

IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 712/Mum/2018
(A.Y: 2013-14)

ITO – 23(1)(5) Room.No.113,1st floor Matru Mandir, Tardeo Road, Mumbai – 400 007	Vs.	M/s Grace Development Associates 101, B-Wing, Landmark Building, 1 st Floor, 150 Pali Road, Nr. HDFC Bank, Bandra (W), Mumbai – 400050.
PAN/GIR No. : AAHFG5648M		
Appellant	..	Respondent

Appellant by :	Ms.Neeraja Sarma.DR
Respondent by :	Mr.Devendra Jain.AR

Date of Hearing	09.02.2023
Date of Pronouncement	16.03.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) -32, Mumbai passed u/s 250 of the Act. The revenue has raised the following grounds of appeal:

- Whether on the facts and in the circumstances of the case and in law, Ld CIT(A) was justified in deleting the additions on account of bogus loans u/s 68 and the interest on them made by the Assessing Officer despite*

the fact that the loan providing entities were part of the Bhanwarlal Jain Group?

2. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A) was justified in deleting the additions despite there being an unequivocal statement by Sh.Bhanwarlal Jain that he was in the business of providing accommodation entries?

3. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the A.O be restored.

4. The appellant craves leave to add, delete, alter, amend and modify or all grounds of appeal.

2. The brief facts of the case are that the assessee is a partnership firm and is engaged in the business of construction of housing projects. The assessee has filed the return of income for the A.Y 2013-14 on 08.01.2014 disclosing a total income of Rs.Nil and the return of income was processed u/s 143(1) of the Act. There was a search and seizure operations conducted in the case of Shri Bhanwarlal Jain & group/concerns which are providing accommodation entries. The Assessing Officer (A.O) has received the information that the assessee is one of the beneficiaries of the accommodation entries provided by the group concerns. Therefore the AO has reason to believe that

the income has escaped assessment and after recording reasons for reopening of assessment, the AO has issued notice u/s 148 of the Act. In compliance to notice, the assessee has filed a letter dated 04.08.2015 to treat the original return of income filed on 08.01.2014 as due compliance to the notice issued. The assessee has requested for reasons for reopening of assessment and the same was provided by the AO and the assessee has not filed any objections on the reopening of the assessment.

3. Subsequently, the AO has issued notice u/s 143(2) and 142(1) of the Act along with the questionnaire. In compliance, the Ld.AR of the assessee appeared from the time to time and furnished the details supporting the return of income and documentary evidences, information in respect of unsecured loans received from the group concerns. Whereas the AO considered the statement recorded in the course of search and issued notice u/s 142(1) on the assessee to prove the identity, creditworthiness and genuineness of the transactions of unsecured loan creditors. Whereas the assessee has obtained loans from three parties i.e 1) M/s. Varsha Gems, of Rs. 1.32 crores; 2) M/s

Minal Gems of Rs. 2.40 Crores; 3) M/s Naman Exports of Rs. 68 lakhs, and the assessee has also paid interest on these unsecured loans aggregating to Rs.29,57,400/-.The assessee has submitted the audited financial statements and other evidences to substantiate the identity, creditworthiness and genuineness of the loan creditors and the details were referred at Para 9.1 of the assessment order, whereas the AO has dealt on the facts of the search party and the transactions of group concerns and the financial statements of the lenders.

4. Further the A.O. has issued summons u/sec131 of the Act on the three parties and was not complied but the loan creditors have sent confirmations by speed post. Considering the facts in the assessee's proceedings, the A.O. has issued notice u/s 142(1) of the Act dated 10.03.2016 to treat the loan transactions credited in the books of accounts in the name of the group concerns as unexplained cash credits and required the assessee to produce the parties. In response to the notice, the assessee has filed the reply on 17.03.2016 and could not produce the parties but complied by submitting the additional

information in the assessement proceedings and the AO has referred the submissions at page 11 of the assessment order. Finally the AO was not satisfied with the evidences and information and observe that the assessee has not established the ingredients required U/sec68 of the Act in respect of the transactions and made addition of unsecured loans of Rs.4.40crores and disallowance of interest on loans of Rs.29,57,455/- and assessed the total income of Rs.4,69,57,460/- and passed the order u/s 143(3) r.w.s 147 of the Act dated 21.03.2016.

5. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The appellate authority has considered the grounds of appeal, statement of facts, findings of the AO, written submissions and the judicial decisions. The CIT(A) has observed that the assessee has discharged the burden by submitting the requisite information and the onus lies on the AO to make enquires and deleted the addition. The CIT(A) has considered the submissions of the assessee referred at Page 3 Para 2.3 of the order as under:

THE APPELLANT'S CONTENTIONS & SUBMISSIONS:

Submission of facts of the case vis a vis relevant judicial pronouncements will assist immensely to your goodselves in arriving at reasonable & judicious conclusion. Taking into consideration significance of this aspect, the fact of the case is narrated in nutshell along with judicial dictums herein under,

FACTS OF THE CASE:

- 1. The appellant is a partnership firm having its registered office at 101, B- Wing, Landmark Building, 1st Floor, 150 Pali Road, Nr. HDFC Bank, Bandra (West), Mumbai-400050.*
- 2. During the year under consideration i.e. assessment year 2013-14, a return of income declaring the total income of Rs. Nil was filed on 08th January, 2014.*
- 3. The assessee firm is engaged in the business of construction of housing projects.*
- 4. The return was processed u/s. 143(1) of the Income Tax Act.*
- 5. Information was received from the DGIT(Inv) by the Ld AO that Shri Bhanwarlal Jain Group is the entry provider operating in Mumbai. It was engaged in providing accommodation entries in the nature of bogus sales and unsecured loans through various concerns managed by Shri Bhanwarlal Jain. The list of beneficiaries was also forwarded by the Investigation Wing.*
- 6. From the list thus provided, the Ld. AO concluded that the Assessee firm has received bogus unsecured loans amounting to Rs. 9,34,27,815/- in the A.Y. 2013-14 from M/s. Varsha Gems, M/s. Minal Gems and M/s. Naman*

Exports, the parties run and managed by Shri Bhanwarlal Jain Group.

7. Pursuant to the aforesaid alleged information received from the DGIT(Inu), the assessment of the Appellant was reopened and a notice u/s. 148 of the IT Act was issued on 27th March, 2015.

8. During the course of re-assessment proceedings, the appellant submitted details according to which the amount of loan taken and interest paid on it were Rs. 4,40,00,000/- and Rs. 29,57,455/- respectively, total amounting to Rs. 4,69,57,455/-. The appellant was asked to prove the genuineness of the loans from the above mentioned parties. The appellant provided all the available details. It was also submitted that the loan transaction was made in the ordinary course of business and substantiated the genuineness of the loan with various evidences including confirmation of accounts, ITR set, proof of repayment, etc.

9. The Ld. A.O., however, relied on the alleged information received from DGIT (Inv.).

10. It is further submitted that the Assessing Officer has not brought on record any adverse material with regard to the genuineness of loan but merely relied on the alleged information received from DGIT (Inv.) and had drawn a conclusion that the transactions in the books of accounts of the appellant are bogus.

11. In view of the aforesaid documents the appellant had proved the transaction of loan as genuine. It becomes crystal clear that the appellant had discharged its primary onus establish the to genuineness of the transaction by producing details of the parties.

12. One more point on facts was explained by the appellant to the Ld. A.O. that the appellant had never agreed before the Ld. A.O. that the said loan was not genuine.

13. Since all the primary facts and details were made available on record, the Ld. A.O. had to draw a reasonable inference on merit of the case depending upon the details filed by the Appellant and not mechanically add the loan amount declaring as bogus merely on certain information received and without verifying the same.

14. The Appellant had discharged its onus of proving the transaction as genuine with all sorts of evidences and then the responsibility to prove the transactions otherwise shifts on the shoulder of the Assessing Officer. Thus, without establishing the loan is bogus with corroborative independent evidences and findings, and not controverting the evidences and details filed, by assessing the alleged addition made in the hands of the Appellant is liable to be deleted.

15. The Ld. A.O. failed to appreciate the overwhelming evidences produced in support of the claim and passed an order u/s. 143(3) making an addition of Rs. 4,69,57,455/- on the basis of information received from the Investigation Department.

16. Being aggrieved by the actions of the Ld. A.O., your appellant has within 30 days of the receipt of the Order filed an appeal before your honour u/s 246-A of the Income Tax Act and with regard to the same would like to make the following submissions in support of the grounds of appeal.

SUBMISSIONS:

**ADDITION ON THE POINT OF BOGUS LOAN ENTRY AND
INTEREST PAID ON IT AMOUNTING TO RS. 4,69,57,455/-
STAND OF THE LD, AO:**

During the course of assessment proceedings, the appellant was asked to prove the genuineness of the transaction of loan received from M/s. Varsha Gems, M/s. Minal Gems and M/s. Naman Exports amounting to RS. 4,40,00,000/- and interest paid of Rs. 29,57,455/-. It was submitted that the transaction was carried out in the ordinary course of business and substantiated the genuineness with various evidences including confirmation of accounts, IT acknowledgements, proof of repayment, etc. We hereby again attach the same for the kind references of your honour vide "Annexure A" to this submission.

The Ld. A.O. while passing the order u/s. 143(3) justified his action of disallowing the amount of loan and treating the transaction as bogus by the following reasons:

i. The information was received from the DGIT(Inv.) reporting the alleged transactions from the parties listed therein to be treated as bogus.

ii. The listed parties were categorized as engaged in the business of providing only accommodation entries by Shri Bhanwarlal Jain in his statement recorded during the course of search. The assessing officer made an addition of Rs.46957455/- u/s. 68 of the I.T. Act, 1961. The additions were on account of certain loans taken and the interest accrued thereon.

According to the A.O. these parties were the alleged group companies of Bhanwarlal Jain Group on whose premises

a Search action was conducted by the investigation wing on 03.10.2013 and the assessee company according to the A.O. took some accommodation entries prior to the asst. year 2012-13 and the A.O. considered that the loans were bogus loans and hence the interest paid were also bogus he made additions as above, without adducing any - evidence other than some information received from the investigation wing which information have not been supplied to the assessee at any stage

The facts of the case of the assessee is that the assessee company took genuine loan from the aforesaid companies. The acceptance of loans and the repayment of loans are through A/c payee cheques. Interest have been paid regularly after deducting T.D.S The aseessee had filed Quarterly Returns of T.D.S. Besides the assessee has produced the following details before the A.O.:

- 1. Loan Confirmation from the above parties.*
- 2. PAN No. of them.*
- 3. Ledger extract.*
- 4. Copy of the Return of Income of the Firm/ Company who advanced the loan.*
- 5. Copy of Bank accounts.*

The aforesaid details have been filed before the A.O. However, the Assessing Officer throughout the assessment order is making the assessment of Bhanwarlal Jain Group and he has nothing to say about the onus of the assessee or the fulfillment of the condition precedent for charge of any amount u/s 68 of the I.T. Act, 1961.

The assessee has produced the Confirmation Letters, Bank Statements showing Credit entries as well as repayment by Cheques encashed through Banking Channel. Besides, the assessee produced the Income tax Return as well as the Bank Statements and ledger extract of the parties concerned. Besides, the A.O. issued summons u/s 131 to the concerned parties and in response to the same, they have confirmed the genuine loans having been given by them and proof for the same.

From the above it can be seen that the assessee has proved the identity of the Creditor, genuineness of the transaction and capacity of the party. Whereas the Learned Assessing Officer did not have an iota of evidence in his possession against the assessee.

The ld AO has said that the alleged company has very negligible net profit and he is not paying to its creditors and thus incurring huge exchange loss. That fact does not prove the loan to be bogus entry and it has nothing to do with assessee's case. If we go through the balance sheets of the alleged party , it can be seen that if there is creditors, there are debtors, stock etc also. It is absolutely there look out and they make payment to the creditors as per their terms, it does not prove that there is no creditworthiness.

The Hon. Apex Court in the case of LAKHMANI MEWAL DAS reported in 103 ITR 437 (SC) has held that the reopening of the assessment would be justified only if there is a live nexus between the material and the escapement of income. A general and vague statement made by a third party cannot provide reason to believe that chargeable income has escaped assessment in the

hands of the assessee. At page 438 & 439, the Hon. Apex Court held as under:

The original assessment for the assessment year 1958-59 was made on the respondent after allowing deduction of a sum of Rs. 10,494/- towards interest to certain creditors. Thereafter, by a notice under section 148 of the Income tax Act, 1961 dated March 8, 1967, served on the respondent on March 14, 1967, the Income tax officer sought to reopen the assessment. In his report made in February, 1967, to the Commissioner for reopening the assessment of the respondent for the assessment year 1958-59 after four years under section 147(a) of the Income tax Act, 1961, two reasons were mentioned: (i) that M.K., who was shown to be one of the creditors of the respondent, had since confessed that he was doing only name-lending; and (ii) that N.M., D.K.N., B.S. and others, whose names too were mentioned in the list of the creditors of the respondent, were known name-lenders. The respondent thereupon filed a writ petition claiming that there was no material before the Income tax officer on which he could have reason to believe that income chargeable to assessment for the year had escaped assessment by reason of the respondent's failure to disclose material facts, and stated that he had produced all books of account, bank statements and other necessary documents in connection with his return. The High Court, by a majority held that the pre-conditions for the exercise of jurisdiction under section 147 were not fulfilled. On appeal: Held, affirming the decision of the High Court, on the facts.

i. That the second ground could not have led to the formation of the belief that the income of the respondent chargeable to tax has escaped assessment for the

assessment year 1958-59 because of failure of the assessee to disclose fully and truly all material facts.

ii. That since there was nothing to show that the confession of M.K. related to a loan to the assessee, much less to the loan which was shown to have been advanced by that person to the respondent, in the first ground the live link or close nexus which should be there between the materials before the Income tax officer and the belief which he has to form as missing or in any event too tenuous to provide legally sound basis for reopening the assessment.

Sir, it is respectfully submitted that in view of the decision of the Hon. Delhi High Court in the case of CIT v. Gangeshwari Metal Pvt. Ltd. (2013) 96 DTR (DEL) 299, wherein it was held that there was a clear lack of enquiry on the - part of the A.O. once the assessee had furnished all the materials including PAN, loan confirmations and Bank Statements, in such an eventuality no addition can be made u/s 68 of the Act.

The A.O. merely stated in the assessment order that the explanation of the assessee is not acceptable and went on to make an addition of these loans and interest paid to the income of the assessee. The A.O. did not explain/ state why the explanation of the assessee is not acceptable.

Sir, it is submitted that:

In order to establish the receipt of cash credit as required under Section 68, the assessee must satisfy three important conditions, namely, (i) the identity of the creditor; (ii) the genuineness of the transaction; and (iii) the financial capacity of the person giving the cash credit to the assessee, i.e. the credit worthiness of the creditor.

However, the onus of the assessee is limited to the extent of proving the source from which he received the cash credit. The creditworthiness of the creditor has to be judged vis-a-vis the transaction which had taken place between the assessee and the creditor, and it is not the burden of the assessee to find out the source of creditworthy capacity in order to prove the genuineness of the transaction.

As held by the Hon. Gauhati High Court in the case of CIT v. Sanghamitra Bharali (2014) 361 ITR 481 (Gau) at p. 482. The aforesaid points were also affirmed in the past by the apex court in the case of CIT v. Orissa Corporation P. Ltd. Reported in (1986) 159 ITR 78 (SC) wherein it is held as under:

Held, that in this case the respondent had given the names address of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesses. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the respondent, 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 creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.

In view of all these facts, what is required is to prove 3 things as held by the Courts in case of Cash Credits u/s. 68 of the I.T. Act, 1961.

In the case of the assessee, Identity of the person is proved beyond doubt as the persons have been borne on the Register of Income-tax Department as their permanent A/c No. is filed before the Assessing Officer and they are regularly filing their Return of Income. Capacity of the person is also proved beyond doubt as the Loanee had given the Loans through Banking Channel and the repayment is also made through Banking Channel. Besides, Copy of Bank Passbooks of both the parties also available as it has been produced by the assessee before the A.O., the Creditors have confirmed having paid the loans in response to summons u/s. 131 of the I.T. Act, 1961. The Genuineness of the transaction is proved by producing the loan confirmations from the above parties, as also the Ledger extracts. There was nothing proved against the assessee by the A.O.

Sir, it is respectfully submitted that the Assessing Officer had not even expressed that he is not satisfied with evidences produced by the assessee. Besides, the learned Assessing Officer did not make any type of enquiries, as various tribunals have held that receiving information from the DIT (Inv.) is only a starting point for enquiries to be held; and not the final conclusion. In this case what the A.O. has done is only making an addition on the basis of an information received without making any further enquiries. Even the A.O. himself does not appear to have been satisfied with the issue of addition to be made to the income disclosed.

The Hon'ble ITAT Mumbai in the case of ITO vs Anant Shelters Pvt. Ltd. (2012) 20 Taxmann.com 153 has

enumerated certain principles which would be extremely useful in understanding the issue in hand. It has been stated in the said judgment that over the years, law regarding cash credits have evolved and has taken a definite shape. A few aspects of law u/s 68 can be enumerated

1. Sec. 68 can be invoked when there is a credit of amounts in the books maintained by the assessee, such credit is a sum of money during the previous year and either the assessee offers no explanation about the nature and source of such credits or the explanation by the assessee in the opinion of the AO is not satisfactory.

2. The opinion of the AO for not accepting the explanation offered by the assessee as not satisfactory is required to be formed objectively with reference to the material on record.

3. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner.

4. The onus of proof is not static. The initial burden lies on the assessee to establish the identity and the credit worthiness of the creditor as well as the genuineness of transaction.

5. The identity of creditors can be established by either furnishing their PANS or assessment orders. The genuineness of the transaction can be proved if it was shown that the money was received by a/c payee cheque. Creditworthiness of the lender can be established by attending circumstances.

The only base on which the ld AO made addition is the statement given by Shri bhanwarlal jain. The statement

given by Shri Bhanwarlal Jain at the time of search was given under stress and mental pressure as stated in the retraction statement given by him. But the Ld. AO did not consider the fact of retraction by Shri Bhanwarlal Jain and merely added the sum. The loans are genuine and we do not agree with the stand taken by the Ld. AO.

Point wise submission with case laws is as under:

1. Onus Discharged By The Appellant:

For making the aforesaid addition the AO has discussed the reasons in the assessment order.

The AO disregarded our contention made during the course of assessment proceedings and merely relied on the information received from the DGIT (Inv.).

The AO only considered the statement given by Shri Bhanwarlal Jain at the time of search proceedings at their premises, without considering the fact that such statement was later on retracted by him.

The AO has given the detailed analysis of the Balance sheet of the three firm and came to the conclusion that they are having very low net profit and they use their business fund to give unsecured loan and thus incurred huge exchange loss. This fact does not prove the loan to be non genuine.

The assessee has provided all the relevant documents i.e. account confirmation, ITR acknowledgement, proof of repayment, etc. at the time of assessment proceedings to prove the genuineness of the transactions. The alleged party has also submitted required details in response to summons u/s 131 of the act. So it cannot be said that the assessee has not discharged its onus.

Your honour's kind attention is invited to the following cases in support of the appellant's submission that the onus cast upon the appellant is discharged when the appellant provides details of the parties and all the related evidences to the assessing officer.

ACIT vs. M/s. Ottoman Steel Tubes (P.) Ltd. 2016 (7) TMI 998, ITAT Delhi dt. 21 June, 2016 Addition u/s 68 - genuineness of transaction and the creditworthiness and identity of the subscribers not proved information received from the Investigation Wing of the department Held that:- In the present case, the AO while making the impugned addition had relied upon the information received from the Investigation Wing of the department that the aforesaid two companies were controlled by one Sh. Tarun Goyal who disclosed in his statement that the said companies were engaged in providing accommodation entries, however, the assessee was not confronted with that statement, if any. It was also claimed by the assessee that on inspection of the assessment record no such statement was found. In our opinion, the said observation of the AO is not sufficient to presume that the said companies were engaged in providing the accommodation entries. It is well settled that the companies are juristic person and separate from the individual, therefore, on this basis that even if Sh. Tarun Goyal was engaged in providing accommodation entry, it was not sufficient to hold that M/s Bhavani Portfolio Pvt. Ltd. and M/s Thar Steels Pvt. Ltd. were also engaged in providing accommodation entries, particularly when no evidence was brought on record in support of the said presumption. In the present case, as we have already noted that the assessee discharged the onus cast upon it to prove the identity of the share applicants, their creditworthiness and genuineness of the transaction.

Therefore, the addition made by the AO u/s 68 of the Act was rightly deleted by the ld. CIT(A). In that view of the matter we do not see any merit in this appeal of the department. - Decided in favour of assessee.

> Gurmeet Singh c/o. JS Kochar & Associates vs. ITO 2016(6) TMI 839-ITAT Delhi

Reopening of assessment - accommodation entry received - information received from the DIT (Inv.) - Held that:- Notice u/s 148 has been issued in a mechanical manner on the basis of vague information from Directorate of Inspection (Inv.). The AO did not dwell upon the veracity and the basis of information received. He has not mentioned any material which has led him to believe that the amount deposited in the bank account represented accommodation entry which has escaped assessment. He has simply filled up a proforma mentioning the information received. Therefore, the notice u/s. 148 is patently illegal

Reasons do not satisfy the requirements of s. 147 of the Act. The reasons and the information referred to is extremely scanty and vague. There is no reference to any document or statement. Further, it is apparent that the AO did not apply his own mind to the information and examine the basis and material of the information. The AO accepted the plea on the basis of vague information in a mechanical manner. The reasons recorded reflect that the AO did not independently apply his mind to the information received from the DIT (Inv.) and arrive at a belief whether or not any income had escaped assessment. Decided in - favour of assessee.

Renuka Traders Private Limited vs. DCIT 2016(7) TMI 950 - ITAT Delhi

Addition u/s 68 - addition based on report of investigation wing - Held that:- AO has made addition merely based on the investigation carried out by the investigation wing from the order of the Ld. assessing officer without bringing out any material evidence against the assessee and not confronting assessee with that material. Contrarily evidences produced by the assessee of stalwart Realtors Limited of loan given of 46 lakhs, which is supported by the bank statement of the lender, was not anyway found false or an accommodation entry. In view of this, we reverse the finding of the CIT (A) and are of the view that appellant has discharged its onus cast upon him under section 68 of The Income Tax Act by proving the identity, creditworthiness and genuineness of the transactions and therefore the addition of 46 lakhs of loan received by it from M/s Stalwart realtors private limited cannot be added into the hands of the assessee under section 68 of the Income Tax Act, 1961. On the above factual aspects, we delete the addition made by the Ld. assessing officer. Decided in favour of assessee.

> M/s Narendra Polychem (P) Ltd. Formerly known as M/s Narendra Cold Storage (P) Ltd. Vs Income Tax Officer 2016 (6) TMI 936 - ITAT Delhi

Reopening of assessment - receipt of accommodation entries - AO reopened the assessment on the basis of information of other persons - Held that:- AO in the reasons recorded mentioned that it had come to his knowledge that the persons from whom amount was received were entry operator and provided the entries to the assessee after receiving the amount in cash, however, nothing was brought on record that how and in what manner the persons from whom the assessee received the

loans were entry operator and that as to how the cash was paid by the assessee. In fact the aforesaid conclusion of the A.O. is unhelpful in understanding as to whether the AO applied his mind to the material, particularly when he did not describe how and in what manner it came to his knowledge that the assessee received the accommodation entries.

Thus the reopening done by the AO u/s 147 of the Act was not valid and accordingly the subsequent assessment framed by the AO was void-ab-initio and therefore the same is quashed - Decided in favour of assessee.

> Pr. CIT vs. Shankar U. Jatwani 2016(8) TMI 108 Gujarat High Court

Addition on account of unverifiable and bogus liability- ITAT deleted the addition stating that the same can't be added u/s. 41(1) or Sec. 68- Held that:- As the entire issue is based on appreciation of evidence on record. CIT (Appeals) as well as the Tribunal both concurrently found that the assessee had produced sufficient material to establish the claim. The Assessing Officer had raised demands which were not possible to meet with. - Decided against revenue.

The ITO, Mumbai vs. Shri Subodh R. Nemlekar 2016 (7) TMI 534, ITAT Mumbai

Addition u/s 68 - Held that:- CIT(A) has rightly deleted the addition of 15,00,000/- on the basis of this fact that the HUF has given loan to one Shri Bhushan Nemlekar in A.Y.2003-04 and 2004-05 of 15,00,000/- which were reflected in balance sheet. The bank statement also speaks about the entry on various dates. Mr. Bhushan Nemlekar has repaid 15,00,000/- to the HUF on

13.11.2009 and the same amount has been transferred by account payee cheque from the HUF A/c. to Shri Subodh

Nemlekar on the same day. Therefore, the source of credit is the loan which were given by the HUF to one Mr. Bhushan Nemlekar. Immediately after receipt of the same amount, the amount was transferred in the accounts of the assessee. The creditworthiness and genuineness of the loan has duly been proved on record. Therefore, in the said circumstances the CIT(A) has rightly deleted the addition of - 15,00,000/-u/s.68 of the Act.

> Supreme Court Of India - Orissa Corporation Pvt. Ltd. 159 ITR 78 (SC)

Wherein the hon. Supreme Court has held that when the assessee furnishes names and addresses of the alleged creditors and the G.I.R. numbers, the burden shifts to the department to establish the revenue's case and in order to sustain the addition the Revenue has to pursue enquiry and to establish the lack of creditworthiness and mere issue of notice under section 131 is not sufficient.

> High Court Of Mumbai - Nikunj Eximp Enterprises, ITXAL No. 5604 of 2010

The High Court held that the ITAT deleted the addition on account of bogus purchases not only on the basis of stock statement i.e. reconciliation statement but also in view of the other facts. The ITAT had recorded that the books of accounts of the assessee were not rejected. Similarly the sales have not been doubted and that substantial sales were made to government departments. Further there were confirmatory letters filed by suppliers, copies of invoices, bank statements indicated that purchases were actually made. The High Court also held that merely

because the suppliers have not appeared before the AO or the CIT(A), one cannot conclude that the purchases were not made by the assessee.

> U.M. Shah, Propreitor, Shrenik Trading Co. 90 ITR 396 (Bom.)

It was held that it was not for the assessee to produce the witness without summons. The assessee having discharged the initial onus of giving complete name and address of bankers and confirmation letters it was for the Income-Tax Officer to show that the explanation rendered by the assessee was untrue.

Brij Pal Sharma, 333 ITR 229 (P & H),

It was held that it was not open to the A.O. to determine the matter without any further investigation so as to be able to repudiate the material relied upon by the assessee. It was open to the A. O. to exercise authority vested in him u/s. 131 of the Act, to determine the veracity of the material relied upon by the respondent-assessee. Having not taken the aforesaid imperative procedural requirement, it was not open to the A.O. to reject the material produced by the respondent-assessee.

> Hi Lux Automotive (P.) Ltd, 183 Taxman 260 (Del.)

Business expenditure-Allowability-Genuineness of purchases-AO initially-AO has allowed the payments made to two parties on the basis that the payments were made to them by means of account payee cheques and the same were actually credited in their bank accounts, even though they were not maintaining books of account-Proprietors of BE and SS have confirmed that they had received the payments by means of account payee cheques and specifically affirmed that they had been

supplying goods/raw material to the appellant-Appellant produced the bank statements of these parties which clearly show that the payments made by the appellant were duly credited in the bank accounts of the said suppliers-Thus, these two cases are at par with those in which the payments have been allowed and hence the payments could not be disallowed-Disallowance of payments made to the remaining parties for the reason that they did not appear when the notices were sent was not justified-Appellant has produced sufficient material, namely bank account of such parties to show the payments- Therefore, the finding of fact arrived at by the Tribunal that the said parties were genuine suppliers and that they received payments by account payee cheques is plausible and based on evidence-No question of law arises for consideration.

> Rajesh P. Soni, 100 TTJ 892 (Ahd.)

Income from undisclosed sources-Addition under s. 69-Unexplained investment in purchases-AO made addition merely because suppliers could not be located and were not produced for examination-Not justified-Purchases were properly recorded in books of account and supported by authenticated purchase bills/vouchers-Appellant has filed details of suppliers and their sales-tax numbers-Payments were made through banking channels-Sales against these purchases are not doubted-Hence, addition cannot be sustained.

➤ Babulal C. Borana VS. ITO (2006) 282 ITR 251 (Bom.)

It was held by the Hon'ble Bombay High Court that "When the identity of the person from whom goods are purchased and source of investment made has been explained by the assessee, and it was established that amounts paid by

assessee by cheque for those goods had been received, and further, books maintained by assessee had been accepted by AO and in fact addition was based on entries made in those books, it could be said that transaction was genuine.

> ITO VS. Kanchanwala Gems 122 TTJ 854

"The assessee had furnished all the necessary information including name, address, PAN, RST/CST numbers and telephone numbers of the suppliers, supported with documents which was expected from a prudent purchaser to establish the genuineness of claimed transaction; besides the payments had been made through account payee cheques and goods purchased from the four parties had been exported by the assessee in the same size, shape and weight, duly verified by the Customs Authorities. The AO was not justified in doubting the genuineness of the claimed purchases made by the assessee from the occasion the parties were not found on the given addresses or in some other cases some connected person to the supplier stated that they were only issuing bills without supplying goods or that the money paid by the assessee against purchases was withdrawn by those parties. Undisputedly, after completion of a transaction a purchaser cannot have control over the suppliers and suppliers are always at liberty to use the money paid to them against the goods sold by them. Thus, in the absence of any positive evidence that the goods were not purchased from the above parties but from some named person or that the money paid by the assessee against the goods was ultimately returned to the assessee by the suppliers, there was no occasion before the AO to deny the claimed purchases, especially when the genuineness of the export of those goods by the assessee had been

accepted by the AO. The Commissioner (Appeals) had, thus, rightly deleted the addition."

In nutshell, the AO did not make any proper investigations and did not disprove the evidences given by the assessee. The AO could have made inquiry from the bank records also. Details of the purchase parties are available on various websites being Private Limited Companies, the detailed investigation could have been carried out on the basis of those details also. But AO simply choose to add the amount just because the names were there in the list of received from DGIT (Inv.), which is not acceptable to us as the addition cannot be made on the basis of presumption and without making proper investigation by the department.

No Opportunity For Cross Examination Given:

During the year under consideration, the addition of the loan entry has been made on the basis of list of concerns provided by Shri Bhanwarlal Jain at the time of giving statement during the search proceedings as being concerns managed and controlled by him and involved in the business of providing only accommodation entries. The department has only relied on the names such provided and had not tried anything to prove that the transactions with them were bogus. The appellant was not provided with an opportunity for cross examination of the party before making the addition of the loan amount to the income of the

The appellant should have been provided with the opportunity to cross examine the parties who has given the statement or affidavit. If any person has filed any affidavit or given any statement to the department and if the department is using that statement or affidavit

against the appellant then it is the right of the appellant to have an opportunity to cross examine that persons, the appellant has not been provided this opportunity. Your honour may please note that an enquiry must be conducted in accordance with the principle of natural justice and all the materials for and against the assessee must be shown to him and an opportunity must be given to the assessee to rebut and meet the case of the department. Material gathered against the assessee has to be put to the assessee in order to give the assessee an opportunity for confrontation. The Ld. A.O. failed to provide any such opportunity to the appellant to confront and cross-examine the purchase parties.

The legal effect of the statement or affidavits recorded behind the back of the appellant and without furnishing the copy thereof to the appellant or without giving an opportunity of cross-examination, if the addition is made, the same is required to be deleted on the ground of violation of the principles of natural justice.

Your honour's kind attention is invited to the following cases supporting the submission that no addition can be made when the A.O. does not provide any opportunity to confront the parties and cross-examine the evidence obtained by him:

Kanwar Natwar Singh vs. Directorate of Enforcement (Supreme Court (October 8th, 2010):-

Non-furnishing of "all documents" does not violate principles of natural justice. Natwar Singh & Jagat Singh ("Natwar Singh") were alleged to have dealt in and acquired Foreign Exchange totalling US \$ 8,98,027 in respect of some Iraq oil contracts in contravention of FEMA. A notice was issued asking Natwar Singh to sow-

cause why an inquiry should not be held against them. In response, Natwar Singh demanded that the Adjudicating Authority furnish "copies of all documents in possession in respect of the instant case, including the 83000 documents allegedly procured by one Virender Dayal". The Adjudicating Authority furnished copies of the documents as were relied upon by it but declined to furnish copies of other document and decided to hold an inquiry in accordance with FEMA. This non- furnishing of "all documents" was challenged by Natwar Singh in the Delhi High Court which dismissed the challenge. Natwar Singh challenged the decision of the High Court in the Supreme Court. HELD, dismissing the appeal:

The extent of applicability of principles of natural justice depends upon the nature of inquiry, the consequences that may visit a person after such inquiry from out of the decision pursuant to such inquiry. The right to fair hearing is a guaranteed right. Every person before an Authority exercising the adjudicatory powers has a right to know the evidence to be used against him.

Kishinchand Chellaram Vs. Commissioner Of Income Tax

Income from undisclosed sources-Chargeability-T, an employee of Madras office of appellant making a telegraphic transfer of an amount of Rs. 1,07,350 to N, an employee of appellant in Bombay office-On enquiry made by ITO from Madras bank, manager of bank informing ITO that telegraphic transfer of Rs. 1,07,350 sent by appellant from Madras was received by bank at Bombay and the amount was paid to N-ITO treating the amount as undisclosed income of appellant-Not justified-Burden of proof was on the Department to prove that the amount belonged to appellant-Letters of manager, in the absence of same being supplied to the appellant, could not be

used against appellant-Manager also not examined by the Department-There was no evidence for the conclusion that the amount belonged to appellant.

High court of Gujarat Heirs And Lrs Of Late Laxmanbhai S. Patel Vs. Commissioner Of Income Tax 174 Taxman 206

Addition made under s. 68 placing heavy reliance on the statement of one R to the effect that the promissory note in the sum of Rs. 8,78,358 recovered during his search represented amount advanced by appellant to one K without referring the said statement in assessment order nor giving copy thereof to the appellant nor affording an opportunity to appellant to cross-examine R was liable to be set aside for violation of principles of natural justice.

The High Court of Calcutta Eastern Commercial Enterprises, 210 ITR 0103

It was held that the right to cross-examine a witness adverse to the assessee is an indispensable right and opportunity of such cross-examination is one of the cornerstones of natural justice.

High Court Of Calcutta. Bangodaya Cotton Mills Ltd. Vs. Commissioner Of Income Tax 224 CTR 62

AO having made the impugned addition simply on the basis of some letters seized from a third party in the absence of any corroborative evidence and without issuing summons to the concerned person or making him available for cross-examination, the order passed by the Tribunal upholding the addition is set aside and the matter is remanded back to the AO to consider the matter afresh.

>High Court Of Delhi Commissioner Of Income Tax Vs. Dharam Pal Prem Chand Ltd (2007) 212 CTR (Del) 253

"Assessment-Validity-Opportunity of being heard-AO making assessment on the basis of report obtained from an institute as regards percentage of silver contents in different brands of chewing tobacco manufactured by assessee-Assessee challenging the said report as incorrect and requested the AO on several occasions for giving opportunity to cross examine the analyst-Assessee even offere to pay necessary expenses for the purpose-AO not allowing opportunity of cross examination-There was clear violation of principles of natural justice-CIT(A) and Tribunal were justified in setting aside the assessment on that ground no substantial question of law arises.

> High Court Of Kerala Commissioner Of Income Tax Vs. C. F.Thomas (2006) 204 Ctr (Ker) 21

Capital gains-Transfer-Lease of property under unregistered lease deed-Any transaction by way of any agreement or arrangement which has the effect of transferring or enabling the enjoyment of any immovable property is a transfer within the meaning of the Act-Leasing out of property is therefore a transfer of a capital asset-Sworn statement by tenant S that he had paid Rs 10 lakhs to the assesses- lessors by way of pakkidi out of his unaccounted money-Assesseees not confronted with the aforesaid sworn statement of S-It would be an infraction of the cardinal principles of natural justice to rely upon the said statement-However, the fact that about 1350sq. ft. of commercial premises with all amenities on the ground floor of a three-storeyed building in a prime location has been let out by the assessee on a monthly rent of Rs. 2 lakhs cannot be lost sight of-Hence, impugned order is set aside and the matter is remitted to

the assessing authority for making a revised assessment after giving both the parties an opportunity to substantiate their respective contentions.

High Court Of Madhya Pradesh Prakash Chand Nahta Vs. Commisioner Of Income Tax (2008) 218 CTR (MP) 367

AO having not summoned the person from whom the assessee is said to have purchased goods, under s. 131 for cross-examination in spite of the request of the assessee and therefore, the assessment order passed by AO making the impugned addition on the basis of the deposition of the witness is vitiated.

> Income Tax Tribunal Bench Of Delhi - Jindal Stainless Ltd. Vs. Assistant Commissioner Of Income Tax (2009) 122 TTJ (Del) 902

Search and seizure - Assessment under s. 153A- Opportunity of being heard-Assessee having not been given opportunity to cross-examine the person on the basis of whose sole statement addition was made in assessment under s. 153A the addition is liable to be deleted -Addition cannot be made on the basis of documents found from the residential premises of a third person (employee of company) unless positive material is brought on record by the Revenue that the assessee in fact had received any extra money on account of over-billing-Further, assessee having denied under-billing and receipt of extra consideration and having furnished in support comparable sales and details of parties with whom transactions were made, no addition under s. 153A could be made by AO without making any attempt at verification and without bringing any positive material on record.

High Court Of Madras M. Pirai Choodi Vs. Income Tax Officer (2008) 302 ITR 40 (Mad)

"Writ-Alternative remedy-Violation of principles of natural justice vis-à-vis assessment-Respondent Department refused to agriculture income shown by the petitioner (assessee) by placing accept the reliance on the statement of the Village Administrative Officer, overlooking the materials furnished by the petitioner to substantiate his agriculture activity-Admittedly, petitioner was not present when the statement of the Village Administrative Officer was obtained by the assessing authority-Recording of such a statement without giving the petitioner an opportunity to cross-examine the Village Administrative Officer amounted to glaring violation of the principles of natural justice- Therefore, writ petition could not be dismissed on the ground of availability of alternative remedy-Impugned assessment order quashed.

> High court of Rajasthan Commissioner Of Income Tax Vs. Geetanjali Education Society 174 taxman 440

Appellant, registered under s. 12A, could not be denied exemption under s. 11 on the ground that donations were bogus without examining the donors and subjecting those donors to cross-examination who had been examined.

> High court of Delhi Genesis Commet (P). Ltd. 163 Taxman 482 (Del.)

The Hon'ble High Court of Delhi held that if the A.O. was not inclined to believe the material produced by the assessee, he could have used his coercive powers available to him to summon and cross-examine the concerned parties and could also make independent enquiries from the customers of the assessee. Thus the addition was deleted.

High court of Delhi CIT v. SMC Share Brokers, 288 ITR 345

The Delhi High Court held that since an assessing officer functions as a quasi-judicial authority, he is under an obligation to adhere to the principles of natural justice. Denial of permission to cross-examine a witness or examine the evidence is complete violation of the principles of natural justice.

> C.P. Adam, 105 ITR 465 (Ker.),

The Hon'ble Tribunal deleted the addition made by the A.O. holding that no opportunity had been given to the assessee to cross-examine the creditors.

> Ashwani Gupta 322 ITR 396 (Del.)

The A.O. had passed the assessment order in violation of the principles of natural justice in as much as he had neither provided copies of the seized material to the assessee nor had he allowed the assessee to cross-examine the concerned party. The honourable tribunal and the CIT(A) held that the entire addition made by the A.O. was invalid and deleted the said addition.

> Sunita Dhadda, 148 TTJ 719 (Jp.)

It was held that as per the principles of natural justice, it was obligatory on the part of the A.O. to have provided all the materials which were being used against the assessee. In case the AO was relying on the statements of a person then the assessee would have to be given an opportunity to cross examine.

> DCIT vs. Mahendra Ambalal Patel, 40 DTR 243 (Guj.)

It was held that no addition can be made merely on the basis of a bald statement of a third party without there being any corroborative evidence particularly when the assessee was not allowed to cross examine.

Hence, from the analysis of these judgments, one thing is clear that the appellant was not given proper opportunity to prove the claim and the affidavit has been used against the appellant which is against the rule of natural justice. The department has not made any special investigation to prove the transaction bogus; the addition is just on the basis of the list provided by Shri Bhanwarlal Jain in his statement at the time of search and the information received from the DGIT (Inv.).

We would request your honour for giving us a chance for cross examination before making any conclusion in our case.

3. Ld. A.O. Relied On Information from DGIT (Inv.) Blindly And Did Not Conduct Any Independent Inquiry:

Your appellant submits that the statements were recorded by the search and survey team of the Income Tax and not by the Ld. A.O. himself. Further these statements were forwarded to the Ld. A.O. of your appellant with a direction to treat the transaction in question as non-genuine transaction. The Ld. A.O. did not himself investigate the facts and did not ascertain the genuineness of the transactions. The Ld. A.O. only relied on the information received from the DGIT (Inv.) and formed an opinion against the appellant company. It was the primary duty of the Ld. A.O. to investigate the facts and to put them before the appellant for cross-examination. The Ld. A.O. thus failing to do so, made an addition to the purchases of the appellant on the basis of

surmises and conjectures and by violating the principles of natural justice.

Your honour may note that the Ld. A.O. blindly relied on the information provided by the DGIT (Inv.), that the said parties were engaged in providing accommodation entries. Your appellant had submitted all the necessary details that were available to prove the genuineness of the transactions. Thereafter, the onus of disproving the submissions and explanations of the appellant lied on the Ld. A.O. Neither did the Ld. A.O. provide any material evidence to support his contention nor did he verify the genuineness of the dealers by issuing summons to the said concern and ascertained genuineness. Thus the Ld. A.O., without verifying the facts has assumed the transaction in question was not genuine. The inquiry of DGIT (Inv.) is not conclusive and cannot be used against the appellant without any other corroborative evidences.

The appellant would like to rely on the following judgments for this:

> High Court Of Mumbai – Rajeev G. Kalathil Vs. DCIT

Fact that alleged supplier is not traceable and has been termed a "hawala dealer" by the VAT authorities is not sufficient to treat the purchases as "bogus"

The assessee claimed to have made purchases from certain parties. In support of the genuineness of the purchases, he produced bills from the parties and proof of payment by cheque. However, the AO treated the purchases as "bogus" purchases u/s 68 on the ground that the notices u/s 133(6) sent to the alleged suppliers at the address stated in their bills were returned unserved. Further, the said suppliers were termed

as 'Hawala Dealers' (i.e. person who issued a bill for purchase of goods without delivery) by the Maharashtra VAT department. On appeal, the CIT(A) deleted the addition. On appeal by the department to the Tribunal HELD dismissing the appeal.

> High Court Of Mumbai - Nikunj Eximp Enterprises Pvt Ltd Vs CIT

Where in it was held that the respondent appellant having been filed the confirmation letters of suppliers, copies of bank statement showing entries of payment, copies of invoices and stock statement giving complete details of movements of the stocks and the books of account not rejected and the sales not being doubted-the purchases cannot be treated as bogus.

> Permanand Vs. Income Tax Officer 107 TTJ 395 (Jodh.)

Income from undisclosed sources-Addition under s. 69-Alleged bogus purchases-AO received information from the Sales-tax Department that the purchases made by the appellant from two parties were bogus- Solely relying on the same, AO made addition under s. 69-Not justified-No addition can be made in the hands of the appellant merely on the basis of observations made by a third party-While making the assessment, it is the satisfaction of the AO which is of prime importance-It cannot be substituted by the satisfaction of someone else-Appellant has discharged the primary onus cast on him by showing the purchases in the books of accounts, payment by way of account payee cheques and producing the vouchers of sale of goods- AO did not make requisite investigations against the said sellers- Moreover, no opportunity was given to the appellant to confront the sellers-Addition rightly deleted.

> Jagdamba trading company vs ITO ITAT Jodhpur SMC bench 2007

Where it was held that the averment of the seller in his affidavit in sales tax proceedings that he has not made any sales during the relevant year, same cannot be relied upon, particularly when no opportunity of cross examination was given to the appellant.

> CIT VS. Leaders Valves P Ltd High Court Of Punjab And Hariyana 2006

It was held that there is no basis for treating the purchases made by the appellant from seven scrap dealers as bogus as the consumption stood fully proved - it has accepted the contention of the appellant that if the purchases are bogus then it would not be possible to manufacture the goods that has been manufactured.

> Kulwant Singh, 134 TTJ 129,

The ITAT Delhi Bench held that when search and seizure has been - conducted and when the seized evidence does not contain any material to show that the assessee was carrying on accommodation entry business in a clandestine manner, no undisclosed income could be computed by the ld. A.O. merely on the basis of information received from the Sales-Tax Department.

> DCIT v. Beautiful Diamonds Ltd. in ITA No. 78/Mum/2000,

The honourable Mumbai ITAT held that when no incriminating material is found during the search, no addition can be made on the basis of the statement by the

alleged bogus suppliers of goods to the assessee before the FERA authorities.

> Brij Pal Sharma, 333 ITR 229 (P & H),

It was held that it was not open to the A.O. to determine the matter without any further investigation so as to be able to repudiate the material relied upon by the assessee. It was open to the A.O. to exercise authority vested in him u/s. 131 of the Act, to determine the veracity of A.O. to reject the material produced by the respondent-assessee.

the material relied upon by the respondent-assessee. Having not taken the aforesaid imperative procedural requirement, it was not open to the

> R.K. Synthetics Vs. Income Tax Officer [2003] 81 TTJ (Jd) 909

"This is an undeniable fact that the addition in question under section 69 has been made on the sole basis of the statement of the partner K recorded by the Central Excise authorities the fact of which has been incorporated by the CIT (A) in his order. This is also an undeniable fact that the AO never recorded any further statements of K or anybody else. A copy of the statements recorded by the Central Excise authorities was never provided to the assessee. No independent investigation was carried out by AO, though he proposed to make addition under section 69 in the hands of the assessee. There were no evidences of suppressed sales and sales declared by the assessee were fully accepted by the AO and no action was taken by the Sales Tax Department despite there being information from the Central Excise authorities regarding statement of the partner. The assessee had maintained complete financial and quantitative records

and no specific defect were pointed out by the AO in the books of accounts. It was thus held that Addition under section 69 made solely on the basis of statement of assessee's partner recorded by the Central Excise authorities, without any supporting evidence whatsoever is invalid."

>ITO VS. Arora Alloys Limited 12 ITR 263 "

Addition made of unexplained expenses on sole basis of information received from Central Excise department was held not to be justified." > N. K. Proteins Ltd. Vs. DCIT (2004) 83 TTJ 904

It was held by the Hon'ble Ahmadabad ITAT that - "the entire findings given in the assessment order are based on affidavits and statements obtained by Addl. DIT under Section 131(1A). The AO has simply placed reliance on appraisal report sent by Addl. DIT/Dy. DIT and has reproduced the affidavits/statements of the alleged bogus suppliers. The AO has not made any independent examination in the course of assessment proceedings. The assessment proceedings are quasi-judicial proceedings. The burden lies on the AO to prove by bringing positive material and evidence on records to prove that the purchases made by the assessee from various suppliers were not genuine purchases. No reliance can be placed on the affidavits/statements of the suppliers obtained behind the back of the assessee unless the assessee is allowed to cross-examine them. The learned counsel further stated that the assessee has submitted affidavits made by the suppliers at the time of assessment. The AO did not examine the deponents. In the absence of examination, the contents of the subsequent, affidavits submitted before the AO are binding and there is no justification in placing reliance on earlier

statements/affidavits which were obtained by the Addl. DIT/Dy. DIT under pressure and coercion."

No Proof On Record To Prove That Money Was Returned To The Appellant:

Your honour may note that no proof was brought on record that money was returned to the appellant. The Ld A.O. contends that the appellant had obtained bogus entry by making payments by way of cash and that the amounts paid by way of cheques was returned to your appellant. The Ld. A.O. failed to bring on record any proof in support of his contention. His contention was only based on the information received from the DGIT (Inv.) which was not verified by the A.O. and was blindly utilized while making an addition to the purchases. In the case of G. G. Diamonds, 11 SOT 33 (Mum.)(URO), it was held that where there is no evidence to show that money which seller party withdrew reached back to appellant, addition cannot be made.

> ITO VS. Sunsteel 92 TTJ (Ahd) 1126:

Income from undisclosed sources- addition u/s 69C-unaccounted purchases- Appellant was not able to prove the existence of certain suppliers from whom purchases were said to be made- However, AO had no material to prove that payments of purchases came back to the appellant-If addition made by AO is sustained GP would come to 100.6 percent which is not possible-since suppliers were not produced it is possible that appellant has made purchases from unregistered dealer to get benefits of margin of purchases- hence addition is restricted to Rs. 50,000.

> Commissioner Of Income Tax Vs. M.K. Brothers. (1987) 163 ITR 249 (Guj

"Whether the said transactions were bogus or not was a question of fact. The Tribunal has also pointed out that nothing is shown to indicate that any part of the fund given by the appellant to these parties came back to the appellant in any form. It is further observed by the Tribunal that there is no evidence anywhere that these concerns gave vouchers to the appellant. Even the two statements do not implicate the transactions with the appellant in any way. With these observations, the Tribunal ultimately has observed that there are certain doubtful features, but the evidence is not adequate to conclude that the purchases made by the appellant from these parties were bogus.

5. Interest income claimed as income by alleged parties:

Your honour may note from the attached annexures that the alleged parties that were considered to be bogus by the Ld. AO at the time of assessment have filed their return of income and maintained proper records. They have shown interest paid to them by the appellant as income in their books of accounts and filed their return. If the disallowance of interest is confirmed by your honour and added to the income of the appellant, the same shall be taxed twice. On the first part it has been offered as income by the alleged parties and again in the hands of the appellant. Also where the loan are considered as genuine, the interest paid on it cannot be considered bogus and added to the income of the appellant. The appellant has relied on the following case laws to support his claim:

*Dy. Commissioner Of Income Tax Vs. Maithan Alloys Ltd.
ITA No. 269 to 273/Kol/2011*

The said loan creditor companies were regularly taxed on their income particularly they have shown the interest income as accrued to them. The Assessing Officer has accepted the returns of the loan creditors, it should go to mean that the amounts given by these creditors were also genuine as the concerned Assessing Officer accepted all the two loan creditors return wherein the interest has been shown as interest income.

While concluding, Tribunal accepted that it is not a bogus loan and it is for the business as they have already decided the issue of addition on account of alleged bogus loan against the Department and in favour of assessee. This interest which was paid on the above loan and the payments purchases to appellant-If addition made AO is sustained suppliers produced it possible margin of purchases- 50,000.

> Commissioner Income Tax Vs. M.K. Brothers. (1987) 163 249 (Guj

"Whether the said transactions were bogus not was question of fact. The also pointed out that nothing shown indicate that part the fund given the appellant these parties came back appellant in form. further the Tribunal no evidence anywhere concerns vouchers the appellant. the two statements do not implicate any way. the Tribunal the evidence is

5. Interest income claimed as income

Your honour note from the attached annexures that the alleged parties of income books accounts disallowance of interest confirmed by your honour added the hands appellant. Also where the interest paid cannot be considered bogus added to the income the appellant. appellant has relied following case laws

269 273/Kol/2011

The said loan creditor companies were regularly taxed on their income particularly they shown the interest accrued them. The Assessing Officer returns of it should mean that the amounts given these creditors creditors return wherein income.

for the business have decided the of addition on account bogus loan against Department favour of assessee. This which was the above loan and the commission paid on the alleged loan which are of consequent in nature and has to be decided in favour of the assessee and against the Department. Therefore, this interest can not be taken as undisclosed income of the assessee

> *Ratan Muhury vs. ITO ITA No. 1812/Kol/2009*

After hearing the rival submissions and on careful perusal of material available on record, keeping in view of the fact that all the loan creditors have shown the transactions in their books of accounts and offered interest income on the same in their respective returns of income which were evident from the paper book filed by the assessee. We find no justification on the part of the Revenue to disbelieve the same based on the Inspectors report only. Therefore we delete the additions of Rs.3,65,110/- made u/s 68 of the IT Act and consequential disallowance of Rs.65,72/- on account of interest.

The case laws referred by the LD AO:

> *NANAKCHANDRA LAXMANDAS VS CIT*

> *In this case, only confirmation letter has been given and no other details were given, hence this case is not applicable to the case of the assessee.*

> *CIT VS PRECISION FINANCE PVT. LTD. The fact of this case is totally different and not applicable to our case.*

> *NIZAM WOOLS AGNECY VS CIT*

> *In this case, the payments has been made by crossed cheques and was encashed in partners account. In our case all payments are by account payee cheques.*

> *DCIT VS PHOOLWATI DEVI*

> *In this case, the loans was given by persons who were not filing IT returns and cash was deposited in their account before issuing cheques. There was no payment of interest also. All this points are not their in our case hence, this case is not applicable to our case.*

> *SUMATIDAYAL VS CIT*

> *The fact of this case is totally different and not applicable to our case.*

In view of the above mentioned submission, your appellant requests that the alleged loan transaction amounting to Rs. 4,40,00,000/- and interest of Rs. 29,57,455/- totaling to Rs. 4,69,57,455/- be considered as genuine and be deleted from the income of the appellant as computed by the Ld. Assessing

6. Further the CIT(A) has dealt on the facts, credible evidences and submissions and granted the relief observed as under:

DECISION:

Ground No.1 is raised against the addition made of Rs. 4,40,00,000/- as unexplained cash credit u/s 68 of IT Act, 1961. The Id AO has noticed that the appellant has during the year under consideration received unsecured loans of aggregated amount of Rs. 4,40,00,000/- as under:

1 Varsha Gems 1,32,00,000/-

2 Minal Gems 2,40,00,000/-

3 Naman exports 68,00,000/-

During the appellate proceedings, the Id AR has filed detailed submissions and other relevant documents in a paper book. She has also refereed to several case laws on which they rely in support of the ground of appeal. I have carefully considered the facts of the case and submissions of the Id AR. I have also gone through the decisions relied on by the AO and Id AR. It is observed that during the assessment proceedings the appellant has filed relevant details required to prove the identity and creditworthiness of the investing companies and the genuineness of the transactions in the form of PAN, incorporation certificate, memorandum of associate, IT return copies, confirmations, bank statements, audited accounts etc as evident from the record. The Id AR has further argued that the transaction has taken place through banking channels, therefore the genuineness of the investment can not be doubted. Hence the AR argued that appellant has discharged its onus and the identity, - genuineness and creditworthiness of the four companies were proved beyond doubt. The excessive reliance on the statements given by the third-party i.e, key persons of

Bhanwarlal Jain group, whom the appellant does not know is considered to be not proper even without giving the appellant a chance to cross-examine the persons who had given such adverse statements. She further argued that addition was made without providing the appellant the corroborative evidence in the possession of the AO to prove that the appellant has paid the cash, as alleged, against the receipt of cheques. On the other hand the Id AO has believed the documents) submitted before him was engineered to explain bogus i that the those who involved in accommodation entries in an evidence(supporting investment saying organized way are meticulous in arranging the make-believe documents. He further believed that the said key-persons of Pravin Kumar Jain group have given categorical statements stating that they have involved only in bogus transactions by giving accommodation entries by giving cheques in exchange of cash through their group entities. The Id AR on the other hand argued that the AO has ignored the fact that all the statements were retracted by Bhawarlal Jain and all his associates. It is alleged that the failed to collect further information and not made any efforts to disprove the genuineness of the transactions of unsecured loans received. It is also the contention of the Id AR that the AO has failed to discuss the merits of the cases cited by the appellant company during the course of assessment proceedings.

2.4.7 In the present case before me, as seen from the details filed before the AO, as evident from the paper book, do not find any inconsistency or incoherence in respect of the receipt of the unsecured loan received from the said three concerns. Primarily, as regards the transaction, the same has routed through the banking channels and the source can not be doubted. It was held

in several cases that whatever may be the strength of presumption it cannot substitute the evidence. Even though the transaction is from a tainted group, the AO has not made any efforts to show that the transaction with the appellant firm was sham, fictitious or artificial except believing the statements given by the accommodation entry providers. He has failed to gather any evidence to show that the unaccounted cash of the appellant has changed hands consequently replacing the cheque payments. Further he has not provided the corroborative evidence or document which he relied on to the appellant and also failed to prove how the details like PAN, IT returns, audited financials, incorporation certificates, bank statements etc can not be taken note of in this regard. The Honble Mumbai ITAT in the case of Anant shelters P Ltd 20 Taxmann.com 153(2012) has laid down certain principles with regard to section 68 which the AO is bound to follow. It has observed as under:

"(i) section 68 can be invoked when following three conditions are satisfied –

(a) when there is credit of amounts in the books maintained by the assessee.

(b) such credit has to be a sum of money during the previous year (c) either the assessee offers no explanation about the nature and source of such credits found in the books or the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

(ii) The expression the assessee offers no explanation means the assessee offers no proper, reasonable and

acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material on record file. Once the explanation of the assessee is found unbelievable or false the Assessing Officer is not required to bring positive evidence on record to treat amount in question as income of the assessee. While considering the explanation of the assessee, the Assessing Officer has to act reasonably-application of mind is the sine qua non for forming the opinion.

(iii) Phrase appearing in the section - nature and sources of such credits - should be understood in right perspective, so that genuineness of the transaction can be decided on merits and not on prejudices. Courts are of the firm view that the evidence produced by the assessee cannot be brushed aside in a casual manner. Assessee cannot be asked to prove impossible. Explanation about 'source of source' or 'origins of the origin' cannot and should not be called for while making inquiry under section.

(iv) In the matters related to section 68 burden of proof cannot be discharged to the hilt - such matters are decided on the particular facts of the case as well as on the basis of preponderance of probabilities. Credibility of the explanation, not the materiality of evidences, is the basis for deciding the cases falling under section 68.

(v) Though confirmatory letters or account payee cheques do not prove that the amount in question is properly

explained for the purpose of section 68 and assessee has to establish identity and creditworthiness of the creditor as well as the genuineness of the transaction, it is also true that money received through foreign remittance with RBI approval is a strong indicator of bona fide of the cash credit that has to be disapproved only with positive evidence.

(vi) In matters regarding cash credits, the onus of proof is not a static one. As per the provisions of the section the initial burden of proof lies on the assessee. Amount appearing in the books of account of the assessee is considered a proof against him. He can prove the identity of the creditors by either furnishing their PANS or assessment orders. Similarly, genuineness of the transaction can be proved by showing that the money was received by an account payee cheque or by draft. Creditworthiness of the lender can be established by attending circumstances. Once the assessee produces evidences about identity, genuineness and creditworthiness of the lender onus of proof shifts to the revenue."

2.4.8 The Honble Apex Court in the case of Lovely Exports Pvt Ltd. 216 CTR 195(SC) 2008 held that the AO is at liberty to bring to tax the amounts in their respective hands of the investors if their identity, genuineness and creditworthiness is not proved. The AO should have made efforts to assess the amounts in the hands of the investors at least on protective basis. Even in case, the creditworthiness of the investors is not proved it will not automatically give license to the assessing authority to make additions in the hands of the recipient u/s '68 unless it is proved that it is the unexplained and unaccounted money of the appellant which has been introduced in its books of account in the name of

bogus/non-existent entities. As it is observed that, in the instant case, the AO has not made any dent on these lines. On the other hand the appellant has filed all the details and supporting documentary evidence to prove the identity, genuineness and creditworthiness of these three unsecured loan parties.

As seen from the above, the appellant has furnished all the documents and details proving conclusively the three ingredients of identity, creditworthiness of the share-applicants and the genuineness of the transaction. The amounts were paid by investors from their running bank accounts which were duly accounted in the books of the appellant as well as the investors as evident from the audited financial statements filed. These three unsecured loan lender companies have confirmed the transaction. In view of the above discussion, I hold that the unsecured loan received from these three concerns can not be doubted and addition made by the AO u/s 68 of the Act cannot survive the test of appeal. therefore direct the AO to withdraw the addition. This ground is allowed.

Ground No. 2 is connected with the ground No.1 and raised against the addition of Rs.29,57,455/- being interest paid on the above unsecured loans of Rs. 4,40,00,000/-. Since Ground no. 1 of the appellant is allowed in its favour, this ground deemed to be automatically allowed.

Aggrieved by the CIT(A) order, the revenue has filed the appeal with the Hon'ble Tribunal.

7. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the addition though

the assessee has not proved the ingredients of the Sec. 68 of the Act i.e identity, genuineness and creditworthiness of the lender and further unsecured loan transactions are in the nature of accommodation entries and the loan creditors have not responded to notice u/s 131 of the Act but only filed the confirmations and relied on the AO order and prayed for allowing the revenue appeal. Contra, the Ld. AR supported the order of the CIT(A) and substantiated the submissions with the factual paper book and judicial decisions.

8. We heard the rival submissions and perused the material on record. The grievance of the revenue that, the CIT(A) has erred in deleting the addition of unsecured loans from the three loan creditors and interest on loans. The Ld.AR submitted that the assessee has cooperated in submitting the information in the assessment proceedings, whereas the A.O has ignored the information, evidences and Audited financial statements and unilaterally made addition u/sec68 of the Act and disallowed the interest payments. The Ld. AR emphasized that the assessee has discharged its burden by submitting the

financial statements of the lenders where the payment is made through banking channel and identity, creditworthiness and genuineness of the lenders were proved in the assessment proceedings. Further the assessee has submitted the Audited financial statements, confirmations, Bank statements, copy of the income tax returns and TDS was deducted on the interest payments. Whereas the A.O has disbelieved the fact of identity, creditworthiness and genuineness of the transaction. Further to substantiate the identity of lenders, the assessee has filed the income tax PAN and return of income on the genuineness of the transaction, the assessee has submitted the bank statements and also credit worthiness is substantiated with the Audited financial statements. The information submitted by the assessee satisfied the three ingredients of provisions of Sec. 68 of the Act. The Ld.AR submitted that the assessee has substantiated the stand by submitting the details before the A.O. and discharged the burden and relied on the order of the CIT(A), factual paper book and the following judicial decisions as under:

1. *DCIT(CC) vs. Jainam Investments (ITAT, Mumbai) [I.T.A. No. 6099/Mum/2016; order dated 10.08.2018]*
2. *ACIT vs. Sumit S. Jain (ITAT, Mumbai) [ITA No.: 145/Mum/2017; order dated 12.03.2018]*
3. *DCIT vs. Manish Flour Mills Pvt. Ltd (ITAT, Mumbai) [ITA No.: 6729/Mum/2016; Order dated 24.10.2018]*
4. *Indravadan Hanjarimal Jain vs. ACIT (ITAT, Mumbai) [ITA Nos.278/Mum/2020; Order dated 08.9.2021]*
5. *ACIT vs. Neminath Associates (ITAT, Mumbai) [ITA No.: 8034/Mum/2019; Order dated 14.06.2021]*
6. *Nadiadwala Grandson Entertainment Pvt. Ltd. Vs. DCIT (ITAT, Mumbai) [ITA No.: 1492/Mum/2021] (relevant extract)*
7. *PCIT vs. Ambe Tradecorp (P.) Ltd [2022] 145 taxmann.com 27 (Gujarat)*
8. *CIT vs. Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 (Gujarat)*
9. *JCIT vs. Shalimar Housing & Finance Ltd (ITAT, Mumbai) [I.T.A. No. 4079/Mum/2019; order dated 01.06.2021]*
10. *Manibhadra Securities Services P.Ltd. vs. ITO (ITAT, Ahmedabad) [ITA NO.: 2507/Adh/2018; order dated 24.08.2022]*
11. *Shree Samruddhi Overseas Trading Co vs. DCIT (ITAT, Ahmedabad) [ITA 909/Adh/2018; order dated 19.04.2021]*

9. We find in spite of filing all the details, the A.O. has not conducted any investigation or enquiry in respect of the information submitted by the assessee. The CIT(A) has considered the facts, circumstances and observed that the assessee prima-facie has complied the ingredients required u/s 68 of the Act of identity, genuineness and creditworthiness. Further, the CIT(A) relied on the catena of judicial decisions and test checked the genuineness and creditworthiness of the lenders. The CIT(A) came to a reasonable conclusion that the assessee has discharged its burden on submitting the information in the assessment proceedings and the A.O. has failed to conduct the enquiries and the A.O should have conducted independent investigation without relying on the third party statements and facts.

10. The Ld.AR demonstrated the copy of bank statements reflecting the credits from the three parties along with other evidences at page 29 to 55 of the paper book which is not disputed by the revenue. The A.O has failed to make further enquiries and relied on the statement recorded, which was retracted subsequently and has overlooked the

factual aspects that the assessee has discharged the initial burden placed by submitting the information. We find the CIT(A) has dealt on the facts, provisions of law and judicial decisions. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information to take different view. We considered the facts, circumstances, submissions as discussed above are of the view that the CIT(A) has passed a reasoned and conclusive order. Accordingly we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

11. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 16.03.2023.

Sd/-

(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated .03.2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

(Asst. Registrar)
ITAT, Mumbai