

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 275/Del/2020
(Assessment Year: 2011-12)

Naveen Infradevelopers & Engineers Pvt. Ltd, Sardar Patel Marg, Diplomatic Enclave, New Delhi PAN: AADCN2121M (Appellant)	Vs.	DCIT, Circle-17(2), New Delhi (Respondent)
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Assessee by :	Shri Rakesh Joshi, Adv
Revenue by:	Ms. Paramita M. Viswas, CIT DR
Date of Hearing	07/04/2021
Date of pronouncement	31/05/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order (the impugned order) passed by The Commissioner of Income Tax (Appeals) – 6 Delhi (the learned CIT – A) dated 14/11/2019 for assessment year 2011 – 12. By this impugned order the learned CIT – A has dismissed the appeal filed by the assessee against assessment order passed u/s 147 read with Section 143 (3) of the Income tax Act [The Act] dated 31 December 2012 by the Deputy Commissioner of Income Tax, Circle – 17 (2), New Delhi (the learned AO) for the impugned assessment year.
2. The assessee has raised the following grounds of appeal:-
 - “1. That the impugned order passed by the Ld. CIT (A) u/s 250(6) was incorrect, bad in law and have been passed without considering the submissions of the appellant.
 2. That the order passed by the AO u/s 147/143(3) of the Act is incorrect, bad in law and have been passed without assuming jurisdiction to issue notice u/s 148 of the Act and Ld. CIT(A) erred in upholding the same.

3. That the order passed by the AO u/s 147/143(3) of the Act is incorrect, bad in law and have been passed without properly and judicially considering the submission of the appellant. The additions/disallowances made are illegal, unjust and unlawful since reason for reopening statement merely states that a sum has been credited in the account of the assessee and there is no information against the creditor company as paper/shell company involved in providing accommodation entry and CIT(A) erred in upholding the same.
 4. That the order passed by AO making an addition of Rs. 67,00,00,000/- is incorrect, bad in law and have been passed without considering the submissions of the assessee while discharging the onus made upon him u/s 68 of the Act and CIT(A) erred in upholding the same.
 5. That the additions made by AO of Rs. 67,00,00,000/- u/s 68 of the Act is bad in law and in the facts and circumstances of the case even when the source of the source was explained and the creditor party confirmed the loan transaction in a statement recorded by the AO u/s 131 of the Act and Ld. CIT (A) erred in upholding the same.
 6. That the Ld. CIT (A) has erred on facts and circumstances and in law in upholding interests charged by Assessing Officer u/s 234A/234B/234C/."
 7. That the Ld CIT (A) has erred on facts and circumstances and in law in upholding the penalty proceeding initiated by the AO u/s 271(1)(c) of the Income Tax Act, 1961.
3. Facts culled out from the orders of lower authorities shows that assessee is a company, filed its return of income on 30 September 2011 declaring loss of ₹ 15,565/-. This return was processed u/s 143 (1) of the income tax act.
 4. Subsequently, information was received from the office of The Deputy Director Of Income Tax (Investigation), New Delhi that despite having an equity capital of only ₹ 1 lakh and in absence of any business activity during the period Under consideration, assessee has raised ₹ 67 crores by way of debentures from unknown entities in financial year 2010 – 11 and had given a loan of ₹ 63 crores to certain persons during the same financial year. It was noted that assessee company has shown a loss of ₹ 15,565/- because of statutory expenses incurred, however, the company had shown unsecured loan of ₹ 67 crores and has also shown advances of ₹ 62.90 crores. The learned Deputy Director of Income Tax obtained bank statement of the assessee with Union Bank of India finding

that the transaction of huge unsecured loan received by the assessee was correct. As Narrations given in the bank statement for the credit entries only gave cheque number and bank name, but name of the party issuing the cheque was not mentioned, the assessee was asked to file the details of the parties from whom it had borrowed/received funds. Despite being provided opportunities, details of the parties from whom loan was raised were not provided. The learned assessing officer based on this information, examined the return of income filed and noted that no unsecured loan had been shown in the return for assessment year 2010 – 11 but unsecured loan of ₹ 67 crores were shown in the return of income for assessment year 2011 – 12 which showed that the loan was received during the financial year 2010 – 11. The learned assessing officer further noted that The Deputy Director of Income Tax has asked the assessee to furnish the details of unsecured loans and to prove the identity and creditworthiness of the transaction but the assessee has failed to discharge its onus and proof of the genuineness of the unsecured loan. Therefore, reasons were recorded u/s 148 and notice was issued to the assessee. In response to the above notice issued, assessee filed its return of income on 25/5/2018 declaring loss of ₹ 15,565/- which was as per original return filed u/s 139 (1) of the act. The assessee was questioned about the unsecured loan of ₹ 63 crores by the assessee. Assessee submitted that it has received the loan from Infotel Technologies Private Limited. Assessee submitted ledger account, balance sheet, confirmation, and income tax return of the above party. The learned AO further noted that assessee has given a loan to two companies amounting to ₹ 62.90 crores. With respect to all these, three-company assessee submitted the similar details; however, assessee could not produce any memorandum of understanding or agreement between the parties. The learned AO noted that it is not possible that the assessee could disburse such a huge amount without any legal agreement. Therefore, Assessee Company was asked to produce the director of Infotel technologies private limited in person along with the relevant documents. In response to summons u/s 131 of the Act, Shri

Kamal Kumar Sharma appeared confirmed transactions, submitted the balance sheet, accounts of the depositor, and submitted the source of the funds available with the lender. He submitted that lender has received sum from Sun visions Engineering Co Pvt Ltd. Thus, Assessee submitted that

- a. Assessee Company has received a loan in the form of 0% optionally convertible debentures of ₹ 1000 each to the tune of ₹ 67 crores from Infotel Technologies Private Limited through cheque/RTGS of different amount. Assessee submitted, confirmation, bank account, annual accounts i.e. balance sheet and Profit and loss account, Income tax return, Assessment orders of the lenders. Summons issued were also complied with and confirmed by the lender and submitted various details. Source of the funds of the lenders were also explained along with the balance sheet and annual accounts of the lender to the lender i.e. Sun vision Engineering Pvt Ltd and assessment orders of the lenders to the lender were also produced,
 - b. Assessee company has during the period under consideration has disperse the loan of ₹ 62.90 crores two different parties of Rs 25 lakhs each; along with an advance of ₹ 12.90 crores as advance against purchase of Floor space Index. Assessee also stated that both the parties are regularly assessed with the income tax department; such sum was returned / repaid by these parties in subsequent years. Floor space index purchased in this year was sold in subsequent years and, on that profit, taxes have been paid.
5. Learned assessing officer rejected the contention of the assessee stating that there is no evidence regarding the genuineness of the transaction as no ordinary business entity would infuse such amount in a company with a company having a share capital of only ₹ 1 lakh. He further noted that the companies who infused such a huge amount in a company, which does not have any exposure or experience, could have hired experts in the field of infrastructure, and could start it, own business. Therefore, it is clear that the assessee company has received amount from Messer's Infotel technologies private limited and has forwarded the same to the

other parties. AO further noted that the statement of Mr., Kumar Sharma who has stated that the Infotel technologies Ltd received the loan from sun vision engineering Co Ltd, on perusal of assessment order of sun vision Engineering limited, it was seen that it has declared loss of ₹ 6.49 crores and further it had merged with Himachal futuristic Communications Ltd with effect from 1/1/2010 approved by the honourable High Court of Himachal Pradesh. He noted that Himachal Futuritics Limited is assessed for assessment year 2010 – 11 at the loss of ₹ 6.96 crores and again for assessment year 2011 – 12 the return loss was 523 crores. Thus the accumulated losses of the ultimate source company i.e. sun vision engineering Ltd was very huge. Therefore Id AO was of the view that how a company which is incurring such huge loss and having a huge accumulated losses can give a loan to another company with no business activity and having a meager capital only of ₹ 1 lakh, to the tune of ₹ 67 crores and that too without charging any interest. Therefore, he held that that the receipt of ₹ 67 crores by the assessee from Infotel technologies private limited in the form of 0% optionally convertible debenture is an unexplained cash credit in the books of the assessee. Therefore he passed an assessment order u/s 147 read with Section 143 (3) of the act on 31st of December 2018 determining total income of the assessee at ₹ 669,984,435/- against the returned income of loss of ₹ 15,565/- whereby he made an addition of ₹ 67 crores on account of bogus/unexplained expenditure.

6. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A wherein assessee objected reopening of assessment as well as contested addition on the merits. With respect to the challenge of grounds on reopening of the assessment, Ld CIT (A) dealt with the same in paragraph number 4 and held that there is no infirmity in the reopening of the assessment. She noted that the return was processed u/s 143 (1) of the Act and no assessment order was passed u/s 143 (3) of the Act , as information was received from investigation wing, in view of the decision of the honourable Supreme Court in case of Raymond woolen Mills Ltd versus ITO (236 ITR

34) as well as of honourable Delhi High Court in case of Sonia Gandhi versus ACIT 97 taxmann.com 150 and the decision of the honourable Supreme Court in case of DCIT versus Zuari estate development & investment company Ltd (2015) 63 taxmann.com 177 (SC) as well as host of other judicial precedents, the reopening of the assessment was upheld. On the merits of the addition of ₹ 67 crores, she noted that during the appellate proceedings no further documentary evidences have been produced by the assessee to prove the genuineness of the transaction. She further held that the bank statement of Infotel technologies private limited clearly shows that an amount equal to the amount transferred to the appellant company was received in the bank account on the same date. She referred to some of such instances. For instance, prior to the amount of ₹ 2 crores, which was transferred to the company on 26/10/2010, there is a credit entry of an equal amount on 26/10/2010 itself, which has been credited by cheque number 384442. Similarly, there is another credit entry on 27/10/2010, which has been received, by the cheque number 3844424 for ₹ 2 crores after which the same amount was transferred to the account of the appellant company on the same date. Similar transactions are seen on 28/10/2010 for Rs 1 crore, on 4/11/2010 for ₹ 2 crores, on 9/11/2010 for Rs. 1.35 crores. Thus, she noted that the transactions entered through bank are deliberate steps taken with the sole motive of imparting a colour of genuineness to it. Thus, according to her, bank statement does not demonstrate the genuineness of the transaction. According to her, it was imperative on the part of the assessee to establish the creditworthiness of the party and genuineness of the transaction. On the issue of the statement of Mr., Kamal Kumar Sharma of Infotel technologies private limited recorded u/s 131 of the act; she held that merely the reliance was placed on the financial statements. Further the source of the fund was explained being another company, sun vision engineering Co private limited, she held that it cannot be explained that why that company give the funds to Infotel technologies private limited then give the amount to the appellant company for investing in the form of optionally convertible

debentures despite huge losses incurred. Therefore, she held that creditworthiness of Infotel technologies private limited as well as the genuineness of the transaction is not proved.

7. With respect to advance to two companies, she held that assessee has given a loan of ₹ 25 crore each to two companies, which are received back during the financial year 2011 – 12. With respect to the advance against purchase of floor space index of Rs 12.90 Crores, she noted that it was sold subsequently to Super Alliance Marketing Private Limited during financial year 2011 – 12 and the profit of ₹ 52.50 crores has been offered for taxation in the income tax return, the copy of the agreement was also furnished along with the mode of payment details of payment et cetera.
8. She, However, relying on the decision of the Honourable Supreme Court in case of Principal Commissioner Of Income Tax Versus NRA Iron & Steel Private Limited [2019]103 taxmann.com 48 (SC), ITO versus synergy Fin lease private limited ITA number 4778/del/2013 and Decision of Pee Aar Securities Limited other judicial precedent, held that there is overwhelming evidence that the transaction on which adverse view has been taken was prearranged transactions undertaken with the sole motive to evade tax. In view of this, she held that the documents submitted as evidence to prove the genuineness of the transactions are themselves found to serve as a smokescreen to cover up the true nature of the transaction. Thus, she confirmed that the learned assessing officer was justified in making the addition of ₹ 67 crores as income of the assessee from undisclosed source u/s 68. Thus, she dismissed appeal of assessee.
9. The Assessee aggrieved with the order of the learned CIT – A has preferred this appeal before us. The learned authorised representative submitted a paper book containing 530 pages wherein he challenges the reopening of the assessment u/s 147 of the act as well as the addition on the merits. On the issue of the reopening of the assessment, he referred to the reasons placed at page number 78 of the paper book. He submitted that the reopening has been made purely on the behest of the

investigation wing and the learned assessing officer has not done anything to form a belief that income has escaped assessment. The submitted that there is no tangible material available with the assessing officer for reopening of the assessment. He submitted that even if the case of the assessee falls under the original assessment u/s 143 (1) of the act, the assessing officer must have a tangible material to reopen the case. For this proposition, he relied on the decision of Pr CIT V SNG Developers Limited 404 ITR 312[Delhi].

10. On the merits of the case, he submitted that the assessee has furnished the complete details of the lender and all layers of the investments which have resulted into the loan in the books of the assessee company has been disclosed with evidences such as the confirmation, the balance sheets, income tax returns, Assessment orders, therefore, Assessee has discharged its initial onus. He further submitted that even the representative of the assessee was also examined u/s 131 of the act. All these evidences were rejected by the learned assessing officer as well as the learned CIT – A without carrying out any enquiry and merely on conjectures and surmises. He submitted that merely because the company, which has invested into the lender company, has incurred losses, the whole transaction of receipt of money by the assessee company cannot be held to be chargeable to tax in the hands of the assessee u/s 68 of the Act. He further referred to the order of the learned CIT – A and stated that the learned CIT – A has gone into all the evidences furnished before her, however has not given any reason to confirm the addition. She has simply relied up on judicial precedents, which are distinguishable and held that evidences produced by the assessee are merely smokescreen. Thus, he submitted that when there is no information/evidences/enquiry conducted by the learned assessing officer or by the learned CIT – A on evidences submitted by the assessee, no addition could be made in the hands of the assessee. He further stated that merely as a merger acquisition process undergone by the lender of the depositor, it cannot lead an evidence against the assessee that the amount is chargeable to tax u/s 68 of the act. He also referred

to the judicial precedents cited by the dl CIT A) and submitted that it does not apply. In view of this, he submitted that the addition confirmed by the learned CIT – A made by the learned assessing officer deserves to be deleted.

11. The learned department representative vehemently supported the orders of the lower authorities. For reopening of the assessment, she referred to the paragraph number 4.1 of the order of the learned CIT – A and also stated that in para number 4.1.8 the learned CIT appeal, relying upon the decision of the honourable Supreme Court in case of Rajesh Jhaveri, stating that the original assessment was passed u/s 143 (1) of the act, upheld the reopening. She further submitted that there was a tangible material available with the assessing officer to reopen the case of the assessee in the form of the report of the investigation wing. She further submitted that in para number 4.1 – 4.10 of the order of the learned CIT appeal clearly shows various issues on reopening of the assessment, which are unassailable. She therefore submitted that there is no doubt on the reopening of the assessment as it was made based on intangible material available with the assessing officer.
12. On merits of the issue, she relied on the order of the learned CIT – A and specifically on paragraph number 4.2.3 of the order as well as the several judgments relied upon by the learned CIT – A. It was submitted that the learned assessing officer has correctly made the addition in the hands of the assessee u/s 68 of the income tax act as assessee has failed to prove the creditworthiness and genuineness of the party who deposited ₹ 67 crores with the assessee in the form of optionally convertible debentures. He therefore submitted that even on the merits of the case the orders of the lower authorities deserve to be upheld.
13. We have carefully considered the rival contention and perused the orders of the lower authorities as well as the documents submitted by the assessee in a paper book containing 530 pages. Originally the assessee has filed its return of income for assessment year 2011 – 12 on 30/9/2011 declaring loss of ₹ 15,565/-. Admittedly, this return of income was not picked up for the scrutiny. Subsequently the case of the

assessee was reopened by recording following reasons which are placed at page number 78 – 80 of the paper book as Under:

"Reasons for issue of notice u/s 148 for the assessment year 2011 – 12 in case of M/s Naveen infradevelopers private limited

1. Facts of the case

The company was incorporated on 4/7/2008 and was previously known as Naveen Fabtrade private limited. The return of income for the year 2011 – 12 has been filed by the assessee company on 30/9/2011 declaring loss of ₹ 15,565/-.

2. Details of information received regarding escapement of income:-

As information regarding the assessee company was received from DDIT, Inv , unit – 7 (2), New Delhi vide his letter F . No. DDIT (INV)/U – 7 (2)/2017 – 18/785 dated 26/03/2018. Credible information has been received from DDIT (investigation) unit – 7 (2), New Delhi in respect of M/s Naveen Infradevelopers private limited that this company had:-

- i. equity capital of ₹ 1 lakh and had no business activity during the period Under consideration
- ii. raised ₹ 67 crore by debentures from unknown entities in financial year 2010 – 11 relevant to assessment year 2011 – 12
- iii. gave loan of ₹ 63 crore to unknown persons in financial year 2010 – 11 relevant to assessment year 2011 – 12

The DDIT (investigation), unit – 7 (2), New Delhi has further informed the assessee company has shown loss of ₹ 15,565/- in its return for the AY 2011 – 12 owing to

statutory expenses incurred by it. During AY 2011 – 12, it has shown unsecured loan (long-term) of ₹ 67 crore and it has shown advances given at ₹ 62.90 crores.

During the course of verification by DDIT (investigation), unit – 7 (2), New Delhi, copy of bank statement of account number 307901010078194 with Union Bank of India, Karol Bagh was called on it was noticed that the information received in his office regarding huge unsecured loan was correct. However in the directions given in the bank statement for the credit entries, it is seen that only cheque number, and bank name is given and the name of the party issuing the cheque is not mentioned. In view of these facts, the assessee company was asked to file details of the parties from whom it has borrowed/received the funds. Despite being provided various opportunities by the DDIT (investigation), unit – 7 (2), New Delhi, the details of the parties from whom such unsecured loan of ₹ 67 crore was raised was not provided. Thus, not only the identity but also the creditworthiness of these parties have remained unexplained/unverified.

3. Analysis of information regarding escapement of income

On examination of return of income of the assessee company for the assessment year 2010 – 11 filed on 18th/12/2010, it is noted that it has not shown any amount of unsecured loan in the return. The assessee has shown unsecured loan of ₹ 67 crores in its return of income for the assessment year 2011 – 12 which clearly means that it has received loans during the financial year 2010 – 11 relevant to the assessment year 2011 – 12 only.

The DDIT (investigation), unit – 7 (2), New Delhi during the course of investigation proceedings, has asked the assessee company to furnish details of unsecured loans of ₹ 67 crores and establish the identity and creditworthiness of the

lenders as well as genuineness of transactions. As it has been mentioned in the letter of DDIT (investigation), unit – 7 (2), New Delhi that the assessee has failed to discharge its onus and to prove genuineness of unsecured loan of ₹ 67 crores/-. In view of the provisions of Section 68 of The Income Tax Act 1961, 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. From the above facts, it is clear that the income amounting to ₹ 67 crore/- has escaped assessment in view of failure of the assessee to establish genuineness of unsecured loans during the course of investigation conducted by DDIT (investigation), unit – 7 (2), New Delhi.

4. Reasons for formation to believe

The assessee has failed to establish genuineness of unsecured loan of ₹ 67 crore/- during the course of investigation conducted by DDIT (investigation), unit – 7 (2), New Delhi. Accordingly, income amounting to ₹ 67 crores has escaped assessment within the meaning of Section 147 of the income tax act, 1961.

Coming to the provisions of reopening of assessment proceedings, prior to 1989, Section 147 provided for two grounds to reopen concluded assessments:-

- i. On basis of information received by the assessing officer, assessment could be reopened. This had to be within four years.*

- ii. *Where facts material for assessments are not disclosed in the course of assessment, whether within or beyond four Years.*

Supervening these two requirements in the alternative, the initial condition is that the assessing officer has reason to believe that there is escapement of income. The first requirement regarding information has now dropped by 1989 amendment and therefore for reopening of assessment within a period of four years from the end of assessment year the only requirement is reason to believe. For a period beyond four years in case where an original assessment was made u/s 143 (3), further requirement is the nondisclosure of material facts necessary for assessment by the assessee. However, in cases where no scrutiny assessment has been made even beyond of four years the only requirement is reason to believe.

In this case return of income has been filed for the year Under consideration but no scrutiny assessment u/s 143 (3) of the act was made accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reasons to believe as recorded above. In this case of four years but not more than six years have elapsed from the end of the assessment year Under consideration and income chargeable to tax which has escaped assessment is more than ₹ 1 lakh and necessary sanction to issue notice u/s 148 of the act is being obtained separately from the Principal Commissioner Of Income Tax – 6, Delhi Under the amended provisions of Section 151 of the act with effect from 1/6/2015.”

14. After recording the above reasons, learned AO on 14/11/ 2018, also disposed of the objections raised by the assessee against the reopening

of the assessment preferred before him by letter dated 12 November 2018.

15. On the merits of the case, the assessee submitted the return of income in response to the notice u/s 148 of the income tax act wherein in the return of income in part A – BS in the 'sources of fund' Under 'unsecured loans from others' the assessee disclosed a sum of ₹ 67 crores. In the annual accounts i.e. balance sheet and profit and loss account in schedule – 3 assessee disclosed unsecured loan being 0% optionally convertible debentures of Rs 67 crores. As per letter submitted on 22 November 2018 by the assessee in annexure – 6 also gave details of loan obtained stating that name of the parties i.e. Infotel technologies Ltd having a permanent account number AACCD 8086E. The assessee also submitted that during the year the assessee company has received 6,70,000 debentures of ₹ 1000 each to M/s Infotel Technologies Ltd. In support of the same assessee submitted the debentures certificate, copy of the balance sheet for financial year 2010 – 11 of the lender, copy of income tax returns for assessment year 2011 – 12 of the lender, Ledger account copies along with the bank statements. In the balance sheet of the lender for the year ended on 31st of March 2011, assessee also demonstrated that in schedule 4, 'investments' are disclosed wherein at serial number 5, it is disclosed that this company has made an investment of ₹ 67 crores being 6,70,000 0% optionally convertible debentures of ₹ 1000 each. The source of the fund is also available in schedule 2 of the balance sheet wherein a sum of ₹ 1440 000000/- was received being 0% compulsorily convertible zero-coupon bonds of ₹ 1000 each received by that company. Assessee also submitted the bank account of the lender with HDFC bank Ltd to demonstrate the funds received by the assessee from the bank account of the lender. Assessee also submitted its own bank account with Union Bank of India wherein the above sum was credited. Assessee also submitted the loans given to 2 different companies submitting their balance sheets, income tax returns et cetera. Assessee also submitted the assessment order passed in case of Infotel technologies Ltd for assessment year 2015 – 16 on 23 December 2017

passed u/s 143 (3) of the act wherein the income of the lender was assessed at ₹ 4,028,604/-. The assessee also produced the representative of the Infotel technologies Ltd in response to summons issued u/s 131 of the act wherein, in answer to question number 5, he has categorically confirmed that Infotel technologies private limited has invested in the form of optionally convertible debentures in the assessee company. He also demonstrated the above investment in the audited financial statement of the lender company. The details of payment made to the assessee company was also demonstrated by producing the bank account. The representative also explained that where from the Infotel technologies Ltd has received the fund and it was stated that it has received the fund from Sun vision engineering Co private limited, which was also demonstrated by showing the bank statement. He also submitted all the balance sheets of the investor company before the assessing officer. The assessee also submitted that in assessee's own case for assessment year 2015 - 16 the assessment was framed u/s 143 (3) of the income tax act on 28/11/2017 wherein the case of the assessee was selected for the reason of the deductibility of high interest expenditure as compared to business turnover. He submitted that in case the assessee's income was accepted as return by granting the deduction of interest expenditure on the above debentures issued which has now carried interest rate at the rate of 6% instead of 0%. Similarly the assessee was also assessed for assessment year 2013 - 14 on 23/3/2016 u/s 143 (3) of the income tax act wherein the business of the assessee was stated to be engaged in real estate business and total income was assessed at Rs 136,19,030/-. Before the assessing officer, the assessee also disclosed the source of fund available with Infotel technologies private limited from sun vision engineering Co private limited. The sun vision engineering Co private limited was amalgamated with Himachal futuristic company Communications Ltd with effect from 1/1/2010. The assessee has also submitted the assessment orders in the case of sun vision engineering Co private limited for assessment year 2010 - 11 passed u/s 143 (3) of the act by the DCIT Circle 9 (1) New Delhi on

4/3/2013. Similarly the assessment for assessment year 2010 – 11 and 2011 – 12 in case of M/s Himachal futuristic communication Ltd was also passed u/s 143 (3) of the act was placed on record by the assessee. Therefore assessee has shown the transaction of the loan from Infotel technologies private limited showing the 'source of the source' of the above fund from sun vision engineering Co private limited. Further the amount of investment made by the assessee was also proved by the assessee by submitting the annual accounts, income tax return and the assessment order passed u/s 143 (3) of the act of those parties as well as taxation of FSI Income in subsequent years and due payment of tax thereon. The learned CIT – A has held that assessee has not furnished any information about the conversion of the original issued optionally convertible debentures of 0% interest rate to 6%, however said certificates have been placed in paper book page number 422 which was furnished before the learned CIT – A. Respective interest has already been taxed in the hands of the lender and allowed as a deduction to the assessee, therefore, the above finding does not have any relevance. The learned lower authorities were also concerned that sun vision engineering Co private limited which is a loss-making entity has made an investment in Infotel technologies Ltd that in turn has further made investment in the assessee company. The Hon'ble jurisdictional Delhi High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del.), in which it was held that sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, therefore departmental appeal was dismissed by the Hon'ble High Court. Similarly, in this case the loss in the hands of Sun vision Engineering P Ltd i.e. lender to the lender cannot be the basis for making an addition u/s 68 of the Act. We find that sun vision engineering Co private limited subsequently merged in Himachal futuristic Communications Ltd wherein Himachal futuristic Communications Ltd for assessment year 2010 – 11 was engaged in the

menu business of manufacturing of transmission equipment and optical fibre cable incurred a loss of ₹ 698 crores. Therefore, merely because the investor has incurred losses it cannot be said that the investment made by such investor is not genuine. However even otherwise for saying so there is no corroborative material available with the assessing officer. Even otherwise how can an assessee have control over the affairs of the 'lender to the lender' to assessee. Any inference against the assessee for that reason cannot be sustained. Now it is to be seen that assessee has filed a substantial evidences before the learned assessing officer, even the representative of the investor company also remained present in response to the summons issued u/s 131 of the income tax act confirming the above investment, but to rebut all those evidences the learned assessing officer has not made any enquiry to show that the documentary evidences submitted by the assessee does not exhibit a genuine transaction. Merely saying that assessee has a small capital of ₹ 1 lakh and nobody would invest in such a company of the sum to the magnitude of ₹ 67 crores remains merely conjectures and surmises in view of the overwhelming evidences submitted by the assessee and absence of any inquiry by the revenue. for several years , assessee, Investor, Investor in the investor are assessed u/s 143 (3) of the act , such assessment orders are produced by the assessee before the assessing officer, it cannot be said that the investment made by Infotel technologies Ltd in the assessee company of ₹ 67 crores is failing the test of genuineness u/s 68 of The Income Tax Act.

16. Coming to the decision of the coordinate bench in case of Pee Aar securities Ltd versus deputy Commissioner of income tax [2018] 96 taxmann.com 602 (Delhi - Trib.)[23-08-2018] heavily relied upon by the learned departmental representative before us and cited by the learned CIT – A, we find that there is a stark difference between the facts of the case before the coordinate bench as well as before the us. In that, particular case there was a specific allegation that one, Mr. Tarun Goel, accommodation entry operator, was used by the assessee for introducing unaccounted income in the form of share capital in the above company.

The assessee could not give any clue about the investors in that company and did not produce such investors before the assessing officer. Further with respect to the bank statement of the investors furnished by the assessee before the assessing officer there was no explanation available about the source of such funds. In these peculiar facts, the coordinate bench confirmed the addition of ₹ 80 lakhs in the hands of the assessee u/s 68 of the income tax act for issue of share capital at a premium by a private limited company, which were controlled by one of the entry operators. In the case before us, there is no allegation on the assessee about any entry operator involved in money laundering activities. Assessee produced all the evidences as well as the explanation of the sum invested by the lender with respect to source of source of funds. Even investor in the lender where from the above sum has come in the books of the assessee was also shown. The assessee produced before the assessing officer the representative of the investor company who confirmed the above transaction explaining all the details. In view of this, the facts in the decision cited before us by the learned departmental representative are not comparable at all with the facts before us.

17. Accordingly, we direct the learned assessing officer to delete the addition of ₹ 67 crores in the hands of the assessee made u/s 68 of the income tax act with respect to the optionally convertible debentures issued to the Infotel technologies Ltd. Thus, we reverse the finding of the lower authorities and allow ground number 4 and 5 of the appeal.
18. Ground number 1 is general in nature and therefore it is dismissed.
19. Ground number 6 is with respect to the chargeability of interest u/s 234A, 234B, and 234C, which are consequential in nature, and therefore it are dismissed.
20. Ground number 7 is with respect to the initiation of the penalty proceedings is premature at this stage and therefore it is dismissed.
21. As we have already deleted the addition on the merits of the case, ground number 2 and 3 against the reopening of the assessment raised by the assessee are left unadjudicated as those are now remains purely Academic in nature.

22. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 31/05/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:31/05/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi