

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

**Before Shri Rajesh Kumar, Accountant Member and
Shri Pradip Kumar Choubey, Judicial Member**

**ITA No.1799/Kol/2025
Assessment Year: 2022-23**

DCIT, Central Circle -4(3), Kolkata.....Appellant

vs.

Golden Goenka Credit Pvt. LtdRespondent

**24 Magma House, 10th Floor,
24, Park Street, Park Centre,
W.B. – 700016..
[PAN: AACCR3964K]**

Appearances by:

P N Barnwal, CIT - DR, appeared on behalf of the appellant.

Miraj D Shah, AR appeared on behalf of the Respondent.

Date of concluding the hearing : November 11, 2025

Date of pronouncing the order : January 28, 2026

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the revenue is directed against the order dated 05.04.2025 of the Commissioner of Income Tax (Appeals)-27, Kolkata [‘CIT(A)'] passed under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for the assessment year 2022–23.

2. The appeal has been filed by the revenue with a delay of 08 days. The revenue has filed a petition for condonation of the delay. After considering the reasons cited in the petition for condonation of delay, we find that the reasons are valid and consequently, the delay in filing the appeal is hereby condoned and we proceed to dispose of the appeal on merits.

3. Brief facts of the case are that a search and seizure operation u/s 132(1) of the Act was conducted in respect of 'Golden Goenka group of assesseees' on 18.11.2021 by the directorate of Income Tax (Investigation), UP & Uttarakhand. The assessee was also covered in the said search & seizure operation. Subsequent to the search operation, the case of the assessee was centralized to the Central Circle 4(3), Kolkata and jurisdiction of the assessee was also transferred to the Central Circle 4(3), Kolkata by order u/s 127 of the higher authority. Further, the assessee filed its original return of income u/s 139 of the Act on 21.10.2022 declaring total income of Rs. 21,64,700/-. The return was processed u/s 143(1) of the Act on 05.12.2022 at total income of Rs. 21,64,700/-. Being the year of the search, return of the instant year was selected for compulsory scrutiny and notice u/s 143(2) of the Act was issued on 23.06.2023. Thereafter, notices u/s 142(1) of the Act along with detailed questionnaire was also issued on 29.08.2023 & 06.02.2024. Further, assessment order u/s 143(3) of the Act was passed on 22.03.2024 at assessed total income of Rs. 49,88,39,248/-. In this assessment order total addition of Rs 49,66,75,548/- was made wherein Rs.49,04,77,417/- being in-genuine loan was added as unexplained cash credit u/s 68 of the Act and relatable interest of Rs. 61,97,131/- debited to Profit & Loss A/c was also disallowed. Further, the assessee challenged the said assessment order u/s 143(3) of the Act dated 22.03.2024 before the Hon'ble Calcutta High Court vide Writ Petition No. 280/2024 on the ground of 'principle of natural justice'. The Hon'ble Court has pronounced the judgment on 05.04.2024 wherein the impugned assessment order was set aside and remanded back to the assessing officer concerned to pass the fresh assessment order. In pursuance to the order of Hon'ble High Court Calcutta, fresh assessment proceeding was initiated and the assessee has filed a letter of objection

on 04.05.2024. In the course of fresh assessment proceeding, the assessee was allowed with opportunity of being heard and objections raised by them are disposed thereof. In consideration to the fact and circumstances of the case, the AO passed the assessment order u/s143(3) r.w.s 260 the Act on 26.06.2024 assessing the total income to Rs. 49,88,39,248/-. It is observed from the assessment order that the AO has made additions of Rs.49,04,77,417/- u/s 68 of the Act being ingenuine unsecured loans and Rs. 61,97,131/- u/s 36(1)(iii) being relatable interest vide order dated 26.06.2024.

4. Aggrieved by the said order, the assessee filed an appeal before the CIT(A) wherein the appeal of the assessee has been allowed on the addition of loan and the disallowance of the interest. The ld. CIT(A) while allowing the appeal of the assessee considered various judicial pronouncements and the relevant portion of the order of the ld. CIT(A) is reproduced as under:

“6.2. Discussion and decision:-

6.2.1. I have perused the assessment order u/s 143(3) r.w.s 260 of the Act dated 26.06.2024, (and also the previous assessment order u/s 143(3) of the Act dated 22.03.2024) and submissions made by the assessee in the course of appellate proceeding. The assessee filed a writ petition before the Hon’ble Calcutta High Court for an early hearing. The Hon’ble Calcutta High Court disposed off the writ petition vide Order WPA 27468 of 2024 dated 02.12.2024 and directed the CIT (A)-27, Kolkata to dispose off the case within the four months from the date of communication received. The Order received on 30.12.2024 in this office.

6.2.2. In this case, it is observed that a search & seizure action u/s 132 of the Act was conducted by the Directorate of Income-tax (Investigation), UP & Uttrakhand, on 18.12.2021 and on subsequent dates. On examination of digital data found and seized during the aforesaid search & seizure action it was observed that the assessee, during the period of ASSESSMENT YEAR 2022-23, had received unsecured loan from various lenders. Accepting of such unsecured loans & paying of interest on that behalf was also affirmed by the assessee and details of which are as under:-

<i>Name of the loan creditor entity</i>	<i>Amount of loan taken</i>	<i>Amount of interest paid</i>
<i>M/s Sri Salasar Suppliers Pvt Ltd</i>	<i>Rs. 18,09,86,343</i>	<i>Rs. 33,18,159</i>
<i>M/s Mainland Finance Pvt Ltd</i>	<i>Rs. 6,55,47,577</i>	<i>Rs. 6,08,419</i>
<i>M/s Jajodia Finance Ltd</i>	<i>Rs. 9,73,05,711</i>	<i>Rs. 11,17,457</i>
<i>M/s JNB Sidhu Finance Pvt Ltd</i>	<i>Rs. 13,45,49,019</i>	<i>Rs. 10,54,466</i>
<i>M/s Radha Fincom Ltd</i>	<i>Rs. 1,20,88,767</i>	<i>Rs. 98,630</i>

The AO has added all the unsecured loan u/s 68 of the Act along with the interest u/s 36(1)(iii) of the Act. The assessee has filed a writ on the first assessment order datd 22.03.2024. The Hon'ble Calcutta High Court has set aside the order dated 22.03.2024 and directed the AO to pass fresh assessment order after considering the replies of the assessee within a period of four weeks from the date of communication of the order of the writ petition.

The assessing officer has given an opportunity to the assessee and passed the fresh order with the same additions of unsecured loans u/s 68 of the Act of Rs. 49,04,77,417/- and interest u/s 36(1)(iii) of the Act of Rs. 61,97,131/-. The assessee filed appeal u/s 250 of the Act against the AO's order u/s 143 r.w.s 260 of the Act dated 26.06.2024.

6.2.3. *In the assessment order, the AO made the addition of Rs.49,04,77,417/- u/s 68 by treating the said unsecured loans as bogus. On perusal of the assessment order, it is observed that the AO has raised the following issues while making the said addition and treating the said unsecured loans as bogus:*

a) The AO has referred to a bank statement of the lender companies of the assessee company as adverse material to allege that the money sourced by the said lender companies, which was in turn given as unsecured loan to the Assessee Company, was actually sourced, as receipt of loan and advances or refund of earlier loans, from certain identified shell companies. The AO laid emphasis that the source of the amount credited in the books of the assessee was not from tax suffered independent sources of income.

b) The AO stated that list of shell companies prepared by the Income Tax Department is an important evidence.

c) The AO made reference to the statement of Sri Girdhari Lal Goenka recorded by the Investigation Wing in the course of seacrh and claimed that the retraction affidavit of the Sri Girdhari Lal Goenka is an afterthought and a belated claim which cannot be entertained.

d) The AO disregarded the submission of the Assessee that the AO had failed to fully correlate the fund received from so called shell companies with the loan credits received by the Assessee Company.

e) The AO, without bringing on record any evidence, claimed that he has unearthed quality material to show that sources lacked capacity or creditworthiness to advance huge amount of Rs.49.04 crores loan to the Assessee.

Further, the AO relied on ratio analysis of lenders and raised the following issues:-

a) The AO claimed that the decision of Honble Calcutta High Court in CIT vs. M/s. Dataware Private Limited reported in 2011 (9) TMI 175 is not applicable.

b) The AO claimed that Girdhari Lal Goenka is an entry operator who is engaged in conversion of unaccounted money and channelizing the same into banking channel, without paying taxes, and further investing the same into real estate projects.

c) The AO disregarded the request of the Assessee Company for cross examination of the adverse material and statements of third parties.

d) The AO disregarded the fact of payment of interest paid to lenders after deduction of TDS.

e) The AO did not accept the submissions of Assessee whereby it has distinguished the judgment of Honorable SC in PCIT vs. NRA Iron and Steel Pvt. Limited.

f) The AO ignored the submission of the Assessee that section 68 is not applicable as the loans were repaid within the same financial year. The AO stated that source of the repayment of loan was not explained.

6.2.4. Now that the above-mentioned issues raised by the AO on the basis of which the Assessing Officer has made the said addition, have been identified, it is important to have a look at the enquiries made by the AO. As per the details filed before me and a perusal of the recordings of the AO in his assessment order shows that the summons was issued to all the loan creditors and replies were received from them. The Assessee has also furnished details in response to statutory notices issued to him. The appellant company during the course of appeal proceedings also submitted evidences (which have been placed on record) that in response to notice u/s 131, all the lender companies duly submitted copies of audited accounts, bank statements, ITR filed for the relevant F.Y, loan confirmation statements and source of funds. The AO therefore was in possession of the said documents. The AO has failed to show any defect, shortcoming in the details furnished before him and further such documents available on record indicates that the onus cast under section

68 of the Act to prove identity, creditworthiness and genuineness was duly discharged. However, the Assessing Officer chose to doubt the creditworthiness of the lenders and in turn the genuineness of the transactions. The AO referred to the data base of shell companies list and made various generalized observations to doubt the source of the Lenders. The AO has relied on the past deeds/ actions of lender companies and also the Assessee Company and tried to raise adverse inference against the transactions of the Assessee Company pertaining to the year under appeal. The AO failed to appreciate that the law settled with respect to Income Tax Act that each assessee and each assessment year is different and distinct and hence facts related to earlier or later years, with respect to year under consideration of a case, cannot form the basis of drawing any adverse inferences in the transactions of the year under consideration based on fund transfers in the bank accounts of the lenders. The AO has not recorded in his assessment order as to whether any further enquiries were made by him to establish that the financial credentials of the lender companies were inadequate to provide the said unsecured loans or as to how and in what manner the AO considered that the said lender companies were not creditworthy enough to advance the said loans. The AO has claimed that he has unearthed quality material to establish that the sources completely lacked creditworthiness but he did not mention any such unearthed quality material. The only material referred to by the AO was the bank statements of the lenders, which were itself submitted by the lender companies in response to summons and also by the Assessee Company. In any case, I fail to understand as to how a disclosed bank account of the lender company can be taken to be quality adverse material against the transactions appearing in the said bank statement and in turn against the Assessee.

6.2.5. Further the AO has referred to certain historical transactions pertaining to the Loan creditors, which relate to periods much prior to the relevant assessment year. These unrelated transactions have no connection whatsoever with the legitimate and disclosed transactions executed by the assessee in AY 2022-2023. It is a settled principle of law that each assessment year is an independent unit, and allegations or findings pertaining to a different period cannot be automatically extended to subsequent assessment years without independent verification and substantiation. The AO has neither established any direct or indirect link between the assessee's transaction and the alleged irregularities concerning the creditors nor provided any tangible evidence to support the claim that the transaction in question is dubious. Moreover, the AO has failed to controvert the following critical established aspects:

Identity of the Creditor: The identity of the lender companies is established through statutory documentation and transaction records.

Genuineness of the Transaction: The transaction in question is duly supported by proper documentation, banking channels, and confirmations from the creditors and most important factor is the refund of the loans.

Creditworthiness of the Creditor: The Creditors has sufficient own capital and free reserves/net worth and thus there is no reason to doubt their creditworthiness. No evidence has been provided to dispute the financial capacity of the creditors during the relevant period.

In the absence of any cogent evidence, the AO's reliance on unrelated, historic transactions is irrelevant and misplaced as no enquiries were made by him on these issues with the said creditors. Such findings have no bearing on the current assessment proceedings and cannot form the basis for any adverse inference against the assessee. The Hon'ble Supreme Court and various High Courts have consistently held that unsubstantiated allegations and conjectures cannot substitute actual evidence. Therefore, the allegations made by the Assessing Officer are unsustainable in law and liable to be set aside. Any adverse conclusion based on these unfounded assertions and not verified by independent inquiries would be arbitrary, unreasonable, perverse and in violation of the assessee's legal rights.

6.2.6. *The AO has made much thrust on the argument that the source of Loan creditors/Lender Companies are from dubious sources. I am of the view that even in cases of source of loan creditors being dubious then addition cannot be made of the said loans in the hands of the Assessee and action, if any, can be taken in the hands of the Loan Creditor. The fact that the lenders' explanation about the sources where-from they acquired the money is not acceptable to the Assessing Officer, it cannot be presumed that the loan credits given by such lenders is the money of the assessee himself. There is no warrant for such presumption. In such event if the lenders explanation is found to be not acceptable, then such amount of loan credits may be subjected to the proceedings and taxed as their income from undisclosed sources or if they have been found Benami, the real owner can be brought to the tax net. But in order to fasten liability on the assessee by including such credits as its income from unexplained sources a nexus has to be established that the sources of lenders loan credits flew from the assessee. In the absence of any such vital link, additions of loan credits found in the books of account of the assessee cannot be considered to be unexplained income of the assessee. I rely on the following two judgments of the Hon'ble Rajasthan High Court i.e. (i) Kanhaiyalal Jangid v. Asstt. Commissioner of Income Tax [2008] 217 CTR 354 (Raj.) and (ii) Aravali Trading Co. v. ITO - [2010] 187 Taxman 338 (Raj.). I am also supported in my view by the judgment of the Honble Allahabad High Court in PCIT vs Anshika Consultants Pvt. Ltd. [2024] 162 taxmann.com 792 (Allahabad).*

6.2.7. *The AO failed to appreciate that Assessee was not required to prove the source of source and the Assessee has duly discharged its onus*

to prove its own source. The onus cast under Section 68 of the Act in respect of receipts of unsecured loan credits is on the borrower of loan and that too the onus is only upto to prove the source and not the source of source. Any adverse finding as on source of source of the lender can result into suitable action to be taken by the assessing officer of the lender but wrongful source cannot be held to be income of lender Assessee in terms of presumptive law u/s 68 of the Act. I am supported in my view by the judgment of the Hon'ble Gauhati High Court in the case of Nemi Chand Kothari vs CIT reported in 264 ITR 254 (Gau). Even otherwise, the requirement of proving source of source in respect of unsecured loan transactions has been brought in the ambit of Section 68 w.e.f Assessment Year 2023-2024 and such amendment made in section 68 cannot be read to be retrospective in force.

6.2.8. The AO has further relied upon a list of "Identified Shell Companies List" and asserting that companies whose names appear in such list are engaged in providing accommodation entries in the form of share capital/unsecured loan/long term capital gain/short term capital gain/loss...". The Assessee has made detailed submissions to disregard the evidentiary value of such shell company list prepared by the Investigation Wing. The Assessee Company stated that declaring a company as a shell company is a virtual condemnation and that too without a hearing. In the assessment order, the AO has alleged that the lender companies involved in the transaction with the assessee are shell companies. However, it is critical to note that such allegations are entirely unsubstantiated and devoid of any material evidence. The Assessing Officer has failed to reproduce or refer to any concrete material or evidence that could substantiate these serious allegations. The assertions made by the AO are mere bald statements, lacking any corroborative evidence or documentary proof. These generalized allegations bear no nexus with the specific transaction undertaken by the assessee during the Assessment Year (AY) 2022-2023. Even otherwise, the Honble Jurisdictional High Court in the case of **PCIT vs. Sreeleathers in [2022] 143 taxmann.com 435 (Calcutta)** has stated that unless any specific allegations of bogus transactions is not deposed in a statement recorded then based on such statement, no adverse inference can be raised against a third party who is not named in such statement. In this case, the AO has not brought out anything that what has been stated in these statements and how such statements is linking the transactions of the Assessee to come to a conclusion that the same are bogus in nature. Further, the scheme of Income Tax has different evidentiary values of statements recorded under different sections for e.g. a statement recorded u/s. 132(4) is presumed to be correct in the hands of the maker of such statement. Similarly a statement made u/s. 133A or 131 of the Income Tax Act, 1961 has no evidentiary value as held by the Honble Supreme Court in the case of *S. Kader Khan Sons* (2012) 352 ITR 480 (SC). Therefore, it is important for an AO to bring on record what has said in the statement, against whom, in which proceedings, whether the third party Assessee was named in such

statement, how and in what capacity such person was having legal and statutory right to give a statement with respect to a corporate entity I.e. was he is an employee, an active director. Unless all these factors are brought on record merely to hold that and refer to some historical statement lying in the database of the department cannot be held to be material evidence eligible to be used against a third party Assessee.

6.2.9. The Appellant Assessee has referred to large number of case decisions and submitted that such process of suo-moto branding of the companies as Shell Companies is akin to blacklisting them without any objective satisfaction. I cannot help but agree with this submission of the Appellant Assessee. I am supported in such view by the judgment of Gauhati High Court in the case of Assam Co. India Ltd. vs. Union of India WP(C)2572/2018 dated 07/03/2019 and various other judgments of Honble Apex Court cited by the Appellant Assessee in its submission. The Appellant Assessee has also referred to answer given by Minister of State in the Ministry of Finance in response to Question put by a Rajya Sabha Member on the issue of Shell Companies and in such answer the aforesaid Minister stated that shell company is not defined in the Acts administered by the Ministry of Finance and thus the data of shell companies cannot be provided. The Acts administered by the Ministry of Finance, inter-alia, includes the Income Tax Act, 1961 and it appears that Ministry of Finance has not recognized any details, data of Shell Companies. Even otherwise, the AO failed to appreciate that mere reference to such so called list in the absence of any corroborative material will not help the case of the department. In this connection, gainful guidance may be drawn from the decision of the **Hon'ble Apex Court in Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775** wherein the Hon'ble Court although held that while the ITO is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a Court of law, but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. It has repeatedly been held by various judicial authorities that there must be something more than mere suspicion to support any assessment. In the present case, I find that the financials of the lender entities have been held to be unsound. However, no basis for this has been spelt out. From the records it is nowhere apparent that any of these financials were analyzed by the AO to point out as to how these financial were unsound. Records before me do not shed any light upon the nature of the "unsoundness" of these financial of the lender companies. I find that as on 31st March, 2022 the net worth reflected in the audited balance sheets of the said lender companies clearly show that they had sufficient net worth to allow them to give loans to the appellant. The net worth of the five companies as provided in the Audited Accounts of the said companies are reproduced below:

Sl. No. Name of the Lender Company PAN Net worth as on 31.03.2022

1 Sri Salasar Suppliers Pvt. Ltd.AADCS8457R 2550.28 Lakhs

2 Main Land Finance Pvt. Ltd. AACCM3533D 9952.94 Lakhs

3 Jajodia Finance Ltd. AAACJ8457D 6031.54 Lakhs

4 JNB Sidhu Finance Pvt Ltd. AABCJ0370Q 2699.47 Lakhs

5 Radha Fincom Ltd. AACCR4066J 9940.80 Lakhs

Evidently the net worth of those companies is in crores of rupees and in spite of having in his possession the audited accounts of these lender companies the AO has failed to bring anything on record as to why the creditworthiness of the lenders was not considered to have been established. Also, it is noted that unsecured loans were bearing interest and the interest charged thereon had been reflected in the lender's financials as well. No one, either during search or at the time of assessment, has raised any doubts with respect to the interests or the lending rates.

6.2.10. *The AO has raised various inferences against the creditworthiness of the Lender Companies in violation of the ratio laid down by the Hon'ble Calcutta High Court in the case of **CIT vs. M/s. Dataware Private Limited 2011 (9) TMI 175**. The Hon'ble Jurisdictional High Court have held that the transaction of the creditor can only be examined by the AO of the creditor and not by the AO of the assessee i.e. borrower. The AO had stated that the said judgment of Dataware (supra) will not apply in respect of two lenders viz. M/s. Jajodia Finance Limited and M/s. Sri Salasar Suppliers Limited which was centralized under the charge of AO. However, while assessing the said two lenders, the AO has treated them as beneficiary of loans received from other so called entry operators. The Assessee Company has filed copies of the Assessment Orders passed by same AO in the case of M/s. Jajodia Finance Limited passed in the Assessment Year 2019-20 dated 27.06.2024, AY 2020-21 dated 22.03.2024 and AY 2022-23 dated 26.04.2024. Further, the Assessee had filed Assessment Order passed by Ld. DCIT, Central Circle-4(1), Kolkata in the case of M/s. JNB Sidhu Finance Pvt. Ltd for the AY 2019-20 dated 28.03.2024, AY 2022-23 dated 30.03.2024. All these Five Assessment Orders has reference to the Search conducted on Girdhari Lal Goenka in the year 2021 and in context of such search, and these five Assessment Orders were passed in light of the same. On perusal of all these five assessment orders, I find that these Companies have been assessed in their own capacity accepting their Books of accounts, net profits and returned income and some additions were made u/s. 68 on account of monies received by them. Thus, it is evident that AO's of the Central Circle, including the AO of the Assessee in this appeal, after examining the Appraisal report prepared in the case of Girdhari Lal Goenka for the search conducted in 2021 have found these two companies to be carrying on genuine business and hence their*

returned income and transactions for the year were accepted after scrutiny. I find that none of these Assessee's has been held to be Shell entities and no adverse comments has been made in their hands. This being the factual position I fail to understand on what basis that assessing officer of the appellant has taken a contrary stand in this assessment order in appeal. Unless the assessing officer of the creditor does not find any adverse findings in their assessment proceedings, the assessing officer of the borrower cannot take a diametrically opposite view. It is a settled law that a party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. Thus, there is no basis to hold these creditors as shell or bogus accommodation entry providers.

6.2.11. During the course of assessment proceedings, the appellant produced the evidences of loan repayment in respect of all the five concerns. The appellant has produced/filed copies of bank statements to establish that the loans were repaid through banking channels along with interest after deducting TDS on the same. The AO has wrongly claimed that TDS was not deducted on the interest paid to loan creditors. I have verified from the records that the TDS was deducted and deposited in accordance with law.

6.2.12. All the above discussions established the fact that the loans from the said five companies were given from the creditors disclosed bank accounts, and were received in the disclosed bank account of the Appellant. These loans were duly reflected in the assessee's books of account and the said loans were also repaid through banking channels which were duly recorded and reflected. These facts have not been disputed by the AO. With respect to the repayment the AO has raised a doubt in the assessment order that the assessee did not show the source of the repayment of loan. In this regards I find that the entire books of accounts and bank statement etc were before the AO in the assessment proceedings, further the AO has not raised any query or conducted any inquiry with respect to source of repayment of loan. I have examined the statutory notices issued by the AO under section 143(2) and 142(1) of the Act and I find that nowhere in the said notices the AO has sought details in respect of the source of repayment of loan though details were sought about the repayment of loan. It is a matter of record that an Assessment Order dated 22/03/2024 was initially passed, in the case of the Assessee Company, under section 143(3) of the Act wherein the loan credits received from five loan creditors, and related interest expenses, were added as unexplained cash credit under Section 68 of the Income Tax Act, 1961. The said Assessment Order was challenged before the Honble Calcutta High Court in Writ Jurisdiction and the Honble High Court remanded the matter back to AO with a direction to pass fresh assessment order after considering the reply to be filed by the petitioner against the impugned assessment order by treating the said Assessment Order dated 22/03/2024 as show cause notice. I have examined the said

show cause notice/Assessment Order dated 22/03/2024 and I find that no query was ever raised in respect of the source of repayment of loan. Thus, the AO clearly travelled beyond the scope of Show Cause Notice/Assessment Order dated 22/03/2024 which stands in clear violation of the direction of Honble Calcutta High Court. Even otherwise, it is a settled legal principle that if an allegation or ground is not made at the stage of show cause itself, it is not permitted for the authorities to create a new ground. In support of its contention, reference is made to the judgments of the Honorable Supreme Court in the case of **Birla Corporation Ltd. v. CCE 2005 (186) E.L.T. 266/2005 taxmann.com 1293, Indian Oil Corporation Ltd. v. Collector of Central Ex. 2006 (202) E.L.T. 37/2006 taxmann.com1514 (SC) and Boving Fouress Ltd. v. CCE 2006 (202) E.L.T. 389 (SC)**. I fail to appreciate that in absence of any query or inquiry by the AO from the assessee, how is the assessee expected to reply to the same. it is well settled in law that in absence of inquiry the AO cannot invoke Section 68 of the Act.

6.2.13. Furthermore, the fact remains that no addition has been made by AO in respect of the said admitted claim of repayment of loan and thus his attempt to negate the argument of repayment of loan is perverse. I refer to the binding judgment dated 17.12.2024 of the **Hon'ble Calcutta High Court** rendered in the case of **PCIT vs Alom Extrusions Limited [ITAT/268/2024]** wherein the Hon'ble High Court has deleted the addition made of loan credits u/s. 68 of the Act by taking note of the fact of repayment of loan. I am supported in the said view by the judgment of **Gujrat High Court in PCIT vs. Merrygold Gems (P.) Ltd.[2024] 164 taxmann.com 764 (Gujarat)**.

6.2.14. It is observed from the assessment order, that reliance was placed on the statement of Girdhari Lal Goenka dated 18.12.2021. The said statement was retracted within three days by vide Affidavit affirmed before the Learned Judicial Magistrate, 1st Class, Alipore dated 21.12.2021 and was filed with the Investigation Wing, Lucknow. However, the AO claimed that DDIT(Inv.)-II, Lucknow has denied of having received any such retraction affidavit. The receipt dated 18.04.2022 of the Investigation Wing, Lucknow has been filed before me and I have no reason to disbelieve the same. The claim of the AO that the said retraction was afterthought is not acceptable as the very fact of the Affidavit being affirmed before Learned Judicial Magistrate, 1st Class, Alipore, within a very reasonable time gap of only 3 days from his statement, and this shows that the same cannot be claimed to be an afterthought or a belated claim. The Assessee has referred to plethora of judgment that a retracted statement carries no evidentiary value which includes the **Hon'ble Calcutta High Court in the case of Overtop Marketing Pvt Ltd reported as 461 ITR 67 Calcutta**.

6.2.15. Even otherwise, on perusal of the statement given by Girdhari Lal Goenka recorded by the officers of Investigation Wing and I have noted

various issues which supports the case of the Assessee. In response to Question No.7, the deponent (Girdhari Lal Goenka) had stated that he was involved in provided accommodation entry till 2012 and evidently the transactions of the Assessee in question pertains to AY 2022-23. Thus, how can the activities of GL Goenka which ceased in 2012 be held against the assessee for the transactions done in FY 2021-2022. The past actions cannot be relied upon to draw adverse inference against the subsequent later in point of time transactions. I am supported in my views by the judgment of **Jurisdictional Kolkata Bench of Income Tax Appellate Tribunal passed in the case of Coal Sales Co. Ltd., in ITA No.2364/Kol/2019, Order dated 17.12.2021.** The Honble Tribunal has held and observed that just because a person once stated that he or any of his entities were acting as an entry provider that will not mean that all of its other actions are wrong too. **The judgment of Ld. ITAT in the decision of Coal Sale Co. (supra) was later upheld by the Hon'ble Calcutta High Court in PCIT vs Coal Sale Co. Ltd. [ITAT/71/2022, Judgment dt. 29.07.2022].** Furthermore, on detailed reading of the said statement I do not find that anywhere in the said statement any reference to the said five creditor companies involved in this assessment order which have been stated to be in the business of accommodation entries. The only reference to the involvement of Girdhari Lal Goenka in accommodation entry is contained in Question No.14 and its answer, wherein it has been mentioned that accommodation entries were provided to M/s. Nanak Logistics Pvt. Ltd, however a surprising fact which appears to be beyond human probabilities is that while giving such statement, the said GL Goenka could remember and state the exact amount of loan of Rs.2,28,85,966. This fact rather corroborates the retraction affidavit of GL Goenka that the statement as to the allegation that the statement was prepared by the department and such statement was recorded under coercion. It is absolutely humanely not possible for a person to remember the said exact amounts/figures after lapse of months. This fact goes on to support the contention of the deponent that he was coerced to sign the said statement on the dotted lines of the Investigation Wing. I also find that Girdhari Lal Goenka was not a director in any of the five creditor companies and thus he not being a director or employee of these companies had no locus standi to make any comments or reference to the transaction of these five companies.

6.2.16. I have examined the excerpt of the statement of Naresh Parsharamka which was set out in the said statement and the said excerpt clearly shows that the said Naresh Parsharamka has made contradicting statements. The said points noted by me with respect of the said statement of Girdhari Lal Goenka shows that the same cannot come to the aid of the AO for supporting the addition of the loan credits and related interest with respect to the five creditors in the case of the appellant.

6.2.17. *I agree with the contention of the AR that if the Department did indeed wish to rely on the statements of third parties to draw any adverse inference against the Appellant, then they were legally bound to furnish a copy of the third-party statement to the appellant and then summon the third parties and examine them themselves and thereafter allow the appellant an opportunity to cross examine them. It is only thereafter, and after they were satisfied as to the veracity of the statements proposed to be relied upon, that they could have actually relied upon such statements to make the impugned additions. Since this has evidently not been done, it becomes difficult in law to offer support to either the person taking the statement of such parties and the AO's action of using such third party statements to draw adverse inferences against the appellant. It has to be kept in mind that certain rules of Natural Justice cannot be given a complete go-bye. One such rule is that no material shall be used against an assessee without giving him an opportunity to meet it. No assessment can be made while keeping the assessee in the dark as to the materials to be used against him. In fact, even if the material/statement proposed to be used against him is furnished to the assessee, the latter can contest it at the time of assessment and the AO would be legally bound to give an opportunity to the assessee to test the veracity of the statement on the touch stone of cross examination and thereafter only the AO can rely on such a statement. Upon the principles discussed above in relation to the present factual matrix, I find merit in the claim of the appellant that, without providing the purported third party statements, or without first himself personally examining them and allowing the appellant to cross examine, the statement obtained from third parties at some other time and completely different circumstances and not during the course of the search of the assessee company, in this regard was unreliable in as much as there was no corroborating material found and/or collected in the course of search conducted against the appellant or even otherwise. Therefore, the said statement of the alleged entry operator could not have been the only material to be used against the appellant to make the impugned additions.*

6.2.18. *The above is a serious fundamental infirmity which rendered the adverse inferences drawn, by relying on such unverified database/statements collected at the back of the appellant, to be legally unsustainable. In this regard, it is apt to refer to the following findings recorded by the **Hon'ble Apex Court in the case of Andaman Timber Industries Ltd vs Commissioner of Central Excise in Civil Appeal No. 4228 of 2006 reported in (2015) 62 Taxman 3 (SC)**, which read as under:*

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of

principles of natural justice because of which the assessee was adversely affected.”

It has been held that unless oral evidence is tested on the touch-stone of cross-examination, the veracity of such evidence cannot be assumed to be a fact and it cannot be acted upon to the disadvantage of an assessee. I also refer to the provisions of Section 142(3) of the Act which provides that all the material which is collected in the course of enquiry conducted by the AO must be provided to the Assessee and he must be given an opportunity of being heard on the said materials.

6.2.19. *The reliance placed by AO on the judgment of NRA Iron and Steel Pvt. Ltd. (supra) is totally misplaced as the facts involved in the said case was distinguishable on facts as has been pointed by the Assessee. I concur with the said submission of the Assessee. In the case of NRA Iron and Steel Pvt. Ltd., the Honble Supreme Court was concerned with the facts where the share subscribers were not traceable and the Assessee in that case was unable to discharge its onus under section 68 of the Act. The Honble Supreme Court has observed that higher onus is cast on the Assessee in respect of transactions of investment in share capital. The instant case pertains to addition of loan credits under section 68 of the Act and that too in the light of fact that such loan credits were refunded in its entirety. In this case none of the creditors were not found to be untraceable, all notices issued were duly responded, three out of the five assessee creditors were being assessed by the central wing in out of the three , two were assessed by the same AO hence the case of NRA has no relevance in this case.*

6.2.20. *It is quite evident from the perusal of the Assessment Order that Assessing Officer has disregarded the detailed submissions made before him on the basis of irrelevant considerations and on the basis of mere suspicions, surmises and conjectures. The assessing officer, purely based on preconceived notions, rejected all evidence brought on record by the assessee by relying on irrelevant findings and held that despite the fact that the loans taken were duly repaid, the said loans were to be held as taxable under Section 68 of the Act. In this connection, gainful guidance may be drawn from the decision of the **Hon'ble Apex Court in Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775** wherein the Hon'ble Court although held that while the ITO is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a Court of law, but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. It has repeatedly been held by various judicial authorities that there must be something more than mere suspicion to support any assessment. The Addition u/s 68 of the Act on the basis of information from investigation wing without corroborative evidence and linkage of the assessee with the alleged accommodation entry will fall in the domain of suspicion only. Suspicion alone without*

there being evidence specific to a transaction cannot become the basis for creating charge for levying tax as each transaction has to be independently inquired into. It is a time tested Principle of Law that Suspicion howsoever strong cannot take the character of evidence. In the case of **CIT vs. Daulat Ram Rawatmull, [87 ITR 349] (SC)**, the Hon'ble Supreme Court held that the onus to prove that the apparent is not real - is on the party who claims it to be so and the burden of proving a transaction as bogus has to be strictly discharged by adducing legal evidences, which would directly prove the fact of bogusness or establish circumstance unerringly and reasonably raising an interference to that effect. **The Hon'ble Supreme Court in the case of Umacharan Shah & Bros. vs. CIT [37 ITR 271] (SC)** held that suspicion however strong, cannot take the place of evidence.

6.2.21. I find that the facts of the instant case at hand is quite similar to the facts discussed by the Hon. jurisdictional High Court in the case of *Principal Commissioner of Income tax vs. Sreeleathers* in [2022] 143 taxmann.com 435 (Calcutta). The facts of the said case were: a)The assessee-firm was engaged in business of trading/retailing of footwear and leather and non-leather accessories. It had filed its return of income and same was selected for scrutiny. Subsequently, notices under sections 143(2) and 142(2) were issued on it. b)The Assessing Officer noted that the assessee had received certain amount of unsecured loans from various companies out of which 13 companies were allegedly claimed to be paper companies. He thus made addition of amount of unsecured loans in the assessee's total income. c)The Commissioner noted that the assessee had furnished various documents to prove genuineness and creditworthiness of alleged paper companies however same was rejected by the Assessing Officer. He thus held that it was not enough for the Assessing Officer to dismiss documents furnished by the assessee without consideration but rather should have recorded reasons in writing as to why these documents filed by the assessee did not go to establish the identity of the lender or prove the genuineness of the transaction. In the absence of any such finding, order passed by the Assessing Officer was held to be utterly perverse. The Hon. High Court of Calcutta gave the following judgement: "This provision of section 68 deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. The crucial words in the said provision are 'assessee offers no explanation'. This would mean where the assessee offers no proper, reasonable and acceptable explanation as regard the amount credited in the books maintained by the assessee. No doubt the burden of proof is on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their conformations, it has

been held that the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit so as to be justified in referring to section 68. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation with regard to the cash credit, the Assessing Officer should consider the same objectively before he takes a decision to accept or reject it. If the explanation given by the assessee shows that the receipt is not of income nature, the department cannot convert good proof into no proof or otherwise unreasonably reject it. On the other hand, if the explanation is unconvincing, the same can be rejected and an inference shows that the amount represents undisclosed income either from a disclosed or an undisclosed source. The explanation given by the assessee cannot be rejected arbitrarily or capriciously, without sufficient ground on suspicion or on imaginary or irrelevant grounds. Further to be noted that where the assessee furnishes full details regarding the creditors, it is up to the department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there has been some illegalities in the assessee's transaction. Thus, more importantly, the onus of proving that the appellant was not the real was on the party who claims it to be so. Bearing the above legal principles in mind, in the instant case, it is clear that the Assessing Officer issued show cause notice only in respect of one of the lender FGD. The assessee responded to the show cause notice and submitted the reply. The documents annexed to the reply were classified under 3 categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer has brushed aside these documents and in a very casual manner has stated that mere filing PAN details, balance sheet does not absolve the assessee from his responsibility of proving the nature of transaction. There is no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee has discharged his initial burden and the burden shifts on the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression 'money laundering.' Such usage is uncalled for as the allegations of money laundering is a very serious allegations and the effect of a case of money laundering under the relevant Act is markedly different. Therefore, the Assessing Officer should have desisted from using such expression when it was never the case that there was any allegations of money laundering. Much reliance was placed on the statement of AKA which statement has been extracted in full in the assessment order and it cannot be disputed that there is no allegation against the assessee company in the said statement. There is no evidence brought on record by the Assessing Officer to connect the said entry operator with the loan transaction done by the assessee. Therefore, the statement is of little avail and could not have been the basis for making

allegations. The Assessing Officer ignored the settled legal principle and in spite of the assessee having offered the explanation with regard to the loan transaction, no finding has been recorded as regards the satisfaction on the explanation offered by the assessee. Therefore, the Assessing Officer ignored the basic tenets of law before invoking his power under section 68. Fortunately, for the assessee, the Commissioner (Appeals) has done an elaborate factual exercise, took into consideration, the creditworthiness of the 13 companies the details of which were furnished by the assessee. More importantly, the Commissioner noted that all these companies responded to the notices issued under section 133(6) which fact has not been denied by the Assessing Officer. On going through the records and the net worth of the lender companies, the Commissioner (Appeals) has recorded the factual findings that the net worth of those companies is in crores of rupees and they have declared income to the tune of Rs. 45,00,000/- and 75,00,000/-. Therefore, the Assessing Officer if in his opinion found the explanation offered by the assessee to be not satisfactory, he should have recorded so with reasons. However, there is no discussion on the explanation offered by the assessee qua, one of the lenders. Admittedly, the assessee was not issued any show cause notice in respect of other lenders. However, they are able to produce the details before the Commissioner (Appeals) who had rightly appreciated the facts and circumstances of the case. As pointed out earlier, the Assessing Officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It is not enough for the Assessing Officer to say so but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. In the absence of any such finding, it is held that the order passed by the Assessing Officer was utterly perverse and rightly interfered by the Commissioner (Appeals). The Tribunal reappreciated the factual position and agreed with the Commissioner (Appeals). The tribunal apart from taking into consideration, the legal effect of the statement of AKA also took note of the fact that the notices which were issued by the Assessing Officer under section 133(6) to the lenders were duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the Assessing Officer and there is no discussion on this aspect. Thus, the tribunal rightly dismissed the appeal filed by the revenue. [Para 5] In the instant appeal also, the AO in spite of having all the requisite documents at his disposal failed to bring on record any reasons to justify his conclusion that the documents which were filed by the assessee along with the reply did not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. Similarly, the decision of the Hon'ble Rajasthan High Court in the case of CIT Vs A.L.

Lalpuria Construction (P) Ltd (215 taxmann 12) is also found to be relevant to the present case wherein also the addition made by the AO alleging unsecured loans to be in the nature of accommodation entry was held to untenable as it was based on uncontroverted oral statement of third party which was obtained prior to the search conducted u/s 132 of the Act upon the assessee. The Hon'ble Court observed that, "2. The revenue has preferred instant appeals U/s 260A of Income-tax Act,1961 ("Act, 1961") assailing judgment of the Tribunal dt.31-3-2010 affirming order of Commissioner (Appeals) dt. 5-3-2008, with modification that on the statement of Kripa Shanker Sharma, the income of Rs. 5 Lacs was assessed in the hands of assessee and it was observed by the Tribunal that the statement of Kripa Shanker Sharma was never confronted and no documentary evidence was supplied to the assessee, in absence whereof the income in the hands of the assessee on the basis of statement of Kripa Shanker Sharma deserves deletion. The assessee as alleged carried out construction activities and disclosed income from subcontract and investment in building construction. After the search U/s 132 of the Act,1961 was carried out on 12-4-2005 in the case of another assessee M/s. B.C. Purohit & Company at Jaipur & Kolkata, evidence was gathered and from the investigation it revealed that in the garb of tax consultation the owners and employees of this group were running the racket of providing accommodation entries of gifts, loans, share application money, share investment and long term capital gains in shares. It will be relevant to record that the present assessee might have been in consultation with M/s. B.C. Purohit & Company and a member of the group and has drawn inference regarding providing accommodation entries and the assessing officer was of the view that details made available by the assessee as regards unsecured loans and share application money, reference of which has been made in para-4 of its order, appears to be the accommodation entries and the present assessee was middle man and invoking Sec.68 of the Act, it was considered to be part of the income in the hands of the assessee. However, on appeal preferred before the Commissioner (Appeals) by the assessee U/s 143(3) r/w 147 of the Act, 1961 all the factual statements were examined at length and the Commissioner (Appeals), after due appreciation of material which came on record, observed that from independent enquiry the copies of bank account were obtained by the assessing officer and found that for clearing of the cheques issued by these companies either cash was deposited in the same account or in another account of the group company in fact was M/s. B.C. Purohit of which the present assessee was considered to be one of the group member. However, it was further observed that summons issued U/s 131 of the Act were served upon all such applicant/creditors and their confirmation letters were filed and the companies were assessed to tax being the private limited companies, the existence of their separate legal entity ordinarily could not have been doubted. However on the basis of statement of Kripa Shanker Sharma which was recorded by the search authorities as regards accommodation entries, a sum of Rs. 5 Lacs was

assessed in the hands of present assessee alone and as regards other income, it was not considered to be in the hands of the present assessee. Obviously the department being aggrieved preferred appeal before the Tribunal and at the same time, the present assessee filed cross objection regarding part of the income, to the extent of a sum of Rs. 5 Lacs, as being recorded in the hands of present assessee on the basis of statement of Kripa Shanker Sharma. The Tribunal while appreciating the factual matrix came on record observed that after the summons were issued U/s 131 of the Act, 1961 to the applicant/creditors and their confirmation letters were filed and the companies were assessed to tax being private limited companies the existence of their separate legal entity ordinarily could not have been challenged more so when the identity of existence of the investor is not disputed and accordingly upheld the view of Commissioner (Appeals), at the same time further observed that merely on the basis of oral statement of Kripa Shanker Sharma recorded before the search authorities that the assessee provided accommodation entries was not sufficient for the income to be assessed for a sum of Rs. 5 Lacs in the hands of the assessee and while allowing the cross objection filed by the assessee dismissed the appeal preferred by the revenue under order impugned. We have heard the parties at length and of the view that what has been observed by the Commissioner (Appeals) & the Tribunal appears to be based on factual matrix and there appears no substantial question of law arises which may require interference by this Court to be examined in the instant appeal. Consequently, the instant appeals are wholly devoid of merit and accordingly stand dismissed." In addition to the aforesaid binding judgment of Hon'ble Calcutta High Court in the case of PCIT vs Sreeleathers [2022] 143 taxmann.com 435 (Calcutta), I am supported in my views by the following binding judgments of Hon'ble Jurisdictional Calcutta High Court: CIT vs. M/s. Dataware Private Limited reported in 2011 (9) TMI 175 (CAL) PCIT vs Alom Extrusions Limited [ITACT/268/2024, judgment dated 17.12.2024] PCIT vs Parwati Lakh Udyog [ITAT/2/2024, judgment dated 19.02.2024] CIT v. Mitul Krishna Kapoor (ITA No.333 of 2009, judgment dated 09.06.2016) PCIT vs Coal Sale Co. Ltd. [ITAT/71/2022, Judgment dt. 29.07.2022] CIT vs. Eastern Commercial Enterprises [1994] 210 ITR 103 (Cal) of CIT(E) -vs- Mayapur Dham Pilgrim & Visitors Trust (2022) 214 DTR 441 / 328 CTR 984 (Cal) CIT(E) -vs- Sanskriti Sagar [ITAT/46/2018 (GA No. 631 of 2018 dated 26.04.2022 (Cal))]

6.2.22. In view of the above discussions and various judicial pronouncements the additions of loan made by the AO to the tune of Rs.49,04,77,417 u/s 68 of the Act is deleted. As a result, disallowance of the interest of Rs.61,97,131 u/s 36(1)(iii) of the Act on the same is also deleted. Hence, these grounds of appeal raised by the assessee are allowed.

5. Being aggrieved and dissatisfied, the revenue is in appeal before us challenging the very impugned order. The ld. DR submitted that the assessee has taken unsecured loans from the following six entities:

<i>Name of the loan creditor entity</i>	<i>Amount of loan taken</i>	<i>Amount of interest paid</i>
<i>M/s Sri Salasar Suppliers Pvt Ltd</i>	<i>Rs. 18,09,86,343</i>	<i>Rs. 33,18,159</i>
<i>M/s Mainland Finance Pvt Ltd</i>	<i>Rs. 6,55,47,577</i>	<i>Rs. 6,08,419</i>
<i>M/s Jajodia Finance Ltd</i>	<i>Rs. 9,73,05,711</i>	<i>Rs. 11,17,457</i>
<i>M/s JNB Sidhu Finance Pvt Ltd</i>	<i>Rs. 13,45,49,019</i>	<i>Rs. 10,54,466</i>
<i>M/s Radha Fincom Ltd</i>	<i>Rs. 1,20,88,767</i>	<i>Rs. 98,630</i>

5.1 The ld. DR submits that in response to notice u/s 131 of the Act, there was no compliance from the loan creditors for personal appearance and further it is noticed that the said companies did not have any significant business activity. He also submits that even if the money was no doubt received through banking channels but did not reflect genuine business activity. The ld. DR also submits that in respect of the issue of repayment of the loan, the repayment of the loans is an independent transaction and it does not affect, in any way, whether the original receipts of the monies were genuine or not and once it is established that the loan providing Company does not have the creditworthiness to give the loan and the repayment, in any way, is nothing but return of accommodation entries.

6. Contrary to that, the ld. AR supports the impugned order thereby submitting that the Assessing Officer arbitrarily made the addition of Rs.49,66,74,548/- on account of loan taken during the year from five loan creditors and the assessee submitted the following documentary evidences before the Assessing Officer:

- (a) Lender's Letter confirming its transactions with source of fund.
- (b) Loan Confirmation.
- (c) Bank Statement of the Lender
- (d) Income Tax Acknowledgment of the Lender.
- (e) Audited Financials of the Lender.
- (f) NBFC Certificate issued by RBI in the name of Main Land Finance Pvt Ltd. and Shri Salasar Suppliers Pvt. Ltd.

6.1 The ld. AR submits that the Assessing Officer has not made any adverse remark on the documentary evidences submitted by the assessee. His submission is that in respect of loan creditor namely Ms Sri Salasar Suppliers Pvt Ltd, the Assessing Officer made the allegation that the share capital raised by the loan creditor in A.Y 2008-2009 and in the year under consideration i.e. 2022-23, addition cannot be made for the transaction of earlier year i.e. 2008-09. Further, it is submitted by the ld. AR that similarly in respect of loan creditor namely Ms JNB Sidhu Finance Pvt Ltd, the observation of the Assessing Officer is that the share capital raised by the loan creditor in the A.Y 2010-11, which is justified in respect of assessment year under consideration. The ld. AR further submit that in respect to the loan creditor of M/s. Main Land Finance Private Limited, the Assessing Officer observed that in respect to bogus loss booked by the loan creditor to set off interest income earned from the Assessee, which is totally wrong as the assessee cannot avoid to pay tax on interest by booking loss and reducing tax liability and the veracity of the interest income earned by the said loan creditor, which was paid by the assessee in respect of unsecured loan, cannot be doubted. The ld. AR submits that in respect of loan creditor namely M/s. Jajodia Finance Pvt. Ltd., the observation made by the Assessing Officer

is that the director of this loan creditor company being also directors in the other abovenamed loan creditor companies and also the Assessing Officer relied on the statement of Girdhari Lal Goenka recorded on 18.12.2021 wherein he had admitted that he was an accommodation entry provider. His submission is that the statement of Girdhari Lal Goenka has no corroborative evidence as the said statement of Girdhari Lal Goenka has retracted. The Id. AR also submits that in respect of loan creditor namely Radha Fincom Ltd., the observation made by the Assessing Officer is that the name of the said entity appeared in the data base of Shell Company, which has wrongly claimed that the said loan creditors has entered into transactions with shell companies and the Assessing Officer has not given any opportunity to cross-examine the parties. The Id. AR has relied on the decision of Coordinate Bench of the Tribunal in the case of Bisakha Sales (P) Ltd. vs. CIT reported in [2014] 52 taxmann.com 305 (Kol-Trib) and decisions of Hon'ble Calcutta High Court in the cases of PCIT vs. PARWATI LAKH UDYOG, ITAT/2/2024 IA No: GA/1/2024, PCIT VS M/S EDMOND FINVEST PVT LTD, ITAT/28/2024 IA NO: GA/2/2024, PCIT VS ALOM EXTRUSIONS LTD. in ITAT/268/2024 IA NO: GA/1/2024, GA/2/2024.

7. Upon hearing submission of the counsels of the respective parties and on perusal of the material available on record, we find that the assessee taken loan during the year from five loan creditors and interest expenses paid on such loan which has been added by the Assessing Officer. We find that the assessee filed and furnished details in pursuance to notice u/s 142(1) of the Act including the documents and details of unsecured loan received by the assessee from the aforesaid five entities and the loan was taken in the regular course of business and used the same for the purpose of business and repaid the loan in the

same year and the following documents were submitted before the Assessing Officer:

- i. Lender's Letter confirming its transactions with source of fund.
- ii. Loan Confirmation.
- iii. Bank Statement of the Lender
- iv. Income Tax Acknowledgment of the Lender.
- v. Audited Financials of the Lender.
- vi. NBFC Certificate issued by RBI in the name of Main Land Finance Pvt Ltd. and Shri Salasar Suppliers Pvt. Ltd.

7.1 We further find that the Id. AR submitted on record the details of bank account transactions for each of five entities from 01.04.2021 to 31.03.2022 which is enclosed from pages 224 to 320 and the same clearly shows that all the transactions were done through RTGS or NEFT. We note that the Assessing Officer only relied on the statements of third parties to draw any adverse inference against the assessee but the Assessing Officer has not given any opportunity to cross examine of the statements to verify the same and there was no corroborating material found in the course of search conducted against the assessee. It is important to note here that the lender companies were sufficient net worth as on 31.03.2022 to advance loan to the assessee company. We further note that in the instant case, loans were fully refunded in subsequent years and all the creditors were responded in all notices issued and the five creditors were already assessed in Income Tax.

7.2 We note that the assessee's case is squarely covered by the decisions of the Hon'ble Calcutta High court in number of cases namely PCIT-2, Kolkata Vs. Rahul Premier India Agency Private Limited in ITAT/133/2025, IA No.GA/2/2025 vide order dated 05.08.2025, PCIT

Vs. M/s Narayan Tradecom Pvt. ltd. in ITAT/76/2025, IA No. GA/1/2025 dated 10.06.2025, PCIT Vs. Alom Extrusions Ltd. ITAT/268/2024, IA no. GA/1/2024, GA/2/2024 dated 17.12.2024, PCIT Vs. M/s Edmond Finvest Pvt. ltd., in ITAT/28/2024, GA/2/2024 dated 26.02.2024, PCIT Vs. Parwati Lakh Udyong, ITAT/2/2024, IA No.GA/1/2024 dated 19.02.2024. In all the above decisions the Hon'ble court has held that where the assessee has filed all the evidences qua the loan creditors before the ld. AO and loans are also repaid then the same cannot be added u/s/ 68 of the Act. Similarly, the case of assessee is squarely covered by the decision of the Hon'ble Gujarat High Court in the case of Ambe Tradecorp (P.) Ltd., reported in [2022] 145 taxmann.com 27 (Gujarat), wherein it has been held as under :-

"3. The issue in this case arose in respect of the assessment year 2012-2013. It appears that the two loan transactions of Rs. 8,50,00,000/- and Rs. 23,70,00,000/- received by respondent assessee from one M/s. J.A Infracon Private Limited and M/s. Satya Retail Private Limited were treated by assessing officer to be sham in the sense that the creditworthiness etc. of the giver of the loan were not established. Accordingly, the assessing officer made addition under section 68 of the Act.

3.1 While the assessing officer dealt with unexplained cash credit from the M/s. Satya Retail Private Limited and from M/s. J.A Infracon Private Limited in his order in paras 5.1 and 5.2 respectively, the Commissioner of Income-tax in the appeal preferred by assessee found on facts and the material before it that the said two cash creditors had been holding there identity, creditworthiness and genuineness in respect of the loan transactions.

3.2 The appellate authority observed that, "In this regard, it has been noticed that ledger accounts and confirmations of the aforesaid two parties have been provided by the appellant to the AO in the assessment proceedings. Thereafter, the AO also carried out the independent inquiries u/s. 133(6) of the I.T. Act and in compliance thereto both the companies have submitted the requisite information."

3.3 The information supplied by assessee was duly noticed by appellate authority and facts in that regard were recorded also to arrive at a finding that the unsecured loans to the aforesaid parties have been paid by account payee cheques from the bank account of the assessee which was not in dispute, muchless in doubt. The accounts were finally settled with the repayment of the loan to the lender companies.

3.4 When the revenue preferred appeal before the Appellate Tribunal, the Tribunal confirmed the findings recorded by the Appellate Authority. The Tribunal referred to the decision of Durga Prasad More (82) ITR 540 and also in Sumati Dayal (214) ITR 801, to further record on the basis of the facts that the assessee had furnished the details such as copy of ledger account, bank statements, income tax returns, balance sheet etc. It was also recorded that notice under Section 133(6) of the Act was issued to the said parties which were duly responded by them. The identity of the parties could not be, therefore disputed, recorded the tribunal. The aspect was also noticed that the assessee was not beneficiary of the loan received by it and the loan was repaid by the assessee in the subsequent year. It led to unacceptable conclusion that the impugned transaction was a business transaction between the assessee and the loan parties and that they could not be doubted for their genuineness.

3.5 While the revenue has tried to put up a case that the transactions were in the nature of accommodation entries, this case has only presumptive and assumptive value not supported by any factual data. On the contrary, on the basis of the material before the authorities, the transactions were found to be genuine.

4. Learned advocate for the appellant attempted to emphasize that for the purpose of application of Section 68 of the Act, three ingredients were necessary. Firstly identity of the parties to the transaction of loan, second is the creditworthiness of such parties and thirdly the genuineness of the transaction. It was submitted in vain that neither of the ingredients were satisfied.

5. As discussed above, since the requisite material was furnished by assessee showing the identity and since the assessee was not beneficiary when the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness of transaction were well satisfied.

6. The Tribunal rightly recorded in para 29 of the judgment,

"Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in the later years. Thus, in the given facts and circumstances, were hold that there is no infirmity in the order of the Ld.CIT-A. "

7. For the reasons recorded above, no question of law muchless substantial questions arises in this appeal. It stands meritless and accordingly dismissed.

8 Going over the above discussion and respectfully following the various judicial precedents, we find no infirmity in the order of the ld.

CIT(A) and the order of the ld. CIT(A) is upheld. Accordingly, the appeal of the revenue is dismissed.

9. In the result, the appeal of the revenue is dismissed.

Kolkata, the 28th January, 2026.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Pradip Kumar Choubey]
Judicial Member

Dated: 28.01.2026.

RS

Copy of the order forwarded to:

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches