

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Sanjay Garg, Judicial Member
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 1015/KOL/2023
Assessment Year: 2013-2014**

**Iris Clothings Limited,.....Appellant
103/24/1, Foreshore Road, Shibpur,
Howrah-711102
[PAN:AACCI6963K]**

-Vs.-

**Deputy Commissioner of Income Tax,.....Respondent
Circle-11(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
5th Floor, Room No. 21,
Kolkata-700069**

Appearances by:

*Shri Shri Sunil Surana, FCA, appeared on behalf of the
assessee*

*Shri Swapan Kumar Bera, JCIT, Sr. D.R., appeared on
behalf of the Revenue*

Date of concluding the hearing :November 23, 2023

Date of pronouncing the order :January 02, 2024

O R D E R

Per Shri Rajesh Kumar, Accountant Member:-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 06.09.2023, which is arising out of the order under

section 143(3) of the Income Tax Act, 1961 for A.Y. 2013-14 framed by DCIT, Circle-11(1), Kolkata.

2. The issue raised in Ground No. 1 is not pressed by the ld. Counsel for the assessee at the time of hearing. Therefore, the same is dismissed as not pressed.

3. The issues raised in Grounds no. 2, 3, 4 & 5 are against the confirmation of addition of ld. CIT(Appeals) of Rs.3,57,85,862/- as made by the ld. Assessing Officer under section 68 of the Act by treating the unsecured loans raised from 12 entitie/companies along with interest of Rs.17,85,862/- as unexplained cash credit under section 68 of the Act.

4. The facts in brief are that the assessee e-filed its return of income on 13.09.2013 declaring total income of Rs.52,24,330/-. The case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. During the course of scrutiny proceedings, ld. Assessing Officer observed on the basis of audited accounts and details filed by the assessee that the assessee has raised unsecured loans from twelve parties aggregating to Rs.3.40 crores during the year on which the assessee has paid interest of Rs.17,85,862/- after deduction of tax at source, which was duly deposited in the Government Treasury. The ld. Assessing Officer called upon the assessee to prove the identity,

creditworthiness of the lenders and genuineness of the transactions. Accordingly, the assessee complied with the said directions of the ld. Assessing Officer by filing copies of ITRs, Master-datas, audited financial statements, Memorandum & Article of Associations, copies of Bank statements evidencing the receipt of loan and repayment of loan, loan confirmation certificates from the lenders and copies of ledger accounts showing receipt and refund of loans alongwith interest payments and TDS deduction at source in respect of all the parties. The ld. Assessing Officer in order to independently verify the transactions of unsecured loans, issued notices under section 133(6) of the Act to twelve parties but notices were served on the six parties only and the notices were returned back from the remaining six parties. The ld. Assessing Officer made the addition on the basis of statements of three persons namely Shri Abhishek Chokani, Shri Sanjay Kumar Drolia and Shri Praveen Agarwal, which were extracted in the assessment order also. The ld. Assessing Officer simply generalized the statements in the assessment order that loans were received from the paper companies and discussed the modus operandi of these companies in the assessment order. Finally the ld. Assessing Officer, after rejecting the contention of the assessee, added the amount of Rs.3,57,85,862/- under section 68 of the Act as unexplained cash credit comprising Rs.3.40 crores on account of unsecured loans and Rs.17,85,862/- towards

interest expenses paid thereon in the assessment framed u/s 143(3) of the Act dated 13.09.2013.

5. In the appellate proceedings, ld. CIT(Appeals) simply dismissed the appeal of the assessee by upholding the observations of the ld. Assessing Officer as made in the assessment order by passing a cryptic and non-speaking order.

6. The ld. A.R. vehemently submitted before us that during the assessment proceedings, the assessee has filed the loan confirmation letters of the loan creditors, which consists of identity, PANs along with copies of Bank statements, Annual Audited Accounts etc. The ld. A.R. submitted that the assessee has paid interest on these loans and TDS was duly deducted and deposited in the Government Treasury. The ld. A.R. stated that notices were issued under section 133(6) of the Act and duly served to six parties out of twelve parties and they have duly complied with the said notices by furnishing all the information/details as called for by the ld. Assessing Officer. The ld. A.R. submitted that the ld. Assessing Officer mainly relied on the statement of Shri Abhishek Chokhani, which was, according to the ld. Assessing Officer, arranged the loans mentioned at Serial Nos. 2 & 6. The ld. Assessing Officer also relied on the statement of Shri Sanjay Kumar Drolia, who arranged the loan taken which was mentioned at Serial No. 11 and

the ld. Assessing Officer also relied on the statement of Shri Praveen Kumar Agarwal, who arranged the loan as stated at Serial No. 1. The ld. Assessing Officer observed that on the basis of these statements that the loans raised by the assessee were from paper companies and solely relied on the statements of above three individuals nonetheless these three individuals were never connected with the lender companies and nowhere has stated about the assessee-company being beneficiary of loans from these lenders. The ld. A.R. submitted that the ld. Assessing Officer has formed his opinion on the basis of three lenders, which was connected to these three persons and as regards the remaining lender companies, the ld. Assessing Officer has not stated anything as to why the ld. Assessing Officer has doubted the genuineness of the loans taken. The ld. A.R. also stated that even the money borrowed from these parties was duly repaid before the finalisation of assessment. The assessee filed the copies of their ledger account along with the bank statements highlighting the refund of loans. The ld. A.R. submitted that all these companies had substantial net worth as is evident from their audited accounts and these were not paper companies. The ld. A.R. submitted that ld. Assessing officer has not carried out any independent verification on these evidences filed by the assessee as well as by the lenders and has merely harped on the statement of three persons, namely Shri Abhishek Chokhani, Shri Sanjay

Kumar Drolia and Shri Praveen Kumar Agarwal, who were recorded under section 131 of the Act but nowhere they were connected with the loan creditors or stated the assessee as beneficiary of the accommodation entries. The 1d AR submitted that where the assessee has furnished all the evidences before the AO, the additions cannot be made merely on the ground that loan creditors have not responded the notices issued by the AO and that too on the basis of third party without allowing cross examination. Finally 1d. A.R. relied on the decisions of the Hon'ble Calcutta High Court in the case of PCIT -vs.-Sreeleathers in ITAT/18/2022 in GA/02/2022 dated 14.07.2022 and CIT -vs.- Dataware Private Ltd ITAT 263 of 2011 in in GA/2856/2011 dated 21.09.2011. The 1d. A.R. also relied on the decision of the Hon'ble Calcutta High Court in the case of Crystal Networks -vs.- CIT in ITA No. 158/2002 dated 29.07.2010 to support his arguments that that the notices were issued and returned unserved and the assessee filed all the details and evidences qua the loans raised including the names, addresses, balance-sheets, confirmations of the lenders, which were also squared up and 1d. Assessing Officer has not made any verification. The 1d. A.R. also relied on the decision of the coordinate bench of Kolkata dated 22.06.2023 in the case of Poddar Realtors -vs.- ITO in ITA No. 265/KOL/2023 for A.Y. 2013-14, wherein the decision of the Hon'ble Calcutta High Court in the case of PCIT -vs.- Sreeleathers (supra)

has been followed. The ld AR argued that the ld. A.O. has failed to carry out any meaningful and objective investigation/inquiry and has merely relied on the statements of three so-called accommodation entry operators and has failed to discharge the onus, which shifted to the revenue, after the assessee filed all the evidences. The ld. A.R., therefore, prayed that the order of ld. CIT(Appeals) may kindly be reversed and set aside and to direct the ld. Assessing Officer to delete the addition.

7. The ld. D.R., on the other hand, relied on the orders of authorities below by submitting that the assessee is beneficiary of these accommodation entries and mere furnishing all the evidences such as ITRs, Audited Statements, Loan confirmations and other documents would not automatically prove the genuineness of the transactions and creditworthiness of the creditors. The ld. D.R., therefore, relied heavily on the orders of authorities below, which are very detailed and speaking orders after discussing the facts and the modus operandi devised by the operators in this part of the country where black money is being routed in the guise of unsecured loans. The ld. DR stated that the transactions are nothing but accommodation entries and are intended for tax evasion by money laundering. The ld. D.R. finally prayed that the appeal of the assessee may be dismissed by upholding the order of ld. CIT(A).

8. After hearing the rival contentions and perusing the relevant material placed before us, we find that the assessee has raised loans from twelve entities, the details of which were given in the assessment order in para 3. We note that the assessee has also paid interest on these loans after deduction of tax at source and the details were also given in the same table. The tax deducted at source was also deposited in the Government Treasury. We would like to note that these loans were repaid through banking channel even prior to passing of the assessment order by the ld. Assessing Officer. The assessee has filed copies of ITR acknowledgments, master-data of the lenders, audited financial statements, Memorandum & Article of Associations, copies of bank statements, loan confirmations and ledgers showing receipt and refund of loans alongwith TDS details in respect of each of the lenders, which are filed in the paper book from pages no. 11 to 718. We also note that the AO issued notices under section 133(6) of the Act to twelve parties which could only be served to six parties and remaining six cases, the notices were returned back unserved. We note that the six parties, to whom notices were served, have duly responded and replied with all the requisite details. The ld. Assessing Officer has made the addition on the basis of the statements of three persons, namely Shri Shri Abhishek Chokhani, Shri Sanjay Kumar Drolia and Shri Praveen Kumar Agarwal and stated that

they have arranged the loans from four parties. The ld. Assessing Officer has disbelieved the transactions on the basis of the statements of three persons, who were stated to have arranged loans four parties mentioned at serial nos. 1, 2 & 6 and 11 and reached a generalized conclusion even on the remaining parties. The ld. CIT(Appeals) has simply dismissed the appeal of the assessee by passing a very cryptic and non-speaking order. Now the issue before us is whether the assessee has duly discharged his burden by filing the aforesaid evidences before the authorities or not. We note that the assessee has filed all the evidences qua these lenders along with their ITRs, confirmation certificates, names, addresses, PANs banking statements showing the receipt and repayment of loans alongwith their Master Data. The ld. Assessing Officer has relied only on the statements of three parties as stated above, who according to the AO have arranged the loans from four parties mentioned at serial nos. 1, 2 & 6 and 11. In our opinion, the assessee has duly discharged its onus by filing evidences before the ld. Assessing Officer and ld. Assessing Officer has acted on the basis of statements of three persons, which lacks evidentiary value in absence of any substantive and corroborative evidences being brought on records. The ld. AR stated that where the AO has any doubt about the lenders where the assessee has furnished all the evidences before the AO, then the matter should be looked into the hands of the creditors and not the

assessee. The case of the assessee is supported by the decisions of the Hon'ble Calcutta High Court which are discussed as under:

a) In the case of PCIT -vs.-Sreeleathers (supra) , the Honble Court has held as under:

“4. Before we examine the correctness of the order passed by the Tribunal and consider whether a substantial question of law arises for consideration in this appeal we need to take note of Section 68 of the Act. This provision deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. The crucial words in the said provision are “assessee offers no explanation”. This would mean where the assessee offers no proper, reasonable and acceptable explanation as regard the amount credited in the books maintained by the assessee. No doubt the Income Tax Act places the burden of proof on the tax payer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their conformations, it has been held that the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit so as to be justified in referring to Section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation with regard to the cash credit, the Assessing Officer should consider the same objectively before he takes a decision to accept or reject it. In Srilekha Banerjee &Ors. Versus CIT 4, it was held that if the explanation given by the assessee shows that the receipt is not of income nature, the department cannot convert good proof into no proof or otherwise unreasonably reject it. On the other hand, if the explanation is unconvincing, the same can be rejected and an inference shows that the amount represents undisclosed income either from a disclosed or an undisclosed source [CIT Versus Mohanakala (P) 5]. The explanation given by the assessee cannot be rejected arbitrarily or capriciously, without sufficient ground on suspicion or on imaginary or irrelevant grounds (Lal Mohan Krishna Lal Paul Versus CIT 6 and Anil Kumar Singh Versus CIT 7).

5. Further to be noted that where the assessee furnishes full details regarding the creditors, it is up to the department to pursue the matter further to locate those creditors and examine their creditworthiness. It has been further held in Sivan Pillai (AS) Versus CIT 8 that while drawing the inference, it cannot be assumed in the absence of any material that there has been some illegalities in the assessee's transaction. Thus, more importantly, as held by the Hon'ble Supreme Court in CIT Versus Daulat Ram Rawatmull 9, the onus of proving that the appellant was not the real was on the party who claims it to be so. Bearing the above legal principles in mind, if we examine the case on hand, it is clear that the

assessing officer issued show cause notice only in respect of one of the lender M/s. Fast Glow Distributors. The assessee responded to the show cause notice and submitted the reply dated 22.12.2017. The documents annexed to the reply were classified under 3 categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The assessing officer has brushed aside these documents and in a very casual manner has stated that mere filing PAN details, balance sheet does not absolve the assessee from his responsibility of proving the nature of transaction. There is no discussion by the assessing officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee has discharged his initial burden and the burden shifts on the assessing officer to enquire further into the matter which he failed to do. In more than one place the assessing officer used the expression "money laundering." We find such usage to be uncalled for as the allegations of money laundering is a very serious allegations and the effect of a case of money laundering under the relevant Act is markedly different. Therefore, the assessing officer should have desisted from using such expression when it was never the case that there was any allegations of money laundering. Paragraph 5.4 and 5.5 of the assessment order are all personal perception and opinion of the assessing officer which needs to be ignored. Much reliance was placed on the statement of Shri Ashish Kumar Agarwal, which statement has been extracted in full in the assessment order and it cannot be disputed that there is no allegation against the assessee company in the said statement. There is no evidence brought on record by the assessing officer to connect the said entry operator with the loan transaction done by the assessee. Therefore, the statement is of little avail and could not have been the basis for making allegations. The assessing officer ignored the settled legal principle and in spite of the assessee having offered the explanation with regard to the loan transaction, no finding has been recorded as regards the satisfaction on the explanation offered by the assessee. Therefore, the assessing officer ignored the basic tenets of law before invoking his power under Section 68 of the Act. Fortunately, for the assessee, CIT(A) has done an elaborate factual exercise, took into consideration, the creditworthiness of the 13 companies the details of which were furnished by the assessee. More importantly, the CIT noted that all these companies responded to the notices issued under Section 133 (6) of the Act which fact has not been denied by the assessing officer. On going through the records and the net worth of the lender companies, the CIT has recorded the factual findings that the net worth of those companies is in crores of rupees and they have declared income to the tune of Rs. 45,00,000/- and 75,00,000/-. Therefore, the assessing officer if in his opinion found the explanation offered by the assessee to be not satisfactory, he should have recorded so with reasons. We find that there is no discussion on the explanation offered by the assessee qua, one of the lenders. Admittedly, the assessee was not issued any show cause notice in respect of other lenders. However, they are able to produce the details before the CIT(A) who had in our view rightly appreciated the facts and circumstances of the case. As pointed out earlier, the assessing officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It

is not enough for the assessing officer to say so but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply dated 22.12.2017 does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender. In the absence of any such finding, we have to hold that the order passed by the assessing officer was utterly perverse and rightly interfered by the CIT(A). The Tribunal re-appreciated the factual position and agreed with the CIT(A). The tribunal apart from taking into consideration, the legal effect of the statement of Ashish Kumar Agarwal also took note of the fact that the notices which were issued by the assessing officer under Section 133 (6) of the Act to the lenders where duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the assessing officer and there is no discussion on this aspect. Thus, we find that the tribunal rightly dismissed the appeal filed by the revenue.

6. *For all the above reasons, we find that no question of law much less, substantial question of law arises for consideration in this appeal.*

7. *Accordingly, the appeal fails and is dismissed. No costs”.*

b) In the case of Commissioner of Income Tax –vs.-
M/s. Dataware Private Limited(supra):-

“After hearing the learned Advocate for the appellant and after going through the materials on record, we are of the view that no substantial question of law is involved in this appeal.

Both the Commissioner of Income Tax (Appeal) and the Tribunal below have in details considered the fact that the share application money was paid by account payee cheque, the creditor appeared before the Assessing Officer, disclosed its PAN number and also other details of the accounts but in spite of that the Assessing Officer did not enquire further from the assessing officer of the creditor but in stead, himself proceeded to consider the profit and loss account of the creditor and opined that he had some doubt about the genuineness of such account.

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

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

c) In the case of Crystal Networks (P) Limited -vs.- Commissioner of Income Tax (supra) The Hon’ble Court :-
This appeal was admitted by this Court on the following substantial questions of law :-

"I. Whether on the facts and in the circumstances of the case the Tribunal is justified in law in confirming the addition of Rs. 8,50,000/- as unexplained cash credit made by the Assessing Officer solely relying on an entry made in the order sheet which has no direct nexus with the present issue and while completely ignoring all the relevant materials and evidence available ?

II. Whether the addition of Rs. 8,50,000/- to the income of the assessee as unexplained cash credit by the Tribunal is sustainable in law and/or is not unreasonable and perverse ?"

This appeal relates to Assessment Year 1994-95. The fact of the case is summarised as follows :-

The assessee/appellant at the relevant point of time has been trading bidi and as such used to sell and distribute to various customers situated at different parts of the country. In course of business the assessee used to receive from time to time cash from the customers by way of advance. In relevant Assessment Year in the return a sum of Rs.8,50,000/- was shown to have been received cash advances. As such the deduction of the said sum from the income was sought for.

The ITO however did not accept the claim of the appellant rather added to the income and so it was assessed. It was held by the ITO that the assessee under Section 68 of the Income-tax Act, 1961 failed to establish the identity of the creditors of this cash advance. Initially the assessee was asked to bring those creditors who are alleged to have

advanced the amount of cash as against the supply of bidi. On failure of production of those creditors the summons were issued under Section 131 by the ITO. Despite issuance of summons none of the creditors turned up and even some cases summons returned back with the endorsement made by the postal authority "no such person concerned was found".

In view of such circumstances the ITO disbelieved the case of cash credit under Section 68. Hence the claim of deduction was disallowed.

The matter was taken to appeal and the Commissioner of Income-tax(Appeals) after going through the evidence and materials on record came to fact finding that there are sufficient materials to hold that the said cash credit received by the assessee was genuine and these were received as against the supply of bidi. During the same Assessment Year or subsequent Assessment Year the necessary challans, vouchers and other confirmatory letters were also considered by the CIT (Appeals). After analyzing everything the CIT (Appeals) accepted the explanation and also evidence of creditworthiness of the creditors. Hence relief was granted.

Revenue being aggrieved by the said decision approached the learned Tribunal who came to fact finding that the CIT (Appeal) has erroneously held that the summons were issued after assessment was done. Only on that ground it was held that the assessee could not establish by producing evidences that the credit was received from the various customers. As such the case of the appellant is that the cash credit was received as against sale and supply of bidi was not accepted. Hence the order of the CIT(Appeal) was reversed and order of the ITO was restored.

Despite notice no one appears for the respondent.

Assailing the said judgment of the learned Tribunal learned counsel for the appellant submits that ITO did not consider the material evidence showing credit worthiness and also other documents viz., confirmatory statements of the persons, of having advanced cash amount as against the supply of bidi. These evidences were duly considered by the CIT (Appeals). Therefore, the failure of the person to

turn up pursuant to the summons issued to any witness is immaterial when material documents made available, should have been accepted and indeed in subsequent year the same explanation was accepted by the ITO. He further contended that when the Tribunal has relied on the entire judgment of the CIT (Appeals), therefore it was not proper to take up some portion of the judgment of the CIT (Appeals) and to ignore the other portion of the same. The judicial propriety and fairness demands that the entire judgment both favourable and unfavourable should have been considered. By not doing so the Tribunal committed grave error in law in upsetting the judgment in the order of the CIT (Appeals).

In this connection he has drawn our attention to a decision of the Supreme Court in the case of UdhavdasKewalram Vs. Commissioner of Income-Tax, Bombay City reported in 66ITR 462 In this judgment it is noticed that the Supreme Court as proposition of law held that the Tribunal must in deciding an appeal, consider with due care, all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law.

We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter creditworthiness. As rightly pointed out by the learned counsel that the CIT (Appeal) has taken the trouble of examining of all other materials and documents viz., confirmatory statements, invoices, challans and vouchers showing supply of bidi as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued in our view is not important. The important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or not. When it was found by the CIT (Appeal) on fact having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this fact finding. Indeed the Tribunal did not really touch the aforesaid fact finding of the CIT (Appeal) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 463, the Supreme Court has observed as follows :-

"The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act. It is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law."

The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at

page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.

Taking inspiration from the Supreme Court observation we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the CIT (Appeals). We also found no single word has been spared to up set the fact finding of the CIT (Appeals) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.

Hence the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the CIT (Appeal). The appeal is allowed.

There will be no order as to costs”.

d) ITAT, Kolkata in the case of Poddar Realtors -vs.- ITO has decided as under after following the decision of the Hon'ble Calcutta High Court in the case of *Pr.CIT vs. Sreeleathers (supra)* :-

“8. In view of the above facts, the reliance placed by the Ld. Counsel for the assessee on the decision of the jurisdictional Calcutta High Court in the case of Pr.CIT vs. Sreeleathers (supra) is found to be applicable, wherein on similar facts and circumstances, the Hon'ble Court had held as follows:

“Section 68 of the Income-tax Act, of 1961, deals with cash credits. It states that where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to Income-tax as the income of the assessee of that previous year. The crucial words in the provision are “the assessee offers no explanation”. This would mean that the assessee offers no proper, reasonable and acceptable explanation as regards the amount credited in the books maintained by the assessee. No doubt the Act places the burden of proof on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their confirmations, the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit to be justified in referring to section 68 of the Act. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation

concerning the cash credit, the Assessing Officer should consider it objectively before he decides to accept or reject it. Where the assessee furnishes full details regarding the creditors, it is up to the Department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there have been some illegalities in the assessee's transaction.

Held, dismissing the appeal, that the allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued a show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that merely filing the permanent account number details, and balance sheet did not absolve the assessee from his responsibility of proving the nature of the transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted onto the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68."

9. As noted earlier, the loan was repaid in 2014-15 and, therefore, the allegation of the AO that assessee was a beneficiary of the loan cannot be sustained on these facts and is liable to be deleted. We gainfully refer to the judgment of the Hon'ble Gujarat High Court in the case of PCIT vs. AmbeTradecorp (P.) Ltd (supra) where it has been held as follows:

"The Tribunal rightly recorded in para 29 of the judgment. "Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries being carried out in the later years. Thus, in the given facts and circumstances, were hold that there is no infirmity in the order of the Ld. CIT(A)."

10. We, therefore, under the given facts and circumstances of the case, are of the considered view since the assessee has successfully discharged its onus of proving the identity of the loan creditor, which in the instant case duly registered with Ministry of Corporate Affairs, having PAN and had filed return of income as well. Further creditworthiness of the transaction is proved with the fact that they have been carried through banking channel and sufficient funds were available with the loan creditors to explain the amount of loan given and the genuineness of the transaction is proved with the fact that the assessee company is carrying out regular business activity and the loan was obtained at commercial rate of interest which was also repaid at a later date in subsequent year, interest was paid on the loans and tax at source has been deducted and duly reflected by the loan creditor in their income tax return. Therefore, we fail to find any justification in the action of ld. AO invoking the provisions of Section 68 of the Act. We, thus, set aside the finding of ld. CIT(A) and delete the addition of Rs.25,00,000/- made u/s 68 of the Act”.

9. In all the aforesaid decisions, it has been held by the Hon’ble Courts and also by the Coordinate Bench of this Tribunal, where the assessee has filed all the evidences concerning transactions to establish the identity and creditworthiness of the lenders and to prove the genuineness of the transactions and the ld. Assessing Officer has not carried out any further verification, the addition cannot be made in the hands of the assessee. The AO must examine the issue in the cases of creditors and make the addition there and not in the hands of the assessee. The assessee has discharged its initial burden and the burden shifted on the Assessing Officer to enquire further into the matter by filing the evidences, which he failed to do. Accordingly, we set aside the order of ld. CIT(Appeals) and direct the ld. Assessing Officer to delete the addition.

10. In the result the appeal of the assessee is allowed.

Order pronounced in the open Court on 02/01/2024.

Sd/-

Sd/-

**(Sanjay Garg)
Judicial Member**

**(Rajesh Kumar)
Accountant Member**

Kolkata, the 2nd day of January, 2024

Copies to : (1) Iris Clothings Limited,
103/24/1, Foreshore Road, Shibpur,
Howrah-711102

(2) Deputy Commissioner of Income Tax,
Circle-11(1), Kolkata,
AayakarBhawan,
P-7, Chowringhee Square,
5th Floor, Room No. 21, Kolkata-700069

(3) Commissioner of Income Tax(Appeals),
National Faceless Appeal Centre (NFAC), Delhi;

(4) *Commissioner of Income Tax-;*

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.