

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1469/Del/2023 : Asstt. Year : 2016-17

ITA No. 1470/Del/2023 : Asstt. Year : 2018-19

Income Tax Officer, Ward-24(1), New Delhi-110002	Vs.	Sun Infraestate Pvt. Ltd., Triveni Apartment, A-94, Shop No. 1, Swayam Sewa Group, Housing Society, Vivek Vihar, New Delhi-110095
(APPELLANT)		(RESPONDENT)
PAN No. AANCS5532K		

**Assessee by : Sh. Gautam Jain, Adv. &
Sh. Lalit Mohan, CA**

Revenue by : Ms. Deepti Chandola, Sr. DR

Date of Hearing: 18.06.2024

Date of Pronouncement: 02.07.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the Revenue against the orders of National Faceless Appeal Centre (NFAC), Delhi dated 17.03.2023.

2. Since, the issue involved in both the appeals are similar, they were heard together and being adjudicated by a common order. The only difference is in amount involved. In ITA No. 1469/Del/2023 is taken as a lead case. Following grounds have been raised by the Revenue:

"1. The Id. CIT(A) has erred in deleting the addition of Rs.31.80 Cr. made u/s 68 of the Income Tax Act, 1961 without appreciating that the assessee failed to prove the genuineness and creditworthiness of the loan taken from M/s Grand Realcon Pvt. Ltd."

3. In this case, notice u/s 148 of the Income Tax Act, 1961 has been issued to the assessee on 31.03.2021 against which the assessee filed ITR and filed replies to the notices issued u/s 142(1) of the Act. As per the reasons provided to the assessee on 17.12.2021, the Income Tax department has received information that the assessee had transactions with M/s Grand Realcon Pvt. Ltd. whose Director has given statement on oath accepting that M/s Grand Realcon Pvt. Ltd. is a paper company and no real business is being conducted by the company. On 04.02.2022, objections were filed by the assessee to the reasons recorded and requested the AO to provide copy of statement of Directors which was relied upon for opening of the case u/s 147 of the Act on 16.03.2022. The copy of the statement was provided to the assessee and the assessment proceedings continued culminating into conclusion of assessment proceedings on 29.03.2022 making addition u/s 68 of the amounts received from M/s Grand Realcon Pvt. Ltd.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition made by the AO on the grounds that the assessee could provide identity, creditworthiness and genuineness of the party M/s Grand Realcon Pvt. Ltd.

5. Aggrieved, the Revenue filed appeal before the Tribunal. Before us, the Id. DR relied on the order of the Assessing Officer and the Id. AR supported the order of the Id. CIT(A).

6. Heard the arguments of both the parties and perused the material available on record.

7. We have gone through the Assessment Order containing 28 pages and the order of the Id. CIT(A) containing 9 pages. The Assessing Officer sought details from the assessee viz., copy of ledger account of M/s Grand Realcon Pvt. Ltd., copy of bank statement along with bank book evidencing that the amount has been received through proper banking channel. Before the AO, the assessee submitted copy of confirmation of accounts, ITR acknowledgment copy, copy of bank statement and copy of financial statement of M/s Grand Realcon Pvt. Ltd. The Assessing Officer after giving commentary about what constitutes accommodation entries, entry operator, jama kharchi company, beneficiaries held that M/s Grand Realcon Pvt. Ltd. is showing meager capital and meager turnover and hence the company could not have given advances of such huge amounts to the assessee. Further, the AO held that the notices issued u/s 133(6) have not been complied by M/s Grand Realcon Pvt. Ltd. The Assessing Officer has also relied on the statement of Sh. Pradip Dey recorded u/s 131 of the Act on 30.03.2015 by the Investigation Wing of Kolkata.

8. For the sake of ready reference, the relevant part of the order of the Assessing Officer is reproduced as under:

"The assessee company submitted copy of ledger extracts of Grand Realcon Private Limited, for FY 2015-16, Bank Extracts of said transactions, Balance sheet of Grand Realcon Private limited etc.

.....

5. *In order to explain the rotation of cash through the companies by beneficiaries to create bogus transaction in vicious cycle, the details are explained hereunder:*

a. **Accommodation entries:** "Accommodation entry is a financial transaction between the two parties where one party enters the financial transaction in its books to accommodate the other party. These transactions are accommodated entries mostly in lieu of cash of equal amount and commission charged over and above at certain fixed percentage for providing such accommodation entry. These accommodation entries are taken by various beneficiaries for introducing their unaccounted cash into their books of accounts without paying the due taxes."

b. Sometimes there are a number of intermediaries who work for the operator. These intermediaries introduce the beneficiaries to the operator or in many cases these intermediaries become sub agents of the operator and deal with the beneficiaries on their own.

b.1 The operator is a person who manages the overall scheme of the scam. He is in control of numerous paper/bogus companies which are utilized for routing of cash. The beneficiaries desiring bogus accommodation entries approach the operator.

c. **Entry operator:** An entry operator is the person who is in the business of giving accommodation entries in lieu of cash/cheque of equal amount after charging certain percentage of commission in cash. In short, they are individuals who control a large number of paper/ shell companies which are used for routing cash for the transactions. They work for commission to be paid by the beneficiaries.

d. **Jamakharchi companies :** A paper or Jamakharchi company is a company which have usually following characteristics:-

1. These companies have no actual assets. Their capital build up is bogus only and it carries no actual worth.
2. Normally, their balance sheet carries no actual worth.
3. They have not only bogus share capital but bogus investments also.
4. They do not maintain proper books of accounts as required by companies Act and Income Tax Act.

5. *Many times they do not file Return of Income.*
6. *Normally, their actual controllers and directors are different persons. These companies are made in the name of dummy directors.*
7. *Dummy directors means people who appears to be directors of such companies but in actuality they do not control the affairs of the companies. They are mostly employees or relatives of entry operators.*
8. *These companies often use fake registered addresses. They can hardly be found at their given registered addresses.*
9. *Their sole purpose is to launder black money into white. They are used to change the colour of money. They are made for sham transactions.*
10. *They are used for various kind of accommodation entries likeshare capital, unsecured loan, Long Term capital gain, short term capital loss, commodity profit/loss, bills of expenses etc. In the field of accommodation entr^ such companies play a very vital role.*

e. **Beneficiary:** *Beneficiary is the person who is being provided accommodation entry to bring in his unaccounted money into his books of accounts wherein the unaccounted money is laundered and brought into the books on account of transactions. In plain words, the cash or unaccounted money of the beneficiary goes through the entry provider through the paper companies and finally through the jamakarachi company the unaccounted black money entered in the books of account.*

6.(i) *On verification of the information provided, it is observed that M/s Grand Realcon Private limited is showing a small capital of Rs. 1,00,000/- as on 31.03.2015 and Rs. 1,00,000/- as on 31.03.2016 respectively. The Revenue from operation is Rs. 68,000/- and Rs. 33,000/- during FY 2015-16 and FY 2014-15 respectively. The net profit/loss during AY 2016-17 and AY 2015-16 are (Rs.1,700) and (Rs. 3,132). (The Balance sheet and Profit & Loss account is reproduced above.)*

(ii) *The company Grand Realcon Private Limited has given advanced an amount of Rs. 31,80,00,000/- on 15.03.2016 during FY 2015-16 relevant to AY 2016-17 to Sun Infraestate Private Limited. Despite, the company is*

having meagre income and meagre capital Rs. 1,00,000/-, it has advanced such huge amount to the assessee.

(iii) On verification of assessee's submission, it is seen that the assessee company has claimed that it has received an advance of Rs. 31.80 Crores from M/s Grand Realcon Pvt. Ltd. for identification and purchase of suitable land for M/s Grand Realcon Private Limited. However, No evidence of any correspondence in this regard has been placed on record. Further, it is mentioned here that no land transaction, land development activities has been reflected in the books of M/s Grand Realcon Private Limited during any previous years. Further, no activities of land dealing has been made by M/s Sun Infra with any other party during any previous year. The sale & purchase during the year is Nil in its ITR for AY 2016-17. Thus, the claim that the advance of Rs. 31.80 Crore has been received by the assessee company towards land transactions holds no ground.

Also, on perusal of the ITR for AY 2016-17 of the Sun Infraestate Private Limited, it is seen that, the company has no sale or purchase during the year. It is also having meagre capital of Rs. 1,00,000/-, income of Rs. (-2796) and Fixed assets at Rs. 0/-

.....

(iv) On verification of Bank statements of M/s Grand Realcon Private Limited, it is found that funds are credited from other persons/entities and transferred to some other persons /entities as advance (transactions not amounting to any business transactions such as sale and purchase.)

.....

(V) For the verification of transaction, this office issued a notice u/s 133(6) of the Act to the company Grand Realcon Private Limited on 08.03.2022, for furnishing the details in respect of transactions happened with the assessee company. The date of compliance was 11.03.2022. No reply from the said company Grand Realcon Private Limited has been received till date. However, after issuing Show cause Notice alongwith draft assessment Order, the facts was brought on record. The assessee has

submitted a email conversation addressed to the ITO, ward, 24(1), Delhi. The communication is as under:

.....

It is to mention here that Notice u/s 133(6) of the Act were issued to the Grand Realcon Private Limited was duly delivered on its email on 08.03.2022, registered with Income Tax Department. However, it replied to the ITO, ward, 24(1), Delhi instead of e portal of Department through its registered account.

In absence of confirmation direct from the company, the credit of Rs. 31.80 Crores cannot be treated as genuine satisfactorily.

(vi) Other, evidences collected. During the course of Inquiry conducted by the DDIT (Inv.), Unit-2(2), Kolkata, the statement of Shri Pradeep Dey was recorded on u/s 131 of the Act on 30.03.2015. The copy of statement is available with this office. Some part is reproduced here in body of order which describes that Grand Realcon Private Limited is mere shell company:

.....

The annexure A as mentioned in Question and Answer no. 7 is having names of 72 companies. The name of Grand Realcon Private limited appears at S. no. 54 of the said annexure A.

.....

Hence, it can be held that the Grand Realcon Private Limited is just a providing accommodation entry and mere paper and shell company. It is used for re-routing the money.

7. This office issued a show cause notice alongwith draft assessment order to the assessee on 22.03.2022 and the assessee replied on 25.03.2022. The assessee has submitted various points' alongwith number case laws. On perusal of the case Laws, it is found that the facts of the instant case is different from the case laws relied by the assessee. Hence, same is not acceptable.

The reply of the assessee is summarized as under-:

10. Before concluding the appellant seeks to summarize following fundamental aspects of the advance received in the course of business by the assessee company during the financial year 2015-16 relevant to assessment year 2016-17:

- a) *That assessee company is engaged in the business of real estate and in the course of business assessee company received advance of Rs.31,80,00,000/- from M/s Grand Realcon (P) Ltd. for the purpose of identification and procurement of suitable land for the purpose of development of project.*
- b) *That genuineness of the transaction can be seen from the confirmation, audited financial statement and bank statement;*
- c) *That advances were received through banking channel and the M/s Grand Realcon Pvt. Ltd. has confirmed the advances and is also assessed to tax and also furnished financial statements which are duly audited under Companies Act' 2013, no adverse inferences can be validly drawn.*
- d) *That it is not a case any documentary evidence placed on record has found to be not acceptable as is evident from draft order of assessment. It is also not a case where any enquiry has been made established that claim made by the assessee is not genuine. However all that has happened is reliance has been placed on statement recorded on 30.03.2015 of former director to allege that the transaction is pre-arranged transaction. It is further alleged that business activities are not genuine and does not have the capacity or the creditworthiness to advance such huge advance.*
- e) *That aforesaid observation is based on fundamental misconception of facts. That Shri Pradeep Dey was a director in M/s Grand Realcon (P) Ltd. for the period from 06.11.2010 to 09.12.2011. That it is apparent that statement recorded on 30.03,2015 i.e. before the year under consideration.*
- f) *It is also a matter of record that advance was raised by assessee company on 15.03.2016. In such circumstances any such statement recorded of such person who was neither a director in instant year nor statement recorded in instant year has*

evidentiary value and thus adverse inferences drawn on such statement is misconceived one.

- g) That the statements recorded cannot be relied upon as they have been recorded behind the back of the assessee and without any opportunity for cross examination.*
- h) The instant case is a case of "lack of enquiry" as much as no further enquiries were made by assessing officer by issuing notice u/s 131 of the act and it is not a case where assessee has failed to discharge its onus u/s 68 of the Act.*
- i) That alleged non-compliance to notice issued u/s 133(6) of the Act is not a relevant criterion to make the addition u/s 68 of the Act That alleged meagre income alone cannot be a ground to reject the genuineness of transaction or creditworthiness of the M/s Grand Realcon Pvt. Ltd, particularly when source of advances evident from audited financial statement furnished during proceedings.*
- j) That source of source can only be examined in respect of share capital transactions. Thus, alleging that M/s Grand Realcon Pvt. Ltd has "low" income and therefore do not have creditworthiness to advance the amount. Cannot be used as a guise and an indirect attempt to carry out investigation of source which is altogether impermissible in law.*
- k) That money received originated from the coffers of the appellant and on this ground alone addition is not tenable.*

.....

(i) The statement of Shri Pradeep Dey was recorded on 30.03.2015 and behind the back of assessee. In this regard, it is to state that the statement of Shri Pradeep dey was recorded on oath and he stated the modus operandi of companies including Grand Realcon Private Limited. These companies were providing accommodation entries.

The assessee has also requested for opportunity of cross examination of director.

In this regard it is stated that "the right of cross examination is not an absolute right. (Nath International Sales vs. UOI, AIR 1992 (Del) 295).

The Hon'ble Supreme Court has also held that the right of hearing does not necessarily include right of cross examination. The right of cross examination must depend upon the circumstances of each case and also on the statute concerned (State of J&K vs. Bakshi Gulam Mohammad AIR 1967 SC 122). The question whether the assessee is entitled to cross examination is a question which may largely depends on the facts and circumstances of the case (ef. Shyamlal Biri Merchant vs. UOI (1993) 68 ELT 548, 551 (All.)) In the present case no such circumstances are warranted as in the list of beneficiaries to whom accommodation entries were provided by the said group categorically contains the name and address of the assessee, further the group has categorically admitted to providing of accommodation entries of unsecured loans through various benami concerns.

(e) The Hon'ble Rajasthan High Court in the case of Rameshwarlal Mali vs. CIT 256 ITR 536(Raj.) has held that "there is no provision for permitting the cross examination of the persons whose statements were recorded during survey."

1. In CIT v. Metal Products of India (1984) 150 ITR 714 (P&H), it was held that the AO may gather information in any manner he likes, behind the back of the assessee and utilize the same against the assessee, even if it does not, in all respects satisfy the requirements of the Indian Evidence Act. What is necessary is that he should have material upon which to base the assessment; "material" as distinguished from "evidence" which includes direct and circumstantial evidence."

Hence, cross examination of director is not possible as per above.

(ii) Lack of inquiry by the AO-: In this regard, it is stated that this office has recorded the reasons based on enquiry. Also, the director of the company was already examined on oath u/s 131 of the Act by the then DDIT, Unit 2(2), Kolkata. The facts stated by him mentioned in statement are reproduced above.

(iii) The point is also raised that, the AO was not having copy of statement of Director. The point is incorrect. The AO who has recorded the

reasons was having Copy of statement of director at the time of recording of reasons. While disposing the objections, the copy of statement was not attached with Speaking Order. However, it was provided to assessee on later date. It is also contended by the assessee that statement is fade and not legible. The same is reproduced here above in order. The same can be read by any one.

(iv) The opportunity of Video conference was given by this office on 28.03.2022 on the request of assessee which was duly conducted. Shri Maly Chaturvedi, AVP of company attended the V.C. The points of assessee were listened carefully and perused.

9. Section 68 For the purpose of easy understanding of the provision, let us divide the section into 7 parts as under:

- 1. A sum is credited into the books of the assessee*
- 2. Maintained for the previous year*
- 3. Assessee does not give any explanation about the source of the sum*
- 4. Assessee does not give any explanation about the nature of the sum*
- 5. The answer by the Assessee does not satisfy the Income Tax Officer*
- 6. The sum credited is chargeable to income tax*
- 7. If the above conditions are satisfied, sum is credited to the income of the assessee in the previous year*

The word "Sum" used here in the section is very exhaustive in nature. The sum credited into the account shall be of any from and nature. It applied to all the credits by whatever the name being called. This was laid down in the case of G.R. Siri Ram v. CIT [1975] 98 ITR 337 (P&H). The ultimate aim of the Court was to keep the intent of the legislature alive.

The word "Books" is defined under the Section 2 (12) of the Income Tax Act, 1961. The existence of the books is the foremost condition under this act. In V.C. Shukla vs. CBI [1998] 3 SCC 410, the Supreme Court has given a wider connotation of the term "Book". It has stated that those evidences that come under the ambit of the Section 34 of the Indian Evidence Act, 1872 can be considered as book. The entries must be authentic else would fix the liability on the assessee. The pass book of the

bank is not regarded as a valid account books under the section 68. It was laid in CIT, Poona v. B.H. Gandhi 141 ITR 67 [Bom].

In case of section 68, the assessee is under the obligation to prove to following to avoid application of the deeming provision which has been considered by the Hon'ble Calcutta High Court in CIT vs. Precision Finance Pvt. Ltd. (1994)208 ITR 465 (Cal) which laid down the following criteria:-

- 1. Identity of his creditors;*
- 2. Capacity of creditors to advance money; and*
- 3. Genuineness of transaction.*

Also, it is primarily important to ascertain the genuinity of the transaction claimed by the assessee before going into the issue under section 68 of the Act. It is not the entries which speak about the activity of the assessee but the actual act done during the previous year has to be reflected in the books of the assessee. The Assessing Officer is duty bound to satisfy himself with the genuinity of the transaction and only after such satisfaction, the AO has to proceed on the merit of the issue.

b) Capacity of creditors to advance money:

The onus is on the assessee to discharge the onus that the cash creditor is a man of means to allow such cash credit. There should be identification of the creditor and he should be a person of means. When the cash creditor is an income-tax assessee, the department has a free hand to scrutinize the creditor if required as enunciated in the case of Kamal Motors vs. CIT [2003] 131 Taxman 155 (Raj).

The Hon'ble Punjab and Haryana High Court in the case of Gumani Ram Siri Ram v. CIT [1975] 98 ITR 337 (Punj. & Har.) observed that the language of section 68 shows that it is general in nature and applies to all credit entries in whomsoever name they may stand, that is, whether in the name of the assessee or a third party.

In the case of P.V. Raghava Reddi vs. CIT [1956] 29 ITR 942, it was observed by the Andhra Pradesh High Court that the burden of proof is not dependent upon the fact of a credit entry in the name of the assessee or in

the name of a third party. In either case, the burden lies upon the assessee to explain the credit entry, though the onus might shift to the Income-tax Officer under certain circumstances. Otherwise a clever assessee can always throw the burden of proof on the income-tax authorities by making a credit entry in the name of a third party either real or pseudonymous. The same High Court in the case of M.M. A.K. Mohindeen Tham by and Co. vs. CIT [1959] 36 ITR 481, relying on the said decision came to the conclusion that there is no distinction between the entries in the names of the partners and those in the names of the third parties, and the nature of the entry is not distinguishable. In the absence of a satisfactory explanation, it is open to the Department to infer that these monies also belong to the assessee and represent suppressed income.

The Hon'ble Delhi ITAT in the case of A-One Housing Complex Ltd. Vs ITO (2008) 110 ITD 361 (Del) has illustrated different scenarios by way of examples to show cause the quantum of burden to be discharged by the assessee in different cases which is not exhaustive as claimed by the Hon'ble Tribunal. Thus, burden of proof and the quantum of burden to be discharged by the assessee cannot be given a straight jacket formula but has to be ascertained based on facts and circumstances of each case.

c) Genuineness of transaction:

In the case of a partnership firm, the Hon'ble Ahmadabad ITAT in the case of CIT Vs. M/s Radiant Embroideries (ITA No. 3428/Ahd./2008) held as under:

*"When the assessee has explained the amounts as capital contributions by the partners, the AO is not justified in holding that the assessee has not explained the source. In case the Assessing Officer doubted the genuineness of the source, he should have considered the same in the hands of the partners only and not in the case of the firm. This view of ours is supported by the decisions of the Hon'ble Allahabad High Court in the cases reported in CIT v. Jaiswal Motor Finance [1983] 141 ITR 706 and Surendra Mahan Seth v. CIT *1996 + 221 ITR 239."*

Where the nature and source of a receipt, whether it be of money or other property, cannot be satisfactorily explained by the assessee, it is open for the revenue to hold that it is the income of the assessee and no further burden lies on the revenue to show that the income is from any particular source as enumerated the Hon'ble Supreme court in the case of Roshan Di Hatti vs. CIT [1977] 107 ITR 938 (SC) and Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (SC).

The Human Probability Tests were laid down for the first time in the case of CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) as:

"11. The Tribunal disbelieved the story, which is, prima facie, a fantastic story. It is a story that does not accord with human probabilities. It is strange that the High Court found fault with the Tribunal for not swallowing that story. If that story is found to be unbelievable as the Tribunal has found, and in our opinion rightly, then the position remains that the consideration for the sale proceeded from the assessee and, therefore, it must be assumed to be his money."

It was also followed in the case of Sumati Dayal vs. CIT (1995) 214 ITR 801 (SC) as:

"The majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winning from races is not genuine."

Thus, the Court has laid down a test to analyze the genuineness of the entry through the logical analysis. The Human Probability Test could be applied when the Assessee makes the Officer to believe his/her story as a valid event. The false claims of the Assessee cannot sustain before the test of Human Probabilities.

The Human Probability test is also applied in the following cases:

- 1. A. Rajendran & Ors. vs. ACIT (2006) 204 CTR (Mad) 9*
- 2. Hacienda Farms (P) LTD. vs. CIT (2011) 239 CTR (Del) 212*
- 3. Major Metals Ltd. vs. UOI AND ORS (2012) 251 CTR (Bom.) 385*
- 4. Pradip Kumar Loyalka vs. ITO (1997) 59 TTJ (Pat)(TM) 655*

5. *ACIT vs. Sampat Raj Ranka (2001) 73 TTJ (Jd) 642*

Satisfaction of the Assessing Officer:

Section 68 of the Income Tax Act demands that assessee has to provide an explanation to any sum credited in the accounts of the assessee and the said explanation should satisfy the Assessing Officer of the sum credited in the books.

In the case of A. Govindarajulu Mudaliar vs. CIT [1958] 34 ITR 807, it was observed by the Supreme Court that there is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amounts of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature.

In the case of CIT Vs. Oasis Hospitalities (P) Ltd. (2011) 333 ITR 119 the Hon'ble Delhi High Court held as under:

"Order of the CIT(A) clearly demonstrates that this remand report was sent to the assessee who had submitted his reply dt. 10th Feb., 2004, which is even reproduced in the order and thereafter the CIT(A) discussed the same in the light of certain decision cited before him and came to the conclusion that the assessee had not given satisfactory evidence to discharge the onus. It had merely given names of the parties without anything more. That would not be sufficient compliance. Even the bank statement of the assessee which was submitted has not been proved."

However while considering the explanation of the assessee, the revenue or Department cannot act unreasonably as held in the case of Hon'ble Supreme court in the case of Sumati Dayal v. CIT 214 ITR 801 (SC). Where the assessee has shown all the evidence to substantiate the case, the same cannot be ignored by the department and claim unsatisfactory. In the case of CIT vs. Uttamchand Jain (2010) 320 ITR 554, wherein the assessee showed all the proof available with him to prove the genuine sale of jewellery but the Assessing Officer disallowed the same on extraneous grounds. The Hon'ble Delhi High Court observed as under:

".....The fact that the jewellery claimed to have been sold by the assessee was not found with the purchaser or his associates cannot be held against the assessee, because, admittedly, the said jewellery declared under VDIS, 1997 is also not found with the assessee after the sale is effected. If existence of the jewellery with the assessee prior to the sale is evidenced by the VDIS, 1997 certificate and on sale of the said jewellery the assessee has received the consideration which is duly accounted for, then the mere fact that the jewellery sold by the assessee is not found with the purchaser cannot be a ground to hold that the transaction was bogus and the consideration received by the assessee was the undisclosed income of the assessee.

.....

.....The fact that the cash credits are introduced in the accounts of Mr. Trivedi, it cannot be inferred that the said cash belonged to the assessee. The assessee was not under any obligation to prove the cash credits in the accounts of Mr. Trivedi. In the present case, the assessee has proved that he was in possession of the diamond jewellery which was duly declared and certified under VDIS, 1997. The assessee has proved the identity of the person to whom the said diamond jewellery was sold, his credit worthiness and has accounted for the sale proceeds received from the sale of the diamond jewellery."

the treatment of share capital amount under Section 68 of the Act has been amended by Finance Act, 2012, w.e.f. 01.04.2013 to insert the following:

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

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

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

By the above amendment the onus of satisfactorily explaining such credits remains on the person in whose books such sum is credited. If such person fails to offer an explanation or the explanation is not found to be satisfactory then the sum is added to the total income of the person.

While recognizing that the pernicious practice of conversion of unaccounted money through masquerade of investment in the share capital of a company needs to be prevented, Courts have advised a balance to be maintained regarding onus of proof to be placed on the company. The Courts have drawn a distinction and emphasized that in case of private placement of shares the legal regime should be different from that which is followed in case of a company seeking share capital from the public at large.

The amendment to the section 68 of the Act states that the nature and source of any sum credited, as share capital, share premium etc., in the books of a closely held company shall be treated as explained only if the source of funds is also explained by the assessee company in the hands of the resident shareholder. In other words, the in case of closely held companies the sources of the person from whom the share capital is received is also required to be produced by the assessee so as to escape the clutches of section 68. And where they are not regulated by SEBI, the assessee is now under an obligation to prove the source the person from whom the amount is received by the assessee."

10.(i) In view of the above analysis, advance received of Rs.31,80,000,00/-for AY 2016-17 is not allowable and thus, escapement of income appears to that extent.

From the above analysis, the transaction between the M/s Grand Realcon Private Limited and assessee is pre-arranged transaction. It is proved that business activities of M/s. Grand Realcon Private Limited are found to be non-genuine therefore; the Grand Realcon Private Limited does not have the capacity or the creditworthiness to advance such huge advance. So,

the genuineness and creditworthiness of the advance given to Sun Infraestate Private Limited, of Rs.31,80,00,000/- is not proved.

(ii) Hence, addition of Rs. 31,80,00,000/- u/s 68 of the Act is made to the income of the assessee as unexplained cash credit into books of account."

9. The Assessing Officer finally based on the financials of the lender company, statement of Sh. Pradip Dey, explaining the bogus transactions cycle and accommodation entry operations, invoking the provisions of Section 68 of the Income Tax Act, 1961, brought the amounts of the advances received from M/s Grand Realcon Pvt. Ltd.

10. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the addition.

11. While deleting the addition, the Id. CIT(A) held that the appellant has duly discharged its onus and the AO has failed to conduct specific enquiries and to come out with findings that the transactions are sham in nature. For the sake of ready reference, the entire decision of the Id. CIT(A) is reproduced in *toto*:

"5.1 I have gone through the Assessment Order and submissions of the appellant. The learned AO has invoked section 68 and added sum of Rs.31.8 crores on account of unexplained cash credit. The appellant had received advances from the company named Grand Realcon Private Limited towards identification of land parcel required by Grand Realcon.

5.2 In this backdrop the appellant has filed appeal and all grounds pertains to one addition i.e. on account of unexplained cash credit and therefore are disposed of collectively as under.

5.3 The learned AO contested that Grand Realcon is not a genuine company is merely a paper company and is engaged in provision of

accommodation entries. Based on evidences collected during the course of enquiry by DDIT(Inv.)-Unit 2(2) Kolkata the learned AO relied on statement of Pradeep Dey to confirm that Grand Realcon is a shell company. However, the learned AO did not carried out any independent investigation in this regard and passed the order stating that amount received by appellant is unexplainable. The learned AO issued a notice u/s 133(6) to seek confirmation from Grand Realcon however Grand Realcon inadvertently sent that confirmation to ITO Ward 24(1), Delhi instead of e-portal of Income-Tax department. The said fact is also confirmed in the assessment order.

5.4 The appellant submitted following documents to substantiate its claim before learned AO

- (i) copy of ledger account of Grand Realcon*
- (ii) copy of the bank statement reflecting money received from Grand Realcon*
- (iii) copy of confirmation of account*
- (iv) copy of income tax returns of Grand Realcon*
- (v) Grand Realcon's bank statement and financial statements of Grand Realcon*

5.5 I have gone through the appellant and contentions of AO as mentioned above the Assessing Officer has not carried out independent. Therefore, such assessment is not valid in light of following judicial pronouncements.

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5.6 Nonetheless the contention of appellant is also evaluated on merits and found that the appellant has discharged its onus of providing relevant documentation to substantiate genuineness and creditworthiness of Grand Realcon moreover the underlined amount is not in the nature of loans and advances but they are given with a specific instruction to identify land parcel. Therefore, the nature of underlined transaction is very clear.

5.7 In this regard, reliance is placed on following few judicial pronouncements-

"A] In *CIT v. Daulat Ram Rawat Mull*, the Supreme Court held that the fact that the depositor had not been able to give a satisfactory explanation regarding the source of deposit would not be decisive even of the matters as to whether the depositor was or was not the owner of the amount, that a person could still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money was found to be incorrect, and that from the simple fact that the explanation regarding the source of the money had been found to be false, it would be a remote and farfetched conclusion to hold that the money belonged to the assessee.

B] In *A. Govindarajulu Mudaliar v. CIT* the Court came to the conclusion that:

There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipt is of an assessable nature.

C] In *Kale Khan Mohammad Hanif v. Commissioner of Income-tax* the Supreme Court, in answering the question *Whether the burden of proving the source of the cash credit is on the assessee* observed that: *It is well established that the onus of proving the source of a sum of money found to have been received by the assessee is on him. If he disputes liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Income-tax Officer is entitled to treat to as taxable income."*

5.8 Further, it is pertinent to look at provisions of section 68 as under:

"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..."

5.9 In order to invoke section 68, the most essential aspect is that the tax payer do not offer any explanation towards source and nature of such cash credit. The tax payer also needs to establish the identity and credit worthiness of the lender.

5.10 During the course of assessment proceedings the appellant filed supporting documents to the transactions comprising of bank statements reflecting receipt of money, confirmation from Grand Realcon, financial statements and explanation towards source of funds of lenders.

The appellant demonstrated the source of funds of Grand Realcon by way of producing its financial statements. On perusal of financial statements, it has been observed that Grand Realcon has sufficient funds in form of credit balance in the bank account and therefore the creditworthiness of the lender is also established.

5.11 In view of the above as the nature of credit is very explained provisions of section 68 shall not apply.

5.12 In view of the above I am of the considerate view that the appellant has duly discharged its onus however the learned AO has failed to conduct specific enquiries and come out with findings that the underlined transactions is sham transaction. Therefore, the addition made by learned AO for sum of Rs.31,80,00,000/- is not tenable in law and being deleted."

12. From the record, we find that Sh. Pradip Dey was a Director in M/s Grand Realcon Pvt. Ltd. for the period from 06.11.2010 to 09.12.2011 and the statement was recorded on 30.03.2015 before the year under consideration whereas the monies received by the assessee were on 15.03.2016. Sh. Pradeep Dey was not a Director nor in any way associated with the company either of the recording of the statement or at the time of receipt of advance by the assessee company. Thus, the reliance placed by the Assessing Officer on the statement of Sh.

Pradeep Dey is misconceived. Further, the statements recorded in the absence of the assessee which has been utilized for the purpose of assessment but the assessee was not provided any opportunity of cross examining of Sh. Pradeep Dey. The non-compliance to the notices issued u/s 133(6) cannot be considered as the sole criteria to make addition in the case of the assessee. The Assessing Officer should bring this fact to the notice of the assessee and direct /provide an opportunity to the assessee to produce the parties. No field enquiries have been conducted by the Assessing Officer as per the record before us. The allegation that meager income of the lender party cannot be a ground to reject the genuineness and creditworthiness of the transaction. There was no evidence or lead to prove the allegation made by the Assessing Officer that the money received has been originated from the coffers of the assessee. The M/s Grand Realcon Pvt. Ltd. had Rs.74 Cr. of long term borrowings in the form of unquoted CCDs to provide advances to the assessee. The assessee has also furnished copy of confirmation of accounts and the AO has not made any enquiries nor questioned the genuinity of the confirmations filed. While the confirmations filed or on record, the allegation of the AO that the notices issued u/s 133(6) have not been complied and hence the amount be treated u/s 68 is not an acceptable proposition.

13. Keeping in view, the facts and arguments taken, we hold that the assessee has substantiated its claim before the AO by producing all the relevant documents viz. copy of ledger account of M/s Grand Realcon Pvt. Ltd., copy of the bank statement reflecting money received from M/s Grand Realcon

Pvt. Ltd., copy of confirmation of account, copy of income tax returns of M/s Grand Realcon Pvt. Ltd. and M/s Grand Realcon Pvt. Ltd.'s bank statement and financial statements of M/s Grand Realcon Pvt. Ltd., we affirm the decision of the Id. CIT(A) holding that appellant has duly discharged its onus but the AO has failed to conduct specific enquiries and come out with findings that the underlined transactions is sham transaction.

14. In the result, the appeals of the Revenue are dismissed.
Order Pronounced in the Open Court on 02/07/2024.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 02/07/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR