

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2749/DEL/2017  
(Assessment Year: 2012-13)**

ITO, Ward 1 (1),  
New Delhi.

vs.

M/s. AMB Homes Pvt. Ltd.,  
D-62, Ground Floor,  
Defence Colony,  
New Delhi – 110 024.

**(PAN : AAGCA4596C)**

**CO No.152/Del/2017  
(in ITA No.2749/DEL/2017)  
(Assessment Year: 2012-13)**

M/s. AMB Homes Pvt. Ltd.,  
D-62, Ground Floor,  
Defence Colony,  
New Delhi – 110 024.

vs.

ITO, Ward 1 (1),  
New Delhi.

**(PAN : AAGCA4596C)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Mohit Gupta, CA  
REVENUE BY : Shri Kanv Bali, Sr. DR

**Date of Hearing : 24.09.2024  
Date of Order : 06.12.2024**

**ORDER**

**PER S. RIFAUR RAHMAN,AM:**

1. This appeal is filed by the Revenue against the order of ld. Commissioner of Income-tax (Appeals)-I, New Delhi [hereinafter

referred to 'Ld. CIT (A)'] dated 28.02.2017 and assessee has also filed cross objection for Assessment Year 2012-13.

2. Brief facts of the case are, assessee filed its return of income declaring loss of Rs.18,69,022/- on 01.10.2013. The case was selected for scrutiny under CASS. Accordingly, notices under section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. However several notices issued by the Assessing Officer u/s 142(1) of the Act and details of date of notices were disclosed in the assessment order itself. However, since non-compliance by the assessee, the Assessing Officer proceeded to complete the assessment u/s 144 of the Act based on the material available on record. The Assessing Officer proceeded to make disallowance u/s 14A of the Act to the extent of Rs.67,934/- and addition u/s 68 of the Act by observing that assessee has shown unsecured loans as long term borrowings received from related parties. Out of the above long term borrowings, he observed that Rs.6,58,28,164/- was received during the year and assessee has not filed any confirmation or any other details in the course of assessment proceedings. The same remained unverifiable, hence he proceeded to make the abovesaid additions.
3. Aggrieved, assessee preferred an appeal before the ld. CIT (A)-I, New Delhi. Assessee filed grounds of appeal and detailed submissions.

After considering the submissions of the assessee, ld. CIT (A) rejected the submissions of the assessee on reasons of passing the order u/s 144 of the Act and found that the Assessing Officer has followed the due procedure laid down u/s 144(1) of the Act. He held that the Assessing Officer was justified in passing the order u/s 144 of the Act. However, on merits, ld. CIT (A) after considering the detailed submissions filed by the assessee deleted the additions u/s 14A of the Act with the observation that assessee has not received any exempt income during the year. With regard to addition u/s 68 of the Act, ld. CIT (A) considered the submissions and evidences made by the assessee during appellate proceedings along with paper book, confirmation and other supporting evidences to prove the identity, creditworthiness and genuineness of the loans accepted from various parties. After considering the above submissions, ld. CIT (A) remanded the matter back to the Assessing Officer and Assessing Officer submitted the remand report and for the sake of clarity, the remand report was also reproduced in the appellate order. However, for the sake of clarify, the same is reproduced below :-

<i>S.No.</i>	<i>Name and address of the party</i>	<i>Remarks</i>
<i>1.</i>	<i>Sh. Manoj Sethi (Director of the company) B-179, Greater Kailash, Part-1, New Delhi-110048</i>	<i>Letter sent on 17.08.2016 has neither been received back nor any reply received. Another letter dated 30.09.2016 was sent on the similar address as provided by the assessee. This notice has been returned</i>

		<p><i>back with the remarks "Left".</i></p> <p><i>The assessee vide letter dated 23.11.2016 was asked to offer his comments on the above observation. The assessee vide letter dated 09.12.2016 submitted that the address of Mr. Manoj Sethi has been changed from B-179, Greater Kailash, Part-1, New Delhi-110048 to W- 12, Ground Floor, Greater Kailash-II, New Delhi. Sh. Manoj Sethi vide his letter dated 16.12.2016 submitted his confirmation that an amount of Rs. 92,27,000/- was given as unsecured loan to the assessee company during the relevant assessment year. Sh. Manoj Sethi is the director of the assessee company.</i></p>
2.	<p><i>M/s Crayons Advertising Ltd., NSIC Complex, Maa Anandmayee Marg, Okhla Industrial Estate, Phase- III, New Delhi-110020</i></p>	<p><i>Reply was received vide letter dated 25.08.2016. However, the party has denied to have provided any loan and advances to the assessee. Copy of the response received is enclosed herewith.</i></p> <p><i>The assessee vide letter dated 23.11.2016 was asked to offer his comments on the above observation. The assessee vide letter dated 09.12.2016 submitted that "in respect of M/s Crayons Advertising Pvt. Ltd, the balance amount of Rs.25,00,000/- has been confirmed by the party as a payment of share application money instead of loans &amp; advance. It is a matter of change in grouping of the amount in Balance Sheet of the company. The company have not received any share application form from M/s Crayons Advertising Pvt Ltd".</i></p> <p><i>However, no further confirmation has been filed by the party.</i></p>
3.	<p><i>M/s Mani Mudra Vincom (P) Ltd. 16, Netaji Subhash Road, 4<sup>th</sup> floor, BBD Bagh, Kolkata-700001</i></p>	<p><i>The party vide letter dated 23.8.2016 has submitted that it had advanced a demand loan of Rs. 2,50,00,000/- to the assessee company during the month of September in the relevant assessment year. Interest @12% per annum is being charged on the above loan and the closing balance as on 31.3.2012 was Rs. 2,65,54,164/-.</i></p> <p><i>From the details filed, it is noticed that the</i></p>

		<p>party has not submitted the complete bank statement for the relevant assessment period. It has only submitted the bank statement for the period 1.9.2011 to 30.9.2011. Further, from the perusal of the bank statement, it is noticed that there have been 5 credit entries totaling to Rs. 2,80,00,000/-. Further on the same day, amount of Rs. 2,25,00,000/- and Rs. 25,00,000/- has been debited in favour of the assessee company. Thus, there has been credit entries which are immediately followed by debit entries of similar amount. It is also noticed that the party has shown returned income of Rs. 4,90,370/- for the AY 2012-13. Thus, even though the identity of the party has been established, they have not been able to establish their profit generating apparatus to advance such a huge amount of loan to the assessee company. Therefore, the creditworthiness of the party is not proved.</p>
4.	<p>M/s Omni Media Communication (P) Ltd., B-23, 3<sup>rd</sup> floor, Greater Kailash-1, New Delhi – 48</p>	<p>Reply was received vide letter dated 25.8.2016. However, the party has denied to have provided any loan and advances to the assessee Copy of the response received is enclosed herewith.</p> <p>The assessee vide letter dated 23.11.2016 was asked to offer his comments on the above observation. The assessee vide letter dated 9.12.2016 submitted that “in respect of M/s Omni Media Communication Pvt. Ltd. the balance amount of Rs. 25,00,000/- has been confirmed by the party as a payment of share application money instead of loans and advances. It is a matter of change in grouping of the amount in balance sheet of the company. The company have been received and share application from M/s Omni Media Communication Pvt. Ltd.</p> <p>However, no further confirmation has been filed.</p>
5.	<p>M/s Pawansut Media Services (P) Ltd., 1837/138, Shanti Nagar</p>	<p>Letters dated 17.8.2016 and 30.9.2016 were sent to the party. Both the letters have returned back with the remarks “left”.</p> <p>The assessee vide letter dated 23.11.2016</p>

	<p><i>Trinagar, New Delhi 35</i></p> <p><i>was asked to offer his comments on the above observation. The assessee vide letter dated 09.12.2016 submitted that, "in respect of M/s Pawansut Media Services Pvt Ltd, the address of the company has been changed from 1837/138, Shanti Nagar, Tri Nagar, New Delhi to B-8/38, Ansal Tower, Nehru Place, New Delhi-110019."</i></p> <p><i>In view of the above submission by the assessee, information u/s 133(6) was called vide letter dated 20.12 2016 from M/s Pawansut Media Services (P) Ltd at the new address. The party vide letter dated 27.12.2016 which was received on 3.11.2017 has submitted that it has given an amount of Rs.25,00,000/- during the AY 2012-13 to the assessee company as an interest free unsecured loan.</i></p> <p><i>From the details filed, it is noticed that the party has submitted the bank statement for the period 1.4.2011 to 30.06.2011. Further, from the perusal of the bank statement, it is noticed that the opening balance of the account was only Rs. 10,225.88 and during this half year period, there are only two credit entries which are immediately followed by debit entries of the same amount, which is typical of a paper company. There was a credit entry of Rs 25,00,000/- on and on the same day, there was a debit entry in the bank account of the same amount in favour of the assessee company. It is also noticed that the party has shown returned income of Rs.53,054/- for the AY 2012-13. The party has only shown other income of Rs.6,57,285/- consisting of interest received and miscellaneous income. Thus, even though the identity of the party has been established, they have not been able to establish their profit generating apparatus to advance the said loan to the assessee company Therefore, the creditworthiness of the party is not proved.</i></p>
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6.	M/s Real Vyapar (P) Ltd. Room No. 6, 4 <sup>th</sup> floor, 7 Ganesh Chandra Avenue Kolkata -700013	<p><i>Letter dated 17.08.2016 and 30.09.2016 were sent. However, no reply has been received.</i></p> <p><i>The assessee vide letter dated 23.11.2016 was asked to offer his comments on the above observation. The assessee vide letter dated 09.12 2016 submitted that "in respect of M/s Real Vyapar (P) Limited, the company has confirmed us that they are sending the reply of the notice u/s 133(6) of the income-tax Act, 1961 in our case."</i></p> <p><i>However, no reply has been received from the party as yet. Thus the transaction remained unverifiable.</i></p>
7.	M/s Ambica Tradeexpo (P) Ltd 3, PLA Mohan Apartment, Punjabi Bagh West, Delhi	<p><i>Letter dated 17.08.2016 and 30.09.2016 were sent.</i></p> <p><i>The assessee vide letter dated 23.11.2016 was asked to offer his comments on the above observation. The assessee vide letter dated 09.12.2016 submitted that, "in respect of M/s Ambika Tradeexpo (P) Limited, the company has confirmed us that they are sending the reply of the notice u/s 133(6) of the Income-tax Act, 1961 in our case."</i></p>

4. Ld. CIT (A) considered the assessment order as well as remand report submitted by the Assessing Officer and discussed the individual transactions with Manoj Sethi, Director of the Company, Crayons Advertising Ltd., Mani Mudra Vincom (P) Ltd., Omni Media Communication (P)Ltd., M/s. Pawansut Media Services (P) Ltd., M/s. Real Vyapar (P) Ltd. and Ambica Tradeexpo (P) Ltd. in his order and he deleted the additions made by the Assessing Officer to the extent of

Rs.5,58,28,164 and sustained addition of Rs.1 crore received from Ambica Tradeexpo (P) Ltd. with the following observations :-

“ I have considered the submission of the appellant and the information filed by the appellant in the remand proceedings and verification done by the AO u/s. 133(6) in the remand proceedings. It is seen that identity, creditworthiness and genuineness of the transaction in respect of Sh. Manoj Sethi, Crayon Advertising Pvt. Ltd., Money Mudra Vincom Pvt. Ltd., Omni Media Communication Pvt. Ltd., Pawansut Media Services Pvt Ltd. and Real Vyapar Pvt. Ltd. has been established, therefore, the loan as well as share application money received from these companies to the extent of Rs. 5,58,28,164/- is held to be explained and addition to that extent made by the AO u/s. 68 is deleted. However, the loan shown from Ambika Tradexpo Pvt. Ltd. of Rs. 1,00,00,000 has not been proved by the appellant. In the case of said company, the appellant has failed to prove identity, creditworthiness and genuineness of transactions. Hence, amount received from the said company is treated as unexplained cash credits in the hands of the appellant and addition made by the AO to the extent of Rs.1,00,000/- u/s. 68 is upheld. As a result, ground no. 7 and 8 are partly allowed.”

5. Aggrieved with the above order, Revenue is in appeal before us raising following grounds of appeal :-

*“1. The Ld. CIT(A) erred in deleting addition of Rs. 4,65,69,863/- made u/s. 68 of the Act being non genuine loans introduced in the name of five parties namely (i) Ms Crayons Advertising ltd. (ii) M/s Mani Mudra Vincom (P) Ltd. (iii) M/s Omni Media Communication (P) Ltd., (iv) M/s Pawansut Media Services (P) Ltd. (v) M/s Real Vyapar (P) Ltd.*

*2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”*

6. Assessee has also filed cross objections received following grounds of appeals :-

“1. That the Ld. Assessing Officer as well as CIT (Appeal) has erred while upholding the addition of Rs.100 lacs being amount borrowed from M/s. Ambika Tradeexpo Pvt. Ltd. u/s 68 of the Income Tax Act, 1961.

2. That Ld. Assessing Officer has erred while adding Rs.4,65,69,863/- u/s 68 of Income Tax Act, 1961 in spite of complete evidence available with the Ld. AO.”

7. At the time of hearing, ld. DR for the Revenue submitted that in this case, the AO has given proper and sufficient opportunity to the assessee before proceeding to make the assessment under section 144 of the Act. He submitted that it is also brought out in the Remand Report by the Assessing Officer that the investor companies have received the amounts in their accounts just before investing in the shares of the assessee company or before making loans to the assessee. He further submitted that ld. CIT (A) has not countered the findings given in the Remand Report of the AO specially in the case of the amounts received from M/s Mani Mudra Vincom Pvt Ltd., M/s Pawansut Media Services Pvt Ltd., and Real Vyapar Pvt Ltd. In the case of Mani Mudra Vincom Pvt Ltd and Pawansut Media Services Pvt Ltd , these entities have received amounts immediately before transfer to the assessee. He submitted that no explanation and evidence to show

the creditworthiness of these entities was given. He further submitted that ITAT, Mumbai in ITA No.1835 & 1836/Mum/2014 M/s Royal Rich Developers Pvt. Ltd. vs DCIT Dated 24.08.2016 has held that it is for the assessee to explain the creditworthiness of the share subscribers and genuineness of the transaction including the source of source. He further submitted that in this regard, the ITAT held that section 68 of the Act amended by Finance Act 2012, w.e.f 01.04.2013 is clarificatory in nature and hence would apply retrospectively where by the onus is cast upon the assessee to justify the source of share subscription including share premium raised and to explain the source of source of raising the share subscription and ITAT, Mumbai has relied upon the decision of ITAT, Kolkata in the case of Subhlakshmi Vanijya (P) Ltd. Vs CIT (2015) 60 Taxmann.com 60 (Kolkata) in the above matter. He further submitted that similarly it is still not known whether the assessee has issued shares to M/s Cryons Advertising Ltd and M/s Omni Media Communications Pvt Ltd from whom amounts have been received for share subscription. In this regard, he placed reliance on further following decisions for genuineness of the transactions and creditworthiness and capacity to pay :-

*“1. PCIT, Central-I Vs NRA Iron & Steel Pvt. Ltd. [2019] 103 taxmann.com 48 (SC).*

*The principal that emerges when sums of money are credited as share capital/ premium are:-*

(i) Assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investments in question, to the satisfaction of the Assessing Officer, so as to discharge the primary onus.

(ii) The AO is duty bound to investigate the creditworthiness of the creditors/ subscribers, verify identity of the subscribers and ascertain whether the transaction is genuine or these are bogus entries of name lenders.

(iii) If the enquiries & investigation reveal that the identity of the creditors to be doubtful or dubious or lack creditworthiness, then the genuineness of the transaction would not be established. Then assessee would not have discharged the primary onus contemplated by Section 68.

Based on the above principles, the Assessing Officer have made verifications in the case of the assessee relating to unaccounted money placed as share application money.

The other case laws that need to be considered regarding explaining source of source are as under:-

2. *PCIT Vs. Rajmandir Estates (P.) Ltd. (2016) 70 taxmann.com124 (Calcutta)*

" Para 29 - Whether receipt of share capital was a taxable event prior to 1st April, 2013 before introduction of Clause (VII b) to the Sub-section 2 of Section 56 .of the Income Tax Act; whether the concept of arms length pricing in a domestic transaction before introduction of Section 92A and 92BA of the Income Tax Act was there at the relevant point of time are not questions which arise for determination in this case. The assessee with an authorised share capital of Rs.1.36 crores raised nearly a sum of Rs.32 crores on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees is an important pointer necessitating investigation. Money allegedly received on account of share application can be roped in under Section 68 of the Income

*Tax Act if the source of the receipt is not satisfactorily established by the assessee. Reference in this regard may be made to the judgement in the case of Sumati Dayal (supra) wherein Their Lordships held that any sum "found credited in the books of the assessee for any previous year, the same may be charged to income tax .... ". We are unable to accept the submission that any further investigation is futile because the money was received on capital account. The Special Bench in the case of Sophia Finance Ltd. (supra) opined that "the use of the words "any sum found credited in the books" in Section 68 indicates that the said section is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money. Mere fact that the payment was received by cheque or that the applicants were companies, borne on the file of Registrar of Companies were held to be neutral facts and did not prove that the transaction was genuine as was held in the case of Nova Promoters and Finlease (P) Ltd. (supra). Similar views were expressed by this Court in the case of Precision Finance (P.) Ltd. (supra). We need not decide in this case as to whether the proviso to Section 68 of the Income Tax Act is retrospective in nature. To that extent the question is kept open. We may however point out that the Special Bench of Delhi High Court in the case of Sophia Finance Ltd. (supra) held that "the ITO may even be justified in trying to ascertain the source of depositor". Therefore, the submission that the source of source is not a relevant enquiry does not appear to be correct."*

2. *CIT VS Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34)*

*Where Hon'ble Delhi High Court held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68. It was held as follows:*

*"12. A perusal of the order of the Tribunal shows that it has gone on the basis of the documents submitted by the assessee before the AO and has held that in the light of those documents, it can be said that the assessee has established the identity of the parties. It has further been observed that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought back in the form of share application money. As noted in the earlier paragraph, it is not the burden of the AO to prove that connection. There has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68. With respect, it appears to us that there has only been a mechanical reference to the case-law on the subject without any serious appraisal of the facts and circumstances of the case.*

*13. We, therefore, answer the substantial question of law framed by us in the negative, in favour of the revenue and against the assessee. The appeal of the revenue is allowed with no order as to costs."*

*Please also refer to Para 9 of the above Judgement.*

*4. Indus Valley Promoters Ltd. Vs. Commissioner of Income Tax 305 ITR 202 (Delhi)*

*The main plank of the assessed arguments is that the source of the source cannot be examined In the present case, the Revenue has seen through the ploy of the assessed whereby substantial amount have been deposited in cash purportedly in the books of M/s Indwheels stated to be a partnership firm and from where the amounts have been withdrawn and credited to the account of Sh. Sanjay Gupta in the books of the assessed company. It is the case of the Revenue that the same cash deposits could have been made in the books of the*

*assessed company and the method of choosing the circuitous path is only an attempt to circumvent the provisions of Section 68 of Act.*

5. *Commissioner of Income Tax Vs Precision Finance Pvt. Ltd. (1994) 208 ITR 465 (Cal)*

*It is for the assessee to prove the identity of the creditors, their creditworthiness and the genuineness of the transactions. In our view, on the facts of this case, the Tribunal did not take into account all these ingredients which have to be satisfied by the assessee. Mere furnishing of the particulars is not enough. The enquiry of the Income-tax Officer revealed that either the assessee was not traceable or there was no such file and, accordingly, the first ingredient as to the identity of the creditors had not been established. If the identity of the creditors had not been established, consequently the question of establishment of the genuineness of the transactions or the creditworthiness of the creditors did not and could not arise. The Tribunal did not apply its mind to the facts of this particular case and proceeded on the footing that since the transactions were through the bank account, accordingly, it is to be presumed that the transactions were genuine. It was not for the Income-tax Officer to find out by making investigation from the bank accounts unless the assessee proves the identity of the creditors and their creditworthiness. Mere payment by account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. In that view of the matter, the question before us is answered in the negative and in favour of the Revenue ..*

6. *CIT Vs Empire Builtech (P.) Ltd (366 ITR 110)*

*Where Hon'ble Delhi High Court held that u/s 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities.*

7. *Burden to explain source of source of the credit is on the assessee - Blessing Construction VITO [2013] 32 taxmann.com 366/214 Taxmann 645 Gujarat."*

8. On the other hand, ld. AR for the assessee submitted as under :-

S. No.	Party Name	Facts of the case
1	M/s. Crayon Advertising Ltd.	<i>The appellant has filed the confirmation along with copy of bank statement, balance sheet &amp; ITR of the said company and copy of the ledger account of company. The said company also confirmed the said transaction. The party has declared an income of Rs. 9,36,77,261/- for AY 12- 13. In view of the said facts, the identity, creditworthiness &amp; genuineness of the transactions held established.</i>
2	M/s. Mani Mudra Vincom (P) Ltd.	<i>The appellant filed the copy of bank statement, balance sheet &amp; ITR of the said company. The said company also confirmed the said transaction. The party has sufficient reserves and surplus of Rs.73 crores ( approx) . Interest was duly paid and TDS was deducted. In view of the said facts, the identity, creditworthiness &amp; genuineness of the transactions held established. The balance was also repaid in subsequent years.</i>
3	M/s. Omni Media Communication (P) Ltd.	<i>The appellant filed the copy of bank statement, bal sheet &amp; ITR of the said company. The said company also confirmed the said transaction. The party has declared income of Rs. 64,96,541/- and has shown Share holder Funds of Rs. Rs. 1,67,75,440/- and also share app. money pending allotment of Rs. 45,00,000/-. In view of the said facts, the identity, creditworthiness &amp; genuineness of the transactions held established.</i>
4	M/s. Pawansut Media Services (P) Ltd.	<i>The appellant filed the confirmation along with copy of bank statement, bal sheet &amp; ITR of the said company and</i>

		<i>copy of the ledger account of company in appellant's books. The said company also confirmed the said transaction. The party has shown SH Funds of Rs. 17,70,700/-, R&amp;S of Rs.15,71,31,687/- and investment of Rs. 15.01 cr. In view of the said facts, the identity, creditworthiness &amp; genuineness of the transactions held established.</i>
5	<i>M/s. Real Vyapar (P) Ltd.</i>	<i>The appellant filed the confirmation along with copy of bank statement, bal sheet &amp; ITR of the said company and copy of the ledger account of company in appellant's books. The said company also confirmed the said transaction. The party has shareholder funds of Rs.51,38,168/- and short-term borrowings of Rs.6.90 cr and loan &amp; adv at Rs.4,33,75,000/-. In view of the said facts, the identity, creditworthiness &amp; genuineness of the transactions held established. Further, the said amount has also been repaid by the appellant vide chq, no. 173903 of Axis Bank, Lajpat Nagar in July ' 20q3 and thus squared off.</i>

9. He further submitted in the brief synopsis as under :-

*"When the assessee has completely provided all the relevant details of the loan transaction to prove the identity, genuineness & credit worthiness in terms of Sec. 68 of the Income Tax Act, 1961 in the course of proceedings and all the transactions are through 'indisputable banking channel, then whether the assessee needs to further prove the source of source in terms of Sec. 68 of the Act for AY 2012-13"*

*Covered Matter:-*

*- By the Hon'ble Delhi High Court in the case of COMMISSIONER OF INCOME TAX-IV vs M/S*

*DWARKADHISH INVESTMENT PVT LTD (ITA 911/2010 & ITA 913/2010 and CM APPL. 12294/2010 & CM APPL.12296/2010) in favour of the assessee.*

*- By the Hon'ble Delhi High Court in the case of COMMISSIONER OF INCOME TAX-II vs KINETIC CAPITAL FINANCE LTD (ITA 87/2007) in favour of the assessee.*

*- By the Hon'ble Delhi Benches of ITAT in the case of ACIT,CC-26 Vs S.P. Singla Construction P. Ltd. (ITA No. 5163/Del/2016) in favour of the assessee.*

*- By the Hon'ble Delhi Benches of ITAT in the case of ACIT, Circle- 33(1) Vs Smt. Prem Anand (ITA No. 3514/Del/2014) in favour of the assessee and numerous other judgements.*

*The copies of the aforesaid judgements are enclosed herewith.*

*Held:*

*Once the assessee discharge its initial onus to prove the identity, creditworthiness and genuineness of the parties from whom the amounts have been received in terms of Sec. 68 of the Act, then the onus to prove would shift to the Revenue. Moreover, it is held by the Hon'ble Delhi High Court that it is a settled law that the assessee need not to prove the source of source. Further, the assessee is not required to explain source of source of the fund gets further buttressed by the amendment made in section 68 with effect from 01.04.2013, which empowers the AO to examine source of source in case of share application money from 01.04.2013 and no other cases prior to that. This amendment further does not give power to the AO to examine source of source of non-share capital cases and that too prior to 01.04.2013.*

*Prayer:-*

*In view of the aforesaid judicial pronouncements, it is hereby prayed that the contention of the Revenue that the deletion of addition of Rs. 4,65,69,863/- by CIT(A) is wrong is totally invalid and thus the appeal of the revenue needs to be dismissed.*

10. Ld. AR further submitted that issue, “*Where the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants/loans by submitting the PAN details, bank account statements, audited financial statements, balance sheet, profit and loss account and Income Tax acknowledgments and confirmations etc., the addition under section 68 is not warranted.*” In this regard, he placed reliance on the following judgments :-

- (a) *CIT V Fair Investment Ltd. 357 ITR 146*
- (b) *CIT V. Lovely Exports Ltd. (2008) 216 CTR 195 (SC)*
- (c) *CIT V. Kamdhenu Steel and Alloys Ltd. 361 ITR 220 (Del HC)*
- (d) *CIT V. Vrindavan Farms Pvt. Ltd. ITA 71 of 2015 (Del HC)*
- (e) *CIT V. Laxman Industrial Resources Pvt. Ltd. ITA 169 of 2017 dated 14th March 2017 (Del HC)*
- (f) *Dwarakadhish Investment P. Ltd. (ITA No. 911 of 2010) (Del HC)*
- (g) *Dwarkadhish Capital P. Ltd. (ITA No. 913 of 2010) (Del HC)*
- (h) *CIT V. Winstralpetrochemicals P. Ltd. 330 ITR 603 (Del HC)*
- (i) *CIT V. Value Capital Services Pvt. Ltd. (2008) 307 ITR 334 (Del HC)*
- (j) *Pro CIT V. Kurele Paper Mills P. Ltd. 380 ITR 571 (Del HC)*
- (k) *Hon'ble High Court order in CIT vs; Gangeshwari Metal P.Ltd. in ITA no.597/2012 judgement dated 21.1.2013*
- (l) *ACIT V. Mis. S P Singla Constructions P. Ltd. ITA No. 5163/Del/2016 dated 17-02-2021 (Del ITAT)*

11. Considered the rival submissions and material placed on record. We observed from the record that the Assessing Officer was of the view, the assessee has declared long term borrowings received from related parties to the tune of Rs.16,41,62,164/- and out of the above borrowings, Rs.6,58,28,164/- was received during the year. The Assessing Officer has no occasion during the original assessment proceedings to verify the documents and the assessee has submitted

various documents during appellate proceedings and the same was remanded back to Assessing Officer. The Assessing Officer verified the documents and gave a remand report after considering the additional evidences. He gave his findings in the remand report. Ld. CIT (A) considered the submissions of the assessee, remand report and discussed party-wise in detail. With regard to Manoj Sethi, ld. CIT(A) observed that he is a Director of the assessee company and assessee has declared a loan of Rs.8,88,74,000/-. He further observed that there was an opening credit balance of Rs.2,88,34,000/- and out of the above said amount, assessee has repaid Rs.7,96,00,000/- during the year and closing balance of Rs.3,81,08,000/- on 31.03.2012 was shown. In support of the above, assessee also filed return of income of Manoj Sethi for AY 2012-13 wherein he has declared an income of Rs.2,94,79,060/-. He observed that bank statement of Manoj Sethi was also submitted before him and the relevant transactions were confirmed by Manoj Sethi and even, in remand proceedings, the Assessing Officer has not found any negative observations. Therefore, substantial amount received by the assessee during the year was already repaid. Accordingly, he came to the conclusion that identity, creditworthiness and genuineness was established by the assessee. Therefore, we do not see any reason to disturb the findings of ld. CIT(A).

12. With regard to Crayons Advertising Pvt. Ltd., ld. CIT (A) deleted the addition with the observation that the said company has filed the reply u/s 133 (6) of the Act before the Assessing Officer and confirmed the transactions. He also observed that they have declared an income of Rs.9,36,77,261/- in their return of income. Therefore, we are inclined to accept the same.
13. With regard to Mani Mudra Vincom Pvt. Ltd., this company also replied to the notice issued/ u/s 133(6) of the Act during the remand proceedings and they have confirmed the transactions before ld. CIT(A). Further, he observed that the assessee also paid interest @ 12% after deducting TDS and all these transactions were routed through banking channel, they also submitted copy of bank statements, copy of books of account and Balance Sheet along with return of income. Accordingly, ld. CIT (A) after due consideration gave the relief. Therefore, we are inclined to accept the same.
14. With regard to Omni Media Communication Pvt. Ltd., ld. CIT (A) observed that this amount also received by the assessee through banking channel. This company also submitted the confirmations in reply to notice issued u/s 133 (6) of the Act during remand proceedings. However, he noticed misclassification of the above loan as 'share application money paid' by them. However, assessee has shown the same in 'loans and advances'. Since it is a minor error on

the part of classification by the assessee, however the company has submitted the confirmation of transaction. Accordingly, Id. CIT (A) found that the identity, creditworthiness and genuineness of the transaction are already established. Since the assessee has submitted relevant documents to prove the conditions laid down u/s 68 of the Act, Id. CIT (A) has appreciated the issue under consideration. The issue has to be verified on the basis of credit on the books of account and the amended provisions shall apply for AY 2013-14. Therefore, we are inclined to accept the findings of Id. CIT (A).

15. Similarly, Id. CIT (A) also deleted the addition of Rs.25,00,000/- from Pawansut Media Services Pvt. Ltd. by analysing their balance sheet and confirmation of the transactions.
16. Further with regard to Real Vyapar Pvt. Ltd., Id. CIT (A) noticed that the transaction also through banking channel. However, the Assessing Officer has stated in the remand report that this party has not replied to the notices issued u/s 133(6) of the Act. When the same was brought to notice of the assessee during remand proceedings, the assessee has submitted that they will reply to the above notice, however the Assessing Officer reported that he has not received any reply. However, Id. CIT (A) observed that assessee has submitted tracking record of India Post as per which the reply of the company was delivered on 04.01.2017 to the Assessing Officer. When this aspect

was brought to the notice of ld. CIT (A), ld. CIT (A) called for the assessment records and found that the abovesaid reply was delivered to the Assessing Officer and it was found in the assessment records. After going through the abovesaid reply, he found that they have confirmed that they lent the loan to the assessee on 07.10.2011 and confirmed the transaction. In support of the same, they also filed copy of bank statement of Standard Chartered Bank through which the said amount was paid. Further he noticed that the assessee has repaid the same in FY 2013-14 through banking channel vide cheque no.173903 of Axis Bank, Lajpat Nagar. After considering the balance sheet submitted by them, ld. CIT (A) found that they have sufficient creditworthiness and accordingly, he deleted the addition by observing that assessee has established identity, genuineness and creditworthiness of the transaction. Therefore, we after analysing the same hold that the assessee has established the genuineness, creditworthiness and identity in this case. Hence, we are inclined to accept the findings of ld. CIT(A).

17. Further, with regard to loan from M/s. Ambika Tradeexpo Pvt. Ltd., ld. CIT (A) observed that on receipt of loan of Rs.1 crore from M/s. Ambika Tradeexpo Pvt.Ltd. vide cheques dated 04.06.2011 and 09.06.2011, assessee has filed confirmations from them. However, he also observed that during remand proceedings, they have not replied to

the Assessing Officer. Further when the assessee was updated with the fact and assessee has submitted that assessee will provide the confirmation from them and ld. CIT (A) while verifying the assessment record found that no such reply was received by the Assessing Officer and not found any other documents substantiating the transactions. Accordingly, he sustained the addition of Rs.1 crore.

18. After considering the details findings of the ld. CIT (A), since there is no submission made by either party on addition of Rs.1 crore towards M/s. Ambika Tradeexpo Pvt. Ltd., we are not sustaining the same. Accordingly, the appeal filed by the Revenue is dismissed.
19. Further, assessee has filed cross objections to the extent of objections raised relating to appeal filed by the Revenue, since we are already adjudicated in favour of the assessee, the same are dismissed. With regard to M/s. Ambika Tradeexpo Pvt. Ltd., the assessee has not pressed the same, therefore, the cross objection is dismissed.
20. In the result, the appeal filed by the Revenue is dismissed and cross objection filed by the assessee is dismissed.

**Order pronounced in the open court on this 6<sup>th</sup> day of December, 2024.**

**SD/-  
(SUDHIR PAREEK)  
JUDICIAL MEMBER**

**SD/-  
(S.RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

**Dated: 06.12.2024  
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI