

**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.375/Nag./2024**  
(Assessment Year : 2018-19)

Ravindra Madanlal Khandelwal  
C/o M/s. Khandelwal Jewellers  
Gandhi Road, Akola 444 001  
PAN – AMFPK2167B

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Akola Circle, Akola

..... Respondent

Assessee by : Shri Mahavir Atal  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 24/10/2024

Date of Order – 18/11/2024

**ORDER**

**PER K.M. ROY, A.M.**

The captioned appeal has been filed by the assessee challenging the impugned order dated 14/05/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2018-19, arising out of assessment order dated 17/08/2021, under section 143 r/w section 144B of the Income Tax Act, 1961 (“the Act”) by the National Faceless Appeal Centre, Delhi,

2. The assessee has raised following grounds:-

*“1. Whether on the facts and circumstances of the case, the learned First Appellate Authority was justified in endorsing the addition made under section 68 of Rs.5,20,84,000/-. Specifically in the light of the facts that the appellant has duly maintained all requisite records prescribed by the act and the deeming fiction of section 68 have been invoked only on the basis of non-furnishing of tax returns and bank statement of lenders.*

2. Whether on the facts and circumstances of the case, the learned First Appellate Authority was justified in endorsing disallowing of interest income of Rs.74,32,292/-.

3. Whether on the facts and circumstances of the case, the learned First Appellate Authority was justified in endorsing disallowing on interest expenses of Rs.97,66,208/-.

4. Appellant craves leave to add or alter any other ground that may be taken at the time of hearing."

3. Ground no.1, relates to unexplained cash credits amounting to ₹ 5,20,84,000.

4. During the scrutiny assessment, the Assessing Officer noted that the assessee is in receipt of new unsecured loans from various individuals and entities which were reflected in the books of the assessee. Hence, the Assessing Officer sought to verify the genuineness, creditworthiness, and identity of the creditors from whom these loans were reportedly received. The Assessing Officer had directed the assessee to provide comprehensive documentation for all creditors. This included detailed contact information, PAN details, bank statements, and income tax returns which are crucial for verifying the financial standing and identity of the lenders. The Assessing Officer issued multiple *notices* under Sections 142(1) and 133(6) of the Income Tax Act, 1961 ("*the Act*") requesting specific details about the lenders and the loans. In response to notices under section 142(1) of the Act, the assessee submitted list of lenders, their PAN, address, ledger confirmation of most of the debtors, interest payment details, details of TDS deducted on interest and the TDS returns of the assessee. However, the assessee did not submitted tax returns and Bank Statements of the lender making it

challenging to assess their capacity to lend such amounts. It was submitted by the assessee that they are unable to submit the return of income and bank statements of the lenders, as the said documents were personal documents of the lenders and the lenders have denied share their personal information with the assessee. The assessee expressing its inability to submit the aforementioned documents and requested the Assessing Officer to verify the said transactions at the Department's end, as all the people are resident of Akola and the credentials of tax return can be easily verified by the Department. The assessee also submitted detailed working that in case of almost all the lenders, the loans were repaid in full either in current year or in subsequent year. The assessee also submitted lender wise working to buttress his submission.

5. However, as the Assessing Officer could not verify the creditworthiness of the lenders in the absence of the income tax return and bank statements, the Assessing Officer made addition of ₹ 5,20,84,000, under section 68 of the Act and added the same to the total income of the assessee.

6. The learned CIT(A) was of the opinion that the assessee has failed to provide complete and satisfactory documentation that could establish the of the transactions concerning all creditors. The learned CIT(A) further held that assessee also failed to comply with the notices issued by the Assessing Officer, as it indicated a lack of due diligence in substantiating the claimed transactions. Further, the primary burden of proof lies with the assessee to establish that the source of the cash credits appearing in the books are from

genuine sources and in this case, the assessee was unable to discharge this burden satisfactorily. Therefore, the addition of ₹ 5,20,84,000, as unexplained cash credit under Section 68 of the Act was upheld by dismissing the ground raised by the assessee.

7. Ground no.2, relates to disallowance on account of interest amounting to ₹ 97,66,308.

8. The Assessing Officer noticed that the assessee failed to provide adequate documentation to prove that the interest expenses were incurred solely for the purpose of business. The linkage between the borrowed funds and their utilization in business activities was not substantiated satisfactorily. The interest expenses might not have been wholly for the purpose of business. For the reasons, the addition of ₹ 97,66,308, was made to the total income of the assessee.

9. The learned CIT(A) observed that the borrowed funds were used for non-business purposes, such as providing interest-free loans to related parties weakens the case for a business deduction as per income tax laws. The learned CIT(A), based on the examination of the documents furnished and the legal framework, the Assessing Officer's decision to disallow the interest expenses totalling to ₹ 97,66,308, was upheld, as the assessee did not meet the burden of proof required to establish that these expenses were incurred wholly and exclusively for business purposes. Thus the ground raised by the assessee was dismissed and addition of ₹ 97,66,308, made by the Assessing Officer was upheld.

10. Insofar as ground no.3, which relates to disallowance of ₹ 72,32,292, under section 57 of the Act is concerned, the Assessing Officer observed that the assessee claimed an expenditure of ₹ 72,32,292, as interest expenses, which were asserted to be incurred for earning income from other sources, but were not recorded in the Profit & Loss Account of the business. The Assessing Officer disallowed this expenditure on the grounds that the expenditure claimed was not reflected in the Profit & Loss Account, which is a standard practice for legitimate business expenses. This raised doubts about the nature of the expenses and whether they were genuinely incurred for business purposes. The Assessing Officer was not convinced that the expenses were incurred wholly and exclusively for the purpose of business, as required under section 57 of the Act. Since the assessee failed to provide sufficient evidence to prove that the interest expenses were directly linked to income-generating activities that would justify their classification under section 57 of the Act, the failure to route the expenses through the Profit & Loss Account suggests a potential discord between the claimed expenses and the regular accounting practices of the business. This irregularity raises questions about the legitimacy and the true nature of the expenses.

11. The learned CIT(A) dismissed the issue raised by the assessee on the following grounds:-

*"Lack of Documentation and Justification: The appellant did not satisfactorily demonstrate that the expenses were incurred wholly and exclusively for the purpose of making or earning income as required by Section 57. The expenses' omission from the profit and loss account is particularly concerning and undermines the claim."*

*Compliance with Tax Laws: Proper adherence to accounting standards and tax laws is crucial. Expenses claimed for tax deductions must be transparently recorded and justifiably linked to income generation.*

*Based on the analysis of the documents presented and the legal framework, the AO's decision to disallow the expenditure of 74,32,292 is confirmed. The burden of proof to establish a direct and justifiable link between the expenditure and the income purportedly earned was not adequately met by the appellant. The importance of maintaining meticulous and compliant accounting records is reiterated to uphold the integrity of tax claims."*

In effect, all the three grounds were dismissed.

12. The learned Counsel, Shri Mahavir Atal, appearing for the assessee, furnished a detailed written submissions contained in Paper Book from Page-221 to 242, which are reproduced below:-

*"The Assessee is an individual running a jewellery business under the proprietorship concern M/s Khandelwal Jewellers. The assessee is engaged in this line of business for 5 decades.*

1. Addition of Rs. 5,20,84,000 as unexplained cash credit under section 68

*1.1. The assessee's proprietorship concern is almost 5 decades old concern. Considering the new model of business, it was decided to incorporate a new private limited company. Accordingly, a new private limited concern, named M/s Khandelwal Jewellers Akola Private Limited ('KJAPL') was formed, wherein all the shares are held by the assessee's family. Therefore, gradually from 2012, the business of proprietorship concern was shifted to Private Limited Company. As the assessee had existing credit bank limits and other debts in the proprietorship concern, it was decided that the assessee will continue both the concerns (i.e.) private limited company and proprietorship concern for few years. Your kindness may appreciate that both the concerns are subject to audit u/s 44AB of the Income Tax Act, 1961.*

*1.2. For the year under consideration, the assessee raised loans from various parties to the tune of Rs.7,59,60,000/- (Rs.6,74,00,000/- in the proprietorship concern and Rs.85,60,000/- in his personal capacity). To verify the genuineness of the transaction of cash credit entries, the AO had asked the assessee to submit the following details.*

a) Name, Address, Contact Number, Email Id of lenders of loan:-

*These details were provided by the assessee in the submissions before the AO. The same details are attached herewith vide Annexure 1 for ease of reference.*

b) Pan of lenders:-

*PAN of lenders were also been provided in submissions before the AO. The same details are attached herewith vide Annexure 1 for ease of reference*

c) Amount of loan Accepted during the year:-

*The assessee had submitted before the AO the details of loan accepted during the year including confirmation ledgers, which highlighted the amount of loan accepted, interest paid & loan repayments during the year.*

d) Amount of loan repaid during the year:-

*Your kindness may kindly appreciate that most of the loans were repaid during the year. This fact can be verified from the confirmation ledgers attached herewith as Annexure 1.*

*To highlight the factum that the loans were duly repaid through the banking channel, the assessee had also submitted the bank statements before the AO. The same is attached herewith again as Annexure 2 for ease of reference.*

e) Quantum of interest paid and rate of interest:-

*The assessee has also submitted the details with respect to interest rate and quantum of interest. Your kindness may appreciate that the assessee has duly deducted TDS and deposited same to the credit of the ex-chequer. Duly complying with the law, the assessee had also filed TDS returns. The TDS returns were also submitted before the AO. We are hereby again attaching herewith all TDS returns for the relevant year annexure 3.*

f) Purpose for which loan was taken:-

*The Loans were taken for the purpose of business. Your kindness may appreciate that the said loans were advanced to Flagship Company of the group, KJAPL, where most of the business is done. The assessee has submitted requisite ledgers and scan copy of the bank statements to substantiate that the said funds were indeed advanced to the private limited company which was further used for the business purpose.*

g) Copy of bank statements of lenders:-

*The assessee had humbly submitted before the AO that these details being personal details, the lenders are not ready to provide their personal and financial details to us. In this regard, we humbly wish to submit that your kindness has a right to issue summon and enforce the attendance of the parties.*

*As far as bank statements of the assessee is concerned, the assessee has submitted the bank account statements of the assessee's both business*

*and personal accounts highlighting the loans received from these parties and also the loans repaid back to the parties.*

*h) Copy of ITRs of lenders of last 3 years:-*

*Time and again it has been held by the courts that the tax returns are in the realm of personal details of the tax payer and same cannot be divulged without the permission of the tax payer. Therefore, all the lenders have expressed their reservations for sharing their personal details. It was submitted before the AO by the assessee that being a quasi-judicial authority the AO had access to all the income tax details of these lenders on the income tax portal. We have already submitted their PAN details. We humbly requested the AO to download the said details and verify the same at your end. Your kindness may also appreciate the fact that all these lenders have duly reported income in their tax returns and have also claimed credit of TDS deducted by the assessee.*

*i) Copy of documentary evidences to substantiate identity and creditworthiness of the lenders:-*

*The assessee submitted details like PAN number of the lenders before the AO. All the lenders are tax paying assessee and have duly filed tax returns. Their complete details like, address, email id and contact details were already available with the AO, as all the lenders have their PAN issued by the tax department, after verifying complete KYC. Therefore, as these lenders are already registered with tax authorities and are filing tax returns, their identity in our opinion is established.*

*As far as creditworthiness is concerned all the tax payers filed return of income, the creditworthiness may kindly be verified on the basis of the tax returns filed by them. Moreover, as already submitted above, the tax returns and bank statements are personal property of the tax payer, however, same can be easily fetched by the department by issue of summons.*

*j) Copy of documentary evidences to substantiate genuineness of the lenders:-*

*The fact that the transaction was indeed in a realm of a loan, is apparent from the fact that almost all the loans borrowed from the third parties were repaid to them either in the current year or in subsequent year. The assessee had submitted ledger accounts of these parties, along with the extract of the assessee's bank statement, highlighting the repayment of loans borrowed by the assessee. Therefore, as the loans were borrowed and also repaid, there is apparently no case of bogus loans or capitalization.*

*Your kindness may also appreciate the fact, at the cost of the repetition that the assessee has duly deducted TDS on interest payments. A complete working vis-à-vis loan receipt, repayment, bank statement and TDS returns are enclosed for your kind perusal. These parties have also reported income and claimed benefit of TDS credit.*

*The assessee had discharged his onus with respect to proving the identity and genuineness of the transaction. With respect to the creditworthiness, the assessee has had also submitted all the details available with the assessee. However, the assessee was not in a position to submit the personal details of the lenders as they were not ready to share the same.*

*k) Copy of ledger accounts of all the lenders and copy of confirmations of transactions by the lenders:-*

*In this regard we humbly wish to submit that the assessee had submitted the ledger account of almost all the lenders of loans from the date of receipt of loan till its repayment and the confirmations of these parties also before the AO.*

*1.2. Even after the submission of the above extensive documentation, the AO has not accepted the reply of the assessee. The fact which deserves to be appreciated is that the AO has disputed assessee's submission that these transactions are in the realm of loan.*

*1.3. In para 6.7 of the assessment order, the AO has mentioned that the assessee had not submitted the confirmations of 8 parties even after repeated reminders. The assessee most humbly wishes to submit that the assessee had submitted the confirmations of 5 out of the 8 parties mentioned by the AO. However, the AO has inadvertently not considered the same.*

*1.4. Moreover, on request of the assessee, the AO's had issued notice under section 133(6) of the Act to a total of 10 people, out of which 4 people had filed the replies. It is pertinent to note that out of the remaining 6 assessee had already filed the confirmation of 5 parties. Since, the parties had not even replied to the notice issued by the AO under section 133(6). We most humbly wish to submit that it is unfair of the AO to ask assessee to furnish the personal details of the parties. The AO has enough powers under the Act to summon the non-compliant parties and get the details from them. The assessee has discharged his first onus by submitting the PAN of these parties as all the information related to the PAN including ITRs can be accessed by the AO.*

*1.5. Your kindness may appreciate, that most of the lenders are unrelated parties. The loans have been borrowed from them on commercial terms and interest after due deduction of TDS have been paid to the lenders. However, the lenders, have expressed their unwillingness to share their personal information like Income Tax Return, Financial statements and bank statements.*

*1.6. Moreover, the concern here is regarding whether the assessee has introduced his own funds by way of unsecured loans, in this regard we wish to submit that the borrowings were indeed a short-term loan. The fact that these were not capitalization borrowings, may also be substantiated by the fact that most of the borrowings of the current year were actually repaid in the current year or in subsequent year.*

1.7. The assessee vide a submission dated 27.03.2021 before the AO had submitted a separate working highlighting the fact that most of the amount received from the lenders were already repaid back to them. We are hereby again attaching a detailed chart of the working of accepting and repaying the loan. A fact which deserves to be appreciated is that all the lenders are assessed to tax and are regularly filing their returns of income. Moreover, the loans advanced to the assessee were through the regular banking channel and were also repaid through the banking channel after deducting TDS on interest.

1.8. Moreover, the assessee had duly deducted and paid TDS on the interest amount. During the year under consideration, the assessee has neither purchased any capital asset nor undertook any big expenditure, like marriage, house construction or foreign trips. The borrowed funds were utilized in Khandelwal Jewelers Akola Private Limited, as the jewelry is a very capital-intensive business and the business man has to invest a majority of its funds, in the stocks of jewelry.

1.9. The assessee had discharged his onus by submitting the requisite documents available with the assessee. It is a well settled Law that assessee need not prove source of the source. For this jurisprudence we rely upon the Judgment of the Hon'ble Delhi High Court in the case of CIT vs., Dwarkadhish Investment Pvt. Ltd., [2011] 330 ITR 298 (Del.) and Judgment of Hon'ble Gujrat High Court in the case of DCIT vs., Rohini Builders [2002] 256 ITR 360 (Guj.).

1.10. In a recent similar case before Ahmedabad Tribunal in the case of M/S Hindon Forge Ltd Vs DCIT (Del) (Trib) dated 03/12/20, the Hon'ble tribunal has relied on the case laws relied upon by the assessee and allowed the appeal in favour of the assessee. The relevant extract of the order is reproduced below.

*"It is well settled Law that assessee need not to prove source of the source. We rely upon the Judgment of the Hon'ble Delhi High Court in the case of CIT vs., Dwarkadhish Investment Pvt. Ltd., [2011] 330 ITR 298 (Del.) and Judgment of Hon'ble Gujrat High Court in the case of DCIT vs., Rohini Builders [2002] 256 ITR 360 (Guj.)."*

1.11. Further, in the landmark decision of the Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd., (2011) 330 ITR 298 (Del.) it was held that assessee need not prove "source of the source".

1.12. On similar findings, Judgment of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation (P.) Ltd., (1986) 159 ITR 78 (SC) in which the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the

*premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such could arise. Thus, it was held that The High Court was, therefore, right in refusing to refer the questions sought for."*

1.13. In another decision of Hon'ble Gauhati High Court in the case of CIT vs. Nemi Chand Kothari reported at (2003) 264 ITR 254 (Gauhati) it has been held that-

*"Under section 68 of Income Tax Act creditor's creditworthiness has to be judged vis-à-vis transactions, which have taken place between assessee and creditor, and it is not business of assessee to find out source of money of his creditor or genuineness of transactions, which took place between creditor and sub-creditor and/or creditworthiness of sub-creditors for these aspects may not be within special knowledge of assessee."*

1.14. In a case before Hon'ble Delhi High Court in the case of CIT vs. Mod Creations Pvt. Ltd., (2013) 354 ITR 282 (Del.) it was held as under :

1.15. The Hon'ble Delhi High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.) held that –

*"The Tribunal has adopted an erroneous approach on the aspects of genuineness of the transactions in issue and the creditworthiness of the persons/creditors who lent money to the assessee. The first aspect, i.e., identity of the creditors was established before any of the authorities below. It will have to be kept in mind that section 68 only sets up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee. It cannot but be again said that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the assessee to prove the creditworthiness of the sub-creditor."*

1.15 The Hon'ble Delhi High Court in the case of CIT v/s Kamdhenu Steel and Alloys Ltd. & Ors. 361 ITR 220 held that –

*"Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has "created" evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s. 68 was not sustainable."*

1.16. It is evident from the above jurisprudence that the assessee was not required to disclose the source of the source and had no responsibility for verifying the source of income in the hands of lender. Thus, considering the facts of the case and in the light of documentary evidences submitted, the assessee has established the identity of the lender, their creditworthiness and the genuineness of the transaction in the matter.

1.17. On the basis of explanations offered and relying on catena of judgements on this issue we humbly request your kindness to please delete the addition made by the AO in this regard and oblige.

2. Disallowance of interest to the tune of ₹ 74,32,292

2.1. In this regard we humbly wish to submit that the assessee has claimed interest of Rs. 74,32,292/- on the unsecured loans raised in his personal capacity.

2.2. The Assessee has an opening balance of unsecured loans to the tune of Rs. 5,33,08,725/-. During the year under consideration, the assessee has received unsecured loans to the tune of Rs. 85,60,000/- in his personal capacity. A fact which deserves to be appreciated is that out of the loans borrowed during the year to the tune of Rs. 85,60,000/-, an amount of Rs. 55,00,000/- has also been repaid in the current year itself.

2.3. The AO has disallowed the said interest expenses stating that the assessee has not routed the said interest through the Profit and Loss Account of the proprietorship business and has claimed it in the return of income directly. The AO has also stated that no evidences have been furnished in order to prove that the loans claimed to be received in individual capacity were used for business purpose.

2.4. With all humbleness we wish to submit that the assessee, maintains two set of accounts, one is for the proprietary concern (Khandelwal Jewelers) and the other is for the individual personal account. As already mentioned above the assessee has formed a new private limited company named as M/s Khandewal Jewellers (Akola) Private Limited. As and when there is an urgent requirement of funds to the company, funds were transferred to the aforementioned company from the CC Account of M/s Khandelwal Jewelers (proprietorship Concern). However, when CC is utilized, the assessee borrowed in his personal capacity from the market and then same is advanced to the aforementioned private limited company. This fact can be verified from the bank statement of the assessee, KJAPL and the ledger of the assessee in the books of KJAPL.

2.5. As your kindness can figure out that the assessee is already under lot of debt, sometimes, to honor the old repayment of loans, which were earlier advanced to KJAPL, the assessee borrowed from the market and repaid the old loans. All in all, the fact which your kindness can easily figure out, is that the assessee is under severe debt and entire business is being run by borrowing funds from the market and most of the income is being spent in paying interest on the borrowed debt.

2.6. Another major reason for borrowing in personal capacity and further lending it to the company, is the restriction of the company law that the private limited company cannot borrow from the public. Even as far as shareholders are concerned, private limited company can only borrow to the extent of aggregate of paid-up capital, reserves and share premium. Therefore, as the company has no option to borrow funds from the outsiders, the shareholders have borrowed funds in their Individual capacities and forwarded same to the company. Even the cash credit limit of the assessee's proprietorship concern was used to advance funds to the private limited company. Therefore, the end-use of the borrowed funds is only the advances to the private limited company.

2.7. Your kindness may also appreciate the fact that it is not a case of tax planning but a prudent business decision as both the concerns M/s Khandelwal Jewelers and M/s Khandelwal Jewellers (Akola) Private Limited are assessed to tax at maximum marginal rates. Therefore, there is no loss of revenue to the government.

2.8. The assessee has duly deducted and paid TDS on such interest the details of which are tabulated below for quick perusal.

Sr. No.	Party Name	Interest Paid	TDS Deducted
1	Abhijeet F Goenka	23,421	2,342
2	Abhishekh F Goenka	16,729	1,673
3	Amit F Goenka	20,075	2,008
4	Anil R Chandak	30,417	3,042
5	Anita F Goenka	26,767	2,677
6	Basantibai B Goenka	26,767	2,677
7	Bherulal Dhanraj	4,083	-
8	Fakirchand B Goenka	20,075	2,008
9	Gaurav R Chandak	30,417	3,042
10	Geetabai K Savana	30,417	3,042
11	Hauldar Leasing & Finance Pvt Ltd	44,411	4,441
12	J S Corporation	8,167	817
13	Khandelwal Silvers	302,220	30,222
14	Ku. Shruti Ravi Khandelwal	19,470	1,947
15	Ku. Vijeta A Agrawal	30,000	3,000
16	Murlidhar R Chandak	30,417	3,042
17	Namita N Khandelwal	81,812	8,181
18	Nitin M Khandelwal	3,577,401	357,740
19	Omprakash M Sharma	132,000	13,200
20	Prabla Manoj Shah	61,000	6,100
21	Pragya Alok Agrawal	30,000	3,000
22	Pranita N Khandelwal	207,785	20,779
23	Pratik R Khandelwal	130,592	13,059
24	Pushpa M Rathi	67,513	6,751
25	Radheshyam M Chandak	30,417	3,042
26	Rajshree Anil Chandak	24,333	2,433
27	Ravindra M Khandelwal (HUF)	2,192,604	219,260
28	Sau. Asha A Agrawal	84,000	8,400
29	Sau. Rupa P Agrawal	15,600	1,560

30	Sudhir M Rathi (HUF)	67,920	6,792
31	Tisha Anand Manwani	10,333	1,033
32	Veena R Chandak	30,417	3,042
33	Interest on Late Payment of TDS	24,711	-
Total		7,432,291	740,352

2.9. Since, the finds borrowed have been used for the purpose of business and the assessee has duly complied with requirements of deducting TDS. We humbly request your kindness to please delete the disallowance made by the AO.

3. Disallowance of interest to the tune of Rs. 97,66,308/-

3.1 In this regard we humbly wish to submit that the assessee has debited an amount of Rs. 97,80,891/- towards interest paid account for the year under consideration in the profit and loss account. Out of this interest amount, interest of Rs. 53,23,055/- is the interest paid by assessee towards the Cash Credit Limit availed by the assessee and the remaining interest of Rs. 44,57,836/- belongs to the interest paid by the assessee to the unsecured loan providers. The aforementioned interest is part of audited books of accounts of the assessee which is duly accounted and TDS on the same has also been paid. A tabular representation of the breakup of this interest is being reported below along with detail of TDS deducted.

Sr. No.	Party Name	Interest Paid	TDS Deducted
1	Amarchand Omprakash Kasat	4,200	-
2	Arihant Corporation	30,667	3,067
3	Ashok Bharatlal Agrawal	1,100	-
4	Ashok Bharatlal Agrawal (HUF)	11,025	1,103
5	Baba Accosiates	1,07,000	10,700
6	Bilala Refineries	1,02,000	10,200
7	Chandadevi B Khandelwal	73,608	7,361
8	Chetan Ashok Agrawal	25,550	2,555
9	Deepak Mohanlalji Chandak	5,167	517
10	Ekta Ravindra Khandelwal	1,73,024	17,302
11	Gangasahay Tarachand	34,640	3,464
12	Garg Agro Industries	61,975	6,198
13	Kamlesh Kisanchand Motwani	550	-
14	Kanika Agro Industries	94,808	9,481
15	M/s, Shradha Ginning & Pressing Factory	20,333	2,033
16	M/s. Kapil Industries	5,425	543
17	Maa Vaishnavi Udyog	20,000	2,000
18	Mukesh Ramchand Motwani	550	-
19	Nikhil Bharat Shah	1,21,667	12,167
20	Nikita Tushar Shah	1,21,667	12,167
21	Pannalal Sumerchand	60,116	6,011
22	Prafulla K Chandak (HUF)	1,52,083	15,208
23	Pratibha N Kedia	60,900	6,090
24	R G Agro Industries	29,450	2,945
25	R G Udyog	1,44,767	14,027
26	Radheshyam Biharilal Khandelwal	47,800	4,780
27	Rajendra K Chandak (HUF)	1,52,083	15,208
28	Rajesh B Khandelwal	20,075	2,008
29	Ravindra Gopidasji Mohata	14,250	1,425
30	Ravindra M Khandelwal HUF	1,15,125	11,513

31	Ravindrakumar Harikisanji Chandak	5,167	517
32	S K Udyog	10,920	1,092
33	Sandip Tejpalji Shah	27,191	2,719
34	Sanjay Industries	19,000	1,900
35	Sau. Binti R Bhala	1,08,982	10,897
36	Sau. Chitra Umesh Agrawal	18,958	1,896
37	Sau. Lajwanti S Motwani	47,700	4,770
38	Smt. Nirmalal R Khandelwal	1,22,383	12,238
39	Sau. Rashmi R Chandak	1,52,083	15,208
40	Sau. Sarika Vinit Mohata	15,000	1,500
41	Sau. Usha Ashok Agrawal	47,725	4,773
42	Shah Agencies	26,667	2,667
43	Shah Brothers	1,23,750	12,375
44	Sharad Makhanlal Agrawal HUF	15,334	1,534
45	Snehlata B Shah	1,21,667	12,167
46	Sukhdeo Sitaram	1,02,634	10,264
47	Sumit Traders	32,700	3,270
48	Tulsiram Goenka & Co	1,23,450	12,345
49	Tulsiram R Goenka	87,667	8,767
50	Uday Traders	71,300	7,130
51	Umesh Laxmikant Agrawal	14,408	1,441
52	Vimlabai R Khandelwal	31,867	3,187
53	Vinodkumar Nathmal Goenka HUF	15,333	1,533
54	Khandelwal and Agrawal Jewellers	13,04,345	1,30,435
55	TJSB Saharaki Bank Ltd	53,23,055	-
Total		97,80,891	4,44,698

3.2 The AO has disallowed the entire expenses by stating that interest bearing funds was used for non-business activity. In this regard we humbly wish to submit that the interest-bearing funds i.e., secured as well as unsecured are used for business of the related concern (i.e.) private limited company Khandelwal Jewellers Akola Private Limited.

3.3 The term for business purpose, used in the section 36(1)(iii) & Section 37 have been interpreted by the Hon'ble Supreme Court in the landmark judgment of SA Builders 288 ITR 1 (SC).

" In Madhav Prasad Jatia v. CIT AIR 1979 SC 1291, the Supreme Court held that the expression 'for the purpose of business' occurring under the provision of section 36(1)(iii) is wider in scope than the expression 'for the purpose of earning income, profits or gains', and this has been the consistent view of the Supreme Court. [Para 20]

The High Court in the impugned judgment as well as the Tribunal and the income-tax authorities had approached the matter from an erroneous angle. In the instant case, the assessee borrowed the fund from the bank and lent part of it to its sister concern (a subsidiary) as interest-free loan. The test in such a case was really whether this was done as a measure of commercial expediency. [Para 21]

The decisions relating to section 37 will also be applicable to section 36(1)(iii) because in section 37 also the expression used is 'for the purpose of business'. It has been consistently held in decisions relating to section 37 that the expression 'for the purpose of business' includes

*expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby. [Para 22]*

*It is not in every case that interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances. Where holding company, has a deep interest in its subsidiary, and the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the holding company would ordinarily be entitled to deduction of interest on its borrowed loans. [Para 35]*

*3.4 Therefore, the very fact that the loan was used for the purpose of the business of a related concern is quite evident. As the newly formed Private Limited company could not borrow more from for the financial institutions the only option available was to mobilize funds from the open market. However, as the Company Acts prohibit direct acceptance of loans from the public. The assessee, being a shareholder member borrowed loan from the open market and advanced same to the company. The entire planning is tax neutral and it was the need of business to mobilize funds from the market.*

*4. Allowability of the aforementioned interest amount of Rs. 97,80,891/- and Rs. 74,32,292/-on the grounds of commercial expediency:-*

*4.1 With all humbleness we wish to submit that –"the expression commercial expediency is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, but yet it is allowable as business expenditure if it is incurred on grounds of commercial expediency." This was observed by the Hon'ble Supreme Court in case of C.R. Auluck & Sons Pvt. Ltd. (ITA No.915/Chd/2008).*

*4.2 In the present case, M/s Khandelwal Jewellers Akola Private Limited is engaged in the retail trade of jewellery business. The Assessee is a director and shareholder in M/s KJAPL and derives dividend, salary and commission income from such company. As the company is in a dire need of funds, no dividend is declared during the year.*

*4.3 The assessee has made investment in the company for the purpose of earning the income from the investment either in the form of interest or in the form of dividend or capital gain. Therefore such an advance was clearly given by the assessee for the purpose of commercial expediency.*

- 4.4 As far as interest expenses vis-a- vis section 57 is concerned. The assessee wishes to submit that, the section 57(iii), lays down*

*following conditions for claim of expenditure. o The expenditure must have been laid out or expended wholly and exclusively for the purpose of making of earning "income from other sources";*

- *expenditure must not be in the nature of capital expenditure or personal expenses of the assessee;*

*4.5 Clause (iii) to section 57 makes admissible the deduction of any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income (income chargeable under the head "income from other sources'). This means section 57(iii) provides for deduction only of expenditure incurred wholly and exclusively 'for the purpose of making or earning such income". In order that expenditure may be admissible under section 57(iii), it is necessary that the primary motive of incurring it is directly to earn income falling under the head "income from other sources". The plain natural construction of the language of section 57(iii) of the Act, irresistibly leads to the conclusions that to bring a case within that section it is not necessary that any income should in fact have been earned as a result of the expenditure. What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. The section does not require that this purpose must be fulfilled in order to qualify, the expenditure for deduction it does not say that the expenditure shall be deductible only if any income is made or earned (CIT vs. Rajendra Prasad Moody (1978), Taxation 51 (3)-52, 115 ITR 519 (SC) : CIT vs. Murlimanohar (1998) IX SITC 673 (All): CIT vs. Rampur Tirnber&Turney Co. Ltd. (1981) 129 ITR 58 (All.) : CIT vs. Administrator General of Madras (1998) 142 Taxation 85 (Mad)). A similar view was also taken by the Hon'ble Madras High Court in the case of "CIT vs. M Ethurajan" (273 ITR 95) (Mad).)*

*4.6 In the assessee's case, assessee has made an investment in a related company, and the resultant in a form of a dividend income, interest income or directors remuneration fall within the head of income from other sources. The courts have time and again held that it is immaterial whether the assessee has made profit out of such expenditure or not. For claiming deduction u/s 57(iii) of the income tax act it would be sufficient to prove that there is nexus between the income which will be earned and amount expended. Therefore, here in the case of the assessee as all the requirements for claiming deduction u/s 57(iii) of the income tax act, 1961 are fulfilled, assessee has legally claimed deduction u/s 57(iii).*

*4.7 Further, I humbly wish to submit the fact that any advance made to the related/sister concern out of commercial expediency is also allowable under section 36(1)(iii), section 37 and section 57(iii) of the income tax act, 1961. The landmark judgment on this issue, which explains the entire gamut of provisions is that of the Hon'ble Supreme Court in SA Builders Limited's case 288 ITR 1 (SC).*

*4.8 In the above-mentioned case, the issue was whether an assessee, who had borrowed funds carrying interest and advanced part thereof to*

*its sister concern on interest free basis, can claim deduction to that extent. In the aforesaid case, Hon'ble the Supreme Court opined that the tax authorities must not look at the matter from their own view point but that of a prudent businessman. In case, it is found that transfer of borrowed funds to a sister concern was on account of commercial expediency even if the same is interest free, the deduction claimed by the assessee cannot be disallowed.*

*4.9 This jurisprudence was further explained in the recent judgment of the Jaipur Tribunal in case of Shri Kailash Chand Soni V/s ACIT (ITA NO.960/JP/2019) where in it was held that-*

*"Para 14 :-*

*We are of the view that it is not necessary that the expenditure incurred must have been obligatory; it is enough to show that the money was expended not of necessity and with a view to an immediate benefit to the assessee but voluntarily and on the ground of commercial expediency and in order indirectly to facilitate the making or earning of the income.*

*Para 15 :-*

*Further, clause (iii) to section 57 makes admissible the deduction of any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income (income chargeable under the head "income from other sources'). This means section 57(iii) provides for deduction only of expenditure incurred wholly and exclusively 'for the purpose of making or earning such income". In order that expenditure may be admissible under section 57(iii), it is necessary that the primary motive of incurring it is directly ITA No. 960/JP/2019 Shri Kailash Chand Soni, Jaipur Vs. ACIT, Jaipur 16 to earn income falling under the head "income from other sources". The plain natural construction of the language of section 57(iii) of the Act, irresistibly leads to the conclusions that to bring a case within that section it is not necessary that any income should in fact have been earned as a result of the expenditure. What section 57(iii) requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. The section does not require that this purpose must be fulfilled in order to qualify, the expenditure for deduction it does not say that the expenditure shall be deductible only if any income is made or earned (CIT vs. Rajendra Prasad Moody (1978), Taxation 51 (3)-52, 115 ITR 519 (SC) : CIT vs. Murli Manohar (1998) IX SITC 673 (All): CIT vs. Rampur Tirnber & Turney Co. Ltd. (1981) 129 ITR 58 (All.) : CIT vs. Administrator General of Madras (1998) 142 Taxation 85 (Mad))."*

*4.10 This year our company has already witness lockdowns for almost 6 months. Because of cash crunch and being a non-essential item, the general public has refrained from purchasing and investing in gold. With the business being highly under debt stress and lockdowns, it is becoming very difficult to even fulfill daily fixed cost like EMI, salaries and therefore, it is our humble request that any further tax demand will certainly push assessee in a deeper financial trouble as the business is*

*already on the brink of closure. We are ready to co-operate and furnish all the possible documents for your kind perusal. We humbly request a practical and pragmatic stand may be taken."*

13. On the other hand, the learned Departmental Representative, Shri Sandipkumar Salunke, appearing on behalf of the Revenue prayed that the authorities below have correctly come to the conclusion which need not be interfered with as the assessee miserably failed to prove the creditworthiness.

14. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. As regard the issue of cash credit, it is on record that the majority of repayment of loan was effected within the same financial year. The repayment was never doubted by the Assessing Officer. The same issue was decided by the Honble High Court of Gujarat in PCIT v/s Merrygold Gems Pvt. Ltd., [2024] 164 taxmann.com 764. In this case, Their Lordships have held as follows:—

*"5. Being aggrieved by the aforesaid, the assessee preferred an appeal before the learned CIT(Appeals). Surat who vide its order dated 10-2-2020 allowed the appeal of the assessee observing, inter alia, as under:*

*"7.6 Repayment of advances.*

*The AR pointed out that the impugned advances have been re-paid by assessee company within the financial year mostly within 30 days). The repayments are evident from the ledger accounts, bank a/c. statements and also from the affidavits filed by the lenders. The Ld. AO has not questioned repayments or sources of the repayments. No contrary findings or evidences are lead by Ld. AO. The repayment of loan or advances when no fault is found by Ld. AO, constitutes a good evidence regarding genuineness of the said loans or advances. This commercial logic & common knowledge is recognized by judiciary. The Hon'ble jurisdictional High Court in case of Ayachi Chandrashekhhar Narsangaji TA 992 of 22013 datd. 2-12-2013 has held that "It has also come on record that the said loan amount has been repaid by the assessee to 'IA' in the immediately next year and the Department had accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be*

possible, there was no reason to interfere with the impugned order passed by the Tribunals".

Further the Hon'ble ITAT Surat in case of Kalubhai A. Dhamelia ITA No. 88/SRT/2018 dtd. 18-9- 2018 & in case of Damjibhai Varjibhai Gangani ITA 124/SRT/2018 dtd. 18-9-2018 have also taken a view that the repayment of loan/advances constitute evidence regarding genuineness of the impugned loan or advances. The above binding decisions squarely apply to the facts of instant appeal & hence the addition u/s. 68 liable to be deleted on this reason."

6. As against that Revenue has approached the Tribunal by way of filing Appeal being ITA NO. 126/SRT/2020 for Assessment Year 2016-2017. The Tribunal by its order dated 11-1-2023 dismissed the appeal of the Revenue observing, inter alia, as under

"15. We find that the Ld. CIT(A) after considering the submission of assessee further noted that all the advances were repaid by assessee within the same financial year ie, most of the case within 30 days. The repayment was verified from the ledger account and the bank statement. The Ld. CIT(A) on relying on the decision of Jurisdictional High Court in Ayachi Chandrasekhar Narsangji (supra). wherein it was held that when loan amount has been repaid by the assessee in the immediately next year and the Department has accepted the repayment of such loan without proving it, no addition can under section 68 can be made, deleted the entire additions. During the hearing, the L.d. AR for the assessee vehemently argued that the assessee received the said amount during the course of its business activities and the amount was return either within one or two days or in a span of very short period, for which the provisions of section 68 cannot be invoked. We find the Ld. AR for the assessee filed following summary of impugned deposits and refunds;

Sr. no.	Details of payers	Details of trade advance received		Details of trade advance repaid		Repayment within
		Date of Receipt	Amount Received	Date of Payment	Amount repaid	
1.	M/s. Anshul Gems Pvt. Ltd.	20/08/2015	31,00,000	21/08/2015	31,00,000	
2.	M/s. Manhar Impex Pvt. Ltd.	07/07/2015 13/07/2015	5,00,000 73,00,000	08/07/2015 14/07/2015	5,00,000 73,00,000	1 day
3.	M/s. Uttam Gems Pvt. Ltd.	07/07/2015	50,00,000	08/07/2015	50,00,000	1 day
4.	M/s. Look At Me Retails Pvt. Ltd.	04/12/2015	2,10,00,000	07/12/2015 10/12/2015 22/06/2015	21,34,000 1,88,66,000	3-6 days
5.	M/s. Veena Gems	18/06/2015	5,00,000	22/06/2015	5,00,000	4 days
6.	M/s. Royal Refinery Pvt. Ltd.	01/09/2015 03/09/2015	50,00,000 1,40,000	07/09/2015 08/09/2015 30/09/2015	10,00,000 50,00,000 1,30,00,000	6-27 days
7.	M/s. Rama Exports	07/05/2015	75,00,000	08/09/2015	75,00,000	124 days

8.	M/s. Kaushal Diamonds	07/05/2015	15,00,000	15/09/2015	15,00,000	131 days
9.	M/s. Kumar Exports	07/05/2015 13/05/2015 14/05/2015	63,25,000 30,00,000 28,00,000	15/09/2015 01/10/2015 01/10/2015	30,00,000 83,25,000 8,00,000	131-141 days
10.	M/s. Piyush Exports	08/05/2015 15/05/2015 19/05/2015 25/05/2015	50,00,000 28,00,000 20,00,000 8,00,000	01/10/2015	10,60,00,00 0	146 days
11.	M/s. Jai Shree Exports	19/05/2015	27,00,000	01/10/2015	27,00,000	135 days
12.	Rajen Vasant	29/12/2015	2,00,00,000	13/05/2016 16/05/2016	1,00,00,000 1,00,00,000	138 days
13.	M/s. Osiaji Exports	22/03/2016	₹49,54,500	22/03/2016	46,54,500	1 day
	Total		11,57,79,50 0		11,57,79,50 0	

6. A bare perusal of the aforesaid details makes it clear that the assessee has refunded the entire deposits either within in a day or in a week in respect of seven transactions. It was refunded in a maximum period of five months in respect of six transactions. Thus, no amount was left at the end of financial year. It is also matter or record that the repayment is not doubted by the assessing officer. The Hon'ble Jurisdictional High Court in CIT v. Ayachi Chandrashekar Narsangji (2014) 42 laxmann.com. 251 (Gujrat) held that where Department has accepted repayment of loan in subsequent financial year, no addition was to be made in the current year on account of cash loan."

7. Being aggrieved by the aforesaid, Revenue has approached this Court by way of present Tax Appeal.

8. Heard learned advocate Mr.Karan Sanghani for learned advocate Ms. Kalpana Raval for the appellant and learned advocate Mr. Tej Shah for the respondent.

9. Having considered the submissions advanced by learned advocates for the respective parties and the orders impugned in this appeal, what is evident is that the amount of loan received by the assessee was returned within the same financial year and in most of the cases within 30 days. The said repayment was also verified from the Ledger Account and the Bank Statement.

10. In view of aforesaid undisputed fact with regard to repayment of loan, at this juncture, it would be pertinent to take note of decision of this Court in case of Dy CIT v. Rohini Builders [2003] 127 Taxman 523/120021 256 ITR 360 (Guj.), wherein it is held as under:

"We have considered the rival submissions and have also gone through the order passed by the Assessing Officer. the relevant portion of which we have also extracted in para. 2 above. The Commissioner of Income-tax (Appeals) more or less confirmed the addition on the reasoning given by the Assessing Officer in the assessment order. A perusal of the chart given by us in para. 3 above indicates that out of 21 creditors the Assessing Officer has

recorded the statements of only six creditors, viz., creditors at serial Nos. 1, 2, 3, 4, 6, and 7. However, in respect of all the 21 creditors the assessee has furnished their complete addresses along with GIR numbers/permanent account numbers as well as confirmations along with the copies of assessment orders passed in the cases of creditors at serial Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 12 and 16. In the remaining cases where the assessment orders passed were not readily available, the assessee has furnished the copies of returns filed by the creditors with the Department along with their statement of income. All the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques along with the interest in relation to those loans. It is rather strange that although the Assessing Officer has treated the cash credits as non-genuine, he has not made any addition on account of interest claimed/paid by the assessee in relation to those cash credits, which has been claimed as business expenditure and has been allowed by the Assessing Officer. It is also pertinent to note that in respect of some of the creditors the interest was credited to their accounts/paid to them after deduction of tax at source and information to this effect was given in the loan confirmation statements by those creditors filed by the assessee before the Assessing Officer. Thus it is clear that the assessee had discharged the initial onus which lays on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent accounts numbers and the copies of assessment orders wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of *Orient Trading Co Ltd. v. CIT* [1963] 49 IIR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee -from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of *Orissa Corporation* [1986] 159 [TR 78]. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee. In the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those

*creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.*

*Further, we may point out that section 68 under which the addition has been made by the Assessing Officer reads as under:*

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

*The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this, case the legislative mandate is not in terms of the words "shall be charged to income-tax as the income of the assessee of that previous year". The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 IIR 570."*

*11. Keeping in mind the ratio laid down in the said judgment, in the facts of the present case, we do not see any merit in the appeal and therefore, same deserves to be dismissed and is accordingly dismissed with no order as to costs."*

15. Moreover, certain lenders have confirmed the transaction. The Assessing Officer, out of total 43 lenders, issued notices under section 133(6) of the Act only to 10 lenders out of which 4 lenders confirmed the transaction, while 6 lenders did not respond. There is no denial in any case. The Assessing Officer, only on the basis of non-receipt of response from 6 lenders, coloured the entire unsecured loan borrowed during the year as unexplained cash credit, conveniently ignoring the fact that majority of loans were repaid during the current year and subsequent year and the assessee has duly paid interest and complied with TDS provisions. The A.O. erred in drawing negative inference based on non-response from few parties. Moreover, the A.O. only enquired from 10 parties out of 43. It was least expected from the

Assessing Officer to at least verify the return of income of the lenders from their own database. Needless to say that in case of non-response, the Assessing Officer has all the powers to issue summons under section 133 of the Act and enforce attendance of the lenders. However, the said exercise was also not conducted by the Assessing Officer.

16. No enquiry was made by the Assessing Officer by issuing summons. Further, no incriminating evidences were brought on record to dislodge the materials relied upon by the assessee to prove the ingredients of section 68 of the Act. We are also fortified by the judgment of the Hon'ble Jurisdictional High Court in Gaurav Triyugi Singh v/s ITO, [2020] 423 ITR 531 (Bom.), wherein on similar issue the Hon'ble Court has observed as under:–

*"9. Though a number of questions have been proposed by the Appellant as substantial questions of law, we find that the following question covers the controversy in question, which is as under:*

*Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the addition in respect of unsecured loan of Rs. 14,00,000/- under section 68 of the Act, inspite of the fact that the initial onus laid down on the Appellant was duly discharged ?.*

*10. Submissions made have been considered.*

*11. Regarding Smt. Savitri Thakur, it is seen that she had issued cheque payment of Rs. 14 lakhs dated 21- 7-2009 to the Appellant. Prior to the issuance of the cheques, this amount was credited into the bank account of Smt. Savitri Thakur maintained in the State Bank of India. Rae Baraeli Branch. There were three transfers of Rs. 5 lakhs. Rs. 5 lakhs and Rs. 4 lakhs into the above account of Smt. Savitri Thakur*

*before issue of cheques by her to the assessee. Smt. Savitri Thakur claimed that these amounts were received by her as gifts from one Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur. Shri Rajendra Bahadur Singh is the brother of Smt. Savitri Thakur and Smt. Sarojini Thakur is the sister of Smt Savitri Thakur. Shri Rajendra Bahadur Singh had gifted Rs. 5 lakhs to Smt. Savitri Thakur and Smt. Sarojini Thakur had gifted to Rs. 5 lakhs and Rs. 4 lakhs to Smt. Savitri Thakur. Result of verification and remarks by the Department in respect of Shri Rajendra Bahadur Singh is as under:*

*"The donor had retired in 2003 and claims to earn tuition income of Rs. 1.5 Lacs p.a. and this money has been claimed to have been hoarded and kept in cash by him over several years and he claims that out of this accumulation he deposited a sum of Rs. 5,00,000/- in cash in his bank account with SBI Rae Baraeli on 20-7-2009 and it was transferred to Savitri Thakur on 20-7-2009. The donor has not filed any income tax return."*

*11.1 Similarly in respect of Smt. Sarojini Thakur, result of verification and remarks by the Department is as under:*

*"This donor has ostensibly retired from service in 2007 and she has deposited cash of Rs. 9,00,000/- in her bank with SBI, Rae Baraeli on 18-7-2009 before issuing two cheques to Savitri Thakur. She has not filed any return of income admittedly from A.Y. 2008-09. She also claims to receive agricultural income of Rs. 1.5 lacs p.a. which is claimed to be kept in cash with her since several years."*

*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: (1) identity of the creditor, (ii) genuineness of the transaction; and (iii) credit-worthiness of the creditor.*

*14. In Pr. CIT v. Veedhata Towers (P) 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 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 45 pm 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 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.*

*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."*

17. Keeping in view of the aforesaid discussion, we deem it fit in deleting the addition made by the Assessing Officer on account of cash credit to the extent of repayment of loans made by the assessee either in the same year or succeeding years. The Assessing Officer is directed to verify Identity, Genuineness and creditworthiness of the lenders for the balance loans.

18. The loans repaid subsequently cannot be treated as unexplained cash credit under section 68 of the Act following the ratio of above legal proposition. However, exact quantification of amount repaid is subject to factual verification. The Assessing Officer is directed to examine the summary as contained in Page-244 to 246 of the Paper Book furnished by the assessee, which is also reproduced below to easy accessibility:-

**RAVINDRA M KHADELWAL**  
**ASSESSMENT YEAR 2018-19**  
**DETAILS OF UNSECURED LOANS**

Sr.No	Name	PAN	Loan Received	Interest paid/payable during the year	Received on	Paid to	Received in Bank A/c	Remarks	Paid in Next Year	Paid From
1	Amarchand Omprakash Kasat	ACZPK2356C	1,000,000.00	4,200.00	10.07.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	As per notice it is written as Rs. 1 Crores. This is repaid during the year	-	
2	Arihant Corporation	ABGPJ7716B	1,000,000.00	30,667.00	27.11.17	Khandelwal Jewellers (Akola) Pvt Ltd	TJSB Bank	Repaid during the year	-	
3	Ashok Bharatlal Agrawal (HUF)	AAAHA9760P	500,000.00	11,025.00	04.12.17	-	TJSB Bank	Repaid during the year	-	
4	Baba Accosiates	ACUPA3503A	3,000,000.00	107,000.00	15.12.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	-	Rs. 15,00,000 paid on 19-10-18 & Rs. 15,00,000 paid on 22-10-18	TJSB Sahakari Bank Ltd
5	Bilala Refineries	AABFB0957C	3,000,000.00	102,000.00	24.07.17 & 01.09.17	Khandelwal Jewellers (Akola) Pvt Ltd	TJSB Bank	Repaid during the year	-	
6	Chetan Ashok Agrawal	AEQPA6182D	1,000,000.00	25,550.00	18.01.18	Khandelwal Jewellers (Akola) Pvt Ltd	TJSB Bank	-	Repaid on 18-07-18	TJSB Sahakari Bank Ltd
7	Deepak Mohanlalji Chandak	ADDPC9114B	500,000.00	5,167.00	17.10.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	Repaid during the year	-	
8	Gangasahay Tarachand	AABHR2376F	1,600,000.00	34,640.00	16.11.17 & 22.02.18	Ravindra M Khandelwal	TJSB Bank	Repaid during the year Rs. 8,00,000	Repaid on 27-11-18	Bank of India
9	Garg Agro Industries	AAKPG5738R	1,500,000.00	61,975.00	13.12.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	-	Repaid on 15-10-18	TJSB Sahakari Bank Ltd
10	Kanika Agro Industries	AAIFK1433H	4,000,000.00	94,808.00	05.09.17, 12.09.17 & 15.12.17	Khandelwal Jewellers (Akola) Pvt Ltd	TJSB Bank	Repaid during the year	-	
11	M/s, Shradha Ginning & Pressing Factory	ADDFS5015R	1,000,000.00	20,333.00	28.09.17	Ravindra M Khandelwal	Bank of India	Repaid during the year	-	
12	M/s. Kapil Industries	AADFK9950C	500,000.00	5,425.00	19.12.17	Tulsiram Goenka (Repayment of Loan)	TJSB Bank	Repaid during the year	-	

13	Maa Vaishnavi Udyog	AAQFM4952P	2,000,000.00	20,000.00	05.01.18	Ravindra M Khandelwal	Bank of India	Repaid during the year	-	
14	Pannalal Sumerchand	ABEPA3871A	1,000,000.00	60,116.00	15.07.17	Amarchand O Kasat (Repayment of Loan)	Bank of India	Repaid during the year	-	
15	Pratibha N Kedia	ACAPK4111C	1,000,000.00	60,900.00	11.09.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	Repaid during the year	-	
16	R G Agro Industries	AALFR6182M	3,000,000.00	29,450.00	29.07.17 & 09.11.17	Khandelwal Jewellers (Akola) Pvt Ltd & Nitin Khandelwal (5.00 L)	Bank of India	Repaid during the year	-	
17	R G Udyog	AAEFR2686M	5,500,000.00	144,767.00	10.07.17, 13.09.17 & 10.01.18	Khandelwal Jewellers (Akola) Pvt Ltd & R G Udyog (Repayment of Loan Rs. 10,00,000/-)	Bank of India	Repaid during the year Rs. 35,00,000	Repaid on 10-04-18	Bank of India
18	Radheshyam Biharilal Khandelwal	ACDPK2000K	600,000.00	47,800.00	05.08.17	Shah Brothers (Repayment of Loan)	TJSB Bank	As per notice it is written as Rs. 60 Lakhs.	-	
19	Ravindra Gopidasji Mohata	ABNPM3048C	500,000.00	14,250.00	14.07.17	R.G. Udyog (Repayment of Loan)	Bank of India	Repaid during the year	-	
20	Ravindrakumar Harikisanji Chandak	AEGP5407H	500,000.00	5,167.00	17.10.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	Repaid during the year	-	
21	S K Udyog	ABIPA6090K	2,500,000.00	10,920.00	09.03.18	Ravindra M Khandelwal	TJSB Bank	Repaid during the year	-	
22	Sandip Tejpalji Shah	AWDPS0483Q	500,000.00	27,191.00	16.10.17	Ravindra M Khandelwal	Bank of India	-	Repaid on 18-06-18	TJSB Sahakari Bank Ltd
23	Sanjay Industries	AADFS7290P	2,000,000.00	19,000.00	02.12.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	Repaid during the year	-	
24	Sau. Chitra Umesh Agrawal	AIOPA4466E	500,000.00	18,958.00	07.12.17	Shah Brothers (Repayment of Loan)	TJSB Bank	-	Repaid on 20-04-18	Bank of India
25	Sau. Lajwanti S Motwani	ABLPM5097P	900,000.00	47,700.00	24.10.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	-	Repaid on 24-04-18	Bank of India
26	Smt. Nirmalal R Khandelwal	AIQPK2901E	1,000,000.00	122,383.00	08.01.18	Khandelwal & Agrawal Jewellers ((Repayment of Loan)	TJSB Bank	-	Repaid on 19-11-18	Bank of India
27	Sau. Sarika Vinit Mohata	AHGPA4663F	1,000,000.00	15,000.00	15.12.17	Khandelwal Jewellers (Akola) Pvt Ltd	TJSB Bank	Repaid during the year	-	

28	Sau. Usha Ashok Agrawal	ABBPA3187A	1,500,000.00	47,725.00	15.07.17, 17.10.17 & 16.11.17	Khandelwal Jewellers (Akola) Pvt Ltd, Ravindra M Khandelwal & Umesh L Agrawal (Repayment of Loan)	TJSB Bank	Repaid during the year Rs. 10,00,000/-	Repaid on 15-05-18	Bank of India
29	Shah Agencies	AAHHS5716G	5,000,000.00	26,667.00	17.06.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	Repaid during the year	-	
30	Shah Brothers	APLPS9971A	6,000,000.00	123,750.00	07.07.17, 28.09.17 & 08.01.18	Khandelwal Jewellers (Akola) Pvt Ltd & R.G. Agro Industries (Repayment of Loan)	TJSB Bank (35L) & Bank of India (25L)	Repaid during the year	-	
31	Sharad Makhanlal Agrawal HUF	AABHS8253A	500,000.00	15,334.00	23.10.17	Bilala Refineries (Repayment of Loan)	TJSB Bank	Repaid during the year	-	
32	Sukhdeo Sitaram	AADFS8090B	4,000,000.00	102,634.00	17.10.17 & 31.03.18	Ravindra M Khandelwal	Bank of India	Repaid during the year Rs. 20,00,000/-	Repaid on 01-10-18	Bank of India
33	Sumit Traders	AGQPK1334H	1,000,000.00	32,700.00	13.12.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	-	Repaid on 28-05-18	Bank of India
34	Uday Traders	AAZPA2484R	1,500,000.00	71,300.00	24.07.17 & 18.10.17	Khandelwal Jewellers (Akola) Pvt Ltd	TJSB Bank (5L) & Bank of India (10L)	Repaid during the year Rs 5,00,000/-	Repaid on 15-09-18	Bank of India
35	Umesh Laxmikant Agrawal	AAYPA2169E	500,000.00	14,408.00	19.07.17	Khandelwal Jewellers (Akola) Pvt Ltd	TJSB Bank	Repaid during the year	-	
36	Vimlabai R Khandelwal	BMVPK 6868 G	400,000.00	31,867.00	05.08.17	Khandelwal Jewellers (Akola) Pvt Ltd & Shah Brothers (2.00L) ((Repayment of Loan)	TJSB Bank	-	-	
37	Vinodkumar Nathmal Goenka HUF	AAAHV6671C	500,000.00	15,333.00	18.10.17	Umesh L Agrawal (Repayment of Loan Rs. 5,00,000)	TJSB Bank	Repaid during the year	-	
38	J S Corporation	AAAFJ8805E	2,000,000.00	8,167.00	30.08.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	Repaid during the year	-	
39	Ku. Shruti Ravi Khandelwal	ECKPK8618C	35,000.00	19,470.00	06.07.17	-	Bank of India	Repaid during the year Rs. 85,500	-	
40	Nitin M Khandelwal	ACDPK2014R	565,000.00	3,602,112.00	28.02.18	Buldhana Urban Credit Co-op Society (Repayment of Loan)	TJSB Bank	Repaid during the year Rs. 1,44,35,000/-	-	
41	Prabla Manoj Shah	AECPS 6991 Q	1,500,000.00	61,000.00	06.09.17	Khandelwal Jewellers (Akola) Pvt Ltd	Bank of India	Repaid during the year	-	
42	Pratik R Khandelwal	HGBPK2211M	540,000.00	130,592.00	08.03.18	Vishwa Automotive Sales and Services Pvt Ltd (Repayment of Loan)	Bank of India	-	-	
43	Ravindra M Khandelwal (HUF)	AABHR4256A	1,920,000.00	2,192,604.00	18.08.17, 13.09.17, 23.11.17 & 04.12.17	Khandelwal Jewellers (Akola) Pvt Ltd & Nitin Khandelwal (5.00 L)	Axis Bank Ltd	-	-	

19. Accordingly, we set aside the impugned order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for verification of the fact as to whether loans were duly repaid back by the assessee either in current year or subsequent years and if so, the same need not be added back. Needless to say that the assessee be provided reasonable opportunity of being heard. Thus, ground no.1, raised by the assessee is allowed for statistical purposes.

20. We now proceed to adjudicate the balance two grounds in unison regarding disallowance of interest for ₹ 74,32,292, and ₹ 97,66,208, respectively.

21. The Assessing Officer had disallowed the interest considering the fact that the funds were not used for the purpose of business. In this regard, for better appreciation of facts, Para-7.2 of the assessment order is reproduced below:-

*"In this regard the assessee has under In respect of claim of Rs. 7432292/- from the income of the Assessee, EN*

*it is a payment of interest paki and the details of the same have been submitted in Yst reply itself. However, for your reference the same is again enclosed herewith. This payment of interest is in personal capacity of the Assessee and paid over and above the financial accounts submitted. Details of the interest paid for Audited accounts and personal loans are already submitted. In these details the name of the tenders, address, PAN, opening balance. Loan received, Loan paid, Closing balance & interest paid are given. It is further added that the due amount of TDS has been deducted & TDS returns in this regard are filed in time. All these transactions have been made through bank alt only & all the copies of bank a/c are already submitted with the reply. For your ready reference we are again enclosing with copies of bank a/c which shows that the amount received from parties has been either to Khandelwal Jewelers (Firm) or Khandelwal Jewellers (Akola) Pvt. Ltd. From the Khandeshwal Jewellers (Akola) Pvt. Ltd., the Assessee received interest to the ture of Rs. 5152434. The total amount of interest paid in personal capacity is As under:-*

<i>Interest paid to parties</i>	<i>7427850</i>
<i>Interest paid to LIC</i>	<i>37517</i>
<i>Interest paid to Buldhana Urban Co-operative Credit Society</i>	<i>2726565</i>
<i>Total Interest Paid</i>	<i>10191932</i>
<i>Interest received from Khandelwal Jewellers (Akola) Pvt. Ltd.</i>	<i>545243</i>
<i>Interest received from Pawankumar Jagdishprasad Bachhuka</i>	<i>32200</i>
<i>Interest received from Prakash Narayandas Lodhiya</i>	<i>18133</i>
<i>Total Interest Received</i>	<i>595576</i>
<i>Balance interest paid in personal Books</i>	<i>9596356</i>

*Out of the above ₹ 74,32,292 has been claimed as interest paid for the purpose of business."*

22. It is observed that the assessee has claimed an interest expenses of ₹ 74,32,292, over and above the interest claimed under section 36(1)(iii) of the Act. It was explained before the authorities below as well as before us that the said interest is allowable under section 57, as the borrowed funds have been transferred to the business concern for business exigencies. It was also explained that the borrowed fund were transferred to the related concern, who is also in the same line of business. However, related concern being a private limited company, as per the Companies Act, cannot borrow funds from the outsiders except financial institutions. Therefore, the assessee who is also a Director as well as shareholder in his Individual capacity in the related concern namely Khandelwal Jewellers Akol Pvt. Ltd., borrowed funds in his individual capacity and advanced the same to the Private Limited Company.

23. The Assessing Officer could not dispute that the transfer of borrowed funds is made to a sister concern. Non-charging of interest on loans given by an assessee cannot itself be a sufficient ground for disallowing interest paid by an assessee on loans taken by it in the absence of any nexus between borrowed capital and interest-free advances or in the absence of any finding that borrowed funds or part thereof was diverted towards interest-free advances-Meenakshi Synthetics (P) Ltd. v. CIT [2003] 84 ITD 563 (Lucknow). Where nothing has been brought on record by the revenue to prove that interest-bearing funds available with the assessee is not utilised for the purpose of business but is given as interest-free loans or advances,

disallowance of interest on borrowed capital is unjustified-ITO v. Naresh Fabrics [2002] 75 TTJ (Jodh.) 386.

24. The principles enunciated in various decisions are that if there are sufficient funds on a particular date to cover the advance, merely because the assessee has also taken some loan, it cannot be attributed that the interest-bearing funds are diverted for non-business purposes. In other words, the benefit of doubt of utilising the own funds from the common pool account, should be given to the assessee. However, the primary burden of establishing that on the date when each interest-free loan is given by the assessee there were sufficient non-interest bearing/own funds available with the assessee to advance the money to the sister concern without charging interest, is on the assessee. Merely because the overall interest-free funds available with the assessee were more than the interest-free loan given by the assessee, it cannot be said that the interest-free loans given by the assessee were out of its own funds-Sanghvi Swiss Refills (P.) Ltd. v. ITO [2003] 85 ITD 59 (Mum.) (SMC-I) Transfer of borrowed fund to a sister concern-Once it is established that there is nexus between the expenditure and the purpose of the business (which need not necessarily be the business of the assessee itself), the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize its profit. The income tax authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act. The authorities

must not look at the matter from their own view point but that of a prudent businessman. One has to see the transfer of the borrowed funds to a sister concern from the point of view of commercial expediency and not from the point of view whether the amount is advanced for earning profits.

25. It is not correct that in every case interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced a measure of commercial expediency. However, money can be said to be advanced to a sister concern for commercial expediency in many other circumstances (which need not be enumerated here). Where it is obvious that a holding company has a deep interest in its subsidiary, and hence if the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the assessee would, ordinary be entitled to deduction of interest on its borrowed loans-SA. Builders Ltd. v. CIT 2007) 158 Taxman 82 (SC). Interest paid on borrowed funds utilized for investment in group companies for strategic business purpose is allowable as deduction under section 36(1)(iii)-CIT v. KEC International Ltd. [2020] 113 taxmann.com 532 (Mad.)."

26. The provisions of section 57 of the Act provide allowance of interest expenditure if it is expended wholly and exclusively for the purpose of making income under the head "*income from other sources*". The plain natural

construction of the language of section 57(iii) of the Act, leads to the conclusions that to bring a case within that section it is not necessary that any income should in fact have been earned as a result of the expenditure. What section 57(iii) of the Act requires is that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. The provisions of section does not require that this purpose must be fulfilled in order to qualify, the expenditure for deduction it does not say that the expenditure shall be deductible only if any income is made or earned [CIT v/s Rajendra Prasad Moody [1978], 115 ITR 519 (SC)]. In the present case, the assessee has made an investment in a related company and the resultant income in the form of a dividend income, interest income or directors' remuneration fall within the head of "*income from other sources*". Therefore, for claiming deduction under section 57(iii) of the Act, it would be sufficient to prove that there is nexus between the income which will be earned and amount expended. In the given case, it is undisputed fact that the funds have been advanced to related concern. At this juncture it is also apropos to refer to the landmark judgment of the Hon'ble Supreme Court in S.A. Builders Ltd., 288 ITR 1 (SC) wherein it has been held that the tax authorities must not look at the matter from their own view point but that of a prudent businessman. In case, it is found that transfer of borrowed funds to a sister concern was on account of commercial expediency even if the same is interest free, the deduction claimed by the assessee cannot be disallowed. Thus, ground no. 2, raised by the assessee is allowed. It is reiterated that the

allowance of any expenditure is within the judicial periphery laid in the Act and mere non-recording in the books of account can hardly negate the claim.

27. Ground no3, relates to disallowance of interest expenses of ₹ 97,66,208, claimed under section 36(1)(iii) in the books of accounts.

28. It is important to appreciate the financial statements, wherein the application of funds, as contained in Page-27 of the Paper Book is also reproduced below for ready reference:-

<i>Particulars</i>	<i>No. of Schedule</i>	<i>Figures at the end of Current Financial year</i>	
<u>SOURCE OF FUNDS:-</u>			
<u>Promoter's Fund</u>			
A Promotor's Capital A/c	A	19405970.01	
B Reserve & Surplus	B	00	19405970.01
<u>Loan Funds</u>			
A Secured Loans	C	9529106.16	
B Unsecured Loans	D	24746174.00	34275280.15
<u>Current Liabilities &amp; Provisions</u>			
A Current Liabilities	E	72065313.96	
B Provisions	F	61600.00	72126913.96
			125808164.12
<u>APPLICATION OF FUNDS:-</u>			
<u>Fixed Assets</u>		<i>Opening WDV &amp; Additions</i>	
	G	6692145.65	
		<i>Less: Depreciation</i>	
		237031.00	6455114.65
<u>Investments</u>	H		151015.00
<u>Current Assets, Loans &amp; Advances</u>			
A Inventories	I	6061250.00	
B Sundry Debtors	J	69813542.00	
C Cash and Bank Balances	K	605920.06	
D Other Current Assets	L	13197195.26	
E Loans and Advances	M	29524126.15	119202034.47
			125808164.12

29. It is not clear as to how the Assessing Officer has rightfully concluded that the funds have been diverted for non-business purpose. He has not brought any nexus between the loan funds and its corresponding application. Further, he has pointed out in Para-8.7, which is reproduced below:-

*"8.7 Considering the above mentioned facts it is clear that the entire loan shown in the books of accounts is not used for the business purpose. Moreover most of the unsecured loan is treated as unexplained/bogus. Considering the above mentioned facts the entire claim of interest expenses of Rs.9766308/- is hereby disallowed and added to the total income of the assessee. Moreover, the unsecured loan claimed to be obtained during the year has also been rejected and added u/s 68 of the I.T. Act. As such the claim of interest is also not allowable on this ground also. Penalty proceedings for under reporting u/s 270A of the I.T. Act has also been initiated separately."*

30. In the first ground of appeal, the assessee has successfully assailed the addition under section 68 of the Act to a substantial level and hence the corresponding interest cannot be held to be unexplained or bogus. The matter has to be directed to be re-examined since we do not ascribe to the views that loan is unexplained. Further, the Assessing Officer could not make out a single case of diversion of funds for non-business purpose apart from making a general and casual statement which has no basis to be sustained. Hence, we find force in the submissions of the learned Counsel for the assessee that the interest is used for the purpose of business. The order of the learned CIT(A) cannot be sustained because he has failed to highlighted about how the submissions of the assessee is fallacious. He failed to advert about the financial affairs which clearly demonstrates that the assessee has own funds to the extent of ₹ 1.25 crore. Thus, it is beyond any logic as to how the entire interest can be disallowed straightway. Moreover, out of the total interest of ₹

0.97 crore, the interest paid by the assessee on cash credit of ₹ 0.53 crore is availed from Bank, which is undisputedly loan taken for business, which fact is examined and is not in dispute. Even for the balance interest, not even single instance of diversion of funds have been brought by the Assessing Officer. In the absence of any instance of diversion of funds, the interest claimed under section 36(1)(iii), which are part of audited books of account, cannot be disallowed. Thus the Assessing Officer is directed to delete the disallowance. Thus, ground no. 3, raised by the assessee is allowed.

31. As a result of the forgoing discussion, the appeal of the assessee is summarised below:-

32. Ground no.1, is allowed for statistical purposes. The Assessing Officer is directed once again to analyse meticulously Pages-244 to 246 of the Paper Book, which is reproduced in Page-27 to 29. The assessee is directed to be vigilant and co-operative in placing all the documents.

33. Ground no.2, is allowed in full; and

34. Ground no.3, is also allowed in full.

35. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 18/11/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 18/11/2024**

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.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur