

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIPRADIP KUMAR CHOUBEY, JM**

**ITA No.1599/KOL/2025
(Assessment Year:2016-17)**

DCIT
110, Shantipally, Kolkata-
700107, West Bengal

(Appellant)

Avima Exports Private Limited
4th. NS Road, Dalhousie, Kolkata-
700001, West Bengal

Vs.

(Respondent)

PAN No. AAGCA5857N

Assessee by : Shri Manish Tiwari, AR
Revenue by : Shri Sanjib Kumar Paul, DR

Date of hearing: 19.01.2026
Date of pronouncement: 26.02.2026

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the Revenue against the order of the Commissioner of Income-tax (Appeals), Kolkata-27(hereinafter referred to as the "Ld. CIT(A)") dated 25.03.2025 for the AY 2016-17.

2. The issue raised in ground no.1 is against deletion of addition of ₹1,45,00,000/- by the Id. CIT (A) as made by the Id. AO u/s 68 of the Income-tax Act, 1961 (the Act) in respect of bogus unsecured loans.

2.1. The facts in brief are that the assessee company is a flagship company of 'Avima Group' and is in the business of trading in jute items. The assessee filed the return of income u/s 139(1) of the Act on 30.09.2016, declaring total income at ₹49,57,450/-. The

assessment was framed u/s 143(3) by assessing the income at ₹50,61,634/- vide order dated 24.12.2018. A survey u/s 133A of the Income-tax Act, 1961 (the Act) was conducted on assessee on 04.11.2019 and during the course of survey certain documents were found and impounded. It was found during the survey and post survey proceedings that assessee has taken unsecured loans which were bogus as admitted by Shri Vishwanath Gupta, a key person of the group, in the statement recorded u/s 131 of the Income-tax Act, 1961 (the Act). The case of the assessee was reopened u/s 147 of the Income-tax Act, 1961 (the Act) by issuing notice u/s 148 of the Act. The assessee complied with the said notice by filing the return of income on 08.04.2021, by declaring the total income at ₹49,57,450/- . Thereafter, the statutory notices along with questionnaire were issued and the assessee complied with the said questionnaire. The Id. AO finally added the loan from three parties namely; ₹50 lacs from Avion Tradelinks Private Limited, ₹65 lacs from Goodpoint Real estate Private Limited & ₹30 lacs from Snowbird Computers Pvt. Ltd. and added the same to the income of the assessee.

2.1.1. In the appellate proceedings, the Id. CIT (A) allowed the appeal of the assessee by recording a very detailed finding as under:-

"6.2. Discussion and decision:

6.2.1. I have gone through the assessment order as well as the submission of the assessee. On examining the same, it is observed that during the year under consideration, the assessee had received the following unsecured loans from the following entities:

Sl. No.	Name of Loan Creditors	Loan taken during the year (in Rs.)	Interest paid during the year (In Rs.)
1.	Avion Tradelinks Pvt. Ltd.	50,00,000/-	1,22,877/-
2.	Goodpoint Realestate Pvt. Ltd.	65,00,000/	99,726/-

3.	Snowbird Computers Pvt. Ltd.	30,00,000/-	46,849/-
4.	Anubandh Financial Services Pvt. Ltd.	---	2,17,116/-
5.	Cosmos Tradelink Pvt. Ltd.	---	5,04,795/-
	Total:	1,45,00,000/-	9,91,363/-

6.2.2. *In the asst. proceedings, the AO had treated the aforesaid loan credits as uncategorized unexplained cash credits in the hands of the assessee. The AO had contended that during the asst. proceedings, the assessee had failed to produce any details and documents in respect of the aforesaid receipts from the aforesaid three lending entities. The AO had also contended that during the said survey operation done by the Investigation wing in the case of Avima Group, Shri. Viswanath Gupta and Shri. Vivek Gupta, directors and key persons of the said group had admitted on oath that the assessee was involved in availing accommodation entry from several shell companies in the form of unsecured loans. The AO had also alleged that the list of such shell companies includes the name of the above three lenders. Moreover, the AO had also alleged that the financial capacity of the said lending entities is very poor. Hence, they don't have the minimum financial magnitudes to extend such huge credits of Rs.1,45,00,000/- to the assessee company. The AO had also contended that the source of the funds of the said lending entities from which the said loans were extended to the assessee was not substantiated by both the lending entities as well as the assessee company. Hence, the AO had opined that the said unsecured loans were received by the assessee from shell companies and the said loans are bogus.*

6.2.3. *However, the AO had failed to appreciate the fact that the statement as relied by him in the asst. proceedings were later retracted by the aforesaid persons delivering the statements i.e., Shri. Viswanath Gupta and Shri. Vivek Gupta on 28.11.2019 & 26.12.2019 respectively. Hence, any retracted statement cannot be relied upon to use against the assessee. It is a settled law that without bringing any cogent evidence on record, addition cannot be made merely relying upon the statements recorded in a survey operation which was even retracted thereafter. If such retraction be viewed in light of the evidence furnished along with the affidavit filed by the assessee, it becomes naturally clear that the assessee had given proper explanation for all the items under which the issues on unsecured loans were brought by the AO to make the addition. The Hon'ble Gujarat High Court in case of 'Kailashben Mangarlal Chokshi Vs CIT reported in 220 CTR 138', held that "In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under Section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, there-fore, of the view that the Tribunal was not justified in making addition of Rs.6 lacs on the basis of statement recorded by the Assessing Officer under*

Section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee." Further, any statement recorded which was later on retracted has no evidentiary value and hence should be relied upon for further reference. The assessee had relied on the judgment of Hon'ble Madras High Court in the case of 'CIT vs. S Khader Khan Son', which was further affirmed by the Supreme Court, the court held that "statement recorded u/s 133A has no evidentiary value and any admission made during such statement cannot be basis of addition".

6.2.4. Further, the AO had also alleged that the said lending entities did not have minimum financial strengths to extend such funds to the assessee. It is noticed that to support his contention, both in the asst. proceedings as well as in the remand proceedings, the AO had published certain financial parameters like 'Fixed assets', 'Turnover', 'Rent Payment', 'PBT', 'PAT', 'Total other income' etc. of the aforesaid lending entities for the subjected AY. The AO had opined that as these parameters are very meagre and alike the characteristics of shell companies, the said lending entities are bogus entities and the transactions with these entities are done in pre-conceived notion. However, the contention of the AO is not acceptable in law. Financial strengths cannot be determined only based on the aforesaid parameters. One should obtain the 360-degree financials of any entity to infer any adverse statement against its genuineness. Reliance is placed in the case of 'CIT, Dehi vs. Ms. Mayawati, 338 ITR 563 (Del), 03/08/2011', where the Hon'ble Delhi High court held the following:

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

Sl.	Name of Loan parties	Share Capital, Reserves & Surplus	Unsecured loan (Rs.)	Percentage (%)	Revenue from operations
1	Avion Tradelinks Pvt. Ltd.	6,48,60,682/-	50,00,000/-	7.70	23,07,036/-
2	Goodpoint RealEstate Pvt. Ltd.	18,25,42,578/-	65,00,000/-	3.56	10,05,635/-
3	Snowbird Computers Pvt Ltd	6,10,54,380/-	30,00,000/-	4.91	7,97,405/-
		Total	1,45,00,000/-		

However, without considering the net-worth of the lending entities, the AO had alleged that the aforesaid entities are bogus and dummy entities which were controlled and managed by some famous entry operators namely Shri. Mukesh Banka and Arun Nangalia only based on the statements recorded of the above person by the Search team. However, in the said statement, nowhere the said persons had admitted that they had given accommodation entry to the assessee in any mode. Further, during the course of the assessment proceedings, the AO had asked the assessee to provide explanation with regard to identity, creditworthiness and genuineness of the lending entities. In reply to the same, the assessee had furnished the PAN, address of the lending entity, loan confirmation, ledger and bank statement showing the receipt and

repayment of loan. However, it is observed from the asst. order that the AO had made the addition of the unsecured loan for two reasons. Firstly, the AO had relied on the statements recorded of the key persons of the assessee company. Secondly, the AO had observed that the aforesaid entities were non-responsive to the summons issued u/s 131 of the Act. It is worth mentioning that all the aforesaid entities had responded to the summons issued by the AO in due time and the said responses are found to be placed on record. Further, the assessee had filed all the relevant details and documents in respect of the aforesaid loan transactions. It is noticed that all the loan transactions were done in banking channel. On perusal of the financial capacity of the said creditors, it is observed that these creditors had enough resources to extend such small loans to the assessee. It is observed that the AO during the assessment proceedings as well as in the remand proceedings had not enquired into the financial creditworthiness of the lending entities in depth. The AO had neither enquired the genuineness of the lenders nor deputed any inspector to verify the creditworthiness of the same and also to verify the existence of the said lenders in their registered addresses.

6.2.6. Further, the AO, in the remand proceedings had enquired into the source of the said lending entities for extending the said unsecured loans and found the same sources as not reliable and bogus based on his own logic and presumption. As an instance, in the case of one of the lending entities viz. M/s Good Point Real Estate Pvt. Ltd. (GPREPL), the AO had opined that the said lending entity is a shell entity floated by one Mukesh Banka, one of the famous entry operators of Kolkata. The AO had also alleged that M/s GPREPL was floated on 29.03.2012 with paid up capital of Rs.42,78,500/- with the help of two directors Jagdambi Sharma and Rajendra Kumar Pathak. The AO had also alleged that these two persons are dummy directors of many shell entities controlled, managed and operated by Manoharlal Nangalia and Arun Nangalia. Hence, the AO had opined that under the above facts, it cannot be accepted that the said lender company genuinely exists. The AO had also observed that in case of the said lending entity, the share capital and premium was given as loans and advances to different parties and it is found that such parties are well connected with shell companies appearing in shell company database. Further, the AO had also alleged that one share subscriber of the lending entity i.e., M/s Gritty Infrastructure Pvt. Ltd. was a 'struck off' company as per ROC. Hence, the AO had opined that where source of money is from a 'struck off' company and other 'doubtful' entities well connected with entry operators and identified shell entities by common directors, such source cannot be accepted as genuine and bonafide. Considering the above fact, there is substantial doubt in the aforesaid transactions and therefore, source of loan and creditworthiness of lender so explained by the lender deserves to be rejected.

6.2.7. However, on perusal of the above facts, one thing comes in common that all the allegations made above by the AO against the lending entity M/s GPREPL (supra) was without any supportive evidence on record. Low paid-up capital, low profit, high premiums per share, increase in incidental expenses can't fall in the purview of incremental evidences to term an entity as bogus and shell entity and the loan transaction of the said entity with the assessee as bogus and ingenuine loans. It is pertinent to mention that the AO had nowhere mentioned that the status of the said company was 'Struck off' at the time of investing in the shares of the lending entity M/s GPREPL. No independent enquiry was done by the AO except relying on the

investigation report on the said issue of M/s Gritty Infrastructure Pvt. Ltd. In respect of the allegation of the AO that the share subscriber companies of the said lending entity are shell companies, it would be apposite to discuss the definition of a shell company or its legal connotation at the outset. The expression shell company has not been defined under any law in India. Therefore, there is no statutory definition of shell company, be it in fiscal statutes or in penal statutes, Neither the Companies Act, 1956 nor the Companies Act, 2013 defines the expression shell company. In an interim order passed on 12.07.2018, the Hon'ble Apex Court observed that in the Concise Oxford English Dictionary, 11th Revised Edition, shell company has been defined as a non-trading company used as a vehicle from various financial maneuvers. In popular parlance, a shell company is understood as having only a nominal existence; it exists only on paper without having any office and employee. Just like a shell company is understood as having only a nominal existence, it exists only on paper without having any office and employee. Just like a shell which has a thick outer covering but is hollow inside, a shell company is a corporate entity without having active business operations or significant assets. It may be used as a deliberate financial arrangement providing service as a tool or vehicle of others without itself having any significant assets or operations i.e. acting as a front. However, in the present case of the said lending entity and its share subscribers, there are registered offices and employees are present. The AO himself had contented that the said lending entity had inflated employee expenses. Presence of registered office of the said entity and its business affairs was not denied by the AO at any stage of the asst. proceedings.

6.2.8. Further, the AO in the remand proceedings, had doubted the source of the lending entity M/s GPREPL (supra) and other 2 lending entities as the concerns from which the funds were received by the lending entities in the form of share capital including premium or unsecured loans were bogus and also shell entities are without any sacrosanct evidence on record. It is a settled law that the Assessee's burden is confined to prove identity of the creditors, creditworthiness of creditor and genuineness of the transaction with reference to transaction between assessee and creditor and the same cannot be extended to include source of such creditor for the purpose of section 68 of the Act. A harmonious construction of section 106 of India Evidence Act and Section 68 of the Income Tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor. The burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and 'subcreditors' nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the assessee. It is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transaction, which took place between the creditor and sub creditor and/or creditworthiness of the 'sub-creditors', since, these aspects may not be within the special knowledge of the assessee.

6.2.9. *This concept of Source of Source has been negated by various jurisdictional courts; undoubtedly, the assessee has a legal duty to identify the creditors in addition to his means and genuineness of the transaction. Also, it is also a matter of fact that where the identities of creditors are shown by the assessee, the AO is at liberty to proceed against such creditor wherever required. In the case of '**CIT v. Steller Investment Ltd. [2001] 251 ITR 263 (SC)**', the Hon'ble Apex Court had held that "It is evident that even if it be assumed that the subscribers to the increase share capital were not genuine, nevertheless, under no circumstances can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names the shares had been issued and money may have been provided by some other persons. If the assessment of the persons who were alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital could be assessed in the hands of the company itself."*

6.2.10. *Further, in the case of 'Divine Leasing & Finance Limited [2008] 299 ITR 268 (Delhi)', the Hon'ble Delhi High Court had held the following:*

"In the context of section 68 of the Income-tax Act the assessee has to prima facie prove:

- (1). the identity of the creditor/subscriber;*
- (2). the genuineness of the transaction, namely whether it has been transmitted through banking or other indisputable channels;*
- (3). the creditworthiness or financial strength of the creditor/subscriber;*
- (4). if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders register, share application forms, share transfer register, etc., it would constitute acceptable proof or acceptable explanation by the assessee.*
- (5). The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices;*
- (6). the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, without more, against the assessee; and*
- (7). the Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation."*

The revenue appeal against the above order was dismissed by Hon'ble Supreme Court vide order dt. 21st Jan 2008 dismissed the SLP and held that if the share application money is received by the assessee company even from the bogus shareholders whose names are given to the AO then the Department is free to proceed to reopen their

individual assessments in accordance with law. Accordingly, addition made under s. 68 which was deleted by the Hon'ble High Court was upheld by Hon'ble Supreme Court."

6.2.11. *Hence, it is evident from the aforesaid jurisprudence that if the AO can find any adversity or discrepancy against the creditors or sub-creditors of the aforesaid lending entities, the same cannot be weaponized against the assessee on the occasion of taking unsecured loans. Further, it is submitted by the assessee that the statements of Sri Mukesh Banka and Mr. Nangalia (supra) as alleged in the remand proceedings are totally irrelevant in the present case of the assessee as the said statement was recorded in a distinct case u/s 132(4) of the Act in the search operation in the case of said entry operators, and was not in relation to the asst. proceedings against the assessee conducted by the AO. It is noticed that the AO had only relied upon the said recorded statement only.*

6.2.12. *Further, the AO had not given opportunity to the assessee for cross examination of the allegations in the said statement of the said entry operators. Moreover, it is also observed from the said statement that they had never admitted the fact that the said lending entity had ever given accommodation entry to the assessee through providing bogus loans. It is pertinent to mention here that as per the provisions of section 68 of the Act, the assessee is liable to prove the creditworthiness, genuineness and identity of the creditors and source of the said unsecured loans. However, the assessee is not required to prove the authenticity of the sub creditors and the source of the source of the source of the said unsecured loans etc. The source of the loans has already been proved by the assessee by submitting all the relevant details and documents viz. loan confirmations, relevant audited ledger copies, relevant bank account statements, proofs of their net worths etc. in respect of the said lending companies. Hence, the onus of proving the three limbs of section 68 have already been discharged by the assessee.*

6.2.13. *Further, on perusal of the submitted ledger copies and confirmations of the loans, it is noticed that part of the said loans was repaid by the assessee in the same year i.e., in the FY 2015-16 and rest of the loans were repaid in the next FY 2016-17 with payment of due interest after deducting legitimate TDS on the same. Hence, the assessee cannot be alleged to be the beneficiary of the said fund. However, the AO had not considered the same and stuck to the issue that assessee has brought back its unaccounted income in books of account in the form of bogus unsecured loans without furnishing any evidence regarding the same. Further, it can be stated that the assessee had provided the name, PAN, registered addresses of the aforesaid lending entities, hence, the assessee had proved one of the three primary limbs of the section 68 of the Act i.e., identity, of the loan creditors effectively. Moreover, these two lending entities had filed their Income Tax returns regularly and they also were assessed to income Tax. The net-worths of the said entities are more than adequate to extend huge loans to anyone. The AO had not considered the positive financial parameters of the lending entities (supra) and only relied upon the adverse strictures of financials according to his own choice. Further, on perusal of the submission of the assessee, it is noticed that the status of the said loan creditors is Active in MCA website and they are regularly filing their returns as per the provisions of Companies Act with ROC. Further, as stated earlier and as evident from the unsecured loan summary provided by the assessee, it is observed that the assessee had also paid interest on*

loan @ 12% p.a to the lending entities. This is also evident from the Account Confirmation provided by the lender. However, these findings did not get any place in the assessment order by the AO. It may not be out of place to mention here that the lending entities had neither provided any adverse statement nor they had formed any adverse opinion against the loan transaction of the assessee.

6.2.14. It is observed from the submissions of the assessee that the assessee during the course of reassessment proceedings, had furnished audited Tax audit report showing the receipt and payment of the said loan etc. Hence, it is palpable that the AO, by not considering the aforesaid averments presented by the assessee during the assessment proceedings, relied on the statements of one unrelated arbitrary person recorded by the investigation wing and had made addition on the said loans received by assessee from the aforesaid lending entities along with corresponding interest payments without finding any defect in documents and details filed by assessee and merely relying on some retracted statements of the key persons of the assessee. It is also observed that the AO had not made any cross verification with the alleged lending entities. It is also noticed that nowhere in the assessment order it is mentioned that the assessee had routed its unaccounted cash and also no instance of cash deposit or cash trail was found and established during the assessment proceedings.

6.2.15. Reliance is placed on the following judicial pronouncements on the basis that no addition can be made when the identity, creditworthiness and genuineness of the loan creditors have been established by the assessee and the AO has not disputed the documents:

a) In the case of "Overtop Marketing (P.) Ltd. Vs. PCIT I.T.A. No. 686/Kol/2019, 15.03.2021', the Hon'ble ITAT, Kolkata had held the following :

"17. So, the A.O in this case, erred in relying on the statement of two persons who were not allowed to be cross-examined as held by the Hon'ble Apex Court in Andaman Timber (supra) and Odeon Builders Pvt. Ltd. (supra). So from any angle, one looks, the statement of these two persons cannot be used against the assessee. And when we remove these two statements with the legal infirmities discussed supra, there is no material at all against the assessee and the AO having failed to find any infirmity with the documents filed by the assessee/lenders to prove the loan transactions as discussed supra, no adverse view was legally tenable. And having gone through the impugned order and the Paper Book filed before us, we fully concur with the finding of facts as rendered by Ld CIT(A) in respect of identity, creditworthiness and genuineness of the lenders/loan transaction and for the sake of brevity and to avoid repetition it is not again repeated. We agree with the judicial precedence relied upon by the Ld CIT(A) in support of his decision. And we don't find any legal or factual infirmity in the impugned order of the Ld CIT(A), so we decline to interfere. So the impugned action of Ld. CIT(A) to delete the section 68 addition of Rs.4.51 crores and [the interest paid by assessee to lenders] Rs.53,70,163/- is confirmed. So, the Revenue's appeal stands dismissed."

The decision of the ITAT was challenged before the Hon'ble High Court by the department. The court had upheld the decision of ITAT by dismissing the appeal of the

department vide 'Overtop Marketing (P.) Ltd. Vs. PCIT [2023]148 taxmann.com 94 (Calcutta)'.

b) In the case of 'Ambe Tradecorp (P) Ltd. Vs. PCIT [2022] 145 taxmann.com 27 (Gujarat)', the Hon'ble Gujarat High Court had held the following:

"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."

In the case of 'ACIT Vs H.K. Pujara Builders (2019) 178 DTR 97.', The Hon'ble ITAT, Mumbai had held as follows:

"The assessee had been making frequent repayment of loans to said party and had also availed loans from time to time said party and entire loan account together with interest there on [duly subjected to TDS] had been completely squared up on 20.03.2015-entire transaction i.e. , received of loans, repayment of loans and repayment of interest there on had been made through regular banking channel from account payee cheques/there was no case of any cash deposit made either at the time of receipt of loan in account of M/s Grafton Merchants Pvt Ltd, or in account of assessee while making repayment of loan or repayment of interest-Hence, there was no need to suspect entire gamut of transaction ."

The Hon'ble High Court of Gujarat, in the case of 'DCIT Vs. Rohini Builders (2002) 256 ITR 360 (Guj)' had held as under:

"That the tribunal having deleted the addition under s. 68 accepting the genuineness of loans which were received and repaid by assessee by account payee cheques, assessee having established the identity of the creditors by giving their complete addresses, GIR numbers/PAN as well as confirmations along with the copies of their assessment orders wherever readily available, no substantial question of law arises; appeal under s. 260A dismissed."

a) In the case of 'Commissioner of Income-Tax vs. Shiv Dhooti Pearls & Investment Ltd. [2016] 237 Taxman 104 (Delhi)', the Hon'ble Delhi High Court had held the following:

"12.What follows, as a corollary, is that it is not the burden of the Assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the Assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the Assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be judged vis-a-vis the transactions, which have taken place between the Assessee and the creditor, and it is not the business of the Assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and subcreditor and/or creditworthiness

of the sub-creditors, for, these aspects may not be within the special knowledge of the Assessee.

.....

15. In view of the legal position explained in the above decisions, the Court holds that as far as the present case is concerned, the Assessee has indeed discharged its onus of proving the creditworthiness and genuineness of the lender (TIL). There was no requirement in law for the Assessee to prove the genuineness and creditworthiness of the sub-creditor, which is in this case was TCL."

b) The Hon'ble Supreme Court in the case of 'CIT vs Orissa Corporation Pvt Ltd 159 ITR 78 (SC)' held as follows:

"13. In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further."

d) The Hon'ble Guwahati High Court in the case of 'Nemi Chand Kothari vs CIT 136 Taxmann 213' had held the following:

"Once the assessee had established that he had received the said amounts from 'N' and 'P' by way of cheques, the assessee must be taken to have proved that the creditors had the creditworthiness to advance the loans. Thereafter, the burden had shifted to the Assessing Officer to prove the contrary. On failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said amounts to the assessee, these amounts as a corollary, could not have been and ought not to have been, under the law, treated as the assessee's income from the undisclosed sources, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. Therefore, the Assessing Officer had failed to show that the amounts, which had come to the hands of the creditors from the hands of sub-creditors, had actually been received by the sub-creditors from the assessee. In the absence of any such evidence on record, the Assessing Officer could not have treated the said amounts as income derived by the assessee from undisclosed sources. The Tribunal seriously fell in error in treating the said amounts as income derived by the assessee from undisclosed sources merely on the failure of the sub-creditors to prove their creditworthiness."

e) In the case of 'CIT vs Shalimar Buildwell Pvt Ltd (2014) 2020 Taxman 138 (All)' where the following was held by the Hon'ble jurisdictional High Court:

"No additions on account of unsecured loans can be made when identity of the party is proved and more so when the amount is received through proven banking channels."

6.2.16. Hence, it is proved that the AO had made the addition without any corroborative evidence on record against the assessee. The AO had treated the said lenders as bogus and dummy only relying on the statement of one unrelated person of the assessee namely Mr. Banka and Mr. Nangalia. Hence, the addition on the said unsecured loans were made by the AO merely on presumption and surmises which is not acceptable in law and devoid of natural justice. Reliance may be placed in the following cases:

a) In the case of 'Prashant Pratap Ahir vs ACIT ITA No. 1954/PUN/2018' the Hon'ble Punjab & Haryana High Court had held that "addition u/s 68 of the IT Act merely on the basis of presumption or suspicion without any corroborated evidence is unsustainable."

b) Further, the Hon'ble High Court, Calcutta in the 'CIT-III, Kolkata vs. Dataware Private Limited ITAT No. 263 of 2011 Date: 21st September, 2011' wherein the Court held as follows:

"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness" of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."

c) The Hon'ble Supreme Court of India in 'Sreelekha Banerjee V. CIT (1963) 49 ITR (SC) 112' had held that "if the explanation shows that the receipt was not of an income nature, the Department cannot act unreasonably and reject the explanation to hold that it was income. The Department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof".

d) In the case of 'Khandelwal Construction Vs CIT 227 ITR 900 (Gauhati)', the Hon'ble jurisdictional High Court had held as under:

"the amount of cash credits could not be included in the total income of the assessee because the Assessing Officer had not made proper enquiry. Therefore, u/s 68, the onus is on the assessee to offer explanation where any sum is found credited in the

books of account. This is not the case where assessee has not provided relevant details. In this case the assessee has discharged its onus by filing the documents for which Ld. Assessing Officer has not pointed any discrepancy. There is no material with the Ld. Assessing Officer to prove the funds received by the assessee as non-genuine and no belief can be formed merely on the basis of assumptions, presumptions, surmises and conjectures.”

e) The Hon'ble Calcutta High Court in the case of 'Hindustan Tea Trading Co. Limited v. CIT 263 ITR 289 (Kol)', had held that

"But once sufficient material is produced and explanation is given, the onus is discharged and shifted on the Revenue. Having regard to the materials, it might ask for further materials from the assessee or it might come to a conclusion on the materials so produce as it might in law arrive at. Once the materials are there, it is incumbent on the Assessing Authority to inquire into the same. It cannot over look one or other materials nor can it undertake a halfhearted enquiry”.

f) In the case of 'Commissioner of Income Tax V. Diamond Products Limited (2009) 177 Taxmann 331 (Delhi)', the following has been held by Hon'ble High Court of Delhi:

"We have heard the learned Counsel for the appellant and have examined the findings returned by the Tribunal as well as those returned by the Commissioner of Income-tax (Appeals) and find ourselves to be in agreement with the conclusions arrived at by the Tribunal. The Assessing Officer is not permitted to examine the source of the source once the assessee has been able to establish that the transaction with his creditors is genuine and that the creditors identities and creditworthiness have been established. In this case, this had been done, therefore, it was not open to the Assessing Officer to make the addition of Rs. 23,00,000 after entering upon an examination of the source of the source. Consequently, we feel that no interference is called for on this conclusion in the impugned order passed by the Tribunal. The Tribunal has correctly applied the law on the facts determined by it. No substantial question of law arises on this aspect of the matter”.

6.2.17. It is further observed from the assessee's submission (confirmation of accounts, ledgers etc.) that part of the said loans were repaid in the same year and rest in subsequent years with respective interest after deducting due TDS on it. Reliance was placed by the assessee in the following judicial pronouncements in respect of its contention:

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

"The unsecured loan availed was repaid in the next financial year to the creditor namely Smt. Hansaben M. Patel through cheque payments and the bank statement also filed before the Lower Authorities. Therefore, we are of the considered opinion, the provisions of section 68 do not attract in the above transaction and thereby we uphold the order passed by the Ld. CIT(A) deleting the addition made u/s. 68 of the unsecured loans availed from Smt. Hansaben M. Patel. The so-called unsecured loan was given by Account Payee cheques and also repaid by the assessee in the next

financial year through banking channels. The recovery proceedings u/s. 226(3) initiated against Mukesh J. Shah was also dropped by the A.O. Therefore, the provisions of section 68 do not attract of the loan transactions between the assessee M/s. Savitaben Mangaldas Trust and Shri Mukesh J. Shah. Therefore, the addition on this account is also liable to be deleted and the grounds raised by the Revenue is devoid of merits."

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

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

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

"15. It is now a settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no explanation is given or the explanation given by the appellant is not satisfactory, the Assessing Officer can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to assessee.

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

Assessing Officer to enquire through the Inspector to verify the statements."

d) In the case of 'CIT vs. Y.K. Gupta [2014] 46 (HC), the Hon'ble Gujrat High Court' held the following:

"18. As mentioned hereinabove, we had called for the original file, which had revealed new, valid and tangible information supporting Assessing Officer's opinion received from DCIT, Kolkata, based on the material found during the search by the CBI, where

Basant Marketing Pvt. Ltd. is said to be a dummy company of one Shri Arun Dalmia. What has been emphasized by the learned Senior Counsel appearing for the petitioner is that the Assessing Officer had attempted to fill in the gap by terming the amount received from Basant Marketing Pvt. Ltd. as "accommodation entry", which she could not have done without further inquiry/ verification. Yet another contention emphasized by the learned Senior Counsel is that the post notice correspondence made after the reasons recorded could not have added anything which was lacking in the reasons themselves. He urged that in absence of any statement given by any Director of Basant Marketing Pvt. Ltd. stating that the assessee received and obtained accommodation entry in the form of loans and advances, the reasons lack basis. The Director Mr. Dalmia of Basant Marketing Pvt. Ltd. as contended also does not reveal anywhere and, therefore, it is premature on the part of the Assessing Officer to so record the reasons. It is further urged that the affidavit of Rishabh Dalmia stating on oath that the loan transactions with the petitioner are genuine for having been carried out only through cheques, prima facie vindicates that the entire exercise is based on suspicion."

6.2.18. In view of the various judicial pronouncements cited by assessee together with various evidential documents submitted by the assessee, it can be inferred that since the assessee had taken loan in case of normal business and repaid the said loan through banking channel in the next FY, the assessee cannot be said to be beneficial owner of the money without any cogent evidence brought by the AO on record and addition under section 68 by the AO cannot be sustained. Additionally, as discussed above, the assessee's burden is confined to prove identity of the creditors, creditworthiness of creditor and genuineness of the transaction with reference to transaction between assessee and creditor and the same cannot be extended to include source of such creditor for the purpose of section 68 of the Act. The burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. In the present case, the assessee had received unsecured loan of Rs.1,45,00,000/- from the said three lending entities (supra) through banking channel and also repaid the same during the subsequent years through banking channel and the same is well reflected in the Tax Audit Report. The acceptance of loan has been established vide the confirmation and bank statements filed during the appellate proceedings. Hence, the addition of Rs.1,45,00,000/- made by the AO u/s 68 of the Act is liable to be deleted.

6.2.19. As the addition on the unsecured loan has been deleted by the AO, the corresponding addition on interest payments against the such loans of Rs.2,69,452/- is also liable to be deleted as the same was paid by the assessee through proper banking channel and the said was reflected in the audited P&L A/c and books of the assessee. Further for the remaining interest payment of Rs.7,21,911/- paid to two creditors viz. Cosmos Tradelink Pvt. Ltd. (Rs.5,04,795/-) & Anubandh Financial Services (P) Ltd. (Rs.2,17,116/-), it is imperative to mention that the same interest payment were made to them against loans taken from them in earlier years and addition on which was deleted vide appellate order dated 24.03.2025. Hence, the corresponding addition on such interest payments are also liable to be deleted. Further, the said interest payment was reflected in the audited books of accounts of the assessee and paid through banking channel. The AO had failed to bring any corroborative evidence on

record to substantiate the fact that the aforesaid interests were paid from unexplained sources of the assessee and outside books of it. Hence, the disallowance u/s 36(1)(iii) can't be invoked in any manner. Therefore, the addition totaling to Rs.9,91,363/- is hereby deleted. Consequently, these grounds of appeal raised by the assessee are allowed."

2.1.2. After hearing the rival contentions and perusing the materials available on record, we find that the Id. CIT (A) noted that the assessee has furnished /produced all the evidences before the Id. AO as well as the Id. CIT (A). The Id CIT(A) noted that the Id. AO has not pointed out any defect or deficiency in the documents /evidences so furnished. It was also noted by the Id. CIT (A) that the loan was repaid by the assessee along with interest and therefore, in view of the Ambe Tradecorp (P) Ltd. Vs. PCIT (2022) 145 taxmann.com 27 (Gujarat), the addition u/s 68 cannot be made. The Id. CIT (A) also relied on series of decisions as discussed above in the appellate order including the decision of Hon'ble Apex court in case of 'CIT v. Steller Investment Ltd. [2001] 251 ITR 263 (SC). Consequently, we do not find any infirmity in the order of Id. CIT (A).

2.2. On the issue that the lending entity did not have minimum financial strength to lend money to the assessee, such as, no fixed assets, low turnover, no rent payable etc, the Id. CIT (A) noted that the financial strength cannot be determined based on the aforesaid parameters and one should obtain 360-degree financials of any entity to infer any adverse view against its genuineness. The case of the assessee find support from the decision of Hon'ble Delhi High Court in case of 'CIT, Dehi vs. Ms. Mayawati, 338 ITR 563 (Del), 03/08/2011', wherein the Hon'ble Delhi High court held that "the capacity of any person does not mean how he earns monthly or annually but the term capacity is a wide term and that can be pursued by how wealthy he is. Therefore, we do not find any infirmity

in the order of Id. CIT (A) and accordingly, the same is upheld by dismissing the ground no.1.

3. The issue raised in ground no.2 is against the deletion of interest on the loans by the Id. CIT (A) and the issue in ground no.3 is against the deletion of addition made u/s 69C of the Act in respect of commission expenses.

3.1. We note that both the grounds are consequential to ground no 1 and therefore, we are inclined to uphold the order of Id. CIT (A) by dismissing the ground nos.2 and 3 of the Revenue's appeal.

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

Order pronounced in the open court on 26.02.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 26.02.2026

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata