

IN THE INCOME TAX APPELLATE TRIBUNAL, "F" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA. No. 4809/MUM/2023
(A.Y.2015-16)

Surya India Fingrowth Pvt Ltd, Valecha Chambers, 6 th Floor, New Link Road, Andheri (W), Mumbai -400053.	Vs .	ITO, Ward – 11(2)(1) Aayakar Bhawan, M.K Road, Mumbai-400020.
PAN/GIR No. AABCF1317P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri K.P.Dewani.AR
Revenue by	Shri Nimesh Yadav.CIT-DR

सुनवाई की तारीख/Date of Hearing	21.05.2024
घोषणा की तारीख/Date of Pronouncement	23.07.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre (NFAC) Delhi /CIT(A) passed u/sec 143(3) and U/sec250 of the Act. The assessee has raised the following grounds of appeal:

- 1. The learned Assessing Officer has erred in adding the amount of Rs.20,00,00,000/- being loan taken from M/s Kriveria Impex Private Limited during the year u/s 68 of the Income Tax Act, even though assessee company had proved the identity of the lender, genuineness of the transaction and the credit worthiness of the lender by placing legal evidence on record.*

2. The learned Assessing Officer erred in applying the proviso to section 68 even though transaction is not in respect to share capital.

3. The addition made by Assessing officer and upheld by CIT(A) at Rs.20 crores u/s 68 of I.T. Act 1961 is unjustified, unwarranted and bad in law.

4. The learned A.O. and CIT(A) ought to have held that assessee has discharged its onus to explain the loan in terms of provisions of section 68 of I.T. Act 1961 and consequently no addition ought to be made at the hands of assessee.

5. The assessee having repaid the loan in subsequent accounting year and same having been accepted by A.O. Addition made in the case of assessee is unjustified, unwarranted and bad in law Addition upheld by CIT(A) without considering the submission made by assessee in appellate proceedings is in violation of principles of natural justice and is unjustified and unsustainable.

7. Addition upheld by CIT(A) without allowing the opportunity, of physical hearing through video conferencing is in violation of principles of natural justice and is unjustified and unsustainable

8. The assessee denies liability to pay interest u/s 234A, 234B and 234C of I.T. Act 1961. Without prejudice, levy of interest under section 234A, 234B and 234C of I.T. Act 1961 is unjustified, unwarranted and excessive.

9. Any other ground that shall be prayed at the time of hearing.

2. The brief facts of the case are that the assessee company is engaged in the business of trading & investment in Shares /Securities. The assessee has filed the return of income for the A.Y 2015-16 on 28.09.2015 disclosing a total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS to examine

/ verify the “large difference in the opening stock of current and closing stock of previous year shown in profit and loss account as per return of income”. Subsequently the Assessing Officer (AO) has issued notice u/sec 143(2) and u/sec 142(1) of the Act along with questionnaire. In compliance, the Ld. AR of the assessee has appeared from time to time and submitted the details and information on various dates of hearing. The AO on perusal of the financial statements and the information submitted found that the assessee has obtained unsecured loan of Rs.25,000/- from Mr. Kanayo Thakur and unsecured loan/ inter corporate deposits of Rs.20 Crores from M/s Krivera Impex Pvt Ltd. The AO has called for the details/information to explain the transactions and produce the loan/ lender parties with supporting sources of funds and bank statements of lenders. Further the notice u/sec 133(6) of the Act was issued on the M/s Krivera Impex Pvt Ltd and the AO has provided an opportunity to the assessee to establish the identity, creditworthiness and genuineness of the loan parties/creditors. The assessee has filed the detailed submissions explaining the transactions duly supported with the bank statement, loan confirmation and ledger accounts. The AO having dealt on the details, facts and has issued notice on the assessee for the additional information. Whereas the AO has dealt on the information and the evidences filed and observed that the assessee has not discharged obligation of proving the identity,

creditworthiness and genuineness of the loan creditor. The assessee has filed the details vide letters dated 19-12-2017 and 29-12-2017. Whereas the assessee in the financial year has obtained inter corporate deposit/unsecured loan supported with the bank statements, loan confirmations, ITR acknowledgement copy and ledger accounts. The AO has analyzed on the financial statements of the lender creditor and called for the clarifications and same was complied. The AO was not satisfied with the information and explanations though the assessee has submitted the details of confirmation of lender, bank statement, and financial statements to substantiate genuineness, identity and creditworthiness of loan creditors. The assessee has obtained the unsecured loan/ inter corporate deposit and was repaid to the lender company in the financial year 2015-16 and was confirmed by the parties. Whereas the AO was not satisfied with the information and explanations and observed that the assessee has not satisfied the ingredients required u/sec 68 of the Act and made an addition of unsecured loan and assessed the total income of Rs.20,00,00,000/- and passed the order u/sec 143(3) of the Act dated 30.12.2017.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) has considered grounds of appeal, findings of scrutiny assessment. The assessee has filed the submissions on the disputed issue of unsecured

loan/ inter corporate deposits on 24-12-2020 placed at page 293 to 325 of the paper book read as under:

“1. In Ground No.1 to 3 assessee has challenged the addition made by A.O. at Rs. 20 crores u/s 68 of I.T. Act 1961. A.O. has made addition in respect to amount received from M/s. Kriviera Impex Pvt. Ltd. A.O. by referring to proviso to section 68 has made addition of Rs 20 crores in the assessment framed.

2. It is respectfully submitted that addition made by A.O. u/s 68 at Rs.20 crores is unjustified, unwarranted and bad in law. Assessee requests to consider the following submissions in respect to same.

A) Assessee company is Investment Company and has maintained regular books of account which are duly audited by Chartered Accountants. Assessee has submitted audited financial statement along with return of income and has made due compliances as required by A.O. from time to time

B. Assessee has received during the previous year under consideration sum of Rs.20 crores through proper banking channel from M/s. Kriviera Impex Pvt. Ltd. The aforesaid company is assessed to income tax by Dy. Commissioner of Income Tax, Central Circle-8(1), Mumbai. Assessee had submitted confirmation of loan obtained from the aforesaid company indicating PAN of the party along with bank statement of the creditor wherefrom money has flown to assessee company. The aforesaid company is not a related party. The primary documents indicating identity, creditworthiness and genuineness of transaction in respect to loan were placed on record before A.O. Onus to explain credit in terms of provisions of section 68 of I.T. Act 1961 stood discharged. A.O. at para 11 of assessment order has observed documents furnished by assessee in the course of assessment proceedings. The para 11 of assessment order is reproduced hereunder for ready reference.

"11. With regard to loan of Rs.20 crore, claimed to have been taken from M/s. Kriviera Impex Pvt. Ltd., the assessee through different letters has furnished the following documents:

i) Confirmation of Unsecured Loan

ii) Copy of ITR acknowledgement of M/s. Kriviera Impex Pvt. Ltd.

iii) Copy of extract (of one page) of Bank Statement of M/s. Kriviera Impex Pvt. Ltd., highlighting the debits in favour of your company.

iv) Copy of extract (of one page) of assessee's Bank Statement highlighting the payments received by the assessee from above company.

v) A copy of Disclosure of General Information about the company M/s. Kriviera Impex Pvt. Ltd."

A.O. has not found any fault in aforesaid legal evidences submitted in assessment proceedings. On above undisputed factual position addition made by A.O. by treating loan at Rs.20 crores as unexplained credit at the hands of assessee is unjustified and unsustainable.

C) It is respectfully submitted that the balance sheet of the lender company shows that it had opening loan & advances of Rs. 70.91 crores which has increased to Rs.72.59 crores thereby there is increase in loan & advances given to the tune of Rs 1.67 crores. The above facts has been noted by A.O. at para 12 of the assessment order. The fact that the lender company has given loan & advances as on 31/03/2014 at Rs.70.91 crores and there are outstanding loans & advances as on 31/03/2015 at Rs.72.59 crores which includes Rs.20 crores advance given to assessee sufficiently establishes the creditworthiness of the lender to give loan of Rs.20 crores to the assessee company. In view of above, adverse observation in assessment order with regard to lender company does not deserve any credence and are unjustified and unsustainable.

D) The assessee invites attention to the Company Master Data downloaded from ROC site to show that lender company is incorporated on 29/03/1989. The company is in operation for almost 3 decades. The company has submitted balance sheet for 31/03/2018 and has also conducted its Annual General Meeting on 29/09/2018. This fully demonstrates the bonafides and genuineness of lender company.

E) The A.O. in assessment order at para 13 has reproduced the submission of assessee dated 29/12/2017. The assessee has submitted before A.O. that lender company M/s. Kriviera Impex Pvt. Ltd. had bank balance of about Rs.23 crores before advancing loan to assessee company. The copy of bank statement of M/s. Kriviera Impex Pvt. Ltd. was submitted in assessment proceedings. A.O. has not disputed aforesaid factual position as submitted in assessment proceedings as is evident from assessment order. The legal evidence on record clearly establishes creditworthiness of lender M/s. Kriviera Impex Pvt. Ltd. In view of above addition made by A.O. is unjustified and unsustainable.

F) It is respectfully submitted that assessee has repaid the aforesaid amount by cheque through proper banking channel and repayment of

the loan is also properly recorded in regular books of account maintained by assessee company. The repayment of loan has been made in subsequent accounting year. The aforesaid factual position is undisputed fact on record.

G) It is respectfully submitted that books of account of assessee company are accepted and not rejected and income has been determined on the basis of books of account maintained by assessee wherein such loan transaction is recorded in the course of carrying on day to day activities of business. A.O. has not brought any evidence on record to show that any money belonging to assessee company has flown to the said company for which assessee company has received cheque as loan. The addition made by A.O. is thus on suspicion and surmises.

H Assessee has submitted the share holding pattern of M/s Kirveria Impex Pvt. Ltd. before A.O. which clearly indicates that it is unrelated party. The loan received by assessee in the normal course of business through proper banking channel. The loan received has been repaid in the subsequent accounting year through proper banking channel and repayment of loan is accepted by A.O. in the assessment framed.

I) A.O. at para 21.1 has observed as to information obtained from A.O. of lender. It indicates that complete set of paper return along with audited financial statement of lender company was obtained from A.O. of the lender company. A.O. by referring to share capital, reserve & surplus and loans & advance received from the said company has observed that it has not much capital to advance Rs. 20 crores to assessee company. It is respectfully submitted that complete analysis of balance sheet of M/s. Kriviera Impex Pvt. Ltd. indicates that it is a company having substantial operation. The aforesaid company is having turnover to the tune of Rs.181.18 crores as against turnover of immediately preceding year at Rs.85.26 crores. Assessee has downloaded the details of ROC from the site of registrar of company to show that the aforesaid company is having status of active company. The aforesaid company is assessed by Dy. Commissioner of Income Tax, Central Circle-8(1), Mumbai. It is matter of common knowledge that majority of assessment at Central Circles are completed u/s 143(3) of I.T. Act 1961. The above facts amply demonstrate the identity, genuineness and creditworthiness of creditor and credit with assessee company does not remain unexplained so as to invoke provision of sec. 68 of I.T. Act 1961.

J) A.O. has analyzed the balance sheet of M/s. Kriviera Impex Pvt. Ltd. at para 21.3 of assessment order and in particular the trade payable observed in balance sheet of such company at Rs.201.78 crores. A.O. by referring to expenditure in Profit & Loss Account at Rs.181.10

crores has observed that one fails to understand that as to how the trade payables are at Rs.201.78 crores. It is respectfully submitted that the A.O. has omitted to consider trade payables on the opening day of accounting year at Rs.86.26 crores as well as other current liabilities at Rs.57.72 lacs. The aforesaid fact materially affects the adverse inference drawn by A.O. observed in assessment order. In view of above it is humbly prayed that the facts observed at para 21.3 wherefrom adverse inference is sought to be drawn deserves no credence as same is not based on complete facts of balance sheet of corporate shareholder

K) It is respectfully submitted that A.O. while making addition has largely referred to proviso to section 68 introduced in the Income Tax Act 1961 w.e.f. Asstt. Year 2013-14. A.O. at para 15 has reproduced Section 68 of I.T. Act 1961 and at para 16 & 17 has discussed the applicability of proviso to section 68 of I.T. Act 1961. A.O. while reproducing obligation under proviso to section 68 has omitted to consider that proviso is applicable in respect to sum credited consisting of share application money, share capital and share premium. A.O. at para 17 has not considered the complete proviso to section 68 to draw adverse inference that assessee has failed to explain cash credit of Rs.20 crores in respect to loan obtained from M/s Kriviera Impex Pvt. Ltd. The proviso to section 68 is not applicable as assessee has obtained loan and it is not share capital. The bare reading of proviso to section 68 would reveal that proviso can be pressed into service in respect to transaction which has been claimed by assessee to be share capital contribution. The facts in case of assessee indicate that the transaction is in respect to unsecured loan and is not contribution of share capital of the assessee company. In view of above provisions of proviso to section 68 is inapplicable and has been wrongly invoked by A.O. while making addition of huge amount of Rs.20 crores. It is respectfully submitted that A.O. has misapplied the proviso to section 68 on facts which do not warrant the application of proviso to section 68 of I.T. Act 1961. The addition made by A.O. is thus unjustified and unsustainable.

L The assessee places reliance on decision of Hon'ble ITAT Delhi Bench in the case of Smt. Prem Anand in ITA No.3514/Del/2014 vide order dated 13/04/2017. The Hon'ble ITAT in aforesaid case has held that amendment to section 68 by inserting proviso does not give power to A.O. to examine the source of source in non- share capital cases u/s 68 of I.T. Act 1961. The ratio laid down by Hon'ble ITAT squarely applies to the facts in the case of assessee. In view of above addition made by A.O. is unjustified and unsustainable.

3. Considering the submission made hereinabove it is humbly submitted that addition made by A.O. is unjustified and unsustainable. In view of above it is humbly prayed that addition made by A.O. be directed to be deleted.

The assessee respectfully begs to submit as under:

1. The assessee in assessment proceedings has adduced sufficient legal evidence on record to substantiate identity, creditworthiness and genuineness of loan transaction of M/s. Kriviera Impex Pvt. Ltd. Onus to explain credit stands satisfactorily discharged. There remains no scope for addition u/s 68 of I.T. Act 1961. The assessee for this proposition places reliance on the following decisions discussed herein below:

2. The assessee places reliance on the decision of Hon'ble Patna High Court in the case of Sarogi Credit Corporation Vs. CIT reported at 103 ITR 0344 (Patna) wherein Hon'ble High Court has held as under;

"If the credit entry stands in the names of the assessee's wife and children, or in the name of any other near relation, or an employee of the assessee, the burden lies on the assessee, though the entry is not in his own name, to explain satisfactorily the nature and source of that entry. But, if the entry stands not in the name of any such person having a close relation or connection with the assessee, but in the name of an independent party, the burden will still lie upon him to establish the identity of that party and to satisfy the ITO that the entry is real and not fictitious. Once the identity of the third party is established before the ITO and other such evidence are prima facie placed before him pointing to the fact that the entry is not fictitious, the initial burden lying on the assessee can be said to have been duly discharged by him. It will not, therefore, be for the assessee to explain further as to how or in what circumstances the third party obtained the money and how or why he came to make advance of the money as a loan to the assessee. Once such identity is established and the creditors, as in the instant case, have pledged their oath that they have advanced the amounts in question to the assessee, the burden immediately shifts on to the Department to show as to why the assessee's case could not be accepted and as to why it must be held that the entry, though purporting to be in the name of a third party, still represented the income of the assessee from a suppressed source. And, in order to arrive at such a conclusion, even the Department has to be in possession of sufficient and adequate materials. As I have already indicated above, the ITO's rejection not of the explanation of the assessee, but of the explanation regarding the source of income of the depositors, cannot by itself lead to any inference regarding the non-genuine or fictitious character of the entries in the assessee's

books of account. Nor, for that matter, is there any such finding recorded either by the ITO or the AAC. On the contrary, the AAC, whose appellate order in favour of the assessee forms part of the statement of the case, marked "B", clearly points out that the findings recorded by the ITO were no positive findings. The AAC, in my view, had rightly assessed the position in law by holding that, in order to rope in any amount as the income of the assessee from undisclosed sources, or as secreted profits, there must be some tangible materials".

The ratio laid down by Hon'ble Patna High Court squarely applies to the facts in case of assessee and considering the same addition made by A.O. is unjustified and unsustainable.

3. The assessee places reliance on the decision of Hon'ble Bombay High Court in case of M/s Orient Trading Co. Ltd. Vs. CIT reported at 49 ITR 0723 (Bom.) wherein Hon'ble Bombay High Court has held as under:

"When, however, in a case where the entry stands in the name of the third party, the assessee satisfies the ITO as to the identity of the third party and also supplies such other evidence which will show, prima facie, that the entry is not fictitious, the initial burden which lies on him can be said to have been discharged by him. It will not, thereafter, be for the assessee to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of the same with the assessee. The burden will then shift on to the Department to show why the assessee's case cannot be accepted and why it must be held that the entry, though purporting to be in the name of a third party, still represents the income of the assessee from a suppressed source. In order to arrive at such a conclusion, however, the Department has to be in possession of sufficient and adequate material",

The ratio laid down by Hon'ble Jurisdictional High Court squarely applies to the facts in case of assessee. In view of above addition made by A.O. is unjustified

4. The assessee places reliance on the decision of Hon'ble Apex Court in case of M/s Orissa Corporation (P) Ltd. reported at 159 ITR 0078 (SC) wherein Hon'ble Apex Court has held as under:

"In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who

could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises".

The ratio laid down by Hon'ble Apex Court squarely applies to the facts in the case of assessee. In view of above addition made by A.O. is unjustified and unsustainable.

5. The assessee places reliance on the decision of Hon'ble High Court of Gujarat in the case of DCIT Vs. M/s Rohini Builders reported at 256 ITR 360 (Guj.). In case of facts of aforesaid case the confirmation of creditors was given along with GIR/PAN and repayment of loan obtained by cheque was submitted. The Hon'ble ITAT has held that the onus to explain the credit stands discharged by assessee and addition made u/s 68 was unsustainable. The order of ITAT was upheld by Hon'ble High Court of Gujarat. The SLP filed by revenue against the said judgment before Apex Court is dismissed and reported at 254 ITR 275 (St.)

6. The assessee places reliance on the decision of Hon'ble Calcutta High Court in case of CIT Vs. M/s Chandela Trading Co. Pvt. Ltd. reported at 372 ITR 0232 (Cal.) wherein Hon'ble High Court has held that omission on part of creditors to subject themselves to enquiry will not lead to conclusion that creditors lacked identity, creditworthiness and genuineness on the face of sufficient legal evidences on record. The ratio laid down by the aforesaid decision supports the submission assessee. In view of above, addition made by A.O. is unjustified. of

7. The assessee place reliance on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Jai Kumar Bakliwal reported at 366 ITR 217 (Raj.). The Hon'ble High Court while considering provision of sec. 68 has held as under:

"9. In our view as well, three things are required to be proved by recipient of money i.e. (1) identity of the creditor (2) capacity of the creditor to advance money and (3) genuineness of the transaction. From the facts emerging on the face of record, we notice that it is an admitted fact that all the above cash creditors (12 in number) are assessed to income tax and they provided confirmation as well as their permanent account number. They have their own respective bank accounts which they have been operating and it is not the claim of the AO that the respondent-assessee was operating their bank accounts rather they have categorically stated that they issued cheque to the

respondent-assessee. It is also an admitted fact that most of the cash creditors appeared before the AO and their statements u/s 131 were also recorded on oath. The cash creditors appeared to be from small place and it is quite possible that they may not be in a position to pin pointedly or specifically say about everything but by and large stood to the testimony and were able to explain various issues as per the question and answer reproduced by the AO himself in the assessment order. It may be that most of the cash creditors are relatives of the respondent-assessee and heavy burden lay on the respondent-assessee to prove about the cash credit but once all the cash creditors appeared before the AO, their statements having been recorded u/s 131, then in so far as the respondent-assessee is concerned, the onus, which lay upon him (assessee), in our view, stood discharged as he was able to prove identity of the creditors. Once the amount was advanced by account payee cheque from their respective own bank accounts and were being assessed to income tax, then in our view, capacity of the creditor and genuineness of the transaction stood proved. In so far as the respondent-assessee is concerned, it is correct that he is not required to prove source of the source and if the AO had any doubt, then the AO, assessing the respondent-assessee, could have sent the information to the AO, assessing the cash creditors for appropriate action in their cases but in so far as the respondent-assessee is concerned, in our view, the respondent-assessee has been able to discharge the burden which lay upon him.

11. The Hon'ble Apex Court in the case of Commissioner of Income-Tax, Orissa Vs. Orissa Corporation P. Ltd.: (1986) 159 ITR 78 held as under:-

"In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesses. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of Income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

12. Hon'ble Apex Court in the case of Commissioner of Income-Tax (Central), Calcutta Vs. Daulat Ram Rawatmull: (1973) 87 ITR 349 held as under:-

"The onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though the receipt had been issued in the name of Biswanath, the burden lay on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of Biswanath. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the source is concerned, there is no material on the record to show that the amount come from the coffers of the respondent-firm or that it was tendered in Burrabazar Calcutta branch of the Central Bank, on November 15, 1944, on behalf of the respondent. As regards the destination of the amount, it has already been mentioned that there is nothing to show that it went to the coffers of the respondent. On the contrary, there is positive evidence that the amount was received by Biswanath on January 22, 1946. It would thus follow that both as regards the source as well as the destination of the amount, the material on the record gives no support to the claim of the department."

13. The Gauhati High Court, in the case of Nemi Chand Kothari Vs. Commissioner of Income-Tax and another: (2003) 264 ITR 254, held that it is not the business of the assessee to find out the source or sources from where the creditor had accumulated the amount which he had advanced in the form of loan to the assessee and Section 68 cannot be read to show that in the case of failure of sub-creditors to prove their creditworthiness the amount advanced as loan to the assessee by the creditor shall have to be read as corollary as the income from undisclosed source of the assessee himself.

14. The Calcutta High Court, In the case of Shankar Industries Vs. Commissioner of Income-Tax, Cental, Calcutta: (1978) 114 ITR 689 had observed that mere establishing identity of the creditor and nothing more is not sufficient and something more is to be proved by the assessee and in the aforesaid case, the assessee was unable to prove beyond identity and therefore, the Calcutta High Court upheld the findings of the Tribunal. However, in the present case, we notice that not only the identity of the creditor has been proved but from the facts which have been culled out, the assessee has been able to prove genuineness also.

15. This Court, in the case of *Kanhailal Jangid Vs. Assistant Commissioner of Income Tax: (2008) 217 CTR 354*, held that the burden does not go beyond to put the assessee under an obligation to further prove that where from the creditor has got or procured the money to be deposited or advanced to the assessee. The fact that the explanation furnished by the creditor about the source from where he procured the money to be deposited or advanced to the assessee is not relevant for the purposes of rejecting the explanation furnished by the assessee and make additions of such deposits as income of the assessee from undisclosed sources by invoking Sec. 68 unless it can be shown by the department that source of such money comes from the assessee himself or such source could be traced to the assessee itself.

16. This Court, in the case of *Aravali Trading Co. Vs. Income Tax Officer. (2008) 220 CTR 622* has gone to the extent of observing the fact that the explanation furnished by the four creditors about the sources where from they acquired the money was not acceptable by the revenue could not provide necessary nexus for drawing inference that the amount admitted to be deposited by these four persons belonged to the assessee. The assessee having discharged his burden by proving the existence of the depositors and the depositors owing their deposits, he was not further required to prove source of source.

17. As observed herein above, though u/s 68, AO is free to show with the help of the enquiry conducted by him into the transaction which has taken place between the creditor and the sub-creditor that the transaction between two were not genuine and that the sub-creditor had no creditworthiness, it will not necessarily mean that loan advanced by the sub-creditor to the creditors was income of the assessee from undisclosed sources unless there is evidence direct or circumstantial, to show that the amount which had been advanced by the sub-creditor to the creditor had actually been received by the sub-creditor from the assessee.

18. The logical interpretation will be that while the assessee has to prove as special knowledge i.e. from where he has received the credit and once he disclosed the source from which he has received money, he must also establish that so far as his transaction with his creditor is concerned, the same is genuine and his creditor had the creditworthiness to advance the loan which the assessee had received. When the assessee discharges the burden so placed on him, onus then shifts to the AO, if the AO assesses the said loan as the income of the assessee from undisclosed source he has to prove either by direct evidence or indirect/ circumstantial evidence that the money

which the assessee received from the creditor actually belong to and was owned by the assessee himself.

19.If there is direct evidence to show that the loan received by the assessee actually belong to the assessee, there will be no difficulty in assessing such amount as the income of the assessee from undisclosed source but if there is no direct evidence in this regard, then the indirect or circumstantial evidence has to be conclusive in nature and should point to the assessee as the person from whom the money has actually flown to the hands of the creditor and then from the hands of the creditor to the hands of the creditor.

20.When we peruse the facts herein above, it is an admitted position that all the cash creditors have affirmed in their examination that they had advanced money to the assessee from their own respective bank accounts. Therefore, when there is categorical finding even by the AO that the morney came from the respective bank accounts of the creditors, which did not flow in the shape of the money, then, in our view, such an addition cannot be sustained and has been rightly deleted by both the two appellate authorities. There is no clinching evidence in the present case nor the AO has been able to prove that the money actually belonged to none but the assessee himself. The action of the AO appears to be based on mere suspicion."

The ratio laid down by the decision of Hon'ble Rajasthan High Court squarely applies to the facts in the case of assessee. In view of above addition made by A.O. is unjustified.

8. The assessee places reliance on decision of Hon'ble High Court of Gauhati in the case of Nemi Chand Kothari reported at 264 ITR 0254 (Gauhati) wherein Hon'ble High Court has held as under

"Keeping in view the above position of law, when we turn to the factual matrix of the present case, we find that so far as the appellant is concerned, he has established the identity of the creditors, namely, Nemichand Nahata & Sons (HUF) and Pawan Kumar Agarwalla. The appellant had also shown, in accordance with the burden, which rested on him under s. 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors aforementioned. In fact, the fact that the assessee had received the said amounts by way of cheques was not in dispute. Once the assessee had established that he had received the said amounts from the creditors aforementioned by way of cheques, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter the burden had shifted to the AO to prove the contrary. On mere failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, such failure, as a corollary, could not have

been and ought not to have been, under the law, treated as the income from the undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. Viewed from this angle, we have no hesitation in holding that in the case at hand, the AO had failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. In the absence of any such evidence on record, the AO could not have treated the said amounts as income derived by the appellant from undisclosed sources. The learned Tribunal seriously fell into error in treating the said amounts as income derived by the appellant from undisclosed sources merely on the failure of the sub-creditors to prove their creditworthiness."

The ratio laid down by Hon'ble Gauhati High Court squarely applies to the facts in the case of assessee. In view of above addition made by AO is unjustified and unsustainable.

9. The assessee places reliance on decision of Hon'ble Delhi High Court in the case of Shiv Dhooti Pearls & Investment Ltd reported at 64 taxmann.com 329 wherein Hon'ble Delhi High Court has held that assessee is liable to disclose only sources from where he has himself received credit and it is not burden of assessee to show sources of his creditor. The ratio laid down by Hon'ble Delhi High Court supports the submission of assessee. In view of above addition made by AO is unjustified & unsustainable.

10. Considering the judicial precedents discussed hereinabove it is humbly submitted that loan credit of assessee is not unexplained credit considering evidence on record. In view of above it is humbly prayed that addition made u/s 68 be directed to be deleted

1. It is respectfully submitted that A.O. in assessment order at para 22 has referred to various decisions for the purpose of making addition in assessment framed. All the decisions relied upon are distinguishable on facts and ratio laid down therein is inapplicable to the facts in case of assessee. Assessee gives hereunder submission on each of the judgement relied upon by A.O.

A) A.O. at para 22 has referred to the decision of Hon'ble Delhi High Court in case of CIT Vs. M/s. Nipun Builders & Developers Pvt. Ltd. reported at 350 ITR 407 (Del.). The perusal of judgment would indicate that in the aforesaid case summon issued u/s 131 of I.T. Act 1961 was returned unserved with remark "no such company". The company had not provided proper address and the Inspector of Income Tax also could not find the company on his visit to the address of company given by assessee. On above factual scenario the Hon'ble High Court

had upheld the addition made u/s 68 of I.T. Act 1961. In the facts of present case the confirmation, bank statement, balance sheet and ROC record of lender was submitted in the course of assessment proceedings. A.O. has independently obtained information from A.O. of lender company. The financial statement of lender company independently obtained substantiates the loan received by assessee company from the lender company. In view of above, nothing adverse can be taken with reference to decision of Hon'ble Delhi High Court on the facts and circumstances in case of assessee.

B) The decisions of Hon'ble Apex Court in case M/s. Govindarajulu Mudaliar vs. CIT reported at 34 ITR 807 (SC) was in respect to amount received in cash which assessee therein had failed to prove satisfactorily. In the aforesaid case gift and amount received from the party was held to be untrue. Finding of facts recorded by the tribunal was held to be based on evidence on record and have been upheld by Hon'ble Apex Court. Similarly in the decision of Apex Court in case of Shri M. Ganpithi Mudaliar reported at 53 ITR 623 (SC) the amount received was held to be in nature of income of assessee and therefore it was held that same is assessable to tax at the hands of assessee. The aforesaid two decisions of Hon'ble Apex Court are clearly distinguishable on facts and ratio laid down therein is inapplicable to the facts in case of assessee.

C) In the decision of Hon'ble Andhra Pradesh High Court in case of R.B. Mittal Vs. CIT reported at 246 ITR 283 (AP) the addition on account of cash credit was made as various creditors being individuals were found to be man of no means and were staying in hutments in slum. The cash deposit in bank account of creditors were also not explained. Under such peculiar circumstances it was concluded that the capacity of creditors is not explained. The facts narrated hereinabove are clearly distinguishable from the facts in case of assessee, Ratio laid down therein is thus inapplicable to the facts in case of assessee.

D) In decision of Dharamavet Provision Stores vs. CIT reported at 139 ITR 700 (Bom.) it has been held that credit in capital account and also in the name of third party is required to be explained u/s 68 of I.T. Act 1961. There is no quarrel to above proposition and nothing adverse can be drawn there from in case of assessee in as much as assessee has satisfactorily explained the identity, creditworthiness and genuineness of loan transaction.

E) The A.O. has placed reliance on decision of Hon'ble Punjab Haryana High Court in case of Shantadevi vs. CIT reported at 171 ITR 532 (P & H) and decision of Hon'ble Gauhati High Court in case of Anandram Raitani reported at 223 ITR 544 (Gauhati) wherein it has been held

that the entry in books of account of assessee is required to be considered u/s 68 of I.T. Act 1961, The aforesaid decision do not support the case of revenue where cash credit has been satisfactorily explained by placing on record the legal evidence as to identity, creditworthiness and genuineness of transactions of loan. It is worthwhile to submit in conclusion both decisions have decided issue in favour of assessee.

The decision of Hon'ble Rajasthan High Court in case of M/s Kamal Motors reported at 131 Taxmman 13 (Raj.) is relied upon at para 22.4 of assessment order. Perusal of aforesaid judgement would indicate that out of the three creditors in respect to one of the creditors Smt. U GIR/PAN was submitted. The Hon'ble Rajasthan High Court had accepted the contention of assessee that the assessee having given GIR No. no addition in respect to such credit can be made. The aforesaid decision in fact supports the submission of assessee and ratio laid down therein fully supports the contention of assessee that addition made by A.O. is unjustified and unsustainable. In respect to other two creditors it was found that they had no capacity to advance money and nor they were assessed to income tax. Considering the above factual position the addition in respect to aforesaid two creditors was upheld. Nothing adverse can be drawn from the aforesaid findings of Hon'ble High Court of Rajasthan in the case of

G) The Hon'ble Rajasthan High Court in case of M/s Rajashree Synthetics Pvt. Ltd. had observed that ITAT had remitted the matter for fresh inquiry and it does not call for any interference. In view of above nothing adverse can be drawn from the aforesaid decision of Hon'ble High Court of Rajasthan in case of assessee.

H) A.O. had placed reliance on the decision of Hon'ble Delhi High Court in case of CIT Vs. Oasis Hospital Pvt. Ltd. reported at 333 ITR 119 (Del.). Perusal of decision of Hon'ble Delhi High Court would indicate that the judgment was consolidated judgment of four assessee's as observed in reported judgment. The decision rendered in M/s. Oasis Hospital Pvt. Ltd. is in favour of assessee. In the aforesaid decision it has been concluded that on producing PAN, bank account and copies of ITR of share applicant the primary onus to explain credits discharged. In the aforesaid decision at para 22 of the judgment the decision of Hon'ble Delhi High Court in case of CIT Vs. Value Capital Services Pvt. Ltd. reported at 307 ITR 334 (Del) has been discussed. The aforesaid para is reproduced hereunder.

We would like to refer to another judgment of the Division Bench of this Court in the case of CIT vs. Value Capital Services (P) Ltd. (2009) 221 CTR (Del) 511: (2008) 307 ITR 334 (Del). The Court in that case held

that the additional burden was on the Department to show that even if share applicants did not have the means to make investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. In the absence of such findings, addition could not be made in the income of the assessee under s. 68 of the Act."

In terms of ratio laid down by Hon'ble Delhi High Court discussed hereinabove it is for the department to show that it is money belonging to assessee which has flown for receipt of loan by assessee. A.O. has not brought any evidence on record to show that money has flown from assessee to receive back loan. The decision of Hon'ble Delhi High Court in fact supports the submission of assessee and considering the same the addition made by A.O. is unjustified and unsustainable. In the consolidated judgment in ITA No. 514 of 2007 in the case of Vijay Power Generators Ltd. considering the statement of two shareholders it was concluded that they were man of no means and thus addition in respect to credit of such person was held to be assessable u/s 68 of I.T. Act 1961 In the aforesaid case bank statement of assessee was also not submitted to support that the money has been received through proper banking channel. The facts in the aforesaid judgment is clearly distinguishable and thus ratio laid down therein cannot be applied to the facts in case of assessee.

1) A.O. has placed reliance on the decision of Hon'ble Delhi High Court in case of Shri Krishna Kumar Aggarwal reported at 266 ITR 380 (Del.). In the aforesaid case on reappraisal of entire documentary evidence CIT(A) came to conclusion that the documents showing sale of jewellery were doubtful. In view of above, it was concluded that the cash credit entry is not satisfactorily explained. The Hon'ble High Court has observed that the finding of facts is based on cogent and material evidence on record and cannot be said to be perverse. The aforesaid facts in the said case are distinguishable from the facts in case of assessee and thus ratio laid down therein is inapplicable to the facts in case of assessee.

2. The assessee has given hereinabove brief summary of facts in each of the case relied upon by A.O.. Assessee has submitted that facts in each of the case relied upon by A.O. are distinguishable from the facts in case of assessee and thus nothing adverse can be drawn therefrom. The assessee has placed legal evidence on record to substantiate the identity, creditworthiness and genuineness of loan transaction. The facts placed on record is also verified by making independent inquiry from A.O. of lender company and no mistake or default has been found in independent inquiry made by A.O. In view of above loan credit from

M/s. Kriviera Impex Pvt. Ltd. does not remain unexplained credit so as to warrant addition of same u/s 68 of I.T. Act 1961.

3. In view of above it is humbly prayed that addition made by A.O. u/s 68 of I.T. Act 1961 be directed to be deleted.

1. The assessee has in the course of appellate proceedings before CIT(A)-3 has submitted written submission in 3 parts. Copies of such submission are enclosed herewith along with judicial precedents.

S-1 Submission on merits of addition.

S-2 Reliance on Judicial Precedents.

S-3 Explanation on Judicial Precedents referred in Assessment Order.

Compilation of Judicial Precedents.

2. The assessee has obtained loan from M/s. Kriviera Impex Pvt. Ltd at Rs. 20 Crores through proper banking channel. Assessee has submitted confirmation, acknowledgment of return of income, balance sheet and bank statement of lender before A.O. The aforesaid legal evidence placed on record has not been faulted or found to be incorrect. Assessee is not required to prove source of source in respect to loan obtained by assessee. Assessee has discharged its onus to explain the credit in terms of provisions of section 68 of I.T. Act 1961 by placing legal evidence on record. In view of above it is humbly submitted that there is no justification for addition u/s 68 of L.T Act 1961. The submission made by assessee company is in terms of law laid down by Hon'ble Jurisdictional High Court in the following cases.

i) (2020) 107 CCH 0294 (Mum.) Pr. CIT vs. AMI Industries (India) Ltd.

ii) Hon'ble Bombay High Court decision in case of Mr. Gaurav Triyugi Singh in ITA No.1750 of 2017 vide order dated 22/01/2020

In view of above it is humbly prayed that addition made by A.O. be directed to be deleted.

3. Assessee company has repaid loan obtained in subsequent financial year and same has been accepted by Income Tax Department in regular assessment framed. The repayment of loan having been accepted addition in respect to loan received cannot be made. Assessee for this proposition places reliance on the decision of Hon'ble Gujarat High Court in case of CIT Vs. Ayachi Chandrashekhar Narsanggi in Tax Appeal No.992 of 2013 reported at 221 Taxman 146 vide judgment dated 02/12/2013. Ratio laid down by the Hon'ble Gujrat High Court squarely applies to the facts in case of assessee and considering the same addition made by A.O. is unjustified and unsustainable.

4. In view of above, it is humbly submitted that the addition made by A.O. is unjustified and unsustainable. In view of above it is humbly prayed that addition made by A.O be directed to be deleted.”

4. Whereas, the CIT(A) was not satisfied with the submissions and material information and has affirmed the action of A.O. and sustained the addition of unsecured loan and dismissed the assesses appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal with the Honble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the addition u/sec 68 of the Act irrespective of the fact that the assessee has filed the details in respect of the loans/inter corporate deposits and submitted the confirmation of the loan creditors along with other supporting details. Further, the Ld. AR submitted that the assessee maintains the regular books of accounts and has obtained unsecured loan from genuine creditor company. Whereas, the assessee has furnished before the CIT(A), the confirmation of loan/inter corporate deposit, bank statement of both the assessee and loan creditors, audited financial statements to substantiate the genuineness, identity and creditworthiness of the loan creditors. The assessee has obtained the unsecured loan/inter corporate deposit and was repaid to the lenders in the financial year 2015-16 and was confirmed by the parties. The Ld.AR supported the submissions on the disputed issue with the evidences in the factual paper book, synopsis and judicial decisions and prayed for

allowing the appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

6. We have heard the rival submissions and perused the material on record. The Ld. AR submitted that the CIT(A) has erred in sustaining the addition u/sec 68 of the Act of unsecured loan/inter corporate deposit though the assessee has filed the requisite details before the lower authorities. We find that before the Assessing Officer, the assessee has submitted information in respect of unsecured loan creditors and the A.O. has issued notice u/s 133(6) of the Act. On perusal of the assessment order, the assessee has submitted the documentary evidences but the A.O has over looked the vital documents in respect of the sources filed by the assessee. The assessee has submitted the written submissions before the CIT(A) and the confirmation of loan creditor, PAN, Bank account details and the Income Tax returns. We find that the assessee has to satisfy the 3 ingredients with respect to identity, creditworthiness and genuineness of the transaction. The CIT(A) has discussed on the provisions of the Act but has confirmed the action of the A.O. We are of the opinion that the assessee has discharged the burden of proof in filling the documents. Whereas the A.O and the CIT(A) has taken a different view and over looked the explanations of the assessee and the judicial decisions relied by the Ld.AR are as under:

1. *CIT Vs. Orissa Corporation (P) Ltd., 159 ITR 0078 (SC).*

2. *Shri Kanwarjeet Singh Nanda, ITA no. 361/Ind/2022*
3. *CIT Vs. Ranchhod Jivanbhai Nakhava, 208 taxmann 0035*
4. *CIT Vs. Dharamdev Fin P Ltd, 43 taxmann.com 395*
5. *Mr. Gaurav Triyugi Singh Vs. ITO, 423 ITR 0531 (Bom)*
6. *CIT Vs. Shiv Dhooti Pearls & investment Ltd, 64 taxmann 329*
7. *CIT Vs. metachem Industries, 245 ITR 0160 (MP)*
8. *Ashok Pal Dag Vs. CIT, 220 ITR 0452*
9. *No. 992/guj/2013, Ayachi Chandrashekar narsangji*
10. *CIT Vs. Ambe Tradecorp Pvt ltd, 290 Taxmann 471*
11. *CIT Vs. Smt. PK. Noorjahan, 237 ITR 0570 (SC)*
12. *CIT Vs. Mohankala & Ors, 291 ITR 0278 (SC)*
13. *PCIT Vs. Wel Intertrade P Ltd, 152 taxmann 663 (Del)*

7. Whereas the Hon Supreme Court in the case of CIT Vs. Orissa Corporation Pvt Ltd, 159 ITR 0078 (SC) has held as under:

“Income-Cash credit-Burden of proof-Assessee had given the names and addresses of the creditors-It was in the knowledge of the Revenue that the said creditors were income-tax assesseees-Their index number was in the file of the Revenue-Revenue, apart from issuing notices under s. 131 at the instance of the assessee, did not pursue the matter further-Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the allowed loans-Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence-High Court was, therefore, right in refusing to refer the questions sought for”

8. The Honble High Court of Gujarat in the case of CIT Vs. Ranchhod jivanbhai Nakhava, 208 Taxman 0035 (Guj) held as under:

“Cash Credits-Unexplained Income-Burden of verification-AO, without verifying whether creditors, in their respective ITRs, had shown the loan transactions, decided to examine them u/s 131-Assessee had furnished confirmations and PAN details-Held, Once the AO got hold of the PAN of the lenders, it was his duty to ascertain from the AO of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amounts of money had been lent to the assessee-Position, however, would have been different if those creditors were not income tax assesseees or if they had not disclosed those transactions in their income tax returns or if such returns were not accepted by their Assessing Officers-Revenue's appeal dismissed.”

9. The Honble Tribunal Indore Bench in the case of DCIT Vs Shri Kanwarjeet Singh Nanda in ITA No.361/Ind/2022 dated 20.11.2023 has considered the provisions and facts on the submissions of the assessee and has upheld the order of the CIT(A) dismissing the revenue appeal observing at Page 13 Para 5.3 to 7 of the order read as under:

“5.3 Thus, in all these cases the assessee has produced supporting evidence in the shape of PAN, Bank account statement, confirmation of the loan creditors to prove identity and creditworthiness of the loan creditors. Further all the transactions of loan were through banking channels and the assessee has received loan amount through account payee cheques and the AO has not brought any contrary material on record to show that the assessee's own unaccounted money has routed back in the garb of alleged unsecured loan. Though the AO has issued summons to some of the loan creditors on 26.12.2019 however, the assessment order itself was passed on 31.12.2019 being time barring. The AO has not conducted any inquiry except issuing the alleged summons at the fag end of limitation and not giving sufficient time to the loan creditors to respond with relevant documents. Thus nothing could have been achieved by issuing the summons at the fag end of the limitation period of framing the assessment. Therefore, when the AO himself has failed to conduct any inquiry to disprove the documentary evidence filed by the assessee then the assessee cannot be held guilty for no response of the loan creditors to such summons issued by the AO. Once the assessee has produced all the relevant

evidence then the primary onus of the assessee u/s 68 of the Act stand discharged to prove identity and creditworthiness of the loan creditors as well as genuineness of the transactions. Except raising the issue of non-filing of balance sheet and in two cases deposited of cash in the bank account the AO has not disputed the evidence produced by the assessee. Even if it is considered as a serious aspect where the cash is found deposited in the bank account the AO ought to have conducted inquiry to find out the correct facts. In the absence of any inquiry the cash deposit in bank account of two creditors would not ipso facto lead to the conclusion that the transactions of all the unsecured loans are not genuine or the creditworthiness of the creditors in all cases is not proved. The evidence produced by the assessee prima facie satisfied the conditions u/s 68 to explain the source, identity and genuineness of the transactions. The Hon'ble jurisdictional High Court in case of CIT vs. Metachem Industries (supra) has considered the issue of addition made u/s 68 in para 4 to 7 as under:

"4. 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.

5. 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.

6. 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,

7. 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."

5.4 Thus, the Hon'ble High Court has observed that once it is established that the amount has been invested by a particular person then the responsibility of the assessee is over. The assessee cannot be asked that person who made investment whether the money invested is properly taxed or not. The assessee is under the obligation only to explain that this investment has been made by the particular individual and it is responsibility of the individual to account for the investment made by him, Similarly in case of Ashok Pal Daga vs. CIT (supra) the Hon'ble jurisdictional High Court has considered this issue in para 3 to 7 as under:

"3. We have heard Shri G.M. Chaphekar, learned Senior counsel, with Shri Subhash Samvatsar and Shri Sharda, for the applicant, and Shri D.D. Vyas, learned counsel for the non-applicant.

4. Shri Chaphekar submitted that the amount was borrowed from stated persons through cheques and as such, the Tribunal was not justified to treat the same as unproved cash credit or undisclosed source. He submitted that the assessee was not required to show to from which source the creditor acquired the money to make the us. CIT (1963) 49 ITR 723 (Bom): TC 42R.1039.

5. Shri Vyas, on the other hand, submitted that the proposed questions out of four questions are also the questions of facts and are not referable questions of law.

6. In (1963) 49 ITR 723 (supra), it is held as under :

however, in a case where the end as to the identice of "When, however assessee satisfies the IT evidence which it of the third party the also supplies such other evidencial which will show, third party, that the entry is not fictitious the initial burden which lies primul can be said to be discharged by him. It will not thereafte-88 for the assessee to explain further how or in what circumstances the for the arty obtained money and how or why he came to make a theposit of the money with the assessee. The burden will then shift on depth Department to show why the assessee's case cannot be accepted and why it must be held that the entry, though purporting to be in the name of a third party, still represents the income of the assessee from a suppressed source. In order to arrive at such a conclusion, however, the Department has to be in possessor. of sufficient and adequate material.

7. As the applicant satisfied the authority as to the identity of the third party and also supplied the relevant evidence showing prima facie that the entries were not fictitious, the initial burden can be said to be discharged by the applicant- assessee. In view of the facrial matrix and legal position, we are satisfied that the aforesaid two questions are questions of law arising out of the order and are required to be referred for our opinion. "

5.5 Thus, the onus of the assessee is to satisfy the authorities as to the identity of the third party and also supply the relevant evidences to show prima facie that the entries were not fictitious the initial burden is said to be discharged by the assessee. The burden then shifted on the department to show why the assessee's case cannot be accepted and why it must be held that entry, though purporting in the name of the third party still represent income of the assessee from suppressed source. The Hon'ble Gujarat High Court in case of CIT vs. Dharamdev Finance P. Ltd. (supra) has considered the issue of addition made u/s 68 in para 5 to 9 as under:

**5. Question (B) and (C) require consideration together. On account of certain cash credits, the Assessing Officer had made addition of Rs.3,54,70,163/-. Out of this total amount, aggregate amount of cash credit in respect of 10 persons of Rs. 1,76,83,518/-, according to the Assessing Officer had remained unexplained. This amount included a sum of Rs. 17,0,11,830/- from Hari builders, where one Shri Raju Vaghela was the proprietor of Hari builders. When this addition was made, challenge was taken to the CIT(Appeals) and CIT(Appeals) had called for a remand report and on receipt of the same it noticed that Hari builders had given the confirmation and his PAN number also came on record and his bank statement clearly reflected that person had capacity to lend the money. The CIT(Appeals) therefore, noted that*

if the return was not filed by Hari builders that itself cannot be ground to treat this amount as unexplained in the hands of the respondent. With regard to sum of Rs. 1,77,86,645/-, CIT(Appeals) satisfied itself noting that confirmation of depositors is received from the assessee.

6. The Tribunal chose to confirm such stand by holding thus:

"8. We have heard both the parties and perused the records. We have also gone through various decisions referred to by the learned counsel of the assessee. We find that the addition of Rs.3,54,70,163/- was made by the AO on account of cash credits in respect of deposits in the names of 52 different persons in the books of the assessee. We further find that the assessee has furnished copies of account of his personal books, bank accounts, etc. We further find that in the course of remand proceedings, the AO was provided copy of the accounts of these parties, their names, and addresses, and their confirmation of the accounts. The assessee also provided PAN numbers of these persons along with the copy of bank statements. The amounts were received by account payee cheques. The AO in his remand proceedings was of the view that amount of Rs.1,76,83,518/- were not satisfactory explained by the assessee. The amounts included the sum of Rs.1,70,11,830/-. The learned Crr(A) however was of the view that since in respect of this amount the creditor has given his PA Number, confirmation and his bank statement, the deposit cannot be treated as unexplained. We also feel that since this amount has come to the assessee's account through banking channels which is verifiable from the bank statement of the creditor (which is on record), the source of the credit and genuineness of the transaction is established. The identity of the person is already established as he is having PA Number. In rebuttal of this position, nothing has been brought on record by the Revenue. Therefore, we are not inclined to interfere with the order of learned CIT(A) and the same is hereby upheld. s Grounds nos.4 and 5 of the Revenue's appeal are dismissed."

7. As could be noticed from the orders of both the CIT(Appeals) and the Tribunal, in this entire addition of 's.3.55 crores(rounded off), the names of 52 persons were reflected in the books of assessee respondent. The authorities having found the material on record, respondent he names and addresses Cases PAN numbers, ils of accounts, as also in the most of the cases way numbers, couple accoutre fact that amounts were received y way of account payee cheque, chose not to question then before the authorisation essential chosen matrix presented before the authority and as they based on fact appreciated both these aspects, no question of law arises.

8. With respect to questions (D) and (E), addition of Rs. 1.45 crores (rounded off) on the basis of some newspapers found where the

(rounded of hat Dharamdev Finance Pvt. Ltd received total sum of Rs.1.44 crores and cash transaction as per this noting had taken place between the proprietary concern Satya Developers and the present respondents. The Assessing Officer when added the entire amount, CIT(Appeals) deleted the addition by noting this:

"8.2 I have considered the assessment order and the above submissions. From the submissions made before the A.O. and also before me it is found that the appellant has explained that the notings in these loose papers pertain to Satya Developers, the proprietry concern of Rakesh Thakkar and that transactions are recorded in the books of Satya Developers and Rakesh Thakkar individual, as the transactions are between those two entities. The assessing officer has made the presumption that the loose paper was found from the office premises of Dharamdev Finance Pvt. Ltd and hence it was finance transactions of this concern. As against this the appellant has clearly shown that the transactions are between Rakesh Thakkar individual and his proprietary concern Satya Developers. Copies of account are also furnished. This fact is also explained by Rakesh Thakar in is individual case. The AO was, therefore, not justified in making the addition in the case of the appellant on the basis of these loose papers. The issues raised herein are discussed in the appellate order in the case of Rakesh Thakkar for AY 2005-06 where the AO had made additions of Rs.50 lakh on the basis of the same loose paper and I have deleted such addition in that case. As discussed in the said order, as the transactions are duly recorded in the books of Satya Developers an Rakesh Thakkar and that the books are audited under the provisions of section 44AB, the AO was not justified in charging the explanation of the appellant. Keeping in view the entire facts of the appellant's case, the addition made is accordingly deleted.

9. The Tribunal also sustained the order of the CIT(Appeals) by holding that Rakesh Thakkar in his individual capacity had accepted that the said amounts and the same had been offered by way of tax since he was the proprietor of Satya Developers. Only on the ground that some loose papers were found from the office premises of this respondent i.e. Dharamdev Finance, the Assessing Officer in the instant case appear to have concluded that financial transaction concerned the assessee. In absence of any contrary material having been brought either before both the authorities or before this Court, neither CIT nor the Tribunal committed any error in appreciating the facts which were presented before both of them. As the amount had already been owned by the proprietor of Satya Developers who had not only accepted such amount but had also offered the same for the purpose of tax which were duly recorded in the books of Satya developers the same cannot be taxed twice. Thus, no question of law arises."

5.6 Once the assessee has produced the PAN and confirmation of the creditor as well as bank account statement the assessee discharged its initial onus to prove identity and creditworthiness of the loan creditors. When the transactions are verified from the bank account of the creditors as well as of the assessee then the genuineness of the transactions is also established in absence of any contrary material having brought on record by the AO. The Hon'ble Gujarat High Court has taken a consistent view in case of CIT vs. Sanjay J. Thakkar (supra) in para 2 to 3 as under:

"2. Mr Tanvish U. Bhatt, the learned standing counsel for the appellant revenue has submitted that the two parties in whose case deposits are found in the books of each of the respondent assessee do not appear to be genuine. The said parties have filed returns for a couple of years and thereafter, no returns of income have been filed, the genuineness of the transactions are not found to be satisfactory by the assessing officer. That the assessee failed to present the creditors. He, therefore, urged that the order of the Tribunal requires to be set aside and for this purpose, the appeals may be admitted.

3. The impugned order of Tribunal specifically records that the CIT (Appeals) had rightly deleted the addition based on appreciation of evidence on record and after taking into consideration the ratio of the Apex Court decision in case of C.I.T. v. Orissa Corporation Pvt. Ltd., 159 ITR 78 as well as this High Court in case of D.C.I.T. v. Rohini Builders, 256 ITR 360. It is found from the record that the creditors have advanced the monies through bank and placed evidence in this regard on record, are assessed to income tax. In the circumstances, the position in law is well settled that the assessing officer is not satisfied about the capacity or the creditworthiness of the party in question or as to the source from which the creditor has deposited the amount, it is open to the assessing officer to make the addition in hands of the respective creditors after making appropriate inquiry."

5.7 Thus following the ratio of Hon'ble Supreme Court in case of CIT vs. Orissa Corporation P. ltd. (supra) it was held that once the loan was taken through banking channel and assessee placed evidence to prove identity and creditworthiness of the loan creditor who is assessed to income tax then if the AO is not satisfied about capacity or creditworthiness of the creditor or as to the source from which the creditor has deposited the amount, it is open to the AO to make the addition in the hands of the respective creditor after making proper inquiry. Thus, in a way the Hon'ble High court has reiterated the view that the assessee is not required to establish the source of source. In case Gaurav Triyugi Singh vs. ITO (supra) the Hon'ble Bombay High Court has considered this issue in para 12 to 16 as under:

"12 At this stage, it would be apposite to advert to section 68 of the Act, relevant portion of which reads as under :

"68. Where any sum is found credited in the books of an assessee maintained from 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.

12.1. seen From a reading of section 68, as extracted above, it is that if an amount is credited in the books of an assessee maintained from 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 the relevant previous year.

13 Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely: (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit-worthiness of the creditor.

14 In *Principal Commissioner of Income Tax vs. Veedhata Tower Pvt. Ltd.*, (2018) 403 ITR Borey 7/9 spb/ 15itxa1750-17.doc 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

15 In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of

income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he Borey 8/9 spb/ 15itxa1750-17.doc was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur ie. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

16 Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act."

5.8 Therefore, the onus is on the assessee to prove prima facie the transactions which result in the cash credit in the books of account by producing the proof of identity and capacity of the creditor as well as genuineness of the transactions. The Hon'ble High Court has held that it is not required from the assessee to explain source of source, once the assessee has discharged its primary onus by producing the proof of identity and creditworthiness of the creditor as well as genuineness of the transactions and the burden is shifted on the AO to prove the contrary. The amendment in section 68 of I.T. Act by Finance Act 2022 is applicable w.e.f 01.04.2023 and therefore, the same is not applicable for the assessment year under consideration.

5.9 In the grounds of appeal the revenue has relied upon the judgment of Hon'ble Supreme court in case CIT vs. P. Mohankala (supra). It is pertinent to note that in the case of CIT vs. P. Mohankala the Hon'ble Supreme Court has not disputed the ratio of judgment in case of CIT us. Orissa Corporation P. Ltd. (supra) as well as in case of CIT us. P.K. Noorjahan (supra) in para 14 & 17 as under:

**14. In CIT vs. Smt. P.K. Noorjahan (1999) 155.0TR (SC) 509 : (1999) 14. In CT570 (SC), this Court while con in enacting s. the Ad 237 ITR 570, the intention of Parliamente of treating the was to obsfer a discretion on the ITO in the matter of treating the source of confer a discutich has not been satisfactorily plained by the investments the income of the assessee and the ITO is not obliged to asat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory The question whether the source of the investment should be treated as income or not under s. 69 has to be considered in the light of the facts of each case. The contention of Shri Iyer was that the ratio of the decision would equally be applicable to interpret s. 68 of the Act. There is no dispute about the same but the assesseees in no manner raised any plea that even if their explanation is not acceptable the same cannot be treated as an income in their hands. In cases where the explanation offered by the*

assessee about the nature and source of sums found credited in the books is not satisfactory there is, prima facie, evidence against the assessee, viz., the receipt of money, the burden is on the assessee to rebut the same and if he fails to rebut it can be held against the assessee that it was a receipt of an income nature. The alternative submission made by Shri Iyer before us would not help the assessee in this case in hand.

17. In CIT vs. Orissa Corporation (P) Ltd. (1986) 52 CTR (SC) 138. (1986) 159 ITR 78 (SC), the ITO did not accept the assessee's accounts showing cash credits which were shown to have been received by way of loans from three individual creditors. The ITO treated the entire amount as unproved cash credit and added the same to the income of the assessee. On appeal the Tribunal took the view that the assessee could not produce those persons alleged to be creditors, but it did not follow automatically and an adverse inference should be drawn that the amount represented undisclosed income of the assessee. The creditors were themselves income-tax assesseees and while being assessed, they had made statements before the respective ITO admitting that they were allowing their names to be lent without giving loans as creditors of different assesseees. In these circumstances, the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him. This Court held that the Tribunal's conclusion was not unreasonable or perverse or based on no evidence and accordingly further held that no question of law as such had arisen for consideration

5.10 Thus, it is clear that the issue in case of CIT vs. P. Mohanakala (supra) was entirely different and based on different set of facts. Accordingly the said judgment of Hon'ble Supreme Court is not applicable in the case rather the ratio laid down in case of CIT vs. P. K. Noorjahan (supra) and CIT vs. Orissa Corporation P. Ltd. (supra) are applicable in the case of the assessee. After considering all these facts and case law cited by the assessee the CIT(A) has given its concluding finding in para 7.8 as under:

"7.8 In the case of appellant loan creditors are all assessed to tax. of loan received is through proper banking channel. Amount Confirmation of loans are submitted. Loan creditors have owned up the transaction of loan given by giving confirmation. No shred of evidence is brought on record to discredit legal evidence. Loan creditors are properly recorded in regular books of account maintained on day to day basis. Books of account are not rejected and income from business as shown in the return has been accepted without inviting any adverse observation. It has not been alleged that assessee has earned income over and above from any activity and such money is brought in the

name of loan creditors. Considering evidence on record no addition u/s 68 can be made in the case of appellant. Onus to explain cash credits in terms of decision of Hon'ble Apex Court in the case of Orissa Corporation (P) Ltd. is discharged by placing legal evidence on record. Provisions of section 68 are not mandatory. Ratio laid down by Hon'ble Jurisdictional High Court and Supreme Court reproduced hereinabove fully supports the case of appellant. Explanation and evidence cannot be rejected on mere suspicion. It is settled position of law that appellant has no obligation to prove source of source. Onus to explain cash credits has been satisfactorily discharged by proving identity genuineness and creditworthiness of loan creditor. In view of facts of the case and the ratio laid down by case laws (Supra), the addition made by the AO of Rs. 5,46,00,000/-u/s. 68 of the I. T. Act, 1961 is hereby deleted. The ground No. 2 & 3 of appeal are accordingly allowed."

6. In view of the facts and circumstances of the case as discussed above as well as binding precedence cited in forgoing part of this order, we do not find any error or illegality in the impugned order of Ld. CIT(A) the same is upheld.

7. In the result, the appeal of revenue is dismissed"

10.The Honble Tribunal Ahmedabad Bench in the case of M/s Hit Iron & Steel Pvt Ltd Vs ITO in ITA No.379/Ahd/2018 dated 29.08.2022 has considered the provisions and facts on the submissions of the assessee on the unsecured loans and granted relief observing at Page 11 Para 5.3 &5.4 of the order read as under:

"5.3 Accordingly, in our considered view, no addition is called for in the instant facts for the reasons that firstly, the assessee had furnished details of the lenders (name, address, PAN number, confirmation, proof that all transactions were carried through banking channels etc.) and the correctness of details so furnished have not been disputed by the Department. Secondly, the assessee has placed on record supporting documents to prove that the amount has been repaid back to the lender in the subsequent year through banking channels, which as observed earlier gives a strong support as to the genuineness of the transaction/ parties. Thirdly, the Department is solely relying upon the statement of Shri Praveen Kumar Jain without brining anything further on record to show that the details / information furnished by the assessee is incorrect/

inaccurate. Fourthly, we also observe that in similar set of facts, the Tribunal on various occasions has granted relief to the assessee in respect of loans taken from M/s Hema Trading Company (now M/s Nakshatra Business Private Limited) and deleted the additions on the ground that the assessee furnished all possible documents evidencing that the loans are not bogus and additions cannot be made by the Department by only placing reliance on the statement of Shri Pravin Kumar Jain without having brought anything to disbelieve and disprove various documents filed by the assessee. In view of the above, we are of the considered view that the Ld. CIT(Appeals) erred in facts and in law in confirming the additions of Rs. 50 lakhs in respect of loan taken from M/s Hema Trading Company.

6. In the result, the appeal of the assessee is allowed.”

11. The Honble Hight of Bombay in the case of Gaurav Triyugi Singh Vs Income Tax Officer (423 ITR 531 (Bombay) has dealt and observed as under:

“12. At this stage, it would be apposite to advert to section 68 of the Act, relevant portion of which reads as under:

"68. Where any sum is found credited in the books of an assessee maintained from 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..."

12.1. From a reading of section 68, as extracted above, it is seen that if an amount is credited in the books of an assessee maintained from 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 the relevant previous year.

13. Section 68 of the Act has received considerable attention of the courts. It has been held that it is necessary for an assessee to prove prima facie the transaction which results in a cash credit in his books of account. Such proof would include proof of identity of the creditor, capacity of such creditor to advance the money and lastly, genuineness of the transaction. Thus, in order to establish receipt of credit in cash, as per requirement of section 68, the assessee has to explain or satisfy three conditions, namely: (i) identity of the creditor; (ii) genuineness of the transaction; and (iii) credit- worthiness of the creditor.

14. In *Principal Commissioner of Income Tax vs. Veedhata Tower Pvt. Ltd.*, (2018) 403 ITR 415 (Bom), this court has held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur.

15. In view of discharge of burden by the assessee, burden shifted to the revenue; but revenue could not prove or bring any material to impeach the source of the credit. Though Mr. Walve, learned standing counsel, has pointed out that the creditor had no regular source of income to justify the advancement of the credit to the assessee, we are of the view that the assessee had discharged the onus which was on him to explain the three requirements, as noted above. It was not required for the assessee to explain the sources of the source. In other words, he was not required to explain the sources of the money provided by the creditor Smt. Savitri Thakur i.e. Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur.

16. Considering the above, we are of the view that the Tribunal was not justified in sustaining the addition of Rs. 14 lakhs to the total income of the assessee as undisclosed cash credit under section 68 of the Act.

17. Consequently, finding of the Tribunal to the above extent is set aside. The question framed is answered in favour of the assessee and against the Revenue.

18. Appeal is accordingly allowed but with no order as to cost.

12. The Honble Hight of Delhi in the case of (CIT Vs. Shiv Dhooti Pearls & Investment Ltd., 2015) 64 taxmann.com 329 (Delhi) has observed as under:

The assessee filed its return declaring certain taxable income. In the course of scrutiny assessment, the Assessing Officer noticed that the balance sheet of the assessee showed the receipt of unsecured loans. The assessee was asked to furnish the evidence regarding identity, creditability and genuineness of the source of its income.

Pursuant thereto, the assessee disclosed that the amount was borrowed from TIL. The acknowledgement of the return filed by TIL showed that it had returned an income of Rs. 2,904 in the assessment

year in question and a loss of Rs. 18,677 in the assessment year 1996-97 which created doubts about the TIL's creditworthiness. Accordingly, TIL was asked to furnish the source of its lending.

The TIL intimated that the amount lent to the assessee had in turn been borrowed from 'TCL', the address of which was the same as TIL.

The letter containing the summons sent by registered post (speed post) to TCL was received back unserved with the remarks 'not available.' The AO then concluded that TCL was not a genuine party which could have lent the money to TIL, which in turn lent the said amount to the assessee. It was, therefore, concluded that 'the entire chain of lending and borrowing was bogus.' Accordingly, amount of unsecured loan was treated as unexplained income of the assessee under section 68.

The Commissioner (Appeals) allowed the assessee's appeal and held that as long as TIL had confirmed the loan advanced by it to the assessee, the assessee had discharged the onus on it under section 68 to prove the identity, genuineness and creditworthiness of the creditor.

The Commissioner (Appeals) also noted that from the chart in regard to encashment of cheques issued in favour of the assessee it was clear that the corresponding amounts had been received from TCL by TIL. Therefore, the finding of the Assessing Officer that the entire chain of lending and borrowing was bogus, was unsubstantiated. The Commissioner (Appeals), therefore, deleted the additions made by the Assessing Officer.

The Tribunal upheld the order passed by the the Commissioner (Appeals).

The revenue's appeal”

13. The Honble Hight of Madhya Pradesh in the case of CIT Vs. Metachem Industries. (2000) 245 ITR 0160 (MP). held :

“According to s. 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. 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

responsibility of that individual to account for the investment made by him. If that person owns that entry, then, the burden of the assesses firm in discharge person owns that entry, then, the further to that individual who has deposited this amount. So far as the responsibility o the individual who has this amouischarged. Whether that person is income-tax payer or not or from where he has brought this money is not the responsibility of the firm. The moment the has gives 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 income of the firm for the purposes of income-tax. It is open for the AO to take appropriate action under s. 69 against the person who has not been able to explain the investment. In the present case, there is the concurrent finding of both the CIT(A) as well as of the Tribunal that the firm has satisfactorily explained the aforesaid entries. Therefore, the view taken by the Tribunal is correct”

14. The Honble Hight of Madhya Pradesh :Indore Bench in the case of Ashok Pal Daga Vs. CIT(1996) 136 CTR 0235 held :

“3. We have heard Shri G.M. Chaphekar, learned Senior counsel, with Shri Subhash Samvatsar and Shri Sharda, for the applicant, and Shri D.D. Vyas, learned counsel for the non-applicant.

4. Shri Chaphekar submitted that the amount was borrowed from stated persons through cheques and as such, the Tribunal was not justified to treat the same as unproved cash credit or undisclosed source. He submitted that the assessee was not required to show as to from which source the creditor acquired the money to make the loan to the assessee. He placed reliance on Orient Trading Co. Ltd. vs. CIT (1963) 49 ITR 723 (Bom): TC 42R. 1039. . Shri Vyas, on the other hand, submitted that the proposed questions out of four questions are also the questions of facts and are not referable questions of law.

6. In (1963) 49 ITR 723 (supra), it is held as under:

"When, however, in a case where the entry stands in the name of a third party the assessee satisfies the ITO as to the identity of the third party and also supplies such other evidence which will show, prima facie, that the entry is not fictitious the initial burden which lies on him can be said to be discharged by him. It will not thereafter be for the assessee to explain further how or in what circumstances the third party obtained money and how or why he came to make a deposit of the money with the assessee. The burden will then shift on to the Department to show why the assessee's case cannot be accepted and why it must be held that the entry, though purporting to be in the name of a third party, still represents the income of the assessee from a suppressed source. In order to arrive at such a conclusion, however, the

Department has to be in possession of sufficient and adequate material."

7. As the applicant satisfied the authority as to the identity of the third party and also supplied the relevant evidence showing prima facie that the entries were not fictitious, the initial burden can be said to be discharged by the applicant- assessee. In view of the factual matrix and legal position, we are satisfied that the aforesaid two questions are questions of law arising out of the order and are required to be referred for our opinion.

8. In the circumstances, we allow this Reference Application and direct the Tribunal to state the case and refer the aforesaid two questions of law for our opinion as expeditiously as possible.

15. The Honble High Court of Gujarat in the case of CIT Vs. Ayachi Chandrashekhar Narsangji[2014] 42 taxmann.com 251 (Gujarat) has held :

"The assessee filed return.

The Assessing Officer framed the assessment under section 143(3) of total income of Rs. 1,84,10,790 wherein he made the addition of Rs. 1,45,00,000 under section 68 on ground that loan taken from one person i.e., 'IA', was not explained satisfactorily.

On appeal, the Commissioner (Appeals) deleted the addition after considering the identity of the donors, creditworthiness and the genuineness of loan transaction.

On revenue's appeal, the Tribunal confirmed the order passed by the Commissioner (Appeals).

16. The Honble High Court of Gujarat in the case of Pr. CIT Vs. Ambe Tradecorp Pvt Ltd, (2022) 114 CCH 0601 Guj HC held :

"5. As discussed above, since the requisite material was furnished by assessee showing the identity and since the assessee was not beneficiary when the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness of transaction were well satisfied.

6. 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 were 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."

7. For the reasons recorded above, no question of law much less substantial questions arises in this appeal. It stands meritless and accordingly dismissed"

17. The Hon Supreme Court in the case of CIT Vs. PK Noorjahan²³⁷ ITR 570 (SC) held :

Income from undisclosed sources-Addition under s. 69-Discretion of AO-Intention of Parliament in enacting s. 69 was to confer a discretion on the ITO in the matter of treating the unexplained source of investment as income of assessee-ITO is not obliged to treat such source of investment as income in every case-Whether it has to be treated as income or not has to be considered in the light of facts of each case-Assessee, a young lady, could not explain satisfactorily her source of investment in lands-Tribunal held that it was not possible for her to earn the amount even during a decade and that the source of investments could not be treated as income of assessee-No error in the finding of the Tribunal

18.. Further the assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and audited financial statements and unilaterally made addition u/sec68 of the Act. The Ld. AR emphasized that the assessee has discharged its burden by submitting the financial statements of the lenders where the payment is made through banking channel and identity, creditworthiness and genuineness of the lender company was proved in the assessment proceedings. Further the assessee has submitted the audited financial statements, confirmations, Bank statements of lender company, copy of the income tax returns, ledger account, and the repayment details to substantiate the genuineness and credit worthiness of loan creditors placed at page 286 to 289

of the paper book. The Ld.AR demonstrated the bank statement of the Lender company having opening balance Rs.23 Crores (appx) before granting Unsecured loan/ inter corporate deposit of Rs.20 Crores in September 2014. Further the Ld.AR has filed the audited financial statements of the lender company for F.Y.2014-15 & F.Y.2015-16 to substantiate the identity and Net worth of the company and at page 109 of the paper book, the lender company has disclosed the loan under “Long Term Loans and Advances”. The Ld.AR demonstrated the copy of bank statements reflecting the repayment of unsecured loan/inter corporate deposit at page 290 to 292 of the paper book which is not disputed by the revenue. Further, the A.O has failed to make further enquiries and overlooked the factual aspects that the assessee has discharged the initial burden placed by furnishing the details. The information submitted by the assessee satisfied the three ingredients of provisions of Sec. 68 of the Act. Further the A.O. dealt on the loan transactions and alleged as non genuine and treated as unexplained cash credit U/sec68 of the Act. Whereas the unsecured loan was repaid through account payee / banking channels in the subsequent financial year which is not disputed by the revenue and in the year of repayment of loan, the revenue has accepted returned income of the assessee and passed the order u/sec143(1)of the Act on 17-10-2016. The Ld.AR submitted that the assessee has substantiated the stand by submitting the details before

the A.O. and CIT(A) and discharged the burden. We considering the facts, circumstances, evidences and the ratio of the judicial decisions referred in the above paragraphs set-aside the order of the CIT(A) and direct the Assessing officer to delete the addition of unsecured loan and allow the grounds of appeal in favour of the assessee.

19. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 23.07.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 23/07/2024

KRK, PS

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,

Mumbai