

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 1084/JP/2024
निर्धारण वर्ष / Assessment Years : 2011-12

Deputy Commissioner of Income Tax, Central Circle-01, Jaipur	बनाम Vs.	Harsh Stock Portfolio Pvt. Ltd., 8, Main Gopalpura Bypass, Triveni Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCH 3091 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Tarun Mittal, CA &
Sh. Harshit Agarwal, CA
राजस्व की ओर से / Revenue by : MS. Alka Gautam, CIT

सुनवाई की तारीख / Date of Hearing : 11/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 02/01/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

By way of the present appeal, revenue challenges the finding so recorded in the order of the Commissioner of Income Tax (Appeals), Jaipur-4 dated 25/06/2024 [for short CIT(A)]. The dispute relates to the assessment year 2011-12. Ld. CIT(A) has passed that order the assessee challenged the order of assessment dated 28.12.2018 passed under

section 147 r.w.s 143(3) of the Income Tax Act [for short Act], by DCIT, Central Circle-01, Jaipur [for short AO].

2. In this appeal, the revenue has raised following grounds: -

“1. Whether on facts and in circumstances of the case, the Ld. CIT(A) is justified in deleting the addition of Rs. 4,28,00,000/- made by the Assessing Officer on account of unexplained unsecured loan u/s 68 of the Income Tax Act by disregarding the evidence indicating that the loan was channeled through shell companies M/s Wellworth Tradelink Pvt. Ltd. and Desire Vincom Pvt. Ltd. to introduce unaccounted money into the assessee’s books of accounts.

2. The applicant craves leave to add, amend or withdraw any of the ground of appeal during the course of appeal proceedings.”

3. Succinctly, the fact as culled out from the records are that the assessee has filed income tax return on 29.09.2011 declaring total income of Rs. 40/-. Information has been received from the ADIT (Inv.)(OSD), Unit-4, Kolkata vide letter no. ADIT (Inv.)/Unit-4/Kol/S- 110/STR No. 1000039118/2017-18 dated 09.03.2018, that the assessee company had taken credit entry of Rs. 2,00,00,000/- through M/s Wellworth Tradelink Pvt. Ltd. (New Name Xylo Infrastructure Pvt. Ltd.) and Rs.1,08,00,000/- from Desire Vincom Pvt. Ltd, which are paper companies. The bank statements of these companies it is reveals that these accounts got credited by cash as well as transfers, and the same is transferred to various intermediary companies and ultimately to the beneficiaries who are having real business. The funds were transferred to the account of the beneficiaries by routing their own funds through various intermediaries who are basically

shell companies, and they don't have real business. Considering that facts, notice u/s 148 was issued on 26.03.2018 after recording reasons and taking prior approval from the Pr. CIT (Central), Jaipur. The assessee has not filed return in response to notice u/s 148. Notice u/s 142(1) along with query letter was issued on 14.09.2018. In compliance with the notice the assessee company has filed return of income on 15.11.2018 declaring total income Rs. 40/- and requested a copy of reasons, which was provided on 19.11.2018. Notice u/s 143(2) was issued on 26.11.2013. In compliance to the notice dated 07.12.2018 Id. AR of the assessee has furnished written reply along with the confirmations of the unsecured loans. On perusal of these confirmation, it is revealed that the total credit in the form of unsecured loan received by the assessee, therefore, assessee was requested to show cause as to why the unsecured loan of Rs. 1,08,00,000/- from M/s Desire Vincom Pvt. Ltd., and interest paid there on for Rs. 3,92,830/- should not be held as your undisclosed income which has been routed back into your books in the disguise of unsecured loan from a shell company and same way unsecured loan of Rs. 3,20,00,000/- from M/s Wellworth Tradelink Pvt. Ltd., and interest thereon paid for Rs. 6,62,488/- was proposed. In compliance to the show cause notice dated 24.12.2018 the AR of the assessee has furnished a detailed written reply

thereby submitting the confirmation of unsecured loans and bank statement of lender was submitting claiming that the confirmations of lenders has been already filed and the transactions have taken place through banking channels and therefore the genuineness of the same cannot be doubted more particularly when the loans was squared up, leaving apart interest amount, during the year under consideration. As regards the identity of the creditor M/s Desire Vincom Pvt. Ltd and M/s Wellworth Tradelink Pvt Ltd both are private limited company incorporated under Companies Act, 1956. Both the companies have valid PAN under the Income Tax Act and financial statements are duly audited by the independent chartered accountant, which have already been furnished. Such financial statements were also submitted by the said company before the Registrar of the Companies along with its annual return. Thus, it is quite evident that the identity of the said creditor company was duly established. As regards the creditworthiness of these parties, copy of financial statements of the lender in the shape of audited Balance Sheet, Profit and Loss account, ITR and bank statement through which the loan was given etc. were submitted The copy of bank statements of the relevant period of both the parties were placed on record in support of the source of fund in the hands of lenders. It was claimed that no cash was deposited in bank accounts before making

such advances to the assessee. Based on that contention the assessee claimed that they have duly proved the genuineness, identity and creditworthiness of the lender and therefore no adverse inference may be taken in the matter.

Ld. AO noted that the primary onus is on the assessee to establish the genuineness of the transaction claimed by it. The assessee has never objected the reasons of the reopening. Further, if the investigation done by the department leads to doubt regarding the genuineness of the transactions, it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction. Payment by account payee cheque is not sacrosanct. It is a fact that the assessee deals with shell companies and has taken unsecured loan from shell companies under consideration. The assessee was trying to introduce his own money from undisclosed sources through unsecured loans. In the light of the various judicial pronouncements and the above discussion it is to be seen whether the assessee was able to establish the genuineness of the transactions claimed by it. The assessee has failed in discharging this onus. The information received from the investigation wing and clearly explains the modus operandi of this bogus transaction and accordingly total

sum of Rs. 4,28,00,000 [3,20,00,000 + 1,08,00,000] was added as per provisions of section 68 of the Act.

4. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds so raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

As noted in assessment order/reasons of reopening, information was received from the ADIT (Inv.)(OSD), Unit-4, Kolkata. From this information it is revealed that the assessee company M/s Harsh Stock Portfolio has taken credit entry of Rs. 2,00,00,000/- through M/s Wellworth Tradelink Pvt. Ltd. (New Name Xylo Infrastructure Pvt. Ltd.) and Rs. 1,08,00,000/- from Desire Vincorn Pvt. Ltd, which are paper companies. The bank statements of these companies it is reveals that these accounts got credited by cash as well as transfers, and the same is transferred to various intermediary companies and ultimately to the beneficiaries who are having real business. The fund have been transferred to the account of the beneficiaries by routing their own funds through various intermediaries who are basically the shell companies and they don't have real business. As noted in the reasons of reopening the appellant company received total of Rs. 3,08,00,000 through rotation of its own money by the means of capital gain/penny stock trading.

The appellant has contended that Id.AO has formed belief regarding escapement of income on the ground that assessee has received sum of the Rs.3,08,00,000/- through rotation of its own money by means of capital gains and on this satisfaction, reassessment proceedings were initiated by issue of notice u/s 148. Whereas, eventually assessment has been completed after making addition on allegation that unsecured loans received by the appellant were unexplained though the same were repaid in the year itself. There is no addition in the assessment order on alleged capital gain / penny stock trading, which was recorded in the satisfaction. The appellant has also contended that it is a settled law that when no addition is made in respect to the reason for which the satisfaction is reached in the reasons recorded before issue of notice u/s 148, then the Ld. AO had no jurisdiction to make addition/ disallowance of any other income/expenditure/ loss i.e. to go beyond the jurisdiction assumed by issue of notice u/s 148 of the Income Tax Act, 1961.

At para 3 of the reasons recorded under the head 'analysis of information collected / received it is stated that amount of Rs. 2,00,00,000/- received from M/s Wellworth Tradelink Pvt. Ltd. and Rs. 1,08,00,000/- has been received from M/s Desire Vincom Pvt. Ltd. and "these companies are intermediary shell companies through which assessee's own money was rotated and received back through penny stock trading"

At para 4 of the reasons recorded related to "enquiries made by the AO" at the end following observations has been made:-

"As per this information, the assessee company M/s Harsh Stock Portfolio Pvt. Ltd. received total of Rs. 3,08,00,000/- through rotation of its own money by the means of capital gain."

In the assessment order it has been concluded that

"Thus the amount credited on account of unsecured loan from shell company is to be added u/s 68 of I.T. Act, 1961. Therefore Rs. 4,28,00,000/- (3,20,00,000+1,08,00,000) is added to the total income of the assessee on account of unexplained unsecured loan. The assessee has furnished inaccurate particulars of income therefore penalty u/s 271(1) (c) is separately initiated on this issue."

Thus in the reasons recorded the AO had formed "reason to believe that appellant's own money has been rotated by means of penny stock trading i.e. capital gain whereas in the final reassessment order no amount has been added relating to capital gain and rather addition has been made on account of unsecured loan and the amount is also different.

Appellant has also contended that Id.AO failed to establish as to how the appellant has rotated his own money more particularly through penny stock trading (i.e. reason on which belief was formed).

The appellant has also raised grounds on merits as well. Appellant has contended that it has discharged onus cast upon it by section 68 by furnishing all the documentary evidences in the shape of ITR of lender, confirmations of parties, Financial statements of lenders and copies of bank statements of lender. Appellant has also contended that unsecured loans stood repaid in the year itself. Appellant has also contended that Id.AO failed to establish as to how the appellant has rotated his own money more particularly through penny stock trading (i.e. reason on which belief was formed). Appellant has relied upon judgements in this regard.

It is held by the Hon'ble Rajasthan High Court in the case of Commissioner of Income-tax v. Shri Ram Singh [2008] 306 ITR 343 (Rajasthan)/[2008] 217 CTR 345 (Rajasthan)[20-05-2008] as under:-

"28. If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great

significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under section 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment, and which has come to his notice subsequently, in the course of proceedings under section 147.

29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.

30. It is a different story that for such other income, the AO may have recourse to such other remedies, as may be available to him under law, but then, once it is found, that the income, regarding which he had "reason to believe" to have escaped assessment, is not found to have escaped assessment, the AO is required to withhold his hands, at that only.

31. To this extent, we agree with the view expressed by the Punjab & Haryana High Court, in Atlas Cycle Industries' case.

32. The result of the aforesaid discussion is, that the question framed, in the order dated. 23rd May, 2006, is required to be, and is, answered in the manner, that the Tribunal was not justified in holding, that the proceedings for reassessment under section 148/147 were initiated by the AO, on non-existing facts. because ultimately the assessee has been able to explain the income, which was believed to have been escaped assessment, was explainable. It is further held, that the AO was justified in initiating the proceedings under section 147/148, but then, once he came to the conclusion, that the income, with respect to which he had entertained "reason to believe" to have escaped assessment, was found to have been explained, his jurisdiction came to a stop at that, and he did not continue to possess jurisdiction, to put to tax, any other income, which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment".

It is held by the Hon'ble Bombay High Court in the case of Commissioner of Income-tax-5, Mumbai v. Jet Airways (1) Ltd. [2010] 195 Taxman 117 (Bombay)/[2011] 331 ITR 236 (Bombay)/[2011] 239 CTR 183 (Bombay) [12-04-2010] as under-

"16. Explanation 3 lifts the embargo, which was inserted by judicial interpretation, on the making of an assessment or reassessment on grounds other than those on the basis of which a notice was issued under section 148 setting out the reasons for the belief that income had escaped assessment. Those judicial decisions had held that when the assessment was sought to be reopened on the ground that income had escaped assessment on a certain issue, the Assessing Officer could not make an assessment or reassessment on another issue which came to his notice during the proceedings. This interpretation will no longer hold the field after the insertion of Explanation 3 by the

Finance Act (No. 2) of 2009. However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

17. We have approached the issue of interpretation that has arisen for decision in these appeals, both as a matter of first principle, based on the language used in section 147(1) and on the basis of the precedent on the subject. We agree with the submission which has been urged on behalf of the assessee that section 147(1) as it stands postulates that upon the formation of a reason to believe that income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may assess or reassess such income "and also any other income chargeable to tax which comes to his notice subsequently during the proceedings as having escaped assessment. The words "and also" are used in a cumulative and conjunctive sense. To read these words as being in the alternative would be to rewrite the language used by Parliament. Our view has been supported by the background which led to the insertion of Explanation 3 to section 147. Parliament must be regarded as being aware of the interpretation that was placed on the words "and also" by the Rajasthan High Court in Shri Ram Singh's case (supra). Parliament has not taken away the basis of that decision. While it is open to Parliament, having regard to the plenitude of its legislative powers to do so, the provisions of section 147(1) as they stood after the amendment of 1-4-1989 continue to hold the field."

It is held by the Hon'ble Bombay Delhi Court in the case of Ranbaxy Laboratories Ltd. v. Commissioner of Income-tax [2011] 12 taxmann.com 74 (Delhi)/[2011] 200 Taxman 242 (Delhi)/[2011] 336 ITR 136 (Delhi)/[2011] 242 CTR 117 (Delhi)[03-06-2011] as under:-

"19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items viz.. club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under sections 80HH and 80-1 as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under sections 80HH and 80-1 and accordingly reduced the claim on these accounts.

20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-1 which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make disallowance in respect of

the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per Explanation 3 to reduce the claim of deduction under sections 80HH and 80-1 as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of revenue and the second part of the question against the revenue."

It is held by the Hon'ble ITAT in the case of Assistant Commissioner of Income-tax, Circle-7, Jaipur v. M.K. Exim (India) Ltd. [2017] 82 taxmann.com 61 (Jaipur – Trib.)/(2015) 173 TTJ 377 (Jaipur-Trib.)(17-07-2015) as under:-

"8. We have heard rival contentions and perused the material on record and gone through the reasons recorded by the AO under section 147 of the IT Act. It is undisputed fact that AO had not borrowed the satisfaction from the audit party as nowhere in the satisfaction he has mentioned the audit objection. The basis of reopening of the assessment order was lesser figure of total turnover. As per his working in reasons recorded excess deduction had been calculated at Rs. 27,66,386/- on the basis of total turnover of Rs. 16,82,67,037/- whereas the assessee has taken total turnover in computation made by the CA in prescribed form at Rs. 15,39,35,866/- but this issue has not been considered by the AO at the time of completing the assessment. He simply reduced the other income from total income Rs. 1,43,31,171/- which includes interest at Rs. 12,14,227/-, dividend income of Rs. 32,550/- and brokerage and commission income of Rs. 12,736/- and business profit has been calculated at Rs. 3,12,21,537/- in place of Rs. 3,24,81,050/- shown by the assessee. It is clear that Id. AO had not made any addition on the basis of reopening or satisfaction recorded. The decisions of both the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. (supra) and Hon'ble Bombay High Court in the case of Jet Airways (1) Ltd. (supra) are squarely applicable on the case of assessee. The Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. has held as under :-

"Under Explanation 3 if during the course of the proceedings the Assessing Officer comes to the conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. For every new issue coming before the Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under section 148. The Assessing Officer was satisfied with the justifications given by the assessee regarding the items of club fees, gifts and presents and provision for leave encashment, but during the assessment proceedings, he found the deduction under sections 80HH and 80-1 as claimed by the assessee to be not admissible. He consequently proceeded to make deductions under sections 80HH and 80-1 and accordingly reduced the claim on these accounts. The very basis of initiation of proceedings for which reasons to believe were recorded was income escaping assessment in respect of items of club fees, gifts and presents, etc., but while these items were not disturbed, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-1 which was not permissible. The Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings were

initiated but he was not justified when the reasons for the initiation of those proceedings ceased to survive."

The Hon'ble Bombay High Court in the case of Jet Airways (1) Ltd. Has held as under:-

"Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a notice under section 148 would be necessary in the event of challenge by the assessee. The effect of section 147 as it now stands after the amendment of 2009 can therefore, be summarised as follows: (i) the Assessing Officer must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year; (ii) upon the formation of that belief and before he proceeds to make an assessment, reassessment or recomputation, the Assessing Officer has to serve on the assessee a notice under sub-section (1) of section 148; (iii) the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income, chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section; and (iv) though the notice under section 148(2) does not include a particular issue with respect to which income has escaped assessment, he may none the less, assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section."

In the impugned order, the AO has not made any addition on the basis of formation of believe under section 147 of the IT Act. The AO has power as per Explanation 3 to include the items of income which came to his notice subsequently in the course of proceedings under this section for which no separate reopening is required, but in final out come both the additions have to be made by the AO in assessment order which has not been the case of AO during the year under consideration as he has not made any additions on the basis of total turnover. Accordingly we confirm the order of Id. CIT (A) and dismiss the revenue's appeal".

In view of the above discussion, the reasons of reopening are recorded or the case was reopened on the issue of rotation of own money through capital gains/ penny stock trading and the addition has been done in the assessment order only on account of unsecured loan. Thus no addition was found during assessment proceedings on the issue of rotation of own money through capital gains / penny stock trading which was the reason of reopening. In such a scenario as held by the Hon'ble Rajasthan High Court in the case of Shri Ram Singh (supra) "29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings

under section 147, the AO were to come to conclusion, that any income chargeable to tax, Which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.". Thus the Id. AO could not have made addition on the other issue. Accordingly the addition on account of unsecured loan is not sustainable and the same is hereby directed to be deleted.

Accordingly, this ground of appeal is allowed in above terms. Other contentions raised by the appellant are not required to be adjudicated as those are rendered academic."

5. Feeling dissatisfied with the finding so recorded by the Id. CIT(A), revenue preferred the present appeal taking solitary ground directing the Id. AO to delete the addition of Rs. 4,28,00,000/- made by the Assessing Officer on account of unexplained unsecured loan u/s 68 of Act by disregarding the evidence indicating that the loan was channeled through shell companies M/s Wellworth Tradelink Pvt. Ltd. and Desire Vincom Pvt. Ltd. to introduce unaccounted money into the assessee's books of accounts. In support of the ground so raised Id. DR representing the revenue submitted that the appellant - assessee company had taken credit entry of Rs. 2,00,00,000/- through M/s Wellworth Tradelink Pvt. Ltd. (New Name Xylo Infrastructure Pvt. Ltd.) and Rs.1,08,00,000/- from Desire Vincom Pvt. Ltd, which are paper companies. The bank statements of these companies it is reveals that these accounts got credited by cash as well as

transfers, and the same is transferred to various intermediary companies and ultimately to the beneficiaries who are having real business. The funds were transferred to the account of the beneficiaries by routing their own funds through various intermediaries who are basically shell companies, and they don't have real business. Therefore, considering the facts mentioned in the assessment order the addition was required to be sustained and the finding of the Id. CIT(A) was not considered as correct one and therefore, the revenue contested that order of the Id. CIT(A) in this second appeal.

6. On the other hand, Id. AR of the assessee supported the finding recorded in the order of the Id. CIT(A). To support the finding of the Id. CIT(A) and against the ground of appeal raised by the revenue the Id. AR of the assessee has filed the following written submission;

“Brief facts of the case are that the appellant is a company engaged in the business of share trading. The assessee company filed its return of income for the year under appeal on 29.09.2011 declaring total income at Rs. 40/- (APB 1). Assessment proceedings u/s 147 of the Act was initiated against the assessee by issuance of notice u/s 148 of the Act on 26.03.2018. In response to notice so issued, assessee filed Return of Income on 15.11.2018 declaring total income at Rs. 40/- (APB 2-4) and reasons recorded were sought, which were supplied to assessee. On perusal of reason so recorded (APB 27-32), it is observed that the sole reason for re-opening the assessment of assessee is some information received from Asst. Director of Income Tax (Inv.) (OSD), Kolkata, according to which it was alleged that assessee company has rotated his own money through intermediary shell companies through penny stock trading and eventually concluded that money was received by assessee by means of capital gains in the year under appeal. Various details/information as sought by Id.AO were provided and assessment was

completed after making addition of Rs. 4,28,00,000/- on allegation that assessee has received unsecured loans to this extent from alleged shell companies.

Aggrieved of the reassessment order passed and the additions so made, assessee has preferred an appeal before Id. CIT(A)-4 Jaipur, whereon Id. CIT(A)-4, Jaipur by placing reliance on the order of Hon'ble Rajasthan High Court in the case of CIT v. Shri Ram Singh [2008] 306 ITR 343 allowed the appeal of assessee vide order dated 25.06.2024,

Aggrieved by the order of the Id. CIT(A)-4, Jaipur department has preferred an appeal before your honours

Departmental Ground of Appeal No. 1:

Under this ground of appeal, the department has challenged the action of Id. CIT(A) in deleting the addition of Rs.4,28,00,000/-, which was made by Id. AO u/s 68 by alleging that assessee company has routed unaccounted money in the form of unsecured loans obtained from alleged shell companies namely M/s Desire Vincom Pvt Ltd. and M/s Wellworth Tradelink Pvt Ltd.

At this outset it is submitted that departmental appeal is not maintainable since the ground of appeal taken by department is related to merits while the Id. CIT(A)-4, Jaipur has decided the appeal on legal front and case was not adjudicated on merits. Relevant operating para of the order is reproduced as under for ready reference—

"In view of the above discussion, the reasons of reopening are recorded or the case was reopened on the issue of rotation of own money through capital gains / penny stock trading and the addition has been done in the assessment order only on account of unsecured loan. Thus no addition was found during assessment proceedings on the issue of rotation of own money through capital gains / penny stock trading which was the reason of reopening. In such a scenario as held by the Hon'ble Rajasthan High Court in the case of Shri Ram Singh (supra) "29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, Which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.". Thus the Id. AO could not have made addition on the other issue. Accordingly the addition on account of unsecured loan is not sustainable and the same is hereby directed to be deleted.

Accordingly, this ground of appeal is allowed in above terms. Other contentions raised by the appellant are not required to be adjudicated as those are rendered academic.

At this juncture, kind attention of your goodself is also invited to the para 3 of reasons recorded, i.e. "Analysis of information collected/received" and para 4, i.e. "Enquiries made by AO as sequel to information collected/received", which read as under:

3. Analysis of information collected/ received:

From the perusal of the information it is found that the assessee had received Rs. 2,00,00,000/- from M/s Wellworth Tradelink Pvt. Ltd.(New Name- Xylo Infrastructure Pvt. Ltd.) through Axis Bank A/c No. 41101000008129, Branch H.B. Sarani and Rs. 1,08,00,000/- had been received from M/s Desire Vincom Pvt. Ltd. through Axix Bank A/c No. 910020028492524, Branch H.B. Sarani in AY 2011-12. These companies are intermediary shell companies through which the assessee's own money was rotated and received back through penny stock trading.

After appraisal of information received and the material on record, there is enough reason to believe that the assessee has concealed the undisclosed income of Rs. 3,08,00,000/-, the assessee has clearly failed to disclose all material facts for determination of income.

4. Enquiries made by the A.O. as sequel to information collected/received:

During the enquiry it is found the assessee filed its return of income on 29.09.2011, declaring his total income Rs. 40. The assessee has shown total turnover/receipts for the AY 2011-12 of Rs. 33,27,38,712/-. The assessee had received accommodation entry/capital gain provided by group of companies in which some of companies received cash deposits and the deposited amount was then transferred to other intermediary shell companies. Further through exit entry provider companies with the help of some stock brokers by the way of penny stock trading capital gain is arisen to the ultimate beneficiary company. As per this information, the assessee company M/s Harsh Stock Portfolio Pvt. Ltd. received total of Rs. 3, 08, 00,000/- through rotation of its own money by the means of capital gain.

From perusal of above, it is evident that on the basis of information received, Id. AO in para 3 has analysed that "These companies are intermediary shell companies through which assessee's own money was rotated and received back through penny stock trading." Similarly in para 4, Id.AO has eventually concluded that "As per this information, the assessee company M/s Harsh Stock Portfolio Pvt. Ltd. Received total of Rs.3,08,00,000/-through rotation of its own money by the means of capital gains". However, while concluding assessment, addition has

been made by alleging that the assessee has taken unsecured loan of Rs.1,08,00,000/- and Rs.2,60,00,000/- from M/s Desire Vincom Pvt. Ltd. and M/s Well worth Tradelink Pvt. Ltd. respectively by holding the same as unexplained. It is worthwhile to mention here that Id.AO has listed names of 5 companies in assessment order, which were stated to have been received from ADIT (Inv.) Kolkata [information received from which was used for reopening assessment], and were used as intermediaries to rotate money of beneficiaries, however, name of M/s Worthwhile Tradelink Pvt. Ltd. was not mentioned in such list. Also, no other basis whatsoever, was mentioned in reasons so as to arrive at conclusion regarding M/s Worthwhile Tradelink Pvt. Ltd. being treated as shell company.

In view of above, it is submitted that so far as reasons were recorded regarding escapement of income by rotating its own money through capital gains, on which no addition was made eventually, addition made by alleging unsecured loans taken by assessee (for which no satisfaction was recorded) as unexplained, is contrary to the law laid down by Hon'ble Rajasthan High Court in the case of CIT v. Shri Ram Singh [2008] 306 ITR 343, wherein it was held as under—

Reassessment – Income escaping assessment – Income believed to have escaped investment explained by assessee – Tribunal rightly holding reassessment proceedings initiated on non-existing facts and invalid – Income Tax Act, 1961, ss. 147, 148.

Hon'ble Court in this case has inter alia held that:

29. *To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under [section 147](#), the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under [section 147](#)."*

By following the aforesaid judgment, hon'be jurisdictional high in the case of MS Prime Chem Oil Ltd. Vs. ACIT in DBITA No. 220/2017 vide order dt. 17.4.2018 has also expressed the same view.

63 DTR 212 – CIT vs. Adhunik Niryat Ispat Ltd. (Delhi) [DOD: 28.07.2011]
Reassessment – Scope – Issue not subject-matter of reasons to believe – Assessment
reopened on the ground that the assessee had accepted accommodation entries from some parties in the garb of share capital – However during the reassessment proceedings, the AO also made certain additions of the credits received from some other parties though on that basis the assessment was not reopened – Reasons

which persuaded the AO to reopen the assessment proceedings and on the basis of which additions were made were not found valid and those additions were deleted by the Tribunal – Since the grounds for reopening the assessment do not exist any longer and no additions were ultimately made on that account, the additions in respect of other items which were not part of “reasons to believe” cannot be made.

Thus, looking into facts and circumstance of the case Id. CIT(A)-4, Jaipur has rightly allowed the appeal of assessee by acknowledging the fact that Id. AO was not justified in making the addition when the reasons for the initiation of those proceedings ceased to survive.

Without prejudice to above in alternate on merits it is submitted that during the year under consideration, appellant has taken unsecured loans aggregating Rs. 1,08,00,000/- from M/s Desire Vincom Pvt Ltd. and of Rs. 2,60,00,000/- from M/s Wellworth Tradelink Pvt Ltd. On various dates. Details of loans taken and repaid as appearing in the confirmations furnished by assessee are as under:

M/s Desire Vincom Pvt. Ltd.

Date	Particulars	Amount	Balance
01.04.2010	Opening Balance	24,00,000/-	24,00,000/-
02.07.2010	Loan taken	33,00,000/-	57,00,000/-
09.09.2010	Loan repaid	57,00,000/-	NIL
26.11.2010	Loan taken	75,00,000/-	75,00,000/-
02.02.2011	Loan repaid	50,00,000/-	25,00,000/-
03.02.2011	Loan repaid	25,00,000/-	NIL

Wellworth Tradelink Pvt. Ltd.:

Date	Particulars	Amount	Balance
14.07.2010	Loan Taken	10,00,000/-	10,00,000/-
30.07.2010	Loan taken	50,00,000/-	60,00,000/-
04.09.2010	RTGS made for repayment of Loan	60,00,000/-	NIL
04.09.2010	RTGS Returned	60,00,000/-	60,00,000/-
06.09.2010	Loan repaid	60,00,000/-	NIL
01.12.2010	Loan taken	2,00,00,000/-	2,00,00,000/-
22.02.2011	Loan repaid	2,00,00,000/-	NIL

From perusal of above, it is evident that:

1. Firstly, assessee had taken gross loan of Rs.1,08,00,000/- from Desire Vincom Pvt. Ltd. and Rs.2,60,00,000/- from Wellworth Tradelink Pvt. Ltd. and that the entire amount of loans taken stood repaid also in the year under consideration itself except the interest outstanding thereon. However, Id.AO made addition to the tune of Rs.1,08,00,000/- being loan taken from M.s Desire Vincom Pvt. Ltd. and of Rs.3,20,00,000/- being loan taken from Wellworth Tradelink (P) Ltd. Basically, one of RTGS made by assessee on 4.9.2010 of Rs.60,00,000/- in the name of Wellworth Tradelink Pvt. Ltd. towards repayment of loan, stood returned and

therefore entry of same date is appearing on debit as well as credit side of ledger confirmation (APB 94), however as the narration regarding return of RTGS was not mentioned in confirmation, Id.AO has assumed the loan taken as Rs.3,20,00,000/- and issued show cause notice proposing to make addition of Rs.3,20,00,000/- as against Rs.2,00,00,000/- as stated in initial show cause notice. In response to the same, assessee vide his reply dated 27.12.2018 (APB 37-38) explained that the cheque of Rs 60,00,000 received from M/s Wellworth Tradelink Pvt Ltd was dishonoured. Hence the gross loan taken from M/s Wellworth Tradelink Pvt Ltd should be Rs 2,60,00,000 instead of Rs 3,20,00,000. However, Id.AO brushed aside the submission of assessee without specifying any reason and proceeded to make addition of Rs.3,20,00,000/-.

2.

In this regard, contention of assessee is strengthened from bank statement of the assessee at APB 51 where entry of Rs.60,00,000/- dated 4.9.2010 bearing reference no. HDFCH102476571670 is appearing on debit as well as credit side. Thereafter, assessee has made payment of Rs.60,00,000/- on 6.9.2010 vide reference no HDFCH10249669013 at APB 52. It is thus submitted that addition to the tune of Rs.60,00,000/- out of addition of Rs.3,20,00,000/- made by Id.AO deserves to be deleted outrightly.

2. Secondly, before advertng to the discussion on merits of the case regarding addition made solely on the basis of information collected in the case of action taken by department in the case of third parties, not related to assessee in any manner, if for a moment it is presumed that (though not admitted at all) information available with Id.AO was related to assessee, then too, from a bare perusal of detail of loans taken and repaid, it is evident that highest loan amount in the case of M/s Desire Vincom P Ltd. And M.s Wellworth Tradelink P Ltd. was Rs.75,00,000/- and Rs.2,00,00,000/- respectively and therefore going by the Ld AO's own presumption of money getting rotated maximum addition if at all could be made would have been to tune of Rs.2,75,00,000/-. Though not admitted at alleged. However, Id.AO has made addition of Rs.4,28,00,000/- which shows absolutely arbitrary and illogical approach of the Id.AO. It is thus submitted that Id.AO was absolutely unjustified in making addition over and above the peak balance and addition in excess of the same deserves to be deleted outrightly.

It is further submitted that addition was made by Id.AO solely on the basis of some information received from ADIT (Inv.) (OCD), Kolkata vide letter no. ADIT (Inv.)/Unit-4/Kol/S110/STR No. 1000039118/2017-18 dated 09.03.2018 whereby it was alleged that the appellant has taken unsecured loans amounting to Rs 1,08,00,000/-from M/s Vincom Pvt Ltd and Rs 2,00,00,000/- from M/s Wellworth Tradelink Pvt Ltd. which are in alleged as paper companies. However, on the basis of confirmations furnished by assessee during the course of assessment proceedings, Id.AO made addition of Rs.4,28,00,000/- u/s 68 of the Income Tax Act, 1961 (as against Rs.3,08,00,000/- as per reasons recorded). As stated above, addition to the tune of Rs.60,00,000/- was wrongly made by Id.AO, thus submission with regards to balance addition is made as under:

During the course of assessment proceedings, Id.AO vide show cause notices dated 07.12.2018 and 24.12.2018 proposed to make addition on account of above loans by holding the same as received from paper companies, whereas the loans were genuinely taken by assessee during the ordinary course of business. Therefore, in order to prove genuineness of the transaction, assessee not only furnished confirmations from both companies but also copies of bank statements, Income Tax Returns, Financial Statements etc. of both the companies, which proved identity, creditworthiness and genuineness of both the companies beyond doubt. Documentary evidences so furnished are tabulated as under:

Nature of Document	M/s Desire Vincom Pvt. Ltd. (APB)	M/s Wellworth Tradelink Pvt. Ltd. (APB)
Loan Confirmation	75	94
Bank Statements	76-82	95-97
Return of Income	83	98
Financial Statements	84-93	99-108

However, Id. AO without pointing out any single discrepancy in the details so furnished and solely on the basis of above unverifiable and uncorroborated information, presumed those companies as Shell Companies and loan taken by assessee as unexplained. Ld. AO without making any inquiries and simply on the basis of borrowed information completed the assessment and made huge addition of Rs.4,28,00,000/-, which is absolutely contrary to the facts.

On the other hand, on perusal of the evidences produced by assessee, it is evident that the lending companies were private limited companies and were having sufficient funds for making advances. Further, loan was obtained through banking channels and entries were duly debited in bank statement of lender and payment of interest on such loans was made through cheque after deducting tax at source. Further it can be seen that the status of both the companies on MCA portal is "Active" (screenshot enclosed along with submission) and these have been filing financial statements on the portal on Ministry of Corporate Affairs regularly.

At this juncture, kind attention of your honour is invited to provisions of section 68, which read as under:

"68. Where any sum is found credited in the books⁷⁸ of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the ⁷⁹[Assessing] Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year"

On perusal of above, it is evident that assessing officer can make addition u/s 68 only under two circumstances, i.e.:

- appellant does not offer any explanation about nature and source of such credit or

- explanation offered by appellant is not upto the satisfaction of Ld. AO.

In other words, whenever appellant provides explanation, before rejecting the same Ld. AO has to record dissatisfaction as to why the explanation furnished by appellant is not acceptable.

In the instant case, appellant has not only offered explanation regarding nature and source of credits but also substantiated the same with documentary evidences in the shape of ITRs, Confirmations, Balance Sheet, Bank Statement of lender which were brushed aside by Ld. AO without pointing out any defects or without rebutting the evidences produced.

Your goodself would appreciate that M/s Desire Vincom Pvt Ltd. and M/s Wellworth Tradelink Pvt Ltd are private limited companies incorporated on 13.06.2009 and 22.07.2008 under Companies Act, 1956. Financial Statements of said companies were duly audited by chartered accountant, which were furnished before Ld. AO. It is also a matter of fact that such financial statements were submitted by the lender not only with its ITR but also before the Registrar of Companies along with annual return filed.

Your goodself would appreciate that Ld. AO has not pointed out any discrepancy in the details furnished. It is further submitted that to come out of rigors of section 68, an assessee has to prove identity and creditworthiness of the creditor and genuineness of the transaction. In the instant case, assessee has established all the three conditions as under:

- Identity of creditor: is established as the lender is a company incorporated under Companies Act. Copy of ITR was furnished.
- Creditworthiness: Copy of audited financial statements as well as bank statement was furnished where the loan given to applicant is duly evident.
- Genuineness: Loan was received through banking channels. Assessee has furnished confirmation from the party as well as financial statements, wherein loan taken by assessee is appearing.

It is also a matter of fact that nowhere in the assessment order, Ld. AO has established his allegation as per reasons recorded that *"The assessee had received accommodation entry/capital gain provided by group of companies in which some of companies received cash deposits and the deposited amount was then transferred to other intermediary shell companies."*

In fact, no cash deposits/cash withdrawals are appearing in bank statements of any of the companies prior to making advance to assessee. It is also relevant to state that unsecured loan taken by assessee company from M/s Desire Vincom Pvt. Ltd. Of Rs. 1,08,00,000/- & M/s Wellworth Tradelink Pvt Ltd of Rs. 2,60,00,000/- respectively were repaid in the year under consideration itself and all the transactions were undertaken through banking channels. In this regard reliance is placed on the decision of Hon'ble Gujrat High Court in the case of The

Principal Commissioner of Income Tax – 1 Vadodara vs. M/s Ojas Tarmake Pvt. Ltd. In R/Tax Appeal No. 533 of 2023 upheld the decision of Hon'ble ITAT, Ahmedabad Bench wherein it was held that since the ITAT found on facts that amount of loan received by the assessee were repaid during the year itself and all transactions were made through banking channels, no error of law was made by ITAT in deleting addition made under section 68 of the Act.

It is further submitted that the Id.AO completed assessment without providing assessee with opportunity for cross examination of third parties, whose statements recorded in some other case and behind the back of assessee, are solely relied upon for making the additions in the hands of the assessee despite of specific request made by assessee vide reply dated 27.12.2018 (APB 37-38). Ld. AO simply denied cross examination by observing that opportunity to cross examination is not absolute right and has then cited certain case laws. Ld. AO has relied upon one judgement of Hon'ble Rajasthan High Court in case of Rameshwar Lal Mali vs CIT reported 256 ITR 536. It is submitted that facts of said case are distinguishable as in that case, information was obtained in the course of survey conducted in the case of assessee himself and assessee was seeking cross examination of one of his own employee. Whereas in the present case, assessee sought cross examination of third parties whose statements were recorded in some other case and not in the case of assessee that too behind the back of assessee and Id. AO neither provided complete copies of documents stated to have been seized from third party nor full text of statements was provided which have been relied upon for making addition. The other decisions relied upon are also distinguishable as in none of the case the addition is solely based on the statements of third party who incidentally be the witness of the department.

Hon'ble Apex court in the case of CCE Vs. Andaman Timber Industries, (324) ELT 641 has held as under:

- “6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the*

appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. *As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above."*

CIT vs Odeon Builders (P.) Ltd [2019] 110 taxmann.com 64 (SC)

Hon'ble Supreme Court held that if the addition was based on third party information gathered by Investigation wing then addition cannot be made unless such information is provided to the assessee and opportunity of cross examination is provided more so when assessee placed on record all the evidences. The relevant findings are as under:

Headnote: Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Bogus purchase) - Certain portion of purchases made by assessee was disallowed - Commissioner (Appeals) found that entire disallowance was based on third party information gathered by Investigation Wing of Department, which had not been independently subjected to further verification by Assessing Officer and he had not provided copy of such statements to appellant, thus, denying opportunity of cross examination to appellant, who on other hand, had prima facie discharged initial burden of substantiating purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and fact of payment through cheques, VAT Registration of sellers and their Income-tax Return - He held that purchases made by appellant was acceptable and disallowance was to be deleted - Tribunal dismissed revenue's appeal - High Court affirmed judgments of Commissioner (Appeals) and Tribunal being concurrent factual findings - Whether no substantial question of law arose from impugned order of Tribunal - Held, yes [Para 4] [In favour of assessee]

(403 ITR 183) Sunita Dhadda, order dt 28.03.2018 SLP (SC)

The ratio laid down by Hon'ble Rajasthan High Court and also Hon'ble ITAT, Jaipur Bench as below was upheld:

"Their Lordships ADARSH KUMAR GOEL and ROHINTON FALL NARIMAN Ji.- dismissed the Department's special leave petition against judgment dated July 31, 2017, of the Jaipur Bench of the Rajasthan High Court in D.-B,L TA. No. 197 of 2012 whereby the High Court held that the Tribunal was justified in deleting the addition of Rs. 4,07,00,000 of "on money" said to have been received with respect to subject land of the assessee holding that the question what was the price of the land at the relevant time, was a pure question of fact and that unless it was established on record by the Department, that as a matter of fact, the

consideration did pass to the seller from the purchaser, the Department had no right to make any additions, especially since none of the witnesses were examined before the Assessing Officer, and the assessee did not have any opportunity to cross-examine them” [Emphasis Supplied]

Hon'ble Jaipur Bench of Tribunal in the case of Sh. Pramod Jain vs. DCIT has relied upon the view taken by Hon'ble Apex Court in Andaman Timbers and held that the statements of witness cannot be made sole basis of making assessment without giving an opportunity of cross examination and consequently it is a serious flaw which renders the order a nullity.

Hon'ble Ahmedabad bench of ITAT also in the case of Smt. Sunita Jain vs ITO quashed the assessment order by placing reliance on Apex Court judgment in the case of Andaman Timber (cited supra) as entire assessment was based upon the statements of Sh. Mukesh Choksi, which were neither supplied to assessee nor was the opportunity of cross examination provided.

In view of above, it is submitted that addition made by Id.AO without providing opportunity of cross examination is against the principle of natural justice and order so passed deserves to be quashed and addition so made be deleted.

It is further submitted that Id.AO has also drawn adverse conclusion by observing that the assessee never objected the reasons of the reopening, and that the primary onus is on the assessee to establish the genuineness of the transaction and assessee failed in discharging this onus.

So far as first allegation of Id.AO regarding assessee not objecting to the reasons of the reopening, it is submitted that assessee vide his reply dated 27.12.2018 (APB 37-38) demanded Ld. AO to provide the necessary details on basis of which the adverse conclusion is reached. Thus, vide this letter itself assessee has objected the reopening, however such material was never provided by Id.AO. As far as second allegation is concerned, it may be noted that assessee has already provided the plausible evidences necessary for verifying the genuineness and creditworthiness of the lenders (APB 75-108), which included bank statement of lender as well where the transactions have been duly reflected regarding the amount received hence existence of parties from whom money was borrowed. It is thus submitted that assessee has duly discharged onus cast upon it and rather Id.AO has disregarded the crucial evidences without rebutting them in any manner and has relied upon the generalised information received.

Reliance is placed on:

160 DTR (Raj.) 198 CIT. Vs. Smt. Pooja Agrawal
Capital gains – Vis-à-vis income from undisclosed sources – Genuineness of share transactions - Tribunal has found that though at the time of survey the assessee in her statement denied having made any transactions in shares,

subsequently facts came on record that the assessee had transacted not only in the shares which are disputed but shares of various other companies – Various details like copy of contract note regarding purchase and sale of shares and assessee’s account with share broker PK were filed – Copy of depository account or demat account was also filed which shows that the transactions were made through demat account – Payments and receipts were through account payee cheques and the transactions were routed through Kolkata Stock Exchange – There is no evidence that the cash has gone back in assessee’s account – Prima facie the transactions which are supported by documents appear to be genuine transactions – AO has failed to prove through any independent inquiry or relying on some material that the transactions made by the assessee through share broker PK were non-genuine or there was any adverse mention about the transaction in question in the statement P – In view of Tribunal’s findings, the AO was rightly directed to accept the short term capital gain as shown by the assessee.

Ratan Lal Agarwal vs ACIT in ITA No. 738/JP/2019 (Jaipur ITAT)

“5.8. On perusal of the assessment order.....”

“5.2 During the A.Y. 2014-15,”

The basis of this finding has been on subsequent pages namely page 3 and 4 of the order. On perusing the details it is seen that letter u/s 133(6) so sent by the AO was returned unserved and considering this alongwith two more points, the AO has observed the company to be ‘shell company’. The other two things are namely that there are no tangible or intangible assets of the company and profit of the company as seen from the profit & loss account (submitted by the Id. AR of the appellant) is very meager, though AO has herself mentioned in same para 6.6 of the order that company has got reserves and surplus to the extent of Rs. 36,36,90,414/-. It is thus seen that only on the basis of aforesaid observations the AO tried to infer that the lender company is ‘shell company’. As against it, Id. AR has furnished the details and evidences firstly by way of PAN details and confirmation of the account from the lender company in order to prove the genuineness of the loan taken from the lender company. Moreover as notice u/s 133(6) sent by AO was returned unserved and AO wanted the director of lender company to appear before her which was not materialized as director being located from Jaipur and reluctant to appear before AO, the Id. AR furnished various further details and evidences before the AO in order to substantiate his claim. The balance sheet and profit & loss account of the lender company for AY 2014-15 and copy of the ITR was furnished before the AO. Moreover the copy of bank account of the lender company was also furnished to further substantiate about loan being genuine. Moreover, the Id. AR has submitted that this company is not the defunct company and is active as it has been filing its financial statements on the online portal of Ministry of Corporate Affairs. Moreover, the company has never been declared a ‘shell company’ by the MCA. Other argument of the AO of profit being so meager is not of much relevance considering that she has herself

rightly mentioned about reserve and surplus to the tune of Rs. 36,36,39,628/-. Other argument of no any tangible asset of the company is also not so relevant so as to treat the company as 'shell company', as there are many companies which have been accepting deposits and giving loans and these companies do not generally have physical assets in their balance sheet. Thus it is clear that the finding of the AO of the lender company namely M/s Inner Mercantile (P) Ltd. as 'shell company' on the basis of the aforesaid observations does not stand to merit in view of the discussion made as above regarding the observations of the AO and accordingly this finding of the AO of treating the company as 'shell company' is rejected and deserves to be ignored. It is seen that AR has brought to our notice that as on today no amount is outstanding and the loan was gradually repaid in various years and was completely repaid as of 31.03.2020. This also supports the aforesaid finding of existence of the company not being in doubt."

Instant case of assessee is on better footing as in cited case notice u/s 133(6) remained unserved, whereas in instant case no such notices were sent by Ld AO. In the cited case loan has been gradually repaid over the years whereas in instant case principal amount of loans have been repaid to both lenders in the year under consideration itself. Considering the decision of Hon'ble ITAT in the aforesaid case, the addition so made in instant case deserves to be deleted.

Rajhans Construction (P) Ltd. v. ACIT (2022) 216 TTJ 59 (UO) / 140 taxmann.com 370 (Surat)(Trib)

Section 68 of the Income-tax Act, 1961 - Cash credit (Unsecured loan) - Assessment year 2007-08 - Assessee availed unsecured loan from one 'A' in month of October, 2006 and repaid same in February, 2007 along with interest and deducted tax at source on interest amount - Assessing Officer held that loan was not genuine and made addition of same to income of assessee under section 68 - Whether when unsecured loan had been repaid within a short span of time for which assessee had paid interest and deducted tax thereon, Assessing Officer was not justified in making addition under section 68 - Held, yes [Para 18] [In favour of assessee]

159 ITR 78 (SC) Orissa Corpn. (P) Ltd

When the assessee furnishes names and addresses of the alleged creditors, the burden shifts to the department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the inquiry and to establish the lack of creditworthiness and the mere issue of notice u/s 131 is not sufficient. Thus, the Appellant has discharged the primary burden of establishing the identity and genuineness of the creditor.

152 ITR 507(Delhi HC) Sona Electric Co.

"As soon as the assessee discharged the initial burden of proof, the Assessing Officer is not entitled to reject the assessee's case. In other words, the explanation

offered by the assessee can be rejected by the Income Tax Officer on cogent grounds. When such grounds are themselves based on no evidence the question of presumption does not arise.”

82 ITR 542 (SC) Durga Prasad More

“The discharge of onus is dependent on the facts and circumstances of each case. Whether the initial onus is discharged or not that has to be ascertained from the materials on record. Once the initial onus is discharged, the onus shifts on the revenue. Then, it is for the revenue to act on it and until it comes to a finding that the explanation is insufficient and unsatisfactory, it could either ask for further explanation or could come to a decision on the basis of such material, but it is also a necessity or incumbent on the taxing authority to discharge their duty before fastening liability on the assessee. As far as credit worthiness or financial strength of the creditor/ subscriber is concerned, that is proved once the bank statement of the creditors is produced showing that it had sufficient balance in its accounts, once these documents are produced, the assessee would have satisfactorily discharged it's onus cast upon him. Thereafter, it is for the AO to scrutinize the same and in case he nurtures any doubt about the veracity of these documents to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion. The loan creditor had sufficient net worth of their own so as to advance loan to the assessee company.”

Reliance is also placed on judgement of Hon'ble Bombay High Court in the case of Pr. CIT vs M/s Paradise Inland Shipping Pvt. Ltd. TAX APPEAL NO. 66 OF 2016 wherein it has been categorically held that *“once the Assessee has produced documentary evidence to establish the existence of such companies, the burden would shift on the Revenue- Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subject to cross examination. In such circumstances, the question of remanding the matter for re-examination of such persons would not at all be justified. The Assessing officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot be discarded merely on the basis of two individuals who have given their statements contrary to such public documents.”*

187 Taxman 338 Aravali Trading Co. Vs. ITO (Raj.)

Assessment year 1993-94 – Whether once existence of persons in whose names credits are found in books of assessee is proved and such persons own such credits with assessee, assessee is not required to prove sources from which creditors could have acquired money to be deposited with it – Held, yes – Whether merely because depositors' explanation about sources wherefrom they acquired money is not acceptable to Assessing Officer, it cannot be presumed that deposits

made by such creditors are moneys of assessee itself – Held, yes – Whether in order to fasten liability on assessee by including such credits as its incomes from unexplained sources, a nexus has to be established by revenue that sources of creditors' deposit flow from assessee – Held, yes.

57 ITR 532 (SC) P. Seetharamamma
87 ITR 349 (SC) Daulat Ram Rawatmull

It was held that the fact, that as assessee was not able to satisfy the Authority as to the source of the source, from which the creditor of assessee derive the money would not justify the addition being made in respect of such credit in the hands of assessee

Balbir Sing Tomar (Dr.) V/s ACIT (Raj. HC) 20 TW 546

Where the creditors are regular assesseees and have also filed their affidavits no addition of such cash credits can be made unless there is sufficient material to disprove the genuineness.

CIT Vs. Heerala Chagan Lal 257 ITR 281 (Raj.)

Cash Credits- Finding by Tribunal that identity of creditor had been established- Amount representing cash credits not includible in total income of assessee- Income Tax Act, 1961.

Sheon Narain Moharilal Vs ACIT 24 TW 318 (ITAT, Jaipur)

No addition of cash credit can be made simply on the basis of presumption in the absence of any contrary evidence.

Sideway Investment Pvt. Ltd. V/s DCIT 24 TW 146 (ITAT, Jaipur)

Establishing the identity of the creditor, proving the genuineness of the transaction and the source of the credit appearing in the books of creditor is sufficient to discharge the onus for explaining the genuineness of the cash credit.

Pradeep Kumar Himmatramka Vs ITO 27 TW 393 (ITAT, Jaipur)

Whether filing of confirmations and disclosure of the amounts of advance in the income tax returns by the depositors can be treated as sufficient compliance of the provisions of section 68 for explaining the genuineness of cash credits? Held yes.

128 TTJ 708 Shanti Kumar Chordia Vs. Asstt. CIT (JP 'A')

Income – Cash credit – Genuineness – Amounts having been received through account payee cheques, creditors being assessed to tax and their confirmations also having been filed through belatedly, no addition under section 68 was called for.

CIT Vs. Kishori Lal Construction Ltd. [2010] 5 taxmann.com 60 (Delhi)

The onus cast on the assessee stands discharged where the assessee is able to establish the three ingredients of section 68 i.e. (a) the identity of the creditor, (b) the genuineness of the transaction, and (c) creditworthiness of the creditor.

43 DTR 449 Tulip Hotels (P) Ltd. Vs. Dy. CIT (Mumbai 'E') (TM)

Burden of proof and genuineness – Assessee having duly established the identity of the creditor, his creditworthiness and also genuineness of the transaction, the addition under s. 68 towards unexplained credit is liable to be deleted.

It is also pertinent to state that the none of the lender companies i.e. that M/s Desire Vincom Pvt Ltd. and M/s Wellworth Tradelink Pvt Ltd. are related to assessee company in any manner nor assessee has any control over the management of the said companies. Moreover, in view of the above submission, it is clear that:

- the assessee has discharged onus casted upon it by section 68 by furnishing all the documentary evidences in the shape of ITR of lender, confirmations of parties, Financial statements of lenders and copies of bank statements of lender;
- unsecured loans taken by the assessee stood repaid in the year itself and;
- Id.AO failed to establish as to how assessee has rotated his own money more particularly through penny stock trading (i.e. reason on which belief was formed)
- no facts whatsoever were concealed by assessee and rather loans taken from both the companies were duly recorded in books of accounts and there is no income, which has escaped assessment.

It is therefore prayed that the addition of Rs.4,28,00,000/- is made by Id.AO is rightly deleted by Id. CIT(A) and thus order of Id. CIT(A) should be upheld.”

7. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	PARTICULARS	PAGE NOS.
1.	Copy of Acknowledgement of Return of Income filed u/s 139(1) on 29.09.2011	1
2.	Copy of Acknowledgement of Return of Income and Computation of Total Income filed in response to notice u/s 148 on 15.11.2018	2-4
3.	Copy of Auditor's report & Balance sheet set for the period ending 31.03.2011	5-25
4.	Copy of Letter dated 19.11.2018 seeking reasons for re-opening assessment	26
5.	Copy of letter dated 19.11.2018 providing reasons for reopening of assessment.	27-32
6.	Copy of reply in response to notice issued u/s 142(1) of the I.T. Act, 1961	33-34
7.	Copy of show cause notice dated 24.12.2018 issued u/s 142(1) of the I.T. Act, 1961	35-36

S. No.	PARTICULARS	PAGE NOS.
8.	Copy of reply dated 27.12.2018 in response to show cause notice.	37-38
9.	Copy of bank statements for the period 01.04.2010 to 31.03.2011	39-74
10.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Desire Wincom Pvt. Ltd.	
	a Copy of confirmation of accounts	75-76
	b Copy of bank statements reflecting loan taken and repayment of same	77-82
	c Copy of Return of Income filed u/s 139(1) of the I.T. Act, 1961 on 30.09.2011	83
	d Copy of Auditor's report & Balance sheet set for the period ending 31.03.2011	84-93
11.	Copy of documentary evidences to prove identity, creditworthiness and genuineness of M/s Wellworth Tradelink Pvt. Ltd.	
	a Copy of confirmation of accounts	94
	b Copy of bank statements reflecting loan taken and repayment of same	95-97
	c Copy of Return of Income filed u/s 139(1) of the I.T. Act, 1961 on 30.09.2011	98
	d Copy of Auditor's report & Balance sheet set for the period ending 31.03.2011	99-108
12	Copy of Written Submission dated 12.03.2024 filed before Id. CIT(A) – 4 Jaipur	109-134
13	Copy of Written Submission dated 24.05.2024 filed before Id. CIT(A) – 4 Jaipur	135-136
14	Copy of Written Submission dated 03.06.2024 filed before Id. CIT(A) – 4 Jaipur	137-139
15	Copy of order by Hon'ble Court of Gujarat at Ahmedabad dated 22.08.2023 in the case of The Principal Commissioner of Income Tax 1 Vadodara v/s M/S Ojas Tarmake Pvt. Ltd.	140-151

8. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that the revenue has challenged the order of the Id. CIT(A) on merits considering the facts of the case whereas the Id. CIT(A) has allowed the appeal of the assessee on re-opening of the case and therefore, when the finding of the merits is not given by the Id. CIT(A) and revenue has not challenged the finding of the Id. CIT(A) on technical ground the appeal filed by the revenue is required to be dismissed. Even on merits revenue did not prove that the assessee found to have any cash trail. The Id. AR of the assessee thus relying on the decision of Gujarat High Court in the case of Principal Commissioner of Income-tax v. Ojas Tarmake (P.) Ltd., [156 taxmann.com 75 (Gujarat)] submitted that where assessee showed unsecured loans received during relevant assessment year and AO made addition on ground that assessee failed to discharge onus of liability as laid down under section 68, since amount of loan received by assessee was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted.

9. We have heard the rival contentions and perused the material placed on record. In this appeal the revenue has taken a solitary ground there by contended that Id. CIT(A) was not justified in deleting the addition of Rs.

4,28,00,000/- made by the Assessing Officer on account of unexplained unsecured loan u/s 68 of the Income Tax Act by disregarding the evidence indicating that the loan was channelled through shell companies M/s Wellworth Tradelink Pvt. Ltd. and Desire Vincom Pvt. Ltd. to introduce unaccounted money into the assessee's books of accounts.

The brief facts related to the dispute are that revenue received information from the ADIT (Inv.)(OSD), Unit-4, Kolkata vide letter dated 09.03.2018, wherein it was revealed that the assessee company had taken credit entry of Rs. 2,00,00,000/- through M/s Wellworth Tradelink Pvt. Ltd. (New Name Xylo Infrastructure Pvt. Ltd.) and Rs.1,08,00,000/- from Desire Vincom Pvt. Ltd, which are paper companies. The bank statements of these companies reveals that these accounts got credited by cash as well as transfers, and the same is transferred to various intermediary companies and ultimately to the beneficiaries who are having real business.

Considering that facts, notice u/s 148 was issued on 26.03.2018 after recording reasons and taking prior approval from the Pr. CIT (Central), Jaipur. Notices were issued on 14.09.2018, in compliance with the notice Id. AR of the assessee has furnished a detailed written reply thereby submitting the confirmation of unsecured loans and bank statement of

lender was submitting clamming that the confirmations of lenders has been already filed and the transactions have taken place through banking channels and therefore the genuineness of the same cannot be doubted more particularly when the loans was squared up, leaving apart interest amount, during the year under consideration. As regards the identity of the creditor M/s Desire Vincom Pvt. Ltd and M/s Wellworth Tradelink Pvt Ltd both are private limited company incorporated under Companies Act, 1956. Both the companies have valid PAN under the Income Tax Act and financial statements are duly audited by the independent chartered accountant, which have already been furnished. Such financial statements were also submitted by the said company before the Registrar of the Companies along with its annual return. Thus, it is quite evident that the identity of the said creditor company was duly established. As regards the creditworthiness of these parties, copy of financial statements of the lender in the shape of audited Balance Sheet, Profit and Loss account, ITR and bank statement through which the loan was given etc. were submitted. Copy of bank statements of the relevant period of both the parties were placed on record in support of the source of fund in the hands of lenders. It was claimed that no cash was deposited in bank accounts before making such advances to the assessee. Based on that contention the assessee

claimed that they have duly proved the genuineness, identity and creditworthiness of the lender and therefore no adverse inference may be taken in the matter.

Ld. AO noted that the primary onus is on the assessee to establish the genuineness of the transaction claimed by it. The assessee has never objected the reasons of the reopening. Further, if the investigation done by the department leads to doubt regarding the genuineness of the transactions, it is incumbent on the assessee to produce the parties along with necessary documents to establish the genuineness of the transaction. Payment by account payee cheque is not sacrosanct. It is a fact that the assessee deals with shell companies and has taken unsecured loan from shell companies under consideration. The assessee was trying to introduce his own money from undisclosed sources through unsecured loans. In the light of the various judicial pronouncements and the above discussion it is to be seen whether the assessee was able to establish the genuineness of the transactions claimed by it. The assessee has failed in discharging this onus. The information received from the investigation wing and clearly explains the modus operandi of this bogus transaction and accordingly total sum of Rs. 4,28,00,000 [3,20,00,000 + 1,08,00,000] was added as per provisions of section 68 of the Act.

9.1 Assessee when challenged the order of the assessment before the Id. CIT(A) on the various grounds on merits as well as challenging the re-opening of the assessment. Ld. CIT(A) has considered the technical ground raised by the assessee and thereby held that :

In view of the above discussion, the reasons of reopening are recorded or the case was reopened on the issue of rotation of own money through capital gains/ penny stock trading and the addition has been done in the assessment order only on account of unsecured loan. Thus no addition was found during assessment proceedings on the issue of rotation of own money through capital gains / penny stock trading which was the reason of reopening. In such a scenario as held by the Hon'ble Rajasthan High Court in the case of Shri Ram Singh (supra) "29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, Which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147.". Thus the Id. AO could not have made addition on the other issue. Accordingly, the addition on account of unsecured loan is not sustainable and the same is hereby directed to be deleted.

Accordingly, this ground of appeal is allowed in above terms. Other contentions raised by the appellant are not required to be adjudicated as those are rendered academic."

9.2 As is evident from the above finding of the Id. CIT(A) the he has followed the decision of our jurisdictional high Court in the case of Shri Ram Singh (Supra) and the revenue has not challenged that finding of the Id. CIT(A). So far as merits of the case of the assessee Id. AR of the assessee submitted that the assessee has repaid those loans and that factual aspect

of the case has not been denied before us by the Id. DR also. Thus, when the loans accepted were repaid in the same year no addition can be made as herein this case assessee showed unsecured loans received during relevant assessment year and AO made addition on ground that assessee failed to discharge onus of liability as laid down under section 68, since amount of loan received by assessee was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted to drive home to this contention Id. AR of the assessee serviced the decision of Gujarat High Court in the case of Principal Commissioner of Income-tax v. Ojas Tarmake (P.) Ltd., [156 taxmann.com 75 (Gujarat)] wherein the court has held as under :

3. What is evident is that the Tribunal found on facts that ***the amount of loan received by the assessee was returned to the loan party during the year itself and all transactions were carried out through banking channel.*** The ITAT on the decision of *CIT v. Rohini Builders* [\[2003\] 127 Taxman 523/\[2002\] 256 ITR 360 \(Guj.\)](#), held in favour of the assessee.

4. On facts therefore, having perused the orders under challenge, we are of the opinion that no error of law is committed by the Ld. ITAT. In the case of *Rohini Builders (supra)*, the Court held as under:

" We have considered the rival submissions and have also gone through the order passed by the Assessing Officer, the relevant portion of which we have also extracted in para. 2 above. The Commissioner of Income-tax (Appeals) more or less confirmed the addition on the reasoning given by the Assessing Officer in the assessment order. A perusal of the chart given by us in para. 3 above indicates that out of 21 creditors the Assessing Officer has recorded the statements of only six creditors, viz., creditors at serial Nos. 1, 2, 3, 4, 6, and 7. However, in respect of all the 21 creditors the assessee has furnished their complete addresses along with GIR numbers/permanent account numbers as well as confirmations along with the copies of assessment orders passed in the cases of creditors at serial Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 12 and 16. In the remaining cases where the assessment orders passed were not readily available, the assessee has furnished the copies of

returns filed by the creditors with the Department along with their statement of income. All the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques along with the interest in relation to those loans. It is rather strange that although the Assessing Officer has treated the cash credits as non-genuine, he has not made any addition on account of interest claimed/paid by the assessee in relation to those cash credits, which has been claimed as business expenditure and has been allowed by the Assessing Officer. It is also pertinent to note that in respect of some of the creditors the interest was credited to their accounts/paid to them after deduction of tax at source and information to this effect was given in the loan confirmation statements by those creditors filed by the assessee before the Assessing Officer. Thus it is clear that the assessee had discharged the initial onus which lays on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent accounts numbers and the copies of assessment orders wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of *Orient Trading Co. Ltd. v. CIT* [1963] 49 ITR 723. The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques. Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee -from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of *Orissa Corporation* [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee. In the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69. Further, we may point out that section 68 under which the addition has been made by the Assessing Officer reads as under :

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

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

5. For the aforesaid reasons, we do not see any merit in the appeal, and therefore, the same is accordingly dismissed with no orders as to costs.

Considering the overall facts as placed on record and revenue did not bring anything contrary before us while hearing of the case we do not find any merits in the grounds so raised by the revenue and thereby we dismiss the present appeal.

In the result, the appeal of the revenue stands dismissed.

Order pronounced in the open court on 02/01/2025.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/01/2025

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- DCIT, Central Circle-01, Jaipur
2. प्रत्यर्थी / The Respondent- Harsh Stock Portfolio Pvt. Ltd., Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1084/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar