

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

**BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER &  
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.1654/Del/2023**  
**[Assessment Year : 2011-12]**

DCIT, Central Circle-06, New Delhi	vs	Praveen Kumar Jolly, 39/1, East Patel Nagar, New Delhi-110008. <b>PAN-AAGPJ0144C</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

**C.O.No.-134/Del/2023**  
**[In ITA No.1654/Del/2023]**  
**[Assessment Year : 2011-12]**

Praveen Kumar Jolly, 39/1, East Patel Nagar, New Delhi-110008. <b>PAN-AAGPJ0144C</b>	vs	DCIT, Central Circle-06, New Delhi
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Revenue by</b>	Shri Ajay Kumar Arora, Sr.DR	
<b>Assessee by</b>	Shri Ved Jain, Adv. & Ms. Uma Upadhyay, CA	
<b>Date of Hearing</b>	17.07.2025	
<b>Date of Pronouncement</b>	15.10.2025	

**ORDER**

**PER MANISH AGARWAL, AM :**

The present appeal is filed by the Revenue and Cross-objection is filed by the assessee against the order dated 31.01.2023 passed by Ld. Commissioner of Income Tax (A)-24, New Delhi [“Ld. CIT(A)”] in Appeal No. CIT(A), Delhi-35/10036/2019-20 u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the order dated 31.12.2018 passed u/s 147 of the Act pertaining to Assessment Year 2011-12.

2. The appeal of the Revenue was delayed by 158 days which was condoned by Co-ordinate Bench of Tribunal in terms of the order sheet entry dated 10.02.2025. The relevant contents of the order sheet entry dated 10.02.2025 are reproduced as under:-

*“There was a delay of 158 days in filing the appeal by the Department which has been explained by the CIT (DR), as consequence of procedural delay to internal administrative exigency. The Learned Authorized Representative for the assessee has no objection to the said delay in filing the appeal by the department. Accordingly, the aforesaid delay of 158 days is condoned, and the appeal was admitted on merits.*

*From the record, it is noted that the department has challenged the deletion of the addition of Rs. 8,09,95,988/- by the CIT (A) without appreciating the merits of the case ignoring that huge credit contribution received to the personal capital shown in assessment year 2011-12 (under consideration) claimed to be received through multiple opportunity to the department. Accordingly, the registry is directed to fix the appeal for hearing before regular Bench on the date available on board under notice to both the parties.”*

3. Brief facts of the case are that assessee is engaged in the business of trading in property and Government securities and bonds besides having income from director's remuneration and rental income. The return of income was originally filed u/s 139(1) on 29.09.2011, declaring total income of INR 1,25,55,794/- and the necessary Audit Report and other documents were filed alongwith the return of income. Thereafter, the case was re-opened in terms of the reasons recorded before issue of notice u/s 148 of the Act and notice u/s 148 was issued on 24.04.2018. The basis for re-opening the assessment was that there were heavy transactions in assessee's bank account maintained with Bank of Rajasthan Ltd. (now known as ICICI Bank), Karol Bagh Branch, Delhi in saving bank A/c No. 1250301112512. In response to the notice issued on 31.03.2018 u/s 148 of the Act, the assessee filed return of income

on 17.04.2018, declaring the same income as was declared in the return filed u/s 139(1) of the Act and thereafter, various notices were issued and after considering the replies, AO has made two additions, first, addition of INR 49,54,036/- by disallowing the interest paid on the loans holding that the assessee is providing interest free funds to various companies and second addition of INR 8,09,95,988/- was made regarding the peak credits in the bank account as unexplained u/s 68 of the Act.

4. Against the said order, assessee filed an appeal before Ld. CIT(A) wherein the assessee has challenged the reassessment order on re-opening as well as merits of the additions were also challenged. Ld. CIT(A) vide impugned order dated 31.01.2023 has deleted the additions on merits and not adjudicated the issues raised regarding re-opening of the assessment.

5. Aggrieved by the order of Ld.CIT(A), Revenue is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“The Ld. CIT (A) erred in law and on facts in deleting the addition of Rs. 8,09,95,988/-disregarding the fact that the assessee has not given the details of personal capital shown in AY 2011-12 and also no documentary evidence has been provided for explaining the genuineness of the personal capital in hand. Also, no evidence has been given by the assessee w.r.t availability of funds shown as the personal capital during the AY 2011-12.*

2. *The Ld. CIT (A) erred in law and on facts in deleting the addition of Rs. 8,09,95,988/- by just relying upon the copy of capital account along with confirmation with the concerned parties from whom payments have been credited in the bank account of the assessee, which is not a conclusive evidence, as most of these entities /parties are related parties to the assessee and he is controlling and managing the affairs of these entities. Further, on perusal of these documents, it is noticed that most of the entities are not doing any business activities and not shown substantial income from business and profession during the year which*

*shows that these are shell entities which have been used for rotation of funds.*

3. *The Ld. CIT (A) erred in law and on facts in deleting the addition of Rs. 8,09,95,988/- by not appreciating the fact that the persons/ entities from whom the assessee has received funds had deposited cash in their account before transferring the funds to the assessee and these entities were controlled and managed by the assessee himself. CIT (A) has erred on fact by accepting that the cash deposits are explained by the cash withdrawals of the counter parties, but failed to bring on record the rationale for these cash withdrawals and their use, or the source of cash deposited. CIT (A) also did not bring the timing of cash deposit and cash withdrawal and erred on facts in taking the correct conclusion.*

4. *The Ld. CIT(A) erred in law and on facts in deleting the addition of Rs. 49,54,036/- without appreciating the fact that the assessee has paid interest free loan whereas he was paying interest on loans availed which could have been avoided. Also, the fund flow has not been analyzed by the CIT(A) in this regard, w.r.t. interest bearing funds and non interest bearing funds and their use respectively.*

5. *The Ld. CIT(A) erred in law and on facts in not recognizing the fact that, the 9 parties from which these funds have been received, have immediately deposited cash amounting to Rs. 1.67 crores, and the same funds have been transferred to the assessee, thus remaining unexplained in hands of the assessee.*

6. *The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.”*

6. The assessee also filed following cross-objections:-

1. *“On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on the facts.*

2. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in upholding the reopening of assessment done by the AO, despite the fact that the initiation of the proceedings under Section 147, read with Section 148 of the Act is bad and liable to be quashed, as the conditions and procedures prescribed under the statute have not been satisfied and complied with.*

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the reassessment proceedings initiated by the AO, despite the same being bad in law, as the reasons recorded for the issue of notice under Section 148 are vague in the eye of law and are contrary to the facts.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the reassessment*

*proceedings initiated under section 148 despite the fact that there is no live nexus between the reasons recorded and the belief formed by the AO.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in confirming the reassessment proceedings, despite the same being initiated without obtaining valid approval of authority prescribed under the provision of section 151 of the Income-tax Act.*

6. *On the facts and circumstances of the case the learned CIT(A) has erred in upholding the reopening of assessment ignoring the fact that the same has been reopened by the AO merely on the basis of doubt and suspicion.*

7. *On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the reopening despite the fact that the same has been made by the AO on the basis of information received from the investigation wing without independent application of his own mind.*

8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in rejecting the contention of the assessee that the notice issued under section 148 of the Act is bad and liable to be quashed as the same is barred by limitation having being issued beyond the four years from the end of relevant assessment year.*

9. *On the facts and circumstances of the case, the CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee that reopening of assessment is bad without there being any whisper in the reasons recorded by the AO that the income has escaped assessment on account of failure on part of the assessee to disclose fully and truly all material facts necessary for assessment.*

10. *On the facts and circumstances of the case, the CIT(A) has erred both on facts and in law, in rejecting the contention of the assessee that the assessment has been reopened by the AO on the basis of the reasons which are mere change of opinion as the issue was already examined during the course of assessment under Section 147/143(3) of the Act.*

11. *The respondent craves leave to add amend on alter any of the grounds of cross objection.”*

7. **Ground of appeal Nos. 1 to 3** raised by the Revenue are with respect to the additions made u/s 68 of the Act of INR 8,09,95,988/- made by holding the credits in the bank accounts as unexplained.

8. Before us, Ld. Sr. DR for the Revenue submits that the assessee has filed additional evidences before Ld. CIT(A) and no explanation was given before the AO with respect to huge transactions carried out in the bank accounts. He submits that the assessee received amounts from 24 companies and claimed that these are the group companies and the balances available as investment in these companies were routed through the bank accounts of the assessee, which remained unexplained before the AO. Ld. Sr. DR submits that Ld. CIT(A) has failed to appreciate the fact that no plausible explanation was given for not filing these details before the AO and admitted the additional evidences even without considering the objections filed by the AO in the Remand Report which is reproduced in para 3.2.2 of the appellate orders. He further submits that assessee has failed to submit any justification with respect to the huge credits in the bank accounts and entries contained in the said account are appearing to be the circular nature of transactions and therefore, the AO has rightly made the additions of the peak credits in the said bank account and he prayed for the confirmation of the order of the AO.

9. On the other hand, Ld.AR for the assessee vehemently supported the order of Ld.CIT(A) and submits that the assessee has filed all the details in respect to the transactions carried out as appearing in the bank account with Bank of Rajasthan (now known as ICICI Bank). The details were before the AO including copy of confirmation, copy of bank statements of respective parties, copy of ITRs, copy of their financial statements thus, the assessee has established the identity and creditworthiness of the transactions.

He further submits that since the transactions were carried out through banking channels, genuineness cannot be doubted. He further submits that the assessee is having his own capital of more than the amounts involved in the addition and therefore, no addition is required to be made. Ld.AR further submits that in the remand proceedings, AO has verified all these facts and no doubts with respect to the details filed were raised except stating that the additional evidences should not be admitted. Ld.AR thus, submits that the additions made were rightly deleted by Ld.CIT(A) which order deserves to be upheld.

10. Heard the contentions of both parties and perused the material available on record. In the instant case, reassessment proceedings were initiated for the reason that there were heavy transactions in the bank account of the assessee which include credit as well as cash transactions totaling to INR 102,94,13,424/-. The AO after considering the facts that there were credit as well as debit entries made the addition of the peak credit of INR 8,09,95,988/- being the highest balance available at a particular point in the said bank account. During the course of assessment proceedings, the assessee has field all the documentary evidences with respect to the 24 companies from whom, credits were received to establish their identity, genuineness of the transactions and creditworthiness of these companies. The details so filed are tabulated at page 62 to 63 of the appellate order which is reproduced as under:-

Sl.No.	Name	Particulars
1.	Express Marketing Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements
2.	Breeze Real Estates Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements 5. Copy of cash book
3.	Shakti Investcap Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements
4.	Ardor Medical Institute Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements
5.	Glare Estates Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of Jurisdictional Details



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		5. Copy of audited financial statements 6. Copy of computation of income
6.	Keshav Buildcop Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of tax audit report and audited financial statements 5. Copy of computation of income 6. Copy of notice calling AGM 7. Copy of director's Report 8. Copy of cash book
7.	Janaardan buildtech Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements
8.	Mahattan Industrial Promoters Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of notice for calling AGM 4. Copy of explanatory statement pursuant to section 173(2) of the companies Act, 1956 5. Copy of director's Report 6. Copy of audited financial statements 7. Copy Jurisdictional Details 8. Copy of cash book
9.	Quartz Infrabuild Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of notice calling AGM 4. Copy of director's Report 5. Copy of audited financial statements
10.	Vibgyor Buildprop Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of tax audit report 5. Copy of notice calling AGM 6. Copy of director's Report 7. Copy of audited financial statements 8. Copy of cash book
11.	Pradeep Jolly	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of computation of income 5. Copy of computation of income
12.	Biltz Real Estates & Developers Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of notice calling AGM 5. Copy of director's Report 6. Copy of audited financial statements



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		7. Copy of cash book
13.	Gopala Agri Farms Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements 5. Copy of cash book
14.	Swift Infrabuild Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of audited financial statements 4. Copy of cash book
15.	Shakti Finbiz Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of Jurisdictional details 5. Copy of tax audit report 6. Copy of audited financial statements 7. Copy of computation of income
16.	Brijmohan Infrastructure Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement of the party 3. Copy of acknowledgment of return 4. Copy of audited financial statements
17.	Ganpati Buildprop Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements
18.	Bharat Buildtech Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement of the party 3. Copy of acknowledgment of return 4. Copy of computation of income 5. Copy of audited financial statements 6. Copy of cash book
19.	Rangoli Buildwell Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of acknowledgment of return 4. Copy of audited financial statements
20.	Shri Luxmi Narayan Buildtech Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of acknowledgment of return 3. Copy of Jurisdictional details 4. Copy of bank statement 5. Copy of notice calling AGM 6. Copy of director's Report 7. Copy of audited financial statements
21.	Elite Buildprop Pvt. Ltd.	1. Copy of confirmation of accounts 2. Copy of bank statement 3. Copy of notice calling AGM 4. Copy of director's Report 5. Copy of audited financial statements
22.	Zodic Infrabuild Pvt. Ltd.	1. Copy of confirmation of accounts



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		<ol style="list-style-type: none"><li>2. Copy of bank statement</li><li>3. Copy of acknowledgment of return</li><li>4. Copy of audited financial statements</li></ol>
23.	Navyug Overseas Pvt. Ltd.	<ol style="list-style-type: none"><li>1. Copy of confirmation of accounts</li><li>2. Copy of bank statement</li><li>3. Copy of acknowledgment of return</li><li>4. Copy of audited financial statements</li></ol>
24.	Madhav Realtors Pvt. Ltd.	<ol style="list-style-type: none"><li>1. Copy of confirmation of accounts</li><li>2. Copy of bank statement</li><li>3. Copy of acknowledgment of return</li><li>4. Copy of audited financial statements</li></ol>

11. It is further seen that the AO alleged that there were cash deposits in the bank accounts of certain companies. Ld. CIT(A) in para 4.1.19 of the order has observed that total sum of INR 1,67,43,750/- were deposited in cash in the bank accounts of 11 companies on various dates for which the necessary explanation was given by the assessee that these amounts were re-deposited out of the cash withdrawn by those companies from their respective bank accounts of earlier occasions. Ld. CIT(A) after considering all these facts and also considering the fact that the assessee is regularly assessed to tax and is having capital of more than INR 73.00 crores as on the end of the year under appeal and there was an opening capital of INR 71.98 crores and thus, is having sufficient net worth for having transactions of this magnitude in the bank account which has been alleged as unexplained by the AO. Further

from the perusal of the Balance Sheet of the assessee as available at page 10 of the Paper Book, there were bank balances of more than INR 3.45 crores as on 31.03.2011.

12. Ld.CIT(A) while deleting the additions has considered the all the arguments of the assessee and such observations as contained in para 4.1.14 to 4.1.20 of the appellate order are as under:-

4.1.14 The primary objections of the Assessing Officer that resulted in applying the peak credit query are as under:

1. The purpose of giving loans to related parties is not justified.
2. The genuineness of the credit entries has not been proved by the assessee.
3. The assessee not produced the details of capital account and bifurcation of such capital account.
4. The bank balance of the assessee as on 31.03.2010 shows that liquid assets of the assessee are nowhere near to the quantum of loans/transactions with related parties.

4.1.15 The Assessing Officer has mentioned that the purpose of giving loans to related parties is not justified. The appellant holds the position of director in various companies and funds are transferred from the director to the companies on need basis. Some of these loans extended by the appellant to such companies were also repaid during the year. The appellant was having a capital of around Rs. 72-74 Crores during the year and therefore, he was capable of extending the loans to his companies and others.



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4.1.16 The Assessing Officer alleged that the genuineness of the credit entries has not been proved by the assessee. In support of this, he identified the 9 parties, who have deposited some amount of cash in their books of accounts before transferring the funds to the assessee. On the perusal of the assessment order, it can be noted that the Assessing Officer himself accepted that the appellant provided the details of credit received in his bank account from 24 parties and provided copy of confirmation of accounts, copy of bank statement of parties, copy of acknowledgment of income tax return of the party, copy of audited financial statements as supporting documents. Further, the appellant provided the confirmation of account, bank statement, acknowledgment of income tax return and audited financial statements of the parties, which are sufficient to prove the genuineness or the creditworthiness. The Assessing Officer although alleged that the said credit entries represent the unexplained money of the appellant but he did not elaborate or investigate this issue further. He did not prove that how these transactions represent the unexplained money of the appellant. This is only an allegation which was neither investigated nor proved in the assessment order. The Assessing Officer did not ask for any further detail beyond the documents filed by the appellant; therefore, the allegation that the appellant's own money has been credited through these transactions cannot be accepted as correct. All the credit entries in the bank account were substantiated by the appellant through documentary evidences and the Assessing Officer did not provide any counter argument to substantiate his allegation/hypothesis.

4.1.17 It is noteworthy that the Assessing Officer has reached to the conclusion that the appellant was routing his unaccounted income, which is more than the balance shown in books of account by parking the funds in the related companies and the difference between maximum balance available with appellant at any point of time and the bank balance as on 31.03.2010 stands at Rs. 8.09 Crores. Only after reaching this conclusion the Assessing Officer mentioned the summary of cash withdrawal and deposit by companies that transfer funds to the appellant. It is not understood as to why the cash withdrawals have been clubbed with the deposits while analyzing the same. Further, the appellant vide his application under rule 46A has submitted the cash book of these parties and mentioned that the source of funds in the hands of these 9 parties is the cash withdrawn by them from their bank accounts only and hence the source of such cash is well explained and this is not appellant's unaccounted income. In the remand proceedings the Assessing Officer did not comment upon the merits of the documents submitted describing the source of funds in the hands of these 9 parties. It is also noteworthy to mention that the sum of cash deposited and withdrawn by these 9 parties is only Rs. 1,67,43,750/- against the total cash credit transactions amounting to Rs. 102,94,13,424/- in the appellant's bank account. Therefore, even if a small amount of cash was deposited in 9 bank accounts of these parties, the entire credit of Rs. 102,94,13,424/- cannot be presumed to be unexplained.

4.1.18 Further, the Assessing Officer was very much in possession of copy of bank statement and/or cash book of these 9 parties where the cash was deposited in parties bank account. The Assessing Officer did not verify the fact that the cash deposited in these parties bank account is out of the cash withdrawn from those very bank accounts. No adverse observations regarding the



same have been mentioned by the Assessing Officer during the assessment proceedings and subsequently during the appellate proceedings. The appellant had provided the source of cash deposited during the course of assessment proceedings and subsequently during the course of appellate proceedings but at both these stages the Assessing Officer did not verify the same. Further, the Assessing Officer did not inform the appellant before passing the assessment order that he is considering the cash deposits adversely and never gave an opportunity to the appellant to provide for his counter arguments. On prima facie perusal of the bank accounts in which the cash has been deposited it can be seen that the cash deposited is out of the cash withdrawn from the very same account. Therefore any adverse cognizance of such cash deposited cannot be considered as appropriate.

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4.1.19 As per the assessment order, the summary of cash withdrawals and deposits by companies that transferred funds to the assessee are as following:

Party	Amount (in Rs.)
Breeze Real Estate Pvt. Ltd.	19,00,000
Keshav Buildprop Pvt. Ltd.	8,50,000
Mahattan Industrial Promoters Pvt. Ltd.	28,00,000
Vibgyor Buildprop Pvt. Ltd.	6,00,000
Pradeep jolly	10,00,000
Blitz Real Estate & Developers Pvt. Ltd.	52,90,000
Gopala Agri Farms Pvt. Ltd.	25,90,000
Swift Infrabuild Pvt. Ltd.	8,63,750
Bharat Buildtech Pvt. Ltd.	8,50,000
Total	1,67,43,750

These cash deposits have been analysed with reference to the bank statements/cash books of these parties submitted before the Assessing Officer during the assessment proceedings as under:

Name of the party in whose account cash is deposited	Amount of cash deposited and withdrawn as per the assessment order (in Rs.)	Amount of cash deposited (in Rs.) during the year	Remarks (Source as per the bank statements and/or cash book of these parties)
Breeze Real Estate Pvt. Ltd.	19,00,000	86,40,000	Out of the cash withdrawals of Rs. 89,10,000 from the same account/s, prior to the dates of deposition.
Keshav Buildprop Pvt. Ltd.	8,50,000	17,50,000	Out of the cash withdrawals of Rs. 49,50,000 from the same account/s, prior to the dates of deposition.
Manhattan Industrial	28,00,000	43,00,000	Out of the cash



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Promoters Pvt. Ltd.			withdrawals of Rs. 49,50,000 from the same account/s, prior to the dates of deposition.
Vibgyor Buildprop Pvt. Ltd.	6,00,000	17,50,000	Out of the cash withdrawals of Rs. 28,30,000 from the same account/s, prior to the dates of deposition.
Pradeep Jolly	10,00,000	8,00,000	Out of the cash withdrawals of Rs. 9,90,000 from the same account/s, prior to the dates of deposition.
Blitz Real Estate & Developers Pvt. Ltd.	52,90,000	52,90,000	Out of the cash withdrawals of Rs. 54,90,000 from the same account/s, prior to the dates of deposition.
Gopala Agri Farms Pvt. Ltd.	25,90,000	25,00,000	Out of the cash withdrawals of Rs. 29,70,000 from the same account/s, prior to the dates of deposition.
Swift Infrabuild Pvt. Ltd.	8,63,750	9,00,000	Out of the cash withdrawals of Rs. 9,90,000 from the same account/s, prior to the dates of deposition.
Bharat Buildtech Pvt. Ltd.	8,50,000	16,50,000	Out of the cash withdrawals of Rs. 19,80,000 from the same account/s, prior to the dates of deposition.

On the basis of the table above it is clear that the cash deposited in the bank accounts of the companies mentioned above has been prima facie sourced from the cash withdrawals out of the same bank accounts. Therefore, as per the bank statement and/or cash books of these parties, the cash deposits have been duly explained and are out of the cash withdrawn out of the bank account and therefore the same cannot be stated as unexplained money of the appellant being deposited in the bank accounts of the parties for subsequent transfer to the appellant. Therefore, the inference drawn by the appellant that these cash deposits in the accounts of the parties are out of the unexplained money of the appellant is incorrect and cannot be considered as appropriate. Accordingly, it can be ascertained on the basis of the documents available during the course of assessment and appellate proceedings that the cash deposited in these bank accounts are not the



unexplained money of either the appellant or of these parties and is prima facie the cash withdrawn out of these very bank accounts of the parties.

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✓4.1.20 The Assessing Officer has also alleged that the appellant did not produce the details of a capital account and bifurcation of such capital account. The appellant has argued that the appellant has duly submitted the audited financial statements as on 31.03.2010 and 31.03.2011 to the Assessing Officer during the course of assessment proceedings. The appellant filed his statement of affairs as on 31.03.2010 and 31.03.2011 during the course of assessment and appellate proceedings. As per the statement of affairs, the opening balance of capital as on 01.04.2010 was Rs. 71,98,33,429.77 and the closing balance as on 31.03.2011 was Rs. 73,93,13,297.60. Therefore, the appellant is having a capital of around Rs. 72-74 Cr. during the year as per the statement of affairs of the appellant. The details of his capital has been provided on the asset side of the statement of affairs and a sizeable portion of Rs. 41,75,50,943.24 was placed in loans and advances as on 31.03.2011. This figure was Rs. 41,54,51,059.34 as on 31.03.2010. Therefore, it is evident that the capital of the appellant was placed in loans and advances and other assets as per the balance sheet. Several of these loans and advances have found mentioned in the list of 24 parties, mentioned in the assessment order from whom the credits were received in the bank account of the appellant. In view of the above, the argument of the Assessing Officer that the details of capital account and the bifurcation of such capital account was not provided during the assessment proceedings is incorrect and the conclusions drawn by the Assessing Officer cannot be considered as appropriate.

13. Before us, the Revenue has failed to controvert these findings given by Ld. CIT(A) by bringing on record any contrary material who has not only considered all the observations/allegation made by the AO for making the additions but also considered the fact that assessee's own funds in the shape of capital etc. are more than sufficient and thus, deleted the additions.

14. In view of above discussions and looking to the facts of the case, in our considered opinion, order of Ld.CIT(A) is reasoned one and therefore, we are not inclined to interfere in the same. Accordingly, Ground of appeal Nos. 1 to 3 raised by the Revenue are dismissed.

15. **Ground of appeal Nos. 4 & 5** raised by the Revenue with respect to the deletion of the disallowance made by AO of INR 49,54,036/- out of the interest paid by holding that the interest bearing funds were utilized for making interest free advances.

16. Heard the contentions of both parties and perused the material available on record. Before us, Ld. Sr. DR failed to controvert the findings of Ld.CIT(A) as given in para 4.2.5 to 4.2.9 which reads as under:-

*4.2.5 "As per the assessment order, the Assessing Officer observed that appellant was paying interest on loans availed by him to the extent of Rs. 49,54,036/-. However, the appellant has provided interest free loans to various companies. The Assessing Officer observed that the appellant has borrowed an amount of around Rs. 30 Crores and extended loans of around Rs. 41 Crores and therefore, the appellant could have avoided payment of interest on loans as loans given were more than loans availed. The Assessing Officer therefore disallowed the payment of interest mentioning that the appellant has utilized interest bearing loans for non business purposes disallowing an amount of Rs. 49,54,036/-.*

*4.2.6 The appellant is maintaining a personal capital of around Rs. 72-74 Crores in the year under consideration and has extended various interest free loans to group entities. During the year the appellant has also borrowed and paid interest amounting to Rs. 49,54,036/- which has been later disallowed by the Assessing Officer mentioning that the appellant has utilized such loans for non business purposes. As per section 36(1)(iii) of Income Tax Act, the amount of interest paid in respect of capital borrowed for the purposes of business or profession is an allowable expense. During the year the appellant has given loan and advances to 55 parties amounting to Rs. 41,75,50,943/- on which an interest income of Rs. 40,30,000/- has been earned. The appellant was in possession of his own capital of around Rs. 72-74 Crores, which was sufficient to extend*

loans and advances amounting to around Rs. 41.75 Crores. The capital available was far higher than the interest free loans and advances given by the appellant. The appellant was having a common pool of funds and Assessing Officer has not linked as to how these interest bearing funds have been directly linked or advanced to the non interest bearing loans. Further, from certain parties the appellant has charged interest and an amount of interest of Rs. 40,30,000/- has been earned on these loans and advances.

4.2.7 Therefore it is certain that the appellant was having capital which is far higher than the loans extended and the appellant has having common pool of funds out of which the loans have been extended. Hon'ble Supreme Court in his certain pronouncements have mentioned as under.

1. Supreme Court Of India In The Case Of Commissioner Of Income Tax (Large Tax Payer Unit)) Versus M/S Reliance Industries Ltd:

"Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03. In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question. Insofar as the second question is concerned, the issue, it is common ground, is governed by the decision of this Court in *Plastiblends India Limited Vs. Additional Commissioner of Income Tax, Mumbai and Another* (2017) 9 SCC 685."

2. [2009] 178 Taxman 135 (Bombay) High Court Of Bombay Commissioner of Income-tax v. Reliance Utilities & Power Ltd.

"9. Apart from that we have noted earlier that both in the order of the CIT (Appeals) as also the Appellate Tribunal, a clear finding is recorded that the assessee had interest-free funds of its own which had been generated in the course of the year commencing from 1-4-1999. Apart from that in terms of the balance sheet there was a further availability of Rs. 398.19 crores including Rs. 180 crores of share capital. In this context, in our opinion, the finding of fact recorded by CIT (Appeals) and ITAT as to availability of interest-free funds really cannot be faulted.

10. If there be interest-free funds available to an assessee sufficient to meet its investments and at the same time the assessee had raised a loan it can be presumed that the investments were from the interest-free funds available. In our opinion the Supreme Court in *East India Pharmaceutical Works Ltd.'s case* (supra) had the occasion to consider the decision of the Calcutta High Court in *Woolcombers of India Ltd.'s case* (supra) where a similar issue had

*arisen. Before the Supreme Court it was argued that it should have been presumed that in essence and true character the taxes were paid out of the profits of the relevant year and not out of the overdraft account for the running of the business and in these circumstances the appellant was entitled to claim the deductions. The Supreme Court noted that the argument had considerable force, but considering the fact that the contention had not been advanced earlier it did not require to be answered. It then noted that in Woolcombers of India Ltd.'s case (supra) the Calcutta High Court had come to the conclusion that the profits were sufficient to meet the advance tax liability and the profits were deposited in the overdraft account of the assessee and in such a case it should be presumed that the taxes were paid out of the profits of the year and not out of the overdraft account for the running of the business. It noted that to raise the presumption, there was sufficient material and the assessee had urged the contention before the High Court. The principle therefore would be that if there are funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest-free fund generated or available with the company, if the interest-free funds were sufficient to meet the investments. In this case this presumption is established considering the finding of fact both by the CIT (Appeals) and ITAT."*

3. *South Indian Bank Ltd. [2021] 130 taxmann.com 178 (SC), Hon'ble Supreme Court held that Where the assessee has mixed fund made up partly of interest free funds and partly of interest-bearing funds and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund.*

4. *S.A. Builders Ltd. v. Commissioner of Income-tax (Appeals), Chandigarh, [2007] 158 Taxman 74 (SC):*

*"In Madhav Prasad Jatia v. CIT AIR 1979 SC 1291, the Supreme Court held that the expression 'for the purpose of business' occurring under the provision of section 36(1)(iii) is wider in scope than the expression 'for the purpose of earning income, profits or gains', and this has been the consistent view of the Supreme Court. [Para 20]*

*The High Court in the impugned judgment as well as the Tribunal and the income-tax authorities had approached the matter from an erroneous angle. In the instant case, the assessee borrowed the fund from the bank and lent part of it to its sister concern (a subsidiary) as interest-free loan. The test in such a case was really whether this was done as a measure of commercial expediency. [Para 21]*

*The decisions relating to section 37 will also be applicable to section 36(1)(iii) because in section 37 also the expression used is 'for the purpose of business'. It has been consistently held in decisions relating to section 37 that the expression 'for the purpose of*

*business' includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby. [Para 22]*

*In Atherton v. British Insulated & Helsby Cables Ltd. [1925] 10 TC 155, it was held by the House of Lords that in order to claim a deduction, it is enough to show that the money is expended, not of necessity and with a view to direct and immediate benefit, but voluntarily and on grounds of commercial expediency and in order to indirectly facilitate the carrying on of the business. [Para-23]*

*The High Court as well as the Tribunal and other income-tax authorities should have approached the question of allowability of interest on the borrowed funds from the above angle. In other words, the High Court and other authorities should have enquired as to whether the interest-free loan was given to the sister company (which is a subsidiary of the assessee) as a measure of commercial expediency, and if it was, it should have been allowed. [Para 24]*

*The expression 'commercial expediency is an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation, yet it is allowable as a business expenditure if it was incurred on grounds of commercial expediency. (Para 25)*

*No doubt as held in Madhav Prasad Jatia's case (supra), if the borrowed amount was donated for some sentimental or personal reasons and not on the ground of commercial expediency, the interest thereon could not have been allowed under section 36(1)(i) [Para 26]*

*Thus, the ratio of Madhav Prasad Jatia (supra), is that the borrowed fund advanced to a third party should be for commercial expediency, if it is sought to be allowed under section 36(1)(iii). [Para 27]*

*In the instant case, neither the High Court nor the Tribunal and other authorities had examined whether the amount advanced to the sister concern was by way of commercial expediency. [Para 28]*

*The High Court and other authorities should have examined the purpose for which the assessee advanced the money to its sister concern, and what the sister concern did with the money, in order to decide whether it was for commercial expediency, but that had not been done. [Para 30]*

*It is not in every case that interest on borrowed loan has to be allowed if the assessee advances it to a sister concern. It all depends on the facts and circumstances of the respective case. For instance, if the directors of the sister concern utilize the amount advanced to it by the assessee for their personal benefit, obviously it cannot be said that such money was advanced as a measure of commercial expediency. However, money can be said to be*

*advanced to a sister concern for commercial expediency in many other circumstances. Where holding company, has a deep interest in its subsidiary, and the holding company advances borrowed money to a subsidiary and the same is used by the subsidiary for some business purposes, the holding company would ordinarily be entitled to deduction of interest on its borrowed loans. [Para 35]*

*In view of the above, the appeals were to be allowed and the impugned judgments of the High Court, the Tribunals and other authorities were to be set aside and the matter was to be remanded to the Tribunal for afresh decision, in accordance with law and in the light of the observations made above.*

*4.2.8 The appellant argued that he is a director of the concerned relating companies and whenever any need arises for the funds, the appellant give loans to such companies. These loans were fully utilized by the respective concerns in the business and were duly returned back by the related concerns. He had argued that there exists a commercial expediency for extending such interest free loans.*

*4.2.9 In this case, as on 31.03.2011 the appellant was having a capital of around Rs. 74 Cr.. Interest bearing borrowings of araina-Re 30 Cr. and the interest free loans of around Rs. 41.75 Cr. were extended. The appellant therefore had a mixed pool of funds consisting of own funds and borrowings. Therefore, this is a case where sufficient own capital of the appellant was available and which was utilized for various purposes including extending non-interest bearing loans. The appellant is a director of the concerned relating companies and when ever any need arises for the funds, the appellant give loans to such companies. Some of these loans were bearing interest also and the appellant has declared interest income out of some of these loans. These loans have been extended out the mixed pool of funds consisting of appellant's own capital as well as the borrowed funds. It has already been held by Hon'ble Supreme Court that where the assessee has mixed fund made up partly of interest free funds and partly of interest-bearing funds and payment is made out of that mixed fund, the investment must be considered to have been made out of the interest free fund. In view of the above I am of the considered opinion that the appellant was in possession of its own capital which was far higher than the amount of loan extended. Further, if the loans have been considered as extended out of the mixed pool, it shall be presumed that the appellant's own capital and interest free funds have been used to extend these interest free loans. Therefore, the inference drawn by the Assessing Officer in this regard cannot be considered as correct. Accordingly, the disallowance of interest payment made by the Assessing Officer cannot be upheld. Therefore, the disallowance of interest expense amounting to Rs. 49,54,036/- is deleted. Accordingly, Ground Nos. 5(i), 5(ii) and 5(iii) are allowed.”*

17. Since the assessee is having sufficient interest free funds out of which advances were given which fact has not been controverted by the Revenue by placing any contrary material therefore, we find no infirmity in the order of Ld.CIT(A) which is hereby upheld. Ground of appeal Nos. 4 & 5 raised by the Revenue are dismissed.

18. Since we have already dismissed the appeal of the Revenue by confirming the deletion of the additions made on merits, the cross-objection filed by the assessee raising legal issues of reopening of assessment become academic and not adjudicated.

19. In the result, appeal of the Revenue in **ITA No.1654/Del/2023** and C.O. filed by the assessee in **C.O.No.134/Del/2023 for AY 2011-12**, both are dismissed.

Order pronounced in the open Court on 15.10.2025.

**Sd/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

**Date- 15.10.2025**

*\*Amit Kumar, Sr.P.S\**

**Sd/-**

**(MANISH AGARWAL)  
ACCOUNTANT MEMBER**

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ITAT, NEW DELHI