove the identity, creditworthiness and genuineness of the transaction. The ld. counsel for the assessee has duly demonstrated from the record that the creditor had sufficient net worth to give loan to the assessee. Further, the ld. counsel has duly demonstrated that the entire loan was repaid during the subsequent assessment years. As noted, the loan duly carried interest, TDS was duly deducted on the interest expenditure, the interest income has been accounted by lender and the same forms part of the income of the lender. Interestingly, the Assessing Officer has not made any disallowance in respect of interest expenditure incurred by the assessee on the aforesaid loan amount. In our view, neither the Assessing Officer nor the ld. CIT(A) has pointed out any defect or discrepancy in the evidences furnished by the assessee. The addition has been made on the basis of unsubstantiated information received from the Investigation Wing and the said

uncorroborated information has been duly rebutted by the assessee by producing the sufficient evidences on the file. Moreover, the loan has been repaid in the subsequent assessment year. Further in view of our discussion made above while adjudicating identical issue in ITA No. 1170/2023 and in the light of the decision of the co-ordinate bench of the tribunal in the case of 'Poddar Realtors vs. ITO' (Supra), the addition made/confirmed in this case by the lower authorities is not sustainable and hence the same is ordered to be deleted.

14. **ITA No.1172/Kol/2023** – The sole issue raised by the assessee through the grounds of appeal is relating to the confirmation of addition of Rs.1,10,00,000/- made by the Assessing Officer u/s 68 of the Act treating the unsecured loans claimed by the assessee as unexplained income of the assessee.

15. The brief facts of the case are that the Assessing Officer received from the Investigation Wing that the money was routed to the accounts of various beneficiaries through shell companies. As per the information, the assessee received funds amounting to Rs.1,10,00,000/- during the year from three shell companies namely M/s Anmol Commerce Pvt. Ltd., Avenue Dealcom Pvt. Ltd. and Mangalam Trade Fin Pvt. Ltd. having the same directors. The Assessing Officer observed that as per the information received, the amount was routed through various shell companies and the pattern of transactions indicated that there was possibility of routing unlawful money after getting used in the same account and probably with the intention of converting black money into white. On the basis of the said information, the Assessing Officer reopened the assessment in the case of the assessee u/s 147 of the Act. However, during the assessment proceedings, it was found that the amount of Rs.1,10,00,000/- was

received by the assessee from one company only namely M/s Anmol Commerce Pvt. Ltd. The Assessing Officer observed that the said M/s Anmol Commerce Pvt. Ltd. had negligible income. He further referred to the information of Investigation Wing and also reproduced a chart of cash trail and observed that the amount was routed through various companies, which ultimately reached to the accounts of the assessee. The assessee further pleaded that the amount of Rs.1,10,00,000/- was unsecured loans received from M/s Anmol Commerce Pvt. Ltd., which was repaid during subsequent assessment years. The assessee furnished various documents to prove the identity, creditworthiness and genuineness of the transaction such as loan confirmation from the creditor and also submitted the documents to prove the creditworthiness of the creditor and further submitted that the amount was received through banking channel. However, the Assessing Officer relied on the information of Investigation Wing and treated the said amount of Rs.1,10,00,000/- as unexplained income of the assessee and added the same to the accounts of the assessee u/s 68 of the Act.

16. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the ld. CIT(A). However, the ld. CIT(A) confirmed the addition so made by the Assessing Officer. Being aggrieved by the said order of the CIT(A), the assessee has come in appeal before us.

17. The fact and issue involved is identical to that has been discussed above in ITA No.1170/Kol/2023. The facts relating to the legal issue relating to the validity of the reopening of the assessment are identical as discussed above in ITA No.1170/Kol/2023 and ITA 1171/Kol/2023. In view of our findings given above, the legal issue is accordingly decided in favour of the assessee.

18. The issue on merits relating to identity and creditworthiness of the creditor M/s Anmol Commerce Pvt. Ltd has also been discussed at length as it has been observed that the assessee has not only proved the identity and creditworthiness of the creditor but also the genuineness of the transaction. The ld. counsel has further referred to the various documents placed in the paper-book. He in this respect has referred to page 9 of the paper-book to submit that in response to notice issued u/s 142(1) of the Act, the assessee had duly furnished the copy of ITR, Audited Balance Sheet and Profit & Loss account of the proprietorship concern i.e. M/s Deep Steels and further the details of unsecured loan in desired format including details of interest paid and TDS deducted thereon along with loan confirmations from the creditors were filed and also the details of bank accounts of the proprietorship concern were also furnished. The ld. counsel has further referred to page 10 of the paper-book to submit that vide letter dated 21.08.2017, the necessary documents/evidences pertaining to the loan creditor i.e. M/s Anmol Commerce Pvt. Ltd., which included loan confirmations from the said creditor, return filing acknowledgement for A.Y 2014-15, audited annual accounts, bank statement and declaration about source of loan payments. The ld. counsel has further referred to page 14 of the paper-book, which is a reply to the show-cause notice, wherein, it has been stated that apart from asking the assessee to furnish the relevant documents, the Assessing Officer has directly communicated with the creditor to verify the loan transaction. It has also been mentioned in the said reply that the aforesaid loans have been repaid to the creditors in subsequent years along with interest after deduction of tax at source u/s 194A of the Act. The ld. counsel thereafter has relied upon the various documents which were furnished before the Assessing Officer to prove the identity, creditworthiness of the transaction. The ld. counsel

in this respect has also referred to pages 71 of the paper-book, which is the copy of balance sheet of M/s Anmol Commerce Pvt. Ltd. to show that as per the balance sheet, there was a share capital of Rs.18.10 crore and reserves & surplus amounting to Rs.283.919 crore. That the short-term loans and advances were amounting to Rs.176.09 crore only, out of which an amount of Rs.1,10,00,000/- was given to the assessee. He, therefore, had submitted that the creditworthiness of the said share subscriber was proved beyond doubt. The ld. counsel has further referred to page 82 & 88 to submit that the aforesaid transaction was duly confirmed by the creditor. The ld. counsel has further referred to page 108, which is a copy of assessment order dated 28.12.2019 passed u/s 147/143(3) of the Act in the case of M/s Anmol Commerce Pvt. Ltd. for A.Y 2012-13. He referred to the observation made in the said assessment order to submit that the identical information was received from Investigation Wing in the case of M/s Anmol Commerce Pvt. Ltd. for assessment year 2012-13 , however, no addition on account of any unexplained source of funds has been made in the case of the said creditor. The ld. counsel in this respect has submitted that the said M/s Anmol Commerce Pvt. Ltd. has been duly assessed to Income Tax and that from the said assessment order, it is proved that the observation of the Assessing Officer that the said company was a shell company, was wrong and false. In view of our discussion made above on identical facts of earlier years and further in the light of the decision of the Co-Ordinate Bench of this Tribunal in the case of 'Poddar Realtors vs. ITO' (supra) , the addition made on this issue is not sustainable and the same is accordingly ordered to be deleted.

19. **ITA No.1173/Kol/2023** – The sole issue raised by the assessee through grounds of appeal is relating to the confirmation of addition of Rs.1,50,00,000/- made by the Assessing Officer u/s 68 of the Act treating the unsecured loans claimed by the assessee as unexplained income of the assessee.

20. The facts are identical to that have been discussed in appeals for earlier years. The only distinguishing fact is relating to the name of creditors and amount of money received as loan. In this case, the Assessing Officer received from the Investigation Wing that the assessee received funds amounting to Rs.1,50,00,000/- during the year from three shell companies namely M/s Anmol Commerce Pvt. Ltd., Avenue Dealcom Pvt. Ltd. and Mangalam Trade Fin Pvt. Ltd.. On the basis of the said information, the Assessing Officer reopened the assessment in the case of the assessee u/s 147 of the Act. However, during the assessment proceedings, it was found that the amount of Rs.1,50,00,000/- was received by the assessee from one company only namely M/s Anmol Commerce Pvt. Ltd. Rest of the facts, documents relied upon by the assessee and submissions made are identical. To be more particular about the relevant documents for the assessment year under consideration, the ld. counsel has referred to page 9 of the paper-book to submit that in response to notice issued u/s 142(1) of the Act, the assessee had duly furnished the copy of ITR, Audited Balance Sheet and Profit & Loss account of the proprietorship concern i.e. M/s Deep Steels and further the details of unsecured loan in desired format including details of interest paid and TDS deducted thereon along with loan confirmations from the creditors were filed and also the details of bank accounts of the proprietorship concern were also furnished. The ld. counsel has further referred to page 10 of the paper-book to submit

that vide letter dated 21.08.2017, the necessary documents/evidences pertaining to the loan creditor i.e. M/s Anmol Commerce Pvt. Ltd., which included loan confirmations from the said creditor, return filing acknowledgement for A.Y 2015-16, audited annual accounts, bank statement and declaration about source of loan payments. The ld. counsel has further referred to page 14 of the paper-book, which is a reply to the show-cause notice, wherein, it has been stated that apart from asking the assessee to furnish the relevant documents, the Assessing Officer has directly communicated with the creditor to verify the loan transaction. It has also been mentioned in the said reply that the aforesaid loans have been repaid to the creditors in subsequent years along with interest after deduction of tax at source u/s 194A of the Act. The ld. counsel has also referred to pages 77 of the paper-book, which is the copy of balance sheet of M/s Anmol Commerce Pvt. Ltd. to show that as per the balance sheet, there was a share capital of Rs.18.10 crore and reserves & surplus amounting to Rs.285.36 crore. That the short-term loans and advances were amounting to Rs.243.32 crore only, out of which an amount of Rs.1,50,00,000/- was given to the assessee. He, therefore, had submitted that the creditworthiness of the said share subscriber was proved beyond doubt. The ld. counsel has further referred to page 82 & 88 to submit that the aforesaid transaction was duly confirmed by the creditor. The ld. counsel has further referred to page 108, which is a copy of assessment order dated 28.12.2019 passed u/s 147/143(3) of the Act in the case of M/s Anmol Commerce Pvt. Ltd. for A.Y 2012-13.

21. In view of our findings given above in respect of appeals of the assessee for earlier assessment years and further in the light of the decision of the Co-Ordinate Bench of this Tribunal in the case of

‘Poddar Realtors vs. ITO’ (supra), the impugned addition in this appeal is not sustainable and the same is accordingly ordered to be deleted.

22. In view of our discussion made above, the impugned additions in all the captioned appeals are ordered to be deleted. All the captioned appeals of the assessee stand allowed.

Kolkata, the 2nd July, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 02.07.2024.

RS

Copy of the order forwarded to:

1. Sundip Kumar Gupta
2. DCIT, Circle-47, Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches