

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.1511/Mum/2024
(Assessment Year :2020-21)**

Assistant Commissioner of Income Tax, Central Circle-6(4) Mumbai	Vs.	Neuzen Finance Private Limited Unit -1B, A Wing 9 th Floor, Times Square Building, Marol, Andheri Kurla Road Andheri (E) Maharashtra - 400 059
PAN/GIR No.AAACU3597P		
(Appellant)	..	(Respondent)

**ITA No.1247/Mum/2024
(Assessment Year :2020-21)**

Neuzen Finance Private Limited Unit -1B, A Wing 9 th Floor, Times Square Building, Marol, Andheri Kurla Road Andheri (E) Maharashtra - 400 059	Vs.	Assistant Commissioner of Income Tax, Central Circle-6(4) Mumbai
PAN/GIR No.AAACU3597P		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agarwal & Shri Racikant Pathak
Revenue by	Shri S. Srinivasu CIT DR & Shri Sunil Sinde, Sr. AR
Date of Hearing	14/08/2024
Date of Pronouncement	22/10/2024

आदेश / ORDER**PER AMIT SHUKLA (J.M):**

The aforesaid cross appeals have been filed by the Revenue as well as by the assessee against order dated 22/01/2025 passed by Id. CIT(A)-54, Mumbai for the quantum of assessment passed u/s.143(3) for A.Y.2020-21.

2. In the grounds of appeal, the Revenue has raised following grounds:-

1. *"Whether, on the facts and in the circumstances of the case and in law, the Ld CIT(A) is justified in holding the expenses incurred on increase in authorized share capital is revenue expenditure, thereby ignoring that any expenditure specified in sub-section (2) of section 35D of the Act, be allowed a deduction of an amount equal to one-tenth of such expenditure for each of the ten successive previous years beginning with the previous year in which the business commences or, as the case may be, the previous year in which the extension of the undertaking is completed, or the new unit commences production or operation. (Provided that where an Assessee incurs after the 31st day of March, 1998, any expenditure specified in sub-section (2), the provisions of this sub-section shall have effect as if for the words "an amount equal to one-tenth of such expenditure for each of the ten successive previous years", the words "an amount equal to one-fifth of such expenditure for each of the five successive previous years" had been substituted]?"*

2. *"Whether, on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in relying on decision of the Hon'ble Supreme Court in case of CIT vs General Insurance Corporation (286 ITR 232 SC), as the decision was given in respect of issue of bonus shares whereas the assessee has increased its authorized share capital in the present case and hence the decision of the Hon'ble Supreme Court is not applicable?"*

3. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 59,99,00,000/- made by the AO as bogus unsecured loan taken by the assessee from M/s Allbright Electrical Put Lad, M/s Naurus Tradestar Pvt. Ltd. & M/s Carron Investments Put. Lad despite the fact that Allbright Electricals Put. Ltd and its promoters/directors were involved in giving accommodation entries in lieu of cash to the beneficiaries and bring out the dubious nature of the company viz. Novus Tradestar Pvt. Ltd. which does not have any genuine business*

4 *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 5,36,467/ made by the A.O. on account of interest paid on bogus unsecured loan taken by the assessee from M/s Allbright Electrical Pvt. Ltd. despite the fact that Allbright Electricals Put. Ltd. and its promoters/directors were involved in giving accommodation entries in lieu of cash to the beneficiaries and bring out the dubious nature of the company viz Novus Tradestar Put. Ltd. which does not have any genuine business?"*

5 *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 43,17,000/- thereby ignoring that the burden of proof is on the assessee to explain satisfactorily with regards to amount claimed in the return of income along with documentary evidence?"*

6. *"The appellant craves to leave, to add, to amend and / or to alter any of the ground of appeal if need be".*

3. Whereas, assessee in its appeal has challenged the addition of Rs.30,00,000/- on account of loan taken from Shri Gauri Shankar Deora u/s.68.

4. The brief facts are that assessee is an NBFC company engaged in financial activities of borrowing and lending. It has filed its return of income on 30/01/2021 declaring total income

of Rs.13,24,41,330/-. In so far as first issue raised by the Revenue is with regard to disallowance of expenditure u/s.35D(2), the facts are that, assessee has increased its authorised share capital during the financial year under consideration and incurred expenses of Rs.14,25,180/-. In response to show-cause notice as to why the expenses claimed on account of filing fees should not be disallowed, assessee submitted that Section 35D is applicable in case of revenue expenses before the commencement of business and after the commencement of business in connection with extension undertaking or in connection with setting of new unit. Whereas in the case of the assessee, increase in the share capital was neither extension of business nor setting up of new unit, in fact this expenditure was to increase the share capital as per working capital requirements of the company and therefore, the claim of Rs.11,40,144 should be allowed. However, the ld. AO restricted the claim of Rs.2,85,036/- and added back Rs.11,40,144/-.

5. The ld. CIT(A) has deleted the addition following the Hon'ble Supreme Court judgment in case of **CIT vs. General Insurance Corporation (286 ITR 232)** after holding and observing as under:-

"8.3 In this regard it is seen that the Hon'ble Supreme Court in the case of CIT vs General Insurance Corporation [286 ITR 232 SC] has held that the expenses incurred on issuance of bonus shares was revenue expenditure. The relevant extracts are as under

"22. As observed earlier, the issue of bonus shares by capitalization of reserves is merely a reallocation of company's funds. There is no inflow of fresh funds or increase in the capital employed, which remains the

same. If that be so, then it cannot be held that the company has acquired a benefit or advantage of enduring nature. The total funds available with the company will remain the same and the issue of bonus shares will not result in any change in the capital structure of the company. Issue of bonus shares does not result in the expansion of capital base of the company.

23. The case *Wood Craft Products Ltd. (supra)* of the Calcutta High Court is similar to the case of the respondent. In that case as well there was increase of authorized share capital by the issue of fresh shares and a separate issue of bonus shares. The Calcutta High Court drew a distinction between the raising of fresh capital and the issue of bonus shares and held that expenditure on the former was capital in nature as it changed the capital base. **On the other hand, in the case of bonus shares, it was held to be revenue expenditure following the decision of the Supreme Court in *Dalmia Investment Co. Ltd. (supra)* on the ground that there was no change in the capital structure at all.**

24. In our considered opinion, the view taken by the Bombay and Calcutta High Courts is correct to the effect that the expenditure on issuance of bonus shares is revenue expenditure. The contrary judgments of the Gujarat and Andhra Pradesh High Courts are erroneous and do not lay down the correct law

25. For the reasons stated above, the question referred to us, is answered in the affirmative, i.e., in favour of the assessee and against the Revenue."

8.4 In view of the binding judgement of the Hon'ble Supreme Court on this issue the ground is decided in favour of the appellant and the addition made is directed to be deleted. In the result, the ground of appeal is allowed.

6. After hearing both the parties and on perusal of the relevant finding given in the impugned order as well as material placed on record, we find that assessee company has incurred

ROC fees of Rs.14,25,180/- towards increase in authorised share capital to issue bonus shares. The authorised capital was increased from Rs.20 Crores in March 2019 to Rs.40 Crores in March 2020. Consequently, share capital has been increased from Rs.18.43 Crores to 36.88 Crores. The additional share capital was raised by issue of bonus shares in the ratio of 1:1. Once authorised share capital has been increased to issue bonus shares which have been issued by capitalizing free reserves, it tantamount to re-allocation of the company's funds. There is no inflow of fresh funds or increase in the capital, as it remained the same. The issue of bonus shares has not resulted in extension of capital base of the company. The aforesaid observation and the principle laid down by the Hon'ble High Court in the case of CIT vs. General Insurance Corporation (supra) as highlighted above by the Id. CIT(A) is clearly applicable on these facts and therefore, order of the Id. CIT(A) following judgments of the Hon'ble Supreme Court is upheld. Accordingly, ground Nos. 1 & 2 raised by the Revenue are dismissed.

7. Now coming to the issue of addition made u/s.68 for sums aggregating to Rs. 60,59,00,000/- which was on account of unsecured loan taken by assessee from three parties, which has been majorly deleted by the CIT(A).

8. The brief facts are that during the year assessee, assessee has shown loan to the extent of Rs.60,59,00,000/- received from the following parties:-

Sr. No.	Name of the Parties	Amount (Rs.)
1	Allbright Electricals Private Limited	32,35,00,000/-
2	Carrons Investments Private Limited	20,14,00,000/-
3	Novus Trade Star Private Limited	7,50,00,000/-
4	Gaurishankar Deora	60,00,000/-
	TOTAL	60,59,00,000/-

9. In response to the show-cause notice to justify the identity and creditworthiness of the lenders as well as genuineness of the transaction, assessee filed copy of ledger account confirmation from the lender company, copy of return of income filed by the lenders, financial statements of the lenders and also relevant extract of the bank statements of the lenders showing the loan received by the assessee. In so far as the loan taken from **M/s. Allbright Electricals Pvt. Ltd.**, assessee submitted that the loan taken from the said party was Rs.22,52,45,960 and not Rs.32,50,00,000/- as held by the ld. AO. From the ledger account it was pointed out that assessee had opening debit balance as in the earlier assessee has given loan to M/s. Allbright Electricals Pvt. Ltd and balance carried forward was of Rs.1,82,54,040/-. Thereafter, assessee has given further loans to M/s. Allbright Electricals Pvt. Ltd and these loans have been repaid by M/s. Allbright Electricals Pvt. Ltd by August 2019. Ld.

AO has not considered that there was huge amount of repayment of loan amounting to Rs.10 Crores by M/s. Allbright Electricals Pvt. Ltd to the assessee. When assessee had a running ledger account between the two parties, then all the credits could not have been added. However, the ld. AO in his detailed order has rejected various contentions and explanation of the assessee. In sum and substance, the reasons for confirming the said addition by the AO are as under:-

(i) The shareholders of Allbright are M/s. Redrose Commotrade Private Limited and M/s. Bhoomidhar Commotrade Private Limited. The directors of these two companies are Shri Vinod Singhvi who is also director of the Allbright.

(ii) The premium charged by the Allbright from its shareholders does not commensurate with the assets of the Allbright.

(iii) The share capital raised by the Allbright has been used for making investments in another companies namely M/s. Vinod Commodities Limited and M/s. Vinod shares Limited

(iv) Vinod Singhvi did not attend the proceeding physically against the notice issued u/s 131 of the Act but only filed the audited financial statement of Allbright

(v) Search taken place at the premises of M/s. Hubtown Limited in which statement of Shri Mahavir Duggar [brother in law of Shri Vinod Singhvi] was recorded as one excel sheet has been found from his laptop. In the statement he has stated that the sheet found from his laptop contains details of

accommodation entry provided by him to various beneficiaries in form of unsecured loans. Shri Duggar allegedly admitted that he was arranging accommodation entry from various companies for various beneficiaries. Allbright is one of such company which has been used for giving accommodation entry.

(vi) The Allbright has no substantial income from the business activity

(vii) There are various transfer and/or credit entries in the bank statement of Allbright before giving loan to the Appellant.

(viii) The ownership of Allbright found to be suspicion and loan taken by the Appellant is also under suspicion.

10. Similarly, AO has also disallowed the payment of interest of Rs.5,36,467/- to M/s. Allbright Electricals Pvt. Ltd., In the case of loan taken from **M/s Carron Investments Pvt. Ltd., and M/s Naurus Tradestar Pvt. Ltd.**, he noted that on examination of the profiles of these lender companies, it is revealed that they had common directors and one Sh.Mohd Latif Khan Ummed Ali was filing the return of income for A.Y.2020-21 for both the companies. Further, he observed that these companies had a meager paid up capital in the balance sheet and had shown negligible income. Further, there was no compliance of summons issued u/s.131 by these parties.

11. Lastly, in the assessment of these two companies, notice u/s.133(6) were issued to 12 parties out of which only two

companies replied and therefore, these two companies appeared to be an entry accommodation provider. Accordingly, he has made the additions based on his own analysis of the facts in the following manner:-

“Assessee's arguments are carefully considered but are found to be not acceptable. With respect to a credit of any amount in its books the Assessee is supposed to establish the genuineness of the transaction, identity and creditworthiness of the party from which the credit has been received in the case of the lending parties listed in Table-2 above it can be seen that these companies have meagre paid-up capital in their balance sheets and also have shown nil income in their returns of income for the AY under consideration. The Assessee company had furnished ledger account confirmation from all of the above lenders along with their ROIs and bank account statements. It can be noticed that all of the companies are Mumbai based and had internal transactions with each other which were reflected in bank account entries. Total Loans received during the F. Y under consideration is Rs. 27,64,00,000/- as reflected in Table-2 above All of these companies appear to be merely entry providing companies and are believed to be not conducting any genuine business activity but merely rotating funds and providing entries to beneficiary companies

(i) As has been pointed out in preceding paras all these companies as listed in Table Nos. 2 and 3 above from whom the Assessee Umang Trading Pvt Ltd has received unsecured loans either during the F.Y under consideration or in preceding FYs show common traits as under

1 They have transactions with each other also as could be seen from their bank account statements submitted by the Assessee.

2. They have common director viz Shri Mohd Latif Khan Ummed Ali who did not appear before the VU to testify for the genuineness of the transactions of these companies with Umang Trading Pvt Ltd.

3. Each of these companies have nominal paid up capital and negligible income declared in return of income meaning thereby that these companies do not have any funds of their own from which they could have given loans to the Assessee Umang Trading Pvt Ltd. There are corresponding credits in their bank accounts immediately before the loan transfer to Umang Trading Pvt Ltd.

4. Dubious character of two of these companies have been observed by their respective Assessing officer in their assessment proceedings.

(ii) The contention of Shri Mohd. Latif Khan Umed Ali that he did not attend before the verification unit for personal examination because the summons did not mention any address is but an alibi to hide his insincerity. Shri Mohd. Latif Khan Umed Ali chose to not respond to the summons otherwise he could have reverted back online to the VU stating that he could not attend because no address was mentioned. In the summons, the VU had also required Shri Mohd. Latif Khan Umed Ali to upload various documents for which due path had also been provided, which he did not upload which shows that Shri Mohd. Latif Khan Umed Ali had no intention to cooperate with the VU

(iv) The Creditworthiness of the said lending parties is not established looking to the entries in the bank account statements submitted. It can be seen that immediately prior to a transfer to the Assessee, there is credit/transfer-in of funds which shows that the lender parties did not have funds of their own to extend the loans to the Assessee. It can also be seen that all of these parties also had transactions among each other wherein no actual business was being conducted other than just rotating funds

(v) In the case of Novus Tradestar Pvt Ltd the assessment orders passed A.Ys 2013-14 in its case for to 2016-17 have been shared by its Assessing Officer(AO) viz DCIT Central Circle 4(2), Mumbai Mohd. Latif Khan Umed Ali is one of the directors in Novus Tradestar Pvt Ltd. The findings of the Assessing officer in all these assessment orders is that bank accounts of the Assessee Novus Tradestar Pvt Ltd shows high value transactions of debit and credit, mostly on the same day It is also found by the AO that the assessee company has shown miniscule GP against a very high

turnover in all the A.Ys mentioned. The AO observed that there were high value credits in the bank account followed by immediate transfer to third party which are mostly related parties or parties having same director or companies which are merged with the Assessee. AO also observed that the trading was with 12 parties to whom the AO issued notices u/s 133(6) of the Act calling confirmation. However, only two of the parties responded The AO has also observed that in spite of huge turnover the Assessee had not debited any transportation expenses nor maintained any closing stock. No tax audit report had been filed. With these observations the AO concluded that the books of accounts of the Assessee were not reliable and therefore rejected the book result and estimated the GP The findings of the AO thus bring out the dubious nature of the company viz Novus Tradstar Pvt Ltd which does not have any genuine business and from whom the Assessee has purportedly received unsecured loans amounting to Rs. 7,50,00,000/- during the FY under consideration. The transaction can therefore be concluded as non-genuine.

(vi) In light of the above discussion, it is established beyond any doubts that the transactions between the Assessee company and the lending companies listed in Table-2 above, were not genuine and therefore the loans received by the Assessee company from the lending companies listed in Table-2 above deserves to be treated as unexplained cash credits. The amount of Rs.27,64,00,000/-, thus received from M/s Novus Trade star Pvt Ltd and Carron Investments Pvt Ltd is hereby added to the total income of the Assessee u/s 68 of the Income tax Act. Penalty proceedings u/s 271AAC (1) are being initiated separately. Penalty proceedings u/s 271AAC (1) are proposed to be initiated separately

[(B)- Addition of Rs. of Rs. 27,64,00,000/-

12. Again with regard to loans received from Shri Gaurishankar Deora, ld. AO noted that assessee has received unsecured loans of Rs.60,00,000/- but there is no PAN of the lender in the

confirmation letter filed by him and accordingly, Rs.60,00,000/- was added.

13. Before the ld. CIT(A) assessee gave point wise rebuttal of each and every allegation and observation of the ld. AO and various documents which were filed before the ld. AO. The submissions of the assessee have been incorporated from pages 7-32 of the appellate order. The ld. CIT (A) analysed each and every creditor and observation of the finding of the ld. AO which has been summarized by him in para 9.1.1 to 9.1.3. After considering these facts and material placed on record and various judgments, the ld. CIT(A) has deleted the said addition after observing and holding as under:-

“9.12 It is also pertinent to note that the legislature in their wisdom has made amendment in section 68 w.e.f. 01.04.2013 to specify that the assessee needs to prove the source of the source only in case of share capital. In case of other receipts, there were no such provisions until AY 2022-23 after which the amendment has been made prospectively from AY 2023-24 to also include loan or borrowing Accordingly, for the year under consideration, there was no requirement to prove the source of the source of the party from whom the unsecured loan had been received

9.13 Now coming to the facts of the case, it is observed that the appellant has submitted the PAN ITRs, Loan Confirmations, Audited financial statements and relevant bank accounts of 3 out of the aforesaid 4 parties. It is seen that the relevant documentary evidence has been submitted in respect of Allbright Electricals Pvt Ltd. Carron Investment Pvt Ltd and Novus Tradestar Pvt Ltd. In respect of the fourth party, namely, Sh. Gaurishankar Deora, the appellant has only been able to furnish the loan confirmation Thus, in respect of Sh. Gaurishankar Deora the PAN, ITR, financial statements, his bank accounts etc have not been provided.

9.14 Therefore in the case of Sh Gaurishankar Deora from whom unsecured loan amounting to Rs. 60.00,000/- have been allegedly taken, the assessee has not been able to discharge the onus cast upon it to prove the identity, genuineness and creditworthiness of the loan transactions as required u/s 68 of the Act.

9.15 In the case of the remaining 3 parties ie Allbright Electricals Pvt Ltd. Carron Investment Pvt Ltd and Novus Tradestar Pvt Ltd from whom loans amounting to Rs. 59,99,00,000/- have been taken, the basic documentary evidence in the form of PAN details, ITRs, Loan Confirmations, Audited Financial Statements and relevant bank account statements have been furnished to prove the identity, genuineness and creditworthiness. The AO on the other hand has simply relied on the weak financials of the lender parties and that the Directors did not depose personally for examination. In the case of Allbright Electricals Pvt Ltd, the AO has also relied on the statement of Sh Mahavir Duggar, who was the brother in law of the Director of Allbright Electricals Pvt Ltd, that he was in the business of giving accommodation entries to various beneficiaries through various companies and that Allbright Electricals Pvt Ltd was one such company which had been used for this purpose. Besides relying on this general statement, the AO has not been able to bring on record any specific evidence implicating the assessee. The AO has not been able to bring on record any material fact to suggest that anywhere any specific reference was made in respect of the assessee as a recipient of accommodation entries. As regards Carron Investment Pvt Ltd and Novus Tradestar Pvt Ltd, the AO has simply relied on the fact that the Director of these companies was residing in a small flat in Bhayandar. Without making any enquiry from the said person, coming to any conclusion on the basis of the size of his accommodation cannot be accepted. The assessee on the other hand has contended that the relevant documentary evidence proving the identity, genuineness and creditworthiness has been furnished. Nothing adverse has been reported by the AO regarding the genuineness of the documentary evidence submitted by the assessee. In this regard, it is seen that the Courts have held that when all other documentary evidence has been furnished, mere non-appearance of the parties in person cannot be a sufficient reason to treat the transaction as non-genuine as had been decided by the Jurisdictional High Court in the cases of CIT v.

Orchid Industries Pvt Ltd (397 ITR 136), CIT v. Creative World Telefilms Ltd (333 ITR 100) and CIT vs. Nikunj Eximp Pvt Ltd (35 Taxmann.com 384) As regards, the argument of the AO that the lending parties had meagre income, the appellant has contended that it is not the result in the Profit and Loss account which determines the capacity of the lender to extend the loan but it is the Balance Sheet which explains the capacity to provide the loan. The appellant has vehemently argued that while it has provided all the documentary evidence to prove the genuineness of the transactions, it was in any case not required to prove the source of the source

9.15.1 In this regard, it is observed that the identity of the lenders Allbright Electricals Pvt Ltd, Carron Investment Pvt Ltd and Novus Tradestar Pvt Ltd is proved by the PAN and their ITRs. Further, the genuineness of the transactions can also be safely concluded from the confirmations filed and the fact that the transactions have been done through the banking channels, duly recorded in the books of accounts of the assessee. Further, the onus regarding proving the creditworthiness or financial strength of the lenders has been duly discharged by providing before the AO, the audited financial statements as well as bank statements of the lenders. The AO has not controverted the genuineness of the documents submitted by the assessee in respect of the impugned transactions. It is noted that in respect of these 3 parties from whom loan amounting to Rs 59,99,00,000/- has been taken, the AO has not been able to bring on record any other evidence to show that the loan entries are coupled with similar contra-transactions in cash The conduct of these parties also does not lead us to an inference that each loan entry was coupled with a contra cash transaction Also, as per various judicial pronouncements, for the year under consideration, there was in any case no requirement to prove the source of the source from whom the unsecured loan had been received.”

14. However, with regard to loan taken from Shri Gaurishankar Deora of Rs.60,00,000/-, the ld. CIT(A) found that assessee has only taken loan of Rs.30,00,000/-. During the year by way of cheque and balance of Rs.30,00,000/- cheque was dishonoured,

thus, there was only a loan of Rs.30,00,000/-. However, he has confirmed an addition of Rs.30,00,000/- that the onus cast upon the assessee was not discharged.

15. Before us ld. DR relied upon the various observation of the ld. AO and submitted that none of these companies had any credibility and were found to be dubious companies and drew our attention to facts as discussed by the AO (incorporated above). Further, ld. AO also referred to statement of Shri Mahavir Duggar in whose case the search was conducted and in his statement, he has admitted that he was arranging accommodation entries from various companies which also included Allbright Electricals Pvt. Ltd., Further, in some of the companies they were not carrying out any genuine business. In these facts and circumstances, the documents furnished by the assessee cannot be relied upon.

16. On the other hand, ld. Counsel for the assessee submitted that, firstly, in the case of Allbright Electricals Pvt. Ltd., this company had huge reserves and surplus of more than Rs.50.24 Crores and has duly disclosed the loan given to the assessee in the balance sheet. Further, from the perusal of the ledger account, it can be seen that there was an opening debit balance of Rs. 1,82,54,040/- and assessee has further given loan to the said company. Thereafter, this company has repaid back the loan. He drew our attention to the copy of ledger account appearing in the paper book and pointed out that not only in this year but in the subsequent year there was a running account

wherein the assessee has given huge funds to the said company which has been returned back and whatever credit balance was left by the year end same has been repaid back. He also filed a copy of ledger account for the next financial year also. He pointed out that on 31/03/2021 of the loans were squared up. Thus, it cannot be a case of entry from any accommodation entry provider. Similarly, he pointed out the other cases also wherein there was a regular transaction between the two parties and all the loans were squared up during the year or in the subsequent year. Thus, he strongly relied upon the order of the Id. CIT (A).

17. We have heard both the parties and also perused the relevant material placed on record. In so far as the primary onus to prove the genuineness of the loan, the assessee has filed following documents before the AO to prove the genuineness of the transaction:-

Allbright Electricals Private Limited

- *Acknowledgement of return of income filed alongwith the Computation of total income for Assessment Year 2018-19 and 2020-21. (letter dated 22/08/22)*
- *Audited Financial statements for Financial Year 2019-20 (Letter dated 22/08/2022)*
- *Master data of Allbright downloaded from the portal of Ministry of Corporate Affairs (MCA)*
- *Relevant extract of Bank statement of Allbright Electricals Private Limited*
- *Relevant extract of Bank statement of the Appellant highlighting the loan taken and repaid. (letter dated 22/08/22)*

- *Ledger account of the Allbright Electricals Private Limited in the books of the Appellant Company*
- *Loan Ledger confirmation for Financial Year 2019-20 (letter dated 22/08/22)*
- *Statement showing the correct amount of loan taken from the 256 Allbright for the year under consideration.*

Carron Investment Private Limited

- *Acknowledgement of return filed for Assessment Year 2020-21, 2019-20 and 2018-19. (letter dated 22/08/22)*
- *Audited Financial Statement for Financial Year 2019-20. (letter dated 22/08/22)*
- *Relevant extract of Bank statement of the Appellant Company highlighting the loan taken and repaid. (letter dated 22/08/22)*
- *Relevant extract of Bank statement of Carron Investment Private Limited.*
- *Ledger account of Carron in the books of Appellant company for Assessment Year 2020-21.*
- *Loan Ledger confirmation for the Financial Year 2019-20. (letter dated 22/08/22)*

Novus Tradestar Private Limited

- *Acknowledgement of return filed for Assessment Year 2020-21, 2019-20 and 2018-19. (letter dated 22/08/22)*
- *Audited Financial Statement for Financial Year 2019-20. (letter dated 22/08/22)*
- *Relevant extract of Bank statement of the Appellant company highlighting the loan taken and repaid. (letter dated 22/08/22)*

- *Relevant extract of Bank statement of Novus Tradestar Private Limited.*
- *Ledger account of Novus in the books of the Appellant company for Financial Year 2019-20.*
- *Loan Ledger confirmation for the Financial Year 2019-20. (letter dated 22/08/22)*

Gaurishankar Itankar Deora

- *Ledger account of Gaurishankar Deora in the books of the Appellant company*
- *Loan Ledger confirmation for Financial Year 2019-20. (Letter dated 22/08/22)*
- *Relevant extract of Bank statement of the Appellant Company highlighting the loan taken and repaid.*

18. Further from the perusal of the ledger account of Allbright Electricals Pvt. Ltd., we find that there was an opening debit balance of Rs. 1,82,54,040/- and thereafter, assessee has again advanced loan to the said party of Rs.2 Crores from April 2019 to July 2019. Thereafter, assessee has received back the amount paid by such party and then further there are huge advances given to the said company. There was a running account transaction between both the parties and at the yearend the total credit was Rs.32,35,00,000/- and there was a total debit of Rs.26,99,82,820/-. The closing balance was of Rs.5,55,00,000/-, which was carried forward to the next year and finally in the next financial year there are again running account where huge debit and credit balance are there and all the balances have been

squared off. The pattern of ledger account goes to show that there are regular transactions with the said party. Thus, in such a situation it cannot be held that it is a case of some kind of an entry provider as alleged by the ld. AO.

19. Apart from that, if the assessee had furnished the details of the lender's bank statement, source of the funds of the said company alongwith bank statement and ledger account and confirmation, then that understanding the nature of transaction, then ld. AO cannot simply doubt the nature of entries without carrying out any further enquiry himself. The ld. AO has mostly relied upon the extraneous information received to him of the lender parties without even examining the nature of transaction, bank statements and the position of funds in the balance sheet to see the creditworthiness. The net income shown in the return of income cannot be the criteria for judging the source of income, albeit one has to see overall availability of the funds disclosed in the balance sheet, bank statement and the nature of transaction. If the AO has to inquire upon the source of funds in the hands of lender companies then he has to inquire from these companies. Assessee as the law prevalent at that point of time was required to prove the source of the source. It is only when some material has been found that assessee is beneficiary and assessee has unaccounted money routed through these companies, then ostensibly sources of funds can be inquired upon. Here in this case as discussed above there were regular transactions and assessee has also advance loan to these companies which was repaid back. Under these facts, once identity and the

creditworthiness is proved from the records and genuineness of the transaction has not been disproved as noticed from the entries in the bank statement and copy of ledger account, then it cannot be deemed to be unaccounted money or credit from undisclosed sources. Ld. AO has not verified the ledger account properly the overall nature of debit and credit entries for all the three parties. If the parties have shown enough sources to advance the loan and in most of the cases, it was repayment of loan given by the assessee and being a NBFC company, it has to receive the funds and give loans on interest to these parties. Therefore, to treat even the repayment of loan given by the assessee to these parties as 'unexplained loan' received cannot be sustained.

20. The ld. AO has drawn inferences by the fact that in the case of M/s Carron Investments Pvt. Ltd., and M/s Naurus Tradestar Pvt. Ltd., that the Directors of this company was one residing in a small flat in Bhayender (E), whether that person was examined about the transaction undertaken by the assessee and the lender company has not been brought on record. The ld. AO based on this information should have been at least carried out some enquiry to find out the genuineness of the transaction and the source of the funds from these companies. As stated above, here in this case there is a huge transaction between two companies i.e. assessee and the lender companies as assessee had advanced loan in the earlier years which had been repaid back and further assessee is also received loan which again has been repaid during the year or in the subsequent year. Such a

running account of transactions cannot be held to be that these companies were providing accommodation entry. Thus, on these facts, we do not find any infirmity in the order of the ld. CIT(A) in deleting the said additions qua all the three companies. Thus, the grounds raised by the Revenue are dismissed.

21. Coming to the said ground of the Revenue i.e. addition of Rs.43,17,000/-, the facts are that the assessee had given commission expenses of Rs.43,17,000/-. However, ld. AO found that the exact nature and quantity provided by the concerned person was not given. The ld. CIT(A) has deleted the addition after observing as under:-

“10.3 In this regard it is seen that the appellant has provided to the AO the PAN details and invoices in respect of the commission expenses incurred. Without making any enquiry from the concerned parties, the AO has straightaway come to the conclusion that the expenses were not genuine and not incurred for the purpose of the business. It is also strange that while in para 4.3.1 of his order the AO himself states that documentary evidences have been provided in respect of these expenses, in the subsequent paras he contradicts himself to state that documentary evidences have not been provided. Such a contradictory stand cannot be accepted. Also, since no independent enquiry has been done to controvert the stand of the assessee, the addition made cannot be sustained. Accordingly, the addition of Rs. 43,17,000/- in respect of commission expenses is directed to be deleted. Accordingly, this ground is allowed.”

22. Once the assessee has given the details and invoices in respect of commission expenses, then ld. AO should have verified the same from the parties. However, in these facts, we feel that this issue needs to be restored back to the file of the ld. AO to examine the evidences and carry out necessary inquiry and

assessee has to substantiate the payment of commission to these parties that it relates to its business of financial dealings of borrowing and lending. Accordingly, ground No.5 is allowed for statistical purposes.

23. Before us, in assessee's appeal with regard to addition of Rs.30,00,000/- which has been confirmed by the ld. CIT(A) on the ground that assessee had not been able to discharge the onus before us. Ld. Counsel pointed out that ld. AO has confirmed the addition that assessee has not filed the PAN, therefore, now the PAN is available which was filed before us as additional evidence. Further, he submitted that the loan has been repaid back to the said person Shri Gaurishankar Deora. On the facts of the case, we feel that this matter should be restored back to the file of the ld. AO to examine the genuineness of the loan given by the said party of Rs.30,00,000/- and assessee has to substantiate the said loan within the parameters of Section 68. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

24. In the result, appeal of the Revenue is partly allowed for statistical purposes and appeal of the assessee is allowed for statistical purposes.

Order pronounced on 22nd October, 2024

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 22/10/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai