

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.108/AGR/2025
(ASSESSMENT YEAR: 2022-23)

Income Tax Officer-1 Morena, (M.P.)	Vs.	Shri Agrasen Logistics, In front of Old Rajput Hotel, A.B. Road, Morena-476001 (M.P.) PAN-AEIFS3236E
(Appellant)		(Respondent)

Assessee by	Shri Sudhir Sehgal Adv. & Shri Ashok Vijaywargiya, CA	
Department by	Shri Sukesh Kumar Jain, CIT- DR	
Date of Hearing	21/05/2025	
Date of Pronouncement	24/06/2025	

ORDER

PER MANISH AGARWAL, AM:

This appeal is filed by the Revenue against the order passed u/s 250 of the Income Tax Act, 1961 (the Act, in short) by the Id. Commissioner of Income Tax (Appeals), [Id. CIT(A), in short] National Faceless Appeal Centre (NFAC) dated 03.02.2025 in Appeal No. NFAC/2021-22/10337524 for Assessment Year 2022-23 arising out of the order passed by the Assessing Officer (the AO, in short) u/s 143(3) of the Act, dated 26.03.2024.

2. Brief facts of the case are that the assessee is a partnership firm engaged in the business of real estate and filed its return of income for the AY 2022-23 declaring total income of Rs. NIL. The case of the appellant was selected for Scrutiny by way of issue of notice u/s 143(2) of the Act. During the assessment proceedings, the AO asked the assessee to explain and justify the loan creditors. In reply, the assessee filed confirmations, PAN and bank account statements of

all the loan parties from whom loans were taken during the year under appeal. The AO by observing that average balance in the bank accounts of many of the loan creditors was below Rs.5,000/- and there were either cash deposit or account transfer of same amount in some of the bank accounts concluded the said loans as unexplained credits and circulation of assessee's own money and bogus in nature as the creditworthiness of the creditors was not proved. Thereafter, the assessment was completed at a total income of Rs. 17,02,25,505/- after making addition by holding the unsecured loans as unexplained cash credits u/s 68 of the Act. Against such order the assessee filed appeal before the ld. CIT(A) who vide impugned order dt. 03.02.2025 has deleted the additions. Aggrieved by the said order, revenue is in appeal before Tribunal.

3. The revenue has raised following grounds of appeal:

- “1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was erred in law by accepting creditworthiness, genuineness and capacity of the lenders without verifying the same although the bank account of the lenders had identical in cash deposits just before giving loans to the assessee.*
- 2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was erred in not remanding the matter to the Assessing Officer for verification of genuineness of the transactions before deciding the issue.”*

4. Since both the ground of appeal taken by the revenue are related to the addition of Rs. 17,02,25,505/- deleted by ld. CIT(A) thus both are taken together for adjudication.

5. Before us, ld. CIT, DR vehemently supported the order of AO and submitted that assessee has failed to prove the creditworthiness of the creditors and genuineness of transaction was also not proved. He further submitted that the AO after making sample verification of the confirmations and bank statements in case of six creditors, out of details filed by assessee for all the 245 loan creditors had observed that most of the lenders filed their ITR declaring Nil or low income. Their bank statement shows the average balance was around 5000/- and either cash was deposited or transfer entry is made in their bank accounts just prior to transfer of funds to the assessee. The ld. CIT DR further

argued that the ld. CIT(A) has failed to consider these facts and further failed to appreciate the human probability and surrounding circumstances which suggest that the loan transactions are nothing but is a method devised by the assessee to route its cash into business in the guise of loans. Ld. CIT DR also filed a written submission wherein he placed reliance on the judgements relied upon by the AO and also relied upon other judicial pronouncements to support his arguments and prayed for the restoration of the additions made.

6. In the alternate, the ld. CIT DR requested that the matter be remand back to the file of the AO/CIT(A) for making necessary enquiries in respect to all the creditors. The written submission filed by the CIT DR is as follows:

“The Hon'ble Bench after hearing detailed oral arguments from the Department's side directed the CIT(DR) to file citations of the Case laws relied upon by the Revenue during the hearing.

Accordingly, the same is submitted as follows.

1. Through this appeal, the department has challenged the action of the Ld. CIT(A) in his order dated 03.02.2025 in deleting the addition of Rs 17,02,25,505/- made under section 68 in respect of unexplained cash credits when the assessee had failed to prove the creditworthiness of the lenders and genuineness of the transactions.

2. In the assessment orders the Assessing Officer (AO) has made a detailed discussion in pages 3 to 7 and concluded that the assessee had failed to prove the capacity of the lenders and genuineness of the transactions.

2.1 It is undisputed that in the year under consideration, the opening balance of sundry creditors was Rs Nil.

2.2 It is undisputed that during the year, the assessee has claimed to have, borrowed from 250 persons whereas in the earlier year there was no such transaction.

2.3 It is undisputed that the assessee had submitted only PAN, confirmations and bank statements of these lenders.

2.4 It is undisputed that most of the lenders filed their return of income showing NIL or very nominal returned income.

2.5 It is undisputed that, there was a peculiar pattern in the bank statements of almost all the bank accounts of the lenders that average balance in all these accounts was below Rs 5,000/- only. Further, there was either a cash deposit or transfer in the bank account of lenders on a particular day and immediately thereafter same amount was transferred on the same day to the assessee. Two sample bank accounts have been illustrated by the AO at page 4.

2.6 All these facts were confronted to the assessee by way of a show cause notice dated 10.03.2025. In response the assessee failed to furnish any further evidence in support of the creditworthiness of the lenders and genuineness of the transactions.

3. Before the Ld. CIT (A) also the assessee made the same contentions as filed before AO and failed to submit any further evidence in support of the capacity of the lenders and genuineness of the transactions. However, the Ld. CIT taking into consideration of only confirmations and bank statements concluded that the assessee had satisfactorily proven these cash credits and deleted the additions by ignoring the facts that mere filing of confirmations was not sufficient; the bank statements in all the cases showed a peculiar pattern; and the fact that opening balance was Nil and suddenly persons of meagre means were able to contact assessee and lent it significant amounts showed that the transactions were not genuine.

4. The action of Ld. CIT (A) is against the settled position of law that the primary onus is on the assessee to not just establish the identity of the creditors but also their creditworthiness and genuineness of the transaction. Reliance is placed on the case laws in the succeeding paragraphs.

General

5. The Apex Court has laid down in *Kalekhan Mohd. Hanif v. CIT*, [1963] 50 ITR 1 (SC) that the onus is on the assessee to explain the nature and source of cash credits.

6. In the case of *CIT v. Durga Prasad More*, [1971] 82 ITR 540, the Hon'ble Supreme Court, has held that Section 68 casts the burden of proof on the assessee to prove the identity of the creditor, the creditworthiness of the creditor, and the genuineness of the transaction.

7. The Hon'ble Supreme Court has held in *A. Govindarajulu Mudaliar v. CIT* [1958] 34 ITR 807 (SC) that the burden to prove the genuineness of cash credit lies on the taxpayer. If the assessee fails to prove satisfactorily the source and nature of amounts of cash received and creditworthiness of the creditor, the AO is entitled to draw inference that the receipts are of an assessable nature.

8. The Hon'ble Supreme Court in *Roshan Di Hatti v. CIT* [1977] 107 ITR 938 has held that onus of proving the source of a sum of money found to have been received by an assessee is on him. When the nature and source of money or otherwise cannot be satisfactorily explained by the assessee, it is open to the revenue to hold that it is the income of the assessee.

9. In *PCIT v. NRA Iron & Steel (P.) Ltd.* [2019] 103 taxmann.com 48 (SC), the Apex Court has reiterated that the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors; (ii) their creditworthiness; and (iii) genuineness of the transaction. It held that where the assessee failed to discharge the onus required under section 68 of the Act, the AO was justified in adding back the amounts to the Assessee's income.

10. Hon'ble Jurisdiction High Court of Allahabad in *Rupal Jain v. CIT* 2023] 152 taxmann.com 345 (Allahabad) has held where assessee though had disclosed source of deposit but could not establish nature thereof, three conditions required to be proved by assessee as per section 68 could not be proved and thus, addition made was justified.

11. The Hon'ble Delhi High Court in *CIT v. Oasis Hospitalities Pvt. Ltd.* [2011] 333 ITR 119 (Delhi), held that the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68. Those are: (i) identity of the investors; (ii) their creditworthiness; and (iii) genuineness of the transaction. The department's exercise starts only when these three ingredients are established prima facie, by the assessee.

12. The Hon'ble Calcutta High Court) in *Shankar Industries v. CIT* [1978] 114 ITR 689 has held that the Assessee must prove identities of creditors, capacity of creditors to advance moneys and genuineness of the transactions, then only burden will fall on the revenue. Establishing identity of creditor is not sufficient.

13. The Ld. AR has contended that the identity of the creditors had been established by the assessee. However, it is a settled law that establishing identity of creditor is not sufficient in these matters. Reliance is placed on following case laws:

13.1 The Hon'ble Supreme Court in *PCIT vs. NRA Iron and Steel Works* [2019] 103 taxmann.com 48 (SC) held that merely providing the identity of investors is not enough to discharge the onus on assessee u/s 68 to prove the genuineness and creditworthiness of the investors.

13.2 Hon'ble Kerala High Court has in *M.A. Unnceri Kutty v. CIT* [1992] 198 ITR 147 (Kerala) has held that where the assessee had established only the identity of the creditor but the creditworthiness and the genuineness of the transactions have not been proved, no interference was required in Tribunal's order sustaining the addition.

13.3 Hon'ble Delhi High Court in *Siddharth Export v. Asstt. CIT* [2019] 112 taxmann.com 193 (Delhi) has held that the genuineness of credit is not proved merely on the strength of bank statement, or identity by way of copy of passport, PAN No. etc.

13.4 Hon'ble Kerala High Court has in *CIT v. Universal Empire Educational Society* [2017] 80 taxmann.com 44 (Ker.) has held that merely by establishing identity of creditor, assessee would not be said to have discharged burden of proof under section 68.

Mere filing of PAN Number/ income tax return of creditor not enough¹⁴. It was contended that PAN/Aadhar/ITRs of the creditors have been filed therefore, the identity; creditworthiness of the creditors has been established and genuineness of the transaction is proven by the assessee. However, it is a settled law that mere filing of PAN Number/income tax return of creditor not enough.

14.1 The Hon'ble High Court of Calcutta, in *CIT v. Korlay Trading Co. Ltd.* [1998] 232 ITR 820, ruled mere filing of income-tax file number of creditor was not sufficient to prove genuineness of cash credit - there should be creditworthiness and also there should be genuine transaction mere filing of filing of income tax return is not enough to prove genuineness of cash credit.

Mere filing of confirmations is not enough

15. The Ld. AR contended that as the confirmations have been filed in all cases, there was no case of making any addition in this case. However, it is a settled law that mere filing of confirmations is not sufficient to prove the ingredients of section 68. Reliance is placed on following case laws:

15.1 The jurisdictional Hon'ble Allahabad High Court in *Nanak Chandra Laxman Das v. CIT* [1982] 9 Taxman 252 (All.) has held that mere confirmation letter from alleged creditor could not be treated as sufficient evidence to prove genuineness of cash credit.

15.2 Hon'ble Calcutta High Court in *CIT v. United Commercial & Industrial Co. (P) Ltd.* [1991] 187 ITR 596 held that mere production of the confirmation letters before the AO would not by itself prove that the loans have been obtained from those loan creditors or that they have credit-worthiness.

15.3 Hon'ble Calcutta High Court in the case of *Bharati (P.) Ltd. v. CIT* [1978] 111 ITR 951 upheld the Appellate Tribunal's decision that mere filing of confirmatory letters did not discharge the onus that lay on the assessee.

15.4 Hon'ble Rajasthan High Court in *Rajshree Synthetics (P.) Ltd. v. CIT* [2002] 256 ITR 331 (Raj.) has held that mere filing of confirmatory letters does not discharge the onus that lies on the assessee.

15.5 Hon'ble ITAT Patana in *Prabhat Construction Co. v. CIT* [2015] 60 taxmann.com 37/155 ITD 813 (Pat. Trib.) held that confirmation from creditors only establishes their identity, the burden to prove their creditworthiness or genuineness of credit transactions is not discharged. Transaction through banking channels are not sufficient to prove creditworthiness and genuineness.

16. It was also contended that considering the fact that transactions of accepting credit and return thereof has been made through banking channels and therefore, the creditworthiness and genuineness stands proved. It was submitted by the Revenue that merely because transactions have taken place through banking channels is not sufficient to prove creditworthiness and genuineness. Reliance is placed on following case laws:

16.1 The Hon'ble Supreme Court in *CIT v. P. Mohanakala* [2007] 161 Taxman 169 (SC) held that the transactions though apparent, yet were held to be not real one. May be the money came by way of bank cheques and was paid through the process of banking transaction, but that itself was of no consequence.

16.2 The Hon'ble Supreme Court in *PCIT vs. NRA Iron and Steel Works* [2019] 103 taxmann.com 48 (SC) has held that merely showing that the transactions were made using proper banking channels would not be enough to discharge the onus on assessee u/s 68 to prove the genuineness and creditworthiness of the investors.

16.3 The jurisdictional Hon'ble Allahabad High Court in *CIT v. Smt. Prem Lata Sethi* [2014] 220 Taxman 333 (All) held that transaction through bank account is not enough to explain creditworthiness of creditor and genuineness of transaction.

16.4 Hon'ble High Court of Calcutta in *Precision Finance (P.) Ltd.* [1994] 208 ITR 465 (Calcutta), held that even the loan through bank cannot be accepted as genuine unless the identity and creditworthiness of the creditors are proved. Mere payment of account payee cheque is not sacrosanct nor can it make a non-genuine transaction genuine. SLP in this case Dismissed/Rejected in [2023] 152 taxmann.com 346 (SC).

16.5 Hon'ble Delhi High Court in *PCIT v. Bikram Singh* [2017] 85 taxmann.com 104 (Delhi) held that mere establishing of their identity and fact that amounts had been transferred through cheque payments, did not by itself mean that transactions were genuine.

16.6 Hon'ble Madras High Court in *Mangilal Jain v. ITO* [2009] 315 ITR 105 (Mad.) has held that merely the fact that the transaction was by proper banking channel was not sufficient.

16.7 Hon'ble Calcutta High Court in *CIT v. United Commercial & Industrial Co. (P) Ltd.* [1991] 187 ITR 596 held that genuineness of the loans could not be accepted merely because cheques were exchanged between the parties. Deposits in lenders' bank account before giving loan.

17. It was argued by the Revenue during the hearing that the Ld. CIT(A) was unjustified in ignoring the observations of the AO that there was either a cash deposit or transfer in the bank account of lenders on a particular day and immediately thereafter some amount was

transferred on the same day to the transactions, which clearly showed that the creditworthiness of the lenders and genuineness of the transaction was not at all proven. Following case laws are to be considered in this regard.

17.1 The jurisdictional Hon'ble Allahabad High Court in Suman Gupta Vs ITO ITA No.680/12 vide judgement dated 07.08.2012 affirmed ITAT Agra decision reported at [2012] 25 taxmann.com 220 (Agra) that where identical amounts were found to have been deposited in accounts of lenders prior to lending, addition is to be made as assessee failed to prove genuineness of loans. SLP of assessee dismissed by Hon'ble Supreme Court reported at 2013 2013-LL-0122-69.

17.2 Hon'ble Gujarat High Court in Pavankumar M. Sanghvi v. ITO [2018] 90 taxmann.com 386 (Gujarat) held that where assessee received loan from two companies, in view of fact that on date assessee was given loan there were credit entries of almost similar amounts and balance after these transactions was a small amount, impugned amount was rightly brought to tax under section 68. SLP dismissed by Supreme Court reported at 258 Taxman 160 (SC).

17.3 It was held by Hon'ble Gujarat High Court in Blessing Construction Vs ITO [2013] 214 Taxman 645 (Gujarat) where sizeable amounts were deposited in cash in account of depositors only before their withdrawal through cheques in favour of assessee, addition was justified. Surrounding Circumstances and Test of Human Probability is relevant.

18. It is a settled law that while deciding the creditworthiness of lenders and genuineness of the transactions, overall surrounding circumstances indicating the reality must be seen and the matter has to be considered by applying the test of human probabilities.

18. In this case, it is undisputed fact that there was no sundry creditor/unsecured loan at the beginning of the year; suddenly 250 different individuals have shown to have extended loans to the assessee. It is not known as to how the assessee came into contact with these 250 different persons when he had no acquaintance with these persons in past. Copies of ITRs of these persons show that most of them had either filed Nil returned income or very nominal income. Further, very peculiar pattern is observed in the bank statements of almost all the bank accounts of the lenders that average balance in all these accounts was below Rs 5,000/- only and there was either a cash deposit or transfer in the bank account of lenders on a particular day and immediately thereafter same amount was transferred on the same day to the assessee. All these facts, overall surrounding circumstances show that applying the test of human probabilities, the transactions were not genuine.

18.2 Hon'ble Supreme Court has held in CIT v. Durga Prasad More [1971] 82 ITR 540 that the taxing authorities are entitled to look into the surrounding 'circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities after considering the surrounding circumstances.

18.3 Hon'ble Supreme Court reiterated in Sumati Dayal v. CIT [1995] 214 ITR 801 (SC) held that considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine.

18.4 In identical facts, Hon'ble ITAT Agra has in Smt. Suman Gupta v. ITO [2012] 25 taxmann.com 220 (Agra) where cash was deposited either on the date of issue of cheques in favour of the assessee or just prior to it of the equivalent amount, the source of which is not explained. The creditors have no source of income to advance loan to the assessee. Creditworthiness of the creditors has not been proved. The creditors were filing return of

income at meager income and have no source to advance any money to the assessee. The ITAT applied Durga Prasad More (supra) and Sumati Dayal (supra) and confirmed the addition. It held:

"11..... When the test of human probabilities after considering the surrounding circumstances as is propounded by Hon'ble Supreme Court in the case of Durga Prasad More (supra) and Sumati Dayal (supra), is applied to the facts of the case, it is clear that the Id. CIT(A) was justified in confirming the addition u/s. 68 of the IT Act. In the present case, the assessee has not adduced any sufficient evidence before the authorities below to prove the creditworthiness of the creditors and genuineness of the transactions in the matter. Therefore, the assessee has not satisfied the essential ingredients of section 68 of the IT Act."

18.4.1 The jurisdictional Hon'ble Allahabad High Court in Suman Gupta Vs ITO ITA No.680/12 vide judgement dated 07.08.2012 has affirmed the aforesaid decision of the ITAT Agra. Further, SLP of assessee has been dismissed by Hon'ble Supreme Court reported at 2013 2013-LL-0122-69.

19. In view of the overall discussion made above, it is submitted that the Ld. CIT(A) was not justified, on facts and in law, in ignoring the overwhelming observations of the AO the assessee had failed to prove the creditworthiness of the lenders and genuineness of the transaction. It is therefore requested that the grounds of appeal raised by the department may kindly be allowed.

19. In view of the overall discussion made above, it is submitted that the Ld. CIT(A) was not justified, on facts and in law, in ignoring the overwhelming observations of the AO the assessee had failed to prove the creditworthiness of the lenders and genuineness of the transaction. It is therefore requested that the grounds of appeal raised by the department may kindly be allowed."

7. On the other hand, the Ld. AR of the assessee submitted that the assessee vide letter dt. 09.03.2024 had filed the complete details of the all the 245 loans creditors from whom the loans of Rs. 17,02,25,505/- were taken during the year. Such details include the following documents:

1. PAN and Aadhar card
2. Bank Statements
3. Confirmations
4. Bhū Pustika, wherever applicable
5. ITR Acknowledgement
6. Balance Sheet, wherever available

8. A chart containing complete name and the nature of evidences as filed before the AO is available at paper book pages 14-43 filed by the assessee. It is also submitted by the ld. AR of the assessee that in respect to two parties, they have not provided the requisite details and a request was made to AO to directly call the relevant details u/s 131/133(6) of the Act. Ld.AR further submitted that

upon receipt of the reply by the assessee alongwith the evidences, on the very next day, the AO issued show cause notice wherein it was alleged that assessee has failed to establish the genuineness, identity and creditworthiness of loan creditors and therefore, addition of entire amount of unsecured loans of Rs. 17,02,25,505/- u/s 68 of the Act was proposed. The said show cause notice is placed in the paper book pages 46-49. At this juncture, ld.AR drew our attention to the reply filed by the assessee on 14.03.2024 wherein besides re-submitting the above stated details, it was further submitted that in many cases, the amounts were repaid during the year itself through banking channel. Ld. AR also submitted that out of the total loans of Rs. 17,02,25,505/-, a sum of Rs. 1,91,29,000/- taken from 11 parties were settled in subsequent assessment year through sale of property and copies of sale deed were also filed which are placed in the paper book pages 77-78. Ld.AR further contended that when the loan amounts were repaid in the year itself or in subsequent year and the payments were not doubted, no addition should be made with respect to the receipt of the same. For this, he placed reliance on the following judicial pronouncements:

1. [2011] 15 Taxmann.com 70 CIT vs. Karaj Singh (Punjab & Haryana)
2. [2024] 164 Taxmann.com 764 PCIT vs. Merrygold Gems (P.) Ltd. (Gujarat)
3. [2022] 145 Taxmann.com 27 PCIT vs. Ambe Tradecorp (P.) Ltd. (Gujarat)
4. [2022] 140 Taxmann.com 370 Rajhans Construction (P.) Ltd. vs. ACIT (ITAT, Surat)
5. DCIT vs. Tripoli Management Pvt. Ltd. in ITA No. 05/AHD/2024 (ITAT Ahmedabad) order dated 01.08.2024.

9. Ld. AR further submitted that if the AO had any doubts about the genuineness of the transactions or regarding the creditworthiness of any of the loan creditor, he could have made direct enquiries by issue of notices/ summon u/s 131 or 133(6) of the Act however, ld. AO has opted the short cut and after receiving the evidences filed by the assessee, on the very next day had issued show cause notice proposing to make the addition. This clearly shows the arbitrary approach and preconceived notion of the AO who was bent upon to make the addition. Ld. AR further submitted that the AO by verifying details of only six parties had made a general observation that in almost all the cases similar deficiencies were noticed which is nothing but on mere suspicion and

conjectures. Ld. AR further submitted that ld. CIT(A) after appreciating these facts and further by making in-depth analysis of the evidences filed by the assessee and further by considering the judgements relied upon and after distinguishing the judgements relied by AO has deleted the additions. ld.AR thus submitted that ld. CIT(A) has rightly deleted the additions made and humbly prayed for the confirmation of the order of ld. CIT(A). Ld. AR also filed a detailed written submission which reads as under:

“Backgrounds of the case

1. The assessee is a partnership firm engaged in business of real estate filed its return of income declaring of NIL. Income in year under consideration because the firm purchased the property but could not sale during the year under consideration.
2. The case of the assessee was selected for scrutiny and specific issue relating to 'High liabilities in the form of 250 Loan creditors' was pointed out by Ld. AO which amounts to Rs. 17,02,25,505/
3. The assessee during the course of assessment proceedings filed following documents to prove the genuineness of the Loan creditors:

- Copies of Bank Statements of all the creditors
 - Copies of Aadhar/Pan of all creditors depicting address and other details.
 - Copies of account of the parties in the books of assessee.
 - Copies of confirmation of loan creditors.
 - Copies of repayment schedule in most of the cases.
 - Copies of ITR acknowledgement, who are assessed.
 - Copies of Balance sheet, wherever available.
 - Copies of Bhu-Pustika having Khatoni and khasra number in certain cases.
4. However, the Ld. AO had pointed out defects as follows against the above documentary evidences filed by the assessee
 - ITR declaring Nil Income as filed by some of the loan creditors (Findings at page 5 of the order of CIT(A)).
 - Out of questioned 245 total loan creditors, Ld. AO pointed out specific defects in six parties only, who had advanced loan to us, pointing out Issue that funds advanced by the creditors were firstly deposited in the bank account of the creditors and then transferred to the assessee. (Findings at page 5-6 of the order of CIT(A)).
 - Average balance of the above referred six creditors are below then Rs. 5000/- (Findings at page 5 of the order of CIT(A)).
 - 5. The assessment order u/s 143(3) was passed dated 26.03.2024 without considering and verifying any documentary evidences filed by the assessee and without making any enquires, took similar views in respect of all the other creditors.
 - 6. The assessee aggrieved with the order of Ld. AD filed an appeal before the worthy CIT(A) and the addition on account of loan creditors was deleted.
 - 7. Now, the department against the order of CIT(A) filed an appeal before Hon'ble tribunal to confirm the order passed by the Ld. AO.

Our arguments on appeal filed by the Department

The order passed by the Assessing officer was based on conjecture and surmises, without taking into consideration any reply and documentary evidences filed before the Ld. AO. Thereafter, the submission and same documents filed before the AD were filed before the Worthy. CIT(A) and the appeal of the assessee was allowed based on facts and grounds discussed and tabulated below:

Finding by Ld. AO	Conclusion taken before CIT(A)	Finding given by CIT(A)
<p>The Ld. AO at pages 1-3 of the assessment order has discussed as under:</p> <p>a. Facts of the case, defect pointed out by the Ld. AO due to high liabilities stands payable in the books of assessee.</p> <p>b. Details of opportunities given during course of assessment proceedings.</p> <p>c. That the assessee has responded to all the queries relating to high liability payable by the assessee in form of loan advanced from 245 parties alongwith documents i.e. Aadhar/Pan, Bank statements and confirmations of 243 parties out of 245 loan creditors.</p> <p><u>Further, the LD. AD at page 3(last para) to page 5 (para4. 5) of the assessment order has dacussed about defects pointed out as under:</u></p> <p>d. That the ITR's filed by the loan creditors are either filed declaring income of Nil or have filed returns declaring nominal Incomes</p>	<p>The assessee vide submission dated 14.03.2024 before the CIT(A) filed the details as under:</p> <p>a. Details of total 245 parties from whom loans have advanced the assessee giving separate parties wise details of 'loans taken as unsecured loan' from 235 parties of Rs. 15, 10,96,505/- and amounts received as 'advance against booking of plots' from 10 parties fo Rs. 1,91,29,000/-.</p> <p>b. Also, the same reply was filed before the Ld. AO requesting to kindly verify the creditors by way of issuing notice u/s 131 & 133(6) of the Act. However, the Ld. AO had not issued any notices to the creditors.</p> <p>C. Details of fresh borrowings taken during the year under consideration from 187 parties out of which documentary evidence of 136 parties have been filled by the assessee</p> <p>The assessee vide submission dated 13.06.2004 before the</p>	<p>That the Worthy CIT(A) at pages 1 to 3 of the First Appellate Order has discussed as under:</p> <p>a) Brief fact of the case and Ground of Appeal taken by the assessee.</p> <p>b) Dismissing the Ground No. 1 and 4 being general in nature.</p> <p>That the Worthy CIT(A) at pages 4 to 8 of the First Appellate Order has discussed as under:</p> <p>c) Considering Ground No. 2, 3, 5 and 6 as intra-alia linked with same Issue of unexplained cash credit u/s 68.</p> <p>d) Order of AD reproduced at pages 4 to 1 of the Appellate Order. wherein, defect point out by the AD and conclusion drawn with reference of different came laws is reproduced by the CITIAL</p> <p>That the Worthy CITIA) at pages (para 5.2) to 15 of the First Appellate Order has discussed as under</p> <p>e Submission of the assessee flied dated 13.06.2004 is reproduced here.</p> <p>f) At para 53 CITIA) has died about the facts and other material available on the record which has been filed by the assessee before Ld. AG to prove the identity and</p>

<p>e. Average balances in their loan creditors are below 5,000/-</p> <p>f. Pattern of first depositing the cash and then lending the same on the same dates is founds out of bank statements filled by the assessee in case of 6 different lenders having names Sh. Anant Jain, Sh. Amar Singh, Sh. Ankush Singal, Sh. Anil Kumar Jain, Sh. Arvind sharma, Sh. Ashish Jain along with their PAN numbers, the trend of cash having been depositing & then the cheques have been issued</p> <p>g. Show cause notice dated 10.03.2004 proposing variation of Rs. 17,02,25,505-was proposed by the ld. AO taking on above facts into consideration and thereby, treating the loan advanced by the assessee as unexplained cash credit u/s 68 r.w.s. 1158BE.</p> <p>h. That the assessee made his compliance in response to above SCN issued and once again submitted the details in the form of Bank Statements, Aadhar/PAN etc of the lenders.</p> <p>Further, the Ld. AO at page 5(14.6 para) to page 8 of the assessment order has discussed about conclusion drawn by the Ld. AO:</p> <p>i. At para 4.6 the AO has referred about the</p>	<p>CITA) filed the details is under:</p> <p>d. Written submission filed before the worthy CITIA) taken on grounds under</p> <p>If the assessee has discharged his onus by way of providing each and every documents then the burden of verifying be in hands of Assessing Officer.</p> <p>No material on record have been produced by the Ld. AO before taking adverse action against loans taken by the assessee.</p> <p>No specific reasons have been furnished in respect of each lender and creditors separately.</p> <p>e. The assessee have filed following judgements in rebuttal to the case laws cited by the Ld. AO and adverse view have been taken against the assessee:</p> <p><u>DCIT vs. Rohini Builders 256 ITR 360. (GUJ HC)</u> on the issue No substantial question law can be raised, where sufficient document have been provided by the assessee to prove the cash credits u/s 68.</p> <p><u>CIT v Rohini Builders 254 ITR 275(SC)</u> no addition can be made by the AO, just taking on fact the explanation was not found</p>	<p>creditworthiness of the creditors and the same has been followed by the CITIA) also has appreciated the evidences filed by the assessee as under:</p> <p>Assessee has filed copy of PAN and Aadhar of the creditors in support of identity of the creditors. Copy of ITR and Acknowledgment. Copy of confirmations, copy of Balance Sheet, Profit and Loss account of the creditors.</p> <p>Copy of relevant extract of relevant bank statement of the creditors.</p> <p>Copy of Bhu Pushtika, Khatoni and Khasra in support of claim that there was Agricultural land holding of the creditors.</p> <p>h. Para 5.4 the Worthy CIT(A) has discussed here that the initial burden of proving the Identity, creditworthiness were proved by the assessee and onus was shifted to the AO to verify the same by conducting independent inquiry from the creditors u/s 133(6). However, the AO has chosen a simple way of relying upon his surmises and subspecies and, thus treated the entire amount of loan advance 244 parties as unexplained cash credits.</p> <p>i. Para 5.5 no failure on the part of the assessee was proved to prove the identity creditworthiness and genuineness of the creditors.</p> <p>j. Further, the issue pointed out by the AO relating to cash being first deposited into the bank account of the creditors and then being transferred to the assessee in form of</p>
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<p>discussion made as above that the assessee fails to prove the credit worthiness of the lenders and also referred to the case laws on following issues as under:</p> <p>Case of CIT Vs. Korlay Trading Co. Ltd. [1998] 232 ITR 820 (Cal.) wherein it is held, without filing confirmation the creditor and merely mentioning Income tax file no. of the creditors, the genuineness of the cash credit cannot be said to have been proved by the assessee.</p> <p><u>Smt. Suman Gupta vs. Income-tax Officer, Ward 1, Aligarh [2012] 25 taxmann.com220 (Agra)</u> may also be referred to on this issue. In this case the assessee was found to have received Rs. 13 lakh as loans from six persons. Assessing Officer noted that Immediately before amounts were lent to assessee, identical amounts were deposited in bank accounts of sald persons. Assessee could produce only one lender for examination. Assessing Officer found that lenders had no creditworthiness give loan as they had very small bank balances and were earning small income. In the given facts, it was held by the Tribunal that it was money of assessee which was routed through bank accounts of lenders for purpose of giving credits</p>	<p>satisfactory by the AO, even when onus have been proved by the assessee.</p> <p>MOD creations Pvt. Ltd VX, ITO on the Issue If assessee established the authenticity of transaction thus, assessee need not to prove either genuineness of transaction executed between creditors and sub creditors . Further, it is submitted that the assessee has duly discharged his ones by way of providing sufficient documentary evidence that proves the genuineness creditworthiness and identity of the creditors. Therefore, the ones lies in the hands of the department to verify the same as failure on the part of the assessee to disclose any information fully or truly.</p> <p>The assessee vide submission dated 05.07.2024 before the CIT(A) filed the details as under:</p> <p>g. Howsoever, the assessee during the course of assessment proceedings have filed total confirmation of 243 parties out of 245 parties. Therefore, vide additional submission assessee has filed confirmations of 2 remaining parties namely Mukesh Sharma and Umesh Chand Jain. Thus, the</p>	<p>unsecured loan is discussed here and the CIT(A) has given his finding that the AO has failed to bring on the record that how cash of the appellant Firm had changed It has been discussed by the CIT(A) as under</p> <p>"the AO outrightly ignored the submission filed by the assessee and made addition of entire amount under the head unsecured loan by treating unexplained cash credit u/s 68 of the Act".</p> <p>n. Also CIT(A) has discussed here that the documents submitted by the assessee before AO as well as before Worthy CIT(A) was all in order and no adverse action is called for as all component that is identity, creditworthiness and genuineness was proved and as discussed in the appellate order in above paragraphs. Therefore, the appeal of the assessee is allowed.</p>
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<p>to assessee and entries were only accommodation entries and as such, could not be considered as genuine transactions.</p> <p>Shankar Ghosh v ITO [1985] 23 TTJ (Cal.)</p> <p>it is observed that merely proving the identity of the creditor does not discharge the onus of the assessee if the capacity or creditworthiness of the creditors is not proved. The assessee also has to prove the capacity to give credit of the creditor.</p> <p>Pavankumar M. Sanghvi Vs. Income-tax Officer in which the apex court has observed that Assessee received certain sum as loan from two companies Assessing Officer having found that said lender companies were shell entities added loan amount to income of assessee under section 68 Bank statement of lender companies revealed high transactions during day and a consistently minimal balance at end of working day - Further, day when assessee was given loan there were credit entries of almost similar amounts, and balance after these transactions was a small amount Tribunal taking into account bank statements of lender companies and fact that assessee failed to produce these lenders for verification held that</p>	<p>confirmation all the creditors were filed before the Worthy CIT(A) alongwith confirmations of above remaining parties thus, the genuineness, creditworthiness and identity of transaction cannot be held as unexplained</p>	
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<p>alleged loan transactions were not genuine High Court by impugned order held that since Tribunal had given elaborate reasons to come to conclusion that entire loan transaction was not genuine, appeal filed before it was to be dismissed - Whether Special Leave Petition against impugned order was to be dismissed.</p> <p>j. Ld. AO has concluded the case of the assessee at page 7 and treated the amount of Rs.17,02,25,505/- as unexplained cash credit and made addition in the hands of the assessee.</p>		
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8. It is further submitted that the Ld. Assessing Officer during assessment proceedings has not doubted any of the evidences filed by the assessee and since we have proved the genuineness of the lenders and creditors and, thus, no doubt should have been raised by the Assessing Officer and, in so far as, the returned income is concerned, the finding of the Assessing Officer is contradictory and further, the returned Income is not a criteria and there was sufficient balance in the bank accounts of all the parties concerned, from where, the amount had been advanced and no more requirement was asked by the Assessing officer and reliance is being placed on the following judgments:

- i. Judgment in the case of CIT vs. Orissa Corpn, (P.) Ltd. reported in (1886) 25 Taxman 80F (SC) vide order dated 19.03.1986. Copy placed at page 1 to 5 of judgement set
- ii) Judgment of the Hon'ble Supreme Court in the case of CIT Vs. Chunnilal as reported in 211 ITR 11. Copy placed at page 6 of judgement set regarding source of source.
- iii) Judgment in the case of Mis. Loil Overseas Food Ltd. vs. ITO as reported in (2017) 88 taxmann.com 782 (Chandigarh - Trib.).
- iv) Judgment in the case of Income-tax Officer. Vs. Swaran Fastners CIT reported in (133 taxmann.com 454 Chandigarh-b) vide order dated 18.02.2021 Copy placed at pages 18 to 32 of judgment set.
- v) Judgment of Hon'ble Calcutta High Court in the case of CIT Vs. United Commercial and Industrial Company Pvt. Ltd, passed dated 10/06 1990 pre In 187 ITR 596/56 Taxman 304, Copy placed at pages 33 to 35 of judgement set

vi). Judgment of Hon'ble Calcutta High Court in the case of CIT. Va. Precision Finance (P) Ltd. reported in 208 ITR 405/(1995) 82 Taxman 31 vide order dated 14.06.1983. Copy placed at pages 36 to 38 of judgement set

vii). Judgment of Hon'ble Rajasthan High Court in the case of Rajshree Synthetics (P) Ltd. Vs. CIT reported in (2003) 131 Taxman 391 (Raj) vide order dated 08.11.2001, Copy placed at pages 33 to 41 of judgement set.

Thus the CIT (A) has rightly deleted the addition made by the Ld. AO.”

10. We have heard the rival submissions and perused the materials available on record. In this case, the AO made addition of Rs. 17,02,25,505/- under section 68 of the Act by considering unsecured loan taken by the appellant from around 245 parties as unexplained. Before dwelling upon the issue on merits, the provisions as contained in section 68 of the act needs to be referred, which 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 :

[Provided that where the assessee is a company (not being a company in which the public are substantially Interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]

11. That a bare reading of [Section 68](#) suggests that there has to be credit of amounts in the books maintained by an assessee; such credit has to be of a sum during the previous year; and the assessee offer no explanation about the nature and source of such credit found in the books; or the explanation offered by the assessee in the opinion of the Assessing Officer is not satisfactory, it is only then the sum so credited may be charged to

income-tax as the income of the assessee of that previous year. The expression "the assessee offer no explanation" means where the assessee offer no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. It is true the opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material available on record. Application of mind is the sine qua non for forming the opinion.

12. During the appellate proceedings, our attention was drawn to the list containing the name of loan creditors and details of evidences filed before the AO to establish their identity and creditworthiness which are placed in paper book pages 14-43. It is further seen that all the loans were received through proper banking channel and many of the loans were repaid through banking channel in the year itself thus genuineness of the transactions was also proved. Further, the evidence filed by the appellant comprises of copy of ITR, confirmation note, bank statement, agri holdings and balance sheet (wherever applicable) to prove identity, genuineness and creditworthiness. As per appellant, the AO made addition on the basis of conjuncture and surmises. It is worthy to mention that the above mentioned details were also submitted during the appellate proceedings and after appreciating the same Id. CIT(A) has deleted the additions made. The relevant observation of the Id. CIT(A) as contained in para 5.3 to para 5.7 are as under

"5.3. The facts and grounds of the case, assessment order and other material available on record have been gone through carefully and are considered in adjudicating the issue as under. Apparently, it is an admitted fact that the appellant received unsecured loan from various creditors. During the assessment proceedings, the AO asked the appellant to prove the identity & creditworthiness of the creditors and genuineness of transactions. In response, the appellant firm furnished the copy of PAN of the creditors in support of identity of the creditors, copy of ITR acknowledgment, confirmation, Bhu Pustika, Khatoni & Khasra in support of creditworthiness of the creditors and bank account statement of the creditors to prove the genuineness of the transactions. However the AO noted that prior to transfer of loan amount from creditor to the appellant firm, there was similar amount of cash deposit

or other transfer on the same day implying that these loans were circulation of money of the appellant firm or accommodation entry. Also the AO noted that the creditors had filed return of income declaring total income of Rs. Nil or very nominal total income. Therefore the AO concluded that the unsecured loans received from the creditors amounting to Rs. 17,02,25,505/- was unexplained cash credits u/s 68 of the Act & added it to the total income of the appellant for the year under consideration.

5.4 During the course of the appeal proceedings, the appellant claimed that it had discharged the initial burden lying upon it and the onus lying upon the appellant was discharged to the AO, which was not discharged by the AO. The AO made addition of unsecured loan on account of unexplained cash credits only on the basis of cash deposits or other transfer entry of same amount as that of loan given, in the bank account of the creditors on the date of giving loan to the appellant firm. The AO made allegation that the loans given to the appellant was nothing but the appellant's unaccounted money which was circulated and brought into the books of accounts of the appellant by giving it colour of the unsecured loans. However if this were the case, the AO ought to have made enquiry and have to show how the money changed hands from the appellant firm to the creditors before it got transferred to the bank account of the appellant firm in the form of unsecured loans. The AO was in possession of confirmation & PAN of the creditors and he could have made independent enquiries from the creditors u/s 133(6) of the Act. However the AO choose a simple way to rely on the surmises & suspicion and treated the entire unsecured loan as unexplained cash credits u/s 68 of the Act.

5.5 It is to be noted that the assessee firm accepted to have received unsecured loan, provided name, PAN, confirmation and bank account statement of the creditors thereby establishing the identity of the creditors & genuineness of the transactions. The only basis for addition of unsecured loan as unexplained cash credits u/s 68 of the Act was failure to prove the creditworthiness of the creditors. Even if the AO noted that all the creditors filed return of income declaring total income of Rs. Nil or very nominal total income, the appellant claimed that all the creditors were either having sufficient funds for the purpose of lending or else they were having agricultural income which was not included in the total income declared in the ITR as the exempted from taxation as per the provisions of the Act. In support, the appellant firm had furnished the copy of Bhu Pustika, Khatoni, Khasra in order to prove the agricultural land holding of the creditors. The same were perused and found to be in order.

While making addition of unexplained cash credit u/s 68 of the Act, the AO also doubted the genuineness of the transactions in view of there being similar amount of cash deposit or other transfer entry reflecting in the bank account of the creditors as that of loan given by the creditors to the appellant firm. Therefore the AO concluded that these loans were bogus in nature and it was unaccounted money of the appellant firm which was circulated and routed back to its books of accounts in the form of unsecured loans. So far as accommodation entry is concerned, the loan/deposit is given through cheques in lieu of cash paid by the beneficiary or by someone on behalf of the beneficiary. Such cash is deposited in the bank account of some entity in the control of accommodation entry operator & such cash after being deposited is rotated through several layers of bank accounts & out of one such bank account, the loan or deposit is paid through banking channels to the beneficiaries. However in this case, the AO failed to bring on record that how cash of the appellant firm had changed hands before it got routed through multiple layers in the form of unsecured loans. Thus without conducting any independent enquiry the AO made addition only on the basis of suspicions and surmises. In this regards the assessee placed reliance on the following judicial decisions:-

1. Gujarat High Court in the case of DCIT Vs. Rohini Builders

"Section 68 of the Income-tax Act, 1961-Cash Credits - Assessing Officer made addition of Rs. 12,85,000 as unexplained cash credits in respect of loans taken by assessee from 21 parties Assessee had discharged initial onus by providing identity of all creditors by giving their complete addresses, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available Assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques drawn from bank accounts of creditors Repayment of loans and interest thereon was also made by account payee cheques by assessee and tax also had been deducted at source on interest payments and remitted Whether assessee was not expected to prove genuineness of cash deposited in bank accounts of creditors because under law, assessee can be asked to prove source of credits in its books of account but not source of source Held, yes.

Whether merely because summons issued to some of creditors could not be served or they failed to appear before Assessing Officer, could not be ground to treat those credits as non-genuine-Held, yes - Whether considering totality of facts and circumstances of case, especially fact that Assessing Officer had not disallowed interest claimed/paid in relation to those credits in assessment year under consideration or even in subsequent assessment years, and tax at source had been deducted out of interest paid/credited to creditors, Tribunal was justified in deleting addition made - Held, yes - Whether as there was no substance in appeal and no substantial question of law arose, appeal was liable to be dismissed-Held, yes

1. Delhi High Court in the case of Mod Creations (P) Ltd Vs ITO

"Section 68 of the Income-tax Act, 1961 Gash credits Assessment year 2002-03 During relevant assessment year, assessee-company had raised unsecured loans from five persons who were its directors and shareholders Payments were made through banking channels Duriong assessment proceedings, assessee furnished income-tax returns and bank statements of said creditors along with their affidavits stating therein source of funds which were used in lending amounts to assessee Assessing Officer, however, held that both, genuineness of transactions as also creditworthiness of creditors remained unexplained and added amount of aforesaid credits to assessee's income Whether, on facts, assessee had discharged initial onus placed on it and if revenue still had a doubt with regard to genuineness of transactions in issue or as regards creditworthiness of creditors, it would have had to discharge onus which had shifted on to it-Held, yes Whether no such exercise having been undertaken by revenue authonties, addition under section 68 in hands of assessee was unjustified-Held, yes [In favour of assessee]"

1. Allahabad High Court in the case of Zafa Ahmad & Co Vs. CIT, Varanasi

"Section 68 of the Income-tax Act, 1961-Cash credits Gifts -Assessment year 1992-93 Partners of assessee firm had deposited amounts in their capital accounts in firm Amounts were claimed to have been received by them as gift In order to prove genuineness of gift, partners explained that donors had filed their Income-tax and gift-tax returns Assessing Officer rejected assessee's plea and, added said amount as unexplained deposit under section 68 Tribunal upheld order of Assessing Officer Whether on facts, assessee could not be asked to prove source of source or origin of origin Held, yes -Whether, therefore,. Tribunal erred in holding that amount deposited by two partners was liable to be, added under section 68 on ground that gifts received by respective partners from various persons could not be explained as creditworthiness of donors had not been established - Held, yes [Para 9] [in favour of assessee]."

1. Jharkhand High Court in the case of Pravao Tendu Leaves Processing Co. Vs. WIRE

"Section 68 of the Income-tax Act, 1961-Cash credits (Gifts) -Assessment year 2001-02 Whether under section 68, Assessing Officer, while assessing a partnership firm, can go behind source of income of partnership firm, but he cannot go to 'source of source' Held, yes Whether where assessee has given supporting material evidencing gift or amount received from particular person with necessary documents, such as, copies of demand drafts and cheques etc., no addition could have been made by Commissioner in respect of amount received by assessee - Held, yes [Paras 6 & 7] [In favour of assessee]."

Madras High Court in the case of S. Hastimal Vs. CIT

"Whether after lapse of ten years assessee should not be placed upon rack and called upon to explain not merely origin and source of his capital contribution but origin of origin and source of source as well - Held, yes Whether, therefore, It could not be said that sum credited to capital account of assessee with firm represented income from undisclosed sources - Held, yes."

5.6. During the assessment proceedings, the AO in Paragraph No. 4.6 at Page 5 of the assessment order mentioned that the assessee only furnished the PAN, AADHAR and bank account statement of the creditor. The AO noted that only PAN of the creditor will not suffice to discharge the onus as held in the case of CIT Vs. Korlay Trading Co. Ltd. (1998) 232 ITR 820 (Cal.) wherein it was held that where, without filing confirmation letter from the creditor, the assessee merely mentioned the PAN of the creditor, the genuineness of the cash credit cannot be said to have been proved by the assessee. I have perused the impugned judicial decision & material available on record and noted that the facts of the present case are distinguished from the one quoted by the AO. As in the quoted case, the confirmations from the creditors were not filed whereas in the present case, the confirmation of all the creditors was duly filed and the AO did not find any discrepancy in the same.

Further, it is also observed that the cash was first deposited in the lender's bank account and then transferred to assessee's bank account on the same date. For this, the AO relied on the decision of ITAT Agra Bench in the case of Smt. Suman Gupta Vs. ITO, ward-1, Aligarh (2012). In this case, the assessee was found to have received Rs.13 lakhs as loan from six persons. The AO noted that immediately before amounts were lent to the assessee, identical amounts were deposited in the bank accounts of the said persons. Assessee could produce only one person for examination. AO also found that lenders had no creditworthiness to give loan as they had very small bank balances and were earning very meagre income. In the given facts, it was held by the tribunal that it was money of the assessee which was routed through bank accounts of lenders for purpose of giving credits to the assessee and entries were only accommodation entries & as such, could not be considered as genuine transaction. I have perused the impugned judicial decision & material available on record and noted that the facts of the present case are distinguished from the one quoted by the AO. As in the quoted case, the assessee could produce only one lender for examination whereas in the present case, the creditors were not called for examination but the appelland firm had duly furnished the confirmation from all the creditors.

The AO further relied on the case of Shankar Ghosh Vs. Ito (1985) 23 TTJ (Cal.) wherein it is held that merely proving the identity of the creditors does not discharge the onus of the assessee if the capacity or creditworthiness of the creditors is not proved. I have perused the impugned judicial decision & material available on record and noted that the facts of the present case are distinguished from the one quoted by the AO. As in the quoted case, the assessee could only prove the identity of the creditors whereas in the present case, the assessee had also proved the genuineness of transactions with supporting bank account

statements and creditworthiness of all the creditors by filing their confirmation, ITR acknowledgement & agricultural land holdings etc.

The AO also concluded that the unsecured loans were circulation of money or accommodation entries. However it is to be noted here that the assessee firm had taken loan from the individual lenders and none of them have ever worked as or on behalf of the accommodation entry operator

5.7. It is also noted that the AO made addition of Rs. 17,02,25,505/- in respect of unsecured loan/sundry creditors by treating it as unexplained cash credit u/s 68 of the Act. However during the assessment proceedings, the assessee submitted that it had taken unsecured loan from 235 persons & advance against the sale of property from 10 persons. Further the assessee furnished that the same was shown wrongly under one head as unsecured loan in the balance sheet at the time of filing of income tax return. The break-up of unsecured loan and advance against sale of property is as under:

Sr. No.	Nature of transactions	Amount (in Rupees)
1.	Unsecured loan	15,10,96,505
2.	Advance against sale of property	1,91,29,000
	Total	17,02,25,505

The assessee furnished before the AO the confirmations in respect of advance received against sale of property. However, the AO out rightly ignored the submissions filed by the assessee and made addition of entire amount under the head unsecured loan by treating it as unexplained cash credits u/s 68 of the Act.

During the appellate proceedings also, the assessee claimed same as during the assessment proceedings and also furnished the confirmations in respect of advance received against sale of property. The same were perused and found to be in order. Therefore it is proved that the assessee received advance of Rs.1,91,29,000/- against sale of property and the remaining amount of Rs. 15,10,96,505/- was received as unsecured loan in respect of which the identity & creditworthiness of the creditors and genuineness of transactions was proved as discussed in above paragraphs.

13. It is further noticed that the AO has not considered the appellant's submission and made addition with predetermined mind. As can be seen from the submission filed by the appellant before the AO that the appellant had furnished ITR Acknowledgment, loan balance confirmation, bank statement, in many cases details of land holding and further details of repayment wherever the loan was repaid, however ignoring all these, the AO had concluded that identity, creditworthiness of the creditors and genuineness of transaction has not been proved. Further, since many loans were repaid in the year itself and also in subsequent years, the question of getting accommodation entries in the guise of loan does not survive.

14. In land mark cases like Kale Khan Mohammad Hanif v CIT (1963) 50 ITR 1 (SC), Roshan Di Hatti v CIT (1977) 107 ITR (SC) it has been held that the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee, is on him. Where the nature and source thereof cannot be explained satisfactorily, it is open to the revenue to hold that it is the income of the assessee and no further burden is on the revenue to show that the income is from any particular source. It may also be pointed out that the burden of proof is fluid for the purposes of Section 68. Once assessee has submitted basic documents relating to identity, genuineness of transaction and creditworthiness then AO must do some inquiry to call for more details to invoke Section 68.

15. Further by filing all the relevant details of the loan creditors before the AO, assessee has discharged the onus lies upon it. Therefore, there is nothing left on the part of the assessee to prove further. If the AO wanted to inquire further, he has powers under the provisions of the section 131 and section 133(6) of the Act which he could have opted and could have verified whatever is submitted before him. The AO did not do so. This shows clearly the biased mind of the AO.

16. The Hon'ble Supreme Court in the case of Orissa Corporation reported in [1986] 159 ITR 78 (SC) 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.

17. In the present case as observed above, no such exercise was carried out by the AO. In case, the Assessing Officer was not satisfied with the cash / cheque amount deposited by the loan 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.

18. The hon'ble jurisdictional high court in the case of Principal Commissioner of Income-tax v. Anshika Consultants (P.) Ltd. reported in [2024] 162 taxmann.com 792 (Allahabad) held as under:-

“INCOME TAX : Where assessee had received unsecured interest bearing loans from three corporate entities and had furnished necessary acknowledgement of return, balance sheet, profit and loss account, etc., to prove identity, creditworthiness and genuineness of transaction of unsecured loan taken by it, addition under section 68 was not warranted.”

19. Similarly in the case of Deputy Commissioner of Income-tax v. Paswara Papers Ltd. reported in [2024] 159 taxmann.com 604 (Allahabad), the hon'ble court has held as under:

“INCOME TAX: Where assessee received loan from various creditors who sold their old jewellery and gave loan to assessee out of sale consideration, since assessee had disclosed name of jewellers to whom jewellery was sold and also established mode of payment through banking channel, and moreover existence of deposits made to assessee by creditors was not in dispute, impugned addition under section 68 with respect to loan could not be sustained.

20. The coordinate bench of ITAT Delhi in the case of ITO Vs. Alpha Contech Pvt. Ltd. in ITA No.3351/Del/2016 vide order dt. 28.07.2023 has held as under:

“7. On careful consideration of above rival submission, first of all, we note that the Assessing Officer made addition u/s. 68 of the Act, by observing that despite several opportunity the assessee failed to prove creditworthiness of lender and genuineness of transaction and thus could not discharge onus as per requirement of sec 68 of the Act. The assessee carried the matter before ld. CIT(A) and filed additional evidence under rule 46A of the Rules on which remand report was called wherein the Assessing Officer did not made any adverse comment on the additional documentary evidence of assessee and also admitted that the lender company received amount of Rs. 7,30,62,000/- as share premium reserve during immediately preceding assessment year and amount of loan of Rs. 3.60 crore advanced to the assessee during present assessment year was from the said reserve amount. The remand report of the Assessing Officer supported the case of assessee which was based on the strength of additional evidence filed by the assessee without raising any doubt or discrepancy therein.”

8. We also find and appropriate to reproduce the relevant operative part of first appellate order as follows:-

The appellant company has received Rs.3,60,00,000/- from M/s Fennie Commercial Pvt. Ltd. as unsecured loan / share application money during the year. The same was added by the AO on the ground that appellant has failed to file confirmation as well as other supporting documents of the lender party before AO to prove identity, genuineness and creditworthiness of the party. During the course of appellate proceedings, appellant filed an application under Rule 46A and filed following documents to prove identity, genuineness and creditworthiness of the party:

- i. Copy of Acknowledgement of IT. Paper Book page no. 48.
- ii. Copy of Audited Financial Statements along with all the annexures. Paper Book page no. 49-60.
- iii. Copy of Confirmed ledger account. Paper Book page no. 61.
- iv. Copy of Bank Statements reflecting the amount given to the assessee company. Paper Book page no. 62-63.
- v. Copy of confirmation. Paper Book page no. 64.

These documents were forwarded to the A for carrying out necessary enquiry with reference to the lender party. The Assessing Officer after conducting enquiries with reference to the lender party has submitted remand report vide his letter dated 2.03.2016 which was forwarded by the Addl. CIT, Range 2 vide his letter dated 08.03.2016. The relevant part of the remand report is submitted as under:

"4. As per directions received, the submissions made by the assessee before your good self as well as additional evidence submitted by it for admission at the appellate stage have been carefully perused. Besides, the additional evidence furnished by the assessee has also been independently verified from this Office by way of issue of letter us 133(6) of the [Income Tax Act, 1961](#), to the third party concerned, i.e., to Ms Fennie Commercial Private Limited, 96-AV9, Neelkanth Apartments, Kishan Ganj, Vasant Kunj, New Delhi - 110070.

5. The said party has furnished its detailed reply to the letter issued us 133(6) vide its letter dated 08.01.2016, which is placed on record. The said party has given the details of the share application money of Rs.3.60 crores advanced by it to the appellant company and also produced the ledger account of the assessee company in its books for the relevant period, apart from the copy of the ITR-V in its case, copy of the Audit Report, Balance sheet, P & L Account and annexures. It is also seen from the annexures to the Audit Report that under the head "Loans & Advances (totaling Rs. 7,41,00,000/-), the name of the appellant company is appearing the List of Share application money given details wherein the sum of Rs.3.60 crores has been shown against the name of the appellant company, amongst other entities to whom share application money had been advanced by this company. As regards the source of investment made by this company, it has been submitted that the same has been made out of its own sources. Further, the perusal of the Balance Sheet of this company shows that it has Share Premium Reserve of Rs.7,30,62,000/-, which is the same as in the immediately preceding previous year, out of which funds have been invested in the appellant company and others.

6. However, it is also seen from the P & L Account filed in this case that this company has no apparent business activity during the relevant period, i.e. during the FY 2010-11, and it has declared a nominal sum of Rs.35,600/- as Consultancy / Commission income. This company has also furnished a copy of the intimation us 143(1) in its case, issued by [CPC](#), Bangalore, in response to the specific query regarding furnishing copy of assessment order passed in its case for AY 2011-12.

7. As regards the present position of the said money advanced by MIs Fennie Commercial Pvt. Ltd. to the appellant company, it has been stated that they have not received any shares from M/s Alfa Contech Private Limited till date and the said Sum is lying as Loans & Advances in their books. However, this company has not furnished copy of its latest IT filed as well as copy of Audit Report, Balance Sheet and P & L Account despite being specifically called for in the letter issued us 133(6) to it.

8. It is also submitted here that as per the Balance Sheet of the appellant company for the AY 2011-12, it has shown a sum of Rs.3.60 crores as "Loans from Body Corporate", as per Schedule 3 annexed to the Balance Sheet and not as Share Application Money. Also, as per details filed by the appellant vide its letter dated 03.02.2014 during the course of the assessment proceedings in its case for AY 2011-12, it has furnished the name of Ms Fennie Commercial Private Limited, PAN AAACF9549A, from whom it had allegedly received unsecured loan of Rs.3.60 crores whereas the said party is showing this Loan & Advance as "Share Application Money".

It is seen from the remand report that Assessing Officer has carried out enquiry with the lender party us 133(6) of the [I.T. Act](#). The said party furnished the detailed reply vide its letter dated 08.01.2016. It has been reported by the AO that Ms Fennie Commercial Pvt. Ltd. has confirmed that it has given share application money of Rs.3.60 crore which has been accounted for by the appellant as unsecured loan in its balance sheet. The AO has also examined the ledger account of the appellant company from the lender party's books of accounts. The lender party has also filed copy of its return of income, audit report, balance sheet, profit & loss account and annexures. It has been observed by the AO from the annexures of the audit report that lender has shown loans and advances totalling Rs.7,41,00,000/- in its balance sheet. The appellant's name is also appearing in the loan and advances and has been shown as share application money of Rs.3.60 crore in the name of appellant. AO has also verified the balance sheet of the lender company and it is seen that said company has shown share premium reserve in its balance sheet in A.Y. 2010-11 out of which the amount has been given to the appellant. All these facts establish the identity, creditworthiness and genuineness of the transactions. It is seen that the said party has confirmed the transactions with the appellant and source of the money is also explained. M/s Fennie Commercial Pvt. Ltd. is assessed to tax with Ward 9(1), New Delhi and filing its return of income.

The appellant company has filed copies of their bank statement, balance sheets and profit & loss a/c of the lender company before me to prove the identity, creditworthiness and genuineness of the transaction. These facts have been verified by the AO in the remand proceedings and has submitted report in this regard. It is seen that name of the appellant company is appearing in the balance sheet of the lender company. In view of the documents filed by the above named lender company before me as well as AO, it is established that the identity, source, creditworthiness of the lender company and genuineness of the transactions has been established.

I find that the AO has not been able to bring on record any evidence to negate the genuineness of the transaction done by the appellant. Therefore, the addition cannot be sustained only on suspicion and surmises. Considering the fact that the identity, genuineness and creditworthiness of the lender company duly established, the addition made by the A cannot be upheld and hence the AO is directed to delete the addition of Rs.3,60,00,000/- made on account of unexplained income us 68 of the I.T. Act. In support of my above decision, reliance is placed on following judicial pronouncements:

- a. CIT Vs. Fair finvest Ltd. [2014] 44 taxmann.com 356 (Delhi) HIGH COURT OF DELHI "Section 68 of the Income-tax Act, 1961 - Cash credit - Assessment year 2002-03 - Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application and affidavits of directors, Assessing Officer could not make addition on account of share application money solely on basis of investigation report [In favour of assessee. Where assessee adduces evidence in support of share application monies, it is open to Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on report of investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between assessee and alleged hawala operators. Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application, affidavits of directors, Form 2 filed with Registrar of Companies by such applicants, confirmations by applicants for company's shares, certificates by auditors, etc., Assessing Officer was not justified in making addition under section 68 on account of share application money merely on general inference to be drawn from the reading of the investigation report. The least that Assessing Officer ought to have done was to enquire into matter by, if necessary, invoking his powers under section 131 summoning the share applicants or directors.
- b. Commissioner of Income-tax v. Mark Hospitals (P.) Ltd. [2015] 58 taxmann.com 226 (Madras) HIGH COURT OF MADRAS "Section 68 of the Income-tax Act, 1961 - Cash credit (Burden of proof - Assessment year 2006-07 - Assessee had obtained unsecured loans from agriculturists and submitted their names and addresses, but did not provide their PAN cards - Assessing Officer made addition under section 68 - It was found that loans were given to assessee through cheques and all creditors had confirmed that they had advanced loans mentioned against their names to assessee and, thus, identity of creditors could not be disputed - Further, all creditors were agriculturists and therefore, they did not have PAN card - Whether, on facts, no addition could be made - Held, yes [Para 6] [In favour of assessee]"
- c. ITO Vs. Neelkanth Finbuild Ltd., [2015] 61 taxmann.com 132 (Delhi - Trib.), held that "6. Keeping in view the findings given so the Assessing Officer as well as the learned first appellate authority and the documentary finding by the assessee before us, we are of the considered view that the learned first appellate authority has deleted the addition in dispute on the basis of various documentary evidence filed by the assessee before the Assessing Officer as well as before him. The hon'ble Supreme Court of India (sic.) in the case of CIT v. Lovely Exports (P.) Ltd. [2008] 299 ITR 268 (Delhi) which has confirmed the order of the hon'ble Delhi High Court has held that once the identity of the shareholder have been established, even if there is a case of bogus share capital, it cannot be added in the hands of the company unless any adverse evidence is not on record. The learned first appellate authority has examined the documentary

evidence filed by the assessee before the Assessing Officer as well as before him and held that the assessee has provided confirmations from all the parties as well as various evidences to establish the genuineness of the transaction, the assessee has also relied upon the judgment of [Nemi Chand Kothari v. CIT](#) [2003] 264 IT 254/[2004] 136 Taxman 213 (Gau.) wherein it has been held that it is a certain law that the assessee is to prove the genuineness of transaction as well as the creditworthiness of the creditor must remain confined to the transactions which have taken place between the assessee and the creditor. It is not the business of the assessee to find out the source of money of creditors. Similar observation has also been given in the case of [S. Hastimal v. CIT](#) [1963] 49 ITR 273 (Mad.) and [CIT v. Daulat Ram Rawatmull](#) [1973] 87 IT 349 (SC). The learned first appellate authority has cited various decisions rendered by the hon'ble Supreme Court of India as well as the hon'ble jurisdictional High Court in the impugned order and finally has held that the assessee has substantiated the transaction regarding share application money received by it was genuine transaction and the same were not accommodation entries. He did not find any evidence collected by the Assessing Officer which could prove otherwise and deleted the additions in dispute. As regard the addition of Rs. 12,500 made on account of commission which was presumed to have been allowed by the assessee for obtaining the hawala entry in dispute, the learned Commissioner of Income-tax (Appeals) observed that the Assessing Officer was not able to bring anything on record that it was the assessee's own money which was routed in the form of share application money and has rightly deleted the same.

7. Keeping in view all the facts and circumstances, we are of the considered view that the learned first appellate authority has passed the impugned order under the law and according to the facts of the present case and has rightly deleted the addition in dispute. We find no infirmity in the impugned order and uphold the impugned order by dismissing the appeal filed by the Revenue."

d. Honorable Supreme Court of India in the case of [CIT v. Kamdhenu Steel & Alloys Ltd., SLP \(CC\)](#) no. 15640 of 2012, dated 17-09-2012 (Supreme Court), wherein the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Revenue against the decision of Hon'ble Delhi High Court in the case [CIT v. Kamdhenu Steel & Alloys Ltd.](#) in which it has been held by Hon'ble Court that once adequate evidence/material given by the assessee, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter, in case such evidence is to be discarded or it is proved that the assessee has "created" evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under [Section 68](#) and [69](#) of the Act."

e. COMMISSIONER OF INCOME TAX-9 ERSTWHILE CIT-VI versus VRINDAVAN FARMS (P) LTD, ITA 71/2015, ITA 72/2015, ITA 84/2015, the High Court of Delhi held as under :

"3. The ITAT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the A by the Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It was observed by the ITAT

that the AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the share holders.

4. The Court is of the view that the Assessee by produced sufficient documentation discharged its initial onus of showing the genuineness and creditworthiness of the share applicants. It was incumbent to the AO to have undertaken some inquiry and investigation before coming to a conclusion on the issue of creditworthiness. In para 39 of the decision in [Nova Promoters](#) (supra), the Court has taken note of a situation where the complete particulars of the share applicants are furnished to the AO and the AO fails to conduct an inquiry. The Court has observed that in that event no addition can be made in the hands of the Assessee under [Section 68](#) of the Act and it will be open to the Revenue to move against the share applicants in accordance with law.

5. In the facts and circumstances of the present appeals, the Court is satisfied that no substantial question of law arises. The appeals are dismissed."

The facts of the above cited judicial pronouncements are identical with the facts of the appellant case, therefore, the ratio of the above cited judicial pronouncements is squarely applicable to the facts of the appellant case, hence, unsecured loan received by the appellant from M/s Fennie Commercial Pvt. Ltd. cannot be termed as unexplained income of the appellant and cannot be added [u/s 68](#) of the I.T. Act. Therefore, the unsecured loan received from the above mentioned party is treated as genuine transaction and cannot be added us 68 of the [I.T. Act](#). Therefore, the addition of Rs.3,60,00,000/- is deleted."

21. Another major fact which was ignored/ not appreciated by the AO is that in many cases loans were repaid by the assessee in the year itself or in subsequent year and the necessary details of the repayment of loan amounts were also submitted to the AO. The Hon'ble Gujarat High Court in the case of PCIT Vs Ojas Tarmake Pvt Ltd reported in 156 Taxmann.com 75 has observed as under:

"Where appellant showed unsecured loans received during relevant assessment year and AO made addition on ground that appellant failed to discharge onus of liability as laid down under section 68, since amount of loan received by appellant was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted."

22. The judgements relied upon by the revenue in its written submissions mainly revolve around the facts where the assessee has filed to discharge the burden casted upon it of proving the identity, creditworthiness and genuineness of transaction. In the instant case, as observed above, assessee not only filed

the PAN/Aadhar to establish the identity of the loan creditors but also filed their confirmations, bank statements, ITR and wherever applicable their land holding papers were also submitted. As observed above, if the AO had any doubts about the loan creditors he was free to make independent enquiries by issue summons u/s 131 or 133(6) of the Act but he chooses the other path and merely alleged the loan creditors as bogus proceeded to make the additions. Thus, all the judgements relied by the revenue rather favours the assessee where the assessee has established all the three ingredients as enumerated in section 68 to hold the loans as explained.

23. On the issue of discharging of onus, the Hon'ble Delhi High court in the case of Mod. Creations (P.) Ltd. v. ITO reported in [2013] 354 ITR 282, has held as under:

"It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the creditworthiness of the sub-creditors.

24. It was further observed by the Hon'ble court as under:

"14. With this material on record in our view as far as the Assessee was concerned, it had discharged initial onus placed on it. In the event the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the ASSESSING OFFICER that the credits were a circular route adopted by the Assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the Assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the Assessee as being mala Ride. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements or the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the

*recipient of the loan and not that its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors. [See CIT v. Divine Leasing & Finance Etd (20092-229-178.268 (Delhi) and CIT v. Lovely Exports (P.) Ltd. 2006) 215 CTR 495 (SC).**

25. The Hon'ble Deih High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd. etc. in ITA. No.71 of 2015 dated 12th August, 2015 held as under:

"The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the Assessing Officer had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High court."

26. The Hon'ble Deih High Court in the case of PCIT vs. Agson Global Pvt. Ltd reported in [2022]134 Taxmann.com 256 (Delhi) while allowing the appeal in favour of the assessee towards the additions made u/s 68 of the Act has held as under:

"Section 68 of the Income-tax Act, 1961 – Cash credits (Share capital money) – Assessment years 2012-13 to 2017-18 – Assessee-company received share capital and share premium money from several investors – Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company – Whether since assessee placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuineness of investors was proved, there was no justification to make addition under section 68 – Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of assessee]"

27. It is also relevant to state an amendment is made that vide Finance Act, 2022 wherein second proviso to section 68 is added, so as to provide that the nature and source of any sum, whether in the form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source of funds is also explained in the hands of the creditor or entry provider. However, this additional onus of proof of satisfactorily explaining the source in the hands of the creditor, would not apply if the creditor is a well-regulated entity, *i.e.*, it is a Venture Capital Fund, Venture Capital Company registered with SEBI. This amendment has taken effect from 1st April, 2023 and accordingly applies in relation to the assessment year 2023-24 and subsequent assessment years. The year before us is AY 2021-22 thus this amendment is

not applicable and as has been held by the hon'ble Delhi High court in the case of Vrindavan farms (supra), when the assessee had filed all the details, the burden of proving the genuineness and creditworthiness of the creditor stood discharged by the assessee.

28. As observed above, the requirement of explaining 'Source' of 'Source' in respect of loans is applicable from A.Y. 2023-24 and subsequent years. Reliance in this regard is placed on Delhi ITAT decision dated 31/05/2022 in the case of M/s Mall Hotels Ltd. V. CIT (ITA No. 2688/DEL/2014). The Hon'ble Delhi Bench of ITAT in the case of ACIT v Smt. Prem Anand (ITA No. 3514/Del/2014) vide its decision dated 13.04.2017 has held that amendment made in section 68 of the Act w.e.f. 01.04.2013 empowers the A.O. to examine source of source in case of share application money / share capital / share premium from 01.04.2013 and this amendment does not give power to the A.O. to examine source of source of non-share capital cases.

29. Regarding surrounding circumstances, it is observed that while making addition u/s 68 of the Act, the AO has doubted the financial capacity of loan creditors but such addition cannot be made on preponderance of probability and there has to be some evidence and substance in contention. The Assessing Officer has not brought anything on record to establish that the sources in the hands of loan creditors is non-genuine. Merely because they have shown meagre income or no sufficient sources as presumed by Assessing Officer, loan taken by appellant from them cannot be held to be accommodation entries. It is well-settled position of law that no matter how strong suspicion is, it cannot take place of the evidence. Therefore, in the absence of any evidence showing that in fact, appellant has given cash in lieu of unsecured loan taken, merely on the basis of suspicion, no addition can be made for which reliance is placed on decision of Hon'ble Supreme court in the case of Daulatram Rawatmull, (1964) 53 ITR 574.

30. In view of above facts and in the circumstances of the case, we are of the considered view that the decision of the Ld. CIT(A) as observed above, is not only based on the relevant documents which have been produced by the Assessee to establish identity and creditworthiness of the parties from whom the Assessee had taken the loans and genuineness of the transactions but also based on the legal precedents and the fact that the Assessee has taken the unsecured loan through banking channel and repaid the loan through banking channel itself and then only deleted the addition under consideration. We observe, as demonstrated by the Ld. Counsel of the Assessee that the Hon'ble Jurisdictional High Court in the case of Principal Commissioner of Income-tax v. Anshika Consultants (P.) Ltd (supra) has also dealt with the fact that where assessee has discharged its burden by filing all the necessary evidences to prove the loans, provisions of section 68 cannot be invoked. Further hon'ble Gujarat high court in the case of PCIT Vs. Ojas Tarmake Pvt.Ltd. (supra) has held that where major portion of the credit has been repaid during the year and the AO has accepted the debit entries as genuine, the Hon'ble court on the said facts ultimately affirmed the decision of the Tribunal in deleting the addition. Further the hon'ble Gujarat high court re-affirmed this view in the case of PCIT Vs. Merrygold Gems Pvt. Ltd. Similar view is also expressed by the hon'ble Punjab & Haryana high court in the case of CIT Vs. Karaj Singh (supra).

31. Regarding revenue's alternate prayer of the remanding back the matter to the file of Id.CIT(A) or AO, as discussed above, the assessee has duly discharged the burden casted upon it and the AO has failed to make any enquiry if he had doubts about the genuineness of the evidences field thus if one more opportunity is given to the assessee, it would be gross injustice with the assessee. It is also a settled law that AO cannot be provided an opportunity to plug the loopholes and once a view is taken after appreciating the evidences available, it cannot be said that no proper opportunity was provided to AO. It is further seen that no new or fresh evidence was filed by the assessee before the Id. CIT(A) and all the

details filed were already submitted before the AO. Thus, we find no force in this argument of the revenue.

32. Based on above discussion and analyzations of the facts and by respectfully following the decisions of Hon'ble supreme court, various high courts and coordinate bench of Tribunal as referred herein above, the decision of the Ld. Commissioner in deleting the addition in hand does not require any interference, as the same is neither suffered from any perversity or impropriety and nor illegality. Accordingly, the order of ld. CIT(A) is upheld and both the grounds raised by the revenue are dismissed.

33. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 24/6/2025.

Sd-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated: 24.06.2025

PK/Sr. Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR