

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA Nos.440, 441/Bang/2024
Assessment Years : 2015-16, 2016-17

The Income Tax Officer, Ward – 7(2)(2), Bengaluru.	Vs.	Shri. Vastimal Bhim Raj Sancheti, #23 3 rd Main Road, 2 nd Cross, Chamrajpet, Bengaluru – 560 019. PAN : AGZPS 6277 L
APPELLANT		RESPONDENT

Assessee by	:	Shri. Prashanth GS, AR.
Revenue by	:	Shri. Subramanian, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	20.11.2024
Date of Pronouncement	:	04.12.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

These two appeals have been filed by the Revenue against separate Orders passed by CIT(A) vide Orders DIN ITBA/NFAC/S/250/2023-24/1059725539(1) and DIN ITBA/NFAC/S/250/2023-24/1059815854(1) dated 15.01.2024 and 17.01.2024 respectively. The grounds of appeal for both the years are as under:-

A.Y. 2015-16

“1. On the facts and circumstances of the case, the learned CIT(A) erred in deleting the addition of Rs. 5,87,25,000/- made by the AO u/s 68 of the IT Act, 1961

2. *On facts and circumstances of the case, the learned CIT(A) erred not appreciating that an elaborate structure with many layers was created to obscure and hide the source of money received by the assessee. Since none of these companies has any other business activity except circulation of money from one company to another and by subscribing to or purchasing shares of other companies at a huge premium, there can be no justification of such a huge premium. This shows that the shareholder companies of one company become investee companies of other companies and in turn such other company whose shares are purchased, further invest in the shares of other companies and in turn such other company, whose shares are purchased, further invest in the shares of other company and so on. It can' be seen as a sheer coincidence that many companies brought into existence, having link with each other and none of them doing any worthwhile business activity come together to issue shares at such a huge premium. This when considered on overall basis is nothing but a smokescreen and beneficiary from this arrangement is the assessee.*
3. *On the facts and circumstances of the case, the learned CIT(A) erred in deleting the above mentioned addition as the assessee was not able to substantiate the genuineness of loan received of Rs 5,85,00,000/- from M/s Magnificent Realcon Private Limited (MRPL).*
4. *On the facts and circumstances of the case, the learned CIT(A) did not appreciate that the identity of M/s Magnificent Realcon Private Limited is not confirmed. Ld. CIT(A) has not appreciated that assessing officer in the order passed for AY 2016-17 has categorically discussed about each layer of the company used to subscribe share at huge premium and ultimately all were found to be either struck off or to be with negligible revenue.*
5. *The learned CIT(A) erred in deleting the above mentioned addition by stating that the genuineness of the transaction is established from the facts that the acceptance and repayment of loan has been through banking channel. This is not disputable that the money was received through banking channel but the money did not come out of actual business activity. The share subscribers and parties which extended loans to Mis Magnificent Realcon Private Limited did not have their own profit making apparatus and were not involved in business activity.*
6. *On facts and circumstances of the case, the learned CIT(A) erred in deleting addition of loan credit of Rs 1,50,000/- received from Sri*

Ramesh Kumar Sancheti and Rs 75,000/- received from Mrs Sumitra Bai as the assessee has not substantiated the transaction before the assessing officer which could have explained the identity, genuineness and creditworthiness of the transaction.

7. *On the facts and circumstances of the case, the learned CIT(A) erred in deleting the above mentioned addition as section 68 of the IT Act, 1961 states that in failure of satisfactory explanation of the identity, creditworthiness and genuineness of the transaction, the assessing officer can invoke section 68 of the IT Act, 1961. In this case, the assessee failed to discharge the onus of proving the identity, creditworthiness and genuineness of the transaction thereby unexplained credits were added as Income by the assessing officer by invoking the section 68 of the IT Act, 1961. Hence, Ld. CIT(A) ought not to have deleted the addition made under section 68 of the IT Act, 1961.*
8. *In the assessment order passed, the assessing officer has discussed total disallowance of Rs 6,13,95,000/- u/s 68 of the IT Act, 1961, but inadvertently in the computation, addition for Rs 5,87,25,000/- was considered. Thus, the issues in regard to addition of Rs 26,70,000/- shall be decided on merits or may be set aside to the file of the assessing officer.”*

A.Y. 2016-17

1. *On the facts and circumstances of the case, the learned CIT(A) erred in deleting the addition of Rs. 8,31,00,000/- made by the AO u/s 68 of the IT Act, 1961*
2. *On facts and circumstances of the case, the learned CIT(A) erred not appreciating that an elaborate structure with many layers was created to obscure and hide the source of money received by the assessee. Since none of these companies has any other business activity except circulation of money from one company to another and by subscribing to or purchasing shares of other companies at a huge premium, there can be no justification of such a huge premium. This shows that the shareholder companies of one company become investee companies of other companies and in turn such other company whose shares are purchased, further invest in the shares of other companies and in turn such other company, whose shares are purchased, further invest in the shares of other company and so on. It can be seen as a sheer coincidence that many companies brought into existence, having link*

with each other and none of them doing any worthwhile business activity come together to issue shares at such a huge premium. This when considered on overall basis is nothing but a smokescreen and beneficiary from this arrangement is the assessee.

3. *On the facts and circumstances of the case, the learned CIT(A) erred in deleting the above mentioned addition as the assessee was not able to substantiate the genuineness of loan received of Rs 8,31,00,000/- from M/s Magnificent Realcon Private Limited (MRPL).*
 4. *On the facts and circumstances of the case, the learned CIT(A) did not appreciate that the identity of M/s Magnificent Realcon Private Limited is not confirmed. Ld. CIT(A) has not appreciated that assessing officer in the order passed for AY 2016-17 has categorically discussed about each layer of the company used to subscribe share at huge premium and ultimately all were found to be either struck off or to be with negligible revenue.*
 5. *The learned CIT(A) erred in deleting the above mentioned addition by stating that the genuineness of the transaction is established from the facts that the acceptance and repayment of loan has been through banking channel. This is not disputable that the money was received through banking channel but the money did not come out of actual business activity. The share subscribers and parties which extended loans to M/s Magnificent Realcon Private Limited did not have their own profit making apparatus and were not involved in business activity.*
 6. *On the facts and circumstances of the case, the learned CIT(A) erred in deleting the above mentioned addition as section 68 of the IT Act, 1961 states that in failure of satisfactory explanation of the identity, creditworthiness and genuineness of the transaction, the assessing officer can invoke section 68 of the IT Act, 1961. In this case, the assessee failed to discharge the onus of proving the identity, creditworthiness and genuineness of the transaction thereby unexplained credits were added as Income by the assessing officer by invoking the section 68 of the IT Act, 1961. Hence, Ld. CIT(A) ought not to have deleted the addition made under section 68 of the IT Act, 1961.”*
2. Since in both the appeals, the issue involved are similar regarding addition made by the AO under section 68 of the Income Tax Act and

deleted by the CIT(A). The assessment was completed for the AY 2015-16 U/s 147/143(3) and for the AY 2016-17 was completed u/s 143(3) of the I T Act. For the sake of brevity, we are taking appeal for Assessment Year 2015-16 and the decision taken for Assessment Year 2015-16 shall apply mutatis mutandis for Assessment Year 2016-17.

3. Briefly stated, the facts of the case are that assessee filed its return of income on 29.09.2015 declaring total income at Rs.19,16,960/-. While completing the assessment under section 143(3) of the Act for the Assessment Year 2016-17 on 13.12.2018, it was noticed that the assessee has received cash credit of Rs.8.31 Crores from the entity M/s. Mangal trading and clothing LLP during the relevant previous year and listed the entity as sundry creditors. However, on the basis of detailed enquiry carried out, the AO established that the above said entity was a part of the multiple layers of shell entities for providing accommodation entry. During the course of assessment proceedings, assessee failed to discharge the onus to substantiate the credit entries appeared in the name of M/s. Mangal trading and clothing LLP. Accordingly, AO held that the genuineness of sum credited in the name of said entity was not established during the year in terms of section 68 of the Act. resultantly , Rs.8.31 Crore under section 68 of the Act was added and it was also noticed that the assessee has taken loan from the same entity during the Assessment Year 2016-17 of Rs.5.85 Crores and it is claimed as outstanding as on 31.03.2015. Accordingly, after recording reasons and duly following the procedure for reopening for reassessment, the case was reopened by issuing notice under section 148 of the Act and in response, assessee filed return of income on 17.01.2022. Subsequently, the other statutory notices were issued to the assessee. To

verify the genuineness of the credit entries appearing in the name of M/s. Mangal Trading and Clothing LLP, notice under section 142(1) of the Act was issued to the assessee asking for various details. Thereafter, another notice under section 142(1) of the Act was issued on 03.01.2022. However, there was no response from the assessee side. Accordingly, a show cause notice was issued for completing the assessment under section 144 of the Act on 17.01.2022. Thereafter, the assessee filed some details of the unsecured loan. After verifying the details, another letter was issued to the assessee on 21.01.2022 and the assessee filed further details. The AO noted that the assessee has not filed complete details of the creditors as per the notice issued u/s 142(1) of the Act. A notice under section 133(6) of the Act was also issued to the Magnificent Realcon Pvt. Ltd., (MRPL) (M/s. Mangal trading and clothing LLP) asking to furnish copy of ledger account with nature and reason of transaction, copy of bank statements highlighting the transactions, income tax returns for Assessment Year 2015-16 and 2016-17 and furnish copy of complete detail transactions with supporting documentary evidence. In this response, the MRPL (M/s. Mangal trading and clothing LLP) has uploaded its reply on 26.01.2022 and it was noticed that the MRPL furnished the ITR for Assessment Years 2013-14 to 2016-17 declaring meagre income of Rs.350/-, 730/-, Rs.-12,650 and loss of Rs.115/- and other details were also furnished but AO noticed that the MRPL has not furnished complete details viz., entire set of return of income, bank details highlighting the transactions and supporting documents. He further noted that merely filing of income tax returns / PAN, etc., of the creditors is not enough to prove the genuineness of cash credits and similarly payment by cheque is also questioned nor can it make a non-genuine

transaction genuine. If the assessee has not proved the three ingredients as per section 68 of the Act, the cash credit appearing in the books of accounts is bogus. He further noted that in the case of MRPL, that the MRPL having no taxable income and no evidences are submitted about the activity of MRPL and in the absence of financial statement, the genuineness of transactions, source of loan and credit worthiness of the depositors could not be verified. Further, it was noticed that the assessee has received loan from Sumitra Bai of Rs.75,000/- and from Ramesh Kumar Sancheti the assessee received Rs.1,50,000/- on 17.05.2014 but the assessee is unable to prove in terms of section 68 of the Act. During the course of proceedings, the assessee was requested to furnish the details of source in the hands of MRPL which was transferred in the bank account of the assessee as loan but the assessee has never submitted the same. As per the details furnished, the AO noticed that after verification of the bank account of MRPL, various companies have granted loan to MRPL amounting to Rs.6,08,50,000/-. On verification of the details furnished, the total addition was worked out under section 68 of the Act. Of Rs.5,87,25,000/-. Further, as per request made by the assessee, a video conference was organized and Shri. Sourabh, CA, attended the video conference on 24.03.2024 at 10.30 AM and it was submitted that the same was arising in the Assessment Year 2016-17 and against the Order the assessee has filed appeal before the CIT(A) which is still pending and also submitted tht the loan taken from MRPL has been repaid and as on date there is no outstanding. Accordingly, the AO treated the entire loan received of Rs.5.87,25,000/-.

4. Aggrieved from the above Order, the assessee filed appeal before the CIT(A). Before the CIT(A), assessee has filed documents that was filed

before the AO and after considering the various case laws and submission of the assessee, the Id. CIT(A) allowed appeal of the assessee observing as under:

“8.12. I have carefully considered the relevant and material facts on record, in respect of this ground of appeal, as brought out in the assessment order and submissions made during appeal proceedings. The moot point for adjudication is whether the AO was justified in treating the unsecured loan of Rs. 5,87,25,000/- raised by the appellant from the above entities during the year, as unexplained cash credits under section 68, in the light of evidence brought on record. The issue is being discussed, in the light of material available on record, in respect of different lender entities, as under.

8.13 In respect of loan credit of Rs. 5.85 Crore received from MRPL, I find that the appellant, in the course of assessment proceedings, has brought on record the particulars of loan creditor including name, complete address and PAN, the mode of receipt of loan. the bank statement of the appellant, supporting documents relating to the loan creditor viz. loan confirmation, explanation as to source of funds, copies of ITRs, audited financial statements, and banks statement of the loan creditor. The appellant has also substantiated source of funds in the hand of the loan creditor (i.e. MRPL) by submitting copies of ITRs and audited financial statements of several companies from whom MRPL has in turn received loan credits during the year. On a careful perusal thereof, I find that the appellant has satisfactorily discharged the primary onus last upon it to substantiate the unsecured loan transactions during year, by furnishing all the relevant and material evidence. The identity of the loan creditor is established as the entity is having PAN, CIN and is regularly filing return of income. The creditworthiness of the loan creditor is established from the audited balance sheets and profit and loss accounts, which show that the lender entity has adequate own funds (share capital and reserves). The source of funds in the hands of the loan creditor is explained by way of further loan credits received from various companies. The identity and lending

capacity of these companies is also established from their ITRs, audited balance sheets and profit and loss accounts, which show that these other companies have adequate own funds (share capital and reserves), and are also having substantial operating revenue, during the relevant period, to in turn advance the funds to MRPL. The genuineness of the transaction is established from the fact that both the acceptance and repayment of loan has been through banking channel, as evidenced from the bank statements of the loan creditor and the appellant, and interest has been paid by the appellant to the loan creditor, in respect of the loan transaction, for the relevant period, after duly deducting TDS thereon.

8.14 In the assessment proceedings, AO has merely doubted identity of the lenders on the ground that- (i) copy of acknowledgement of ITRs only were given, and (ii) only one e-mail ID was mentioned in cases of various lenders. AO has also doubted the creditworthiness of lenders, on the basis that "source of loans given" in the hands of loan creditor was not satisfactorily explained, and has brushed aside the plethora of documentary evidence furnished by the appellant. However, AO on his part has not made any independent enquiry viz. by way of issue of summons to the Directors, or calling for information from Banks, etc. to verify the genuineness of loan transactions. AO has not reverted any factual finding in the assessment order that there are cash deposits reflected in the bank statements of the loan creditor entity. AO has only made certain general observations regarding features of shell companies, and on that basis has drawn adverse inference as to creditworthiness of those companies from whom MRPL has received credits. However, in view of the specific, relevant and material evidence adduced by the appellant to substantiate the loan transaction, I am not inclined to agree with the adverse findings of the AO regarding genuineness of loan transactions.

8.15 I find considerable force in the plea taken by the appellant that the appellant could not be expected to have information about "source of source of funds" in the hands of lender, particularly so when the loans have subsequently been repaid. In this context, it is

pertinent to refer to the relevant provisions of section 68. The second proviso to section 68 (inserted by the Finance Act 2012, with effect from 1st April 2013), which provides that in cases where assessee is a closely held company, and any sum is found credited by way of share capital, share application money, share premium etc., the "source of source of such credits" is also required to be explained satisfactorily. It is noteworthy that this statutory obligation to explain not only the credit in the hands of the assessee, but also source of such credit in the hands of the creditor, is applicable only for credits in the nature of share capital, share application money etc., where it is reasonable to presume a continued relationship with the creditor; and not in respect of credits by way of loans or borrowings etc., the "source of source of such credits" is also. required to be explained satisfactorily. This amendment, however, is applicable to the Assessment Year 2023-24 and subsequent assessment years, hence does not apply to the year under consideration.

8.17 It is well-established that the onus lies on the assessee to adduce necessary documentary evidence so as to prove all the three ingredients of section 68 viz. identity and creditworthiness of the creditor, and genuineness of the transaction, as the relevant facts are within the special knowledge of the assessee. It has also been held that the evidence adduced by the assessee have to be examined not superficially but in depth and having regard to the test of the human probabilities and normal course of human conduct.

8.18 Hon'ble ITAT, Mumbai Bench, Mumbai in case of ITO v. Anant Shelters Pvt Ltd (20 taxmann.com 153) (2012) (Mum) has enumerated certain legal principles regarding taxation of cash credits under section 68 as under :-

"(1) Section 68 can be invoked when following three conditions are satisfied (a) when there is credit of amounts in the books maintained by the assessee, (b) such credit has to be a sum of money during the previous year, (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory. It is

only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

(ii) The expression the assessee offers no explanation means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. The opinion of the AO is required to be formed objectively with reference to the material on record file. Once the explanation of the assessee is found unbelievable or false the AO is not required to bring positive evidence on record to treat amount in question as income of the assessee. While considering the explanation of the assessee, the AO has to act reasonably-application of mind is the sine qua non for forming the opinion.

(iii) Phrase appearing in the section - nature and sources of such credits should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a causal manner. Assessee cannot be asked to prove impossible. Explanation about 'source of source' or 'origins of the origin' cannot and should not be called for while making inquiry under section.

(iv) In the matters related to section 68, burden of proof cannot be discharged to the hilt -such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under Section 68.

(v) Confirmatory letters or A/c payee cheques do not prove that the amount in question is properly explained for the purpose of section 68. Assessee has to establish identity and

creditworthiness of the creditor as well as the genuineness of the transaction. All the three ingredients are cumulative and not exclusive.

(vi) In matters regarding cash credit the onus of proof is not a static one. As per the provisions of the section the initial burden of proof lies on the assessee. Amount appearing in the books of a/cs. of the assessee is considered a proof against him. He can prove the identity of the creditors by either furnishing their PANs or assessment orders. Similarly, genuineness of the transaction can be proved by showing that the money was received by an account payee cheque or by draft. Credit worthiness of the lender can be established by attending circumstances. Once the assessee produces evidences about identity, genuineness and credit worthiness of the lender onus of proof shifts to the Revenue. "

5. Further the Id CIT (A) has relied on the following judgements and deleted the additions made by the Assessing Officer :-

- Rushabh Enterprises Vs. ACIT (60 taxmann.com) [2015] (Bombay)
- Pr.CIT Vs. Ojas Tarmake (P.) Ltd., [2023] (156 taxmann.com 75)
- Pr.CIT (Central) Vs. Naresh Nemchand shah [2023] (156 taxmann.com 346) (Gujarat)
- ITO Vs. Mega Collections (p.) Ltd., [2023] (151 taxmann.com 403) (Surat – Trib.)
- Pr.CIT Vs. Wel Intertrade (P.) Ltd., [2023] (152 taxmann.com 663) (Delhi)
- Pr.CIT Vs. Yogendrakumar Gupta [2023] (152 taxmann.com 661) (Gujarat)
- ITO Vs. Kayathwal Estate (P.) Ltd., [2022] (139 taxmann.com 317) (SC)
- Ambe Tradecorp (P.) Ltd., [2022] (145 taxmann.com 27) (Gujarat)
- CIT Vs. Lovely Exports (216 CTR 195) [2008] (SC)
- CIT vs creative World Telefilms Ltd.(2011) (333 ITR 100) (Bombay)

- CIT vs Gagandeep Infrastructure Pvt. Ltd (394 ITR 680) (2018) (Bombay)
 - ITO vs Anant Shelters Pvt. Ltd. (20 taxmann. Com 153) (2012) (Mum)
6. Aggrieved from the above Order, the Revenue filed appeal before the Tribunal.
7. The learned DR vehemently argued his case and strongly supported the Order of the AO. He further argued that the CIT(A) erred in granting relief to the assessee on merits without properly appreciating the facts and evidence on record. The DR highlighted that an elaborate and multilayered structure of Kolkata based companies were created to obscure and conceal the true source of funds received by the assessee. He stated that the entities involved lacked substantive business activity and primarily engaged in the circulation of money among themselves. The DR also contended that there was no justification for the substantial share premiums paid by these entities, which had no significant business operations. The DR also stated that the modus operandi of these entities is that one entity subscribes to or purchase shares of another at a high premium, and this process repeats across multiple interconnected entities which indicates that the entire arrangement lacked commercial rationale.
8. The DR further contended that mere filing of Income-tax file numbers of the creditors is not enough to prove the genuineness of cash credit and similarly payment by account payee cheque is also not sacrosanct nor can it make a non-genuine transaction genuine. The DR pointed out that the assessee, in an attempt to establish the identity of the creditors, had merely submitted copies of the ITR acknowledgments. However, this

evidence alone is inadequate to substantiate the identity and independent existence of the purported creditors. He further stated that the confirmation letters submitted by the assessee, from the creditors followed a uniform pattern and appeared to have been prepared by the same individual in all cases. This uniformity indicates that the assessee exercised control over the preparation and submission of these documents, undermining the claim of independent and bona fide transactions. The learned DR contended that the CIT(A) erred in deleting the additions of Rs.1,50,000 received from Shri Ramesh Kumar Sancheti and Rs.75,000 received from Mrs. Sumitra Bai during assessment year 2015-16. He argued that the assessee failed to substantiate these transactions during the assessment proceedings by furnishing sufficient evidence to establish the identity of the creditors, the genuineness of the transactions, and the creditworthiness of the lenders. The DR emphasized that the onus to prove the nature and source of these credits' rests squarely upon the assessee under Section 68 of the Act. In the absence of a satisfactory explanation and supporting documentation before the AO, the deletion of the additions by the CIT(A) is not proper.

9. The Id. Authorized Representative (AR) for the assessee contended that the CIT(A)'s order was justified on merits and requires no interference, as the assessee had provided substantial evidence to establish the genuineness of the transactions. The assessee submitted all necessary details and supporting documentation, including copies of income tax returns (ITRs), audited financial statements, and confirmations from the creditor entity. These included relevant extracts of the creditor's bank statements showing the advance given to the assessee, along with the corresponding source of funds received by the creditor as share capital. The AR further

stated that the assessment in the case of MRPL was completed under Section 143(3) for A.Y. 2012–13 by the Income Tax Officer, Ward-5(4), Kolkata. The said assessment was concluded after detailed examination, which included recording statements from the directors of the investor companies, and thereafter the return of income of MRPL was accepted. The AR also emphasized that the investor companies that contributed to MRPL's share capital during F.Y. 2011–12 are regular taxpayers. Copies of their ITRs and audited financial statements were submitted to substantiate their creditworthiness and the genuineness of the transactions. The AR argued that the assessee had adequately discharged the primary onus under Section 68 of the Act by establishing the identity and creditworthiness of the creditor, as well as the genuineness of the transactions. Therefore, the additions made by the AO are unwarranted and the CIT(A)'s decision to delete the additions should be upheld.

10. The learned AR for the assessee has also contended that the assessee has duly placed on record pertinent contemporaneous evidence, which unequivocally substantiates the identity and creditworthiness of the creditor, as well as the genuineness of the transactions in question. A meticulous examination of the Bank Statements of the creditor reveals that there were no cash deposits made immediately prior to the encashment of the cheques issued in favour of the assessee, thereby foreclosing the possibility of any accommodation entries. Furthermore, he also stated that, a perusal of the financial statements of the creditor discloses that it possessed sufficient financial wherewithal, as evidenced by its substantial reserves and surplus, to extend the advances to the assessee, thereby lending credence to the genuineness of the transactions.

11. The AR for the assessee pointed out that M/s. MRPL received the share capital/premium in question during the A.Y. 2012-13. However, the assessee received amounts from M/s. MRPL during A.Y. 2015-16 and 2016-17, which is after a gap of three years. The AR argued that the Revenue's contention that the amounts received by the assessee represent its own unaccounted money lacks merit as the significant time gap between M/s. MRPL's receipt of share capital/premium and the assessee's receipt of amounts from M/s. MRPL undermines the Revenue's claim of a direct nexus between the two transactions.

12. The AR for the assessee vehemently argued that the requirement to substantiate the 'source of source' of funds is applicable only for share capital, share premium and share application and not for unsecured loans and he placed reliance on the Supreme Court decisions in CIT vs. Daulat Ram Rawatmall, 87 ITR 349 & CIT vs. Lovely Exports Pvt Ltd, 216 CTR 195. The AR submitted that the provisions of section 68 of the Act were amended by the Finance Act, 2022 by inserting the first proviso with effect from 01.04.2023. This proviso stipulates that where the sum credited consists of loans, borrowings, or any such amounts, the "source of the source" of such credits must also be satisfactorily explained. However, the AR emphasised that, this amendment is applicable to the Assessment Year 2023-24 and subsequent assessment years and, therefore, does not apply to the Assessment Years 2015-16 and 2016-17. The AR further argued that as per the provisions of Section 68 of the Act prior to its amendment through Finance Act, 2022, a company in which the public is not substantially interested is required only to explain the immediate source of the receipt

concerning unsecured loans, and no obligation exists to trace the source of such funds beyond the immediate creditor. In the present case, the assessee raised funds in the form of unsecured loans, and since the first proviso to Section 68 is not retrospective, there was no statutory mandate for the assessee to substantiate the "source of the source" for such loans.

13. We have carefully considered the rival submissions and perused the materials on record. During the proceedings before us, the assessee has furnished a Paper Books containing the documentary evidence in support of his case. Our perusal of the record reveals that the assessee has furnished complete particulars of the credits received during the relevant assessment years, including the name, address and PAN of the creditor, the amount and mode of receipt, and the bank statement of the assessee to substantiate the receipt of funds through banking channels. Furthermore, the assessee has also submitted supporting documents relating to the creditor entity, M/s. MRPL, including confirmation letters, bank statements depicting the payments made to the assessee, audited financial statements, and copy of ITRs, which establish that the creditor entity has duly acknowledged & recorded the transactions in its books of accounts.

14. The assessee has submitted all requisite details and supporting documentary evidence before the authorities below as well. We observe that the assessee has provided confirmation letters from creditors, which can be found on pages 127 and 305 of the Paper Book. Furthermore, the incorporation certificates of MRPL are located on pages 328-331, while the income tax returns and audited financial statements of MRPL span from pages 332 to 492. Notably, the balance sheet of MRPL for the year ended

March 31, 2012, which is found on page 351 of the Paper Book, discloses reserves and surplus of Rs.15.62 crores. Additionally, the assessment order passed in the case of MRPL for the assessment year 2012-13 by the ITO, Ward-5(4), Kolkata, is located on page 505. This order reveals that MRPL issued 1,57,200 shares at a face value of Rs.1 to raise a capital of Rs.15.64 crores. We note that in order to verify the share capital issued, the Assessing Officer issued notices under Section 133(6) of the Act to the share applicants/allottees. Following a detailed examination and recording of the statements of the directors of the investors of M/s. MRPL, the assessment was concluded by accepting the return of income.

15. The AR for the assessee pointed out that subsequent to the conclusion of the assessment in the case of M/s. MRPL order dated 31.03.2014 completed u/s 143(3) of the I T Act, no adverse action was taken against the said company. There is sufficient reserve and surplus (Net Worth) had the company in the financial year ending 31.03.2012 and out of this reserve the MRPL ha given loan to the assessee company. According to the AR, this inaction on the part of the Revenue implies an implicit acceptance of the transactions in question.

16. In respect of the loan credits of Rs.75,000/- received from Mrs. Sumitra Bai and Rs.1,50,000/- received from Mr. Ramesh Kumar Sancheti during the assessment year 2015-16, the learned AR submitted that the assessee had fully discharged the onus placed upon him under Section 68. The AR argued that the assessee provided complete details of the loan creditors, including their names, addresses, and PAN before the authorities below. To substantiate the transactions, the assessee also furnished

supporting documents, such as loan confirmations and copies of the creditors' ITRs. In the case of Mrs. Sumitra Bai, it was specifically stated that she had directly responded to the notice issued under Section 133(6) of the Act by furnishing copies of her bank statements. Furthermore, the AR contended that both individuals are regular income tax filers, and the income declared in their ITRs is adequate to establish their financial capacity to advance the loan amounts in question. The genuineness of the transactions is further corroborated by the assessee's bank statements, which provided direct evidence of the receipt of funds through proper banking channels. The AR concluded that the identity of the creditors, their creditworthiness, and the genuineness of the transactions were all satisfactorily demonstrated through credible and relevant evidence. Looking to the income declared by the lenders and quantum of loan the learned CIT(A) has rightly deleted .

17. Section 68 of the Act mandates that where any sum is credited in the books of account of the assessee for which no explanation is offered or the explanation offered is found unsatisfactory by the Assessing Officer, such sum may be charged to income-tax as the income of the assessee for that previous year. In the present case, the assessee was not required to explain the source of funds in the hands of M/s. MRPL, since the MRPL has sufficient own funds which is clear from the financial statements and it was received in the AY 2012-13. The Assessing Officer's assertion that MRPL received share capital from unknown companies is unfounded and contrary to the facts on record. It is pertinent to note that these companies are filing Income Tax Return. Furthermore, the assessee has placed on record the copies of the income tax returns and audited financial statements of the investors of M/s. MRPL, thereby established the authenticity and credibility

of the investors. The assessee has provided a clear explanation regarding the source of the credit in its books of account as unsecured loan.

18. It was held by Hon'ble Supreme Court in the case of Roshan Di Hatti v. CIT [1977] 107 ITR 938 that onus of proving the source of sum of money found to have been received by the assessee, is of assessee. Once the assessee has submitted the documents relating to identity, genuineness of transactions and creditworthiness, then ld. AO must conduct enquiry and call for more details before invoking section 68 of the Act. If the assessee is not able to provide a satisfactory explanation of the nature and sources, the credit shown in the books of accounts in the assessment year under consideration is open to the lower authorities to hold that it is the income of the assessee and there would be no burden on the revenue to show that the income is from any particular sources. It is to be noted that once the assessee has produced the documents relating to identity, genuineness of transactions and creditworthiness of the lender, then the lower authority is duty bound to conduct an independent enquiry to verify the same. In the present case, the assessee not only disclosed the source of the credits reflected in its books of accounts but also furnished the assessment records of the creditor, demonstrating that the source of funds in the creditor's hands had been subjected to scrutiny. The CIT(A) has rightly distinguished the judgment of Hon'ble apex Court in the case of NRA Iron & Steel (P) Ltd. (103 taxmann. Com 48 (2019) (SC). In this case the lender has sufficient reserve & funds maintain for the last three years and it was accepted by the revenue authority in assessment proceedings u/s 143(3) vide order dated 31.03.2014 placed at paper book page No. 505 to 507. The judgement indicates that the assessee

discharged its initial onus under Section 68, and any addition made without further investigation or rebuttal of the evidence provided by the assessee would be untenable in law.

19. In view of the above observations, we are of the considered opinion that the assessee has satisfactorily explained the source of credits in his books and consequently, the CIT(A) has rightly deleted the additions after relying on various judgments made by the Assessing Officer, and no further intervention is warranted under these circumstances. In result the orders of the CIT(A) deleting aggregate addition of Rs.6,13,95,000/- for the assessment year 2015-16 & Rs.8,31,00,000/- for the assessment year 2016-17 is hereby upheld.

20. In the result, the appeals of the Revenue are **dismissed**

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated : 04.12.2024.
/NS/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.