

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'B', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Before Shri Sanjay Garg, Judicial Member and
Sanjay Awasthi, Accountant Member**

**I.T.A. Nos.179 & 180/Kol/2024
Assessment Years: 2017-18**

D.C.I.T, Central Circle-4(3), Kolkata

..... Appellant

vs.

**Avima Exports Pvt. Ltd.
4th floor, 16, N. S. Road, Dalhousie,
West Bengal'700001.
(PAN: AAGCA5857N)**

..... Respondent

Appearances by:

Shri A. Kundu, CIT, DR appeared on behalf of the Appellant.

Shri Manish Tiwari, FCA, appeared on behalf of the Respondent.

Date of concluding the hearing: December 19, 2024

Date of pronouncing the order: December, 23, 2024

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा/ Per Sanjay Garg, Judicial Member:

Both the captioned appeals have been preferred by the revenue against the separate orders dated 22.11.2023 and 29.11.2023 of the Ld. Commissioner of Income Tax (Appeals), Kolkata-27 (hereinafter referred to as the "Ld. CIT(A)" passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for Assessment Year (AY) 2017-18.

2. Since grounds are most common and facts are identical, except variance in amount, both the appeals have been heard together and are being disposed of by this consolidated order for the sake of convenience. First, we take up ITA No. 179/Kol/2024 as the lead case.

ITA No. 179/Kol/2024:

3. The Revenue in this appeal has taken the following Grounds of appeal:

“1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeal) has erred in deleting the additions of Rs.7,26,00,000/- (assessment order u/s.143(3) of the Act dated 27.12.2019) and Rs. 2,24,00,000/- (assessment order u/s 147/143(3) of the Act dated 14.03.2022) made u/s 68 of the Income Tax Act 1961 on account of Unexplained cash credit.

2. That on the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in deleting the addition of Rs. 4,75,000/- (assessment order u/s. 147/143(3) of the Act dated 14.03.2022) made u/s. 69C of the Income Tax Act 1961 on account of Commission paid to entry operators.

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT (Appeal) has erred in deleting the addition of Rs.42,10,718/- (assessment order u/s. 147/143(3) of the Act dated 14.03.2022) made u/s. 36(iii) of the Income Tax Act 1961 on account of Disallowance of relatable interest expenses.

4. That the revenue reserves its rights to substantiate, modify, delete, supplement and/or alter the grounds at any time of the appeal proceedings.”

3.1 The revenue, though in this appeal has taken as many as four grounds of appeal, however, only ground No1 arises out of the impugned Assessment order dated 27.12.2019 passed u/s 143(3) of the Income Tax Act and the corresponding Appellate order of the CIT(A). The remaining three grounds Pertain to ITA No. 180/Kol/2024 which are emanating from the assessment order dated 14.03.2022 passed u/s 147/143(3) of the Income Tax Act, the same will be discussed in the later part of this order.

3.2 The facts in brief are that the assessee filed its return of income u/s. 139 of the Act on 31.10.2017 declaring total income at Rs.46,65,770/-. Later, the case was selected for scrutiny through CASS. It was noticed by the Assessing Officer (in short, “the AO”) that in the

Financial Year (in short “FY”) 2016-17, the assessee had taken unsecured loans from the following parties.

Name of Loan Creditor	Nature of Transaction	Amount (Rs.)
Gyaneshwar Vyapaar Pvt. Ltd.	Unsecured Loan (squared off during the year)	40,00,000
Jatasiv Piazza Pvt. Ltd	Unsecured Loan	5,76,00,000
Nityadhara Housing Pvt. Ltd.	Unsecured Loan (squared off during the year)	40,00,000
Oversure Piazza Pvt. Ltd.	Unsecured Loan (squared off during the year)	70,00,000
	Total Loan	7,26,00,000

3.3. The AO issued show-cause notice to the assessee on 22.10.2019, requesting to furnish the details and documentary evidences substantiating the identity and creditworthiness of the aforesaid loan creditors and to prove the genuineness of the above transactions. The assessee furnished the requisite documents such as registration details of the creditor companies, their PAN Nos., copies of their financials, bank statement etc. and pleaded that the loan was taken in regular course and due interest was paid thereupon. The AO, however, did not get satisfied with the details submitted by the assessee. He observed that none of the aforesaid creditors had sufficient income to provide loans of such huge amounts. Hence, the AO formed the opinion that the assessee had failed to establish the identity and creditworthiness of the aforesaid loan creditors and that the aforesaid loan transactions were not genuine. The AO, accordingly, added the aforesaid amount of Rs.7,26,00,000/- to the total income of the assessee as unexplained cash credit u/s. 68 of the Act vide assessment order dated 27.12.2019 passed u/s 143(3) of the Act.

4. Being aggrieved by the aforesaid assessment order, assessee preferred the appeal before the Ld. CIT(A). The Ld. CIT(A), however, by

way of a detailed order, deleted the additions so made by the AO. The Revenue, thus, has come in appeal before us.

5. We have heard the rival contentions of the Ld. Representatives of the parties and gone through the record.

5.1 Before the Ld. CIT(A), the assessee reiterated its submissions and again furnished the relevant details of loan creditor companies which included the address and PAN of the allottees, the identity and address proof of the directors of the loan creditor companies, share application forms, bank statements highlighting the transactions, PAN Cards of the applicants, financial statements with ITR acknowledgements for AY 2017-18, along with details of sources of funds, with supporting documentary evidences. The Ld. CIT(A) forwarded the said documentary evidence along with submissions to the AO for a remand report. Thereafter, the AO sent the remand report to the Ld. CIT(A) reiterating his observations as were made in the assessment order. and recommended for the confirmation of the impugned additions. The Ld. CIT(A) , however, after going through the remand report, considering the evidences on record, and after analysing the financials and other details of each of the creditors, including their financial worthiness and source of the funds held that the assessee had been able to successfully discharge the burden fastened upon it to prove the identity and creditworthiness of the creditors and genuineness of the transactions. He in this respect observed that the AO had made general observations of modus operandi of some of the companies to obtain bogus loan entries. The Ld. CIT(A), in this respect, observed that the aforesaid general observations made by the AO were not applicable in the present case of the assessee. He further observed that the assessee and the loan creditor companies had provided their bank statements, in which no cash deposits were found before advancement of loan to the assessee. The Ld.

CIT(A) observed that once the assessee had submitted the documents relating to identity, genuineness of the transaction, and creditworthiness of the creditors, then, AO was duty bound to conduct an independent enquiry to verify the same. He observed that however, in this case, the AO had not made any independent enquiry to verify the genuineness of the transactions. He observed that the assessee had furnished all the details and documents before the AO but the AO had not pointed out any discrepancy or insufficiency in the said evidences and details furnished by the assessee before him. He noted that the assessee having discharged its initial burden cast upon him to furnish the evidences to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, it shifted on the AO to examine the evidences furnished and even make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidences furnished by the assessee by confronting with the same. Having held so, the Ld. CIT(A) thereafter, himself carried on the exercise to examine the details and evidences furnished by the assessee. He, thereafter, by way of a detailed order, observed that in this case, the loans were advanced by the creditors in the due course of business and that even the creditors had duly reflected the receipt of interest from the assessee in their income tax returns. He noted that in this case, all the creditor companies were active compliant companies with the Registrar of Companies and they have also been filing their returns with the Income Tax Department. That all the material necessary for establishing the identities, creditworthiness and genuineness had been furnished by the assessee. He further observed that each of the loan creditors-maintained bank accounts and copies of their respective bank accounts from which they had made payments to the assessee were filed by each of them before the AO as well before the Ld. CIT(A). Further, each

of the loan creditors accepted the fact that they have advanced loan to the assessee and that such transactions were duly reflected in their respective books of accounts, as well as in their audited Balance Sheets. He further noted that the creditors had duly explained the source of funds which was from sale of investment. He further noted that the AO had not doubted the source of funds with the creditors. He noted that the AO had not produced any material to show that the transactions were unnatural. The Ld. CIT(A) observed that in this case, the only objection of the AO was that the loan creditor companies did not have enough profits to justify the payment of loans to the assessee. The Ld. CIT(A), however, in this respect, noted that in order to prove the creditworthiness of a company, it was not always necessary to look only for the profits of the company. That it was an accepted position of law that net profits were not the only indicators of the investment making capacity of an entity. He noted that what had to be examined was the net worth of entity as well the availability of money with it. He noted that there were plethora of judicial decisions that have expounded this proposition. He in this respect referred to the following decisions:

“ a) In the case of CIT, Dehi vs. Ms. Mayawati, 338 ITR 563 (Del), 03/08/2011, the Hon'ble Delhi High court held the following:

"The capacity 'of any person does not mean how they earn monthly or annually but the term capacity is a wide term and that can be pursued by how wealthy he is. All the formalities, as per the law are made by the assessee and donors as well. "

b) Further, reliance may be placed in the case of Dy. CIT vs. Rohini Builders [2002] 256 ITR 360/[2003] 127, The Hon'ble Gujrat High Court has held the following:

"The onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the assessing officer is satisfied about the source of 'cash deposited in the bank accounts of the creditors', the proper course would be to

assess such credit in the hands of creditors (after making due enquiries from such creditor)."

c) Besides that, the Hon'ble ITAT, Ahmedabad, in the case of DCIT vs. A. S. Shah, ITA No.945/Ahd/2018, 02/08/2023, held the following:

"The unsecured loan availed was repaid in the next financial year to the creditor namely Smt. Hansaben M. Patel through cheque payments and the bank statement also filed before the Lower Authorities. Therefore, we are of the considered opinion, the provisions of section 68 do not attract in the above transaction and thereby we uphold the order passed by the Ld. CIT(A) deleting the addition made u/s. 68 of the unsecured loans availed from Smt. Hansaben M. Patel. The so-called unsecured loan was given by Account Payee cheques and also repaid by the assessee in the next financial year through banking channels. The recovery proceedings u/s. 226(3) initiated against Mukesh J. Shah was also dropped by the A. O. Therefore, the provisions of section 68 do not attract of the loan transactions between the assessee M/s. Savitaben Mangaldas Trust and Shri Mukesh J. Shah. Therefore, the addition on this account is also liable to be deleted and the grounds raised by the Revenue is devoid of merits."

In the present case most of the loans were repaid during the same FY only. The above observations of the Hon'ble ITAT is clearly applicable to the present case.

d) Further, in the case of CIT v. S. Kamaljeet Singh [2005] 147 Taxman 18 (All.), the Hon'ble Allahabad High Court had pronounced that on the issue of discharge of assessee's onus in relation to a cash credit appearing in his books of account, has observed and held as under:-

"4. The Tribunal has recorded a finding that the assessee has discharged the onus which was on him to explain the nature and source of cash credit in question. The assessee discharged the onus by placing (i) confirmation letters of the cash creditors; (ii) their affidavits; (iii) their full addresses and GIR numbers and permanent account numbers. It has found that the assessee's burden stood discharged and so, no addition to his total income on account of cash credit was called for. In view of this finding, we find that the Tribunal was right in reversing the order of the AAC, setting aside the assessment order. "

e) Further, the decision of the Hon'ble High Court, Calcutta in the case of S.K. Sothra & Sons, HUF v. Income-tax Officer, Ward-46(3), Kolkata 347 ITR 347 wherein the Court held as follows:

"15. It is now a settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no

explanation is given or the explanation given by the assessee is not satisfactory, the Assessing Officer can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to assessee.

16. In the case before us, the assessee by producing the loan-confirmation-certificates signed by the creditors, disclosing their permanent account numbers and address and further indicating that the loan was taken by account payee cheques, no doubt, prima facie, discharged the initial burden and those materials disclosed by the assessee prompted the Assessing Officer to enquire through the Inspector to verify the statements.

f) Furthermore, there are many judicial pronouncements clearly establishing that if the assessee proves identity, genuineness and creditworthiness and if no fresh enquiries were made by the AO to disprove the assessee's claim, it cannot be taken as addition u/s 68 of the Act. in the case of CIT vs. Y.K. Gupta [2014]46 (HC), the Hon'ble Gujrat High Court, The Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del), Carissa Investment (P) Ltd. Vs ACIT (ITAT Delhi) in ITA. No. 6448/Del.12016 dated 22.01.2021.”

5.2. The Ld. CIT(A), thereafter, discussed the financials and net worth of each of the creditors. The relevant part of the order of the ld. CIT(A) is reproduced as under: -

“ Gyaneshwar Vyapaar Pvt Ltd :

The assessee in order to substantiate the Identity, Creditworthiness and Genuineness of the transaction with the loan creditor, the assessee company submitted the following documentary evidence.

- Income Tax Return for the Assessment Year 2017-18 evidencing that the company is an income tax assessee regularly assessed to tax,*
- PAN: AAECG6384J.*
- Bank Statement maintained by the company for the relevant period evidencing the advancing of loan and receipt of the principal amount with interest through proper medium.*
- Source of Funds.*

- *Loan Confirmation from the loan party duly evidencing that the loan along with interest after deducting TDS was routed through bank.*
- *Master Data available on the ROC website evidencing that the company exists at the given address.*

The above documentary evidence were submitted during the assessment proceedings and further also at the time of remand proceedings before the AO. The AO has not reported any discrepancy in the documentary evidence.

Further on a perusal of the audited annual accounts of the loan creditor company as submitted in form of paper book (Pg 113-124). I find that during the relevant year the company had substantial shareholder's fund and Reserves & Surplus of Rs. 23,32,72,047/- and the amount of loan advanced to assessee company was Rs 40,00,000/-, which approximately 1.71 % of the available funds. Thus the party had substantial resources on its own, shareholders fund to advance the loan of Rs. 40,00,000/- and earn interest income. Thus, the creditworthiness of the company with respect to the loan transaction is beyond any doubt. Also from the copy of loan confirmation, it was observed that the loan was squared off during the assessment year and interestingly I find that the repayment of loan is accepted by the AO without any adverse comment.

Jatasiv Piazza Pvt Ltd

The assessee in order to substantiate the Identity, Creditworthiness and Genuineness of the transaction with the loan creditor, the assessee company submitted the following documentary evidence .

- *Income Tax Return for the Assessment Year 2017-18 evidencing that the company is an income tax assessee regularly assessed to tax,*
- *PAN: AACCCJ7969G.*
- *Bank Statement maintained by the company for the relevant period evidencing the advancing of loan and receipt of the principal amount with interest through proper medium.*
- *Source of Funds.*
- *Loan Confirmation from the loan party duly evidencing that the loan along with interest after deducting TDS was routed through bank.*
- *Master Data available on the ROC website evidencing that the company exists at the given address.*

The above documentary evidence were submitted during the assessment proceedings and further also at the time of remand proceedings before the AO. The AO has not reported any discrepancy in the documentary evidence.

On a perusal of the audited annual accounts of the loan creditor company as submitted in form of paper book (Pg 132-143), I find that during the relevant year the company had substantial shareholder's fund and Reserves & Surplus of Rs. 19,34,06,810/- and the amount of loan advanced to assessee company was Rs 5,76,00,000/-, which approximately 29.78% of the available funds. Thus the party had substantial resources on its own, shareholders fund to advance the loan of Rs. 5,76,00,000/- and earn interest income. The interest income received by the company was duly reflected in the annual accounts. Thus, the creditworthiness of the company with respect to the loan transaction is beyond any doubt. Also from the copy of loan confirmation, it was observed that the loan amounting to Rs. 5,51,00,000/- (approx.) was squared off during the assessment year and the closing balance as on 31.03.2017 was Rs 25,00,0001-. Interestingly I find that the repayment of loan is accepted by the AO without any adverse comment.

Nityadhara Housing Pvt Ltd.

The assessee in order to substantiate the Identity, Creditworthiness and Genuineness of the transaction with the loan creditor, the assessee company submitted the following documentary evidence.

- Income Tax Return for the Assessment Year 2017-18 evidencing that the company is an income tax assessee regularly assessed to tax,*
- PAN: AADCN9446R.*
- Bank Statement maintained by the company for the relevant period evidencing the advancing of loan and receipt of the principal amount with interest through proper medium.*
- Source of Funds.*
- Loan Confirmation from the loan party duly evidencing that the loan along with interest after deducting TDS was routed through bank.*
- Master Data available on the ROC website evidencing that the company exists at the given address.*

The above documentary evidence were submitted during the assessment proceedings and further also at the time of remand proceedings before the AO. The AO has not reported any discrepancy in the documentary evidence.

On a perusal of the audited annual accounts of the loan creditor company as submitted in form of paper book (Pg 163-174), I find that during the relevant year the company had substantial shareholder's fund and Reserves & Surplus of Rs. 9,86,15,289/- and the amount of loan advanced

to assessee company was Rs 40,00,000/-, which approximately 4.06% of the available funds. Thus the party had substantial resources on its own, shareholders fund to advance the loan of Rs. 40,00,000/- and earn interest income. Thus, the creditworthiness of the company with respect to the loan transaction is beyond any doubt. Also from the copy of loan confirmation, it was observed that the loan was squared off during the assessment year and interestingly I find that the repayment of loan is accepted by the AO without any adverse comment.

Oversure Plaza Pvt. Ltd.

The assessee in order to substantiate the Identity, Creditworthiness and Genuineness of the transaction with the loan creditor, has submitted the following documentary evidence.

- *Income Tax Return for the Assessment Year 2017-18 evidencing that the company is an income tax assessee regularly assessed to tax,*
- *PAN: AABC06328H.*
- *Bank Statement maintained by the company for the relevant period evidencing the advancing of loan and receipt of the principal amount with interest through proper medium.*
- *Source of Funds.*
- *Loan Confirmation from the loan party duly evidencing that the loan along with interest after deducting TDS was routed through bank.*
- *Master Data available on the ROC website evidencing that the company exists at the given address.*

4.5.14 The above documentary evidence were submitted during the assessment proceedings and further also at the time of remand proceedings before the AO. The AO has not reported any discrepancy in the documentary evidence. On a perusal of the audited annual accounts of the loan creditor company as submitted in form of paper book (Pg 163-174), I find that during the relevant year the company had substantial shareholder's fund and Reserves & Surplus of Rs. 9,96,43,671/- and the amount of loan advanced to assessee company was Rs. 70,00,000/-, which approximately 7.03% of the available funds. Thus the party had substantial resources on its own, shareholders fund to advance the loan of Rs. 70,00,000/- and earn interest income. Thus, the creditworthiness of the company with respect to the loan transaction is beyond any doubt. Also from the copy of loan confirmation, it was observed that the loan was squared off during the assessment year and interestingly I find that the repayment of loan is accepted by the AO without any adverse comment.

5.3. The Ld. CIT(A), thereafter, concluded that factually all the loan creditor companies had sufficient net worth of their own to make the investments. In most cases the percentage of net worth so-invested was at a very a very low percentage of their net worth. He further referred to the decision of the ITAT, Kolkata in the case of ITO vs. Goodpoint Commoddeal (P) Ltd in ITA No. 1204/Kol/2015 for AY 2017-18, order dated 07.06.2019, wherein, further reliance has been placed on the decision of the hon'ble Delhi High Court in the case of CIT Vs. Mayawati when reported in 338 ITR 563 (Del), wherein it has been observed as under:

*"Thus, we note that we find all the four share subscribers have been assessed by the Department and that too u/s. 143(3) of the Act and the genuineness of the transactions, cannot be disputed since the payments have been made through banking channel and we note that there cannot be any dispute in respect to creditworthiness of the share subscribing companies since they had sufficient net worth/own fund in its kitty to invest in the assessee company. It would be worthwhile to take note of the observation by Hon'ble Justice A. K. Sikri while delivering the judgment in CIT Vs. Mayawati when His Lordship then was in Hon'ble Delhi High court reported in 338 ITR 563 (Del) observed that **"The capacity of any person does not mean how they earn monthly or annually but the term capacity is a wide term and that can be pursued by how wealthy he is. All the formalities, as per the law are made by the assessee and doors as well."** Therefore, the Hon'ble 'High Court was pleased to uphold the action of the Tribunal in deleting the addition made by the Department against the assessee Mayawati".*

5.4 The Ld. CIT(A) relying upon the aforesaid case laws, noted that in this case, the loans granted, as compared to the net worth of the investing companies were quite low and acceptable and would not pose a risk to the company on account of a significant depletion of its net worth. That the AO had also not made any comment upon this aspect or raised any doubts. That all the loan creditors have demonstrated their respective sources and their means for arranging funds from genuine sources for making investment in assessee company. Therefore, in this case the loan given by such loan creditor companies could not be treated as

unexplained u/s 68 of the Act. He also held that the loans in the case of each of the creditor were squared off during the financial year itself, in which the loans were taken. He after detailed discussion on the facts and issue involved in this case, deleted the additions so made by the AO.

5.5. After hearing the Ld. Representatives of the parties, we do not find any infirmity in the order of the Ld. CIT(A). The ld. CIT(A) nhas categorically held that the assessee had taken short term loans for its business needs and due interest was paid by the assessee on the said loans. The receipt of interest has also been taken into account by the creditors and due taxes paid thereupon. Moreover, the Ld. AR of the assessee has demonstrated that all the loans were repaid during the financial year, itself, in which the loans were taken. Under the circumstances, we do not find any infirmity in the order of the CIT(A) in this case, hence the same is upheld. Appeal of the revenue is, hereby, dismissed.

ITA NO 180/Kol/2024:

6. After the aforesaid scrutiny assessment, a survey action was also carried out at the premises of the assessee. During the said survey action, it was noted that the assessee had accepted unsecured loans amounting to Rs. 2,24,00,000/-, from four more parties. Statement of Shri Vivek Gupta, key person of the assessee company was recorded during the survey action, wherein he admitted that the assessee had taken accommodation entries from the aforesaid four loan creditors. The case of the assessee was thus reopened u/s 147 of the Act, whereby the AO made addition of the aforesaid loan credits also into the income of the assessee. The AO also made addition presuming that the assessee might have paid commission in obtaining the aforesaid bogus loan entries. He also disallowed the interest expenditure paid by the assessee on the

aforesaid loans. The Ld. CIT(A), however, vide impugned order, deleted the addition so made by the AO. The Revenue, thus has come in appeal before us.

7. We have heard the rival contentions and gone through the record. The facts and issue involved are identical to that have been discussed above in Revenue's appeal against the order of the CIT(A) deleting the additions made by the AO on account of unsecured loans in the assessment order passed u/s 143(3) of the Act. The ld. CIT(A) noted that the assessee had illustrated the entire facts along with all the relevant documentary evidence before him. That the assessee had furnished not only before the AO but also before him all the relevant details of loan creditor companies which included the address and PAN of the loan creditors, the identity and address proof of the directors of the loan creditor companies, loan confirmation, bank statements highlighting the transactions, financial statements with ITR acknowledgements for AY 2017-18, along with details of sources of funds and source of source, with supporting documentary evidences. The Ld. CIT(A) himself carried on the exercise to examine the details and evidences relating to each of the creditor and held that the assessee had furnished all the material necessary for establishing the identities, creditworthiness of the creditors and genuineness of the transactions. He observed that each of the loan creditors maintained bank accounts and copies of their respective bank accounts from which they had made payments to the assessee were filed by each of them before the AO as well before him. Further each of the loan creditors accepted the fact that they have advanced loan to the assessee and that such transactions were duly reflected in their respective books of accounts, as well as in their audited Balance Sheets. The assessee through the paper book submitted source of funds of all the loan creditors and no discrepancy was ever reported by the AO. He

observed that the AO has not brought any material on record to prove that the transaction was unnatural. Further, that all the loans were repaid during the year in which the said loans were taken. He, therefore held that the assessee had duly proved that the loans were taken for a short period for the business needs of the assessee, due interest was paid on the said loans, which was duly accounted for in the books of accounts of the creditors. The creditors had filed their Income Tax Returns. The source of source was duly explained, which was not doubted by the AO. The creditors had good financial worth and the loan amount was a very small percentage of their net creditworthiness. He observed that the only adverse comment noted by the AO was based on statements recorded during the survey operation of Shri Vishwanath Gupta and Shri Vivek Gupta, the key persons of the company who later retracted their statements as the same contended to be recorded in duress. The Id. CIT(A) in this respect has noted that the alleged statement was retracted by way of affidavits dated 29.11.2019 & 24.12.2019 respectively, as the same was recorded in duress and was not voluntary. It was also explained that at the time of survey, the family was going through tough phase, as wife of Shri Vishwanath Gupta & mother of Shri Vivek Gupta was detected with cancer and was in Mumbai for treatment. Thus, the statement was given purely to avoid the immediate pressure from survey party. Thus the statement were retracted. The Ld. CIT(A) in this respect has also placed reliance upon the CBDT letter no 286/2/2003-IT (Inv) dated 03.10.2023, which clearly states that statement recorded under undue pressure/coercion at the time of search/survey should be considered adversely.

7.1 The Id. CIT(A) hence, duly considering the facts and evidences on record, deleted the impugned addition of loan amount as well as of Rs. 4,75,000/- as estimated by the AO @ 0.5% of total loan of

RS.9,50,00,000 on account of commission paid. He also deleted the disallowance of interest expenditure.

8. After considering the rival submissions, we note that the Ld. CIT(A) has extensively discussed all the facts and circumstances of the case. He has also held that except the statement recorded of the key person of the assessee during the survey action, otherwise there was no evidence before the AO for holding the aforesaid short term loans by the assessee as bogus. However, it has been explained that at the time of survey, the family was going through tough phase, as wife of Shri Vishwanath Gupta & mother of Shri Vivek Gupta was detected with cancer and was in Mumbai for treatment. Thus, the statement was given purely to avoid the immediate pressure from survey party. It has been held time and again that the effect of force, threat undue influence or coercion depends upon the mental state of a person and it may vary from person to person and in this case, shri Vivek Gupta and Shri Vishwanath Gupta, were under extreme mental pressure during the period of survey action. So far so, the legal sanctity of a statement made under section 133A during the survey action is concerned, the various courts have held time and again that such statements do not have any evidentiary value. The Hon'ble Madras High Court in the case of "CIT vs. S. Khaderkhan Son" (2008) 300 ITR 0157 has observed that an offer of additional income made in a statement during the course of survey action under section 133A of the Act has no evidentiary value especially when there was no material on record to prove the existence of such disclosed income or earning of such income in the hands of the assessee. The Hon'ble High Court further observed that section 133A of the Act does not empower any Income Tax Authority to examine any person on oath, hence, any such statement has no evidentiary value and any admission made during such statement cannot, by itself, be made the basis for addition. The above findings of

the Hon'ble High Court have been upheld by the Hon'ble Supreme Court as the appeal against the said order has been dismissed by the Hon'ble Supreme Court vide order dated 20.09.12 reported in (2012) 25 Taxman.com 413. Similar view has been adopted by the Hon'ble Delhi High Court in the case of "CIT vs. Dhingra Metal Works" (2010) 328 ITR 0384 and by the Hon'ble Kerala High Court in the case of "Paul Mathews & Sons vs. CIT" (2003) 263 ITR 0101. Even the Hon'ble A.P. High Court in the case of "Naresh Kumar Agarwal" (2015) 53 taxmann.com 306 (Andhra Pradesh) has observed that where, in the absence of any incriminating material etc. found from the premises of the assessee during the course of search, statement of assessee recorded under section 132(4) would not have any evidentiary value. Similar view has been adopted by the Jaipur bench of the Tribunal in the case of "Shree Chand Soni vs. DCIT" (2006) 101 TTJ 1028 (Jodhpur).

The Hon'ble Delhi High Court in the case of "CIT vs. Harjeev Agarwal" in ITA No.8/2004 vide order dated 10.03.16 has observed that a statement made under section 132(4) of the Act on a stand-alone basis, without reference to any other material discovered during search and seizure operation, would not empower the AO to make a block assessment merely because any admission was made by the assessee during search operation. In the case of "Commissioner of Income Tax vs. Sunil Agarwal" (2015) 64 taxman.com 107 (Delhi-HC), the assessee therein, during the course of search, made a categorical admission under section 134 that the cash amount seized belonged to him and it represented undisclosed income not recorded in the books of accounts. The assessee did not immediately retract from the above admission but only during the assessment proceedings at a belated stage. In his retraction, the assessee stated that the surrender was made under a mistaken belief and without looking into books of account and without understanding

law and that he had been compelled and perturbed by events of search and that the pressure of search was built so much that he had to make the surrender without having actual possession of the assets or unexplained investments or expenses incurred and that there was no such income as undisclosed. The Hon'ble Delhi High Court, after considering the fact and circumstances of the case, while dismissing the appeal of the revenue, observed that though the fact that the assessee may have retracted his statement belatedly, yet, it did not relieve the AO from examining the explanation offered by the assessee with reference to the books of account produced before him. Although, a statement under section 132(4) of the Act carries much greater weight than the statement made under section 133A of the Act, but a retracted statement even under section 132(4) of the Act would require some corroborative material for the AO to proceed to make additions on the basis of such statement.

In the case of "Basant Bansal vs. ACIT" reported in (2015)63 taxmann.com 199 (Jaipur Trib.), having somewhat similar facts, the assessee therein, during the search and seizure action u/s 132 of the Act, offered a summary disclosure of income as undisclosed and the department accepted the summary surrender of income and thereafter advance tax for the said surrendered of income was also deposited, but thereafter it was contended by the assessee that the surrender was made under threat or coercion and that no incriminating material was found during the search action. The stand of the department was that the admission was voluntary and was not under a mistaken belief of fact or law and that the assistance had enough time to go through the facts of their case, law applicable in their case and take advice from their counsels and advisors before filing the letter of surrender of undisclosed/unaccounted income and that the admission by them was

final and binding on them; The co-ordinate Jaipur Bench of the Tribunal, after overall appreciation of the fact and evidences before it, observed that the assessee's surrender was not based on any incriminating material and that the discloser being not voluntary and extracted by the department in creating a coercive situation cannot be relied solely to be basis of addition as undisclosed income. The co-ordinate bench of the Tribunal while relying upon various case laws of the higher authorities observed that it is well settled legal position that merely on the basis of a statement which is not supported by the department with cogent corroborative material cannot be a valid basis for sustaining such ad-hoc addition. The co-ordinate Jaipur Bench of the Tribunal (supra) further observed that the issue of existence of pressure, threat, coercion during search proceedings is to be judged by reference to the existing facts and circumstances, human conduct and preponderance of possibilities. During the search proceedings, record relating thereto being in exclusive custody of the searching officers, it is their wish and will which prevails during the fateful period. That it is almost impossible for the assessee to adduce demonstrative evidence of exerting such pressure. The co-ordinate bench of the Tribunal (supra) while holding so, apart from relying upon various decisions of the higher courts has also relied upon the decision of the Tribunal in the case of "Dy CIT vs. Pramukh Builders" (2008) 112 ITD 179 (Ahd.) wherein, it has been held that even in the absence of proof of coercion or pressure, the statement by itself cannot be taken as conclusive. Therefore, merely in the absence of proof of pressure, threat, coercion or inducement the statement cannot be held as conclusive and additions cannot be made by solely relying on a statement or a letter.

9. The case of the assessee, before us, is on better footing as in this case, the statement recorded of the assessee was under section 133A [not

under section 132(4)], which being without oath has a very weak/ low evidentiary value as compared to the statement made u/s 132(4) of the Act. It has been held by the various High Courts and the Hon'ble Supreme Court that a statement made under section 133A, stands alone, has no evidentiary value. The Ld. CIT(A) in this respect has also placed reliance upon the CBDT letter no 286/2/2003-IT (Inv) dated 03.10.2003, which clearly states that statement recorded under undue pressure/coercion at the time of search/survey should be considered adversely. 18. The said CBDT Letter No.286/2/2003-IT(Inv) dated Oct 3, 2003 read as under:

"To

The Chief Commissioners of Income Tax, (Cadre Contra)
&
All Directors General of Income Tax Inv.

Sir,

Subject: Confession of additional Income during the course of search & seizure and survey operation – regarding

Instances have come to the notice of the Board where assesseees have claimed that they have been forced to confess the undisclosed income during the course of the search & seizure and survey operations. Such confessions, if not based upon credible evidence, are later retracted by the concerned assesseees while filing returns of income. In these circumstances, on confessions during the course of search & seizure and survey operations do not serve any useful purpose. It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search it seizures and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders

Yours faithfully,"

10 A perusal of the above circular also shows that it is in the notice of the statutory controlling body of the Income Tax Authorities that the revenue officials are used to take confessional statements from the person searched under force, pressure or threat and that is why they have made it mandatory that additions solely on the basis on such statements should not be made and that corroborative evidences should be collected or obtained before making such additions. The circular of the CBDT is binding on the revenue officials. In the facts and circumstances of this case, when seen in the light of above case laws and CBDT circular, additions in this case cannot be said to be justifiably made.

11. In view of the above discussion, we do not find any infirmity in the order of the CIT(A) and the same is upheld.

12. In the result, both the appeals of the Revenue are, hereby, dismissed.

Order is pronounced in the open court on 23.12.2024

[Sanjay Awasthi]

लेखा सदस्य/Accountant Member

[Sanjay Garg]

न्यायिक सदस्य/Judicial Member

Dated: 23.12.2024.

JD

Copy of the order forwarded to:

1. **Appellant – DCIT, C.C.4(3), Kolkata**
2. **Respondent – Avima Exports Pvt. Ltd.**
3. CIT(A), Kolkata-27.
4. Pr. CIT,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches