

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3106/M/2024
Assessment Year: 2018-19**

DCIT 13(3)(2), Room No. 229, Aayakar Bhawan, M. K. Road, Mumbai- 400020.	Vs.	Tarmat Limited Roman Tarmat Ltd., General Vaidya Marg, Goregaon East, Mumbai- 400063. PAN: AA ACT1561G
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Jigar Mehta

Revenue by : Shri P. D. Chougule, (Addl. CIT), SR. D.R.

Date of Hearing : 01 . 08 . 2024

Date of Pronouncement : 23 . 10 . 2024

O R D E R

Per : Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]



vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1053095210(1)

Dated 23/05/2023 for the Assessment Year 2018-19.

2. Following grounds of appeal have been raised by the appellant:

1. *"Whether on facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs 3,26,00,000/- made under section 68 of the Income Tax Act without appreciating the fact that the assessee has failed to discharge its initial onus to establish genuineness of the transactions and creditworthiness of the lenders.*
2. *Whether on facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.3,26,00,000/- on account of unexplained unsecured loans on the basis of the Remand Report of the Assessing Officer without appreciating the fact that the Assessing Officer in the Remand Report has specifically recommended non admissibility of the additional evidence and the Assessing Officer in the Remand Report has nowhere accepted the genuineness of the transaction and creditworthiness of the lenders.*
3. *Whether on facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.3,26,00,000/- on account of unexplained unsecured loans only on the basis of the assessee's submission of details without making enquiries at his end and without passing an order under section 250(4) of the Act directing the Assessing Officer to make independent enquiries.*
4. *Whether on facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.3,26,00,000/-, when the Assessing Officer in the report has given his superficial response by only mentioning about the documents submitted by the assessee as additional evidences without making any verification or comments in respect of the same and when the Assessing Officer has not made any independent enquiries in respect of unsecured loan of Rs.3,26,00,000/-.*
5. *The Appellant craves leave to add, amend and/or vary the grounds of appeal before or during the course of hearing."*



3. The facts of the case, in brief, are that the appellant is a company engaged in the business of construction and maintenance of roads. The assessee company filed its return of income electronically for the assessment year 2018-19 on 31/10/2018 showing 'NIL' income and also showing current year loan of Rs.8,49,11,954/- and subsequently, filed a revised return on 28/03/2019 which was duly processed by the CPC on 02/10/2019. Subsequently, on the basis of the revised return of the assessee company, the case was selected for complete scrutiny under CASS on the issue i) increased in TDS in Revised Return ii) Refund Claim, iii) Unsecured Loans, iv) Contract Receipts or Fees. Accordingly, notice u/s. 153 (2) and 152(1) were issued from time to time and the assessee made compliance thereon. The assessee company is engaged in the business of construction and maintenance of roads, rails, bridges, tunnels, ports, harbor, runways. The Ld. AO, during the assessment year under consideration asked the assessee to furnish the details of all the lenders alongwith their confirmation regarding the taking of unsecured loan amounting to Rs.11,75,20,000/-. The assessee was also asked to furnish all supporting documentary evidence to establish the identity, creditworthiness and genuineness of the transaction against the loans taken. In response to that, the assessee furnish only the name, PAN and address of the lender from whom unsecured loans were accepted but did not discharge its onus to



prove the genuineness of the transaction, identity of the parties and creditworthiness of the lenders as required u/s. 68 of the Income Tax Act. Further, the assessee furnished some more details and confirmation of unsecured loans. However, it did not furnish any documentary evidence to prove genuineness of loan transaction and creditworthiness of the lenders and even furnish confirmation from one of the lender i.e. S. D. Infrastructure Real Estate Pvt. Ltd. from whom it has taken an unsecured loan of Rs.50,00,000/-. The Ld. AO, thereafter, examined all the loans taken by the assessee and found that the loans taken from lenders Mr. Dilip Varghese and Ms. Jerry Varghese amounting of Rs.3,26,00,000/- which was credited in the books of the assessee company was not found to be satisfactorily explained and therefore, the same was added u/s. 68 of the Income Tax Act. Further, a sum of Rs.1,46,307/- was added by the Ld. AO to the total income of the assessee on the ground that the assessee has failed to record this receipts in its books of accounts.

4. Aggrieved by the order of the Ld. AO, the assessee filed the appeal before the Ld. CIT(A) vide its impugned order. The Ld. CIT(A) first considered the additions of Rs.3,26,00,000/- made by the Ld. AO and deleted the impugned addition on the reasons recorded in the impugned order as under:

5.1.3. *All the facts and circumstances related to the impugned addition of Rs.3,26,00,000 are duly considered. The essential issue involved in the present appeal is addition w/s. 68 of the Act in respect of loans from Mr. Dilip Varghese to the tune of Rs.1,76,00,000 and from Mr. Jerry Varghese to the tune of Rs.1,48,00,000. The appellant has submitted that it had obtained loan from Kotak Bank and Vijaya Bank. Since the appellant could not repay the loan, the bank auctioned the personal properties of the directors - Mr. Dilip Varghese and Mr. Jerry Varghese and adjusted the auction proceeds against the outstanding loan of the appellant company. The appellant accordingly reduced the loan balance from the bank and created a loan liability towards the directors. The said amount has been added by the AO w/s. 68 of the Act as he was not satisfied with the genuineness and creditworthiness of the lenders.*

5.1.4. *I find that the appellant has in the course of appellate proceedings submitted that provisions of section 68 are not applicable to book entry where there is no movement of funds and the appellant has relied on the various judicial precedents including that of the Hon'ble Madras High Court in the case of V.R. Global Energy (P.) Ltd reported in 407 ITR 145 (Mad.). It is further submitted that the SLP filed by revenue against the said decision has also been dismissed by the Hon'ble Supreme Court.*

5.1.5. *Also, the appellant has submitted the following documents in the assessment/ appellate proceedings:*

1. *Copy of PAN card of the lenders*
2. *Copy of ITR-V for AY 2018-19 of the lenders*

3. Copy of ledger account of Dilip Varghese and Jerry Varghese, being directors and promoters of appellant company, who has advanced loans to the appellant company.

4. Settlement letter to Vijaya Bank dt. 21.03.2018

5. Auction letter from Kotak Bank dt. 28.06.2022

On perusal of the details, I find that the transaction in the present case is a genuine one between the directors of the company and the appellant company which has been accounted because the bank auctioned the property of the directors for the failure of the company to repay the loan to the Bank. I find no funds have been transferred by the directors or received by the company. What has infact been done that the liability of the principal creditor i.e. the bank was assumed by the surety or guarantor. Further, the identity of the lenders stands established in as much they are themselves the directors of the company beside the fact that they have submitted all the documents to prove their identity. I also find that the creditworthiness is also proved by their Income tax returns as also the fact that they were the owner of the property which was auctioned by the bank. In so far as the genuineness of the transaction is concerned, I find that the appellant has submitted the copy of settlement letter from the bank wherein the said facts are clearly evidenced. The appellant has also created a liability towards the director only to the extent of reduction of liability by the bank.

5.1.6. I find that the addition u/s 68 is based on the satisfaction of the AO, It is a trite law that the satisfaction has to be an objective satisfaction. It is however to be noted that the test laid down are to

be based on subjective yardsticks of each case. Therefore, an unsecured loan from a private limited company with no or negligible income will have to be viewed differently as opposed to the present transaction where only the loan liability of the bank has been discharged by auction of property of appellant's director. I also concur with the view that the decision of the Hon'ble Madras High court in the case of V.R. Global Energy (P.) Ltd. is applicable to the present facts of the case in as much as there is no movement of funds in the present case. The Hon'ble High Court in the said case has observed that the addition u/s. 68 cannot be made in a case where there is no movement of funds and merely a book entry or journal entry.

5.1.7. Further, I find that the Assessing Officer in the course of remand proceedings has not come out with any adverse inference in respect of the journal entry passed by the appellant in its books of accounts. Therefore, the AO in the course of remand proceedings has not come up with any adverse inference in respect of the genuineness of the transaction entered into by the appellant with Mr. Dilip Varghese and Mr. Jerry Varghese. The fact that the AO has not given any adverse inference in respect of the evidence submitted by the assessee except on its admissibility indicates that he has impliedly subscribed to the genuineness of the transaction.

5.1.8. In the light of such facts, I am afraid; there is no such occasion to confirm action of Ld. A.O. in making the impugned addition of Rs.3,26,00,000 and relief has to be given to the appellant company as it is entitled for the same. The amount of addition being only an estimate and that too without any basis is not

confirmed and is directed to be deleted. Therefore, Ground no. 1 & 2 are allowed.”

5. Aggrieve by the order of the Ld. CIT(A), the revenue has filed this appeal on the ground that the Ld CIT (A) deleted the additions made by the AO despite the fact that the assessee did not discharge its onus to establish the genuineness of the transaction and credit worthiness of the lenders and even in its remand report, the Ld. AO had objected to the admissibility of additional evidence. The D.R. further relied on the order of the AO. The assessee, on the other hand, submitted as under:-

- 1. The appellant had availed credit facilities from Vijaya Bank and Kotak Mahindra Bank. The directors of the appellant i.e., Mr. Jerry Varghese and Mr. Dilip Varghese had acted as the guarantors in respect of the aforesaid loans. Mr. Jerry Varghese had pledged his land located at Nashik (Sinnar) and Mr. Dilip Varghese and Mrs. Saramma Varghese had pledged their flat located at Belvedere, 35 Rebello Rd, Bandra (West), Mumbai 400050.*
- 2. The appellant was incurring losses consistently and accordingly was facing a cash crunch in order to deliver contracts and maintain the smooth functioning of business activities. Due to continuous losses, the appellant was not able to repay the said loans.*
- 3. The banks invoked the pledge and auction the land and flat of the abovementioned directors which was mortgaged by them. The proceeds from the auction of the land and flat had been utilized to repaid the loan of Vijaya Bank and Kotak Mahindra Bank. Since the loan of the bank stood repaid by auction of land/ Flat of the above-*



mentioned directors, the loan of these banks was transferred to the loan account of the director by passing a journal entry in the books of the appellant.

- 4. Loan of Rs.1,76,00,000/- and Rs.1,48,00,000/- were transferred in the books of the appellant to Mr. Dilip Varghese and Mr. Jerry Varghese respectively.*
- 5. During the assessment proceedings, the NEAC called for the details regarding all the unsecured loans received by the appellant during the year under consideration. In response, the appellant duly complied vide letter dt.17.02.2021 and 08.03.2021 by submitting all the details along with documentary evidence such as Name, PAN, Address, Confirmation of Loan. Further, the NEAC had issued show-cause notice vide dt. 22.03.2021 and in response to the same, the appellant had filed its reply vide letter to which both the parties duly GogAX dt.26.03.2021. Thereafter, the NEAC also issued notices u/s 133(6) of the Act to Mr. Dilip and Mr. Jerry to which both the parties duly complied vide letter dt.01.04.2021 (page no. 174).*
- 6. The NEAC added the loan to the tune of Rs.3,26,00,000/- to the total income of the appellant on the premise that it had failed to prove the genuineness of the loan transaction and creditworthiness of the lender.*

B. Appellants Contention:

I. Validity of Addition u/s. 68 of the Act

- 1. At the outset, Your Honour's attention is invited to the fact that there is no actual movement of funds in the present case in so far as the loan in dispute is concerned. It may be noted that the loan has been accounted in the name of Mr. Dilip & Mr. Jerry by way of merely a*

journal entry in the books of accounts of the appellant. The extract of journal entry is reproduced as under:

<i>Date</i>	<i>Particulars</i>	<i>Debit</i>	<i>Credit</i>
01.01.2018	<i>By Vijaya Bank OD A/c</i>	1,48,00,000	
	<i>To Jerry Varghese Laon A/c</i>		1,48,00,000
31.03.2018	<i>By Kota Mahindra Bank A/c</i>	1,76,00,000	
	<i>To Dilip Varghese Loan A/c</i>		1,76,00,000

It may be appreciated that there is no movement of funds in the aforesaid transaction and the transaction is merely reclassification of loan (existing liability) from bank as the loan from director as the property of director was auctioned by the bank.

2. *The appellant submits that section 68 of the Act deals with actual flow of money in the books of accounts and not merely accounting entry. The same is evident from a bare perusal of section 68 of the Act which is reproduced as under:*

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

It may be appreciated that the term used is "any sum" and not "any entry" and therefore, a journal entry cannot be subjected to the rigors of section 68 of the Act.

3. *The view that addition u/s. 68 of the Act cannot be made in absence of actual movement of funds is upheld in plethora of judicial precedents. Some of the most important decisions are discussed hereinunder:*

(a) V.R. Global Energy (P.) Ltd. Vs Income-tax Officer, Corporate Ward 3(4), Chennai (407 ITR 145) (Hon'ble Madras High Court)

Where the assessee allotted shares to a company in settlement of pre-existing liability of assessee to the said company by way of adjustment and since no cash was involved in transaction of said allotment of shares, conversion of these liabilities into share capital and share premium could not be treated as unexplained cash credit u/s 68 of the Act. It was held that since the cash credits towards share capital were only by way of book adjustment and not actual receipts, therefore, the same could not be treated as receipt towards share subscription money. Since no cash was involved in transaction of said allotment of shares, conversion of these liabilities into share capital and share premium could not be treated as unexplained cash credits u/s 68 of the IT Act.

The Revenue challenged this decision of the Hon'ble Madras High Court before the Hon'ble Supreme Court and the Hon'ble Supreme Court dismissed the SLP filed by the Revenue ITO v. V.R. Global Energy (P.) Ltd. [2020] 113 taxmann.com 31/268 Taxman 392.

(b) ITO v. Zexus Air Services (P.) Ltd. [2021] 127 taxmann.com 119 (Hon'ble Delhi Tribunal)

We find some force in the above argument of the ld. Counsel for the assessee. As mentioned in the body of the assessment order as well as in the finding of the CIT(A), it is an undisputed fact that there is no actual receipt of any cash by the assessee company in the instant case towards issue of share capital and such shares were issued in lieu of goodwill. In the instant case, the assessee has debited goodwill account of Rs. 20 crores and, credited the same to share capital of Rs.20 crores wherein the shares were allotted to Shri Surinder Kumar Kaushik towards goodwill. It has been held in various decisions that the provisions of section 68 can be applied if there is an actual receipt of money by the assessee whether by cash or cheque during the accounting year relevant to the assessment year under consideration. It has been held in these decisions that when the cash did not pass at any stage and when the respective parties did not receive cash nor did pay any cash, there was no real credit of cash in the cash book and, therefore, the question of inclusion of the amount of the entry as unexplained cash credit u/s 68 could not arise.

***(c) ACIT, Circle 32(1) vs Shri Suren Goel (ITA no. 1767/Del/2011)
(Hon'ble Delhi Tribunal)***

Where the assessee has received loan of Rs. 20 lakhs from his father through a journal entry in the books of account and there was no physical transfer of money from the account of his father, addition of the same u/s 68 of the Act is not justified and accordingly the Tribunal dismissed the appeal filed by the Revenue against the order of the CIT (A) deleting the addition made by the AO u/s 68 of the IT Act on account of the journal entry.

**(d) Income Tax Officer-5(3), Kolkata Vs Bhagwat Marcom (P.) Ltd.
[2019] 109 taxmann.com 330 (Hon'ble Kolkata Tribunal)**

Where the assessee company, during the year under consideration issued shares at premium to certain companies in lieu of shares held by the said companies and the said transactions were entered in the books of account of the assessee company by way of journal entries and it did not involve any credit to cash account, therefore, the amount of entry could not be treated as unexplained cash credit u/s 68 of the IT Act.

**(e) Shri Mahendra Kumar Agrawal Vs Asstt. Commissioner of Income Tax, Circle 2(2) Hyderabad (ITA Nos 270 and 316/Hyd/2018)
(Hon'ble Hyderabad Tribunal)**

The provisions of section 68, the words used are "where any sum is found credited in the books of an assessee." In this connection, the word sum is of paramount importance. The words "any sum" cannot be taken as parallel to "any entry." The provisions of section 68 are deeming provisions and therefore, onus is on the Department to prove that any sum was credited to the books of the assessee.

(f) Anand Enterprises Ltd. (I.T.A No. 1614/Kol/2016) (Hon'ble Kolkata Tribunal)

The shares were issued for consideration other than cash in lieu of assessee company making investment in shares in some other company. Effectively, the assessee purchased certain shares from the aforesaid six shareholders and instead of paying cash to them, the assessee company issued shares in its own company to those shareholders. Hence the assessee had made investments in shares of another company for which consideration was settled through

issuance of its shares to those shareholders. Now the crucial point is whether the provisions of section 68 could be invoked in the instant case for making investment towards share capital. There was no receipt of any sum as provided u/s 68 of the Act in the instant case.

4. *In view of the aforesaid discussion, it may be appreciated that since the appellant has not received any fund and no "sum" is credited in its books of accounts for the year under consideration, the provision of section 68 cannot be invoked in the case of the appellant.*

II. Ingredients of Section 68 complied

5. *The appellant submits that vide notice u/s 142(1) of the Act dt.08.02.2021 the appellant was asked to furnish details of all the lenders and also to furnish confirmation copy of all the lenders and to furnish documentary evidence to establish identity, creditworthiness of the lenders and to furnish bank statements of lenders to prove genuineness of transactions. In response to the same the appellant vide letter dt.17.02.2021 and 08.03.2021, submitted balance confirmation from various lenders from whom the appellant had taken unsecured loans. Further a show cause notice along with draft assessment order was issued to the appellant on 22.03.2021 proposing to make addition under the provisions of section 68 of the Income Tax Act. The appellant had submitted the following documents in respect of the aforesaid unsecured loans:*

- (1) Copy of PAN card of the lenders (page no. 162-171)*
- (2) Acknowledgement copy of the e-filed return of income for AY 2018-19 of the lenders (page no. 162-171)*
- (3) Copy of bank statements highlighting the entries pertaining to the receipt of loan (page no. 140-161)*

- (4) Copy of ledger account of Dilip Varghese and Jerry Varghese, being directors and promoters of appellant company, who has advanced loans to the appellant company. (page no. 138-139)
6. Further, the appellant submits the following document evidencing the fact that the lenders had auctioned the property of the directors and adjusted the same towards the repayment of loan:
- (i) Settlement letter to Vijaya Bank dt. 21.03.2018 (page no. 232-224)
- (ii) Auction letter from Kotak Bank dt. 28.06.2022 (page no. 225-226)
7. Your Honour's attention is invited to the fact that the Varghese family holds majority of stake in the appellant company. The individuals of Varghese family and their group concerns holds 60.33% in the appellant company. The said Mr. Dilip Varghese held 6.79% shareholding and Mr. Jerry Varghese held 29.57% shareholding during the year under consideration. The said persons are also holding the position of directors in the appellant company. Thus, the said persons are not unknown to the appellant company and are persons of adequate means.
8. The NEAC had also issued notices u/s 133(6) of the Act was issued to Mr. Jerry Varghese and Mr. Dilip Varghese (i.e., directors of the appellant) to independently verify the loan transaction. In response to the notice issued u/s 133(6), following responses were filed:
- (i) Mr. Dilip Varghese had filed his response on 01.04.2021 and furnished the copy of confirmation of loan, bank statement and copies of ITR-V for AYS 2015-16, 2016-17 & 2017-18. Further he had submitted that he had advanced loan of Rs. 2,01,20,000/-

to the appellant company through his bank account and regarding balance amount of Rs. 1,76,00,000/-, he had stated that in FY 2016-17 in connection with a loan availed by the appellant company from Kotak Mahindra Bank Limited, wherein he acted as the guarantor and his property was auctioned by the Bank to recover the said loan amount. Subsequently, a liability to that effect was accounted for in the books of appellant company by passing journal entry.

(ii) Mr. Jerry Varghese had filed his response on 01.04.2021 and furnished the copy of confirmation of loan, bank statement and copies of ITR-V for AYS 2015-16, 2016-17 & 2017-18. Regarding loan of Rs.1,48,00,000/- advanced by Jerry Varghese, he had stated that in FY 2016-17 in connection with a loan availed by the appellant company from Vijaya Bank, wherein he acted as guarantor and his property was auctioned by the Bank to recover the said loan amount. Subsequently, a liability to that effect was accounted for in the books of appellant company.

9. *The appellant submits that the main contention of the NEAC while making addition of loan amount of Rs.3,26,00,000/- u/s 68 of the Act is that the appellant fails to established the creditworthiness and genuineness of the loan transaction. In this connection we submit as under:-*

a) Creditworthiness of Lenders

To prove the credit worthiness of the lenders i.e., Mr. Dilip Varghese and Mr. Jerry Varghese the appellant had submitted the Acknowledgement copy of the e-filed return of income for AY 2018-

19 of the lenders. Further the lender in their response to notice u/s 133(6) of the Act also filed Acknowledgement copy of the e-filed return of income for AYS 2015- 16, 2016-17 & 2017-18.

b) Genuineness of Loan Transaction

To prove the genuineness of the loan transaction the appellant had submitted the ledger copies, confirmation of loan account evidencing the loan for the year under consideration. Also, the appellant has submitted settlement letter to Vijaya Bank and auction letter from Kotak Bank indicating that the property of the aforesaid parties was auctioned by the bank for satisfaction of the loan that the company owed.

10. The appellant submits that on perusal of the aforementioned documents the creditworthiness and genuineness of the transaction is proved and thus the onus place upon the appellant by the Act is discharged. To support our contention, we are relying on Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax-4 vs Hi-Tech Residency (P.) Ltd (96 taxmann.com 403). The said judgement had arisen out of the order of Hon'ble Delhi High Court in the case Principal Commissioner of Income Tax-4 vs Hi-Tech Residency (P.) Ltd (96 taxmann.com 402). The operative para of the said judgement is reproduced for your Honours perusal as under:-

4. The Court finds that the exercise for determining the identity, genuineness and creditworthiness of the investors of the share capital of the Assessee as well as lenders was undertaken in an elaborate manner by the CIT (A). Comments from the AO were sought. Detailed reasons have been given by the CIT (A) to come to the conclusion that the Assessee had discharged its onus of

establishing the identity, genuineness and creditworthiness of both the investors as well as the lenders. This has been concurred with by the ITAT in the impugned order which is again an extremely detailed one.

11. *The view that addition u/s. 68 of the Act cannot be sustained if the assessee proves the identity and creditworthiness of the lender and the genuineness of transaction is established has also been upheld in the following cases:*

- *Commissioner of Income-tax -1 vs Apex Therm Packaging (P.) Ltd (Hon'ble Gujarat High Court) (42 taxmann.com 473)*
- *K.P. Manish Global Ingredients (P.) Ltd. Vs Assistant Commissioner of Income-tax, Company Circle-II(4), Chennai (Hon'ble Chennai Tribunal) (131 taxmann.com 158)*
- *Abhijavala Developers (P.) Ltd vs. Income Tax Officer 9(1)(1), Mumbai, (Hon'ble ITAT, Mumbai Bench) (ITA 952/MUM/2019)*

III. Rebuttal to the Case laws relied on by the AO:

12. *The Assessing Officer has relied on various case laws to justify the addition u/s. 68 of the Act. However, a close perusal of the said case laws indicates that the said case laws are distinguishable on facts as has been discussed hereinunder:*

a) **Nanak Chandra Laxman Das v. CIT [1982] 9 Taxman 252 (Hon'ble Allahabad High Court)**

In the said case, the assessee had failed to produce creditors. However, in the present case the NEAC had issued notice u/s 133(6) of the Act to the lenders on dt.30.03.2021 and every lender had filed their reply on dt.01.04.2021 and 06.04.2021 and thereby proved their

identity. Therefore, the said case law is not relevant in view of the facts of the present case.

b) A. Govindarajulu Mudaliar v. CIT (1958 34 ITR 807 SC)

The said case is in context of sec 147 of the Act for income escapement assessment. It was held that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the inference that the receipts are of an assessable nature i.e., concealment of income. Hence, the ratio of the said case has no application on the present facts of the case.

c) Kale Khan Mohammad Hanif v. CIT [1963] 50 ITR 1 (Hon'ble SC)

It was held that the assessee has to prove that third party was in a position to lend such sums and that he did, in fact, so lend to the assessee in order to satisfy the Income-tax Officer that the credits shown in the account books were genuine. In the present case, the appellant has proved that the parties are not unrelated and also that they were capable to lend the amount of money in question.

d) Siddharth Export Vs ACIT [2019] 112 taxmann.com 193 (Del HC)

The Hon'ble High Court stated as follows: "creditworthiness of lender could not be said to be proved merely on the strength of bank statement. Assessee did not produce income-tax return of the lender or any confirmation. The purported confirmation had been found to be only a copy of unsigned account of creditor. The source of funds had also not been explained." Your Honour may appreciate that the appellant has also submitted the ITR returns and letters from the banks confirming the sale of pledged properties along with the bank statements to prove the creditworthiness of Mr. Dilip and Mr. Jerry.

Thus, the source of funds is sufficiently explained and accordingly, this case law is not applicable in the present case.

e) Principal Commissioner of Income Tax vs Nra Iron And Steel Pvt. Ltd. [2019] 110 taxmann.com 491 (Hon'ble SC)

It was held that if the assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the revenue to show that the income is from any particular source. Your Honour may appreciate that the appellant has provided sufficient explanation along with documentary evidence as stated above in this submission to prove: (i) identity of the lender; (ii) creditworthiness of the lenders; and (iii) genuineness of the transaction and accordingly, this case law is not applicable in the present case.

In view of the aforesaid factual and legal submission, Your Honour may appreciate that-

- (a) There is no movement of funds in the present case but merely a transfer by way of book entry and hence, the provision of section 68 has no application.*
- (b) The appellant has established the three ingredients i.e. identity and creditworthiness of the lender as well as the genuineness of the transaction.*
- (c) The case laws relied upon by the Assessing Officer were on different facts and are distinguishable.*

Therefore, it is prayed that the addition u/s. 68 of the Act is unwarranted and therefore should be deleted.



For your act of deleting the addition as prayed for, the appellant shall remain grateful to Your Honour.”

6. We have considered the rival submissions and also examined the impugned order of the Ld CIT (A) who examined all the details filed by the assessee and rightly held that the additions were made by the AO without having any basis and the assessee is entitled to get relief as he has fulfilled all the three ingredients of section 68 of the Act by producing supporting documents. It has also been mentioned in the order of the Ld CIT (A) that even in the remand report the AO has not come up with any evidence against the assessee. We find no infirmity in the order of the Ld CIT (A) and therefore, uphold his order.

7. In the result, the appeal is dismissed.

Order pronounced in the open court on 23.10.2024.

Sd/-
NARENDER KUMAR CHOUDHRY
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 23.10.2024.

Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//



By Order

Dy/Asstt. Registrar, ITAT, Mumbai.