

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
&
DR. MANISH BORAD, ACCOUNTANT MEMBER

I.T.A. No. 1559/KOL/2024
Assessment Year: 2014-15

DCIT, Central Circle-3(1) 110, Shantipally, Kolkata-700107 West Bengal	Vs	Chirag Jewellers Flat 17A, Rameshwara Mansion, 10/4A Elgin Road, Kolkata-700020 [PAN : AABFC7914L]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Miraj D. Shah, AR
Revenue by :	Shri Subhendu Datta, CIT DR

सुनवाई की तारीख/**Date of Hearing** : 11.09.2024
घोषणा की तारीख /**Date of Pronouncement** : 21.10.2024

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The captioned appeal filed by the Revenue, pertaining to assessment year 2014-15 is directed against the order passed by the Learned Commissioner of Income Tax (Appeals) – 21, Kolkata (hereinafter referred to as the 'ld. CIT(A)') dated 15th May, 2024 passed u/s 250 of the Income Tax Act, 1961 ('Act'), which is arising out of the assessment order passed u/s 143(3) read with section 153A of the Income-tax Act, 1961 (the Act) vide order dated 30th December, 2017.

2. Revenue has raised following grounds of appeal:-

"1. Whether the Ld. CIT(A) has erred in facts and in law by allowing the appeal of the assessee by deleting the addition of Rs.2,00,00,000/- made by the AO under section 68 of the Act despite the assessee failing to produce any books of account

during the assessment proceedings that could show the true state of business of the assessee?

2. Whether the Ld. CIT(A) has erred in facts and in law by allowing the appeal of the assessee by deleting the addition of Rs.24,21,918/- made by the AO under section 69C of the Act despite the assessee failing to establish the genuineness of the transactions and the identity and creditworthiness of the creditors?

3. Whether the Ld. CIT(A) has erred in law by acting in contravention of the established judicial precedents of CIT vs Durga Prasad More (1971_82 ITR 540 (SC) following in the case of Sumati Dayal vs CIT (1995) 214 ITR 801: 80 Taxman 89 (SC) by deleting the addition of Rs. 2,24,21,918/- made by the AO?

4. The department craves the right to add, alter, amend or withdraw any ground of appeal before or at the time of hearing.”

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of manufacturing and trading in diamond jewellery. Regular return of income for A.Y. 2014-15 was filed on 9th September, 2014, declaring income of ₹2,81,78,830/-. Case processed u/s 143(3) of the Act on 5th December, 2014. On 13th August, 2015, the assessee which is part of Chirag Group was subjected to search and seizure operation u/s 132 of the Act. In response to notice u/s 153A of the Act, the return was filed on 26th September, 2016, declaring total income of ₹2,81,78,830/-. The assessment proceedings were carried out after validly serving notices u/s 143(2) and 142(1) of the Act. During the course of assessment proceedings the ld. AO examined the unsecured loans from NCL research and financial services limited during F.Y. 2014-15 and unsecured loans taken during A.Y. 2010-11 to A.Y. 2016-17, from 3 concerns namely; NCL Research and Financial Services Private Limited , Khoobsurat Ltd. & Jackson Investment Ltd. Thereafter, various information has called for by the ld. AO were duly supplied but ld. AO was not satisfied with the explanation of nature and source of unsecured loans of ₹2 crores received from NCI Research and Financial Services Private Limited and made the addition u/s 68 of the Act. The ld. AO also disallowed the interest of ₹24,21,819/- claimed by the assessee on the unsecured loans



taken from the above referred three companies. Income assessed at ₹ 5,06,00,748/-.

4. Aggrieved, assessee preferred the appeal before the Id. CIT (A) and placed following documents in order to explain the nature and source of the unsecured loans received from NCL Research and Financial Services Private Limited and also the genuineness of interest expenditure incurred towards interest payment made to Khoobsurat Ltd. & Jackson Investment Ltd. and NCL Research and Financial. services Ltd., which reads as under:-

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Sl.	Documents	Fresh Evidence	Page No
1	Audited accounts, computation & ITR acknowledgement	No	01-04
2	ITR filed against notice issued u/s 153A (acknowledgement)	No	05-05
3	Order u/s 143(1) of the IT Act : AY 2012-13 dt 17.02.2013	No	06-09
4	Document seized & marked as:CJ-2, CJ-10, CJ-11 & CJ-12	No	10-22
5	Detail of disputed loan (2,00,00,000) & interest (27,21,918)	No	23-23
6	<i>Ledger of the Lender in Assessee's Books:</i> NCL Research &Financial Services Limited	No	24-24
7	<i>Bank statement showing receipt of loan from:</i> NCL Research Financial &Services LtdRs.2,00,00,000	No	25-29
8	<i>Balance confirmation:</i> Asked by NCL Research &Financial Services Ltd fmAssessee	No No	30-30 31-31

	Certificate provided by Assessee confirming the loan amt.		
9	<p>Form-16A issued by assessee for TDS: interest payment to:</p> <p>Khoobsurat Ltd, Interest Rs.8,00,000 :TDS Rs.80,000</p> <p>Jackson Invest.Ltd, Interest Rs.10,00,000:TDS Rs.1,00,000</p> <p>Moonview/Vintrade Pvt.LtdRs.3,00,000 : TDSRs.30,000</p> <p>NCL Research &Fin. Service Ltd Rs.6,21,918 :TDS Rs.62,192</p>	No No No No	32-32 33-33 34-34 35-35
10	<p>Bank Statement of the assessee : Interest Payment to:</p> <p>Khoobsurat Ltd(8,00,000-80,000):NetInterest =7,20,000</p> <p>Jackson Invest.Ltd (10,00,000-1,00,000:NetInt.=9,00,000</p> <p>Moonview/Vintrade(3,00,000-30,000):Net Int. =2,70,000</p> <p>NCL Research& Fin (6,21,928-62,193):Net Int.=5,59,735</p>	No No No No	36-36 37-37 38-38 39-39
11	<p>Certificate of Incorporation of the Lenders:</p> <p>a) Khoobsurat Ltd</p> <p>b) Jackson Investment Ltd</p> <p>c) Moonview/Vintrade Pvt Ltd</p> <p>d) NCL Research &Financial Services Ltd</p>	No No No No	40-40 41-41 42-42 43-43
12	<p>Reply byNCL Research& Financial Pvt. Ltd to AO wrt proceedings u/s 133(6) submitting details for:</p> <p>i. doc. for 1st source including loan & interest, directors, ITR, audited accounts, bank statement, assessee's ledger, balance confirmation, source of funds and</p>	No	44-58

	ii. doc. for 2 nd source including bal. confirmation, ITR, bank statement, audited accounts, order u/s 143(1):	No	60-65
	a) Rockers Tradelink (P) Ltd	No	66-
	b) MoonviewVintrade Pvt Ltd	68	
13	Order u/s 143(3) for NCL Research & F.S. Ltd:AY2014-15	No	69-71
14	Documents wrt Jackson Investment Ltd	No	72-85
15	Documents wrt MoonviewVintrade (P) Ltd	No	86-97
16	Order u/s 143(3) for Khoobsurat Ltd for AY 2014-15	No	99-101
17	Show cause notice by AO of 18.12.2017 for loan taken from Khoobsurat Ltd, Jackson Ltd & NCL Research & Fin. Ser. Ltd and Reply thereof dated 21.12.2017	--	102-137
		No	138-142
18	Order passed by the Hon'ble Calcutta High Court: CIT vs. Trinayani Exports Pvt. Ltd, ITAT No. 167 of 2010, GA No. 2195 of 2010		143-144

5. The Id. CIT (A) after examining the documents as stated above, found force in the contention of the Id. Counsel for the assessee and was satisfied with the identity and creditworthiness of NCI Research and Financial Services and genuineness of the transaction of loan taken from all the alleged three cash creditors and deleted the impugned addition.

6. Aggrieved Revenue is now in appeal. The Id. DR vehemently argued supporting the order of the Id. AO. On the other hand, Id. Counsel for the assessee relied on heavily on the order of the Id. CIT (A) and the details furnished before the Id. CIT (A).

7. We have heard the rival contentions and perused the records available on records. The Revenue is aggrieved with the finding of the Id. CIT (A) deleting the addition made u/s 68 of the Act for the

unsecured loan taken from NCL Research and Financial Services Private Limited and also the deletion of disallowance of interest expenditure allegedly found to be bogus by the Id. AO. We observe that the Id. CIT (A) after examining the documents filed by the assessee and also considering the ratio of judicial precedence has deleted the impugned addition observing as follows:-

“On perusal of the show-cause and its reply, the following key points emerge.

1. *The AO in his show-cause has solely relied upon some statements of Shri Goutam Bose and Shri Alok Kumar Das, Which were provided by the AO to the appellant;”*

SL No.	Name of the person whose statement was recorded	Date of the statement	Appellant's rebuttal to such statement	Remarks
1.	Sri Alok Kumar Das before DDIT Investigation Sri Abhishek Mishra.	27.05.2015	The Deponent, Alok Kumar Das has confirmed that he is a director of Ms Jackson a Investment Ltd and that Sri NK Fogla is the MD of the Company. There is nothing adverse mentioned in this statement. There is no mention of the fact that the loans given by this company is bogus loan.	The statement does not consist of any question about the lender company M/s NCL Research & Financial Services Pvt. Ltd. In Q. 8 of the said statement, the deponent has accepted the fact that he was director in the companies M/s GCM Securities Ltd, M/s Jackson Investments Ltd and M/s Silver Pearl Hospitality & Luxury Spaces Ltd. No where has it been accepted by the deponent that he was a dummy director of M/s INCL Research & Financial Services Pvt. Ltd or that the loans provided to the appellant company were bogus.
2.	Sri Alok Kumar Das Before AO Sri Abhishek Devlal	21.11.2017	Sri Alok Kumar Das, the deponent before the AC explained various aspects of the business of Msa Khoobsurat Ltd. In question no 30-36 he has confirmed that the loan was given to Chirag Jewellers. There is no mention of the fact that the loans given by this company is bogus loan. There is nothing adverse stated against us or any company in this statement	The statement is primarily related to M/s Khoobsurat Ltd and no questions were asked about M/s Research & NCL Financial Services Pvt. Ltd. the lender company in the instant Appeal. In the statement, Shri Alok Kumar Das has nowhere stated that M/s Khoobsurat Ltd., was bogus and furthermore he has deposed on oath in Q.36 about the source of M/s Khoobsurat Ltd from which loans has been given to the appellant company during other Financial Years.
3.	Sri Goutam Bose before the DDIT Investigation Sri Bal Krishna	13.04.2015 & 16.04.2015	In this statement the deponent Shri Goutam Bose, has stated about the several business transactions and details of	This statement as it appears - has been recorded primarily / in the context of M/s Khoobsurat Ltd. In this statement the deponent has disclosed names and details of various companies he is



	Yadav		various companies he is linked with. There is no mention of the fact that the loans given by M/s NCL Research & Financial Services Pvt. Ltd are bogus.	associated with. There is no I mention about the unsecured loans given by M/s NCL Research & Financial Services Pvt. Ltd, Jackson Investment Ltd or Khoobsurat Ltd
4.	Sri Goutam Bose before the DDIT Investigation Sri Abhishek Mishra	27.05.2015	The deponent has deposed that Sri Manish Baid is the key person of the Company NCL Research and Financia Services Ltd and he is no aware of activities of the Company. In this statement there is reference of some Agarwal family who have taken some capital gains in their file. There is no mention of our transaction in this statement and nor are the loans given by this company stated to be bogus by Sr Goutam Bose. There is no mention of the fact that the loans given by this company is bogus loan. There is nothing adverse statec against us or any company in this statement.	Although this statement is regarding M/s NCL Research and Financial Services Ltd, in Q. 13 it states about the various accommodation entries taken by Shyam Sel and Power Group. There is nothing in this statement which is related to the unsecured loans provided by M/s NCL Research and Financial Services Ltd to the appellatn company. Besides the deponent also shared the names of the Managing Director and other Directors of M/s NCL Research and Financial Services Ltd and the also took name of one Manish Baid, the alleged key person of the M/s NCL Research and Financial Services Ltd. A very important part of this statement is Q.9 asked to the deponent, wherein the deponent is asked about the registered office of M/s NCL Research and Financial Services Ltd and where its books of accounts are kept. In his answer the deponent has stated that he has no idea about the registered office of M/s NCL Research and Financial Services Ltd and where its books of accounts are kept and in what form. This statement of the deponent is contradictory as the deponent himself in his statement recorded on 13.04.2015 (which was a month back) before the DDIT, Investigation Unit-4(3), Kolkata, deposed in answers to ! Nos 30,32 & 33 stated that the business activity of M/s NCL Research and Financial Services Ltd. is investing in shares and securities and Inter corporate deposits and that the books of accounts of M/s NCL Research and Financial Services Ltd is maintained at 79, Nagin Das Master Road, Bhagyadaya Building, 3rd Floor, Fort, Mumbai-23.

It is evident from the discussions made in the above table that the statements of both Shri Alok Kumar Das and Shri Goutam Bose are inconclusive and do not say anything adverse regarding the unsecured loans given by M/s NCL Research &



Financial Services Pvt. Ltd to the appellant company. Therefore, the AO's action in considering such statements as the sole basis of treating the unsecured loans from M/s NCL Research & Financial Services Pvt. Ltd as bogus is unsustainable. In the instant case, a search has also been conducted on the appellant on 12.08.2015, which is after the recording of the statements of Goutam Bose and Alope Kumar Das, but no such material relating to the unsecured loans taken by the appellant company were seized from the appellant's premises, which would render that these unsecured loans were bogus or that the appellant's own money was being routed back in the garb of unsecured loans. The incriminating/impounded material referred to by the AO in his assessment order are as follows:-

Sl. No.	Document marked as	AY	Page No.	Contents
1	CJ-2	15-16	13	Confirmation of accounts for o/s balance for loan from Jackson Investment Limited as on 31.03.2015
2	-do-	15-16	14	Confirmation of accounts for o/s balance for loan from MoonviewVintrade Private Limited as on 31.03.2015
3	-do-	15-16	15	Confirmation of accounts for o/s balance for loan from Khoobsurat Limited as on 31.03.2015
4	-do-	15-16	16	Confirmation of accounts for o/s balance for loan from NCL Research & Financial Services Ltd as on 31.03.15
5	CJ-10	13-14	18	Statement showing loan payment to Khoobsurat Ltd, Jackson Investment Ltd & Moonview Vintrade Ltd in FY 2012-13, with interest charged & TDS deducted
6	-do-	--	19	Address & PAN no. of Khoobsurat Ltd, Jackson Investment Ltd & MoonviewVintrade Ltd
7	CJ-11		18	Purchase & payment related working paper in relation to proceedings for Sri Rakesh Shah
8	-do-		19	Working paper for payable amount for purchase for R. Shah; Assessee's purchase bill for 6.82 Carat Diamond
9	CJ-12		3	Paper showing estimated delivery date which was not materialized; Workings paper for payable amount for purchase for Sri R. Shah

“Evidently none of the documents tabulated above point to anything which would render the unsecured loans taken from the lender companies during the current year from NCL Research & Financial Services Ltd to the tune of Rs.2,00,00,000 and earlier years from M/s Khoobsurat Ltd to the tune of Rs.2,00,00,000, M/s Jackson Investment Ltd to the tune of Rs.2,50,00,000 & M/s Moonview Vincom (P) Ltd to the tune of Rs.75,00,000 as bogus.

That being the case it becomes imperative to see as to whether the identity and creditworthiness of the lender companies as well as the genuineness of the transactions was established before the AO or not. The appellant in reply to the showcause issued by the AO, stated before the AO that these loans were taken by account payee cheques/RTGS, the interest on these loans were being regularly serviced, TDS was being deducted and deposited by the appellant, and that the lender companies had already filed confirmation of loan transaction before the AO. The appellant has further stated that all the lenders had furnished replies confirming the transactions entered with the appellant and provided copies of the loan confirmation, IT Return, Audited Accounts, Bank Statement, Source of Source etc. This statement of the appellant in its reply to the showcause has not been rebutted by the AO in his assessment order and the financials of the lender companies, also has nowhere been discussed by the AO in his assessment order. As a matter of fact the director of the lender companies M/s NCL Research & Financial Services Ltd, M/s Khoobsurat Ltd & M/s Jackson Investment Ltd, Shri Alok Kumar Das had appeared before the AO on 21.11.2017 wherein he has also stated on oath before the AO that all the documents requisitioned by the AO had been duly submitted before the AO except the bank statements of M/s Resorjimento Industrial Co. Pvt Ltd and M/s Sreenidhi Trading Pvt. Ltd. It is therefore evident that the requisite documents relating to the lender companies were very much present before the AO during the course of assessment proceedings but the AO has not taken them into consideration. Furthermore since the Director of the lender companies had duly appeared before the AO the identity of the lender companies therefore stood established.

The unsecured loans from M/s NCL Research & Financial Services Ltd were received by the appellant during the A.Y: 2014-15 in the following manner:

Sl.	Bank & Remittance Ref Nos.	Date	Value Date	Amount (Rs.)
1	ICICI, Cheque No. 502731	28.06.2013	28.06.2013	50,00,000
2	ICICI, Cheque No. 502732	29.06.2013	29.06.2013	50,00,000
3	ICICI, Cheque No. 537023	15.07.2013	15.07.2013	36,00,000
4	ICICI, Cheque No. 537022	15.07.2013	15.07.2013	49,00,000
5	ICICI, Cheque No. 537022	15.07.2013	15.07.2013	15,00,000
	Total			2,00,00,000

Similarly the loans from M/s Khoobsurat Ltd, which were credited in assessee's bank a/c with Standard Chartered Bank:



Sl.	AY	Cheque No.	Date	Value Date	Amount (Rs.)
1	2010-11	019190	17.04.2009	18.04.2009	25,00,000
2		019191	17.04.2009	18.04.2009	25,00,000
		Total			50,00,000
3	2011-12	547629	06.05.2010	07.05.2010	25,00,000
4		647630	06.05.2010	07.05.2010	25,00,000
5		RTGS	21.08.2010	21.08.2010	25,00,000
6		RTGS	21.08.2010	21.08.2010	25,00,000
7		RTGS	18.08.2010	18.08.2010	25,00,000
8		RTGS	18.08.2010	18.08.2010	25,00,000
		Total			1,50,00,000
		Grand Total			2,00,00,000

The loans received from M/s Jackson Ltd for Rs.2,50,00,000 & Rs.75,00,000 from Moonview Ltd were also credited in assessee's bank a/c with Standard Chartered Bank:

Sl.	Bank&Remittance reference	Date	Value Date	Amount (Rs.)
A	From Jackson Investment Ltd			
1	ICICI 12291066943	17.10.2012	17.10.2012	25,00,000
2	ICICI 12291067576	17.10.2012	17.10.2012	25,00,000
3	ICICI 12291066442	17.10.2012	17.10.2012	25,00,000
4	ICICI 12291066915	17.10.2012	17.10.2012	25,00,000
5	ICICI 12319067265	14.11.2012	14.11.2012	25,00,000
6	ICICI 12319067430	14.11.2012	14.11.2012	25,00,000
7	ICICI 12335085722	30.11.2012	30.11.2012	25,00,000



8	ICICI 12335085574	30.11.2012	30.11.2012	25,00,000
9	ICICI 12336005613	01.12.2012	01.12.2012	25,00,000
10	ICICI 12336005396	01.12.2012	01.12.2012	25,00,000
	Sub-total			2,50,00,000
B	From Moonview Vintrade (P) Ltd			
11	ICICI 13068084428	11.03.2013	11.03.2013	25,00,000
12	ICICI 13068087897	11.03.2013	11.03.2013	19,00,000
13	ICICI 13068087637	11.03.2013	11.03.2013	25,00,000
14	ICICI 13068084252	09.03.2013	09.03.2013	6,00,000
	Sub-total			75,00,000
	Gross (A+B)			3,25,00,000

It is evident that the loans were received through banking channels and therefore the genuineness of the transactions stand beyond doubt. The above loan along with outstanding interest was duly reflected in the audited balance sheet of the assessee for NCL Financial Research for Rs.2,00,00,000 & net interest Rs.5,59,727/- (6,21,918-62,192). In respect of interests for all loans, the assessee debited a sum of Rs.33,03,014/- in its audited accounts which included the disallowed interest of Rs.24,21,928. The net interest amount was paid to the respective lenders totaling Rs.21,79,727 vide cheque nos. 12389, 12390 & 12392, all dated 11/06/2014.

Loan from	Loan	Interest	TDS	Net Paid
Khoobsurat Ltd	2,00,00,000	8,00,000	80,000	7,20,000
Jackson Invest.	2,50,00,000	10,00,000	1,00,000	9,00,000
NCL Research Fin.Ser.Ltd	2,00,00,000	6,21,918	62,191	5,59,727
Gross		24,21,918		21,79,727

The above documents submitted before the AO as well as during the course of appellate proceedings and the AO has nowhere placed anything on record to disprove such transactions and therefore these facts also do not support the contention of the AO that the said loans were bogus. With regards to creditworthiness of the lenders, the following is observed from the audited accounts of M/s NCL Research & Financial Services Ltd :



Sl. No.	Name of the company	Share Capital as on 31.03.2014	Reserved Surplus as on 31.03.2014	& Gross turnover as on 31.03.2014	ITR filed for AY: 2014-15	Total taxes paid while filing ITR
1.	M/s NCL Research & Financial Services Ltd	5,81,70,000	55,21,06,421	32,77,81,669	Yes	Rs.44,36,209/-

Furthermore M/s NCL Research & Financial Services Ltd was also assessed for the AY: 2014-15 u/s 143(3) by ACIT-5, Kanpur. In his assessment order dated 30.11.2016, which is much after the dates on which the statements of Goutam Bose and Alok Kumar Das were recorded, the ACIT-5, Kanpur made no additions and the returned income of Rs.1,36,45,670/- was accepted by the AO. Considering the above mentioned own funds of the appellant as well as the substantial turnover of the appellant and the subsequent assessment being completed u/s 143(3) wherein the returned income has been accepted, the creditworthiness of the lender company cannot be placed in doubt especially owing to the fact that the AO has failed to bring anything on record which would dispute the financial credentials of M/s NCL Research & Financial Services Ltd. Similarly in respect of the other lenders the following is observed from the audited accounts as well as the ITR:

Name of the company	AY: 2010-11		AY: 2011-12		AY: 2012-13		AY: 2013-14	
	Total shareholders funds	Gross Turnover	Total shareholders funds	Gross Turnover	Total shareholders funds	Gross Turnover	Total shareholders funds	Gross Turnover
M/s Jackson Investments Ltd	30.67 Cr	30.02 Cr	30.67 Cr	22.12 Cr	30.69 Cr	20.14 Cr	30.86 Cr	34.27 Cr
M/s Khoobsurat Ltd	23.41 Cr	27.29 Cr	23.73 Cr	1.77 Cr	24.18 Cr	1.97 Cr	24.68 Cr	4.33 Cr

Both these lenders regularly file their returns of income and have also been subject to assessment between A.Y's: 2010-11 to 2014-15 u/s 143(3) wherein assessment has been completed by the respective AO's u/s 143(3). Therefore in these cases also the identity of the lenders cannot be disputed. In the assessment order for A.Y: 2014-15 in respect of M/s Khoobsurat Ltd which has been assessed by ACIT, CC-1(1) Kolkata, vide assessment order dated 13.12.2015, only addition u/s 14A has been made. Similarly In the assessment order for A.Y: 2014-15 in respect of M/s Jackson Investments Ltd which has been assessed by ITO, Ward-6(2), Kolkata vide assessment order dated 29.12.2016, the income of the lender company has been assessed by the AO at Rs.31,30,270/-. So, these unsecured loans provided by these lender companies has been accepted by the respective AO's in the assessment for A.Y: 2014-15.

In this case, therefore, as per the replies of the appellant before the AO, the assessee as well as the lender companies submitted the requisite documents to prove the identity, creditworthiness of the lender companies, the genuineness of transactions, and the AO has not brought forward any evidences to dispute these documents submitted by the appellant. The AO has nowhere mentioned in his assessment order that requisite documents were not submitted by the appellant.

A very pertinent judgement by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Dataware Private Ltd. [ITAT No. 263 of 2011 dated 21.09.2011] deserves to be cited in this case, where while examining the issue of addition of share application money received by the assessee therein u/s 68 of the Act, the Hon. Court held that after getting the PAN number and getting the information that the creditor is assessee under the Act, the Assessing Officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing Officer of the Creditor but instead of adopting such course, the Assessing Officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. The Hon'ble High Court further held that so long as it is not established that the return submitted by the creditor (subscriber shareholder) has been rejected by its Assessing Officer, the Assessing Officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

I find that a similar matter has been dealt with by the Hon. Jurisdictional High Court in a recent judgement in [2022] 143 taxmann.com 435 (Calcutta) HIGH COURT OF CALCUTTA, Principal Commissioner of Income-tax v. Sreeleathers*, wherein the Hon. Court has held:

"4. Before we examine the correctness of the order passed by the Tribunal and consider whether a substantial question of law arises for consideration in this appeal we need to take note of section 68 of the Act. This provision deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. The crucial words in the said provision are "assessee offers no explanation". This would mean where the assessee offers no proper, reasonable and acceptable explanation as regard the amount credited in the books maintained by the assessee. No doubt the Income-tax Act places the burden of proof on the tax payer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their conformations, it has been held that the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit so as to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation with regard to the cash credit, the Assessing Officer should consider the same objectively before he takes a decision to accept or reject it. In Sreelekha Banerjee v. CIT [1963] 49 ITR 112 (SC), it was held that if the explanation given by the assessee shows that the receipt is not of income nature, the department cannot convert good proof into no proof or otherwise unreasonably reject it. On the other hand, if the explanation is unconvincing, the same can be rejected and an inference shows that the amount represents undisclosed income either from a disclosed or an undisclosed source CIT v. P. Mohanakala [2007] 161 Taxman 169/291 ITR 278/210 CTR 20 (SC). The explanation given by the assessee cannot be rejected arbitrarily or capriciously, without sufficient ground on suspicion or on imaginary or irrelevant grounds Lal Mohan Krishna Lal Paul v. CIT [1944] 12 ITR 441 (Cal.) and Anil Kumar Singh v. CIT [1972] 84 ITR 307 (Cal.).

5. Further to be noted that where the assessee furnishes full details regarding the creditors, it is up to the department to pursue the matter further to locate those creditors and examine their creditworthiness. It has been further held in A.S. Sivan Pillai v. CIT [1958] 34 ITR 328 (Mad.) that while drawing the inference, it cannot be assumed in the absence of any material that there has been some illegalities in the assessee's transaction. Thus, more importantly, as held by the Hon'ble Supreme Court in CIT v. Daulat Ram Rawatmull [1973] 87 ITR 349 (SC), the onus of proving



that the appellant was not the real was on the party who claims it to be so. Bearing the above legal principles in mind, if we examine the case on hand, it is clear that the assessing officer issued show cause notice only in respect of one of the lender M/s. Fast Glow Distributors. The assessee responded to the show cause notice and submitted the reply dated 22-12-2017. The documents annexed to the reply were classified under 3 categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The assessing officer has brushed aside these documents and in a very casual manner has stated that mere filing PAN details, balance sheet does not absolve the assessee from his responsibility of proving the nature of transaction. There is no discussion by the assessing officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee has discharged his initial burden and the burden shifts on the assessing officer to enquire further into the matter which he failed to do. In more than one place the assessing officer used the expression "money laundering." We find such usage to be uncalled for as the allegations of money laundering is a very serious allegations and the effect of a case of money laundering under the relevant Act is markedly different. Therefore, the assessing officer should have desisted from using such expression when it was never the case that there was any allegations of money laundering. Paragraphs 5.4 and 5.5 of the assessment order are all personal perception and opinion of the assessing officer which needs to be ignored. Much reliance was placed on the statement of Shri Ashish Kumar Agarwal, which statement has been extracted in full in the assessment order and it cannot be disputed that there is no allegation against the assessee company in the said statement. There is no evidence brought on record by the assessing officer to connect the said entry operator with the loan transaction done by the assessee. Therefore, the statement is of little avail and could not have been the basis for making allegations. The assessing officer ignored the settled legal principle and in spite of the assessee having offered the explanation with regard to the loan transaction, no finding has been recorded as regards the satisfaction on the explanation offered by the assessee. Therefore, the assessing officer ignored the basic tenets of law before invoking his power under section 68 of the Act. Fortunately, for the assessee, CIT(A) has done an elaborate factual exercise, took into consideration, the creditworthiness of the 13 companies the details of which were furnished by the assessee. More importantly, the CIT noted that all these companies responded to the notices issued under section 133 (6) of the Act which fact has not been denied by the assessing officer. On going through the records and the net worth of the lender companies, the CIT has recorded the factual findings that the net worth of those companies is in crores of rupees and they have declared income to the tune of Rs. 45,00,000/- and 75,00,000/-. Therefore, the assessing officer if in his opinion found the explanation offered by the assessee to be not satisfactory, he should have recorded so with reasons. We find that there is no discussion on the explanation offered by the assessee qua, one of the lenders. Admittedly, the assessee was not issued any show cause notice in respect of other lenders. However, they are able to produce the details before the CIT(A) who had in our view rightly appreciated the facts and circumstances of the case. As pointed out earlier, the assessing officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It is not enough for the assessing officer to say so but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply dated 22-12-2017 does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. In the absence of any such finding, we have to hold that the order passed by the assessing officer was utterly perverse and rightly interfered by the CIT(A). The Tribunal re-appreciated the factual position and agreed with the CIT(A). The tribunal apart from taking into consideration, the legal effect of the statement of Ashish Kumar Agarwal also took note of the fact that the notices which were issued by the assessing officer under section 133(6) of the Act to the lenders where duly acknowledged and all the lenders confirmed the loan



transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the assessing officer and there is no discussion on this aspect. Thus, we find that the tribunal rightly dismissed the appeal filed by the revenue.

6. For all the above reasons, we find that no question of law much less, substantial question of law arises for consideration in this appeal.”

So the Hon. Jurisdictional High Court has held that the AO cannot simply brush aside the explanation offered by the assessee without giving any specific reason and he should record reasons in writing as to why the documents which were filed by the assessee along in its reply does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lenders. In the absence of any such finding, the Hon. High Court has held the order passed by the assessing officer was utterly perverse and was rightly interfered by the CIT(A).

In *PCIT vs Ami Industries ltd [2020] 116 taxmann.com 34*, It has held by the Hon'ble Bombay High Court that investments may be made from own funds available in share capital or resources or out of borrowed funds and not necessarily out of taxable income only. The information in respect of the net worth of these companies was very much present before the AO at the time of assessment, but there no comment has been made by him in this regard.

In view of the various judicial precedents therefore it is established that once the appellant has discharged its onus to submit the requisite documents to prove the identity, creditworthiness of the share applicants, the onus shifts upon the AO to verify the same and bring on record details of the enquiry conducted by him as well as the results of such enquiry alongwith counter evidences if he does not agree with the evidences submitted by the appellant. There is singular absence of anything in this regard in the assessment order. The contention of the AO is merely based upon the statements of Goutam Bose and Alok Kumar Das, which have been discussed elaborately in the earlier part of this order and it has been observed that such statements are inconclusive and are not backed by any tangible evidence to establish that the unsecured loans in consideration are bogus. The appellant on the other hand has submitted the relevant documents to establish the identity, creditworthiness of all the lenders as well as the genuineness of the transactions to discharge his onus and in the subsequent AY's, the appellant has been paying the requisite interest after deduction of TDS.

Owing to the above discussion, and the judgements discussed above, the action of the AO in treating the unsecured loans to the tune of Rs.2,00,00,000/- and the disallowance of interest paid on such unsecured loans to the tune of Rs.24,21,918/- as bogus cannot be sustained and stands deleted. These grounds are therefore allowed.”

8. On perusal of the above finding of the Id. CIT (A) and examining the facts of the case, we notice that so far as the cash creditors namely NCL Research and Financial Services Private Limited is concerned it is regularly carrying out the business and turnover during the year under consideration was 32.78 crore and the taxes paid during the year amounting to ₹44.36 lakh (approx.). The accumulated share capital and reserve and surplus as on 31st



March, 2014, is also (approx.) 61 crore, which is sufficient enough to explain the source of loan given to assessee company at ₹2 crore. So far as the interest expenditure is concerned, apart from the cash creditors namely NCL Research and Financial Services Private Limited , Khoobsurat Ltd. & Jackson Investment Ltd. are regularly having loan transactions with the assessee since A.Y. 2010-11 and therefore, genuineness of the interest expenditure cannot be doubted as rightly observed by Id. CIT (A). We thus, fail to find any infirmity in the finding of the Id. CIT (A), deleting the impugned addition made by the Id. AO. The effective grounds of appeal raised by the Revenue are dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 21st October, 2024 at Kolkata.

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 21.10.2024

**SS, Sr.Ps*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

**Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata**