IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.229/Nag./2022
(Assessment Year : 2014–15)

Dy. Commissioner of Income Tax
Central Circle–1(2), Nagpur ……. Appellant

v/s

M/s. Vibrant Global Capital Ltd.
Unit no.202, Tower–A
Peninsula Business Park ..... Respondent
Senapati Bapat Marg, Lower Parel
Mumbai 400 013 PAN – aaacv5656j

Assessee by : Shri Kishore P. Dewani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 24/10/2024	Date of Order – 25/10/2024

O R D E R

PER K.M. ROY, A.M.

This appeal has been filed by the Revenue challenging the impugned order dated 31/05/2022, passed by the learned Commissioner of Income Tax (Appeals)–3, Nagpur, [*"learned CIT(A)"*], for the assessment year 2014–15.

2. Following grounds have been raised by the Revenue:–

> *"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.8.50 crore made by the AO as unexplained cash credit u/s 68 of the Act without considering the fact that no evidence was furnished by the assessee to substantiate the creditworthiness of the six (6) entities from whom such amount was claimed to have been received.*
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> *2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.8.50 crore made as*

unexplained cash credit u/s 68 of the Act merely by relying on the fact that four (4) out of the six (6) loans were repaid by the assessee during the relevant year and the other two loans were repaid by the assessee during the subsequent financial years.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance made u/s 14A to Rs.15,89,749/- instead of Rs.25,99,737/- without considering the fact that the entire expenditure was incurred in relation to income not forming part of the total income and hence the entire amount should have been disallowed.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.5,37,962/- made by the AO by disallowing the same out of the interest of Rs.18,38,643/- debited as interest payment on borrowed funds. The Ld. CIT(A) has failed to appreciate the fact that the assessee has not substantiated its claim that the amount of Rs.17,85,24,650/- was advanced to different parties out of its non interest bearing funds.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.9,99,999/- which was debited to the Profit & Loss Account as 'Sundry balances written off', without appreciating the fact that the assessee has failed to explain the nature of business transactions with respective parties and has also failed to substantiate that such advances were made for the purpose of its business.

6. The appellant craves leave to add, amend, vary and/or alter any of the above grounds, as and when ……."

3. Facts in Brief:– In the case of assessee regular assessment has been framed under section 143(3) of the Income Tax Act, 1961 (*"the Act"*) by DCIT, Circle–8(3)(2), Mumbai, on 20/12/2016, determining total income at ₹ 8,65,21,840. In the assessment framed, addition has been made at ₹ 850 lakh under section 68 of the Act, apart from other additions out of claim of interest, disallowance under section 14A of the Act and disallowance of amount written-off, etc. The appeal filed by assessee has been disposed off by order dated 31/05/2022, by learned CIT(A)–3, Nagpur. The learned CIT(A) has deleted the addition at ₹ 850 lakh apart from other additions and has sustained the addition in respect to business promotion expenses and partly out of disallowance made under section 14A of the Act. The assessee

has not preferred any appeal against the addition upheld by learned CIT(A). The Revenue has preferred appeal in respect to additions deleted in the appeal of the assessee and are enumerated in the grounds of appeal reproduced above.

4. In grounds no.1 and 2, the Revenue has challenged the deletion of addition made by Assessing Officer at ₹ 850 lakh by learned CIT(A). The Assessing Officer has discussed the addition in Para 5.1 of the assessment order. It has been noted that assessee company has taken unsecured loans of ₹ 45.53 crore from various parties details of which are indicated in the assessment order. The Assessing Officer at Para–5.1.2 has noted the defects in respect to unsecured loans from the details furnished by assessee. It has been observed that confirmation letters are scanned copies and are not in original. At Para–5.1.2, it has been noted that no interest has been paid by the assessee on so called unsecured loans except to one party. The Assessing Officer has discussed further submissions as made before him in the assessment proceedings. It has been noted at Para–5.1.4 that notice under section 133(6) of the Act were issued to all the parties on 15/11/2016, and such parties were asked to furnish loan confirmation, copies of their return of income and bank statement by 25/11/2016. It has been noted that five parties responded and furnished the requisite details. In respect to others, no reply was received. The Assessing Officer at Para–5.1.5 has noted the issue of show cause notice dated 06/12/2016, in respect to seven parties as detailed at Para–5.1.4 of assessment order. At Para–5.1.6, the Assessing Officer has noted that after the show cause notice, reply has been received from M/s. Kredence Multi Trading Ltd., pursuance to notice under section

133(6) of the Act, therefore, the loan transaction from such party is considered as explained. In respect to loan transactions from balance six parties, it has been held that the same is liable to be assessed to tax as unexplained credit under section 68 of the Act.

5. The learned CIT(A) has discussed the subject matter of addition challenged before him under section 68 of the Act at ₹ 850 lakh at Para–3 and Para–4.1 of the appellate order. At Para–3, the learned CIT(A) has noted the submission made before him by the assessee on 12/07/2021, and the same has been reproduced at Pages–6 to 13. At Para–3.2, the learned CIT(A) has noted additional evidence submitted in appellate proceedings being original confirmation of the parties, Bank Statement and Balance Sheet along with Financial Statement of loan creditors. Reliance was placed on the decision of the Hon'ble Jurisdictional High Court in Smt. Prabhavati S. Shah v/s CIT, [1998] 231 ITR 001 (Bom.), for admission of additional evidence submitted by the assessee. The learned CIT(A), at Para–3.3, has admitted the additional evidence under Rule 46A of Income Tax Rules, 1962, as prayed by the assessee before him and the same was forwarded to the Assessing Officer with direction to examine and send remand report. The Assessing Officer has submitted remand report dated 23/04/2018 which was forwarded vide letter dated 27/04/2018 by the ACIT, Range-8(3), Mumbai. The Assessing Officer in the remand report had objected admissibility of additional evidence and has also given his comments on the merits of submission of assessee in respect to credits added under the provisions of section 68 of the Act. Remand report dated 23/04/2018 submitted by the Assessing Officer insofar as pertaining to addition under section 68 of the Act at ₹ 850 lakh has been

reproduced in the appellate order at Page–14 to 20 of appellate order. The Assessing Officer on receipt of various documents being loan confirmations, bank statements and financial statements of loan creditors had made cross verification by issuing notice under section 133(6) of the Act with six parties in respect to which addition is made. The above fact is noted in the order of the learned CIT(A) at Page–17. The Assessing Officer has noted that response to notice under section 133(6) of the Act was received from all the parties and his observation in this regard are indicated in the remand report. Relevant portion of remand report is reproduced in the order of the learned CIT(A) at Page–17 to 20. The learned CIT(A) at Para–3.4 has noted that the aforesaid remand report was provided to assessee for its reply. The reply submitted by assessee in respect to comments of the Assessing Officer has been reproduced at Para–3.4 / Page–20 to 58. The learned CIT(A) after considering the facts and evidence on record has deleted the addition made for the reasons discussed at Para–4.1 at Page–59 to 63 of appellate order.

6. Before us, the learned Departmental Representative, Shri Sandipkumar Salunke, (*"the learned D.R."*) submitted that the deletion of addition made by the learned CIT(A) is unjustified as addition is deleted by picking and choosing part of remand report. Entire remand report of the Assessing Officer is not considered while granting relief in the case of assessee. It is further submitted by Shri Salunke, that on loan transactions interest has not been paid by assessee and this fact is given in the remand report which justifies the action of the Assessing Officer to make addition under the provisions of section 68 of the Act. The learned D.R. thus argued that addition deleted by the learned CIT(A) is improper and unjustified. He,

therefore, prayed to restore the order of the Assessing Officer by allowing the grounds of appeal raised by the Revenue.

7. The learned Counsel, Shri Kishore P. Dewani, appearing for the assessee, on the other hand, submitted that the addition deleted by learned CIT(A) is fair and proper. It is submitted that the addition has been correctly deleted by the learned CIT(A). He invited attention to Paper Books submitted in Vol. I & II, wherein evidence in respect to all the six parties was placed for perusal which comprises of confirmation of loan creditors, financial statements of loan creditors, bank statements and income tax details including return of income submitted by loan creditors. The response submitted by all the loan creditors pursuance to notice under section 133(6) of the Act was also placed in the Paper Book. It was submitted that the assessee has discharged its onus to explain the credit in terms of provisions of section 68 of the Act. Our attention was further invited to the facts that all the loan creditors have been repaid during the previous year under consideration and in one case in the subsequent accounting year. Repayment made by the assessee in respect to loans has been accepted by the Revenue Authorities without inviting any adverse observation and, therefore, receipt of loan could not have been disputed. The details of repayment are noted in the order passed by the learned CIT(A) at Page–36 and 37. There is no shred of adverse evidence brought on record to support the addition made under section 68 of the Act. Various precedents on the provisions of section 68 of the Act comprising judgment of the Hon'ble High Courts and Hon'ble Apex Court were submitted in compilation in the form of Paper Book and furnished

before us. The written submission, as submitted by the assessee in respect to grounds no.1 and 2, is reproduced hereunder for ready reference:–

> *"Ground No.1 & 2 :*
>
> *Addition of ₹ 8.50 crore under section 68 of the Act*
> *Assessing Officer – Para–5.1 to 5.1.6 at Page–2 to 6*
> *Learned CIT(A) – Para–4.1 at Page–59 to 63*
>
> *A) Assessee has submitted confirmation in respect to loans indicating PAN and address of lenders. Bank statement, acknowledgment of Income Tax Return and response of lenders to notice issued u/s 133(6) of I.T. Act 1961 is available on record. (Page 1 to 172) & (Page 1 to 172) [Vol. – I & II]. None of the legal documents have been found to be incorrect in any manner. No shred of evidence is brought on record to discredit any of the legal evidence available on record.*
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> *B) A.O. in the remand proceedings issued notice u/s 133(6) to various lenders. Response along with documents evidence was submitted by lenders affirming transaction made with assessee company including repayment received of advance given by lenders. Legal evidence obtained in independent verification during the course of assessment proceedings/remand proceedings corroborate the transaction of loan received. Assessee has discharged its onus to explain identity, creditworthiness and genuineness of transaction of loan. Addition made by A.O. u/s 68 of I.T. Act 1961 is unjustified.*
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> *C) A.O. in remand report reproduced at Page 14 to 20 of order of CIT(A) has made no adverse observation as to receipt of loan from such parties to justify addition u/s 68. No shred of evidence is brought on record or any adverse finding is recorded to discredit legal evidence on record.*
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> *D) Onus to explain the credits has been satisfactorily discharged. No adverse evidence is available on record for which addition can be made u/s 68 of I.T. Act 1961.*
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> *E) In the case of M/s. Vibrant Global Trading Pvt. Ltd. PAN AACCG5841J for same assessment year addition was made for loan obtained by associate company from M/s. Hindustan Chemical Industries and M/s. Lok Chemicals Pvt. Ltd. which are also lenders to assessee company. Addition made by A.O. was deleted by CIT(A) vide order dated 27/11/2019 by CIT(A)-14, Mumbai (P- 71 to 90) [Vol. – IV] (82, 83). Department has accepted the decision and appellate order has achieved finality. It substantiates the submission of assessee that no addition u/s 68 can be made P- 35 & 36 of impugned order in appeal.*
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> *F) Page 60 & 61 of impugned order of CIT(A) indicates remarks of A.O. in remand report in final analysis. On undisputed factual submission no scope to make any addition u/s 68 of I.T. Act 1961.*

G) Transaction of loan given accepted by A.O. of lenders in orders passed u/s 143(3) of all the lenders details of which are noted in order of CIT(A) at page 37. This is undisputed fact on record. No scope to make addition u/s 68 considering evidence on record.

H) A.O. at para 5.1.6 has considered the loan received from M/s. Kradene Multi Trading Ltd. as explained on receipt of response to section 133(6) of I.T. Act 1961. Similar facts exist in respect to all the lenders as all have responded to notice u/s 133(6) in remand proceedings. No justification remains to make addition u/s 68 of I.T. Act 1961.

I) It is settled position of law that assessee has no obligation to explain source of source. Repayment of loan in the case of four parties during the year under consideration has been accepted by A.O. Repayment of loan in respect to two parties in the subsequent assessment years has been accepted by Revenue Authorities. Addition made u/s 68 of I.T. Act 1961 is unjustified.

<u>Reliance on</u>:

i) (1986) 159 ITR 0078 (S.C)
CIT v/s Orissa Corporation (P) Ltd.
(P- 1 to 7) [Vol. – V] (3, 7)

ii) ITAT, Indore Bench order in ITA No.361/Ind/2022 in the case of Shri Kanwarjeet Singh Nanda vide order dated 20/11/2023
(P- 8 to 31) [Vol. – V] (8, 20,21,24, 27,28)

iii) (2012) 208 Taxman 0035 (Guj.)
CIT vs. Ranchhod Jivabhai Nakhava
(P- 32 to 36) [Vol. – V] (35)

iv) (2014) 43 taxmann.com 395 (Guj.)
CIT-I vs. Dharamdev Finance (P) Ltd.
(P-37 to 40) [Vol. – V] (38, 39)

v) (2020) 423 ITR 0531 (Bom)
Mr. Gaurav Triyugi Singh v/s ITO
(P- 41 to 44) [Vol. – V] (44)

vi) (2015) 64 Taxmann 329 (Del)
CIT v/s Shiv Dhooti Pearls& Investment Ltd.
(P- 45 to 49) [Vol. – V] (45, 46)

vii) (2000) 245 ITR 0160 (MP)
CIT vs. Metachem Industries
(P- 50 to 53) [Vol. – V] (52, 53)

viii) (1996) 220 ITR 0452 (MP)
Ashok Pal Daga vs. CIT
(P- 54 to 56) [Vol. – V] (55, 56)

ix) Hon'ble Gujrat High Court in Tax Appel No.992/Guj/2013 in case of Ayachi Chandrashekar Narsangjivide vide order dated 02/12/2013.
(P- 57 to 59) [Vol. – V] (58)

x) (2023) 290 Taxmann 471 (Guj)
CIT v/s Ambe Tradecorp Pvt.Ltd.
(P- 60 to 62) [Vol. – V] (61)

xi) (1999) 237 ITR 0570 (SC)
CIT v/s SMT.PK.Noorjahan.
(P- 63 to 66) [Vol. – V] (65, 66)

xii) (2007) 291 ITR 0278 (SC)
CIT v/s P. Mohankala & Ors
(P- 67 to 75) [Vol. – V] (73, 74)

xiii) (2023) 152 Taxmann 663 (Del)
PCIT v/s Wel Intertrade (P.) Ltd.
(P- 76 to 84) [Vol. – V] (82, 82)"

8. We have perused the orders of lower authorities in particular remand report furnished by the Assessing Officer on the evidence submitted by the assessee. It is clear that the Assessing Officer has been provided with confirmation of loan creditors indicating address and PAN details. The aforesaid documentary evidence was substantiated by submitting bank statements and financial statements of loan creditors. Transaction of loan is through proper banking channel. Evidence placed on record was verified by the Assessing Officer by issuance of notice under section 133(6) of the Act during the remand proceedings. Response submitted by loan creditors affirmed the transaction of giving loan and receiving back the amount given along with documentary evidence. Independent evidence obtained on record by the Assessing Officer corroborated the loan transaction of assessee. The documentary evidence available on record clearly discharges onus of assessee to explain the credits. It is also undisputed fact on record that loan creditors have been repaid the amount and such repayment has been accepted by the Revenue authorities during the previous year in respect to five parties and in

respect to one party in subsequent year. The aforesaid facts are undisputed facts on record. The learned D.R. has not contradicted the facts as enumerated hereinabove. There is no shred of evidence on record to discredit the legal evidence placed on record by the assessee. On the above undisputed factual position, onus to explain the credit has been satisfactorily discharged in terms of law laid down by the various juridical precedents relied upon by the learned Counsel for the assessee and discussed hereunder. The documents in respect to six parties, as placed on record before the authorities below and before us in the form of Paper Book, are as under:–

Paper Book (Volume-I)

A. Parakh Agro Industries Ltd.

Sr. no.	*Particulars*	*Page no.*
1.	*Ledger Confirmation*	*1*
2.	*Ledger Account*	*2*
3.	*Relevant Period Bank Statement*	*3 – 7*
4.	*ITR Acknowledgement*	*8*
5.	*Balance Sheet*	*9 – 76*
6.	*Response submitted in respect to notice u/s 133(6) of I.T. Act 1961*	*77 – 84*

B. Lok Chemicals Pvt. Ltd.

Sr. no.	*Particulars*	*Page no.*
1.	*Ledger Confirmation*	*85*
2.	*Relevant Period Bank Statement*	*86 – 92*
3.	*ITR Acknowledgement*	*93*
4.	*Balance Sheet*	*94 – 149*
5.	*Response submitted in respect to notice u/s 133(6) of I.T. Act 1961*	*150 – 159*

C. Hindustan Chemicals Industries

Sr. no.	*Particulars*	*Page no.*
1.	*Ledger Confirmation*	*160*
2.	*Relevant Period Bank Statement*	*161 – 164*
3.	*ITR Acknowledgement*	*165*
5.	*Response submitted in respect to notice u/s 133(6) of I.T. Act 1961*	*166 – 172*

Paper Book (Volume-II)

D. Paramshakti Steels Ltd.

Sr. no.	*Particulars*	*Page no.*
1.	*Ledger Confirmation*	*1*
2.	*Relevant Period Bank Statement*	*2 – 41*
3.	*ITR Acknowledgement*	*42*
4.	*Computation of Income*	*43*
5.	*Audited Financial Statement*	*44 – 63*
6.	*Tax Audit Report*	*64 – 71*

E. Satguru Enterprises

Sr. no.	*Particulars*	*Page no.*
1.	*Ledger Confirmation*	*72*
2.	*Relevant Period Bank Statement*	*73 – 86*
3.	*ITR Acknowledgement*	*87*
4.	*Computation of Income*	*88*
5.	*Audited Financial Account*	*89 – 97*
6.	*Tax Audit Report*	*98 – 107*
7.	*Response submitted in respect to notice u/s 133(6) of I.T. Act 1961*	*108 – 123*

F. Brahmachari ni Vyapaar Pvt. Ltd.

Sr. no.	*Particulars*	*Page no.*
1.	*Ledger Confirmation*	*124*
2.	*Relevant Period Bank Statement*	*125 – 126*
3.	*Form 3CA Acknowledgment*	*127*
4.	*Computation of Income*	*128 – 130*
5.	*Annual Report*	*131 – 155*
5.	*Tax Audited Report*	*156 – 172*

9. It is seen from the record that the learned CIT(A) has considered the entire remand report and appreciated the observation of the Assessing Officer correctly and no fault could be found with the order of the learned CIT(A) while deleting the addition made by the Assessing Officer. The learned Counsel for the assessee has correctly pointed out that the Assessing Officer has made addition of ₹ 850 lakh out of total loan of ₹ 45.53 crore in the case of the assessee. In respect to loans on receipt of information under section 133(6) of the Act the Assessing Officer has considered it to be sufficient compliance to explain the credits by accepting the transaction of loan creditors. Similar evidence having come on record in remand proceedings, it is not appropriate for the Assessing Officer to object the deletion of addition made. It is also noted that the Assessing Officer even though noted that interest has been not paid on unsecured loan has accepted the majority of such unsecured loan in the assessment framed on receipt of information under section 133(6) of the Act. Non-payment of interest thus could be no valid justification for making addition under the provisions of section 68 of the Act. In view of above facts and the assessee having satisfactorily discharged its onus by placing on record voluminous evidence, the learned CIT(A) has correctly appreciated the facts and evidence on record and thus the deletion of addition made by learned CIT(A) is reasonable and correct.

10. It is relevant to refer to the decision of the Co–ordinate Bench of the Tribunal, Indore Bench, rendered in Shri Kanwarjeet Singh Nanda, ITA no.361/Ind./2022, order dated 20/11/2023, wherein the Tribunal has considered the addition under section 68 of the Act. The relevant findings of the Tribunal ares reproduced herein below:–

"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 epso 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 assesse is over. The assessee cannot be asked that person who made investment whether the money invested is properly taxed or not. The assesse is under the obligation only to explain that this investment has been made by the particular individual and it is the responsibility of the individual to account for the investment made by him. Similarly, in Ashok Pal Daga (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 fromstated 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.

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:–

> *"When, however, in a case where the entry stands in the name of a third party the assessee satisfies the ITO as sto 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 depth Department to the Department to show shy 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 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 as to why the assesse'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 CIT v/s Dharamdev Finance P. Ltd. (supra) has considered the issue of addition made under section 68 of the Act 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 crore(rounded off), the names of 52 persons were reflected in the books of assessee respondent. The authorities having found the material on record, confirmed the names and addresses as well as the details of the accounts as also in the most of the Cases PAN numbers, coupled with the fact that amounts were received by wy o account payee cheque, chose not to question the said amount. Question essentially based on factual natrix presented before the authority and as they have rightly appreciated both these aspects, no question of law crises.

8. With respect to questions (D) and (E), addition of Rs. 1.45 crore (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 crore 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 proprietary 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 assesse 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 are also established in the absence of any contrary material having brought on record by the Assessing Officer. The Hon'ble Gujarat High Court has taken a consistent view in CIT v/s 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 assessees 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 theApex 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 laid down by the Hon'ble Supreme Court in CIT v/s Orissa Corporation P. Ltd. (supra), wherein it was held that once the loan was taken through banking channel and the assesse placed evidence to prove identity and creditworthiness of the loan creditor who is assessed to income tax, then, if the Assessing Officer 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 Assessing Officer 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. The Hon'ble Jurisdictional High Court in Gaurav Triyugi Singh v/s ITO (supra) 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. 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 bocks 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 (LMN), 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 ie., 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 assesse 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 the 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 CIT v/s P. Mohankala (supra). It is pertinent to note that the Hon'ble Supreme Court in CIT v/s P. Mohankala (supra), has not disputed the ratio of the judgment rendered in CIT v/s Orissa Corporation P. Ltd. (supra) as well as in CIT v/s P.K. Noorjahan (supra) vide Para–14 & 17 as under:–

> *"14. In CIT vs. Smt. P.K. Noorjahan (1999) 155.CTR (SC) 509 : (1999) 237 ITR 570 (SC) this Court while construing s. 69 of the Act observed that the intention of Parliamente in enacting s. 69 was to confer a discretion on the ITO in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the ITO is not obliged to as at 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 assessees 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 assessees 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 assessees 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 assessees. In thcse 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 involved in CIT v/s P. Mohanakala (supra) was entirely different and based on different set of facts. Accordingly, the said judgment of the Hon'ble Supreme Court is not applicable to the facts of the present case rather the ratio laid down in CIT v/s P. K. Noorjahan (supra) and CIT v/s Orissa Corporation P. Ltd. (supra) are applicable in the present case in hand. After considering all these facts and case law cited by the assesse, the CIT(A) has given its concluding finding in Para–7.8 which is reproduced below:–

> *"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 satisfactory 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 passed by the learned CIT(A) which is hereby upheld.

11. The Co–ordinate Bench of the Tribunal, Indore Bench, has considered various precedents relied upon by the learned Counsel for the assessee before us and extract from such judgment are part of decision of the Tribunal, which is reproduced hereinabove. All the judicial precedents relied by learned Counsel fully supports the case of assessee. Respectfully following the judicial precedents, we are of the considered opinion that the assessee has discharged its onus to explain identity and creditworthiness of loan creditors as well as genuineness of transaction. There remains no scope for invoking provisions of section 68 of Act on the facts and evidence on record. The addition has been correctly deleted by the learned CIT(A) on the facts and evidence on record.

12. The Co–ordinate Bench of the Tribunal, Mumbai Bench, in Surya India Fingrowth Pvt. Ltd., ITA No.4809/Mum./2023, vide order dated 23/07/2024, has considered the addition under section 68 of the Act. The relevant operative portion of the said decision is reproduced hereunder:–

> *"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 High 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"

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 Crore (appx) before granting Unsecured loan/ inter corporate deposit of Rs.20 Crore 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 over looked 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 asssessee 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."

13. The decision referred to hereinabove fully supports the case of assessee. It is settled position of law that the assessee is not required to explain the source of source. The assessee has reasonably explained the credits by adducing sufficient legal evidence on record. Addition made under section 68 of the Act is unjustified and correctly deleted by the learned CIT(A).

14. It is also found from the facts and evidence on record that loan received by the assessee have been repaid during the year under consideration and in

respect to one loan it has been repaid in the subsequent accounting year. Repayment of loan by the assessee is evident from evidence placed on record and is undisputed fact on record. Repayment of loan accepted by the Revenue Authorities is not controverted by the learned D.R. The Hon'ble Gujarat High Court in PCIT v/s Ambe Tradecorp Pvt. Ltd., [2023] 290 Taxman 471 (Guj.) has held as under:–

> *"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. "*

15. Ratio laid down by the judgment of the Hon'ble Gujarat High Court squarely applies to the facts in the case of the assessee. The Hon'ble Gujarat High Court has also, in the recent decision rendered in PCIT v/s Merrygold Gems Pvt. Ltd., 164 taxmann.com 764 (Guj.) in its judgement dated 11/06/2024 has taken similar view and it supports the case of assessee. Considering the totality of facts and circumstances in the case of assessee it is held that assessee has satisfactorily discharged its onus to explain the credit and there remains no scope to make any addition under section 68 of Act. The addition made has been correctly deleted by the learned CIT(A) after giving detailed reasons in support of the same. Consequently, we find no merits in grounds no.1 and 2, raised by the Revenue and accordingly they are dismissed.

16. In ground no.3, the Revenue has challenged the addition deleted by learned CIT(A) at ₹ 10,09,988, made under section 14A of the Act.

17. The Assessing Officer has discussed the addition at Para–5.2 to 5.2.7 at Page–6 to 9 of the assessment order. The Assessing Officer has computed disallowance to be made under section 14A of the Act at ₹ 25,99,737. The aforesaid sum comprising of two amounts being ₹ 10,09,988, on account of interest in terms of Rule 8D(2)(ii) of Income Tax Rules, 1962, and further sum of ₹ 15,89,749, under Rule 8D(2)(iii) of Income Tax Rules, 1962. The average amount of investment to make disallowance under section 14A has been computed by the Assessing Officer at ₹ 31.79 crore. The Assessing Officer while making another addition at ₹ 5,37,962, at Para–5.3.3 has noted and accepted that own funds/non-interest borrowed funds with the assessee at ₹ 62.55 crore. The learned CIT(A) has deleted the addition pertaining to interest under section 14A of the Act by following the decision of the Hon'ble Jurisdictional High Court rendered in HDFC Bank Ltd. v/s DCIT, [2016] 383 ITR 529 (Bom.) and discussed the subject matter at Para–4.2 at Pages–63 to 68.

18. The learned D.R. has relied upon order of Assessing Officer and submitted that the deletion of addition by learned CIT(A) is unjustified and, therefore, the ground of appeal of Revenue be allowed.

19. The learned Counsel for the assessee has submitted that the issue in dispute is covered in favour of the assessee by the decision of Hon'ble Apex Court rendered in CIT v/s Reliance Industries Ltd. [2023] 410 ITR 466 (SC).

The written submission furnished by the learned Counsel before us are reproduced herein below:–

> *"Ground No.3: Addition of Rs.10,09,988/- u/s 14A of I.T. Act 1961.*
>
> *A.O. – Para 5.2 to 5.2.7 – Page 6 to 9*
>
> *CIT(A) - Para 4.2 to 4.2.1 - Page 63 to 68*
>
> *A) CIT(A) has deleted the addition by following the decision of Hon'ble Jurisdictional High Court in the case of HDFC Bank Ltd. vs. DCIT reported at 383 ITR 529 (Bom).*
> *(P- 46 to 61 [Vol. – IV] (50, 57, 58)*
>
> *B) The assessee company is having share capital, reserve & surplus and interest free funds at Rs.62.55 crore. The investment in shares and securities is Rs.32.98 crore [P-67 of impugned order of CIT(A)]. Investment in shares can be reasonably explained with reference to available funds. No disallowance out of interest can be made under the provisions of section 14A of I.T. Act 1961.*
> *Reliance on:*
>
> *i) (2019) 410 ITR 466 (SC)*
> *CIT vs. Reliance Industries Ltd.*
> *(P- 62 to 65) [Vol. – IV] (64)"*

20. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. It is undisputed fact on record that the assessee has own funds and non-interest borrowing fund at ₹ 62.55 crore. Investment made in securities as computed by the Assessing Officer is ₹ 31.79 crore. Entire investment could be considered as explained out of available fund comprising on own fund and non-interest borrowing. The Hon'ble Apex Court in Reliance Industries Ltd. (supra) has held as under:–

> *"7. Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03.*

8. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question."

21. The ratio laid down by the Hon'ble Apex Court in its judgment and the decision of the Hon'ble Jurisdictional High Court in HDFC Bank Ltd. v/s DCIT [2016] 383 ITR 529 (Bom.) is squarely applicable to the case of the assessee. The learned CIT(A) has correctly deleted the addition made. Respectfully following the same, we find no merit in the ground no.3, raised by the Revenue.

22. In ground no.4, the Revenue has challenged the deletion of addition made by the Assessing Officer at ₹ 5,37,962, out of claim of interest at ₹ 18,38,643, paid on borrowed funds.

23. The Assessing Officer has discussed the addition at Para–5.3.3 of assessment order. In ground of appeal, it has been observed that ₹ 17.85 crore has not been substantiated to be out of non-interest bearing fund. The Assessing Officer has noted that the assessee has paid interest at ₹ 18,38,643. The Assessing Officer, by computing ratio of borrowed fund as against own fund/non-interest bearing funds @1.42% has computed that ₹ 25.35 lakh has been used for advancing interest free loan. After noting this, the disallowance has been computed at ₹ 5,37,962. The availability of own funds/non-interest bearing funds at ₹ 62.55 crore is undisputed fact on record. The learned CIT(A) has deleted the addition at Para–4.3 of the appellate order at Page–69 & 70. The learned CIT(A) has relied upon the decision of the Hon'ble Jurisdictional High Court rendered in CIT v/s Reliance

Utilities & Power Ltd., [2009] 313 ITR 240 (Bom.) to hold that addition made by the Assessing Officer in assessee's case is unjustified. The addition made by the Assessing Officer was was accordingly deleted.

24. The learned D.R. has relied upon the order passed by the Assessing Officer and submitted that the deletion of addition made by the learned CIT(A) is unjustified and, therefore, ground of appeal raised by the Revenue be allowed.

25. The learned Counsel appearing for the assessee, on the other hand, submitted that the assessee has sufficient funds/non-interest bearing funds to explain the interest free advance and thus there is no scope for making any disallowance, as made by the Assessing Officer. The written submissions furnished by the learned Counsel are reproduced below:–

> *"Ground No.4 : Disallowance of interest expenses at Rs.5,37,962/-.*
>
> *A.O. – Para 5.3 to 5.3.3 – Page 10 to 11*
> *CIT(A) – Para 4.3 – Page 69 to 71*
>
> *A) A.O. on account of interest free advance at Rs.17.85 crore has computed disallowance to be made on estimated basis out of interest paid at Rs.5,37,962/-.*
>
> *B) Interest free advance stands reasonably explained out of share capital, reserve & surplus and interest free funds. No justification for making addition in respect to interest paid.*
>
> *Reliance on :*
>
> *i) (2019) 410 ITR 466 (SC)*
> *CIT vs. Reliance Industries Ltd.*
> *(P- 62 to 65) [Vol. – IV] (64)"*

26. We have heard the rival submissions and perused the material on record. It is undisputed fact on record that the assessee has own funds and

non-interest borrowing fund at ₹ 62.55 crore. Advances given interest free are noted at ₹ 17.85 crore. Entire advances could be considered as explained out of available fund comprising of own fund and non-interest borrowing. The Hon'ble Apex Court in Reliance Industries Ltd. (supra) has held as under:–

> *"7. Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03.*
>
> *8. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question."*

27. The ratio laid down by the Hon'ble Apex Court and decision of Hon'ble Jurisdictional High Court rendered in CIT v/s Reliance Utilities & Power Ltd. [2009] 313 ITR 240 (Bom.) is squarely applicable to the facts in the case of the assessee. In our opinion, the learned CIT(A) has correctly deleted the addition made by the Assessing Officer. Respectfully following the aforesaid judicial pronouncements, we find no merit in the ground no.4, raised by the Revenue and accordingly the same is dismissed.

28. In ground no.5, Revenue has challenged the deletion of addition made by the Assessing Officer at ₹ 9,99,999, being sundry balances written-of.

29. The Assessing Officer has discussed the addition at Para–5.5 of assessment order. The Assessing Officer has observed that assessee has neither explained the business transaction with the said party nor given any evidence to the fact that income on these amounts has been offered to tax in

earlier years. In view of this fact the amount written-of cannot be allowed to assessee as business expenditure.

30. The learned CIT(A) has discussed the subject matter at Para–4.5 of the appellate order, wherein the learned CIT(A) has deleted the addition by following the judgment of the Hon'ble High Court of Calcutta in Binani Cement Ltd. v/s CIT, [2015] 233 Taxman 340 (Cal). The learned CIT(A) in its order has noted that there is no doubt that the payment of ₹ 10 lakh to the above mentioned concern is wholly and exclusively meant for the purpose of business.

31. The learned Departmental Representative submitted that in respect to this sum assessee had not given any evidence and therefore deletion of addition made by CIT(A) is unjustified and improper. In view of above it was prayed that ground of appeal of revenue be allowed.

32. We have heard the rival submissions of parties and perused the material on record. It is seen that the assessee has submitted voluminous evidence comprising at Page–1 to 127 before the authorities below and the same is also furnished before us as Paper Book Vol.III. The assessee had given advance ₹ 10 lakh in the course of business in assessment year 2012-13 and ledger account as well as bank statement for advance given is at Page–1 & 2 of Paper Book Vol.III. The documentary evidence relating to giving advance to the above said party in the shape of mail is also placed in the paper book. The assessee company wanted to make investment of aggregate sum of ₹ 600 lakh in a project. The subsequent discussion with the aforesaid company did not get carried forward and under the circumstances it

was decided to abandon the project. It is on account of this fact that it was decided to write-of the amount in books of account. In the order passed by the learned CIT(A), the submission of the assessee in the remand report has been reproduced at Page–52 to 56. The detailed submissions made by the assessee clearly indicate that advance was given in the course of business and on abandonment of project which was written-of in its books of account. The ratio relied upon by the learned CIT(A) and extract reproduced in the appellate order fully supports the case of assessee. Extract of order of the learned CIT(A) at Para–4.5 is reproduced hereunder for ready reference:–

> *"4.5 The ground of appeal no.14 is that the AO has made a mistake by making a disallowance of Rs.9,99,999/- which is sundry balance written off.*
>
> *During the assessment proceedings, the O noticed that the appellant has claimed Rs.9,99,999/- towards sundry balances written off. When asked by the AO to explain further, the appellant replied that an amount of Rs.10 lakhs was paid to M/s Cold Cargo & Express Logistics Ltd earlier which has been written off during the relevant FY 2013-14. The AO was not satisfied with the appellant's reply and held that said amount was not incurred for the purpose of business and accordingly disallowed the same and added it to the appellant's income.*
>
> *During the appellate proceedings, the appellant's AR has explained that in FY 2010-11, the appellant entered into a Shareholders Agreement with M/s Cold Cargo Express Logistics Ltd with the intention to invest in the business of cold storage of frozen foods and items and managing logistics. However, subsequently the two parties did not agree on certain terms propose by the appellant and the business proposal was finally cancelled. The fact is that the payment, i.e., the advance paid to M/s Cold Cargo Express Logistics Ltd was in the course of business since the appellant is in the business as NBFC and makes investments in various business entities and does financing activity for other business concerns. Thus, there is no doubt in my mind that the payment of Rs.10 Lakhs to above-mentioned concern is wholly and exclusively for the purpose of business.*
>
> *The appellant's AR has relied on the decision of the H'ble High Court of Calcutta in the case of Binani Cement Ltd vs CIT (2015) 233 Taxman 340 (Cal). In this case, the AO had disallowed the expenditure claimed against abandonment of construction of a new warehouse. The assessee appealed against the assessment order, and the CIT(A) held that when construction/acquisition of nw facility is abandoned at the work-in-progress stage, the expenditure does not result in an enduring advantage*

and such expenditure, when the same is written off, has to be allowed under section 37 of the Income Tax Act, 1961. The Department filed appeal against CIT(A)'s order and the Ld. Tribunal reversed the order of CIT(A) and held that the expenditure incurred in the earlier years could not be deducted in the year under consideration. The H'ble Court decided the matter in assessee's favour. The relevant portion of the judgement is as under.

"Following the judgment in the case of Gajapathi Naidu (supra) the question to be asked is when did the expenditure claimed by way of deduction arise? There would have been no occasion to claim the deduction if the work-in-progress had completed its course. Because the project was abandoned the work-in-progress did not proceed any further. The decision to abandon the project was the cause for claiming the deduction. The decision was taken in the relevant year. It can therefore be safely concluded that the expenditure arose in the relevant year. Reference in this regard may be made to the decision in the case of CIT Vs. Indian Mica Supply Co. P. Ltd. reported in (1970) 77 ITR 20 (SC) wherein the Supreme Court in considering a claim for deduction on arrear lease rents, ascertained subsequently consequent to a compromise arrived in the suit and paid in the relevant assessment year held, inter alia, as under: "The Tribunal, in the present case, had clearly found that it was only as a result of the compromise that the respondent became entitled to remain in possession of the demised land. Its liability also became ascertained only at that point of time. It cannot be disputed that the respondent in incurring the expenditure had acted in the interest of and for the purpose of its business. The expenditure was not laid out for any purpose other than that of carrying on the business. The deduction was properly admissible under section 10 (2)(xv) of the Act and the matter being self-evident the High Court was fully justified in declining to accede to the prayer made under section 66 (2) of the Income-tax Act, 1922."

Section 10(2)(xv) of the old Act corresponds to section 37(1) of the present Act. Our above conclusion is fortified by the view expressed by the Supreme Court in the said decision. For the aforesaid reasons the question is answered in the affirmative in favour of the assessee. The appeal is thus allowed."

The facts in the instant case are similar to those in the cited case and therefore the appellant gets support from the above cited judgement. The proposed investment in M/s Cold Cargo Express Logistics Ltd was abandoned due to various unreconciable differences between the appellant and the aforesaid party. The expenditure has arisen in the year in which the proposed investment was completely abandoned, which is the relevant FY 2013-14. Since the appellant is in business an a NBFC, such investment are made in its routine business. Thus, the expenditure is incurred wholly and exclusively for the purpose of business and has arisen in the relevant FY 2013-14 which is the year in which the proposed investment was abandoned.

Therefore, it is my considered opinion that the expenditure of Rs.9,99,999/- is incurred wholly and exclusively for the purpose of business and is allowable in the relevant Assessment Year 2014-15. Therefore, I direct the AO to delete this addition.

Hence, this ground is 'allowed'."

33. On perusal of decision of learned CIT(A) and judgment of Hon'ble Calcutta High Court in Binani Cement Ltd. v/s CIT, [2015] 233 Taxman 340 (Cal.), we are of considered opinion that the amount written-of in the books of account on abandonment of project is allowable as business expenses. We do not find any fault or infirmity in the impugned order passed by the learned CIT(A) which is reproduced hereinabove. In view of the above, there being no merit in this ground, hence we uphold that the order passed by the learned CIT(A) by dismissing ground no.4.

34. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 25/10/2024

Sd/-	**Sd/-**
V. DURGA RAO	**K.M. ROY**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 25/10/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur