



आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA Nos. 872 to 875 & 901/JP/2024  
निर्धारण वर्ष/Assessment Years : 2012-13 to 2016-17

Income Tax Officer, Jaipur	बनाम Vs.	Kedia Builders and Colonizers Pvt. Ltd., A-6-10, Shyam Nagar, Benad Road, Nadi Ka Phatak Jhotwara, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCA 4547 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sidharth Ranka  
Sh. Saurav Harsh

राजस्व की ओर से / Revenue by : Mrs. Anita Rinesh, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 29/01/2025

उदघोषणा की तारीख / Date of Pronouncement: 11/03/2025

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These bunch of five appeals are filed by the revenue because revenue aggrieved from the order of National Faceless Appeal Centre, Delhi [ for short 'NFAC] for the assessment years 2012-13 to 2016-17 dated 18.04.2024, 16.04.2024 & 17.04.2024. The said order of the Id. CIT(A), NFAC arise as against the order dated 23.12.2019, 18.12.2019,

13.12.2019, 24.12.2019 & 15.12.2019 passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 [ for short Act ] by ACIT & DCIT, Circle-04, Jaipur [ for short AO ].

As these appeal relates to one assessee listed together for hearing and were heard together therefore, same are disposed off by this common order.

2.1 In ITA No. 872/JP/2024 the revenue has raised the following grounds;

1 Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s 147 of the Act ignoring that the case was reopened as per provisions of clause (c) of explanation 2 to section 147 of the Act and with the approval of Principal Commissioner of Income-tax? Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s147 of the Act without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission for taking accommodation entry?

2 Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s 147 of the Act ignoring that the reason to belief of the AO is founded on information which has been received by the AO after completion of assessment, which is a sound foundation for exercising power u/s 147 r.w.s 148?

2.2 In ITA No. 873/JP/2024 the revenue has raised the following grounds;

1 Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s 147 of the Act ignoring that the case was reopened as per provisions of clause (c) of explanation 2 to section 147 of the Act and with the approval of Principal Commissioner of Income-tax? Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s147 of the Act without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission for taking accommodation entry?

2 Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s 147 of the Act ignoring that the reason to belief of the AO is founded on information which has been received by the AO after completion of assessment, which is a sound foundation for exercising power u/s 147 r.w.s 148?

2.3 In ITA No. 874/JP/2024 the revenue has raised the following grounds;

1 Whether on the facts and in the circumstances of this, the Id. CIT(A) is justified in deleting the addition of Rs. 1,69,00,228/- ignoring that various beneficiary companies have routed their unaccounted income through M/s Everstrong Enclave Pvt. Ltd, M/s oversure Enterprises Pvt. Ltd., M/s Sankatharan Marketing Pvt. Ltd & M/s Trilokpati Dealmark Pvt. Ltd, in the form of loans and advances during the F.Y. 2014-15 and Bank Account of these companies was used for layering of unaccounted fund in the form of loans and the assessee was one of such beneficiary? Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the additions made by AO without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission and for taking accommodation entry? Whether the decision of Ld. CIT(A) is perverse on the facts in holding that this.

2.4 In ITA No. 875/JP/2024 the revenue has raised the following grounds;

1 Whether on the facts and in the circumstances of this, the Id. CIT(A) is justified in deleting the addition of Rs. 2,82,00,721/-ignoring that various beneficiary companies have routed their unaccounted income through M/s Giridhan Vintrade Pvt. Ltd, M/s Marubhumi Marcom Pvt. Ltd., M/s Premkunj Commodtrade Pvt. Ltd & M/s Subhvani Niwas Pvt. Ltd, in the form of loans and advances during the F.Y. 2015-16 and Bank Account of these companies was used for layering of unaccounted fund in the form of loans and the assessee was one of such beneficiary? Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the additions made by AO without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission and for taking accommodation entry?

2 Whether the decision of Ld. CIT(A) is perverse on the facts in holding that this transaction of Rs. 2,82,00,721/-with M/s Giridhan Vintrade Pvt. Ltd. M/s Marubhumi Marcom Pvt. Ltd., M/s Premkunj Commodtrade Pvt. Ltd & M/s Subhvani Niwas Pvt. Ltd, is genuine despite accepting that these companies are engaged in some suspicious activity and indulged in illegal activity and ignoring that the foundation of the addition made by the AO is the admission of Shri Mukesh Banka, an accommodation entry provider of Kolkatta vide his statement

recorded u/s 131/132(4) of the Act on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies?

## 2.5 In ITA No. 901/JP/2024 the revenue has raised the following grounds;

1 Whether on the facts and in the circumstances of this, the Id. CIT(A) is justified in deleting the addition of Rs. 1,75,00,364/- ignoring that various beneficiary companies have routed their unaccounted income through M/s Bhagwat Marcom Pvt. Ltd, M/s Coolhut Marketing Pvt. Ltd, M/s Gabarial Tieup Pvt Ltd, M/s Neelgagan suppliers Pvt Ltd, M/s Outlook Vintrade Pvt Ltd, M/s Subhrashi Enclave Pvt Ltd and M/s Viewmore Developers Pvt. Ltd, in the form of loans and advances during the F.Y. 2013-14 and Bank Account of these companies was used for layering of unaccounted fund in the form of loans and the assessee was one of such beneficiary? 2. Whether on the facts and circumstances of this case, the Ld. CIT(A) is justified in deleting the additions made by AO without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission and for taking accommodation entry?

2 Whether the decision of Ld. CIT(A) is perverse on the facts in holding that this transaction of Rs. 1,75,00,364/- with M/s Bhagwat Marcom Pvt. Ltd, M/s Coolhut Marketing Pvt. Ltd, M/s Gabarial Tieup Pvt Ltd, M/s Neelgagan suppliers Pvt Ltd, M/s Outlook Vintrade Pvt Ltd, M/s Subhrashi Enclave Pvt Ltd and M/s Viewmore Developers Pvt. Ltd, is genuine despite accepting that these companies are engaged in some suspicious activity and indulged in illegal activity and ignoring that the foundation of the addition made by the AO is the admission of Shri Mukesh Banka, an accommodation entry provider of Kolkatta vide his statement recorded u/s 131/132(4) of the Act on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies?

3. We note that in ITA Nos. 872 & 873/JP/2024 for A.Ys 2012-13 & 2013-14 revenue challenges the finding of the Id. CIT(A) on technical ground and therefore first we take up these two appeals taking the appeal no. ITA no. 872/JP/2024 as lead case.

4. The brief facts related to that lead case are that the assessee e-filed his return of income on 06.09.2012 declaring total income of Rs. 28,100/-.

The case was completed u/s 143(3) on 27.03.2014 at income of Rs. 28,100/-. Later, based on information available on record notice u/s 148 was issued on 26.03.2019 after recording reasons to believe that income has escaped assessment. Accordingly, the notice was issued after taking necessary approval from Principal Commissioner of Income Tax [ PCIT ] u/s 151 of the Act.

5. In response thereof, the assessee filed his return of income on 13.09.2019 at total income of Rs.28,100/- Thereafter notices u/s 143(2) & 142(1) was issued which were duly served upon the assessee through ITBA portal. The assessee derives income from construction and sale building.

6. The case was reopened because of information received by the revenue that the assessee has taken bogus share application / premium from shell / dummy / paper companies and introduced his own unaccounted cash by routing it through a web of dubious companies and suspicious transactions. Ld. AO noted that the assessee has received an accommodation entry in the form of bogus share application/ premium from the companies managed and controlled by Shri Mukesh Banka. In replies, the assessee had objected saying that in correspondence from the Id. AO

refers a word "unsecured loans" has been mentioned instead of share application/ premium. However, it is worth mentioning that even if it is share application/ premium and not unsecured loan, the fact that the investor is a dummy or shell company remains unchanged. Ld. AO noted that for the year under consideration the assessee has received share application / premium from the following parties:

Sr. No.	Name of parties	Amount Rs.
1.	M/s. Agarani Credit and Finvest P. Ltd.	25,00,110/-
2.	M/s. Darshan Enclave Private Limited	15,00,055/-
3.	M/s. Harshratna Investment Pvt. Ltd.	25,00,110/-
4.	M/s. Shareen Hire Purchase Pvt. Ltd.	25,00,110/-

The assessee was required to prove the identity and credit worthiness of the above parties and genuineness of the transaction. The assessee was given ample opportunities and time to provide the required information.

7. The assessee was required to prove identity and creditworthiness of above parties and genuineness of the transaction. The assessee was given ample opportunities and time to provide required information. The Id. AO after detailed discussion based on the investigation wings findings or information noted that none of the above companies has capacity or source

to invest such a huge amount with the assessee and therefore, he noted that creditworthiness of the lender companies remains questionable.

8. Having noted so Id. AO issued notices u/s. 133(6) to that investor company to provide the information. Ld. AO noted that out four note single one has replied that notice so issued. To verify the physical existence of the above entities, a report was sought from the office of the DDIT Kolkata. The Inspector was required to visit the address of lenders companies and to report regarding their whereabouts. The inspector so deputed reported that he has visited the above companies but no evidence of the above-mentioned companies was found at the said address. Even the local enquiry conducted so it was gathered that the person to whom asked were not knowing of these companies. The Id. AO issued also summons to the directors of the companies but no one appeared.

9. Considering that aspect of the matter the assessee was given various opportunities to prove identity, genuineness and creditworthiness of the lenders vide show cause notice dated 18.12.2019. The assessee submitted their reply on 19.12.2019. The Id. AO noted that the reply of the assessee was considered but was not acceptable since in the field enquiry conducted by the Id. AO, identity of the lenders and their whereabouts cannot be proved. The inspector deputed by the concerned authority reported that the

lenders do not have any existence at the given address. The assessee repeatedly submitting that the transactions were genuine as the same are made through banking channel. The plea taken by assessee was not tenable because merely bank entries do not make the transaction genuine. Therefore, Id. AO further relying on the decision of Hon'ble Delhi High Court in Commissioner Of Income Tax vs Nr Portfolio Pvt Ltd., stated that the assessee has not proved the Identity, creditworthiness or genuineness of the transaction. Merely showing that the transaction was through banking channels or by account payee instrument cannot tantamount to satisfactory discharge of onus. Ld. AO even noted that the assessee could not establish the creditworthiness of the lenders because the return income of the lenders is almost nil or very low as compared to investments made by them. No evidence with respect to source of such investment were either furnished by the assessee or the lender. It has been held that merely proving the identity of the lenders does not discharge the onus of the assessee, if the capacity or creditworthiness has not been established.

10. Ld. AO further noted that the information related to beneficiaries identified from Banka Group of cases [date of search 21.05.2018] has been received from the DDIT(Inv.), Unit-1(3), Kolkata vide letter No. 8851 dated 01.03.2019. As per information, a search & seizure/survey action in the



case of Banka Group was conducted on 21.05.2018. Based on the findings gathered and subsequently information brought on records and after scrutinized of the same, it is found that Shri Mukesh Banka is the key & controlling person of alleged companies, who looks after day to day financial affairs and provides accommodation entry to various beneficiaries. During the course of post search proceedings Shri Mukesh Banka has categorically accepted that these all are dummy/shell companies which are managed by me to provide accommodation entries. Shri Mukesh Banka has also accepted that the main purpose of the above companies in which played key role to providing accommodation entries in the nature of bogus share application or in other forms. Following the lead as obtained from the statements of Shri Mukesh Banka and the materials seized during the course of search operation, the bank accounts of the paper/shell companies, controlled and managed by Shri Mukesh Banka was requisitioned from respective banks and were analyzed. On verification of the same, various beneficiaries have been identified who have obtained accommodation entry in the nature of bogus share application/premium or in other forms, from the paper/shell companies of Banka Group. Further, the financial analysis of above paper/shell companies has been carried out to ascertain their financial creditworthiness. The company wise details of

such financial analysis reveals that no profit accumulation in the company(s) across various financial years, most of the companies have shown income under the head 'Other Income' which shows that these companies have no actual business activities and only getting interest income under the head 'Other Income' for providing bogus share application to different beneficiaries. The admission of Shri Mukesh Banka vide his statement recorded u/s 131/132(4) of the Income Tax Act, 1961 on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies, controlled and managed by Shri Mukesh Banka. The directors of these companies are dummy directors of Shri Mukesh Banka as per the statement of Shri Mukesh Banka recorded u/s 132(4) of the Income Tax Act, 1961 on 19.07.2018. These companies were found to be non-existent as per enquiry made by Inspector of Income Tax. Further, during the course of analysis and examination of the bank statements of paper/shell companies of Banka Group, the entire scheme of arrangement regarding the withdrawal of cash from various bank accounts of paper/shell companies of Shri Mukesh Banka was clearly established and substantiated. These findings got further authenticated from the statements of Shri Mukesh Banka about the pattern of cash withdrawals from his various companies. Huge withdrawal of cash from the bank accounts of

above companies of Banka Group clearly establish the fact that withdrawal of unaccounted cash was one of the main features of modus operandi of Banka Group. The assessee company is one of the beneficiaries who has taken accommodation entry in the form of bogus share application/premium or in other forms from the following dummy/shell companies which were controlled & managed by Shri Mukesh Banka.

11. Based on the detailed observation Id. AO added a sum of Rs. 90,00,385/- being the share application money from these companies as unexplained income of the assessee company as per provision of section 68 of the Act. The Id. AO also added a sum of Rs. 3,25,010/- being the commission of 2.5% commission for obtaining this accommodation entry.

12. Aggrieved from the order of the National Faceless Assessment Center, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the grounds raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here below:

“5.19 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. It is seen that the AO has satisfied himself that appellant had taken accommodation entry in the shape of unsecured loans. The appellant raised objections before AO against such reasons wherein it was categorically contended that appellant had not taken any unsecured loans from any of the party mentioned in the list and in fact some of companies had subscribed to its share capital for which the necessary verification has already been done in the assessment completed u/s 143(3) of the Act. It has been settled by various courts that when no addition is made in respect to the reason for which the satisfaction is reached in the reasons recorded before issue of notice u/s 148 of the Act, then the Ld. AO had no jurisdiction to make any other addition i.e. to go beyond the

jurisdiction assumed by issue of notice u/s 148 of the Act. The Hon'ble jurisdictional Rajasthan High Court in the case of Ram Singh 306 ITR 343 has held as under-

*"28. If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under section 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment and which has come to his notice subsequently, in the course of proceedings under section 147*

*29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."*

5.20 It is also seen that the Hon'ble jurisdictional High Court in the case of M/s Prime Chem Oil Ltd. Vs. ACIT in DBITA No. 220/2017 vide order dt. 17.4.2018 has also expressed the same view. The Hon'ble Bombay High Court recently in the case of Arvind Sahdeo Gupta Vs ITO in Writ Petition No. 4793 of 2021 Date of Judgement/Order: 08/08/2023 Related Assessment Year: 2013-14 has held that if the reasons for re-opening the assessment are based on incorrect facts or conclusions, the notice issued under section 148 of the income Tax Act for re-opening cannot be sustained. The Hon'ble High Court has held as under:-

*"14] It is also to be noted that by issuing subsequent notice, the ITO has sought further information from the petitioner which information does not form the basis of the reasons assigned for re-opening the proceedings. This is clear from the notice dated 24/8/2021. The Division Bench in Nivi Trading Limited (supra) has held that if further details are sought or some verification is proposed by the officer, same cannot be a substitute for the reasons that have led the Assessing Officer to believe that an income chargeable to tax has escaped assessment.*

*15] From the aforesaid, it is clear that the notice dated 24/3/2020 issued under Section 148 of the Act of 1961 seeking reopening of the assessment is based on incorrect facts. The objections raised by the petitioner pointing out the relevant facts including the proper Assessment Year to which the said transaction pertained being Assessment Year 2012-13 coupled with the fact that the amount of Rs 9,90,314/- that was stated to be the amount being profit from the sale of shares*

*having been explained to be the amount of loss, the objections having been decided without any speaking order and not dealing with the undisputed factual aspects leads to the conclusion that the re-opening of the assessment is without there being any reason to believe that the income has escaped assessment in these facts, the notice dated 24/3/2020 suffers from fundamental factual errors. An exceptional case thus having been made out to interfere in exercise of writ jurisdiction, the impugned notice dated 24/3/2020 issued under Section 148 of the Act of 1961 is quashed and set-aside. Consequentially, further steps taken by the respondents based on said notice would no longer survive.”*

5.21 The Hon'ble Bombay High Court in the case of Punia Capital Pvt. Ltd Vs ACIT in Writ Petition No. 1091 of 2022 Date of Judgement/Order: 15/02/2023 Related Assessment Year: 2015-16 held as under: Analysed Section 147 of the IT Act and noted that, if the Respondent had reason to believe in any A.Y. that any income chargeable to tax had escaped assessment, the Respondent may assess or reassess such income, as well as any other income chargeable to tax, which had escaped assessment and which came to its notice subsequently in the course of the proceedings, subject to the provisions of Sections 148 to 153 of the IT Act. The Hon'ble High Court further noted that, if an assessment under Section 143 (3) has been made for the relevant A.Y.. no action shall be taken under Section 147 of the IT Act after the expiry of four years from the end of the relevant A.Y. unless any income chargeable to tax has escaped assessment for such A.Y. by reason of failure on the part of the Petitioner to disclose fully and truly all material facts necessary for its assessment for that assessment year. The Hon'ble High Court observed that, the Respondent had reopened the assessment solely on the basis of "reason to believe" and not on the grounds of failure to disclose material facts fully and truly, which would have required satisfaction on the part of the Respondent, particularly since the re-opening pertained to a period beyond four years, the Hon'ble High Court relied on the judgment in its earlier matter of Hindustan Lever Ltd. v. R.B. Wadkar, Assistant Commissioner of Income-tax [Writ Petition No. 1504 of 2003 dated February 25, 2004], wherein, the Court set aside the notice issued under Section 148 of the IT Act, on the grounds that the Revenue Department had not stated that there was failure on the part of the assessee to disclose fully and truly the material facts necessary for the assessment, without touching upon any of the other grounds. The Hon'ble High Court held that, the Respondent's manner of proceeding reflects a complete non-application of mind, which does not satisfy the jurisdictional condition required under Section 147 of the IT Act.

5.22 The Hon'ble ITAT Delhi in the case of Madan Mohan Tiwari Vs ITO (ITAT Delhi) Appeal Number: ITA No. 6925/Del/2018 Date of Judgement/Order 06/10/2021 Related Assessment Year: 2008-09 has held as under-

*“.....However, in this case, despite, it was brought to the knowledge of the Assessing Officer that the information on the basis of which he has formed belief of escapement of some of the assessee, was wrong, still the Assessing Officer proceeded to frame the assessment on the basis of the aforesaid wrong*

*information which was basis for formalion of his belief. Under these circumstances, it cannot be said that the Assessing Officer has proceeded in accordance with low. Framing of the assessment on the basis of information, which was wrong information to the very knowledge of the Assessing Officer, in our view, cannot be held to be justified, nor the same can be said to be an information to form the belief that the income of the assessee has escaped assessment. The reassessment framed on the basis of such wrong information and wrong belief is not sustainable in the eyes of law and the same is hereby quashed."*

5.23 The fact that the AO mentioned unsecured loan in the reasons for reopening shows that he mechanically issued notice under section 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation) without proper application of mind and independent analysis and investigation. I find that the scrutiny assessment was completed u/s 143(3) on 27.03.2014 in the case of the appellatant for the A.Y 2012-13 wherein all the information related to the share capital had been provided by the appellatant and after due application of mind, the assessment order was passed.

5.24 Section 147 of the Act reads as under.

*"147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)*

*Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure<sup>66</sup> on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year*

*Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.*

*....."*

5.25 Therefore, as laid down in the first proviso to section 147, the AO had to establish failure on the part of appellatant to disclose fully and truly all material fact necessary for assessment which is a pre-requisite for issue of notice u/s 148



beyond 4 years. In the instant case, I find that the AO had failed to establish any failure on the part of appellant to disclose fully and truly all material fact necessary for assessment. It is seen that this fact was brought to the notice of the AO through objections filed during the reassessment proceedings, the AO vide order dt. 25.11.2019 disposing the objections raised, stating that the assessment u/s 143(3) of the Act is completed on 28.03.2016 and notice issued on 18.03.2019 which is within four years from the end of the relevant year in which assessment is completed. Therefore, the AO wrongly has changed the time limit from 'four years from the relevant assessment year to 'four years from the end of the relevant year in which assessment is completed'.

5.26 The Hon'ble Supreme Court in the case of ACIT vs Marico Ltd. has dismissed SLP filed by the department and confirmed the decision of Bombay High Court. The Hon'ble High Court at para 12 observed as under:

*"Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised the query dated 25 september 2017 during the assessment proceedings and the petitioner had responded to the same by its letters dated 10December 2017 and 21 December 2017 justifying its stand. The non rejection of explanation in the Assessment order would amount to the Assessing officer accepting the view of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated 27 March 2019 is quashed and set aside."*

5.27 I find that various courts have settled that the AO cannot reopen concluded assessment merely to re-examine any transaction for non-application of his mind on the materials already with him. In the case of Germini Leather Stores v. ITO [1975] 100 ITR 1, the Hon'ble Supreme Court held:

*"After discovery of the primary facts relating to the transactions evidenced by the drafts it was for the officer to make the necessary enquiries and draw proper inference as to whether the amounts represented by the drafts could be treated as part of the total income of the appellant. This the officer did not do. It was plainly a case of oversight and it could not be said that income chargeable to tax had escaped assessment by reason of the omission or failure on the part of the appellant to disclose fully and truly all material facts. He could not, thereafter, take recourse to Section 147(a) to remedy the error resulting from his own oversight."*

5.28 In the case of Calcutta Discount co. v. ITO (1961) 41 ITR 191, the Hon'ble Supreme Court held that once the assessee disclosed all primary facts, his duty ends and it is for the AO to draw conclusion from the same:

*"Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all*

*the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else far less the assessee to tell the assessing authority what inferences-whether of facts or law should be drawn."*

5.29 In the case of ITO v. Nawab Mir Barkat Ali Khan Bahadur (1974) 97 ITR 239, the Hon'ble Supreme Court held:

*"The High Court was right in holding that the Income Tax officer had no valid reasons to believe that the respondent had omitted or failed to disclose fully and truly all material facts and consequently had no jurisdiction to reopen the assessments for the four years in question. Having second thoughts on the same material does not warrant the initiation of a proceeding under sec. 147 of the Income Tax Act, 1961. Mr Manchanda, learned counsel for the appellant, took us through several sections of Mulla's Principles of Mohammedan Law including sec. 268 and submitted that in the circumstances of the case it must be presumed that the three ladies were the legally wedded wives of the respondent. The law has not changed since the original assessments were made and it was open to the Income Tax Officer to make that presumption at the time. If he should have but did not do so then, he cannot avail of sec. 147 to correct that mistake."*

5.30 Perusal of the original assessment u/s. 143(3) was passed vide order dated 27.03.2014 reveals that the AO had made complete verification of details and records furnished including details in respect of share capital. The judicial principle as set out in the judgement of the Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. (41 ITR 191) wherein the Apex Court had held as follows: -

*"Both the conditions, (1) the income-tax officer having reason to believe that there has been under-assessment and (u) his having reason to believe that such under-assessment has resulted from nondisclosure of material facts, must co-exist before the Income-tax officer has jurisdiction to start proceedings after the expiry of four years"*

5.31 In summing up, in the present case, I find that the AO has formed the reason to believe that the appellant had taken accommodation entry in the shape of unsecured loans. The appellant had raised objections against such reasons recorded wherein it was categorically contended by the appellant that it had not taken any unsecured loans from any of the party mentioned in the list and in fact all these companies had subscribed to its share capital. The reassessment order was passed wherein the addition was made of the said amount by holding the same as unexplained share application money/share premium when the AO had treated it as unsecured loan in reasons for reopening. Further, I find that the scrutiny assessment was originally completed u/s 143(3) of the Act on 27.03.2014 in the case of the appellant for the A.Y 2012-13 wherein all the information related to the share capital had been provided by the appellant and after due application of mind,



the assessment order was passed. In view of the above facts and discussion, and respectfully, following the various judicial decisions including the Hon'ble Supreme Court as discussed above, I am of the considered view that reopening and subsequent reassessment u/s 147 of the Act was not valid and the same is quashed. The appeal on Ground No 1 to 1.3 are thus allowed.

1. In view of the above decision on Ground No 1 to 1.3, appeal on Ground No 2 to 2.4, 3, 4 and 5 have become infructuous and no further adjudication is required on merits.

1. As the result, the appeal is allowed.”

13. Feeling dissatisfied from the above finding of the Id. CIT(A), the revenue has challenged the finding so recorded in that order of the Id. CIT(A) raising the ground that the Id. CIT(A) instead of dealing with the technical ground should have dealt with the merits of the case.

Ld. DR vehemently referring a to chart [ reproduced herein below] submitted that the when the assessment completed no such information was available with the Jurisdictional Assessing officer (JAO). Information was received based on the detailed search conducted on the Banka Group by revenue. In that search revenue received various information including the fact that the assessee also benefited of the bogus entry providing activity of the Banka Group. Therefore, proposal for remedial action was after the search and it was tangible material based upon which the reopening of was done. The Id. AO after analyzing the information proposal was mover for action u/s. 148 which was got approved as per provision of

section 151 of the Act. In the assessment proceeding Id. AO deputed inspector and a letter was served for calling for information both suggest that the companies are shell companies and therefore, the addition made after detailed investigation and the Id. CIT(A) has not appreciated this facts and allowed the appeal of the assessee on technical ground only. Ld. AO also deal with the objections so filed by the assessee and therefore, the assessment proceeding has been conducted in all fair manner following guideline given by the apex court in the case of GKN Drive Shaft case. Based on the written submission, detailed investigation and arguments placed on record Id. DR vehemently argued that the appeal of the assessee is required to be decided on merits by the Id. CIT(A) which has been decided merely on the technical ground and that is not correct and that is why the revenue is in appeal. Ld. DR in support of the grounds so taken Id. DR filed a detailed event chart and a detailed supportive paper book which reads as under:

S.No	Date	Detail	P/B Page No.
1.	06.09.2012	ITR Filed	1
2.	21.05.2018	Search conducted on Mukesh Banka group	2-6
3.	07.03.2019	Information received	7-11
4.	19.03.2019	151 Proposal	12-23

5.	26.03.2019	Approval U/S 151	24
6.	26.03.2019	148 issued	25
7.	04.07.2019	142(1) issued no ITR was filed by assessee	26-27
8	04.09.2019	133(6) Shareen Hire Purchase	28-29
9.	04.09.2019	Darshan Enclave Put	30-31
10.	06.09.2019	Harsharatna Finance and Amp 133(6) Issued	32-33
11	09.09.2019	142(1) To Assessee	34-36
12.	13.09.2019	ITR filed assessee requested for reason reliance placed on GKN	37-39
13	23.09.2019	143(2) issued	40
14	26.09.2019	Reasons were provided to assessee electronically	41
		Vide ITBA/AST/F/17/2019-20/1018317741(1) (First Page Only)	
16.	06.11.2019	131 Director Harshratna	42
17	06.11.2019	131 Director Darshan Enclave	43
18	07.11.2019	131 Director Shareen Hire Purchase	44
18.	07.11.2019	Assessee filed part reply	45-47
19.	Nil	Assessee filed objection	48-53

20.	25.11.2019	Objection disposed of vide ITBA/AST/F/17/2019- 20/1021044152(1)	54-56
21.	27.11.2019	Assessee made part submission	57-58
22.	18.12.2019	Show Cause	59-62
23.	19.12.2019	Assessee filed part reply	63-64
24.	20.12.2019	Assessee filed part reply	65
25.	23.12.2019	142(1) ITBA/AST/F/2019-	66 - 67
	21.12.19	20/1022819106(1)	
27.	25.11.09	A.O Passed	

14. In addition, Id. DR on 23.01.2025 also filed a detailed written submission which reads as under;

Respected Members of the Hon'ble Tribunal,

The following submission is presented on behalf of the Revenue in the case of Kadia Builders and Colonizers P. Ltd. regarding the validity of reassessment initiated under Section 148 of the Income Tax Act, 1961, and the assessee's failure to challenge the same in accordance with the guidelines established by the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [(2003) 259 ITR 19 (SC)]:

#### 1. Background of the Case

A search and seizure action in the case of Mukesh Banka was conducted on 21/05/2018. During the search and post-search verification, Shri Mukesh Banka admitted that he was controlling various shell/paper companies for the purpose of providing accommodation entries to route unaccounted income and provide bogus

accounts for non-existent transactions. For this purpose, a number of bank accounts were opened in other forms. Following the leads obtained from the statements of Shri Mukesh Banka and the materials seized during the course of the search operation, the bank accounts of the paper/shell companies controlled and managed by Shri Mukesh Banka were requisitioned from respective banks and analyzed by the department. On verification of the bank accounts of paper/shell companies of the Banka Group, various beneficiaries were identified who had obtained accommodation entries in the nature of bogus unsecured loans or in other forms.

### 1.2 Financial Analysis of Paper/Shell Companies

The financial analysis of such paper/shell companies of the Banka Group from which such beneficiaries were identified revealed various noticeable points, such as:

1. No Profit Accumulation: The companies showed no profit accumulation across various financial years.
2. Zero Turnover: No actual business was conducted by these companies as they reported zero turnover.
3. Income from 'Other Income': Most of the companies showed income under the head "Other Income," indicating that these companies had no actual business activities and only earned interest income by providing bogus unsecured loans to different beneficiaries.
4. Admission by Shri Mukesh Banka: In statements recorded u/s 131/132(4) of the Income Tax Act, 1961 on 30.05.2018 and 19.07.2018, Shri Mukesh Banka admitted that these companies are paper/shell companies controlled and managed by him.
5. Dummy Directors: The directors of these companies were dummy directors controlled by Shri Mukesh Banka.
6. Non-Existence: Enquiries conducted by the Income Tax Inspector revealed that these companies were found to be non-existent at their registered addresses.

### 1.3 Scheme of Cash Withdrawal

During the analysis and examination of the bank statements of paper/shell companies of the Banka Group, the entire scheme of cash withdrawal from various bank accounts of these companies was clearly established and substantiated. The pattern of huge cash withdrawals supported the statement of Mukesh Banka that withdrawal of unaccounted cash was a main feature of the modus operandi of the Banka Group.

### 1.4 Information from DDIT(Inv.), Unit-4(2), Kolkata

An additional credible source of information was received from the DDIT(Investigation), Unit-4(2), Kolkata, related to companies such as M/s Sansakar Business Pvt Ltd, M/s Zenstar Business Solutions Pvt Ltd, M/s Subhshree Business Solutions Pvt Ltd, M/s Sunbright Securities Pvt Ltd, M/s S.A Securities Pvt Ltd, and M/s Wipro Suppliers Pvt Ltd. These companies:

- Were found to have large movements of rounded amounts within bank accounts without economic rationale.
- Shared common addresses but were found non-existent at those addresses.
- Were controlled and managed by entry operator Shri Manohar Lal Nangalia.

Statements from Shri Manohar Lal Nangalia, his employees, and dummy directors confirmed their involvement in providing accommodation entries through these companies.

## 2. Analysis and Enquiry Made During Scrutiny Proceedings

### 2.1 Returned Income Analysis

Independent enquiries during assessment proceedings revealed that entities providing share applications/premium to the assessee had insufficient returned incomes to explain the sources of funds invested. A comparison of the loan amounts provided by these entities with their returned incomes revealed that their creditworthiness could not be established.

### 2.2 Third-Party Enquiries

Notices u/s 133(6) were issued to the following entities:

1. M/s Agarani Credit and Finvest Pvt. Ltd.
2. M/s Darshan Enclave Pvt. Ltd.
3. M/s Harsharatna Finance & Investment Pvt. Ltd.
4. M/s Shareen Hire Purchase Pvt. Ltd.

However, no replies were received from these entities.

### 2.3 Field Enquiries by Income Tax Inspector

Field enquiries revealed that none of the above companies were physically existent at their registered addresses, confirming their non-operational status.

### 2.4 Summons and Commission

Summons issued u/s 131 to the directors of these companies remained unserved. Similarly, commissions issued to the DDIT(Inv.), Unit-1(3), Kolkata to record statements of the directors revealed that these companies were non-existent and did not have any business activities.

### 3. Findings of the Assessing Officer

- 1) Entities providing share applications/premium lacked creditworthiness.
- 2) Third-party enquiries confirmed the non-existence of these companies.
- 3) Statements of dummy directors and admission by Mukesh Banka corroborated the findings.

### 4. Legal Provisions Invoked

Provisions of Section 68 of the Income Tax Act, 1961, were invoked to treat the share application/premium received from these non-existent entities as unexplained cash credits. Additionally, Section 69C was applied for unexplained expenditure on commissions paid to entry operators.

### 5. Rebuttal of Assessee's Reply

The assessee's arguments regarding transactions being genuine, supported by banking channels, and compliance with filing requirements were rebutted with:

- 1) Evidence of non-existence of companies.
- 2) Admission by entry operators about bogus transactions.
- 3) Analysis of financials showing no creditworthiness.

### 6. CIT (A) Order:

The appeal of the appellant is allowed, and the reopening under Section 147 is quashed.

### Summary of Key Points

#### 1. Background:

- 1) The case involves reopening of assessment under Section 147 based on information from the Investigation Wing regarding entities managed by Mukesh Banka, alleged to have provided accommodation entries to the appellant company.

- 2) The appellant claimed that the reopening was based on vague and unverified information without independent inquiry.

## 2. Appellant's Contentions:

- 1) No Independent Inquiry: The Assessing Officer (AO) relied solely on external information and statements without conducting any independent verification.
- 2) Material Disclosure in Original Assessment: The appellant argued that all details related to share application money and its sources were already disclosed during the original scrutiny assessment under Section 143(3).
- 3) Incorrect Application of Law: The appellant highlighted that reopening after four years requires proof of nondisclosure of material facts, which was absent in this case.

## 3. Judicial Precedents Referenced:

- 1) Calcutta Discount Co. Ltd. (41 ITR 191): Reopening is invalid unless both conditions are met: (1) Income escaped assessment, and (2) Escapement resulted from nondisclosure of material facts.
- 2) Ram Singh (306 ITR 343): The AO cannot tax any other income unless the primary reason for reopening holds valid.
- 3) Arvind Sahdeo Gupta v. ITO: Reopening based on incorrect facts or conclusions is unsustainable.
- 4) Gemini Leather Stores v. ITO (100 ITR 1): Oversight by the AO in earlier assessments cannot justify reopening.

## 4. CIT(A)'s Observations:

- a. The AO mechanically issued the notice under Section 148, without proper application of mind or addressing objections raised by the appellant.
- b. The reopening and subsequent reassessment were quashed on the basis of:
  - i. Lack of independent reasoning by the AO.
  - ii. Absence of failure by the appellant to disclose material facts fully and truly.

## 5. Conclusion:

- 1) The CIT(A) concluded that the reopening and reassessment under Section 147 were invalid due to procedural lapses and absence of credible grounds.



- 2) The appeal was allowed, and the reopening was quashed. Other grounds of appeal became infructuous.

## Background of Issuance of Notice Under Section 148

### Factual Background

1. Issuance of Notice Under Section 148
  - The Assessing Officer (AO) issued a notice under Section 148 to reopen the assessment based on credible and tangible information received during investigations.
2. Compliance with GKN Driveshafts
  - The assessee requested reasons for reopening, which were duly provided by the AO.
  - The assessee filed objections to the reasons, which were addressed by the AO through a detailed speaking order in compliance with the Hon'ble Supreme Court's directives in GKN Driveshafts.
3. Participation in Reassessment Proceedings
  - After the AO disposed of the objections, the assessee participated in the reassessment proceedings without raising further objections.
4. Challenge Before CIT(A)
  - Despite procedural compliance by the AO and the assessee's participation, the assessee later challenged the validity of the Section 148 notice before the CIT(A).

### II. Legal Submissions

#### 1. Compliance with GKN Driveshafts (India) Ltd. v. ITO [(2003) 259 ITR 19 (SC)]

- The Hon'ble Supreme Court in GKN Driveshafts laid down the following mandatory procedural safeguards for reassessment under Section 148:
  1. Reasons for reopening must be communicated to the assessee.
  2. The assessee has the right to file objections to the reasons.
  3. The AO must dispose of the objections by issuing a speaking order before proceeding with reassessment.
- In the present case, the AO adhered to these requirements.

#### 2. Principle of Waiver and Acquiescence

- By participating in the reassessment proceedings after the objections were disposed of, the assessee acquiesced to the reopening process.

- The Hon'ble Delhi High Court in Surendra Kumar Jain v. CIT [2019 SCC OnLine Del 9393] held that once the AO complies with the GKN Driveshafts procedure, the validity of reassessment cannot be contested at a later stage.

### 3. Impropriety of Challenge Before CIT(A)

- The Hon'ble Supreme Court in GKN Driveshafts held that if the assessee is dissatisfied with the AO's decision on objections, the proper remedy is to seek judicial review, not to re-agitate the matter before the appellate authority.
- Raising objections before CIT(A) amounts to circumventing established procedures and undermines the reassessment framework.

### III. Assessee's Failure to Justify Transactions

1. Unexplained Share Application Money
  - During reassessment, the AO identified unexplained share application money amounting to ₹90,00,385/- under Section 68 of the Act.
2. Accommodation Entries from Non-Existent Entities
  - Investigations revealed that the entities providing share application money were shell companies controlled by Shri Mukesh Banka. These entities were non-existent and lacked creditworthiness, as confirmed by third-party inquiries and statements.
3. Unexplained Commission Payments
  - Commission payments of ₹3,25,010/- were found to be unexplained and treated as taxable under Section 69C.

### IV. Judicial Precedents Supporting Revenue's Case

1. CIT v. Sun Engineering Works (P.) Ltd. [198 ITR 297 (SC)]
  - The scope of reassessment includes assessing all income that has escaped taxation.
2. Majinder Singh Kang v. CIT [344 ITR 358 (P&H)]
  - Any income coming to the AO's notice during reassessment can be validly taxed, even if not initially stated in the reasons for reopening.
3. Calcutta Discount Co. Ltd. v. ITO [41 ITR 191 (SC)]
  - Failure to disclose material facts fully and truly justifies reopening.
4. Surendra Kumar Jain v. CIT [2019 SCC OnLine Del 9393]
  - Procedural compliance under GKN Driveshafts validates reassessment, and objections not pursued at the appropriate stage are deemed waived.
5. Ram Prasad v. ITO [1995] 82 Taxman 199 (All)

- Reopening is justified when credible new information highlights tax evasion.

## V. Prayer

In light of the above submissions, the Revenue respectfully prays that the Hon'ble Tribunal may:

1. Uphold the Validity of the Section 148 Notice
  - Recognize that the AO adhered to the procedural requirements established under GKN Driveshafts.
2. Dismiss the Assessee's Challenge Before CIT(A)
  - Acknowledge that re-challenging the validity of the notice at the appellate stage is procedurally improper and unwarranted.
3. Affirm the Reassessment Order
  - Restore the AO's findings under Sections 68 and 69C, as the additions were based on credible evidence of unexplained share application money and commission payments.

## B. Grounds of Appeal

1. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s 147 of the Act ignoring that the case was reopened as per provisions of clause (c) of explanation 2 to section 147 of the Act and with the approval of Principal Commissioner of Income-tax? Whether on the facts and circumstances of the case, the Ld. CIT (A) is justified in quashing the reopening and reassessment u/s 147 of the Act without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission for taking accommodation entry?

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment u/s 147 of the Act ignoring that the reason to belief of the AO is founded on information which has been received by the AO after completion of assessment, which is a sound foundation for exercising power u/s 147 r.w.s 148?

### Ground No. 1

Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment under Section 147 of the Act ignoring that the case was reopened as per clause (c) of Explanation 2 to Section 147 and with the

approval of the Principal Commissioner of Income-tax? Further, whether the Ld. CIT(A) was justified in quashing the reassessment despite the assessee being involved in organized tax evasion through accommodation entries and commission payments?

Submission:

1. Reopening as per Explanation 2(c) to Section 147
  - 1.1. Explanation 2(c) to Section 147 specifically provides for reopening in cases where the Assessing Officer (AO) has credible information indicating that income chargeable to tax has escaped assessment.
  - 1.2. In the present case, the AO received tangible information from DDIT (Investigation), Kolkata, supported by the statement of Shri Mukesh Banka, identifying the assessee as a beneficiary of accommodation entries.
  - 1.3. The Hon'ble Delhi High Court in *CIT v. Kelvinator of India Ltd.* [256 ITR 1 (Del) (FB)] upheld the validity of reopening assessments based on tangible material or information, emphasizing that reassessment is not barred when fresh evidence surfaces post the original assessment.
2. Organized Tax Evasion
  - 2.1. Investigations revealed that the assessee received accommodation entries from entities such as M/s Agarani Credit and Finvest Pvt. Ltd., which were found to be non-existent. Dummy directors controlled these entities, and the transactions were designed to launder unaccounted income.
  - 2.2. The Hon'ble Allahabad High Court in *Ram Prasad v. ITO* [1995] 82 Taxman 199 (All) held that reopening is justified where the AO failed to investigate adequately in the original assessment and new evidence emerges later.
3. Approval of the Principal Commissioner
  - 3.1. The AO obtained the necessary approval from the Principal Commissioner of Income-tax before issuing notice under Section 148. This procedural compliance aligns with the requirements of the Income Tax Act.
4. Findings of the AO
  - 4.1. During reassessment, the AO identified unexplained share application money amounting to ₹90,00,385/- under Section 68 of the Act.
  - 4.2. Furthermore, commission expenditure of ₹3,25,010/- was deemed unexplained under Section 69C, corroborating the non-genuine nature of the transactions.

Prayer:

It is submitted that the reopening under Section 147 was based on credible information

supported by investigations and valid approval. The CIT(A)'s order quashing the reopening is erroneous and deserves to be set aside.

#### Ground No. 2

Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in quashing the reopening and reassessment under Section 147 of the Act ignoring that the AO's reason to believe was founded on information received after the completion of assessment, which is a sound basis for exercising powers under Section 147 read with Section 148?

#### Submission:

##### 1. "Reason to Believe" – Not "Reason to Suspect"

1.1. The Hon'ble Supreme Court in *ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [291 ITR 500 (SC)] clarified that at the stage of reopening, the AO only needs "reason to believe," not conclusive evidence of escapement.

1.2. In this case, detailed investigation reports from DDIT (Investigation), Kolkata, revealed the modus operandi of shell companies controlled by Shri Mukesh Banka. This provided a sound basis for reopening.

##### 2. Information Received Post-Assessment

2.1. The Hon'ble Supreme Court in *Kalyanji Mavji & Co. v. CIT* [1976] 102 ITR 287 (SC) held that information received post-assessment justifies reopening, especially when new facts highlight escaped income.

2.2. The AO received credible post-assessment information highlighting the lack of creditworthiness and genuineness of entities providing share application money to the assessee.

##### 3. Judicial Precedents

3.1. In *Majinder Singh Kang v. CIT* [344 ITR 358 (P&H)], the Hon'ble Court held that during reassessment, the AO could assess any income that comes to their notice, even if not initially stated in the reasons for reopening.

##### 4. *CIT v. Sun Engineering Works (P.) Ltd.* [198 ITR 297 (SC)]

1. The scope of reassessment includes assessing all income that has escaped taxation.

##### 5. *Gemini Leather Stores v. ITO* [100 ITR 1 (SC)]

1. Reopening is valid even if the AO overlooked certain facts during the original assessment.
6. *Calcutta Discount Co. Ltd. v. ITO* [41 ITR 191 (SC)]
  1. Failure to disclose material facts fully and truly justifies reopening

Submission on Reopening Under Section 148 and Assessee's Failure to Challenge in Accordance with GKN Driveshafts

Subject: Written Submission on Validity of Reopening and Assessee's Non-Compliance with Established Legal Procedures

Respected Members of the Hon'ble Tribunal,

The following submissions are made on behalf of the Revenue in the matter of reassessment initiated under Section 148 of the Income Tax Act, 1961, and the assessee's failure to challenge the same as per the procedure established by the Hon'ble Supreme Court in *GKN Driveshafts (India) Ltd. v. ITO* [(2003) 259 ITR 19 (SC)]:

#### I. Factual Background

1. Issuance of Notice under Section 148  
The Assessing Officer (AO) issued a notice under Section 148 for reopening the assessment based on credible and tangible information received during investigations.
2. Communication of Reasons and Disposal of Objections
  - o The assessee requested the reasons for reopening, which were duly provided by the AO.
  - o The assessee submitted objections to the notice, which were addressed by the AO through a speaking order in compliance with GKN Driveshafts.
3. Participation in Reassessment Proceedings
  - o Following the disposal of objections, the assessee participated in the reassessment proceedings without further contesting the validity of the reopening.
4. Challenge Before CIT(A)

Despite procedural compliance by the AO and the assessee's participation, the validity of the Section 148 notice was later challenged before the CIT(A).

#### II. Legal Submissions

1. Compliance with *GKN Driveshafts (India) Ltd. v. ITO* [(2003) 259 ITR 19 (SC)]

- The Hon'ble Supreme Court in GKN Driveshafts outlined the procedural safeguards for reassessment under Section 148, which require:
  1. Furnishing of reasons for reopening to the assessee.
  2. Disposal of objections by the AO through a speaking order.
- In the present case, the AO adhered to all procedural requirements.
- The assessee, upon receipt of the speaking order, did not seek judicial review or contest the matter further but instead proceeded with the reassessment proceedings, thereby waiving any objections.

## 2. Principle of Waiver and Acquiescence

- By participating in the reassessment proceedings without further challenging the validity of the notice, the assessee demonstrated acquiescence to the reopening.
- The Hon'ble Delhi High Court in Surendra Kumar Jain v. CIT [2019 SCC OnLine Del 9393] emphasized that procedural compliance under GKN Driveshafts validates the reassessment process, and objections not pursued at the appropriate stage are deemed waived.

## 3. Impropriety of Challenge Before CIT(A)

- The Hon'ble Supreme Court in GKN Driveshafts held that if the assessee is dissatisfied with the AO's decision on objections, the appropriate remedy is to seek judicial review, not to raise the same objections before the appellate authority.
- Re-agitating the matter before CIT(A) contravenes procedural discipline and undermines the reassessment framework.

## III. Assessee's Failure to Justify Transactions

1. The reassessment revealed that the assessee failed to explain the genuineness of the share application money and the identity and creditworthiness of the entities involved.
2. Investigations uncovered that the entities providing accommodation entries were non-existent, dummy companies, as confirmed by third-party inquiries and the statement of Shri Mukesh Banka.
3. The AO rightly invoked Sections 68 and 69C of the Act to treat the unexplained credits and commission payments as taxable income.

## IV. Judicial Precedents Supporting Revenue's Position

1. CIT v. Sun Engineering Works (P.) Ltd. [198 ITR 297 (SC)]



- Reassessments are intended to include escaped income.
- 2. *Majinder Singh Kang v. CIT* [344 ITR 358 (P&H)]
  - Any income coming to the AO's notice during reassessment can be validly taxed, even if not mentioned in the initial reasons for reopening.
- 3. *Calcutta Discount Co. Ltd. v. ITO* [41 ITR 191 (SC)]
  - The failure of the assessee to disclose material facts justifies reopening.
- 4. *Surendra Kumar Jain v. CIT* [2019 SCC OnLine Del 9393]
  - Compliance with the GKN Driveshafts procedure validates reassessment, and failure to challenge the AO's speaking order at the appropriate stage bars subsequent objections.

#### V. Prayer

In light of the above submissions, it is humbly prayed that the Hon'ble Tribunal may:

1. Uphold the Validity of the Section 148 Notice
  - Recognize that the AO acted within the framework established by GKN Driveshafts.
2. Dismiss the Assessee's Challenge Before CIT(A)
  - Acknowledge that re-challenging the notice at the appellate stage is procedurally improper and unwarranted, when the Landmark Judgment of GKN Driveshafts is applicable.
3. Affirm the Reassessment Order
  - Reinstate the AO's findings under Sections 68 and 69C, as the additions were based on credible evidence of unexplained credits and bogus transactions.

The Revenue respectfully submits that the Hon'ble ITAT allow the appeal and restore the AO's findings in the reassessment order.

Respectfully Submitted on Behalf of the Revenue

15. Ld. DR also filed a detailed submission countering the written submission filed by the Id. AR of the assessee which reads as under :

“Respected Members of the Hon'ble Tribunal,



### Counter Submission on Behalf of the Revenue

The following is a counter to the appellant's reliance on various judicial precedents to justify quashing the reopening and reassessment under Section 147 of the Income Tax Act, 1961:

#### 1. Punia Capital Pvt. Ltd. v. ACIT (Bombay High Court)

- Appellant's Argument: The appellant relied on this judgment to claim that reopening is invalid if the Assessing Officer (AO) has issued a notice mechanically without proper application of mind.
- Revenue's Counter:
  - The judgment in *Punia Capital Pvt. Ltd.* pertains to reopening based on incorrect or incomplete facts, which is not the case here.
  - In the present case, reopening was based on credible and specific information received from the DDIT (Investigation), Kolkata, supported by statements of Shri Mukesh Banka admitting to the modus operandi of accommodation entries. The AO thoroughly applied his mind to the investigation findings and recorded valid reasons to believe.
  - The AO obtained prior approval from the Principal Commissioner of Income-tax, as mandated by Section 151, which underscores the procedural compliance and validity of reopening.

#### 2. Madan Mohan Tiwari v. ITO (ITAT Delhi)

- Appellant's Argument: The appellant contended that reopening is invalid if the AO proceeds based on incorrect information.
- Revenue's Counter:
  - The reliance on *Madan Mohan Tiwari* is misplaced, as the facts of that case involved reopening based on incorrect information known to the AO, which does not apply here.
  - In the current case, the information received from the investigation wing was verified and corroborated with financial records and statements of dummy directors, establishing the escapement of income.
  - The AO's reason to believe was not based on suspicion but on tangible and credible evidence of escapement of income through bogus share application money.

#### 3. ACIT v. Marico Ltd. (Supreme Court)

- Appellant's Argument: The appellant cited this case to argue that reopening based on a mere change of opinion is invalid.
- Revenue's Counter:
  - The appellant has misunderstood the principle laid down in *Marico Ltd.*. This case pertains to reopening on a change of opinion when no fresh material is available, which is not applicable here.
  - The reopening in the present case is based on fresh tangible material unearthed during the investigation of Shri Mukesh Banka and his associates, revealing the use of shell companies to provide accommodation entries to the appellant.
  - The original assessment did not examine the genuineness of the share application money in detail. Therefore, the reopening cannot be construed as a change of opinion.

#### 4. Gemini Leather Stores v. ITO (Supreme Court)

- Appellant's Argument: The appellant argued that oversight or lack of inquiry by the AO in the original assessment does not justify reopening.
- Revenue's Counter:
  - In *Gemini Leather Stores*, the Hon'ble Supreme Court held that reopening is not valid if the AO seeks to remedy his own oversight without fresh material. However, in this case, there is no oversight in the original assessment.
  - The original scrutiny assessment under Section 143(3) did not examine the transactions related to share application money in depth, as these were accepted based on prima facie details provided by the appellant.
  - The investigation findings and the admission of Shri Mukesh Banka constitute fresh material, warranting reassessment.

#### 5. Calcutta Discount Co. Ltd. v. ITO (Supreme Court)

- Appellant's Argument: The appellant claimed that reopening beyond four years requires proof of the assessee's failure to disclose material facts fully and truly.
- Revenue's Counter:
  - While the principle laid down in *Calcutta Discount Co. Ltd.* is acknowledged, it is not applicable here. The notice under Section 148 was issued within four years from the end of the relevant assessment year.
  - The AO's reasons to believe were based on new information received post-assessment, revealing the escapement of income, which satisfies the jurisdictional requirement for reopening.

## 6. ITO v. Nawab Mir Barkat Ali Khan Bahadur (Supreme Court)

- Appellant's Argument: The appellant contended that reopening is invalid if based on a mere change of opinion or re-evaluation of the same facts.
- Revenue's Counter:
  - In *Nawab Mir Barkat Ali Khan Bahadur*, reopening was held invalid as it sought to re-evaluate the same facts without new material. However, in the current case, the reopening was based on fresh material gathered during the investigation into accommodation entry providers.
  - The AO acted on credible evidence that was not available during the original assessment, justifying the reassessment.

### Summary of Counter Arguments

1. The case laws relied upon by the appellant are either factually distinguishable or misinterpreted.
2. The reopening under Section 147 was based on specific, credible information obtained from the DDIT (Investigation), Kolkata, and supported by corroborative evidence.
3. The AO applied his mind, recorded valid reasons to believe, and followed due process by obtaining prior approval from the Principal Commissioner of Income-tax.
4. Judicial precedents such as *ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [291 ITR 500 (SC)] and *Kalyanji Mavji & Co. v. CIT* [102 ITR 287 (SC)] support the reopening in cases involving fresh material.

### Prayer

In light of the above, it is humbly submitted that:

1. The reopening under Section 147 and the subsequent reassessment are valid, as they are based on tangible material and procedural compliance.
2. The CIT(A) erred in quashing the reassessment based on misinterpretation of judicial precedents.

The Hon'ble ITAT is requested to set aside the order of the CIT(A) and restore the findings of the AO.”

16. Ld. DR also counter the legal decision cited by the Id. AR of the assessee contending that

Respected Members of the Hon'ble Tribunal,

The appellant's argument that the reopening is based on mechanical reliance or incomplete information is factually incorrect. In this case, bank account trails of the alleged accommodation entry providers were verified under Section 133(6) by the Assessing Officer (AO) before issuing the notice under Section 148. This independent verification demonstrates that the AO applied his mind and relied on corroborated evidence, not mere third-party information.

Counter Submission on Applicability of Case Laws

1. *Ambaji Avenues Pvt. Ltd. v. ITO* (2024 ITAT Mumbai)

- Appellant's Argument: The appellant may rely on this case to argue that reopening under Section 147 is invalid due to mechanical reliance on third-party information without independent application of mind by the AO.
- Revenue's Counter:
  - In *Ambaji Avenues Pvt. Ltd.*, reopening was quashed because the AO failed to independently verify the information and establish a nexus between the assessee and alleged escapement of income.
  - In the present case, the AO verified the bank account details of the alleged shell companies under Section 133(6) before issuing the notice under Section 148. The AO independently analyzed the evidence, linking it to the appellant's receipt of accommodation entries.
  - The pre-reopening verification under Section 133(6) clearly distinguishes this case from *Ambaji Avenues Pvt. Ltd.*

2. *Keshav Shroff v. ITO* (2024 ITAT Kolkata)

- Appellant's Argument: The appellant may cite this case to argue that reopening is invalid if it is based on incomplete or incorrect information.
- Revenue's Counter:
  - In *Keshav Shroff*, reopening was quashed because the AO failed to substantiate the allegation of escapement of income with supporting material.

- In the present case, the AO conducted independent verification of transactions and traced the bank account trails of dummy companies involved in accommodation entries.
- The AO's findings were supported by tangible evidence, including bank account analysis, making this case factually distinct from *Keshav Shroff*.

### 3. ITO v. Aashna Developers Pvt. Ltd. (2024 ITAT Ahmedabad)

- Appellant's Argument: The appellant may argue that reopening cannot be sustained if no additions are made for the specific reasons recorded at the time of reopening.
- Revenue's Counter:
  - In *Aashna Developers Pvt. Ltd.*, reopening was invalidated because the AO made additions for issues unrelated to the reasons recorded at the time of reopening.
  - In the present case, the additions under Section 68 for unexplained share application money and premium directly relate to the reasons recorded for reopening. The AO identified the appellant's receipt of accommodation entries through shell companies as a basis for escapement of income, and the reassessment focused on these issues.
  - This case is clearly distinguishable as the reassessment and additions made align with the reasons recorded for reopening.

### 4. Narmada Concast Pvt. Ltd. v. DCIT (2024 ITAT Ahmedabad)

- Appellant's Argument: The appellant may rely on this case to argue that the AO must substantiate the nexus between the information received and the alleged escapement of income.
- Revenue's Counter:
  - In *Narmada Concast Pvt. Ltd.*, the reopening was quashed because the AO did not demonstrate a nexus between the information received and the assessee's transactions.
  - In contrast, the AO in this case relied on credible information, corroborated by bank account trails verified under Section 133(6), which established the nexus between the appellant and the alleged accommodation entries.
  - The pre-reopening verification and corroborative evidence make this case factually distinct from *Narmada Concast Pvt. Ltd.*

### 5. Bidit Financial Management Pvt. Ltd. v. DCIT (2019 ITAT Kolkata)

- Appellant's Argument: The appellant may argue that reopening is invalid if the AO does not establish the identity, creditworthiness, and genuineness of the transactions.
- Revenue's Counter:
  - In *Bidit Financial Management Pvt. Ltd.*, the reopening was quashed due to the AO's failure to prove that the assessee did not disclose material facts fully and truly.
  - In the present case, the AO established that the entities providing share application money were shell companies with no business activities, controlled by Shri Mukesh Banka. The bank account analysis under Section 133(6) further confirmed that these transactions were accommodation entries, lacking creditworthiness and genuineness.
  - The independent verification and corroborated evidence distinguish this case from *Bidit Financial Management Pvt. Ltd.*

#### 6. ACIT v. Bhola Ram Papers and Powers Pvt. Ltd. (2022 ITAT Patna)

- Appellant's Argument: The appellant may argue that reopening is invalid if it is based solely on borrowed satisfaction from the investigation wing.
- Revenue's Counter:
  - In *Bhola Ram Papers and Powers Pvt. Ltd.*, the ITAT quashed reopening because the AO relied exclusively on information from the investigation wing without independent verification.
  - In the present case, the AO independently verified the information by analyzing bank account details of the shell companies under Section 133(6) and correlating them with the appellant's transactions. This demonstrated independent application of mind, making this case factually distinct.

#### Key Distinctions

1. Pre-Reopening Verification: The AO verified bank account trails under Section 133(6) before issuing the notice under Section 148, demonstrating independent application of mind.
2. Nexus with Escapement of Income: The AO established a direct link between the appellant's transactions and the findings from the investigation wing, corroborated by independent evidence.
3. Credibility of Evidence: Unlike the cases cited by the appellant, the AO relied on substantial evidence, including corroborated statements, financial analysis, and verified bank trails.

## Conclusion

The cases cited by the appellant are factually distinguishable and not applicable to the present case. The reopening under Section 147 was based on credible and independently verified evidence, satisfying the legal requirements. The Hon'ble ITAT is requested to uphold the reassessment and reverse the order of the CIT(A), quashing the same.

Respectfully Submitted on Behalf of the Revenue

17. Per contra, Id. AR of the assessee supported the order of the Id. CIT(A) and in support of the finding so recorded also relied upon the written submission which reads as under :

### Written Submission on behalf of the Assessee Respondent (A.Y. 2012-2013)

1. The assessee company is a private limited company and is engaged in the Real Estate Business. The assessee company filed its original return of Income for the A.Y. 2012-2013 on 06.09.2012 declaring total income of Rs. 28,100/-. The case was selected for scrutiny assessment and after verification of all facts & records, the same was assessed u/s. 143(3) on 27.03.2014 at Rs. 28,100/-.

2. The case was re-opened by the Ld. AO by issuing notice u/s. 148 on 06.03.2019 by recording reasons which was intimated to the assessee by the Id. AO vide letter dated 26.09.2019 as follows:



- 1. The information related to beneficiaries identified from Banka Group of cases [date of search 21.05.2018] has been received from the DDIT(Inv.), Unit-1(3), Kolkata vide letter No. 8851 dated 01.03.2019. As per information, a search & seizure/survey action in the case of Banka Group was conducted on 21.05.2018. Based on the findings gathered and subsequently brought on records, it is found that Shri Mukesh Banka is the key person/controlling person who looks after day-to-day financial affairs and accommodation entry business of Banka Group. During the course of post search verification of seized/impounded materials, various paper/shell companies controlled and managed by Shri Mukesh Banka were identified. All these companies were categorically accepted by Shri Mukesh Banka as paper/shell companies controlled and managed by him for the purpose of providing accommodation entries in the nature of bogus unsecured loans or in other forms. Following the lead as obtained from the statements of Shri Mukesh Banka and the materials seized during the course of search operation, the bank accounts of the paper/shell companies, controlled and managed by Shri Mukesh Banka was requisitioned from respective banks and analyzed. On verification of the bank accounts of paper/shell companies of Banka Group, various beneficiaries have been identified who have obtained accommodation entry in the nature of bogus unsecured loan or in other forms, from the paper/shell companies of Banka Group.*

*Further, the financial analysis of such paper/shell companies of Banka Group from which such beneficiaries have been identified, has been carried out to ascertain their financial creditworthiness. The details of such financial analysis carried out company wise are provided in CD-2. This led to revelation of various noticeable points like: (i) No profit accumulation in the company(s) across various financial years (ii) Most of the companies have shown income under the head 'Other Income' which shows that*



*these companies have no actual business activities and only getting interest income under the head 'other income' for providing bogus unsecured loan to different beneficiaries (iv) The admission of Shri Mukesh Banka vide his statement recorded u/s 131/132(4) of the Income Tax Act, 1961 on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies, controlled and managed by Shri Mukesh Banka. (v) The directors of these companies are dummy directors of Shri Mukesh Banka as per the statement of Shri Mukesh Banka recorded u/s 132(4) of the Income Tax Act, 1961 on 19.07.2018 (vi) These companies were found to be non-existent as per enquiry made by Inspector of Income Tax.*

*Further, during the course of analysis and examination of the bank statements of paper/shell companies of Banka Group, the entire scheme of arrangement regarding the withdrawal of cash from various bank accounts of paper/shell companies of Shri Mukesh Banka was clearly established and substantiated. These findings got further authenticated from the statements of Shri Mukesh Banka regarding the pattern of cash withdrawals from his various companies. Huge withdrawal of cash from the bank accounts of paper/shell companies of Banka Group clearly established the fact that withdrawal of unaccounted cash was one of the main features of modus operandi of Banka Group. The details of cash withdrawal which has been quantified company wise and year wise is enclosed in a CD-2.*

*The assessee company is one of the beneficiaries who has taken accommodation entry in the form of bogus unsecured loans or in other forms from the following dummy/shell companies which were controlled & managed by Shri Mukesh Banka:-*

*(ii) An another credible information has also been received in this case i.e. M/s Allied Landmark India Pvt Ltd from DDIT(Investigation), Unit-4(2), Kolkata*

*vide letter No. 6777 dated 14.11.2017. The said information related to M/s Sansakar Business Pvt Ltd, M/s Zenstar Business Solutions Pvt Ltd, M/s Subhshree Business Solutions Pvt Ltd, M/s Sunbright Securities Pvt Ltd, M/s S.A Securities Pvt Ltd and M/s Wipro Suppliers Pvt Ltd, the detailed findings of the same are reproduced as under:-*

*"There have been movement of large rounded amount within many accounts with the*



*bank in a day having no economic rationale. Large amount in round figures of lacs of deposits either in cash or clearing frequently flows through a series of accounts and finally the whole amount moves out through clearing on the same day."*

*On perusal of the above, it is gathered that all the above five companies have their common address at 14C, M D Road, Kolkata-700007 and M/s Wipro Suppliers Pvt Ltd has its address at 9/12, Lalbazar Street, Kolkata-700001. From the database of the Department maintained for this purpose, it is seen that all the above six companies, are controlled & managed by well-known entry operator of Kolkata Shri Manohar Lal Nangalia and all the transactions carried through bank accounts of the above six companies are interlinked. To investigate the matter, statements of bank accounts & respective KYCs were obtained from the concerned bank and the same were examined & analyzed. On analysis of the bank statements of the above companies and also the bank account statements of 268 intermediary/beneficiary concerns maintained with UCO Bank, 30 cash deposit bank accounts were identified.*

*Departmental Inspectors were deputed to serve notice u/s 131 on the address of above companies requesting furnishing of books of accounts, details of bank accounts, copies of ITR and other documents, but the same could not be served due to non-existence of the companies on their respective given addresses. From the Database of the department, it is gathered that all the concerns mentioned in the information are interlinked and existing merely on paper having no real existence & business activities and are controlled & managed by Shri Manohar Lal Nangalia for the purpose of providing accommodation entries in the form of bogus share capital/share premium, pre-arranged bogus LTCG/STCL & unsecured loans etc to various beneficiaries/parties in lieu of commission in cash. Statement of Shri Manohar Lal Nangalia has already been recorded before the Directorate of Income Tax (Inv.), Kolkata on several occasions before. In his statement Shri Manohar Lal Nangalia has admitted that he was involved in providing accommodation entries through jama-kharachi/shell companies controlled & managed by him. He also stated that Shri Anjani Banka and Shri Amit Kumar Choudhary are some of the dummy directors apart from others in some of the concerns controlled & managed by him.*

*Statement of Shri Anjani Banka one of the dummy directors in many paper/shell companies controlled & managed by Shri Manohar Lal Nangalia including M/s S.A. Securities Pvt Ltd was also previously recorded before the Department and has already been covered in the database maintained for this purpose by the department. In his statement dated 16.01.2014 and 29.03.2014 Shri Banka admitted that his main source of income was from commission for providing of accommodation entries, forming companies and selling them in lieu of commission. He added that earlier he*



*was an employee of Shri Manohar Lal Nangalia, who used to take his signature for some companies which were controlled & managed by him. He also stated that he himself started providing accommodation entries by floating some companies.*

*Also, from the database of entry operators maintained by the department, it is seen that Shri Amit Kumar Choudhary, one of the employees of Shri Manohar Lal Nangalia and dummy directors in various paper/shell companies including M/s Zenstar Business Solutions Pvt Ltd & M/s Subhshree Business Solutions Pvt Ltd all controlled & managed by Shri Manohar Lal Nangalia had earlier deposed before the department. In his deposition recorded u/s 131 on 14.11.2014 Shri Choudhary stated that he was merely an employee employed for cleaning of office, depositing of cheques in bank and other miscellaneous work. Apart from the above work he was made directors in some of the Jamakharach companies/concerns controlled & managed by Shri Nangalia and was made to sign of various paper/documents related to those companies/concerns.*

*Further, it is gathered from the Database of the department that Shri Prem Kumar Agarwal one of the dummy directors in several paper/shell companies including M/s Sansakar Business Pvt Ltd & M/s Wipro Suppliers Pvt Ltd, all controlled & managed by Shri Manohar Lal Nangalia & Shri Anjani Banka, in response to the notice issued u/s 131 of the I.T Act, submitted a declaration on 29.03.2014 stating that he was one of the directors in 135 companies controlled & managed by Shri Manohar Lal Nangalia. On examination of bank statement of the above-mentioned concerns and the concerns mentioned in the information, it is observed that these accounts have frequently been used for depositing of unaccounted cash which were layered through the several bank accounts of jamakharachi/shell concerns including the concerns named in the information and immediately transferred to the interlinked bank accounts and then ultimately to the bank accounts of the beneficiary.*

*In this way the beneficiary companies have brought back their unaccounted income into their regular books of accounts in the guise of bogus share capital/share premium, pre-arranged bogus LTCG/STCL, unsecured loans etc. There was no other financial rationale behind such transactions. Movement of unaccounted cash/fund of Rs. 126.30 crores (approx.) through the above 30 bank accounts have been shown in the trail prepared for flow of cash/funds and 134 ultimate beneficiaries have been identified.*

*The assessee company is one of the beneficiaries who has taken accommodation entry in the form of bogus unsecured loans or in other forms from the following*



*dummy/shell companies which were controlled & managed by Shri Manohar Lal Nangalia:-*

*(iii) Apart from the above, third information has also been received in the case of assessee company from the ITO (Inv.), Unit-2, Kolkata vide letter No. 1893 dated 26.02.2019. As per information, the account in the name of M/s Orchid Trexim Pvt Ltd was opened on 29/06/2011. Rounded amount in lac is deposited and routed through related accounts mentioned below are finally remitted through RTGS on the same day. The series of transactions do not seem to be normal transactions and there is no rationale behind it. During the course of verification notice u/s 131 of the IT Act, 1961 was issued to UCO Bank, for bank statement of entities mentioned in the dissemination note and the same was provided by the bank. Further, notices u/s 131 & 133(6) were also issued to M/s Orchid Trexim Pvt Ltd on 09.07.2013 & 05.10.2018 whose account was report as suspicious but the same were returned unserved by the postal authorities with remarks 'not known' / 'moved'. Thereafter, KYC of M/s Orchid Trexim Pvt Ltd was called for from the UCO Bank and it is noticed that the address given in the KYC was the same. ITI was deputed to serve the notices but the same could not be served due to non-existence of entity at their given address. Hence, in absence of any documentary evidences sources of fund credited in the account of M/s Orchid Trexim Pvt Ltd remains unexplained.*

*It is further noticed that the company M/s Orchid Trexim Pvt Ltd is enlisted as shell company in the databank available with the Investigation Wing, Kolkata. In this regard, Mr. Prem kumar Agarwal & Mr. Amit Agarwal, Director of M/s Orchid Trexim Pvt Ltd has given declaration on 29.03.2014 before the DDIT(Inv.), Unit-2(3), Kolkata that they are Directors in the various companies which is controlled & managed by Mr. Anjani Banka. Statement of Mr. Anjani Banka was also recorded by the DDIT(Inv.), Unit-2(3), Kolkata on 29.03.2014 wherein he accepted that he is engaged in providing accommodation entries in form of share capital, unsecured loan, LTCG etc and to facilitate the same he earns commission. Further, financial analysis of the companies from whom the fund reached into the account of beneficiary companies was analyzed and found that the fund was finally transferred to the account of beneficiaries from the companies which have no actual business activities and showing either nil income or very meager income. These entities appear to be shell entities and existing merely on paper. Fund trail is prepared on illustrative basis which also indicates that the fund was routed through various shell intermediaries companies within day or two day and finally reached in the account of beneficiaries.*

*On analysis of bank statement, M/s Allied Landmark India Pvt Ltd has been identified as one of the beneficiaries which have brought unaccounted money in the books via layering of fund through banking channel and funds during F.Y. 2011-12.*

*Thereafter, the above information have been matched with assessment record and found to be correct as the assessee has taken unsecured loan of (i) Rs. 90,00,385/- from M/s Agarani Credit and Finvest Pvt Ltd, M/s Darshan Enclave Pvt Ltd, M/s Harsharatna Finance & Investment Pvt Ltd, M/s Shareen Hire Purchase Pvt Ltd (ii) Rs. 25,00,000/- from M/s Sansakar Business Pvt Ltd, M/s Zenstar Business Solutions Pvt Ltd, M/s Subhshree Business Solutions Pvt Ltd, M/s Sunbright Securities Pvt Ltd, M/s S.A Securities Pvt Ltd & M/s Wipro Suppliers Pvt Ltd and (iii) Rs. 15,00,000/- from the dummy/shell companies i.e. M/s Harsharatna Finance & Investment Pvt Ltd, which was controlled & managed by Shri Mukesh Banka and in the year under consideration. Further the above companies have been found dummy/shell companies. Therefore, the above transactions seem to be bogus accommodation entry. Thus, assessee company has routed its unaccounted money in the form of bogus unsecured loans. **Therefore, I have reason to believe that by such accommodation entry in the form of bogus unsecured loans as discussed above paras, the assessee company has introduced its unaccounted income in the books of accounts and it has failed to disclose fully and truly all material facts necessary for assessment. Thus, the income of Rs. 1,30,00,385/- which is chargeable to tax has escaped from assessment within the meaning of section 147 of the I.T. Act, 1961.***

3. The Id. Assessing Officer vide assessment order dated 23.12.2019 has made addition of Rs. 90,00,385/- u/s. 68 of the Act towards receipts of Share Application Money as follows:



During the under consideration the assessee has received share application/premium from the following parties:

S.No.	Name of person from whom loan was received	Amount (Rs.)
1.	M/s Agarani Credit and Finvest Pvt. Ltd.	Rs. 25,00,110/-
2.	M/s Darshan Enclave Pvt. Ltd.	Rs. 15,00,055/-
3.	M/s Harsharatna Investment Pvt. Ltd.	Rs. 25,00,110/-
4.	M/s Shareen Hire Purchase Pvt. Ltd.	Rs. 25,00,110/-

4. The reassessment proceedings initiated against the assessee suffer from fundamental flaws, both procedural and substantive, rendering the entire process legally unsustainable. At the outset, it is submitted that the reassessment under Section 147 of the Act, requires the Assessing Officer to form a bona fide and independent belief based on tangible material that income chargeable to tax has escaped assessment. This belief must be recorded in the reasons to believe, as stipulated under section 148 of the Act. However, in the present case, it is evident that the Id. Assessing Officer has acted solely on borrowed satisfaction from the investigation wing and failed to exercise independent application of mind, as required under law.

5. The impugned assessment order is fundamentally flawed and unsustainable in law due to two critical and interconnected reasons:

- (1) *deviation from the reasons recorded for reopening the assessment, resulting in an impermissible addition and*
- (2) *lack of independent application of mind by the AO*

6. It is settled law that in case of divergence between the basis on which the assessment was reopened and the actual addition made in the final order, the same is impermissible. The reasons recorded for issuing the notice under section 148 categorically mention alleged escapement of income due to bogus unsecured loans. However, the AO's final assessment order shifts the entire focus and makes an addition under section 68 of the Income Tax Act on account of alleged unexplained share capital and premium. Furthermore the reasons recorded alleged bogus unsecured loans taken by the assessee of Rs. 25,00,000/- from M/s Sansakar Business Pvt Ltd, M/s Zenstar Business Solutions Pvt Ltd, M/s Subhshree Business Solutions Pvt Ltd, M/s Sunbright Securities Pvt Ltd, M/s S.A Securities Pvt Ltd and M/s Wipro Suppliers Pvt Ltd Pvt. Ltd. & alleged bogus unsecured loans taken by the assessee of Rs. 15,00,000/- from M/s Harsharatna Finance & Investment Pvt Ltd. Ultimately, no addition was made by the Id. Assessing Officer on account of so-called transaction with M/s Sansakar Business Pvt Ltd, M/s Zenstar Business Solutions Pvt Ltd, M/s Subhshree Business Solutions Pvt Ltd, M/s Sunbright Securities Pvt Ltd, M/s S.A Securities Pvt Ltd and M/s Wipro Suppliers Pvt Ltd Pvt. Ltd. Reference to alleged bogus unsecured loans from M/s Harsharatna Finance & Investment Pvt Ltd. was made twice and no

addition was made towards the same. Such a deviation is wholly impermissible in law, as the reassessment cannot be expanded to cover issues beyond the scope of the reasons recorded at the time of initiating proceedings. Section 148 read with section 147 requires that the AO's jurisdiction be confined to verifying and assessing only those issues for which there is a prima facie belief that income has escaped assessment. He can jump to other issues provided, some addition is made towards the reasons recorded by him. Admittedly, the same is absent in the instant case.

7. The Id. AO has alleged in the assessment order that the share capital and share premium received by the assessee represent unexplained credits under Section 68 of the Act. However, it is submitted that the assessee has fully discharged its onus by providing detailed documentation to establish the identity, creditworthiness, and genuineness of the share applicants. The assessee has submitted the PAN details, financial statements, ITR acknowledgments, and bank statements of the share applicants, all of which corroborate the genuineness of the transactions. The AO's assertion that these entities are shell companies is based solely on the findings of the investigation wing and statements recorded during third-party investigations, which were neither provided to the assessee nor subjected to cross-examination. This procedural lapse undermines the evidentiary value of such findings, as the principles of natural justice require that any evidence relied upon by the revenue be furnished to the assessee with an opportunity to rebut the same. This reflects lack of independent application of mind by the AO.

8. Additionally, the AO's reliance on generalized information from the investigation wing regarding alleged shell companies and accommodation entries does not satisfy the requirements of Section 68. It is well-settled that the identity and creditworthiness of the creditors and the genuineness of the transactions must be evaluated in the context of the evidence provided by the assessee. The AO has failed to conduct any meaningful investigation into the evidence submitted and has instead dismissed it summarily, relying on conjecture and pre-determined conclusions. Such an approach is contrary to the intent and purpose of Section 68, which places the initial burden on the assessee but requires the revenue to substantiate any contrary findings with credible evidence.

9. The failure to adhere to the reasons recorded has rendered the assessment proceedings arbitrary and contrary to the statutory scheme. The procedural safeguards under sections 147 and 148 are not mere formalities but are substantive requirements to ensure fairness and prevent fishing and roving inquiries. In this case, the assessee was never put on notice about any suspicion regarding share capital or premium during the reassessment proceedings. Instead, the focus of the proceedings was solely on unsecured loans. The assessee has been deprived of a fair opportunity to respond to the issue on which the addition has been ultimately made, thereby violating the principles of natural justice.

10. It is settled law that the lack of independent application of mind by the AO. The reopening of the assessment under section 148 of the Income Tax Act, 1961, was based entirely on information received from the Investigation Wing of the Income Tax Department. The said information suggested that the assessee allegedly received bogus share application money and share premium from certain companies categorized as shell entities. However, the AO failed to undertake any independent verification, analysis, or inquiry to corroborate or substantiate the correctness of this information. The AO mechanically reproduced the findings of the Investigation Wing and issued the notice under section 148 without forming his own "reason to believe" that income chargeable to tax had escaped assessment, as mandated under section 147 of the Act.

11. The law envisages that the AO, before issuing a notice under section 148, must have tangible material in his possession that provides a rational and direct nexus to the alleged escapement of income. The provision does not allow the AO to blindly rely on third-party information or borrowed satisfaction. In the present case, the AO merely acted as a rubber stamp of the Investigation Wing, mechanically adopting their findings without exercising his statutory duty to independently scrutinize the material. Such an approach violates the procedural safeguard built into section 147 of the Act to ensure that reopening is not done arbitrarily, but only after the AO himself, based on material evidence, has reason to believe that income has escaped assessment. The Supreme Court has consistently held that the AO must form his own judgment and cannot act as a mere post office.

12. Further, as highlighted in the assessment order, even the initial show-cause notice issued by the AO refers to unsecured loans allegedly received by the assessee. However, the AO, in the final assessment order, framed the addition on account of share capital and premium, purportedly alleging that the funds received were accommodation entries. This discrepancy in the subject matter of the reassessment proceedings strikes at the very root of the proceedings under sections 147 and 148 of the Act. It is settled law that the assessment must be framed strictly within the scope of the reasons recorded for reopening the assessment. Any deviation from the recorded reasons invalidates the entire proceedings.

13. Moreover, the AO's reliance on the alleged findings of the Investigation Wing and the statement of one Shri Mukesh Banka to justify the addition lacks evidentiary support and credibility. The assessee had provided comprehensive documentary evidence, including PAN details, financial statements, bank statements, and share application forms of the entities from whom share capital and premium were received. These documents sufficiently establish the identity, creditworthiness, and genuineness of the transactions. The AO, however, disregarded these documents and failed to provide any cogent evidence to rebut the evidence provided by the assessee. The AO also failed to provide the



assessee an opportunity to cross-examine the persons whose statements were allegedly relied upon, in violation of the principles of natural justice.

14. The AO's failure to independently verify the information, coupled with the complete mismatch between the reasons recorded and the final addition, makes the impugned assessment order unsustainable in law. Section 68 of the Income Tax Act, invoked by the AO to justify the addition, cannot be applied arbitrarily without first discharging the burden of proving that the assessee's evidence is insufficient or unreliable. In the present case, the AO has not discharged this burden. Instead, the addition appears to be based on conjectures and surmises, rather than on substantive evidence.

15. In conclusion, the assessment order is vitiated due to procedural and substantive errors. The AO has failed to adhere to the statutory requirements under sections 147 and 148 of the Income Tax Act, 1961, and has acted mechanically without independent application of mind. Furthermore, the AO has violated the principles of natural justice by framing the addition on a new issue that was never part of the reasons recorded for reopening the assessment. These defects go to the root of the matter and render the assessment legally unsustainable. The addition made in the assessment order should therefore be quashed.

16. It is further submitted that Mr. Mukesh Banka has retracted his statement before the Income Tax Department at Kolkata and hence, no reliance can be placed upon the same.

17. It is further submitted that no opportunity of cross-examination of Mr. Mukesh Banka was provided to the assessee, and hence, no reliance can be placed upon the same.

18. The Id. CIT(A) has appreciated the same and vide its order dated 18.04.2024 has quashed the initiation of 148 proceedings by observing as under:  
*5.1 Ground No 1, 1.1, 1.2 & 1.3 are all directed against the Assessing Officer (hereinafter referred to as 'the AO') in reopening the u/s 147 of the Act, an assessment already completed u/s 143(3) of the Act and without recording subjective belief and merely on the basis of suspicion formed on the basis of so called information received. The brief facts of the case are that the appellant is a private limited company initially incorporated under the name & style as Allied Landmarks (India) Pvt. Ltd. which stood changed to M/s Kedia Builder & Colonizers Pvt. Ltd. The appellant filed the return of income for the A.Y 2012-13 on 06.09.2012 declaring total income at Rs 28,100. The assessment was completed u/s 143(3) of the Act on 27.03.2014 at income of Rs 28,100. On the basis of information available on record, notice u/s 148 of the Act was issued on 26.03.2019 after taking prior approval of the competent authority and after recording reasons to believe that income has escaped assessment. In response, the appellant filed the return of Income on 13.09.2019 declaring same total income as declared in Original Return*  
*5.2.1. The case was reopened on the basis of information that the appellant has taken bogus unsecured loans from shell/ dummy/paper concerns and introduced his own*

unaccounted cash by routing it through a web of dubious companies and suspicious transactions. share application During the year under consideration, the appellant had received unsecured loans from the following companies:

S. No	Name of party from whom unsecured loan was received	Amount
1	M/s Agarani Credit and Finvest Pvt. Ltd.	Rs 25,00,110
2	M/s Darshan Enclave Pvt. Ltd.	Rs 15,00,055
3	M/s Harsharatna Investment Pvt. Ltd.	Rs 25,00,110
4	M/s Shareeen Hire Purchase Pvt. Ltd.	Rs 25,00,110

5.3 It was noticed by the AO that the appellant has received accommodation entries in the form of bogus share application/ premium form the companies managed and controlled by Shri Mukesh Banka as well as Shri Manohar Lal Nangalia and also Shri Anjani Banka. The AO also received information from office of DIT(I&CI), Jaipur that the appellant has entered into several transactions of sale/purchase of immovable property during the F.Y 2011-12 to 2013-14. The re-assessment order was passed u/s 143(3)/147 of the Act by making addition u/s 68 to the tune of Rs 90,00,385 on account of share application/premium received from M/s Agarani Credit and Finvest Pvt. Ltd., M/s Darshan Enclave Pvt. Ltd., M/s Harsharatna Investment Pvt. Ltd. and M/s Shareeen Hire Purchase Pvt. Ltd. and further addition of Rs. 3,25,010 was made u/s 69C on account of commission paid for accommodation entries and a further amount of Rs 30,00,000 was added u/s 68 of the Act on account of share capital and premium received form M/s DhanvantriTrafim Pvt. Ltd.

5.4 The appellant has challenged that action of the AO in reopening the assessment already completed u/s 143(3) after 4 years on three issues. Firstly, the appellant submitted that there was deviation from the reason recorded. The appellant submitted that in the reason recorded before issue of notice u/s. 148, the AO reached to the following conclusion:

5.4.1 The information related to beneficiaries identified from Banka Group of cases [date of search 21.05.2018] has been received from the DDIT(Inv.), Unit-1(3), Kolkata vide letter No. 8851 dated 01.03.2019. As per information, a search & seizure/survey action in the case of Banka Group was conducted on 21.05.2018. Based on the findings gathered and subsequently brought on records, it is found that Shri Mukesh Banka is the key person/controlling person who looks after day-to-day financial affairs and accommodation entry business of Banka Group. During the course of post search verification of seized/impounded materials, various paper/shell companies controlled and managed by Shri Mukesh Banka were identified. All these companies were categorically accepted by Shri Mukesh Banka as paper/shell companies controlled and managed by him for the purpose of providing accommodation entries in the nature of bogus unsecured loans or in other forms. Following the lead as obtained from the statements of Shri Mukesh Banka and the materials seized during the course of search operation, the bank accounts of the paper/shell companies, controlled and managed by Shri Mukesh Banka was requisitioned from respective banks and analyzed. On verification of the bank accounts of paper/shell companies of Banka Group, various beneficiaries have been identified who have obtained accommodation entry in the nature of bogus unsecured loan or in other forms, from the paper/shell companies of Banka Group.

Further, the financial analysis of such paper/shell companies of Banka Group from which such beneficiaries have been identified, has been carried out to ascertain their financial creditworthiness. The details of such financial analysis carried out company wise are provided in CD-2. This led to revelation of various noticeable points like: (i) No profit accumulation in the company(s) across various financial years (ii) Most of the companies have shown income under the head 'Other Income' which shows that these companies have no actual business activities and only getting interest income under the head 'other income' for providing bogus unsecured loan to different beneficiaries (iv) The admission of Shri Mukesh Banka vide his statement recorded u/s 131/132(4) of the Income Tax Act, 1961 on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies, controlled and managed by Shri Mukesh Banka. (v) The directors of these companies are dummy directors of Shri Mukesh Banka as per the statement of Shri Mukesh Banka recorded u/s 132(4) of the Income Tax Act, 1961 on 19.07.2018 (vi) These companies were found to be non-existent as per enquiry made by Inspector of Income Tax.

Further, during the course of analysis and examination of the bank statements of paper/shell companies of Banka Group, the entire scheme of arrangement regarding the withdrawal of cash from various bank accounts of paper/shell companies of Shri Mukesh Banka was clearly established and substantiated. These findings got further authenticated from the statements of Shri Mukesh Banka regarding the pattern of cash withdrawals from his various companies. Huge withdrawal of cash from the bank accounts of paper/shell companies of Banka Group clearly established the fact that withdrawal of unaccounted cash was one of the main features of modus operandi of Banka Group. The details of cash withdrawal which has been quantified company wise and year wise is enclosed in a CD-2.

The assessee company is one of the beneficiaries who has taken accommodation entry in the form of bogus unsecured loans or in other forms from the following dummy/shell companies which were controlled & managed by Shri Mukesh Banka:-

5.4.2 *An another credible information has also been received in this case i.e. M/s Allied Landmark India Pvt Ltd from DDIT(Investigation), Unit-4(2), Kolkata vide letter No. 6777 dated 14.11.2017. The said information related to M/s Sansakar Business Pvt Ltd, M/s Zenstar Business Solutions Pvt Ltd, M/s Subhshree Business Solutions Pvt Ltd, M/s Sunbright Securities Pvt Ltd, M/s S.A Securities Pvt Ltd and M/s Wipro Suppliers Pvt Ltd, the detailed findings of the same are reproduced as under:-*

"There have been movement of large rounded amount within many accounts with the bank in a day having no economic rationale. Large amount in round figures of lacs of deposits either in cash or clearing frequently flows through a series of accounts and finally the whole amount moves out through clearing on the same day."

On perusal of the above, it is gathered that all the above five companies have their common address at 14C, M D Road, Kolkata-700007 and M/s Wipro Suppliers Pvt Ltd has its address at 9/12, Lalbazar Street, Kolkata-700001. From the database of the Department maintained for this purpose, it is seen that all the above six companies, are controlled & managed by well-known entry operator of Kolkata Shri Manohar Lal Nangalia and all the transactions carried through bank accounts of the above six companies are interlinked. To investigate the matter, statements of bank accounts & respective KYCs were obtained from the concerned bank and the same were examined & analyzed. On analysis of the bank statements of the above companies and also the bank account statements of 268 intermediary/beneficiary concerns maintained with UCO Bank, 30 cash deposit bank accounts were identified.

Departmental Inspectors were deputed to serve notice u/s 131 on the address of above companies requesting furnishing of books of accounts, details of bank accounts, copies of

ITR and other documents, but the same could not be served due to non-existence of the companies on their respective given addresses. From the Database of the department, it is gathered that all the concerns mentioned in the information are interlinked and existing merely on paper having no real existence & business activities and are controlled & managed by Shri Manohar Lal Nangalia for the purpose of providing accommodation entries in the form of bogus share capital/share premium, pre-arranged bogus LTCG/STCL & unsecured loans etc to various beneficiaries/parties in lieu of commission in cash. Statement of Shri Manohar Lal Nangalia has already been recorded before the Directorate of Income Tax (Inv.), Kolkata on several occasions before. In his statement Shri Manohar Lal Nangalia has admitted that he was involved in providing accommodation entries through jama-kharachi/shell companies controlled & managed by him. He also stated that Shri Anjani Banka and Shri Amit Kumar Choudhary are some of the dummy directors apart from others in some of the concerns controlled & managed by him.

Statement of Shri Anjani Banka one of the dummy directors in many paper/shell companies controlled & managed by Shri Manohar Lal Nangalia including M/s S.A. Securities Pvt Ltd was also previously recorded before the Department and has already been covered in the database maintained for this purpose by the department. In his statement dated 16.01.2014 and 29.03.2014 Shri Banka admitted that his main source of income was from commission for providing of accommodation entries, forming companies and selling them in lieu of commission. He added that earlier he was an employee of Shri Manohar Lal Nangalia, who used to take his signature for some companies which were controlled & managed by him. He also stated that he himself started providing accommodation entries by floating some companies.

Also, from the database of entry operators maintained by the department, it is seen that Shri Amit Kumar Choudhary, one of the employees of Shri Manohar Lal Nangalia and dummy directors in various paper/shell companies including M/s Zenstar Business Solutions Pvt Ltd & M/s Subhshree Business Solutions Pvt Ltd all controlled & managed by Shri Manohar Lal Nangalia had earlier deposed before the department. In his deposition recorded u/s 131 on 14.11.2014 Shri Choudhary stated that he was merely an employee employed for cleaning of office, depositing of cheques in bank and other miscellaneous work. Apart from the above work he was made directors in some of the Jamakharach companies/concerns controlled & managed by Shri Nangalia and was made to sign of various paper/documents related to those companies/concerns.

Further, it is gathered from the Database of the department that Shri Prem Kumar Agarwal one of the dummy directors in several paper/shell companies including M/s Sansakar Business Pvt Ltd & M/s Wipro Suppliers Pvt Ltd, all controlled & managed by Shri Manohar Lal Nangalia & Shri Anjani Banka, in response to the notice issued u/s 131 of the I.T Act, submitted a declaration on 29.03.2014 stating that he was one of the directors in 135 companies controlled & managed by Shri Manohar Lal Nangalia. On examination of bank statement of the above-mentioned concerns and the concerns mentioned in the information, it is observed that these accounts have frequently been used for depositing of unaccounted cash which were layered through the several bank accounts of jamakharachi/shell concerns including the concerns named in the information and immediately transferred to the interlinked bank accounts and then ultimately to the bank accounts of the beneficiary.

In this way the beneficiary companies have brought back their unaccounted income into their regular books of accounts in the guise of bogus share capital/share premium, pre-arranged bogus LTCG/STCL, unsecured loans etc. There was no other financial rationale behind such transactions. Movement of unaccounted cash/fund of Rs. 126.30 crores



(approx.) through the above 30 bank accounts have been shown in the trail prepared for flow of cash/funds and 134 ultimate beneficiaries have been identified.

The assessee company is one of the beneficiaries who has taken accommodation entry in the form of bogus unsecured loans or in other forms from the following dummy/shell companies which were controlled & managed by Shri Manohar Lal Nangalia:-

5.4.3. *Apart from the above, third information has also been received in the case of assessee company from the ITO (Inv.), Unit-2, Kolkata vide letter No. 1893 dated 26.02.2019. As per information, the account in the name of M/s Orchid Trexim Pvt Ltd was opened on 29/06/2011. Rounded amount in lac is deposited and routed through related accounts mentioned below are finally remitted through RTGS on the same day. The series of transactions do not seem to be normal transactions and there is no rationale behind it. During the course of verification notice u/s 131 of the IT Act, 1961 was issued to UCO Bank, for bank statement of entities mentioned in the dissemination note and the same was provided by the bank. Further, notices u/s 131 & 133(6) were also issued to M/s Orchid Trexim Pvt Ltd on 09.07.2013 & 05.10.2018 whose account was report as suspicious but the same were returned unserved by the postal authorities with remarks 'not known' / 'moved'. Thereafter, KYC of M/s Orchid Trexim Pvt Ltd was called for from the UCO Bank and it is noticed that the address given in the KYC was the same. ITI was deputed to serve the notices but the same could not be served due to non-existence of entity at their given address. Hence, in absence of any documentary evidences sources of fund credited in the account of M/s Orchid Trexim Pvt Ltd remains unexplained.*

It is further noticed that the company M/s Orchid Trexim Pvt Ltd is enlisted as shell company in the databank available with the Investigation Wing, Kolkata. In this regard, Mr. Prem kumar Agarwal & Mr. Amit Agarwal, Director of M/s Orchid Trexim Pvt Ltd has given declaration on 29.03.2014 before the DDIT(Inv.), Unit-2(3), Kolkata that they are Directors in the various companies which is controlled & managed by Mr. Anjani Banka. Statement of Mr. Anjani Banka was also recorded by the DDIT(Inv.), Unit-2(3), Kolkata on 29.03.2014 wherein he accepted that he is engaged in providing accommodation entries in form of share capital, unsecured loan, LTCG etc and to facilitate the same he earns commission. Further, financial analysis of the companies from whom the fund reached into the account of beneficiary companies was analyzed and found that the fund was finally transferred to the account of beneficiaries from the companies which have no actual business activities and showing either nil income or very meager income. These entities appear to be shell entities and existing merely on paper. Fund trail is prepared on illustrative basis which also indicates that the fund was routed through various shell intermediaries companies within day or two day and finally reached in the account of beneficiaries.

On analysis of bank statement, M/s Allied Landmark India Pvt Ltd has been identified as one of the beneficiaries which have brought unaccounted money in the books via layering of fund through banking channel and funds during F.Y. 2011-12.

Thereafter, the above information have been matched with assessment record and found to be correct as the assessee has taken unsecured loan of (i) Rs. 90,00,385/- from M/s Agarani Credit and Finvest Pvt Ltd, M/s Darshan Enclave Pvt Ltd, M/s Harsharatna Finance & Investment Pvt Ltd, M/s Shareen Hire Purchase Pvt Ltd (ii) Rs. 25,00,000/- from M/s Sansakar Business Pvt Ltd, M/s Zenstar Business Solutions Pvt Ltd, M/s Subhshree Business Solutions Pvt Ltd, M/s Sunbright Securities Pvt Ltd, M/s S.A Securities Pvt Ltd & M/s Wipro Suppliers Pvt Ltd and (iii) Rs. 15,00,000/- from the dummy/shell companies i.e. M/s Harsharatna Finance & Investment Pvt Ltd, which was controlled & managed by Shri Mukesh Banka and in the year under consideration. Further the above companies have been found dummy/shell companies. Therefore, the above

transactions seem to be bogus accommodation entry. Thus, assessee company has routed its unaccounted money in the form of bogus unsecured loans. Therefore, I have reason to believe that by such accommodation entry in the form of bogus unsecured loans as discussed above paras, the assessee company has introduced its unaccounted income in the books of accounts and it has failed to disclose fully and truly all material facts necessary for assessment. Thus, the income of Rs. 1,30,00,385/-which is chargeable to tax has escaped from assessment within the meaning of section 147 of the I.T. Act, 1961.”

5.5. *The appellant submitted that the AO has satisfied himself that appellant had taken accommodation entry in the shape of unsecured loans. The appellant submitted that it raised objections before AO against such reasons wherein it was categorically contended that appellant had not taken any unsecured loans from any of the party mentioned in the list and in fact some of companies had subscribed to its share capital for which the necessary verification has already been done in the assessment completed u/s 143(3). However, the appellant submitted that the AO had not addressed or uttered a single word in the Order passed for disposing the objections raised by the appellant.*

5.6 *Secondly, the appellant has objected the reopening of completed assessment on borrowed satisfaction. The appellant submitted that the AO has reopened the completed assessment solely on the basis of information received from Investigation Wing, Kolkata and without arriving at objective and independent conclusion drawn after examining the so-called information / evidences gathered by applying his own mind. The appellant submitted that in a number of judicial pronouncements that the AO cannot mechanically issue notice under section 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation) without proper application of mind and independent analysis and investigation made with the case in hand. In this regard, appellant placed on a number of judicial decisions.*

5.7 *The Hon'ble Bombay High Court in the case of Akhshar Builders & Developers vs ACIT in Writ petition 14490 of 2018 has held as under:*

S. 147: Even in a case where return is accepted without scrutiny, the AO cannot proceed mechanically and on erroneous information supplied to him by investigation wing. If AO acts merely upon information submitted by investigation wing and on total lack of application of mind, the reopening is invalid.

5.8 *The Hon'ble Jaipur bench of ITAT in the case of Balaji Healthcare Pvt. Ltd. ITO ITA No. 566/567/JP/18 has rendered re assessment proceedings void (gist reproduced)*

S. 147 Reopening of s. 143(1) Intimation for Bogus share capital: The AO cannot reopen without establishing prima facie that assessee's own money has been routed back in form of share capital. While he can rely on the report of the Investigation Wing, he has to carry out further examination and analysis in order to establish the nexus between the material and formation of belief that income has escaped assessment. In absence thereof, the assumption of jurisdiction u/s147 has no legal basis and resultant reassessment proceedings deserve to be set-aside.

5.9 *The Hon'ble Bombay High Court in the case of PCIT vs Shodiman Investment P Ltd. In IT Appeal No. 1295 of 2015 has quashed re assessment proceedings initiated on borrowed satisfaction. (gist reproduced):*

S. 147 Reopening of s. 143(1) intimation: The submission of the Dept that in view of Rajesh Jhaveri 291 ITR 500 (SC), the AO can reopen the assessment for "whatever reason" is preposterous. The AO cannot reopen on the basis of info received from DIT (Investigation) that a particular entity has entered into suspicious transactions without linking it to the assessee having indulged in activity which could give rise to reason to believe that income has escaped assessment. Such reopening amounts to a fishing

inquiry. The AO has to apply his mind to the information received by him from the DDIT (Inv.) and cannot act on borrowed satisfaction.

In the circumstances it is submitted that since there was no independent application of mind by Ld. AO while issuing notice u/s 148 and he simply proceeded on borrowed satisfaction reached by some other officials on the basis of statements recorded in the case of third party, that too behind the back of assessee, the same has no evidentiary value, therefore, the entire proceedings initiated u/s 148 deserves to be quashed.

5.10 *Thirdly, the appellant has objected to reassessment after four years from the relevant assessment year on ground that it has already made true and full disclosure of the information necessary for assessment in the assessment proceedings concluded u/s 143(3). The appellant submitted that the assessment was completed u/s 143(3) after verifying all the documentary evidences sought including those related to capital raised by the appellant and income declared by appellant was accepted. The appellant submitted that as provided in First proviso to section 147, the AO has to establish failure on the part of appellant to disclose fully and truly all material fact necessary for assessment which is a pre-requisite for issue of notice u/s 148 beyond 4 years. The appellant has also relied on various judicial decisions that reopening initiated without establishing any failure on the part of the Assessee in fully and truly disclosing all material facts deserves to be quashed.*

5.11 *The Hon'ble Supreme Court in the case of ACIT vs Marico Ltd. has dismissed SLP filed by the department and confirmed the decision of Bombay High Court. Observations of Hon'ble High Court at para 12 are as under:*

*"Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised the query dated 25 september 2017 during the assessment proceedings and the petitioner had responded to the same by its letters dated 10 December 2017 and 21 December 2017 justifying its stand. The non rejection of explanation in the Assessment order would amount to the Assessing officer accepting the view of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated 27 March 2019 is quashed and set aside."*

5.12 *The appellant submitted that the facts and figures recorded in the reasons were wrong and the facts and figures given in the assessment order are also different. The appellant submitted that the AO prima facie has not done the bare necessary/rudimentary enquiry into the material received before he concludes that income chargeable to tax has escaped assessment as there is absence in the reason of any amount being determined by the AO as having escaped assessment. In the reasons recorded it is alleged that the appellant has taken accommodation entries of Rs. 1,30,00,385 from the different entities and in the computation of total income a sum of Rs. 1,20,00,385 was added. The appellant also submitted that since it has been legally settled that the AO is not entitled to reopen a return for review and since in this case, the AO issued the notice u/s 148 of the Act on 28/03/2019 merely as a process of review, the reassessment is not legally invalid. The appellant relied on various judicial decisions that the AO cannot reopen concluded assessment merely to re-examine any transaction for non-application of his mind on the materials already with him.*

5.13 *The Hon'ble Supreme Court in the case of Calcutta Discount co. v. ITO (1961) 41 ITR 191 held that once the assessee disclosed all primary facts, his duty ends and it is for the AO to draw conclusion from the same:*

*"Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of*



*disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else far less the assessee to tell the assessing authority what inferences-whether of facts or law should be drawn."*

5.14 *The Hon'ble Supreme Court in the case of CIT v. Bhanji Loveji (1971) 79 ITR 582 held that:*

The assessee had invited the attention of the Income-tax Officer to the previous assessment proceedings and also had invited his attention to the fact that on the interest received tax at maximum rate was charged. In the Bank account there was no express reference. But we agree with the High Court that since the factual position having remained unaltered in the assessment year 1949- 50, there was no non- disclosure of material facts necessary for assessment of the income. The Income-tax Officer was fully aware of the assessment proceedings for the years 1947-48 and 1948-49, and in his order he expressly referred to those proceedings. Being aware of the earlier proceedings and the reasons for passing the previous order, if the Income-tax Officer passed an order in effect holding that there was no income of the assessee chargeable to tax, the Income-tax Officer cannot seek to reassess the income on the ground of failure to disclose fully and truly the facts necessary for assessment. We do not think that any ground is made out for disagreeing with the High Court in respect of the validity of the order of re- assessment for the year 1949-50. 9. The appeals fail and are dismissed with costs."

5.15 *The Hon'ble Supreme Court in the case of ITO v. Nawab Mir Barkat Ali Khan Bahadur (1974) 97 ITR 239held:*

*"The High Court was right in holding that the Income Tax officer had no valid reasons to believe that the respondent had omitted or failed to disclose fully and truly all material facts and consequently had no jurisdiction to reopen the assessments for the four years in question. Having second thoughts on the same material does not warrant the initiation of a proceeding under sec. 147 of the Income Tax Act, 1961. Mr. Manchanda, learned counsel for the appellant, took us through several sections of Mulla's Principles of Mohammedan Law including sec. 268 and submitted that in the circumstances of the case it must be presumed that the three ladies were the legally wedded wives of the respondent. The law has not changed since the original assessments were made and it was open to the Income Tax Officer to make that presumption at the time. If he should have but did not do so then, he cannot avail of sec. 147 to correct that mistake."*

5.16 *The appellant submitted that all the financial details including the details of share applicants were submitted during the assessment u/s 143(3), the case was reopened again for verification of the same issue which is tantamount to review / change of opinion of AO's order. The appellant relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd, reported in 320 ITR 561 (SC) had referred the Departmental Circular no. 549 dated 31/10/1989 and decided that reopening cannot be made merely for change of opinion:*

*"The concept of "change of opinion" on the part of the Assessing Officer to reopen an assessment does not stand obliterated after the substitution of section 147 of the Income-tax Act, 1961, by the Direct Tax Laws (Amendment) Acts, 1987 and 1989. After the amendment, the Assessing Officer has to have reason to believe that income has escaped assessment, but this does not imply that the Assessing Officer can reopen an assessment on mere change of opinion. The concept of change of opinion must be treated as an in built test to check the abuse of power. Hence after April 1, 1989, the Assessing Officer has power to reopen an assessment, provided there is tangible*

*material to come to the conclusion that there was escapement of income from assessment. Reason must have a link with the formation of the belief"*

Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote here in below the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:

'7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in Section 147.- A number of representations were received against the omission of the words 'reason to believe' from Section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same.'

For the afore-stated reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

5.17 *The appellant submitted that it can be seen that the original assessment u/s. 143(3) was passed vide order dated 27.03.2014 that the AO had made complete verification of details and records furnished including details in respect of share capital. Hence, the appellant submitted that the notice proposing the AO's desire to reopen was issued on 26.03.2019, which is after the expiry of four years from the end of the relevant assessment year under consideration, in such a scenario one of the additional condition precedents which also is required to be satisfied is that the reasons recorded should point out what the material facts the assessee failed to disclose fully & truly necessary assessment. The appellant submitted that a bare perusal of the reasons recorded does not reveal any statement to the effect which would throw light as to what was found by the AO which can be construed to be failure on the part of the assessee to disclose fully & truly the material facts necessary for the assessment during original assessment, which recording of which was sine qua non and had to be spelt out by the AO in the reasons recorded to validity assume jurisdiction u/s. 147 of the Act. The appellant relied on the judgement of the Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. (41 ITR 191) wherein the Apex Court had held as follows: -*

"Both the conditions, (1) the income-tax officer having reason to believe that there has been under-assessment and (ii) his having reason to believe that such under- assessment has resulted from nondisclosure of material facts, must co- exist before the Income-tax officer has jurisdiction to start proceedings after the expiry of four years"

5.18 *The appellant submitted that the reason for reopening only stated that the assessment is reopened primarily on the basis of statement of Shri Mukesh Banka taken during the course of search proceedings conducted on M/s. Banka Group. The appellant submitted that there was no enquiry made by the AO and that the AO had merely relied on the statement of shri Mukesh Banka taken in course of its search proceedings and its statement there is no mention of the appellant company. The appellant submitted that the reasons as made available to the it merely indicates information received from the DIT*

*(Investigation) about a particular entity who had allegedly admitted that it has no business operations and has only other income which is used for giving loans. However, it is submitted that the material is not further linked by any reason to come to the conclusion that the appellant has indulged in any activity which could give rise to reason to believe on the part of the AO that income chargeable to tax has escaped Assessment. The appellant company had furnished details of Share Applicants during the course of original assessment and AO was satisfied in respect of such details furnished.*

5.19 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. It is seen that the AO has satisfied himself that appellant had taken accommodation entry in the shape of unsecured loans. The appellant raised objections before AO against such reasons wherein it was categorically contended that appellant had not taken any unsecured loans from any of the party mentioned in the list and in fact some of companies had subscribed to its share capital for which the necessary verification has already been done in the assessment completed u/s 143(3) of the Act. It has been settled by various courts that when no addition is made in respect to the reason for which the satisfaction is reached in the reasons recorded before issue of notice u/s 148 of the Act, then the Ld. AO had no jurisdiction to make any other addition i.e. to go beyond the jurisdiction assumed by issue of notice u/s 148 of the Act. The Hon'ble jurisdictional Rajasthan High Court in the case of Ram Singh 306 ITR 343 has held as under:-

"28. If considered on that principle, leaving apart for the moment, the aspect of interpretation of the word "and" as "or", the existence of the word "also" is of a great significance, being of conjunctive nature, and leaves no manner of doubt in our opinion, that it is only when, in proceedings under section 147 the AO, assesses or reassesses any income chargeable to tax, which has escaped assessment for any assessment year, with respect to which he had "reason to believe" to be so, then only, in addition, he can also put to tax, the other income, chargeable to tax, which has escaped assessment and which has come to his notice subsequently, in the course of proceedings under section 147.

29. To clarify it further, or to put it in other words, in our opinion, if in the course of proceedings under section 147, the AO were to come to conclusion, that any income chargeable to tax, which, according to his "reason to believe", had escaped assessment for any assessment year, did not escape assessment, then, the mere fact, that the AO entertained a reason to believe, albeit even a genuine reason to believe, would not continue to vest him with the jurisdiction, to subject to tax, any other income, chargeable to tax, which the AO may find to have escaped assessment, and which may come to his notice subsequently, in the course of proceedings under section 147."

5.20 It is also seen that the Hon'ble jurisdictional High Court in the case of M/s Prime Chem Oil Ltd. Vs. ACIT in DBITA No. 220/2017 vide order dt. 17.4.2018 has also expressed the same view. The Hon'ble Bombay High Court recently in the case of Arvind Sahdeo Gupta Vs ITO in Writ Petition No. 4793 of 2021 Date of Judgement/Order : 08/08/2023 Related Assessment Year : 2013-14 has held that if the reasons for re-opening the assessment are based on incorrect facts or conclusions, the notice issued under section 148 of the income Tax Act for re-opening cannot be sustained. The Hon'ble High Court has held as under:-

"14] It is also to be noted that by issuing subsequent notice, the ITO has sought further information from the petitioner which information does not form the basis of the reasons assigned for re-opening the proceedings. This is clear from the notice dated 24/8/2021. The Division Bench in Nivi Trading Limited (supra) has held that if further details are sought or some verification is proposed by the officer, same cannot be a substitute for the

reasons that have led the Assessing Officer to believe that an income chargeable to tax has escaped assessment.

15] From the aforesaid, it is clear that the notice dated 24/3/2020 issued under Section 148 of the Act of 1961 seeking reopening of the assessment is based on incorrect facts. The objections raised by the petitioner pointing out the relevant facts including the proper Assessment Year to which the said transaction pertained being Assessment Year 2012-13 coupled with the fact that the amount of Rs.9,90,314/- that was stated to be the amount being profit from the sale of shares having been explained to be the amount of loss, the objections having been decided without any speaking order and not dealing with the undisputed factual aspects leads to the conclusion that the re-opening of the assessment is without there being any reason to believe that the income has escaped assessment. In these facts, the notice dated 24/3/2020 suffers from fundamental factual errors. An exceptional case thus having been made out to interfere in exercise of writ jurisdiction, the impugned notice dated 24/3/2020 issued under Section 148 of the Act of 1961 is quashed and set-aside. Consequentially, further steps taken by the respondents based on said notice would no longer survive.”

5.21 The Hon'ble Bombay High Court in the case of *Punia Capital Pvt. Ltd Vs ACIT in Writ Petition No. 1091 of 2022 Date of Judgement/Order : 15/02/2023 Related Assessment Year : 2015-16* held as under: *Analysed Section 147 of the IT Act and noted that, if the Respondent had reason to believe in any A.Y. that any income chargeable to tax had escaped assessment, the Respondent may assess or reassess such income, as well as any other income chargeable to tax, which had escaped assessment and which came to its notice subsequently in the course of the proceedings, subject to the provisions of Sections 148 to 153 of the IT Act. The Hon'ble High Court further noted that, if an assessment under Section 143 (3) has been made for the relevant A.Y., no action shall be taken under Section 147 of the IT Act after the expiry of four years from the end of the relevant A.Y. unless any income chargeable to tax has escaped assessment for such A.Y. by reason of failure on the part of the Petitioner to disclose fully and truly all material facts necessary for its assessment for that assessment year. The Hon'ble High Court observed that, the Respondent had reopened the assessment solely on the basis of "reason to believe" and not on the grounds of failure to disclose material facts fully and truly, which would have required satisfaction on the part of the Respondent, particularly since the re-opening pertained to a period beyond four years. the Hon'ble High Court relied on the judgment in its earlier matter of *Hindustan Lever Ltd. v. R.B. Wadkar, Assistant Commissioner of Income-tax [Writ Petition No. 1504 of 2003 dated February 25, 2004]*, wherein, the Court set aside the notice issued under Section 148 of the IT Act, on the grounds that the Revenue Department had not stated that there was failure on the part of the assessee to disclose fully and truly the material facts necessary for the assessment, without touching upon any of the other grounds. The Hon'ble High Court held that, the Respondent's manner of proceeding reflects a complete non-application of mind, which does not satisfy the jurisdictional condition required under Section 147 of the IT Act.*

5.3. The Hon'ble ITAT Delhi in the case of *Madan Mohan Tiwari Vs ITO (ITAT Delhi) Appeal Number : ITA No. 6925/Del/2018 Date of Judgement/Order : 06/10/2021 Related Assessment Year : 2008-09* has held as under:-

“..... However, in this case, despite, it was brought to the knowledge of the Assessing Officer that the information on the basis of which he has formed belief of escapement of income of the assessee, was wrong, still the Assessing Officer proceeded to frame the assessment on the basis of the aforesaid wrong information which was basis for formation of his belief. Under these circumstances, it cannot be said that the Assessing Officer has proceeded in accordance with law. Framing of the assessment on the basis of



*information, which was wrong information to the very knowledge of the Assessing Officer, in our view, cannot be held to be justified, nor the same can be said to be an information to form the belief that the income of the assessee has escaped assessment. The reassessment framed on the basis of such wrong information and wrong belief is not sustainable in the eyes of law and the same is hereby quashed.”*

5.24 *The fact that the AO mentioned unsecured loan in the reasons for reopening shows that he mechanically issued notice under section 148 of the Act, on the basis of information allegedly received by him from the Directorate of Income Tax (Investigation) without proper application of mind and independent analysis and investigation. I find that the scrutiny assessment was completed u/s 143(3) on 27.03.2014 in the case of the appellant for the A.Y 2012-13 wherein all the information related to the share capital had been provided by the appellant and after due application of mind, the assessment order was passed.*

5.4. *Section 147 of the Act reads as under:*

*“147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

*Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure<sup>66</sup> on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:*

*Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:*

*.....”*

5.25 *Therefore, as laid down in the first proviso to section 147, the AO had to establish failure on the part of appellant to disclose fully and truly all material fact necessary for assessment which is a pre-requisite for issue of notice u/s 148 beyond 4 years. In the instant case, I find that the AO had failed to establish any failure on the part of appellant to disclose fully and truly all material fact necessary for assessment. It is seen that this fact was brought to the notice of the AO through objections filed during the reassessment proceedings, the AO vide order dt. 25.11.2019 disposing the objections raised, stating that the assessment u/s 143(3) of the Act is completed on 28.03.2016 and notice issued on 18.03.2019 which is within four years from the end of the relevant year in which assessment is completed. Therefore, the AO wrongly has changed the time limit from ‘four years from the relevant assessment year’ to ‘four years from the end of the relevant year in which assessment is completed’.*

5.26 *The Hon’ble Supreme Court in the case of ACIT vs Marico Ltd. has dismissed SLP filed by the department and confirmed the decision of Bombay High Court. The Hon’ble High Court at para 12 observed as under:*

“Thus we find that the reasons in support of the impugned notice is the very issue in respect of which the Assessing Officer has raised the query dated 25 September 2017 during the assessment proceedings and the petitioner had responded to the same by its letters dated 10 December 2017 and 21 December 2017 justifying its stand. The non rejection of explanation in the Assessment order would amount to the Assessing officer accepting the view of the assessee, thus taking a view/forming an opinion. Therefore, in these circumstances, the reasons in support of the impugned notice proceed on a mere change of opinion and therefore would be completely without jurisdiction in the present facts. Accordingly, the impugned notice dated 27 March 2019 is quashed and set aside.”

5.27 *I find that various courts have settled that the AO cannot reopen concluded assessment merely to re-examine any transaction for non-application of his mind on the materials already with him. In the case of Gemini Leather Stores v. ITO [1975] 100 ITR 1, the Hon'ble Supreme Court held:*

“After discovery of the primary facts relating to the transactions evidenced by the drafts it was for the officer to make the necessary enquiries and draw proper inference as to whether the amounts represented by the drafts could be treated as part of the total income of the appellant. This the officer did not do. It was plainly a case of oversight and it could not be said that income chargeable to tax had escaped assessment by reason of the omission or failure on the part of the appellant to disclose fully and truly all material facts. He could not, thereafter, take recourse to Section 147(a) to remedy the error resulting from his own oversight.”

5.28 *In the case of Calcutta Discount Co. v. ITO (1961) 41 ITR 191, the Hon'ble Supreme Court held that once the assessee disclosed all primary facts, his duty ends and it is for the AO to draw conclusion from the same:*

“Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else far less the assessee to tell the assessing authority what inferences-whether of facts or law should be drawn.”

5.29 *In the case of ITO v. Nawab Mir Barkat Ali Khan Bahadur (1974) 97 ITR 239, the Hon'ble Supreme Court held:*

“The High Court was right in holding that the Income Tax officer had no valid reasons to believe that the respondent had omitted or failed to disclose fully and truly all material facts and consequently had no jurisdiction to reopen the assessments for the four years in question. Having second thoughts on the same material does not warrant the initiation of a proceeding under sec. 147 of the Income Tax Act, 1961. Mr. Manchanda, learned counsel for the appellant, took us through several sections of Mulla's Principles of Mohammedan Law including sec. 268 and submitted that in the circumstances of the case it must be presumed that the three ladies were the legally wedded wives of the respondent. The law has not changed since the original assessments were made and it was open to the Income Tax Officer to make that presumption at the time. If he should have but did not do so then, he cannot avail of sec. 147 to correct that mistake.”

5.30 *Perusal of the original assessment u/s. 143(3) was passed vide order dated 27.03.2014 reveals that the AO had made complete verification of details and records furnished including details in respect of share capital. The judicial principal as set out in the judgement of the Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. (41 ITR 191) wherein the Apex Court had held as follows: -*

“Both the conditions, (1) the income-tax officer having reason to believe that there has been under-assessment and (ii) his having reason to believe that such under-assessment has resulted from nondisclosure of material facts, must co- exist before the Income-tax officer has jurisdiction to start proceedings after the expiry of four years”

5.31 *In summing up, in the present case, I find that the AO has formed the reason to believe that the appellant had taken accommodation entry in the shape of unsecured loans. The appellant had raised objections against such reasons recorded wherein it was categorically contended by the appellant that it had not taken any unsecured loans from any of the party mentioned in the list and in fact all these companies had subscribed to its share capital. The reassessment order was passed wherein the addition was made of the said amount by holding the same as unexplained share application money/share premium when the AO had treated it as unsecured loan in reasons for reopening. Further, I find that the scrutiny assessment was originally completed u/s 143(3) of the Act on 27.03.2014 in the case of the appellant for the A.Y 2012-13 wherein all the information related to the share capital had been provided by the appellant and after due application of mind, the assessment order was passed. In view of the above facts and discussion, and respectfully, following the various judicial decisions including the Hon'ble Supreme Court as discussed above, I am of the considered view that reopening and subsequent reassessment u/s 147 of the Act was not valid and the same is quashed. The appeal on Ground No 1 to 1.3 are thus allowed.*

19. Further reliance is placed upon following authorities apart from referred in the Compilation submitted earlier:

- Jagat Jayantilal Parikh v. DCIT [2013] 32 taxmann.com 161 (Gujarat):

*The reasons for reopening the assessment are almost identically worded as that of audit report. No material worth the name emerges to indicate any independent application of mind. Facts are quite glaring and they clearly establish absence of subjective satisfaction of Assessing Officer. Thus the ground raised by the assessee that such notice of reopening is invalid for the Assessing Officer having not formed his independent belief requires to be sustained. [Para 7]*

- Balaji Minesand Minerals (P.) Ltd. v. ACIT [2024] 163 taxmann.com 37 (Bombay):

*The reason for re-opening given by the revenue only refers to the information received from the Directorate of Revenue Intelligence (DRI), which admittedly referred to the customs duty and the commission paid to overseas agents. The Assessing Officer nowhere disclosed as to how such information is material for the purpose of considering that there is failure to disclose truly and fully about the payment made to the commission agent. Besides, there is absolutely no record on the part of the Assessing Officer that he independently applied his mind to the material received from the Directorate of Revenue Intelligence (DRI), so as to come to his independent conclusion that there was suppression of material and that there is need for reopening of the assessment. The entire material and the chart prepared in the reasons is found copied from the report of the Directorate of Revenue Intelligence (DRI). [Para 42]*

*There was no independent application of mind on the part of the Assessing Officer to come to his own conclusion that the income escaped assessment. Unless such reasons are disclosed, the reopening of assessment is not at all permissible. Accordingly, reopening notices issued to the petitioner in Writ Petition Nos. 879/2016, 882/2016 and 880/2016 need interference. [Para 47]*

- Gandhibag Sahakari Bank Ltd. v. DCIT [2023] 156 taxmann.com 221 (Bombay):

*On perusal of the notice dated 31-3-2021 issued under section 148(1) of the Act of 1961 coupled with the reasons assigned by the respondents for seeking to re-open the*



*proceedings it becomes clear that it is on the basis of the information shared on the Insight Portal with regard to high value cash deposits that has prompted the Assessing Officer to have a "reason to believe" that the said amount in the hands of the petitioner had escaped assessment. Except for stating that such information was available on the Insight Portal it has not been indicated in the said reasons as to how there was formation of belief by the Assessing Officer that income had escaped assessment. The reasons supplied do not indicate that any exercise of independent verification thereafter was undertaken resulting in consideration of the same with due application of mind by the Assessing Officer so as to re-open the completed assessment...The said material however was not further linked by any reason to come to the conclusion that the assessee had indulged in any activity that could give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax had escaped assessment. Further there was absence of application of mind to the information received and the reopening notice was issued merely on the basis of such information received. [Para 9]*

*For aforesaid reasons, it is found that the Assessing Officer in absence of any independent verification of the information available on the Insight Portal has proceeded to reopen the completed assessment without indicating the basis for having a reason to believe that the information in the hands of the petitioner had escaped assessment. [Para 12]*

• *Signature Hotels (P.) Ltd. v. ITO [2012] 20 taxmann.com 797 (Delhi):*

*The aforesaid reasons do not satisfy the requirements of section 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, except the annexure, which has been quoted above. The annexure cannot be regarded as a material or evidence that prima facie shows or establishes nexus or link which discloses escapement of income. The annexure is not a pointer and does not indicate escapement of income. Further, it is apparent that the Assessing Officer did not apply his own mind to the information and examine the basis and material of the information. The Assessing Officer accepted the plea on the basis of vague information in a mechanical manner. The Commissioner also acted on the same basis by mechanically giving his approval. The reasons recorded reflect that the Assessing Officer did not independently apply his mind to the information received from the Director of Income-tax (Investigation) and arrive at a belief whether or not any income had escaped assessment [PARA 15]*

• *PCIT v. Meenakshi Overseas (P.) Ltd [2017] 82 taxmann.com 300 (Delhi): The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the formation of the belief or the reason to believe that income has escaped assessment. [PARA 26]*

*In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment. [PARA 36]*

• **Sri Laxmi Narayan Agency v. ITO [2023] 148 taxmann.com 373 (Orissa):** *In the present case, apart from the fact that the reopening of the assessment being bad in law for non-supplying of the vital documents on the basis of which the reasons to believe were formed, the Court finds that the reasons for reopening merely reproduces the language of the report of the DDIT (Inv.) without the AO independently applying his mind to the material on record.*

*For all of the aforementioned reasons, the Court finds the impugned re-assessment order to be unsustainable in law and the same as well as the consequential demand notices are hereby set aside. The writ petition is allowed in the above terms but, in the circumstances, with no order as to costs.*

• **Nila Infrastructures Ltd. v. ACIT 2023 (9) TMI 1624 (Gujarat):** *The reopening of the assessment in the present case is for the assessment year 2012-13. The reasons to believe reproduced as Sr. No. 3 & 6 in [2023 (1) TMI 181 - GUJARAT HIGH COURT] when compared to the reasons to believe namely reasons no. 1 & 2 of the present case, except for the figures, the company being SECL in the present case and the intimation letter only being one of a different date i.e. 13.03.2018, the reasons to believe in the present petition are completely identical to the reasons no. 3 & 6 in the aforesaid petition. The court therefore had extensively considered these very reasons held that reopening was not justified due to the lack of independent reasons and the impermissible reliance on borrowed satisfaction. The court made the rule absolute, thereby granting the petition in favour of the petitioner.*

• **PCIT v. Sunlight Tours & Travels Pvt. Ltd. 2024 (11) TMI 1384 (Delhi):**

*Validity of Reopening of assessment u/s 147 - Addition on the ground other than assessment was reopened - Assessee contention that since no addition had been made on account of the reasons on the basis of which the reopening of the assessment was sustained no other addition was permissible accepted by ITAT - HELD THAT:- Section 147 of the Act enables the reopening of concluded assessments only in exceptional cases, where there the AO has reason to believe that Assessee's income for the relevant period has escaped assessment. It is trite law that concluded assessment should not be lightly interfered with. If the ground on which the concluded assessment is sought to be re-opened, cannot be sustained, there would be little rationale for expanding the reassessment proceedings.*

*In our view, it would not be apposite to accept an expansive interpretation to the provision of Section 147 of the Act. Given that the nature of the proceedings is to unsettle concluded assessment, a strict interpretation of the plain language of Section 147 of the Act, is warranted. We respectfully concur the view of this court as articulated in [Ranbaxy Laboratories Limited \[2011 \(6\) TMI 4 - DELHI HIGH COURT\]](#) and [ATS Infrastructure Ltd.\[2024 \(7\) TMI 1441 - DELHI HIGH COURT\]](#) and [Jaguar Buildcon Pvt. Limited. \[2024 \(8\) TMI 517 - DELHI HIGH COURT\]](#)*

*It is also relevant to note that various courts had taken a view that the reassessment proceedings were confined under Section 147 of the Act only to the issues (reasons to believe) on the basis of which the assessments were reopened. Thus, there was no scope for making any addition other than those which were circumscribed by the reasons to believe as recorded by the AO prior to the issuing a notice under Section 148 of the Act. However, this controversy was set at rest by introduction of Explanation 3 by virtue of the Finance Act, 2009 with retrospective effect from 01.04.1989.*

*Explanation 3 to Section 147 merely clarified that the AO would assess or reassess the income in respect of the issue which had escaped assessment and such other issue, which came to the notice subsequently. However, the said explanation does not control the import of the plain language of Section 147 of the Act. Explanation 3 to Section 147 of*

the Act, merely clarifies that the jurisdiction of the AO was not confined to assessing or reassessing of the income of an Assessee only in respect of the issue, which formed a part of the reasons recorded for reopening the assessment. The said explanation cannot be interpreted to mean that the AO could assess other incomes of the Assessee even in cases where no addition is made on account of the reasons for which reassessment was initiated. No substantial question of law arises in the present appeal.

• Amar Partap Steels Pvt. Ltd. v. ITO ITA No. 108/JPR/2024 dated 03.10.2024 (ITAT Jaipur):

Apropos to the ground no. 1 & 2 raised by the assessee the relevant facts as emerges from the record is that in this case, information was received related to assessee which was passed on by office of the Director General of Income tax (investigation, 3<sup>rd</sup> floor, Scindia House, Ballard Pier, Mumbai vide its office letter No DGIT (Inv)/Information/PJ2014-15 dated 03.07.2014 and received from the Income tax Officer (Inv)(Hqrs) O/s the Director General of Income Tax (Inv), Rajasthan, Jaipur the assessee has taken the accommodation entries as unsecured loans from the following companies which are managed and controlled by Shri Praveen Kumar Jain Group, Mumbai:

SNo.	Name of the entry provider	PAN No.	Financial Year	Amount
1	M/s Falak Trading Co. Pvt	AABCF5837A	2012-13	1,00,00,000/-
2	M/s Pragati Gems Pvt. Ltd	AAFCE5566J	2012-13	50,00,000/-

As is known from the statement of Shri Praveen Jain that the assessee is one of the beneficiaries for taking the accommodation entries as unsecured loans from the above companies. As these companies were managed and controlled by Shri Praveen Kumar Jain through his relatives, agents and his accountants as known from the search & seizure operation conducted by Investigation Wing, Income Tax Department, Mumbai in the case of Shri Praveen Kumar Jain Group. Therefore, Id. AO merely based on that information considered these loans as bogus unsecured loans made by the assessee with above companies. Based on this information addition of Rs. 1,50,00,000/- in the hands of the assessee considering that the assessee has taken the against accommodation entries from the Praveen Kumar Jain and group concerned managed by him.

When the matter carried to Id. CIT(A) who has also confirmed the view of the Assessing Officer and dismissed the appeal of the assessee by holding that ground of appeal raised by the assessee considering the information received based on the detailed statement of Shri Praveen Jain the addition is required to be sustained. While holding so Id. CIT(A) relied upon the decision of Sumati Dayal Vs. CIT wherein the apex court held that human probabilities and circumstances to be considered while coming to conclusions in finalizing the assessments and thereby he has confirmed the addition.

As is evident from the material placed on record that the assessee has accepted the ICDs from these two companies by account payee cheque. These loans have been repaid by account payee cheque. The relevant details showing the receipt and payment were placed on record. The assessee also placed on record the confirmation and ITR. All these facts are sufficient to prove the identity, genuineness and creditworthiness. The money so received as is evident that was repaid also. All these records so placed on record were not controverted which proves the identity, genuineness and capacity. On the similar set of fact Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 306 held that "The

*genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."*

*Moreover, our Jurisdictional High Court in the case of PCIT vs. M/s Esspal International Pvt Ltd. 166 taxmann.com 722 (Rajasthan) wherein our High Court vide order dated 03.09.2024 has held that " Even otherwise, an admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the revenue cannot be made the basis for any addition."*

*Thus, as is evident that except statement of Shri Praveen Jain there was no corroborative evidence was placed on record and therefore, we do not find any reasons to sustain that addition and direct ld. AO to delete the addition of Rs. 1,50,00,000/- made in the hands of the assessee.*

• *Ambaji Avenues Pvt. Ltd v. ITO 2024 (11) TMI 814 dated 25.10.2024 (ITAT Mumbai): Reopening of assessment after four years - Addition u/s 68 - independent application of mind v/s borrowed satisfaction - HELD THAT:- As undisputed fact that the original assessment in the case of the assessee u/s 147 was already completed on 27.11.2018. The notice u/s 148 for the second time for reopening of the case was issued on 22.03.2019 after the end of the four years period from the end of assessment year 2011-12.*

*The four years period was expired as on 31.03.2017. We have perused the return of income filed by the assessee as referred supra in this order wherein the assessee has disclosed the information and facts relating to the receipt of share capital from the three entities in the ITR Form 6 and in the financial statements filed before the AO at the time of original assessment order passed u/s 147 of the Act on 27.11.2018.*

*AO failed to substantiate that there was any fault on the part of the assessee to disclose fully and truly all material facts.*

*As decided in case of Everest Kanto Cylinder Ltd. [\[2024 \(2\) TMI 163 - BOMBAY HIGH COURT\]](#) since the notice u/s 148 has been issued more than 4 years after the expiry of the relevant assessment year, proviso to section 147 shall apply in as much as re-assessment is not permissible unless there has been failure to truly and fully disclosed necessary facts required for the assessment.*

*We have also perused the decision of Ananta Landmark (P) Ltd. [\[2021 \(10\) TMI 71 - BOMBAY HIGH COURT\]](#) wherein it is held that after a period of 4 years even if the assessing officer has some tangible material given to the conclusion that there is an escapement of income from assessment, he cannot exercise the power to reopen unless he discloses what was the material fact which was not truly and fully disclosed by the assessee.*

*Thus as considered that the assessee had already disclosed the detail of all the shareholder who have subscribed to the share capital of the assessee in the case of the shareholders, the assessing officer has already made addition in the case of one shareholder in the original reopening assessment order passed in the case of the assessee as already discussed above in this order.*

*It is categorically mentioned in the proviso to section 147 of the Act that condition of reopening of the assessment beyond the period of 4 years of the assessment year in which the return was filed is also applicable to the cases reopened u/s 147 of the Act. Therefore, we consider that reopening of the assessment in the case of the assessee made by the assessing officer beyond the period of 4 years without bringing on record any*



*lapses on the part of the assessee for not disclosing fact of the case truly and fully is invalid. Appeal of the assessee is allowed.*

• *Keshav Shroff v. ITO 2024 (7) TMI 1014 dated 28.06.2024 (ITAT Kolkata): Validity of reassessment proceedings - Unexplained cash credit u/s 68 - unsecured loan received from the loan creditor - Loans treated as bogus on the basis of the statement given by one Mukesh Banka - HELD THAT:- As prima facie the appellant has submitted copies of all those documents including the bank statement of the alleged loan provided/accommodation entry provider in support of transaction related to alleged loan claimed by the appellant. But he discarded the same by mere assumption and surmises thereby saying that these documents are mere masks to hide the real nature of the transaction. It is surprising to note that what was the basis of Id. CIT(A) to discard those documents without verification and genuineness of the documents and he doubted the same.*

*We further notice that the Id. CIT(A) has rejected the above documents by saying that finding of the AO was based on strong surrounding circumstances and preponderance of the probability and human conduct. It is important to mention here that above findings cannot be basis of rejection of a document which was filed by the assessee. The documents clearly go to show that the transaction made being a genuine one and we do not find any transaction made by and with any Mukesh Banka. It is also a fact that all transactions made through banking channels.*

*Loan taken was duly repaid by account payee cheque. No transaction was entered with Sh. Mukesh Banka and Banka Group. Genuine loan was taken from M/s. Fast Speed Realcon Pvt. Ltd. and loan confirmation of M/s. Fast Speed Realcon Pvt. Ltd. has also been enclosed in the balance sheet, profit and loss account filed by the assessee. Keeping in view the above facts, the answers come in favour of the assessee that the assessee could be able to disclose the amount and the finding of the AO and the Id. CIT(A) that the assessee could not be able to disclose the source of income of Rs. 15 Lakh is hereby set aside.*

*Validity of reopening of assessment - We find that before issuance of notice u/s 148 of the Act there must be a belief in the mind of the AO that the assessee has escaped assessment of income and there must be some basis for forming such a belief. Mere suspicion cannot be a ground for issuance of notice.*

*In the present case as we have discussed above that there is nothing in the record brought by the AO to establish any connection of the assessee with Mukesh Banka, there is no transaction made by and with Mukesh Banka as the statement of bank account details reveals. Keeping in view the above facts also the case of the assessee is succeeded that issuance of notice is also bad in law. Accordingly, the grounds raised by the assessee are allowed. Assessee appeal allowed.*

• *ITO v. Aashna Developers Pvt. Ltd. 2024 (2) TMI 274 dated 10.01.2024 (ITAT Ahmedabad): Addition of unsecured loan taken from shell/paper companies - assessee company during the year has accepted unsecured loans from certain parties - material collected during the search at third party premises - as alleged by the AO that the parties from whom unsecured loans were accepted by the assessee are paper/shell companies and managed by the entry provider - as argued search materials and statement relied upon by the AO for making addition against the assessee were neither supplied to the assessee - CIT(A) deleted the additions.*

*HELD THAT:- The entire thrust of the AO for treating the unsecured loan as unexplained cash credit was materials collected during the search proceeding from the premises of entry provider and his statement recorded during the search. However, we note that the learned CIT(A) has given categorical finding that the search materials and statement*

relied upon by the AO for making addition against the assessee were neither supplied to the assessee for rebuttal nor the opportunity of cross examination of Shri Mukesh Banka has been provided.

It is settled position of law that not providing the material used against the assessee for rebuttable and opportunity of cross examination of the statement relied upon by the AO will vitiate the validity of the assessment. See *Andaman Timber Industries vs. CCE* [2015 (10) TMI 442 - SUPREME COURT]

Onus to prove - Assessee in support of genuineness of loan have furnished all the necessary documents such as ledger of parties, contra ledger from the parties and confirmation, ITRs, bank statements and annual reports. However, the AO without pointing out any infirmity and application of mind on those documentary evidence, treated the loan amount as unexplained cash credit by relying upon the statement recorded and material collected during the search at third party premises and that too without providing the opportunity of rebuttal and cross examination. Hon'ble Supreme Court in the case of *CIT vs. Odeon Builders Pvt Ltd* [2019 (8) TMI 1072 - SUPREME COURT] has confirmed the concurrent finding of learned CIT(A), the ITAT and the High court in favour of the assessee.

Once the assessee submits primary evidence with regard to identity and credit worthiness of creditor and the genuineness of the transaction the onus shifts on the AO to consider the material provided and make independent inquiry in order to find out genuineness of the evidence or bring material contrary to fact explained by the assessee. The AO cannot reject the primary evidence furnished by the assessee without appreciating the facts available on record or without bringing contrary material to form the belief that primary document or explanation furnished by the assessee is not satisfactory.

Undeniably, the assessee during the assessment proceeding in support of genuineness of credit of unsecured loans has furnished ledger of parties, contra ledger from the parties and confirmation, ITRs, bank statements and annual report of parties along with their affidavit. The AO in assessment order has nowhere referred to any independent inquiry of whatsoever made to disprove the primary evidence provided by the assessee and not pointed out any infirmity in those evidence.

As such, the AO merely on the basis statement of entry provider which has been retracted subsequently held the unsecured loans as unexplained cash credit. Thus approach taken by the AO is not justified. As such the AO failed to appreciate the facts, evidence provided, and case laws relied upon by the assessee company.

Assessee company has taken loan through banking channel and repaid the same in the next year along with interest through banking channel and deducted TDS on the interest. It is also important to note that the interest has been allowed by the AO during the assessment which has direct nexus on the loan in dispute. As such the AO has taken a contrary stand. Thus, the loan amount of cannot be made subject to addition under the provisions of section 68 - Appeal of the Revenue is hereby dismissed.

• *Narmada Concast Pvt. Ltd. v. DCIT 2024 (5) TMI 950 dated 03.01.2024 (ITAT Ahmedabad):* Validity of reassessment proceedings on borrowed satisfaction - allegation of non independent application of mind - As per AO assessee had entered into high value financial transactions facilitating bogus accommodation entries - Addition u/s 68 for unexplained cash credit - AO relied upon investigation report of Banka Group supplied by the Investigation Wing of the Income Tax Department - HELD THAT:- AO has failed to verify the transaction recorded by the Investigation Wing which are double entries made for the same transactions of Rs. 20,00,056/- and Rs. 30,00,056/-. Though the A.O. records the unsecured loan of Rs. 50,00,000/- received by the assessee from M/s. KCPL,

however upheld the double entry addition of Rs. 1,00,00,224/ as the undisclosed income of the assessee.

A.O. failed to consider the repayment of above loan by the assessee during the assessment year 2018-19 which was not disputed, while framing the assessment order for the assessment year 2018-19 by the very same AO. Thus in our considered view, A.O. has simply accepted the information given by DGIT which is reproduced in the reasons recorded, he has not formulated "his own reason to belief" that any income chargeable to tax has escaped assessment.

A.O. ought to have seen the double entry of the loan transactions with bank entry details and then formulated "his own reason to belief" but simply followed the information given by DGIT, which is nothing but "borrowed satisfaction" and is against the provision of Section 147 of the Act. Therefore the same is liable to be quashed.

As decided in Varshaben Sanatbhai Patgel [\[2015 \(11\) TMI 934 - GUJARAT HIGH COURT\]](#) held that in the absence of any details available on record, AO could not initiate assessment proceedings merely on the basis of information supplied by DGIT (Inv.) that assessee had made certain bogus purchases.

Thus reopening of assessment itself is bad in law for having not recorded independent "reason to believe" that income has escaped assessment. Decided in favour of assessee.

18. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

#### ITA No. 872/JP/2024

#### Paper Book

SNo.	Particulars	Page No.
A.	Written submissions dated 31.10.2023 filed before the Id. CIT(A)	A1 – A78
1.	Assessment order dated 27.03.2014 passed u/s 143(3) of the Act	01
2.	Letter dated 26.09.2019 providing reasons recorded for reopening the assessment u/s 147 of the Income Tax Act.	02-08
3.	Letter filed by the assessee with respect to objections against reasons recorded u/s 147 of the Act	09-14
4.	Order dated 25.11.2019 passed by the Id. Assessing Officer disposing of objections to the reopening of assessment	15-17
5.	Reply dated 27.11.2019 filed by the assessee before the Id. Assessing Officer during assessment proceedings u/s 143(3)	18-19
6.	Show cause notice dated 18.12.2019 issued by the Assessing Officer.	20-23
7.	Reply dated 19.12.2019 filed by the assessee in response to show cause notice.	24-25
8.	Copy of Bank statement of the assessee company from 01.04.2011 to 31.03.2012 bearing account number: 701300300000310 With Vijaya Bank	26-30



9.	Copy of Audited Statement of Accounts for the year ended 31st March, 2012 of the assessee Company	31-40
10.	Documents of share applicant Companies	
1.	M/s. Agarani Credit & Finvest Private Limited	
	a) Copy of Form of application for equity shares	41-42
	b) Copy of Board Resolution by the company for investing in assessee company	43
	c) Copy of Bank Statement	44-45
	d) Copy of Return of Income Acknowledgement for the A.Y. 2012-13	46
	e) Copy of Audited statement of accounts Year ended 31.03.2012	47-69
	f) Copy of Return of Income Acknowledgement for the A.Y. 2011-12	70
2.	M/s. Darshan Enclave Private Limited	
	a) Copy of Form of application for equity shares	71
	b) Copy of Board Resolution by the company for investing in assessee company	72
	c) Copy of Bank Statement	73
	d) Copy of Return of Income Acknowledgement for the A.Y. 2012-13	74
	e) Copy of Audited Statement of Accounts for the Year ended 31.03.2012	75-88
3.	M/s. Harsharatna Finance & Investment Private Limited	
	a) Copy of Form of application for equity shares	89-90
	b) Copy of Board Resolution by the company for investing in assessee company	91
	c) Copy of Bank Statement	92-93
	d) Copy of Return of Income Acknowledgement for the A.Y. 2012-13	94
	e) Copy of Audited Statement of Accounts for the Year ended 31.03.2012	95-116
	f) Copy of Return of Income Acknowledgement for the A.Y. 2011-12	117
4.	M/s. Shareen Hire Purchase Private Limited	
	a) Copy of Form of application for equity shares	118-119
	b) Copy of Board Resolution by the company for investing in assessee company	120

	c) Copy of Bank Statement	121-122
	d) Copy of Return of Income Acknowledgement for the A.Y. 2012-13	123
	e) Copy of Audited Statement of Accounts for the Year ended 31.03.2012	124-143
5.	M/s. Dhanvantri Trafin Private Limited	
	a) Copy of Form of application for equity shares	144-146
	b) Copy of Bank Statement	147-148
	c) Copy of Board Resolution by the company for investing in assessee company	149
	d) Copy of Return of Income Acknowledgement for the A.Y. 2012-13	150
	e) Copy of Audited Statement of Accounts for the Year ended 31.03.2012	151-167
	f) Copy of Return of Income Acknowledgement for the A.Y. 2011-12	168
11.	Copy of Retraction Statement of Shri Mukesh Banka dated 01.06.2018	169-171
12.	Copy of Retraction Statement of Shri Mukesh Banka dated 23.07.2018	172-176
13.	Copy of Receipt of Retraction Statements dated 05.09.2019 being submitted by said Shri Mukesh Banka in the office of DCIT, Central Circle 4(2), Kolkata.	177
14.		
	Master data of all share applicants downloaded from MCA website	178-179
	• M/s. Agarani Credit & Finvest Private Limited	
	• M/s. Darshan Enclave Private Limited	180-181
	• M/s. Harsharatna Finance & Investment Private Limited	
	• M/s. Shareen Hire Purchase Private Limited	182-183
	• M/s. Dhanvantri Trafin Private Limited	184-185
		186-187
15.	Assessment orders of all share applicants passed by the respective Assessing Officers	
	• M/s. Agarani Credit & Finvest Private Limited	188-192
	• M/s. Darshan Enclave Private Limited	
	• M/s. Harsharatna Finance & Investment Private Limited	193-200
	• M/s. Shareen Hire Purchase Private Limited	
	• M/s. Dhanvantri Trafin Private Limited	201-212
		213-223

- **Case laws relied upon:**

ITA Nos. 872/JP/2024 to 875/JP/2024 & 901/JP/2024

### Compilation-I

SNo	Particulars	Page No
1.	<b>Ambaji Avenues Pvt. Ltd v. ITO</b> 2024 (11) TMI 814 dated 25.10.2024 (ITAT Mumbai)	1-6
2.	<b>Keshav Shroff v. ITO</b> 2024 (7) TMI 1014 dated 28.06.2024 (ITAT Kolkata)	7-10
3.	<b>TO v. Aashna Developers Pvt. Ltd.</b> 2024 (2) TMI 274 dated 10.01.2024 (ITAT Ahmedabad)	11-16
4.	<b>Narmada Concast Pvt. Ltd. v. DCIT</b> 2024 (5) TMI 950 dated 03.01.2024 (ITAT Ahmedabad)	17-21
5.	<b>Bidit Financial Management Pvt. Ltd. v. DCIT</b> 2019 (3) TMI 1701 dated 15.03.2019 (ITAT Kolkata)	22-52
6.	<b>ACIT v. Bholu Ram Papers and Powers Pvt. Ltd.</b> 2022 (3) TMI 644 dated 17.12.2021 (ITAT Patna)	53-68

### ITA Nos. 872 to 873/JP/2024

#### COMPILATION-II

SNo.	Particulars	Page No
7	<b>Sunlight Tour and Travels Pvt. Ltd. v. PCIT</b> 2024 (11) TMI 1384 dated 12.11.2024 (Delhi High Court)	69-75
8.	<b>Punia Capital Pvt. Ltd v. ACIT</b>	76-79

2023 (2) TMI 717 dated 15.02.2023 (Bombay High Court)

9. Arvind Sahdeo Gupta v. ITO

2023 (8) TMI 522 dated 08.08.2023 (Bombay High Court)

80-85

10. Madan Mohan Tiwari v. ITO

2021 (11) TMI 496 dated 06.10.2021 (ITAT Delhi)

86-98

11. Amar Partap Steels Pvt. Ltd. v. ITO

ITA No. 108/JPR/2024 dated 03.10.2024 (ITAT Jaipur)

99-125

19. The Id. AR of the assessee in addition to the bunch of paper book, decision and written submission vehemently argued that reasons recorded was not correct even though the Id. AO was having the complete information. The statement so relied was retracted and therefore, that retracted statement has no value for making the addition. In the reasons the allegation was that the assessee has taken the unsecured loans whereas the correct fact that it has obtained investment from that companies as share capital. Therefore, there is no leg to stand reasons for making the assessment in the case of the assessee and there is no application of mind by the Id. AO while recording the reasons and it is merely based on the borrowed satisfaction. To drive home to this contention he relied upon the decision of our Rajasthan High Court and Bombay High Court cited in the

decision compilation and even the Jaipur bench in the case of Amar Pratap Steel.

20. We have heard the rival contentions and perused the material placed on record. Vide ground no. 1 challenges the finding of the Id. CIT(A) quashing the reopening and reassessment u/s 147 of the Act ignoring that the case was reopened as per provisions of clause (c) of explanation 2 to section 147 of the Act and with the approval of Principal Commissioner of Income-tax and he was also not justified in quashing the reopening and reassessment u/s147 of the Act without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission for taking accommodation entry. Vide ground no. 2 challenges the finding that reason to belief of the AO is founded on information which has been received by the AO after completion of assessment, which is a sound foundation for exercising power u/s 147 r.w.s. 148 and therefore, he should not have quashed the re-opening of the case.

Since the case of revenue hinges around proceeding-initiated u/s. 148 of the Act and thereby making the addition it would be appropriate to deal with the reasons recorded by the Id. AO while reopening the case. Reasons

as is appearing on page 2 of the paper book filed by the assessee reveals that the Id. AO based on the information received from the DDIT who searched the Banka Group noted that the assessee is one of the beneficiary who has taken accommodation entry in the form of bogus unsecured loans or in other form from the following dummy or shell companies which are controlled or managed by Shri Mukesh Banka.

Against those reasons the assessee objected before the Id. AO that they have not obtained any unsecured loans as alleged in the reasons recorded but in fact companies referred subscribed to its share capital for which the necessary verification has been done and accordingly assessment has already been completed on 27.03.2014 and therefore, the said issue again cannot be taken up as settled by the legal precedent.

The fact that Id. AO mentioned unsecured loan in the reasons for reopening shows that he mechanically issued notice under section 148 of the Act, based on information allegedly received by him from the Directorate of Income Tax (Investigation) without proper application of mind and independent analysis and investigation even though all the information was available on record. The assessee contended that in the scrutiny assessment which was completed u/s 143(3) on 27.03.2014 in the case of the appellant for the A.Y 2012-13 wherein all the information related to the



share capital had been provided by the appellant and after due application of mind, the assessment order was passed.

Even though Id. AR of the assessee contended before the Id. CIT(A) that the reasons were recorded for unsecured loans and additions were made for share capital and therefore Id. CIT(A) following our jurisdictional High Court's order in the case of Ram Singh 306 ITR 343 quashed the assessment. While doing so Id. CIT(A) has also followed the other judgments on the same issue. Before us since there was no contrary judgment serviced by the revenue, we do not find infirmity in that finding of the Id. CIT(A).

The bench also noted that in the original assessment u/s. 143(3) which was passed vide order dated 27.03.2014 reveals that the AO had made complete verification of details and records furnished including details in respect of share capital. The judicial principal as set out in the judgement of the Hon'ble Supreme Court in the case of Calcutta Discount Co. Ltd. (41 ITR 191) wherein the Apex Court held that *"Both the conditions, (1) the income-tax officer having reason to believe that there has been under-assessment and (2) his having reason to believe that such under-assessment has resulted from nondisclosure of material facts, must co-exist*

*before the Income-tax officer has jurisdiction to start proceedings after the expiry of four years”*

As regards the share application money / share capital the apex court in the case of Lovely Exports come at the rescue of the assessee on the merits because to prove the identity, creditworthiness and genuineness of the transaction the assessee has placed on record copy of Form of application for equity shares, copy of board resolution by the company for investment in the assessee-appellant, copy of bank statement, copy of ITR for the year under consideration and earlier year, copy of financial statement of the investor company. Copies of bank statements evidencing the investment of share application money through banking channels. Thus, the assessee discharged its onus as per provision of section 68 of the IT Act. Now onus is on AO to disprove the genuineness of the investments on that aspect except statement of Shri Mukesh Banka no contrary material placed on record. Further, the AO did not point out any specific instance or any information in the statements recorded by the Investigation Wing in the case of Shri Mukesh Banka which reveals the alleged involvement of assessee in taking accommodation entries. In the absence of any specific information about the assessee against the evidence on record it is not correct to make addition merely on the basis surmises and presumptions of

a statement of the third party Shri Mukesh Banka. The evidence placed on record clearly proves the identity, capacity and genuineness of the transactions were proved and thus the criteria as prescribed in section 68 has been fulfilled and it does not warrant the source of source to be proved. The decision cited by the Id. AO does not match with the facts of the case. Considering that aspect of the matter once the credential of the investor is proved about the identity, genuineness and creditworthiness of the investor there is no reason to sustain the addition. We get strength to our view from the decision of the apex court in the case Lovely Exports (Supra) wherein it has been held that where the Revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income Tax Officer to proceed by reopening the assessment of such shareholders and assessing them to tax in accordance with law. It does not entitle the Revenue to add the same to the assessee's income as unexplained cash credit. Thus, it is very much clear from the provision of section 68 as prevailing for year under consideration the Id. AO can make addition u/s 68 only under two circumstances, (i) the assessee does not offer any explanation about nature and source of such credit or (ii) Explanation offered by Appellant is not up to the satisfaction of Ld. AO. Therefore, here we note that the assessee provided so as prove the

identity, credit worthiness and genuineness of the transaction by placing all the records such as PAN, Application made for Shares, Board Resolution Financial Statement and Bank statement of the investor company which were not at all doubted by Id. AO. But all such vital evidence has been ignored solely on the basis of statements of third party recorded by some other officials during the course of search operation conducted and that too that statement was retracted. Thus, even otherwise the bench noted that so far as merits of the case of the assessee the revenue emphasized on the statement of Shri Mukesh Banka recorded in the search. That statement was retracted by him vide retraction statement filed on 04.09.2019 before the Id. DDIT, Kolkata. Therefore, even if we considered the merits of the dispute the same has already been verified in the first round in an order passed u/s. 143(3) of the Act and based on the search of Banka group the reliance was placed on the statement of Shri Mukesh Banka who has retracted the statement. Thus, even on these merits our jurisdictional High Court in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 dated 03/09/2024 held that the merely based on the retracted statement no addition can be made. The relevant finding of binding judicial precedent is reproduced herein below:

**11. Now *it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an***

***admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" (1973) 19ITR18.***

12. Therefore, we hold that no substantial question of law arises between the parties and while so, the present Income Tax Appeal is not maintainable.

13. For the foregoing reasons, D.B. Income Tax Appeal No.25/2024 is dismissed.

Respectfully following the finding of apex court in the case of Lovely Export and our Jurisdictional High Court's decision in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 as referred herein above even on merits addition cannot be sustained.

In terms of these observations, the appeal of the revenue in ITA no. 872/JP/2024 stands dismissed.

21. The fact of the case in ITA No. 873/JP/2024 is similar to the case in ITA No. 872/JP/2024 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the revenue in this appeal No. 873/JP/2024 is equally similar on set of facts and grounds as that of with 872/JP/2024. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No.

872/JP/2024 for Assessment Year 2012-13 shall apply mutatis mutandis in the case of Kedia Builders and Colonizers Pvt. Ltd. in ITA No. 873/JP/2024 for the Assessment Year 2013-14.

In the result, both appeals of the revenue are stands dismissed.

22. Now, we take up appeals of the revenue in **ITA No. 874, 875 & 901/JP/2024 for A.Ys. 2014-15 to 2016-17.**

23. Since the issues involved in these appeals in ITA Nos. 874, 875 & 901/JP/2024 for A.Ys 2014-15 to 2016-17 are inter related, identical on facts and are almost common, except the difference in figure disputed in each year, therefore, these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

24. At the outset, the Id. DR has submitted that the matter in ITA No. 901/JP/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount of addition. The Id. AR did not raise any specific objection against taking that case as a lead case. Therefore, for the



purpose of the present discussions, the case of ITA No. 901/JP/2024 is taken as a lead case.

25. Before moving towards the facts of the case we would like to mention that the revenue has assailed the appeal for assessment year 2014-15 in ITA No. 901/JP/2024 on the following grounds;

1 Whether on the facts and in the circumstances of this, the Id. CIT(A) is justified in deleting the addition of Rs. 1,75,00,364/- ignoring that various beneficiary companies have routed their unaccounted income through M/s Bhagwat Marcom Pvt. Ltd, M/s Coolhut Marketing Pvt. Ltd, M/s Gabarial Tieup Pvt Ltd, M/s Neelgagan suppliers Pvt Ltd, M/s Outlook Vintrade Pvt Ltd, M/s Subhrashi Enclave Pvt Ltd and M/s Viewmore Developers Pvt. Ltd, in the form of loans and advances during the F.Y. 2013-14 and Bank Account of these companies was used for layering of unaccounted fund in the form of loans and the assessee was one of such beneficiary? 2. Whether on the facts and circumstances of this case, the Ld. CIT(A) is justified in deleting the additions made by AO without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking bogus accommodation entry and also has paid commission and for taking accommodation entry?

2 Whether the decision of Ld. CIT(A) is perverse on the facts in holding that this transaction of Rs. 1,75,00,364/- with M/s Bhagwat Marcom Pvt. Ltd, M/s Coolhut Marketing Pvt. Ltd, M/s Gabarial Tieup Pvt Ltd, M/s Neelgagan suppliers Pvt Ltd, M/s Outlook Vintrade Pvt Ltd, M/s Subhrashi Enclave Pvt Ltd and M/s Viewmore Developers Pvt. Ltd, is genuine despite accepting that these companies are engaged in some suspicious activity and indulged in illegal activity and ignoring that the foundation of the addition made by the AO is the admission of Shri Mukesh Banka, an accommodation entry provider of Kolkatta vide his statement recorded u/s 131/132(4) of the Act on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies?

26. Succinctly, the fact as culled out from the records is that the assessee e-filed his return of income on 21.10.2014 declaring total income

of Rs. 36,32,264/-. The case was completed u/s 143(3) on 31.12.2016 at income of Rs. 62,69,680/-. Later, on the basis of information available on record notice u/s 148 was issued on 14.03.2019 after recording reasons to believe that income has escaped assessment. Notice was issued after taking the necessary approval from Principal Commissioner of Income Tax [PCIT] u/s 151 of the Act. In response thereof, the assessee e-filed his return of income on 13.09.2019 at total income of Rs.37,64,500/-. Notices u/s 143(2) and notice 142(1) was issued which were duly served upon the assessee through ITBA portal. The assessee is company and its business is construction and sale building.

27. The case was reopened on the basis of information received that the assessee has taken bogus unsecured loan from shell/dummy/paper companies and introduced his own unaccounted cash by routing it through a web of dubious companies and suspicious transactions. During the under consideration the assessee has received unsecured loans from the following parties:

Sr. No.	Name of person from whom loan was received	Amount Rs.
1	M/s Bhagwat Marcom Private Limited	25,00,056/-
2	M/s Coolhut Marketing Private Limited	25,00,028/-
3	M/s Gabarial Tieup Private Limited	25,00,056/-
4	M/s Neelgagan Suppliers Private Limited	25,00,056/-
5	M/s Outlook Vintrade Private Limited	25,00,056/-
6	M/s Subharashi Enclave Private Limited	25,00,056/-
7	M/s Viewmore Developers Private Limited	25,00,056/-

The assessee was required to prove identity and creditworthiness of above parties and genuineness of the transaction. The assessee was given ample opportunities and time to provide required Information.

28. Ld. AO noted that in the case of the assessee an information was received from the DDIT(Investigation), Unit-1(3), Kolkata vide letter dated 01.03.2019. A search and seizure operation was conducted on 21.05.2018 in the case of Shri Mukesh Banka and his associates who are in the business of providing accommodation entries to various beneficiaries through cheque / DD / RTGS / Neft in lieu of cash through various paper and dummy companies / concerned floated and controlled by them. The information / material / details provided by the investigation wing has been thoroughly analyzed and investigated by the Id. AO along with the statement of Shri Mukesh Banka. After considering all these material so available with the Id. AO he believed that the assessee firm has accepted accommodation entries in the form of bogus unsecured loans from the companies / concern managed by Shri Mukesh Banka for the year under consideration.

29. Ld. AO as a part of independent enquiry during assessment proceeding, the returns of the entities from whom unsecured loans were received, were examined and from that he observed that these entities'

have highly insufficient returned income to explain the sources of funds invested in the assessee company. If the amount of loan provided by such entities to the assessee is compared with their returned income, creditworthiness of these companies cannot be established.

30. While proceeding of the assessment Id. AO issued notices u/s 133(6) to all the parties to provide information in respect of assessee and transaction under taken. No replies were received from those parties. Thereafter, Id. AO to verify the physical existence of the above entities, a report was sought from the office of DDIT Kolkata. The Inspector was required to visit the address of the lenders companies and to report regarding their whereabouts. The inspect deputed reported that no evidence of physical existence of the above mentioned companies have been found at the said address. On asking to the nearby persons they were unaware of the said business premises of those lenders. Thereafter, Id. AO issued summons to the directors of the above companies for their personal appearance but no one appeared in response to that summons.

31. Considering all the facts the assessee was given an a show cause notice dated 01.12.2019 asking the assessee to show cause as to why the amount of such bogus unsecured loans received from paper / shell companies managed by Shri Mukesh Banka should not be considered as

unexplained cash credits as per provision of section 68 of the Act. The assessee submit reply on 12.12.2019.

32. Ld. AO noted the reply but found it not acceptable because in the field enquiry conducted, identity of the lenders and their whereabouts was not proved. The inspector deputed reported that the lenders do not have any existence at the given address. Merely the transaction done through banking channel do not make the transaction genuine and therefore, he relied on the decision of Hon'ble Delhi High Court in Commissioner Of Income Tax vs Nr Portfolio Pvt Ltd., wherein the court observed that "Identity, creditworthiness or genuineness of the transaction is not established by merely showing that the transaction was through banking channels or by account payee instrument." The assessee in its reply could not establish the creditworthiness of the lenders. The return income of the lenders is almost nil or very low as compared to investments made by them. No evidence with respect to source of such investment were either furnished by the assessee or the lender. It has been held that merely proving the identity of the lenders does not discharge the onus of the assessee, if the capacity or creditworthiness has not been established.

33. The Id. AO referring to the information related to beneficiaries identified from Banka Group of cases [date of search 21.05.2018] has been

received from the DDIT(Inv.), Unit-1(3), Kolkata vide letter No. 8851 dated 01.03.2019 noted that a search & seizure/survey action in the case of Banka Group was conducted on 21.05.2018. Based on the findings gathered and subsequently information brought on records and after scrutinized of the same, it is found that Shri Mukesh Banka is the key & controlling person of alleged companies, who looks after day to day financial affairs and provides accommodation entry to various beneficiaries. During the course of post search proceedings Sh. Mukesh Banka has categorically accepted that these all are dummy/shell companies which are managed by him to provide accommodation entries. Shri Mukesh Banka has also accepted that the main purpose of the above companies in which he played key role to providing accommodation entries in the nature of bogus unsecured loans or in other forms. Following the lead as obtained from the statements of Shri Mukesh Banka and the materials seized during the course of search operation, the bank accounts of the paper/shell companies, controlled and managed by Shri Mukesh Banka was requisitioned from respective banks and were analyzed. On verification of the same, various beneficiaries have been identified who have obtained accommodation entry in the nature of bogus unsecured loan or in other forms, from the paper/shell companies of Banka Group.



34. Further, the financial analysis of these paper/shell companies has been carried out to ascertain their financial creditworthiness and from that Id. AO noted that (i) No profit accumulation in the company(s) across various financial years, (ii) Most of the companies have shown income under the head 'Other Income' which shows that these companies have no actual business activities and only getting interest income under the head 'other income' for providing bogus unsecured loan to different beneficiaries. (iii) The admission of Shri Mukesh Banka vide his statement recorded u/s 131/132(4) of the Income Tax Act, 1961 on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies, controlled and managed by Shri Mukesh Banka. (iv) The directors of these companies are dummy directors of Shri Mukesh Banka as per the statement of Shri Mukesh Banka recorded u/s 132(4) of the Income Tax Act, 1961 on 19.07.2018. (v) These companies were found to be non-existent as per enquiry made by Inspector of Income Tax.

35. Further, while analysis and examination of the bank statements of paper/shell companies of Banka Group, the entire scheme of arrangement regarding the withdrawal of cash from various bank accounts of paper/shell companies of Shri Mukesh Banka was clearly established and substantiated. These findings got further authenticated from the statements

of Shri Mukesh Banka about the pattern of cash withdrawals from his various companies. Huge withdrawal of cash from the bank accounts of above companies of Banka Group clearly establish the fact that withdrawal of unaccounted cash was one of the main features of modus operandi of Banka Group and the assessee company is one of the beneficiaries who has taken accommodation entry in the form of bogus unsecured loans or in other forms from the dummy/shell companies which were controlled & managed by Shri Mukesh Banka.

36. Thus, based on that observation and the statement of Shri Mukesh Banka Id. AO observed that the assessee deposited cash (its own unaccounted income) into specified bank account which was part of scheme and that was nothing, but a technic devised to lauder the money through the clandestine manner in which unaccounted money had been brought into the books by this dubious method. Therefore, he proceeded to add that unsecured loans as unexplained credit in the hands of the assessee as per provision of section 68 of the Act for an amount of Rs. 1,75,00,364/-. While doing so he also disallowed interest of Rs. 44,958/- and estimated commission @ 2.5 % of the loan amount at Rs. 4,37,509/- as per provision of section 69C of the Act.

37. Feeling dissatisfied with the assessment order, which was passed by the DCIT, Circle-4, Jaipur, the assessee preferred an appeal before the learned Commissioner of Income Tax. Apropos to the grounds raised the relevant finding of the Id. CIT(A)/NFAC is reiterated here below:

"5.5 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. It is seen that the AO received information from the DDIT(Inv), Unit-1(3), Kolkata that a search and seizure/survey action was carried out in the case of Banka Group on 21.05.2018 and it was found on scrutiny of the findings gathered and subsequent information brought on records that Shri Mukesh Banka provides accommodation to various beneficiaries. Various beneficiaries were identified who have obtained accommodation entry in the nature of bogus unsecured loans or in other forms and the appellant was found to be one of the beneficiaries who have taken accommodation entry in the form of bogus unsecured loans. The AO examined this information and formed reason to believe that accommodation entry in the form of bogus unsecured loan has been brought in by the appellant and that it had failed to disclose fully and truly all material facts necessary for assessment. The appellant submitted that the reassessment is not sustainable in view of the very basic fact that there was no reason for reopening and as it does not contain any material establishing live-link for the information & the conclusion to enable a reasonable person to form a prima-facie belief for escapement of income except a report of Investigation Wing. I have examined the various case laws relied upon by the appellant. However, I find that they are not applicable in the case of the appellant. I find that the following judicial decisions are relevant.

5.6 In ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd, [2007] 291 ITR 500 (SC), the Hon'ble Supreme Court observed as under.

*"16. Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. ITO [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At*

*that stage, the final outcome of the proceeding is not relevant. In other words. at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)."*

5.7 The Hon'ble Gujarat High Court in the case of Pushpak Bullion Ltd. Vs DCIT in Special Civil Application No. 3279 of 2016 has held that reopening of assessment was justified as investigation wing of department had during course of investigation case of a third party found that he was indulged in providing accommodation entries and bogus bills and assessee had made sizeable purchases from him. The Hon'ble High Court relied on the judgement of the Division Bench of Gujarat High Court in case of Yogendrakumar Gupta v. Income Tax Officer reported in (2014) 366 ITR 186 (Guj), which had carried out detailed examination of legal position and concluded as under:

*"The Assessing Officer required jurisdiction to reopen under section 147 read with section 148 of the Act, where the information must be specific and reliable. As held by the Apex Court in the case of Phul Chand Bajrang (supra), since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but is open to an assessee to establish that there exists no belief or that the belief is not at all a bona fide one or based on vague, irrelevant and nonspecific information. To that limited extent, the Court may look at the view taken by the Income Tax Officer and can examine whether any material is available on record from which the requisite belief could be formed by the Assessing Officer and whether that material has any rational connection or a live link with the formation of the requisite belief. It is also immaterial that at the time of making original assessment, the Assessing Officer could have found by further inquiry or investigation as to whether the transactions were genuine or not. If on the basis of subsequent valid information, the Assessing Officer forms a reason to believe on satisfying twin conditions prescribed under section 147 of the Act that no full and true disclosure of facts was made by the assessee at the time of original assessment and, therefore, the income chargeable to tax had escaped assessment, his belief and the notice of reassessment based on such belief/opinion needs no interference.*

*In the present case, since both the necessary conditions have been duly fulfilled, sufficiency of the reasons is not to be gone into by this Court. The information furnished at the time of original assessment, when by subsequent information received from the DCIT, Kolkata, itself found to be controverted, the objection to the notice of reassessment under section 147 of the Act must fail. At the costs of ingemination, it needs to be mentioned that at the time of scrutiny*

*assessment, a specific query was raised with regard to unsecured loans and advances received from the said company namely, Basant Marketing Pvt. Ltd. based at Kolkata. These being the transactions through the cheques and drafts. there would arise no question of the Assessing Officer not accepting such version of the assessee and not treating them as genuine loans and advances. Furnishing the details of names, addresses, PANs, etc. also would lose its relevance if subsequently furnished information, which has been made basis for issuance of notice impugned, concludes that Basant Marketing Pvt. Ltd. is merely a dummy company of one Shri Arun Dalmia, which provided the accommodation entries to various beneficiaries.*

*This Court has examined the belief of the Assessing Officer to a limited extent to inquiry as to whether there was sufficient material available on record for the Assessing Officer to form a requisite belief whether there was a live link existing of the material and the income chargeable to tax that escaped assessment. This does not appear to be the case where the Assessing Officer on vague or unspecific information initiated the proceedings of reassessment, without bothering to form his own belief in respect of such material. We need to notice that the Joint Director, CBI, Mumbai, intimated to the DIT (Investigation), Mumbai. A case is registered against Mr. Arun Dalmia, Harsh Dalmia and during the search at their residence and office premises, the substantial material indicated that 20 dummy companies of Mr. Arun Dalmia were engaged in money laundering and the incometax evasion. The said entities included Basant Marketing Pvt. Ltd. also. From the analysis of details furnished and the beneficiaries reflected, which are spread across the country, the CIT, Kolkata, suspected the accommodation entry related to the assessment year 2006-07 as well, this information has been provided to Director General of Income Tax, Kolkata, who in turn, communicated to the Chief Commissioner of Income Tax, Ahmedabad. Further revelation of investigation as could be noticed from the record examined (file) deserves no reflection in this petition. Insistence on the part of the petitioner to provide any further material forming the part of investigation carried out against Dalmias also needs to meet with negation, as the law requires supply of information on which Assessing Officer recorded her satisfaction, without necessitating supply of any specific documents. The proceedings initiated under section 147 of the Act would not be rendered void on nonsupply of such document for which confidentiality is claimed at this stage, following the decision of the Delhi High Court in case of Acorus Unitech Wireless (P) Ltd. (supra). Assumption of jurisdiction on the part of the Assessing Officer is since based on fresh information, specific and reliable and otherwise sustainable under the law, challenge to reassessment proceedings warrant no interference.*

*Resultantly, the petition is dismissed. Notice is discharged. There shall be, however, no order as to costs."*

5.8 The Hon'ble Supreme Court in the case of Raymond Woollen Mills Ltd Vs ITO [1999] 236 ITR 34 (SC) while examining the issue of validity of notice u/s 148 has held that at the stage of initiation of proceedings u/s 147 of the Act, we have only to



see whether there was prima facie some material on the basis of which department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.

5.9 In the case of Phool Chand Bajrang Lal and another v ITO (1993) 203 ITR 456 (SC) where Assessing Officer located at Ajamgarh in UP after receiving information of accommodation entry from the ITO Calcutta re-opened the case u/s 147 of the Act, Hon'ble Supreme Court approved the decision of the AO to issue notice u/s 148 of the Act and has held as under:

*"Since, the belief is that of the income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."*

5.10 Hon'ble Supreme Court in another case Calcutta Discount Co. Ltd v ITO (1961) 41 ITR 191 201-02 (SC) examining the power of court to investigate the belief of the AO has held as under:

*"All that is necessary to give special jurisdiction under section 147(a) is that the Assessing Officer had when he assumed jurisdiction some prima facie grounds for thinking that there has been some non-disclosure of material facts. Whether these grounds were adequate or not for arriving at such conclusion would not be open for the Courts" Investigation. Clearly it-is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that Assessing Officer had no material at all before him for believing that there had been such non-disclosure."*

5.11 Therefore, I find that there was relevant material in the form of report of the Investigation wing which establishes a live-link for the information & the conclusion to enable a reasonable person to form a prima-facie belief for escapement of income. Therefore, I am of the considered view that the AO had formed 'reason to believe that accommodation entry in the form of bogus unsecured loan has been brought in by the appellant and that it had failed to disclose fully and truly all material facts necessary for assessment.

5.12 It was also contended by the appellant that no independent enquiry was done by AO on the information provided by some other source and hence he draws a borrowed satisfaction. The appellant further submitted that reopening is merely a review of AO's own assessment as made u/s 143(3) of the Act. The appellant submitted that the AO failed cross examine the adverse witness before recording

the reason but formed a reasoned believe merely on suspicion. I find that various courts have held that reassessment on the basis of information from Investigation Wing is valid. It has also been held by courts that where reassessment proceedings were initiated on basis of information received from Investigation wing, merely because these transactions were scrutinized by Assessing Officer during the original assessment, reassessment could not be held unjustified.

5.13 In the case of Yogendra kumar Gupta Vs ITO 51 com 383 (SC), the Hon'ble Supreme Court dismissed the SLP against the High Court judgment which held that where subsequent to completion of original assessment, Assessing Officer, on basis of search carried out in case of another person, came to know that loan transactions of assessee with a finance company were bogus as said company was engaged in providing accommodation entries, it being a fresh information, he was justified in initiating reassessment proceeding in case of assessee.

5.14 In the case of Avirat Star Homes Venture (P.) Ltd. [2019] 102 com 60 (Bombay), Hon'ble Bombay High Court has held- Where information was received from investigation wing about certain companies that were involved in giving accommodation entries of various natures to several beneficiaries and assessee was one of them, information supplied by investigation wing to Assessing Officer, thus, formed a prima facie basis to enable Assessing Officer to form a belief of income chargeable tax having escaped assessment.

5.15 In the case of PCIT Vs Paramount Communication (P.) Ltd. (2017-TIOL-253-SC-IT), Hon'ble Supreme Court dismissed SLP of assessee. Information regarding bogus purchase by assessee received by DRI from CCE which was passed on to revenue authorities was 'tangible material outside record to initiate valid reassessment proceedings.

5.16 In the case of Aradhna Estate (P.) Ltd. Vs DCIT [2018] 91 com 119 (Gujarat). Hon'ble Gujarat High Court held that where reassessment proceedings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, merely because these transactions were scrutinized by Assessing Officer during the original assessment, reassessment could not be held unjustified.

5.17 In the case of Ankit Financial Services Ltd. Vs DCIT [2017] 78 Com 58 (Gujrat), Hon'ble Gujarat High Court held that where material of another person indicated that assessee had received bogus an applications through accommodation entries, since assessee was beneficiary, initiation of opening was justified.

5.18 In the case of Aaspas Multimedia Ltd. v. DCIT [2017] 83 taxmann.com 82 (Gujarat), Hon'ble Gujarat High Court held that where reassessment was made on basis of information received from Principal DFT (Investigation) that was beneficiary of accommodation entries by way of share application provided by a third party, same was justified.

5.19 In the case of Ankit Agrochem (P) Ltd. Vs JCIT [2018] 89 com 45 (Rajasthan), Hon'ble jurisdictional Rajasthan High Court held that where DIT informed that assessee-company had received stars application money from several entities which were only engaged in business of providing bogus accommodation entities to beneficiary concerns, reassessment on basis of said information was justified.

5.20 In the case of ITO vs. Purshottam Dass Bangur (1997) 224 R 382 (0) the Hon'ble Supreme Court has clearly held that letter from Deputy Director (Investigation) constitutes information and masons to believe that income have escaped assessment. In fact herein the Hon'ble Supreme Court has also held that merely because the notice was sent on the next day of the receipt of the information from the DOIT (Inv.) does not mean the ITO has not applied his mind.

5.21 The appellant has argument put forth argument that the issues raised during the reopening of the assessment had already been dealt with in the original assessment. I do not find that the reopening is merely a review of AO's own assessment as made u/s 143(3) of the Act, as the reopening even on the same issue examined in original assessment is on account of new tangible material which was not there during the original assessment, and therefore it does not amounts to a change of opinion and is permissible. A new material/information had come to the knowledge of the AO after the original assessment proceedings. Therefore, I find that there was relevant material on the basis of which the AD formed a reason to believe that the appellant has failed to disclose fully and truly all material facts necessary for assessment and that income chargeable to tax has escaped assessment. Thus, AO is justified in initiating reassessment proceedings u/s 147 of the Act.

5.22 Further, I find that the that the AO has addition of Rs. 25 lacs on account of M/s Neel Gagan Suppliers (P) Ltd which was already made in the order passed u/s 143(3) of the Act. It is seen that the assessment order u/s 143(3) of the Act was passed on 29.12.2016 in the case of the appellant for the A.Y 2014-15. wherein it is seen that the AO has noted as under:-

*"3.1 During the course of assessment proceedings, it was found that the assessee has shown unsecured loans from various persons. To verify the existence and creditworthiness and genuineness of transaction a notices u/s 133(6) were issued to these companies. But no response was received from Mis Neelgagan Suppliers Pvt. Ltd.*

*3.2 Thus keeping in view of the above, the assessee was asked vide Order Sheet entry dated 21.12.2016 to show cause why not the amount of Rs 25,05,178/- taken as loan from M/s Neelgagan suppliers Pvt Ltd be treated as bogus and addition be made u/s 68 of the Income tax Act."*

5.23 The assessment was completed u/s 143(3) of the Act on 29.12.2016 by the AO making addition of Rs 25,05,178 on ground that the loan alleged to have been

taken from M/s Neelgagan suppliers Pvt Ltd is not proved and bogus. Aggrieved, the appellant went in appeal before the Ld CIT(A), Ajmer and the Ld CIT(A) passed the appeal order on 15.02.2019 in Appeal No 601/2-016-17/JPR deleting the addition. The Ld CIT(A) has held as under:-

*"4.4 It is seen that the appellant had received loan of Rs 25 lakhs from M/s Neelgagan Supplies Pvt. Ltd. on 25.03.2014 which was repaid along with interest on 11.03.2015 after deducting the TDS of Rs 28,333/- on interest of Rs 2,54,992/- paid by the appellant to M/s Neelgagan Suppliers Pvt. Limited. The loan of Rs 25 lakhs was received through RTGS. The appellant has filed copy of the bank statement of M/s Neelgagan Suppliers Pvt. Ltd. For the relevant period. It can be seen from the bank statement that either immediately before or after issue of cheque of Rs 25 lakhs to the appellant by M/s Neelgagan Suppliers Pvt. Ltd. On 25.03.2014, there was no cash deposit in the bank account of M/s Neelgagan Suppliers Pvt. Limited. The appellant has filed confirmatory letter, copy of IT. Return of A.Y 2014-15 of M/s Neelgagan Suppliers Pvt. Ltd., Balance Sheet dated 31.03.2014 & Profit & Loss Account for the period ending 31.03.2014 of M/s Neelgagan Suppliers Pvt. Limited. It can be seen that the net worth of M/s Neelgagan Suppliers Pvt. Ltd. As on 31.03.2014 was Rs. 2,48,19,924/- The appellant has also filed copy of mater date downloaded form site of ROC. The status of M/s Neelgagan Suppliers Pvt. Ltd. has been shown as 'active'. The AO has not brought on record any evidence to show that the appellant had paid cash out of his unaccounted income to M/s Neelgagan Suppliers Pvt. Ltd. or its representative or middleman for obtaining any accommodation entry of loan of Rs 25 lac from M/s Neelgagan Suppliers Pvt. Limited. I am of the considered view that when the appellant has filed each and every document to prove identity and creditworthiness of the person from whom the unsecured loan of Rs 25 lac was received by the appellant and the AO has not brought on record any evidence to show that any unaccounted income was introduced by the appellant in the form of unsecured loan introduced un the name of M/s Neelgagan Suppliers Pvt. Ltd., then just because the AO could not enforce compliance of the notice issued u/s 133(6) to M/s Neelgagan Suppliers Pvt. Ltd., no addition u/s 68 could have been made by the AO in respect of unsecured loan of Rs 25 lac received from Mis Neelgagan Suppliers Pvt. Ltd. And interest of Rs 5,178/- debited in respect of interest accrued on such unsecured loan. Therefore, in view of the facts discussed by the AO and the various decisions relied upon by the appellant, the addition of Rs 25,05,178/- (Rs 25,00,000+ Rs 5,178) made by the AO u/s 68 is hereby deleted."*

5.24 I find that the same amount of Rs 25 lakhs from M/s Neelgagan Suppliers Pvt. Ltd. has been again added by the AO in the assessment u/s 147/148 dated 13.12.2019. This amount to double addition of an amount which has already been deleted by the Ld CIT(A) in appeal. Once, an addition has been made in the assessment order passed u/s 143(3) of the Act, the AO cannot resort to making a fresh addition on the same issue as the addition has been deleted by the Ld CIT(A) and if the AO is aggrieved, the further course of action is appeal to the Hon'ble Tribunal but he cannot make any more addition on the same amount on ground of

reassessment. Therefore, the addition made of Rs 25,00,056 on account of unsecured loan from M/s Neelgagan Suppliers Pvt. Ltd. is not valid as the further addition made in the re-assessment order tantamount to double addition and therefore is directed to be deleted. The appeal on Ground Nos 1. 1.1, 1.2, 2 and 2.1 are thus treated as partly allowed.

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6.3 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. The appellant during the course of appeal proceedings has submitted the documents regarding loan taken and repayment from the lender companies as under:

M/s. Bhagwat Marcom Pvt. Ltd

- Copy of ITR Acknowledgement for the A.Y. 2014-2015
- Bank Statement of M/s. Bhagwat Marcom Pvt. Ltd
- Audited Statement of Accounts

M/s. Coolhut Marketing Pvt. Ltd. N

- Copy of ITR Acknowledgement for the A.Y. 2014-15
- Bank Statement of M/s. Coolhut Marketing Pvt. Ltd-
- Audited Statement of Accounts.

M/s. Gabarial Tie-up Pvt. Ltd.

- Copy of ITR Acknowledgement for the A.Y. 2014-2015.
- Bank Statement of M/s. Gabarial Tie-up Pvt.
- Audited Statement of Accounts.

M/s. Neelgagan Suppliers Pvt. Ltd.

- Copy of ITR Acknowledgement for the A.Y. 2014-2015.
- Bank Statement of M/s. Neelgagan Suppliers Pvt. Ltd.
- Audited Statement of Accounts.

M/s. Outlook VintradePvt. Ltd.

- Copy of ITR Acknowledgement for the A.Y. 2014-2015.
- Bank Statement of M/s. Outlook VintradePvt. Ltd.
- Audited Statement of Accounts.

M/s. Subhrashi Enclave Pvt. Ltd.

- Copy of ITR Acknowledgement for the A.Y. 2014-2015.
- Bank Statement of M/s. Subhrashi Enclave Pvt. Ltd.
- Audited Statement of Accounts.

M/s. Viewmore Developers Pvt. Ltd.

- Copy of ITR Acknowledgement for the A.Y. 2014-2015.



- Bank Statement of M/s. Viewmore Developers Pvt. Ltd.
- Audited Statement of Accounts

6.4 I find that the appellant had taken unsecured Loan taken from M/s. Bhagwat Marcom Pvt. Ltd., M/s. Coolhut Marketing Pvt. Ltd., M/s. Gabarial Tieup Pvt. Ltd., M/s. Neelgagan Suppliers Pvt. Ltd., Mis. Outlook Vintrade Pvt. Ltd., M/s. Subhrashi Enclave Pvt. Ltd. and M/s. Viewmore Developers Pvt. Ltd. It is also seen that these loans were short term loans in nature which were squared off in the subsequent year through Banking Channel as and when your appellant had liquidity. The Hon'ble High Court of Gujrat in case of Commissioner of Income Tax, Rajkot-1 vs Ayachi Chandrashekhar Narsangji [2014] 42 Taxmann.com 251 (Gujarat) has held that where department had accepted repayment of Loan in the subsequent year, no addition was to be made in current year on account of cash credit. It is evident that each transaction were made through banking channels and the appellant has submitted audited Balance Sheets, profit and loss accounts, Acknowledgement of ITR, Bank Statement and furnishing of sources of the amount in the hands of loan creditor as well as loan Confirmation of all lender companies including Loan Confirmation for repayment of Loan. I also find from the Master data in record of MCA Website, the lender companies are active and it have been filed its Balance Sheet in MCA Website and complying with legal requirements under the companies Act. The appellant has also enclosed copy of Assessment orders of all loan creditors whereby the department has accepted the accounts of those companies.

6.5 Under Section 68 of the Income Tax Act, any sum credited in the books of accounts of a taxpayer that cannot be explained by the taxpayer's income or other sources is deemed to be the taxpayer's income for that year. The burden of proof lies with the taxpayer to prove that the cash credit is genuine and not an undisclosed income. The appellant has provided identify of the Loan Creditors by giving their complete Address, PAN, Loan Confirmation, Copy of Acknowledgement for filing of I.T. Return for the A.Y. 2014-15, copy of Assessment Orders, Bank Statement and Audited Statement of Accounts and that it had also provided evidences of genuineness of transaction as all the transactions are through Banking Channels and the loan creditors has categorically confirmed by furnishing supporting documents and evidences and in both the bank. The appellant contented that the genuineness of the transactions cannot be doubted, relying on mere surmises without any material to prove the same as held in the case of Dhakeshwari Cotton Mills Ltd. 26 ITR 775 (SC). I find that the AO has overlooked the net worth of the lender companies and relied only on profit. It is seen that besides the loan granted to the appellant, these lender companies had also given loans to other bodies corporate as well and granting of loan to the appellant is not a solitary transaction. The appellant has furnished the financials of the loan creditor companies and other details as under:-

6.6 Therefore, it is seen from the above that the lender companies have sufficient financial capacity to provide the loans. Therefore, the appellant has discharged the

onus of proving the identity, creditworthiness and genuineness of the loan creditors. The appellant has also paid interest to each loan creditor and TDS were deducted u/s 194A in respect of such interest. The loan creditors has also disclosed interest income in their respective tax returns.

6.7 The Hon'ble ITAT Delhi in the case of KMG International Ltd Vs ACIT in ITA No. 5591/Del/2010 Date of Judgement/Order: 21/07/2023 Related Assessment Year : 2007-08 has held that addition under section 68 towards unsecured loan amount unjustified as identity and creditworthiness of creditors and genuineness of transaction duly proved by way of documentary evidences.

6.8 The Hon'ble jurisdictional Rajasthan High Court in the case of Labh Chand Bohra Vs ITO (2010) 189 TAXMAN 141 held as under:

*"So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat Ram's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment runs contrary to the judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent judgment in Mangilal's case (supra) relying upon Daulat Ram's case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in Mangilal's case (supra)."*

6.9 The Hon'ble Supreme Court in the case of CIT Vs Orissa Corporation (P) Ltd. 159 ITR 78(SC) held as follows:

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

6.10 The Hon'ble Agra Tribunal in the case of S.K. Jain Vs ITO (2004) 2 SOT 579 (Agra) observed as under.

*"The creditors have confirmed that they have advanced loan to the assessee. In most of the cases, transactions have been routed through bank account. Therefore, asking source of such deposits will amount to asking source of the source which is not permitted under the law as held by the Hon'ble High Court of Patna in the case of Sarogi Credit Corpn. vs. CIT 1975 CTR (Pat) 1: (1976) 103*

*ITR 344 (Pat) and the decision of the Ahmedabad Bench of the Tribunal in the case of Rohini Builders vs. Dy. CIT (2002) 76 TTJ (Ahd) 521: (2001) 117 Taxman 25 (Ahd)(Mag).*

*Once it is established that the amount has been invested by a particular person, be he is a family member or close relative then the responsibility of the assessee is over. The assessee cannot ask that person, who advanced the loan, whether money advanced is properly taxed or not."*

6.11 The Hon'ble Calcutta High Court in the case of CIT Vs Dataware Pvt Ltd. [ GA to.2856 of 2011] had deleted similar addition u/s 68 with reference to unsecured loan creditors. The relevant extracts of the decision is reproduced below:

*"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 admitted 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 than return of the creditor and brand the same as unworthy of credence.*

*So long It is not established that the return submitted by the creditors 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."*

6.12 The Hon'ble Supreme Court in the case of CIT Vs Orissa Coprn (P.) Ltd [159 ITR 78) has held as follows:

*"In this case the assessee had given the names and addresses of the alleged creditors was in the knowledge of the revenue that the said creditors were the income-tax assessee. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or wear such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to file conclusion that the assessee had discharged he burden that lay on him, than 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 could arise"*

6.13 The Guwahati High Court in the case of Nemi Chand Kothari Vs CIT [136 Taxman 213) observed that the assessee had obtained loans through account payee cheques and had also furnished the name & address of the creditor. In light of the aforesaid observations, they further held as follows:

*"Once the assessed had established that he had received the said amounts from 'N' and 'P' by way of cheques, the assessee must be taken to have proved that the creditors had the creditworthiness to advance the loans. Thereafter, the burden had shifted to the Assessing Officer to prove the contrary. On failure on the part of the creditors to show that their sub creditors had creditworthiness' to advance the said amounts to the assessee, these amounts as a corollary, could not have been and ought not to have been, under the law, treated as the assessee's income from the undisclosed sources, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee."*

6.14 I find that the AO has stated that third party enquiries were made by issuing notices u/s 133(6) and by making field inquiries (by sending Inspector) in the name of such companies, however as no reply was received from such parties, adverse inference was drawn. Also, it is mentioned that summons were issued to directors of above entities u/s 131 & 131(d). I find from the assessment order that the appellant was not confronted with regard to non service or non compliance of summons nor the Inspector's report as mentioned in Assessment order was ever supplied to the appellant. Various courts have held that noncompliance to notices u/s 133(6) or 131 of the Act by itself is not sufficient to draw an adverse inference. In the case of Phool Singh Vs. ACIT (ITAT Delhi) in ITA No. 2901/Del/2014, it has been held by Hon'ble ITAT that. "Merely because 133(6) notices issued to the party returned un-served though it was the same address, which was supplied by supplier while filing its income tax return, no fault can be put on the shoulder of assessee. In 159 ITR 78 (SC) Orissa Corpn. (P) Ltd it was held that when the assessee furnishes names and addresses of the alleged creditors, the burden shifts to the department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the inquiry and to establish the lack of creditworthiness and the mere issue of notice u/s 131 is not sufficient. Thus, the Appellant has discharged the primary burden of establishing the identity and genuineness of the creditor.

6.15 The Hon'ble Supreme Court in the case of CIT vs Odeon Builders Pvt. Ltd. in Civil Appeal No. 9604-9605 of 2018 has held as under:

S. 68/69 Bogus Purchases: Disallowance cannot be made solely on third party information without subjecting it to further scrutiny. The assessee has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the

sellers & their Income Tax Return. The AO has also not provided a copy of the statements to the assessee, thus denying it opportunity of cross examination.

6.16 The Hon'ble jurisdictional Rajasthan High Court in the case of CIT vs Pooja Agrawal in D.B. Income Tax Appeal No. 385/2011 has held that so far as assessee has furnished all the supporting documents in the shape of copy of contract notes regarding purchase and sale of shares, copy of D-mat account etc, the fact of transaction entered into cannot be denied simply on the ground that in his statements appellant denied having made any transactions. Further as payments and receipts were made through account payee cheques and transactions were routed through Kolkata Stock Exchange and there was no evidence that the cash has gone back in appellant's account, it was held by the Court that simply mentioning that findings were on the basis of appraisal report prepared by Investigation wing after considering all the material facts available on record is not sufficient. The Hon'ble Court confirmed the finding of the Tribunal that "The AO has failed to prove through any independent enquiry or relying on some material that the transactions made by the appellant through share P.K. Agrawal were non genuine or there was any adverse mention about the transaction in question in statement of Sh. Pawan Purohit."

6.17 The Hon'ble Jaipur bench of ITAT vide order dated 31.08.2022 in Manohar Lal Chug vs. ITO in ITA No. 312/JP/2021 has held that: the case of

*"6.3. The issue of penny stock and consequent additions made has elaborately dealt with by ITAT Jaipur Bench in the case of Pramod Jain & Others (supra) and relying on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Pooja Agarwal, 160 DTR 0198 (Raj.) deleted the addition by observing as under: "In view of the above facts and circumstances of the case, we are of the considered opinion that the addition made by the AO is based on mere suspicion and surmises without any 30 ITA No. 312/JP/2021 Shri Manohar Lal Chugh, Jaipur, cogent material to show that the assessee has brought back his unaccounted income in the shape of long-term capital gain. On the other hand, the assessee has brought all the relevant material to substantiate its claim that transactions of the purchase and sale of shares are genuine. Even otherwise the holding of the shares by the assessee at the time of allotment subsequent to the amalgamation/ merger is not in doubt, therefore, the transaction cannot be held as bogus. Accordingly, we delete the addition made by the AO on this account." On further appeal by the department to the Hon'ble Rajasthan High Court, the Hon'ble High Court by referring to the decision of CIT vs. Pooja Agarwal in DB IT Appeal No. 385/2011 dated 11.09.2017 (Raj) (HC) held that nosubstantial question of law arise in this case. 6.4. Thus in view of the above discussion and taking into consideration various documentary evidences produced by the assessee in support of his claim and further relying upon various decisions of this Tribunal as well as the decision of Hon'ble Jurisdictional High Court including the decision in case of CIT vs. Pooja Agarwal (supra) as well as in case of PCIT vs. Pramod Jain & Others (supra), we allow the claim of exemption under section 10(38) of the Act*



*and accordingly delete the addition made by the AO. The order of Id. CIT (A) is set aside."*

6.18 In the case of Shree Barkha Synthetics Ltd. Vs. Asstt CIT, 2006, 55 taxman 289, Raj, it has been held as under.

*"The principle relating to burden of proof concerning the assessee is that where the matter concerns money receipts by way of share application from investors through banking channel, he has to prove the existence of the person in whose name the share application is received. Once the existence of the investor is proved, it is not further the burden of the assessee to prove whether that person himself has invested the said money or some other person has made investment in the name of that person. The burden then shifts on to the revenue to establish that such investment has thus come from the assessee itself [Para 16]"*

6.19 The Hon'ble ITAT, Ahmedabad in the case of DCIT Circle-1(1)(1). Ahmedabad Vs. J. P. Fincorp Services Pvt. Ltd. [ITA No.2517/Ahd/2016] has held as follows:

*29. In view of the above, we are of the opinion that, though the transactions of the loan received by the assessee are not free from any doubt but in either of the case, once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in the later years. Thus, in the given facts and circumstances, we hold that there is no infirmity in the order of the Ld. CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed. [Para-29]*

6.20 Further, the Hon'ble ITTA, Kolkata in the case of Bataji Solutions Limited Vs. Assistant Commissioner of Income Tax Circle-2(1), Kolkata (ITA. No. 572/KOL/2022] pronounced on February 20, 2023 has held as follows:

*"9. Apropos to Ground No. 2 regarding the issue of unexplained cash credit amounting to Rs.25,00,000/- under section 68 of the Act is concerned, we find that the assessee took loan from M/s. Ambala Trafina Pvt. Limited. It is not in dispute before us that the aforesaid loan was interest-bearing loan taken through normal banking channel and was repaid back in the same financial year through banking channel and tax at source has been deducted on the interest paid thereon and all the documentary evidence in order to explain alleged credit has been duly placed before the lower authorities. Since no specific discrepancy has been observed by the lower authorities and the said loan being taken and repaid during the year itself and also considering the income of Rs 15. 10 crores offered by the assessee, we do not find any reason to question the genuineness of the said loan. We, therefore, reverse the finding of the Id. CIT(Appeals) and delete the addition of*

*Rs.25,00,000/- under section 68 of the Act and allow Ground No. 2 raised by the assessee."*

6.21 The Hon'ble ITAT Surat in the case of Rajhans Construction (P.) Ltd. v.ACIT [IT APPEAL NO. 1450 (AHD) OF 2016] [[2022] 140 taxmann.com 370 (Surat-Trib.)] has held that:

*22. In view of the aforesaid factual cluaran legal discussion. We are of the view that when the unsecured loan has been paid within a short 8 span of time for which the assessee has paid interest and deducted tax thereon. Therefore, the Assessing Officer was not justified in making addition under section 68. Thus, substantial ground of appeal is allowed."*

6.22 The Hon'ble Supreme Court dismissed the SLP filed by the revenue against the decisions of Hon'ble HC of Delhi in case of PCIT-4 vs Hi-Tech Residency Pvt Ltd (96 Taxmann.com 403) wherein it was concluded that addition made u/s 68 deleted, where assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors to whom shares were allotted by assessee as well as lenders from whom unsecured loans were taken. Also, the Hon'ble Gujarat High Court in the case of CIT-1 vs Apex Therm Packaging Pvt Ltd (42 taxmann.com 473) has held that where name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/lenders as well as their confirmation had been furnished, Assessing Officer could not make addition on account of unsecured loan and interest thereon. Therefore, I find that in the present case where the name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/ lenders as well as their confirmation had been furnished, AO was not justified in making addition on account of unsecured loan.

6.23 I find that the foundation of the addition made by the AO is the admission of Shri Mukesh Banka vide his statement recorded u/s. 131/132(4) of the Act on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies. controlled and managed by Shri Mukesh Banka. However, it is also seen that Shri Mukesh Banka has retracted his statement vide Two Separate Affidavit dated 01/06/2018 and 23/07/2018. Therefore, the statement by itself cannot be solely relied as a fool proof evidence. The Hon'ble jurisdictional ITAT Jaipur in the case of DCIT V/s Saurabh Mittal, ITA No. 16/JP/2018 has noted as under:

*"We further note that the assessee produced copy of affidavit of Shri. Anil Agrawal who has retracted his statement before the Investigation Wing, Kolkata however, without going into controversy of the retraction of the statement we find that the statement cannot be used by the AO without giving an opportunity to cross examination of Shri Anil Agrawal."*

6.24 It may be noted was completed u/s 143(3) of the Act on 29.12.2016 by the AO making addition of Rs 25,05,178 on ground that the loan alleged to have been taken from M/s Neelgagan suppliers Pvt Ltd is not proved and bogus. Aggrieved, the appellant went in appeal before the Ld CIT(A), Ajmer and the Ld CIT(A) passed the appeal order on 15.02.2019 in Appeal No 601/2-016-17/JPR deleting the addition. The Ld CIT(A) has held as under:-

*"4.4 It is seen that the appellant had received loan of Rs 25 lakhs from M/s Neelgagan Suppliers Pvt. Ltd. on 25.03.2014 which was repaid along with interest on 11.03.2015 after deducting the TDS of Rs 28,333/- on interest of Rs 2,54,992/- paid by the appellant to M/s Neelgagan Suppliers Pvt. Limited. The loan of Rs 25 lakhs was received through RTGS. The appellant has filed copy of the bank statement of M/s Neelgagan Suppliers Pvt. Ltd. For the relevant period. It can be seen from the bank statement that either immediately before or after issue of cheque of Rs 25 lakhs to the appellant by M/s Neelgagan Suppliers Pvt. Ltd. On 25.03.2014, there was no cash deposit in the bank account of M/s Neelgagan Suppliers Pvt. Limited. The appellant has filed confirmatory letter, copy of IT. Return of A.Y 2014-15 of M/s Neelgagan Suppliers Pvt. Ltd., Balance Sheet dated 31.03.2014 & Profit & Loss Account for the period ending 31.03.2014 of M/s Neelgagan Suppliers Pvt. Limited. It can be seen that the net worth of M/s Neelgagan Suppliers Pvt. Ltd. As on 31.03.2014 was Rs, 2,48,19,924/-. The appellant has also filed copy of mater date downloaded form site of ROC. The status of M/s Neelgagan Suppliers Pvt. Ltd. has been shown as 'active'. The AO has not brought on record any evidence to show that the appellant had paid cash out of his unaccounted income to M/s Neelgagan Suppliers Pvt. Ltd. or its representative or middleman for obtaining any accommodation entry of loan of Rs 25 lac from M/s Neelgagan Suppliers Pvt. Limited. I am of the considered view that when the appellant has filed each and every document to prove identity and creditworthiness of the person from whom the unsecured loan of Rs 25 lac was received by the appellant and the AO has not brought on record any evidence to show that any unaccounted income was introduced by the appellant in the form of unsecured loan introduced un the name of M/s Neelgagan Suppliers Pvt. Ltd., then just because the AO could not enforce compliance of the notice issued u/s 133(6) to M/s Neelgagan Suppliers Pvt. Ltd., no addition u/s 68 could have been made by the AO in respect of unsecured loan of Rs 25 lac received from M/s Neelgagan Suppliers Pvt. Ltd. And interest of Rs 5,178/- debited in respect of interest accrued on such unsecured loan. Therefore, in view of the facts discussed by the AO and the various decisions relied upon by the appellant, the addition of Rs 25,05,178/- (Rs 25,00,000 + Rs 5,178) made by the AO u/s 68 is hereby deleted."*

6.25 The same amount of Rs 25 lakhs from M/s Neelgagan Suppliers Pvt. Ltd. has been again added by the AO in the assessment u/s 147/148 dated 13.12.2019. This amounts to double addition of an amount which has already been deleted by the Ld CIT(A) in appeal. In the earlier grounds, the addition made of Rs 25,00,056 on account of unsecured loan from M/s Neelgagan Suppliers Pvt. Ltd. has been

held not valid as the further addition made in the re-assessment order tantamount to double addition and therefore has been directed to be deleted.

6.26 The Hon'ble Jurisdictional ITAT in the case of CIT Vs N. M. Agrofood Products Pvt. Ltd (ITAT Jaipur) Appeal Number: ITA. No. 53/JP/2022 Date of Judgement/Order: 24/08/2022 has held that assessment which are already completed after making proper inquiries cannot be allowed to again reframed merely based on the search without any fresh evidence. Addition was held unsustainable.

6.27 In view of the above facts and discussion, and the various judicial decisions as discussed above including the Hon'ble Supreme Court and the jurisdictional High Court and Tribunal as well as the decision of the Ld CIT(A) in the appellant's own case on same issue in the same A.Y 2014-15 against the order passed u/s 143(3) of the Act, I am of the considered view that that the addition of Rs 1,75,00,364 made by the AO u/s 68 of the Act is not sustainable and is directed to be deleted. The appeal on Ground Nos 3, 3.2, 3.3 and 3.4 are thus allowed.

7. Ground No 4 is directed against the AO disallowing Rs. 44,958 by treating the Interest paid on the unsecured loans as being non-genuine. I have carefully considered the facts of the case, the submission of the appellant and evidences on record. I find that TDS was deducted by the appellant on the interest paid and such interest has also been shown by the lender companies in its return of income. As the addition of unsecured loan of Rs 1,75,00,364 has been directed to be deleted in the earlier grounds, the AO is directed to allow the interest of Rs 44,958 and thus the disallowance of it is deleted. The appeal on this ground is allowed.

8. Ground No 5 is directed against the AO making addition of Rs.4,37,509 by alleging the same as commission on such accommodation entry alleged to have been taken by the appellant. I have carefully considered the facts of the case, the submission of the appellant and evidences on record. The AO while holding the unsecured loan of appellant as accommodation entry has further presumed that a commission of the above-mentioned amount @ 2.5% might have been paid by appellant as a consideration for arranging such accommodation entries. As the addition of unsecured loan of Rs 1,75,00,364 has been directed to be deleted, the addition of Rs 4,37,509 as commission paid on it also not sustainable and the AO is directed to delete the same. The appeal on this ground is allowed.

9. Ground No. 6 is directed against the AO initiating penalty proceedings u/s 271(1)(c) of the Act. Since an appeal lies against an order levying penalty and not against initiation of penalty, the appeal on this ground is premature and is treated as dismissed.

10. Ground No. 7 is general in nature and needs no adjudication.

11. As the result, the appeal is partly allowed.”

38. Feeling dissatisfied with the finding so recorded in the order of the Id. CIT(A), revenue preferred the present appeal. While dealing with the grounds of appeal Id. DR vehemently argued that the Id. CIT(A) has not appreciated the enquiries conducted by Id. AO to established that the criteria as prescribed under section 68 of the Act has not been fulfilled for unsecured loan accounted by the assessee in his books of account whereas the Id. CIT(A) without appreciating that finding of the Id. AO directed to delete the addition and has not appreciated the merits of the case of the revenue.

Going further she argued that this is the second round of litigation though in the first round Rs. 25,05,178/- was added by the Id. AO which the Id. CIT(A) has deleted, and the revenue did not challenge that finding because of the low tax effect and the case was selected under CASS. Whereas in the second round of litigation there is specific information as to the assessee based on the search conducted by the revenue at the premises of the companies run by Shri Mukesh Banka. In that search tangible material of providing accommodation entry to the assessee was derived and that information was passed in this case and thereby the re-opening of the case was done by the revenue as per provision of section 148 of the Act. As regards the retraction of the statement of Shri Mukesh



Banka it has no value as the information itself suggest that the total modus operandi and therefore, his retraction has no bearing on the addition so made based on the detailed finding recorded by the Id. AO in the assessment order after making third party enquiries and thereby he has arrived to conclusion as to the credit appearing the books of the assessee company in the name of those shell companies. Even the retraction statement is photostat copy not certified by him. The revenue has established a detailed trail as to how those shell companies operate. As it is clear from the statement of Mr. Banka that he operates or director in the many shell companies and he has declared the techniques as to how he adopted in making the accommodation entries. The Id. AO has made 133(6), deputed inspector and issued summons none of them reveals that those depositors are having their presence. All the credits are of the similar amount and are accounted for in the books in similar fashion. Therefore, indemnity, genuineness and creditworthiness were not established. Merely the entries were made from the bank account does not automatically make the transactions as genuine. In addition the she also filed and relied on the detailed written submission which is reproduced herein below:-.

1. Introduction:

1.1. The assessment for the relevant assessment year was completed under Section 143(3) on 31/12/2016, wherein an addition of ₹25,05,178/- was made under Section 68 due to the non-verification of unsecured loans.

1.2. The assessee filed an appeal before the Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)], who allowed the appeal, holding that the payment was routed through banking channels, as per the order dated 15/02/2019. (PBP No 10, para 4.4)

1.3. Although the Department disagreed with the findings of the Ld. CIT(A), it did not file an appeal due to the low tax effect, which was below the prescribed monetary threshold. (Refer: PBP No. 3)

1.4. Subsequently, a search proceeding was conducted on 21/5/2018 on Shri Mukesh Banka, an identified entry operator. Post-search investigations revealed a list of beneficiaries who had availed accommodation entries, and the assessee was identified as one of the beneficiaries.

1.5. Based on this newly discovered information, action under Section 148 of the Income Tax Act was initiated. The assessment was reopened, resulting in the following additions:

- a. An addition under Section 68 for unsecured loans.
- b. A disallowance under Section 14A.

1.6. Upon appeal, the Ld. CIT(A) upheld the validity of the reopening under Section 148. (page no 98 para no 5.21) but deleted the additions made under Section 68 and on account of unsecured loan.

1.6. Aggrieved by the deletion of these additions, the Department has preferred the present appeal before the Hon'ble ITAT, Jaipur.

2. The Respondent's Written Submission Dated 02/11/2023:

The respondent has raised the following submissions:

2.1 Validity of Reopening of Assessment Under Section 148:

a. The validity of the reopening of the assessment under Section 148 was upheld.

b. The amount of ₹25 lakhs from M/s Neelgagan Suppliers Pvt. Ltd. was again added by the Assessing Officer (AO) in the reassessment order dated 13/12/2019, under Section 147/148. This amounts to a double addition of an amount that was already deleted by the Ld. CIT(A) in appeal.

c. Once an addition has been made in the assessment order passed under Section 143(3), the AO cannot resort to making a fresh addition on the same issue if the addition has already been deleted by the Ld. CIT(A). If the AO is aggrieved by the deletion, the appropriate course of action is to file an appeal before the

Hon'ble Tribunal. The AO cannot make another addition on the same amount on the grounds of reassessment. Therefore, the addition of on account of the unsecured loan from M/s. Neelgagan Suppliers Pvt. Ltd. is not valid. The further addition made in the reassessment order tantamount to a double addition and is therefore directed to be deleted.

d. Details of Unsecured Loans:

The respondent had taken unsecured loans from the following entities:

- M/s. Bhagwat Marcom Pvt. Ltd.
- M/s. Coolhut Marketing Pvt. Ltd.
- M/s. Gabarial Tieup Pvt. Ltd.
- M/s. Neelgagan Suppliers Pvt. Ltd.
- M/s. Outlook Vintrade Pvt. Ltd.
- M/s. Subhrashi Enclave Pvt. Ltd.
- M/s. Viewmore Developers Pvt. Ltd.

These loans were short-term in nature and were squared off in the subsequent year through banking channels as and when the appellant had liquidity.

e. Findings of the AO:

The AO stated that third-party inquiries were made by issuing notices under Section 133(6) and conducting field inquiries through an Inspector. However, as no replies were received from the parties, an adverse inference was drawn.

The AO also mentioned that summons were issued to the directors of the above entities under Sections 131 and 131(d). However, the appellant was not confronted with the non-service or non-compliance of summons, nor was the Inspector's report, as mentioned in the assessment order, ever supplied to the appellant.

3. Findings and Submissions of the respondent:

3.1 Each transaction was made through banking channels, and the respondent submitted the following:

- a. Audited Balance Sheets.
- b. Profit and Loss Accounts.
- c. Acknowledgement of Income Tax Returns.
- d. Bank Statements.
- e. Sources of the amounts in the hands of loan creditors.
- f. Loan confirmations for all lender companies, including confirmation of loan repayments.
- g. The Master Data from the MCA Website shows that the lender companies are active and have filed their Balance Sheets with the MCA. They are compliant with the legal requirements under the Companies Act.

- h. Copies of the Assessment Orders of all loan creditors were also submitted, showing that the Department has accepted their accounts.
  - i. The lender companies have sufficient financial capacity to provide the loans. The appellant has discharged the onus of proving the identity, creditworthiness, and genuineness of the loan creditors.
  - j. The appellant has paid interest to each loan creditor, and TDS was deducted under Section 194A on such interest payments. The loan creditors have disclosed the interest income in their respective tax returns.
4. Rejoinder:

1. Points 1 and 2 are factually correct, and hence no counter is submitted on the same.
2. The Department, while disagreeing with the findings of the Ld. CIT(A) in first round did not file an appeal due to the low tax effect, which was below the prescribed monetary threshold (Refer: Paper Book, Page Nos. 1 to 3).
3. The addition was initially made as the assessee failed to discharge the onus of proving the identity, creditworthiness, and genuineness of the unsecured loans. These findings were detailed in the original assessment order (Refer: Paper Book, Page No. 19 to 28, finding para is 5.1.1 to 5.1.5 (page 19 and 20) and 6.2 (page 28)).
4. The Ld. CIT(A) upheld the reopening of the assessment under Section 148, and the assessee has not challenged the validity of the reopening in any subsequent proceedings, thereby accepting the validity of the reassessment initiated by the Assessing Officer (AO)

5. Relevant Case Law: The Ld. CIT(A) refer following case law-

Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. [(2007) 291 ITR 500 (SC)]:

- The Hon'ble Supreme Court held that when new tangible material or information comes into the possession of the Assessing Officer, he is justified in reopening the assessment under Section 147, even if an addition on the same issue was made in the original assessment.
- The Court clarified that reassessment is permissible as long as the conditions under Section 147 are satisfied, regardless of the outcome of the previous assessment proceedings.
- This principle applies directly to the present case, as the AO reopened the assessment based on new information received during the post-search investigations, which revealed fresh evidence against the assessee.

#### 5. Validity of Reopening under Section 148:

- The Ld. CIT(A) upheld the reopening of the assessment under Section 148, noting that it was based on new tangible material received during post-search investigations identifying the assessee as a beneficiary of accommodation entries.

The assessee did not challenge the validity of reopening, implicitly accepting its correctness.

- Same submission by assessee as in original proceedings:

The assessee submitted the same replies and documents as in the original assessment and failed to counter the specific findings recorded in the reasons for reopening.

- Failure to Produce New Evidence:

The assessee failed to provide any documents or evidence to discharge their onus of proving the identity, creditworthiness, and genuineness of loan creditors during reassessment proceeding signed after search on Banka Group, justifying the addition made by the AO.

- CIT(A) Findings:

The Ld. CIT(A) upheld the validity of reopening but erroneously deleted the addition. The reassessment was based on clear evidence and validly recorded reasons.

- Justification for Addition:

Since the assessee relied on old replies and failed to counter the reasons for reopening, the addition of Rs.1,75,00,364/-is valid and justified.

## 6. Counterarguments on Identity, Creditworthiness, and Genuineness

### 1. Banking Channels Are Not Evidence of Genuineness:

a. The appellant claims that transactions routed through banking channels establish genuineness. However, the Hon'ble Supreme Court in CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)] and Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)] held that merely routing money through banks does not establish the genuineness of a transaction.

b. In Sumati Dayal, the Court stressed that explanations deemed improbable must be rejected, and human probabilities and surrounding circumstances must be considered.

c. The case ITO vs. Mahadev Dairy Pvt. Ltd. (ITAT Delhi, ITA No. 4380/Del/2018, dated 07.07.2023) further observed that routing funds through banking channels, in the absence of evidence of creditworthiness and genuineness, cannot shield the assessee from additions under Section 68.

### 2. Submission of Undated Loan Confirmations:



- a. The appellant submitted undated confirmations from loan providers. As noted in *NRA Iron & Steel Pvt. Ltd. v. PCIT* [(2019) 416 ITR 135 (SC)], such confirmations without proper dates and details hold no evidentiary value.
- b. The *Mahadev Dairy Pvt. Ltd.* case also emphasized that the assessee must provide complete and verifiable evidence to prove the genuineness of transactions. In this case, the creditors failed to comply with notices issued under Sections 133(6) and 131, further eroding the credibility of the transactions.

### 3. Failure of Loan Creditors to Comply:

- a. The loan creditors failed to respond to notices issued under Sections 133(6) and 131. As held in *CIT v. Orissa Corporation Pvt. Ltd.* [(1986) 159 ITR 78 (SC)], the burden of proof lies on the assessee to provide satisfactory evidence explaining the source of credit entries in their books.
- b. When the loan creditors fail to comply or provide evidence, an adverse inference can be drawn, and the AO is justified in making an addition.

### 4. Active Status on MCA Does Not Prove Genuineness:

- a. The appellant argues that the loan creditors were active on the MCA website, but activity on the MCA platform does not establish creditworthiness or genuineness. As held in *CIT v. Nova Promoters and Finlease Pvt. Ltd.* [(2012) 342 ITR 169 (Del.)], mere compliance with MCA regulations does not absolve the assessee of the burden of proving the identity, financial capacity, and genuineness of creditors.
- b. The *Mahadev Dairy Pvt. Ltd.* case highlights that even entities appearing as active in government records can be paper companies, especially if they fail to respond to statutory notices.

### 5. Directors Failed to Comply:

- a. The appellant is a company, and any transaction must be executed through directors or key individuals. In this case, neither the companies nor their directors complied with the notices.
- b. As held in *CIT v. P. Mohanraj* [(2013) 352 ITR 97 (Madras HC)], when the assessee fails to provide sufficient evidence regarding the identity, creditworthiness, and genuineness of creditors, the AO is justified in treating the credit entries as unexplained and making additions under Section 68.

### 7. Reply to CIT(A)'s Findings and Misappreciation of Facts:

#### 1. Non-Responsive Notices Under Section 133(6):

- a. Despite the AO issuing notices under Section 133(6) to verify the genuineness of the loan creditors, the creditors remained non-responsive.

- b. As held in CIT v. Orissa Corporation Pvt. Ltd. [(1986) 159 ITR 78 (SC)], when notices are issued but creditors fail to respond, the burden shifts back to the assessee to establish the genuineness of the transaction.
  - c. The CIT(A) failed to appreciate that the creditors' non-compliance raises serious doubts about their existence and the genuineness of the loans.
2. Non-Compliance with Summons Under Section 131:
    - a. Summons were issued under Section 131 to the directors and key personnel of the loan-providing entities, but they failed to comply.
    - b. As emphasized in Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)], such non-compliance strengthens the inference that the transactions are not genuine.
    - c. The CIT(A) ignored the significance of this non-compliance, which corroborates the AO's findings.
3. Assessee Was Confronted with Reasons for Reopening and Show Cause:
    - a. The assessee was confronted with the reasons for reopening the assessment, and a show cause notice was issued, providing ample opportunity to furnish rebuttal evidence.
    - b. As per CIT v. P. Mohanraj [(2013) 352 ITR 97 (Madras HC)], when the AO provides specific reasons for reopening based on credible material, and the assessee fails to provide a satisfactory rebuttal, the addition is justified.
    - c. The CIT(A) failed to appreciate that the assessee was given multiple opportunities to provide evidence, which it failed to do.
4. Reopening Based on Bank Trail and Banka Group Search (AY 2012-13):
    - a. The reopening was based on a credible bank trail and material gathered during the search on the Banka Group, which revealed that the assessee was a beneficiary of accommodation entries.
    - b. In NRA Iron & Steel Pvt. Ltd. v. PCIT [(2019) 416 ITR 135 (SC)], the Supreme Court held that when new material reveals accommodation entries, the AO is justified in reopening assessments and making additions if the assessee fails to rebut the findings.
    - c. The CIT(A) ignored this strong basis for reopening, which is supported by independent evidence.
5. Connection with the Banka Group and Submission of Retraction Copy:
    - a. The assessee's submission of a retraction copy from the Banka Group establishes its connection with the group, contradicting its claim of no involvement.
    - b. As held in CIT v. Odeon Builders Pvt. Ltd. (Civil Appeal No. 9604-9605 of 2018), such circumstantial evidence supports the AO's findings of accommodation entries.

c. The CIT(A) failed to appreciate that the retraction itself points to the assessee's involvement with entities providing bogus loans.

6. Submission of Old Assessment Orders of Loan Providers:

a. The assessee submitted old assessment orders of loan providers but failed to demonstrate their current financial standing after the Banka Group search.

b. As held in CIT v. Lovely Exports Pvt. Ltd. [(2008) 216 CTR 195 (SC)], filing old assessment orders or financial records is insufficient unless the identity, creditworthiness, and genuineness of the loan providers are independently established.

c. The CIT(A) erroneously accepted these old records without considering their lack of relevance to the current proceedings.

d. Old assessment order are 143(1)(a) intimation only.

7. Contradiction in Assessee's Submission (MCA and Banka Retraction):

a. The assessee admitted to taking a printout from the MCA website to verify the loan providers but also submitted old assessment orders and the Banka retraction copy.

b. This contradiction in the assessee's submissions highlights its attempt to provide piecemeal and inconsistent evidence, which should not have been accepted by the CIT(A).

c. In Swati Bajaj v. CIT [(2022) 447 ITR 361 (SC)], the Court emphasized that contradictory submissions weaken the credibility of the assessee's claims.

8. Non-Submission of Post-Banka Search Status of Loan Providers:

a. The assessee failed to submit the post-Banka search status of the loan providers, including details of subsequent assessments or investigations.

b. As per CIT v. Nova Promoters and Finlease Pvt. Ltd. [(2012) 342 ITR 169 (Del.)], the failure to provide updated and relevant information justifies the AO's conclusions and additions.

c. The CIT(A) overlooked this crucial lapse by the assessee.

9. Non-Submission of Banka's Assessment Order:

a. The assessee failed to provide the assessment order of the Banka Group, which could have clarified the nature of the transactions.

b. This omission further erodes the credibility of the assessee's claims and supports the AO's findings.

c. As per CIT v. Dataware Pvt. Ltd. [GA No. 2856 of 2011], the onus lies on the assessee to furnish all relevant evidence, and failure to do so justifies adverse conclusions.

2. Conclusion:

1. The CIT(A)'s findings fail to appreciate the strong evidence gathered by the AO, including:
  - a. Non-compliance of creditors with statutory notices.
  - b. The credible basis for reopening the assessment.
  - c. The assessee's contradictory and incomplete submissions.
2. Based on judicial precedents, including NRA Iron & Steel Pvt. Ltd., Lovely Exports, Sumati Dayal, and Swati Bajaj, the addition is justified and requested must be sustained.
3. Case Laws Related to Section 68 Addition (Relevant to Present Facts):
  1. Labh Chand Bohra v. ITO [(2010) 189 Taxman 141 (Rajasthan High Court)]:
    - Discusses non-compliance of creditors with statutory notices and the burden shift to the assessee.
  2. S.K. Jain v. ITO [(2004) 2 SOT 579 (ITAT Agra)]:
    - Focuses on assessing human probabilities and transactions that appear doubtful.
  3. CIT v. Dataware Pvt. Ltd. [GA No. 2856 of 2011] (Calcutta High Court):
    - Emphasizes the importance of providing credible supporting evidence when creditors fail to respond.
  4. CIT v. Orissa Corporation Pvt. Ltd. [(1986) 159 ITR 78 (SC)]:
    - Highlights the burden of proof on the assessee for unexplained credits, directly applicable under Section 68.
  5. Nemi Chand Kothari v. CIT [(136 Taxman 213) (Guwahati High Court)]:
    - Stresses credit verification under suspicious circumstances.
  6. Manohar Lal Chug v. ITO [ITA No. 312/JP/2021 (Jaipur ITAT)]:
    - Validates reopening and examines evidence of bogus transactions related to loan creditors.
  7. Shree Barkha Synthetics Ltd. v. ACIT [(2006) 55 Taxman 289 (Rajasthan High Court)]:
    - Covers bogus transactions routed through accommodation entries.
  8. DCIT v. J.P. Fincorp Services Pvt. Ltd. [ITA No. 2517/Ahd/2016 (ITAT Ahmedabad)]:
    - Examines failure to verify identity, creditworthiness, and genuineness of creditors under Section 68.
  9. Rajhans Construction (P.) Ltd. v. ACIT [IT Appeal No. 1450/Ahd/2016 (ITAT Surat-Tribunal)]:
    - Highlights lack of evidence to support the genuineness of loans.
  10. CIT v. Odeon Builders Pvt. Ltd. [Civil Appeal No. 9604-9605/2018 (Supreme Court)]:
    - Stresses the inability to provide relevant creditor evidence and the justification of additions.

#### Case Laws Not Directly Related to Present Facts:

1. CIT v. Chandrashekhar Ayachi Narsangji [(2014) 42 Taxmann.com 251 (Gujarat High Court)]:
  - Focused on the general burden of proof without specific linkage to creditor non-compliance.
2. KMG International Ltd. v. ACIT [ITA No. 5591/Del/2010 (ITAT Delhi)]:
  - Discusses the general onus to prove genuineness without specific reference to creditors' non-response.
3. PCIT-4 v. Hi-Tech Residency Pvt. Ltd. [(96 Taxmann.com 403) (Supreme Court)]:
  - Primarily deals with verification failures broadly without specific creditor-related focus.
4. CIT v. Apex Therm Packaging Pvt. Ltd. [(42 Taxmann.com 473) (Gujarat High Court)]:
  - Discusses reopening of assessments in general without addressing creditor non-compliance.

#### Revenue-Favorable Case Laws Applicable to Current Facts Under Section 68:

1. CIT v. Orissa Corporation Pvt. Ltd. [(1986) 159 ITR 78 (SC)]:
  - Key Finding: The Supreme Court held that the burden of proof lies on the assessee to explain the nature and source of credit entries. When creditors fail to respond to notices, the AO is justified in making an addition under Section 68.
2. Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)]:
  - Key Finding: The Supreme Court ruled that improbable explanations from the assessee and the lack of corroborative evidence justify additions under Section 68. Human probabilities and surrounding circumstances should guide conclusions.
3. NRA Iron & Steel Pvt. Ltd. v. PCIT [(2019) 416 ITR 135 (SC)]:
  - Key Finding: The Supreme Court emphasized that the assessee must prove the identity, creditworthiness, and genuineness of transactions. If any of these are not established, the AO is justified in making additions.
4. Swati Bajaj v. CIT [(2022)]:
  - Key Finding: The Calcutta High Court held that reliance on mere documentation is insufficient if the surrounding circumstances indicate accommodation entries. The burden is on the assessee to provide convincing evidence.
5. CIT v. Dataware Pvt. Ltd. [GA No. 2856 of 2011] (Calcutta HC):
  - Key Finding: The court held that when creditors fail to respond to statutory notices or produce evidence of creditworthiness, the AO is justified in treating the amounts as unexplained.
6. CIT v. P. Mohanraj [(2013) 352 ITR 97 (Madras HC)]:
  - Key Finding: The court upheld additions under Section 68 when the assessee failed to establish the identity, creditworthiness, and genuineness of creditors.
7. CIT v. Odeon Builders Pvt. Ltd. [(Civil Appeal No. 9604-9605/2018) (SC)]:



- Key Finding: The court ruled that reopening based on specific information about accommodation entries is valid, and subsequent failure of the assessee to provide evidence justifies additions under Section 68.

Common themes across these cases:

1. Burden of Proof:
  - The onus is on the assessee to prove the identity, creditworthiness, and genuineness of the transactions.
2. Non-Compliance with Notices:
  - Failure of creditors to respond to statutory notices under Sections 133(6) and 131 strengthens the case of the Assessing Officer (AO).
3. Accommodation Entries:
  - Courts consistently uphold additions when transactions are routed through paper companies or involve suspicious circumstances.
4. Human Probabilities:
  - Judicial precedents emphasize the importance of analyzing surrounding facts and probabilities over superficial documentation.

Respondent has submitted paper book. Following are the comments on same-

S.No	PBPN OF Respondent	Detail in Index of Respondent	Remark of Revenue on Fact
1	117 to 237	ITR, Bank statement, audited statement with audit report of all 07 loan provider	These entities remained non-responsive. The documents submitted are not signed by any authorized person or director of the companies post-search proceedings on the Banka Group. The last signature date is 31/07/2014, while the search occurred on 31/07/2018. Furthermore, during the assessment proceedings, the respondent failed to submit certified copies from these 07 companies, despite their details being mentioned in the reasons recorded and communicated to the assessee.

2	238-251	Confirmation of unsecured loan	-Same as above
3	252-260	Retraction of Mukesh Banka	The respondent filed a copy of Mukesh Banka's retraction, but the assessment status and admission of the retraction were not provided. Hence, this partial submission does not constitute conclusive evidence, especially since Mukesh Banka possessed details of the companies from which the respondent claimed to have taken loans.
4	261-325	Assessment order of all 07 loan providers	These are mere intimations under Section 143(1)(a). The respondent misrepresented the facts before the Hon'ble Bench to mislead and gain undue advantage.
5	326 to 339	MCA data of all 07 Companies	A detailed analysis of the financial data of all seven companies was carried out by the Department, which formed the basis for issuing notice under Section 148. This was subsequently confirmed by the Ld. CIT(A), and the respondent admitted the same. Moreover, while the respondent claims that these companies are active as per MCA records, they remain non-responsive to the Department's notices. An electronic address or data on the MCA portal does

not constitute physical verification or establish the authenticity and genuineness of these entities.

### Conclusion

Based on the facts and evidence provided:

1. **Non-Responsiveness of Entities:** The seven loan-providing entities have consistently remained non-responsive to the statutory notices issued under Sections 133(6) and 131. The failure of these entities to comply with the investigation process, despite being identified as part of the accommodation entry mechanism, casts significant doubt on the genuineness of their transactions.
2. **Reliance on Outdated and Unverified Documents:** The documents submitted by the respondent, including ITRs, bank statements, audited financials, and loan confirmations, are not certified or signed by authorized representatives of the entities post-search. The last dated signature on these documents predates the search proceedings, rendering them unreliable in light of subsequent findings.
3. **Retraction of Mukesh Banka:** The respondent's submission of the retraction copy of Mukesh Banka is partial and inconclusive. The failure to provide the full context, including the assessment status and acceptance of the retraction, undermines its credibility, especially given the established role of Mukesh Banka in managing these entities.
4. **MCA Records as Insufficient Evidence:** While the respondent highlights the "active" status of the entities on the MCA portal, such electronic data does not establish their creditworthiness, identity, or genuineness. The non-compliance of these entities with Department notices further invalidates their purported authenticity.
5. **Misrepresentation of Assessment Orders:** The respondent relied on intimation orders under Section 143(1)(a) to establish the credibility of the loan providers. However, these orders lack the scrutiny necessary to verify the identity, creditworthiness, and genuineness of the entities, making this reliance misleading.
6. **Confirmation by Ld. CIT(A):** The issuance of notice under Section 148 was validated by the Ld. CIT(A) based on the Department's detailed analysis and new material gathered post-search. This acknowledgment further supports the Department's findings and the validity of the addition.

Prayer

In light of the above, the Revenue respectfully submits that:

1. The deletion of additions made by the Ld. CIT(A) under Section 68, amounting to ₹1,75,00,364/- should be reversed.
2. The addition made by the AO, based on credible evidence, including non-compliance of loan providers, their linkage to the Banka Group, and the respondent's failure to discharge the onus of proving the identity, creditworthiness, and genuineness of transactions, should be restored.
3. Any other relief deemed appropriate in the interest of justice may kindly be granted.

This submission addresses the addition made under Section 68 of the Income Tax Act, 1961, involving loans received by the assessee from entities that were later found to be non-responsive, despite being marked as "active" on the MCA portal. The Department argues that the mere "active" status of a company on the MCA portal does not prove the identity, creditworthiness, or genuineness of transactions. This is substantiated by judicial precedents and circumstantial evidence gathered during proceedings.

## 1. Active MCA Status Does Not Prove Genuineness

### 1.1. Definition of "Active" Status:

- The term "active" on the MCA portal indicates compliance with basic statutory filings, such as annual financial statements and returns.
- It does not establish:
  - Financial capacity to grant loans.
  - Genuine business operations.
  - Genuineness of specific transactions.

### 1.2. Judicial Precedents:

- CIT v. Nova Promoters and Finlease Pvt. Ltd. [(2012) 342 ITR 169 (Del.)]: The Delhi High Court ruled that mere existence of companies on the MCA portal does not establish the genuineness of transactions, especially when they fail to comply with notices issued by tax authorities.

### 1.3. Conclusion:

- The "active" status is an administrative formality and does not negate the Department's findings of non-genuine transactions involving these entities.

## 2. Non-Responsiveness of Loan-Providing Entities

### 2.1. Non-Compliance with Statutory Notices:

- Notices issued under Sections 133(6) and 131 to verify the identity and creditworthiness of these companies went unanswered.

- The directors of these entities failed to respond or appear for cross-examination.

## 2.2. Implications of Non-Responsiveness:

- CIT v. Orissa Corporation Pvt. Ltd. [(1986) 159 ITR 78 (SC)]: The Supreme Court held that when creditors fail to respond to statutory notices, the burden of proof shifts back to the assessee to establish the identity, creditworthiness, and genuineness of the transactions.
- The non-compliance of these companies, despite multiple opportunities, indicates their shell nature and lack of genuine business activities.

## 2.3. Absence of Objections by Shell Companies:

- The loan-providing companies, despite being categorized as shell entities, have not objected to these allegations before any authority.
- This silence strengthens the Department's case, as per the legal maxim "Qui tacet consentire videtur" (Silence implies consent).

2.4 Assessee failed to provide cross verification of loan provider company companies and Mukesh Banka.

- a) Mukesh banka's retraction photocopy was filed but no original verified signature was there.
- b) Assessee failed to produce Mukesh Banka in his support as he is relying on his retraction, evidence in its favour
- c) As per Assessee company it has no relation with Mukesh Banka, but, how, why, when the company received the document i.e retraction is not submitted.
- d) Assessee company failed to establish that when it had copy of retraction, why no one to one correspondence has been called by the company from Mukesh Banka.
- e) Assessee company failed to established that the statement of Mukesh Banka leads re-opening of Kedia's company and Mukesh Banka made false declaration resulted in any suit or legal action against him as company may have engaged professionals for all assessment proceedings including appeal, that burden cost also.
- f) Assessee company failed to prove that they had contacted to the loan providers to appear before the department, though in the reasons itself mentioned that the loan provider were shell company controlled by Mukesh Banka.
- g) Assessee has not objected that:
  - i. Name of companies identified on the basis of statement of Mukesh Banka are not in assessee books.
  - ii. Bank accounts identified is not objected by assessee.
  - iii. Company name identified on the basis of statement given by Mr Banka not objected by appellat before any authority.



- iv. In statement Mukesh Banka provided name of companies identified on the basis of statement of Mukesh Banka are not in assessee books modus oprendi and same is not objected by assessee.
- v. The companies are shell as stated by Mukesh Banka is not objected by assessee.
- vi. The companies behaved in similar way as shell
  - a) non available at given address
  - b) Non responsive even on electronic media / by post of department.
- vii. Company Kedia made no efforts to produce evidence that statement of Banka are having no evidentry value.

### 3. Failure to Prove Identity, Creditworthiness, and Genuineness

#### 3.1. Onus of Proof on the Assessee:

- As per *NRA Iron & Steel Pvt. Ltd. v. PCIT* [(2019) 416 ITR 135 (SC)], the onus lies on the assessee to prove:
  - Identity of creditors: These companies were identified as paper entities.
  - Creditworthiness: No evidence of financial capacity to grant loans.
  - Genuineness: No business rationale or economic substance provided.

#### 3.2. Contradictory Stance by CIT(A):

- The CIT(A) held that additions cannot be based solely on the statement of an entry operator. However, the deletion of the same additions solely based on the active MCA status or the lack of creditor objections contradicts this stance.
- If statements alone cannot justify additions, superficial compliance like active MCA status also cannot justify deletion.

### 4. Self-Affirmed Retraction by Mukesh Banka

#### Submission on the Validity of Statement and Retraction by Assessee

4. 1. 1. Statement Recorded on Oath as per Documents found during search  
The statements of the assessee, Mr. Mukesh Banka, were recorded under Section 132(4) of the Income Tax Act during search proceedings, based on documents and evidence found during the search. These statements, made under oath, carry significant evidentiary weight and are corroborated by documentary evidence. The Hon'ble Supreme Court in *Pullangode Rubber Produce Co. Ltd. v. State of Kerala* [(1973) 91 ITR 18 (SC)] held that a statement recorded during proceedings carries evidentiary value unless rebutted with credible evidence..

4. 1. 2. Facts Narrated as per Assessee's Memory and Involvement  
The assessee narrated facts based on his direct memory, knowledge, and involvement in the matter. The statements were voluntary and reflected the factual

details known exclusively to the assessee. The Department has not influenced or put words into the mouth of the assessee, as the statements were made in the presence of competent officers and corroborated with documentary evidence.

4. 1. 3. Disclosure of Controlled Companies and Circumstantial Evidence  
The assessee admitted to controlling shell companies and disclosed their details. The circumstantial evidence revealed in the statement—details of companies, bank accounts, and transactions—were known exclusively to the assessee. Such voluntary admissions, supported by independent evidence, hold greater value as per the maxim *nemo moriturus praesumitur mentire* (a person is not presumed to lie on their deathbed or when under oath).

4. 1. 4. No Objection Raised by Companies or Directors Against Control by Mukesh Banka  
The companies and their directors, allegedly controlled by Mr. Mukesh Banka, have not raised any objections before any authority regarding the claim of being controlled by him. The absence of any objection corroborates the Department's findings and the credibility of the assessee's statement.

4. 1. 5. Silence of Companies During and After Search Proceedings  
The companies alleged to be shell entities remained silent during the search proceedings and have not objected to the serious allegation of being shell companies. Their silence, both during and after the search, further substantiates the Department's findings and the statements given by the assessee.

4. 1. 6. No Legal Action Taken Against the Allegation of Shell Companies  
Despite being categorized as shell entities, the companies and their directors have neither filed objections nor initiated legal proceedings against the allegation. This inaction confirms their shell nature and the credibility of Mr. Banka's statement. Furthermore, the maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) applies to Mr. Banka's retraction, as his delayed and unsupported retraction casts doubt on his integrity.

4. 1. 7. Non-Responsive Shell Companies and Lack of Credibility  
The companies identified as shell entities were non-responsive during and after the search proceedings. The maxim *qui tacet consentire videtur* (silence implies consent) applies here, as these companies and their directors did not object to the allegations of being controlled by Mr. Mukesh Banka or functioning as shell entities. Further, no legal action or suit has been filed by these companies to dispute their alleged shell nature or their association with the assessee.

4. 1. 8. No Objection Raised to Identified Details of Companies, Bank Accounts, and Transactions  
Shell Companies' Inactivity and Failure to Dispute Details  
The assessee has not objected to the details of companies, bank accounts, and amounts identified based on the statement of Mr. Mukesh Banka. As per *CIT v.*

*Orissa Corporation Pvt. Ltd.* [(1986) 159 ITR 78 (SC)], when entities fail to respond to notices or produce evidence, an adverse inference can be drawn against them.

4. 1. 9. Self-Affirmed Retraction Without Cross-Examination Has No Legal Value  
The self-affirmed retraction of the statement, without being subjected to cross-examination by the relevant authority or court, holds no legal validity. Judicial precedents, such as *Ravi Mathur v. CIT (Rajasthan HC)* and *Kantilal C. Shah v. ACIT (Ahmedabad ITAT)*, have established that a retraction must be supported by cogent evidence and cross-examination to hold any credibility. In this case, no such steps have been taken, making the retraction baseless.

4. 1. 10. Delayed Self-Retracting Questions the Integrity of the Assessee  
The self-retraction by Mr. Mukesh Banka, made after a significant delay, raises serious doubts about its credibility and integrity. The original statements were made under oath during a lawful search operation and in the presence of incriminating evidence. The delay in retracting such statements appears to be an afterthought and lacks substantive justification.

4. 1. 11. Contradictions in Respondent's Stand and Retraction  
The deletion of the addition based solely on a self-serving retraction, when the companies were non-responsive, lacks merit. As per *Sumati Dayal v. CIT* [(1995) 214 ITR 801 (SC)], surrounding circumstances and human probabilities must be considered when evaluating evidence. The fact that these companies did not respond to statutory notices and the lack of rebuttal to the Banka statement reinforce the genuineness of the original findings.

4. 1. 12. Latin Maxims Supporting Revenue's Case:

- a) *Verba volant, scripta manent* (spoken words fly away, written words remain): The original statement under oath, corroborated by written evidence, holds more weight than a subsequent verbal retraction.
- b) *Actori incumbit onus probandi* (the burden of proof lies on the claimant): The burden of disproving the original statement lies on the assessee, who has failed to do so convincingly.
- c) *Rebus sic stantibus* (things standing thus): The conditions under which the statement was made (under oath, supported by evidence) were genuine and cannot be altered retrospectively through a self-serving retraction.

4.2. Unilateral Retraction:

- a) The retraction was not called for by the Department and was filed unilaterally.
- b) It was not subjected to cross-examination or supported by corroborative evidence.

4.3. Judicial Precedents:

- a) Ravi Mathur v. CIT [(2018) 98 taxmann.com 332 (Raj)]: A delayed and unsupported retraction holds no legal value.
- b) Kantilal C. Shah v. ACIT [(2011) 133 ITD 57 (Ahd)]: Self-retraction without immediate and convincing evidence is deemed an afterthought and lacks credibility.

## 5. Contradiction in Respondent's Stance

### 5.1. No Rebuttal of Key Details:

- a) The assessee has not objected to the details of companies, bank accounts, and loan amounts identified during the investigation.
- b) The lack of any rebuttal or evidence negating the findings of the Department supports the additions made.

### 5.2. Circumstantial Evidence:

- The search proceedings revealed incriminating evidence linking these companies to the assessee. This evidence was within the knowledge of the assessee and not the Department, reinforcing the credibility of the findings.

### 5.3. Legal Principles Supporting Revenue's Case

- a) "Falsus in uno, falsus in omnibus" (False in one thing, false in everything): If the companies were non-compliant in some respects, their overall credibility is questionable.
- b) "Actori incumbit onus probandi" (The burden of proof lies on the claimant): The assessee has failed to discharge the burden of proving the genuineness of the loans.
- c) "Rebus sic stantibus" (Things standing thus): The conditions under which the statements were made during the search cannot be altered by a delayed retraction or superficial compliance.

### 5.4 Conclusion

In light of the above, it is evident that:

- a) The companies providing loans were non-responsive and failed to establish their identity, creditworthiness, or genuineness.
- b) The mere "active" status on the MCA portal is insufficient to prove the legitimacy of these transactions.
- c) The self-serving affidavit filed by Mukesh Banka, without cross-examination or corroborative evidence, lacks legal validity.

### 5.5 Prayer

The Revenue respectfully prays that:

- a) The addition made by the AO under Section 68 be upheld as it is supported by substantial evidence and judicial precedents.
- b) The deletion of the addition by the CIT(A), based on superficial compliance and unsupported retraction, be set aside.
- c) Any other relief deemed appropriate in the interest of justice may also be granted.

6. Introduction on affidavit: The present submission addresses the validity and implications of the affidavit filed by Mukesh Banka, which attempts to retract his earlier statement recorded under oath during search proceedings. This submission also examines the legal principles governing affidavits, their evidentiary value, and their application in the context of this case.

6.2. Legal Position on Affidavits: a) Affidavit as a Statement under Oath:

- a) An affidavit is governed by Order XIX of the Code of Civil Procedure, 1908, and is considered a written statement confirmed under oath or affirmation before an authorized officer.
- b) As per Section 139 of the Code of Civil Procedure, 1908, affidavits are valid only when made voluntarily and before an authorized officer.

6.3. Evidentiary Value of Affidavits:

- a) As clarified by the Hon'ble Supreme Court in *Kishan Chand Chellaram v. CIT* [(1980) 125 ITR 713 (SC)], an affidavit is not conclusive evidence. It is subject to corroboration, cross-examination, and independent verification.
- b) The Supreme Court has also ruled that "an affidavit cannot be treated as substantive evidence unless the opposite party is given an opportunity to cross-examine the deponent."

6.4. Points on the Affidavit Filed by Mukesh Banka:

6.4. 1. Affidavit Not Called by the Department:

- The affidavit retracting Mukesh Banka's earlier statement was unilaterally filed by him and was not called for or required by the Department at any stage.
- It is pertinent to note that his earlier statement, recorded during search proceedings, was made under oath and was supported by documentary evidence.
- The unilateral filing of an affidavit without prior notice to the Department and without affording the Department an opportunity to cross-examine undermines its validity and credibility.

6.4.2 Banka's Role and Evidence:



- Mukesh Banka was directly involved in facilitating accommodation entries through shell companies. His earlier statement identified the shell companies, their directors, and the beneficiaries, including the assessee.
- At no point did Banka, the directors of the shell companies, or the assessee object to the findings during the search proceedings or immediately thereafter.
- If Mukesh Banka intended to retract his statement, he was obligated to produce corroborative evidence demonstrating that the shell companies were genuine and that the transactions were legitimate. He failed to do so.

#### 6.4.3 Failure to Approach the Department with Evidence:

- When the Department was approachable, Mukesh Banka chose not to present his affidavit before the Department for verification or cross-examination.
- Instead of appearing before the appropriate authority and providing evidence supporting his retraction, he filed the affidavit unilaterally, which raises questions about its credibility and integrity.
- The Department was deprived of an opportunity to cross-examine Mukesh Banka on the contents of the affidavit. As held in *Mehta Parikh & Co. v. CIT* [(1956) 30 ITR 181 (SC)], an affidavit must be subjected to cross-examination and cannot be accepted as conclusive evidence in its standalone form.

### 7. Key Observations and Issues:

#### 7.1. Circumstantial Evidence and Non-Responsiveness:

- The circumstantial evidence obtained during the search clearly demonstrated that the companies involved were shell entities controlled by Mukesh Banka.
- The directors of the shell companies failed to respond to statutory notices issued under Sections 131 and 133(6). Their non-responsiveness corroborates the Department's findings that these companies were not genuine.

#### 7.2. Contradiction in CIT(A)'s Findings:

- The CIT(A) has held that a statement alone cannot form the basis for an addition. However, by relying solely on the affidavit retracting the statement, the CIT(A) has contradicted their own reasoning.
- If a statement cannot be the sole basis for an addition, a self-serving affidavit without corroborative evidence cannot be the sole basis for deletion of the addition.

#### 7.3. Silence of the Shell Companies:

- The shell companies identified during the search have not filed any objections or initiated legal proceedings against the allegations of being controlled by Mukesh Banka.

- Their silence, both during and after the search proceedings, supports the Department's claim that these companies were mere conduits for routing unaccounted funds.

#### 7.4. Self-Affirmed Retraction and Delay:

- The affidavit retracting the earlier statement was filed after a significant delay. This delay casts doubt on the integrity of the retraction and its motivation.
- A delayed and self-affirmed retraction, without being subject to cross-examination, has no legal sanctity as per judicial precedents, including *Sumati Dayal v. CIT* [(1995) 214 ITR 801 (SC)].

#### 8. Judicial Principles Supporting the Revenue's Case: a) "Falsus in uno, falsus in omnibus":

A person who lies in one instance is likely to lie in others. If Banka's retraction is found unreliable, the rest of his submissions must also be scrutinized with skepticism.

b) "Affirmanti non neganti incumbit probatio":  
The burden of proof lies on the person asserting a fact. It was incumbent upon Banka and the assessee to provide credible evidence substantiating their claims.

#### c) Judgment Reference:

- In *Union of India v. Pramod Gupta* [(2005) 12 SCC 1], the Hon'ble Supreme Court emphasized that an affidavit lacking corroborative evidence cannot be accepted as conclusive proof.
- In *CIT v. Durga Prasad More* [(1971) 82 ITR 540 (SC)], the Court held that explanations contrary to human probabilities must be rejected.

8.1. Conclusion and Prayer: In light of the above submissions, it is humbly submitted that:

1. The affidavit filed by Mukesh Banka lacks credibility, as it was not called for by the Department and was filed without supporting evidence.
2. The statement recorded under oath during the search proceedings remains valid and reliable, as it was based on facts known only to Mukesh Banka and corroborated by circumstantial evidence.
3. The shell companies and their directors have not challenged the findings of the Department, further supporting the Revenue's case.
4. The CIT(A) erred in relying solely on the affidavit while disregarding the corroborative evidence gathered during the search and assessment proceedings.

It is respectfully prayed that:

- The addition made by the Assessing Officer under Section 68 be restored.

- The affidavit filed by Mukesh Banka be disregarded for lack of credibility and corroborative evidence
- In Indian jurisprudence, the term "shell company" lacks a precise legal definition within statutory law. However, judicial interpretations and regulatory perspectives have provided clarity on its connotation.
- In the case of *Assam Company India Ltd. and Anr. vs. Union of India and Ors.* [2019 SCC OnLine Gau 912], the Gauhati High Court observed that the term "shell company" is not explicitly defined in Indian law. The court noted that in popular parlance, a "shell company" refers to an entity without active business operations or significant assets, often perceived as being tainted. The court emphasized that labeling a company as a "shell company" without substantial evidence can have serious implications, and such categorization must be approached with caution.
- Furthermore, the Securities and Exchange Board of India (SEBI) has described shell companies as entities that serve as mediums for business transactions without themselves having significant assets or operations. These companies are often used for financial maneuvers, including tax evasion and money laundering

#### 8.2 Active Status on MCA Does Not Prove Genuineness

- The assessee claims that the loan-providing companies are "active" as per the MCA records. However, the mere active status:
  - Indicates only that these companies have filed their basic statutory returns, such as annual financial statements.
  - Does not establish their creditworthiness or the genuineness of transactions, as held in *CIT v. Nova Promoters and Finlease Pvt. Ltd.* [(2012) 342 ITR 169 (Del.)].
- Judicial precedents emphasize that it is the substance, not the form that determines the legitimacy of a transaction (*CIT v. Durga Prasad More* [(1971) 82 ITR 540 (SC)]).

#### 8.3 Non-Responsive Entities Raise Presumption of Being Shell Companies

- The companies failed to respond to:
  - Notices under Section 133(6) issued to verify their transactions.
  - Summons under Section 131 for examination of their directors.
- Their non-compliance indicates that these entities may not have any genuine business operations, thereby raising a presumption of them being shell companies.
- Reliance is placed on *CIT v. Orissa Corporation Pvt. Ltd.* [(1986) 159 ITR 78 (SC)], which held that non-compliance with statutory notices shifts the burden of proof back to the assessee.

#### 8.4 Lack of Identity, Creditworthiness, and Genuineness

- The assessee has failed to discharge its onus of proving the:

- Identity of the loan providers: The companies remained silent despite being provided opportunities.
- Creditworthiness: There is no evidence of financial capacity to grant loans of significant amounts.
- Genuineness of transactions: No evidence of business rationale or economic substance has been provided.
- The Supreme Court in *NRA Iron & Steel Pvt. Ltd. v. PCIT* [(2019) 416 ITR 135 (SC)] laid down that these three elements must be satisfactorily proven for any transaction to be deemed genuine.

#### 9. Contradictions in the Assessee's Claims

- The assessee has heavily relied on the active status of these companies on the MCA portal, yet:
  - The companies have not provided any post-search evidence of their financial strength or operational credibility.
  - The directors of these companies have remained unavailable for cross-examination, despite notices and summons.

#### 10. Legal Principles and Precedents Supporting the Department's Case

##### 10.1 Circumstantial Evidence and Human Probabilities

- As per *Sumati Dayal v. CIT* [(1995) 214 ITR 801 (SC)], the Courts must rely on circumstantial evidence and human probabilities when faced with non-genuine transactions.
- The non-responsiveness of these companies, despite their active status, raises doubts about their operational credibility.

##### 10.2 Shell Companies: Regulatory and Judicial Stance

- While "shell companies" are not defined statutorily, their characteristics have been elaborated in judicial pronouncements and regulatory guidelines. Shell companies are often:
  - Lacking genuine business operations.
  - Merely existing to provide accommodation entries for tax evasion.
- Reliance is placed on *Assam Company India Ltd. and Anr. v. Union of India and Ors.* [2019 SCC OnLine Gau 912], where the Gauhati High Court observed that labeling an entity as a shell company requires substantial evidence but also emphasized that "active status" alone cannot negate the suspicion.

In light of the above submissions, the Revenue respectfully prays that the Hon'ble Tribunal:

1. Uphold the Original Statement Recorded Under Oath:

- Recognize the evidentiary value of the statements made by Mr. Mukesh Banka during the search proceedings, as they were recorded under oath and corroborated by documentary and circumstantial evidence.
- Reject the subsequent self-retraction by Mr. Banka as baseless, self-serving, delayed, and unsupported, especially in the absence of corroborative evidence or cross-examination.
- 2. Set Aside the Deletion by the CIT(A):
  - Reverse the deletion of the addition made by the CIT(A), as it is based solely on the self-serving retraction, which lacks substantiating evidence and does not align with the corroborative material gathered during the assessment proceedings.
- 3. Reinstate the Addition Made by the AO:
  - Reinstate the addition made under Section 68 by the AO, as it is based on credible evidence, including:
    - Statements made during the search proceedings.
    - Documentary evidence linking shell companies to the assessee.
    - Non-responsiveness of the loan-providing companies and their directors to statutory notices, despite being granted ample opportunity.
- 4. Clarify Jurisdictional Scope:
  - Recognize that this Tribunal is not the jurisdictional bench for Mr. Mukesh Banka. However, the statements made by Mr. Banka during search proceedings have a direct bearing on this case as they pertain to the entities providing loans to the assessee. The findings are part of a larger, corroborative evidentiary framework and are not being used in isolation.
- 5. Acknowledge Non-Genuineness of Shell Companies:
  - Note the lack of response, non-compliance with statutory notices, and the absence of any legal action by the alleged shell companies or their directors to dispute their classification as shell entities. This supports the Revenue's case that these entities were conduits for routing unaccounted funds.
- 6. Reject the Self-Retraction and Superficial Compliance:
  - Disregard the affidavit and retraction filed by Mr. Banka, as they were not called for by the Department, were unsubstantiated, and were not subjected to cross-examination or scrutiny before any jurisdictional authority.
- 7. Adopt Established Judicial Principles:
  - Apply judicial principles from landmark cases such as CIT v. Orissa Corporation Pvt. Ltd., NRA Iron & Steel Pvt. Ltd. v. PCIT, and Sumati Dayal v. CIT, which emphasize the onus on the assessee to prove the identity, creditworthiness, and genuineness of transactions, particularly when creditors fail to respond or provide evidence.
- 8. Grant Other Relief as Deemed Appropriate:
  - Grant any other relief deemed fit in the interest of justice, ensuring that the integrity of the tax assessment process is upheld and that revenue leakage through shell companies is curtailed effectively.

Conclusion



The Revenue submits that the addition made under Section 68 by the AO is based on credible and corroborative evidence, while the deletion by the CIT(A) is erroneous and unsupported. The Hon'ble Tribunal is respectfully requested to:

1. Restore the addition made by the AO.
2. Clarify that the statements of Mr. Mukesh Banka are part of the evidentiary framework but are not being relied upon as sole evidence due to jurisdictional limitations.
3. Disregard the affidavit/retraction and uphold the Department's findings.
4. Grant any other relief deemed just and equitable.

Grounds of Appeal:

1. Whether, on the facts and circumstances of the case, the Ld. CIT(A) is justified in deleting the addition of ₹1,75,00,364/- despite the clear evidence of layering of unaccounted income through accommodation entries by various companies such as M/s Bhagwat Marcom Pvt. Ltd., M/s Coolhut Marketing Pvt. Ltd., and others?

*Deletion of Addition by Ld. CIT(A):*

1. The Ld. CIT(A) deleted the addition of ₹1,75,00,364/- relying on:
  - Transactions routed through banking channels.
  - Documents such as loan confirmations, bank statements, and balance sheets of loan-providing entities submitted by the assessee.
  - The active status of the companies on the MCA portal.

Revenue's Counterarguments:

a. Unaccounted Income Routed Through Layering:

- Investigations revealed that the loan-providing entities, such as M/s Bhagwat Marcom Pvt. Ltd., were paper companies used for layering unaccounted funds in the form of loans.
- These companies lacked substantial business activities and were solely operated to provide accommodation entries.

Relevant Case Law:

- CIT v. Nova Promoters and Finlease Pvt. Ltd. [(2012) 342 ITR 169 (Del.)]: Transactions routed through companies without genuine business activities cannot justify loan transactions.

b. Non-Compliance with Notices:

- Notices issued under Sections 133(6) and 131 to verify loan transactions went unanswered.

- The directors of the loan-providing entities failed to appear for examination.
- Non-compliance with statutory notices raises a presumption against the genuineness of the transactions.

Relevant Case Law:

- CIT v. Orissa Corporation Pvt. Ltd. [(1986) 159 ITR 78 (SC)]: Failure of creditors to respond to statutory notices shifts the burden of proof back to the assessee.

c. Genuineness Not Established by Banking Channels:

- Merely routing funds through banking channels does not establish the genuineness of a transaction.
- Judicial precedents stress examining the substance of the transaction over its form.

Relevant Case Law:

- CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)] and
- Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)]: Courts have ruled that superficial banking transactions alone cannot prove the genuineness of credits.

d. Identity, Creditworthiness, and Genuineness Not Proven:

- The assessee failed to demonstrate:
  - Identity: The loan-providing entities were paper companies.
  - Creditworthiness: These companies lacked financial capacity.
  - Genuineness: No business rationale was provided for the loans.

Relevant Case Law:

- NRA Iron & Steel Pvt. Ltd. v. PCIT [(2019) 416 ITR 135 (SC)]: The Supreme Court emphasized that proving identity, creditworthiness, and genuineness is the onus of the assessee.

e. Connection with Entry Operator:

- Investigations revealed that the Banka Group facilitated accommodation entries for the assessee.
- Bank trails linked the loan-providing companies to the entry operator.

Relevant Case Law:

- CIT v. Odeon Builders Pvt. Ltd. (Civil Appeal No. 9604-9605/2018): Evidence linking an assessee to accommodation entries justifies additions under Section 68.

*Prayer:*

In light of the above, the Revenue respectfully prays:

1. To set aside the deletion of the addition of ₹1,75,00,364/- by the Ld. CIT(A).
2. To restore the addition made by the AO under Section 68 for unaccounted income routed through layering.

2. Whether the Ld. CIT(A) is justified in deleting additions without considering evidence of organized tax evasion through bogus accommodation entries and commission payments.

*Deletion of Additions by the Ld. CIT(A):*

1. The Ld. CIT(A) deleted the additions made by the AO based on:
  - Banking channel evidence submitted by the assessee.
  - Loan confirmations and financial documents submitted by the entities.
  - The active status of the loan-providing entities on the MCA portal.

*Revenue's Counterarguments:*

a. Accommodation Entries Established Through Investigation:

- The loan-providing entities were found to be paper companies, controlled by entry operators, to facilitate bogus transactions.
- Evidence linked the assessee to these accommodation entries, including:
  - Bank trails.
  - Evidence of commission payments to entry operators.

Relevant Case Law:

- CIT v. Nova Promoters and Finlease Pvt. Ltd. [(2012) 342 ITR 169 (Del.)]: Transactions through paper companies justify additions under Section 68.

b. Non-Genuineness of Transactions:

Banking Channels Do Not Establish Genuineness:

- Superficial routing of funds through banks does not prove genuine transactions.

Relevant Case Law:

- CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)]: Substance over form is critical in such cases.

Failure to Prove Identity, Creditworthiness, and Genuineness:

- The assessee failed to provide convincing evidence of:
  - Legitimate existence of the loan providers.
  - Sufficient financial capacity.
  - Commercial rationale for granting the loans.

Relevant Case Law:

- NRA Iron & Steel Pvt. Ltd. v. PCIT [(2019) 416 ITR 135 (SC)]: The assessee bears the burden of proof for unexplained credits.

c. Evidence of Commission Payments:

- Evidence confirmed that the assessee paid commissions to entry operators for facilitating accommodation entries.
- Such findings corroborate organized tax evasion by the assessee.

Relevant Case Law:

- CIT v. Odeon Builders Pvt. Ltd. (Civil Appeal No. 9604-9605/2018): Commission payments further substantiate the AO's findings of bogus entries.

*Prayer:*

In light of the above:

1. To reverse the deletion of additions by the Ld. CIT(A).
2. To restore the additions made by the AO based on credible evidence.

Case Summary and Arguments

*1. Addition of ₹ 1,75,00,364/- and Deletion by Ld. CIT(A)*

Key Contentions of the Ld. CIT(A):

1. Transactions were routed through banking channels.
2. The assessee submitted loan confirmations and financial documents.
3. The entities were shown as "active" on the MCA portal.

Shortcomings in Ld. CIT(A)'s Order:

1. Failure to consider the foundational evidence provided by the AO, including:
  - The admission of Shri Mukesh Banka, who identified these entities as paper/shell companies created solely to provide accommodation entries.
  - Post-search investigations that corroborated the suspicious nature of these entities.

*2. Revenue's Counterarguments*

a. Evidence from Shri Mukesh Banka's Statement

1. The statements of Shri Mukesh Banka, recorded under Sections 131 and 132(4) of the Income Tax Act, unequivocally establish the following entities as paper/shell companies:
  - M/s Bhagwat Marcom Pvt. Ltd.
  - M/s Coolhut Marketing Pvt. Ltd.
  - M/s Gabarial Tieup Pvt. Ltd.
  - M/s Neelgagan Suppliers Pvt. Ltd.
  - M/s Outlook Vintrade Pvt. Ltd.
  - M/s Subhrashi Enclave Pvt. Ltd.
  - M/s Viewmore Developers Pvt. Ltd.
2. Key Findings from the Statement:
  - These companies were incorporated solely for providing bogus accommodation entries.
  - Their bank accounts were used for layering unaccounted funds and routing them back to beneficiaries in the guise of loans or advances.
  - Commissions were charged for facilitating these activities.

Relevant Judicial Precedents:

- CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)]: Courts must analyze the substance of transactions, and mere paperwork cannot establish genuineness.
- Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)]: Improbable or inconsistent explanations should be rejected based on human probabilities.

b. Shell Companies Engaged in Suspicious Activities

1. The Ld. CIT(A) acknowledged the suspicious activities of these companies but failed to examine the substance of the transactions.

Relevant Judicial Precedents:



- CIT v. Nova Promoters and Finlease Pvt. Ltd. [(2012) 342 ITR 169 (Del.)]: Transactions involving shell companies cannot be considered genuine, and the AO is justified in treating them as unexplained credits under Section 68.

#### c. Failure to Prove Identity, Creditworthiness, and Genuineness

1. The assessee failed to discharge its burden of proof regarding:
  - Identity: The companies were mere paper entities controlled by entry operators.
  - Creditworthiness: They lacked financial capacity to provide loans amounting to ₹1,75,00,364/-.
  - Genuineness: No commercial rationale or substantiating evidence was provided.

#### Relevant Judicial Precedents:

- NRA Iron & Steel Pvt. Ltd. v. PCIT [(2019) 416 ITR 135 (SC)]: The burden lies on the assessee to prove all three elements—identity, creditworthiness, and genuineness.

#### d. Non-Compliance with Statutory Notices

1. Notices issued under Sections 133(6) and 131 were not responded to by the loan-providing entities.
2. The directors of these entities failed to appear for examination, further raising doubts about their credibility.

#### Relevant Judicial Precedents:

- CIT v. Orissa Corporation Pvt. Ltd. [(1986) 159 ITR 78 (SC)]: Non-response to statutory notices shifts the burden back to the assessee to establish the genuineness of the transactions.

#### e. Evidence of Organized Tax Evasion

1. Investigations revealed that the assessee engaged in organized tax evasion by:
  - Utilizing paper entities for routing unaccounted income.
  - Paying commissions to entry operators for facilitating accommodation entries.

#### Relevant Judicial Precedents:

- Sumati Dayal v. CIT [(1995) 214 ITR 801 (SC)]: Courts should rely on human probabilities and surrounding circumstances when dealing with suspicious transactions.

### 3. Conclusion and Prayer

#### Conclusion:

1. The AO's findings were supported by credible evidence, including:
  - Statements of Shri Mukesh Banka identifying the loan-providing entities as shell companies.
  - Non-compliance with statutory notices by the entities.
  - Lack of identity, creditworthiness, and genuineness of the transactions.
2. Judicial precedents such as NRA Iron & Steel Pvt. Ltd., Durga Prasad More, and Sumati Dayal strongly support the AO's conclusions.

Prayer: In view of the above, the Revenue respectfully prays:

1. The deletion of the addition of ₹1,75,00,364/- by the Ld. CIT(A) be set aside.
2. The addition made by the AO, based on the credible statement of Shri Mukesh Banka and corroborative evidence, be restored.
3. Any other relief that the Hon'ble Tribunal deems fit may also be granted.

#### Ld CIT(A) adopted two stands

#### Counter-Argument on CIT(A)'s Stand in the Case of Kedia

##### 1. Introduction

The Ld. CIT(A) upheld the reopening of the assessment under Section 148, stating that the Assessing Officer (AO) had new tangible material to justify the reopening. However, the Ld. CIT(A) simultaneously deleted the addition made by the AO on the grounds that the addition related to unsecured loans was already deleted in the original assessment proceedings and could not be re-added.

This contradictory stand of the Ld. CIT(A) highlights a lack of consistency in applying legal principles, which the Department seeks to challenge.

##### 2. Inconsistent Stance of the Ld. CIT(A)

###### 2.1 Confirmation of Reopening Based on New Material

- The Ld. CIT(A) confirmed the reopening under Section 148 on the grounds that the AO had new material post-search proceedings (i.e., statements and findings linking the assessee to accommodation entries). This suggests the Ld. CIT(A) acknowledged the new tangible material as sufficient to reopen the assessment.

###### 2.2 Contradictory Deletion of Additions

- Despite confirming that the AO had valid new material, the Ld. CIT(A) deleted the additions on the ground that the issue had already been adjudicated in the original assessment order.
- The argument that the AO cannot make a fresh addition after the deletion by the CIT(A) in the original assessment order is inconsistent with the acknowledgment of new material during the reassessment.

### 2.3 Opportunity for Department to File an Appeal

- The Ld. CIT(A) stated that if the Department disagreed with the deletion in the original proceedings, an appeal should have been filed. However:
  - The Department did not file an appeal solely due to the low tax effect, adhering to the CBDT's monetary thresholds for litigation.
  - This procedural restraint cannot undermine the merit of the AO's new findings in the reassessment proceedings.

## 3. Arguments against the "Double Addition" Claim

### 3.1 New Evidence Justifying Fresh Examination

- The reopening was based on new material, such as the statement of an entry operator, corroborating the accommodation entries provided to the assessee. This evidence was not available during the original assessment.
- Judicial precedent (*Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [(2007) 291 ITR 500 (SC)]) clarifies that reopening can occur even on the same issue if the AO possesses new tangible material.

### 3.2 Original Deletion Not Binding in Reassessment

- The deletion in the original assessment was based on the assessee's submission of confirmations and banking channel evidence, which the CIT(A) accepted as genuine at that stage.
- In the reassessment, the AO brought new evidence to prove that these confirmations were from paper companies and the transactions were accommodation entries. Therefore, the original deletion does not bind the AO in reassessment proceedings, as the reassessment is based on independent evidence.

### 3.3 No Double Addition

- The reassessment addition is not a double addition but a re-examination of the same transaction in light of new evidence.
- Judicial precedent (*NRA Iron & Steel Pvt. Ltd. v. PCIT* [(2019) 416 ITR 135 (SC)]) mandates that the assessee must prove identity, creditworthiness, and genuineness of transactions, especially when new evidence points to accommodation entries.

#### 4. Contradiction in CIT(A)'s Approach

##### 4.1 Acknowledging New Material but Disallowing Addition

- By confirming the validity of the reopening, the Ld. CIT(A) accepted that new evidence existed. However, deleting the addition based on the argument that the issue was previously adjudicated undermines the rationale for reopening.

##### 4.2 Failure to Address Fresh Findings

- The CIT(A) overlooked the substantive findings from post-search investigations, such as:
  - Statements of entry operators confirming the fictitious nature of loan-providing entities.
  - Non-compliance of creditors with statutory notices issued under Sections 133(6) and 131.
  - Evidence of layering through banking channels.

##### 4.3 Judicial Precedent on Reassessment

- The Supreme Court in *CIT v. Durga Prasad More* [(1971) 82 ITR 540 (SC)] and *Sumati Dayal v. CIT* [(1995) 214 ITR 801 (SC)] held that reassessment based on new material is valid, especially when original findings were based on superficial evidence.

#### 5. Supporting Judicial Precedents

##### 5.1 Reassessment Valid Even If Original Addition Was Deleted

- *Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [(2007) 291 ITR 500 (SC)]: New tangible material justifies reopening even if the issue was previously assessed.
- *CIT v. Nova Promoters and Finlease Pvt. Ltd.* [(2012) 342 ITR 169 (Del.)]: Transactions involving paper companies justify reassessment and additions under Section 68.

##### 5.2 New Evidence Overrides Prior Deletion

- *NRA Iron & Steel Pvt. Ltd.* [(2019) 416 ITR 135 (SC)]: The burden is on the assessee to prove identity, creditworthiness, and genuineness, especially when new evidence suggests accommodation entries.

#### 6. Prayer

In light of the above:

1. The deletion of the addition by the Ld. CIT(A) should be set aside as it contradicts the finding that new material justified reopening.
2. The addition made by the AO should be restored, as it is based on credible evidence of accommodation entries and corroborated by judicial precedents.
3. The Hon'ble Tribunal may grant any other relief deemed fit in the interest of justice.

## Addition of unsecured loan and Ld CIT(A) stands

### *Introduction*

The Assessing Officer (AO) made additional additions under Section 68 for unexplained cash credits, supported by specific findings. However, these were deleted by the Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)] on the grounds that the creditors had submitted confirmations and the transactions were routed through banking channels.

It is contended that the Ld. CIT(A) erred in deleting these additions without fully appreciating the AO's findings of non-attendance, non-compliance, and lack of satisfactory evidence provided by the respondents during the assessment or appeal proceedings.

### *2. Key Observations Supporting Additions*

#### *2.1 Failure to Attend or Respond to Notices*

- Notices under Sections 133(6) and 131 were issued to the creditors to verify the identity, creditworthiness, and genuineness of the transactions.
- The creditors failed to attend or respond to these notices, resulting in non-verification of their existence, financial capacity, or the authenticity of the transactions.
- As held in *CIT v. Orissa Corporation Pvt. Ltd.* [(1986) 159 ITR 78 (SC)], the failure of creditors to respond to statutory notices shifts the burden back to the assessee to substantiate the claims.

#### *2.2 Non-Compliance with Summons*

- Summons issued under Section 131 to the directors or representatives of the loan-providing entities were ignored.
- Non-compliance strengthens the inference that the transactions are not genuine and were merely accommodation entries, as emphasized in *Sumati Dayal v. CIT* [(1995) 214 ITR 801 (SC)].

#### *2.3 Banking Channels Alone Do Not Establish Genuineness*



- Merely routing transactions through banking channels is insufficient to prove the genuineness of the loans, as held in:
  - *CIT v. Durga Prasad More* [(1971) 82 ITR 540 (SC)].
  - *NRA Iron & Steel Pvt. Ltd. v. PCIT* [(2019) 416 ITR 135 (SC)].
- Without corroborative evidence to prove identity, creditworthiness, and genuineness, such transactions cannot be considered legitimate.

## 2.4 Post-Search Investigations

- Findings during the search and subsequent investigation revealed that the entities were either shell companies or lacked substantial business operations.
- Statements recorded under oath (e.g., from entry operators) confirm that these entities were engaged in providing accommodation entries for a commission.

## 3. Argument for Sustaining the Balance Addition

### 3.1 Burden of Proof on the Assessee

- Under Section 68, the burden lies on the assessee to prove the:
  - Identity of the creditors.
  - Creditworthiness of the creditors.
  - Genuineness of the transactions.
- Despite opportunities given during the assessment and appeal proceedings, the assessee failed to provide conclusive evidence to discharge this burden.

### 3.2 Adverse Inference from Non-Compliance

- The non-attendance of creditors and failure to respond to notices issued under Sections 133(6) and 131 justifies an adverse inference against the assessee, as held in:
  - *CIT v. Orissa Corporation Pvt. Ltd.* [(1986) 159 ITR 78 (SC)].
  - *CIT v. Dataware Pvt. Ltd.* [GA No. 2856 of 2011].
- The Ld. CIT(A) failed to appreciate this critical lapse.

### 3.3 Judicial Precedents Favouring Revenue

- In *NRA Iron & Steel Pvt. Ltd.* [(2019) 416 ITR 135 (SC)], the Hon'ble Supreme Court held that vague and unsupported confirmations cannot establish the genuineness of credits.
- The same principle applies here, as the creditors failed to substantiate their financial capacity or the genuineness of transactions, despite specific inquiries by the AO.

### 3.4 Reopening Based on New Material

- The reassessment was initiated based on credible new material (post-search investigations and statements from entry operators). This material provided a strong basis for making additions.
- As held in *Rajesh Jhaveri Stock Brokers Pvt. Ltd.* [(2007) 291 ITR 500 (SC)], reassessment based on new tangible material is valid and overrides findings in the original assessment.

### 3.5 Failure to Address AO's Findings

- The AO clearly outlined the following issues:
  - Non-response from creditors.
  - Non-compliance with summons.
  - Lack of independent evidence to verify the identity, creditworthiness, and genuineness of the creditors.
- The Ld. CIT(A) did not address these findings adequately before deleting the additions, rendering the order flawed and unsustainable.

### 4. Prayer

In light of the above arguments:

1. Deletion of the Balance Addition by the Ld. CIT(A) Should Be Set Aside:
  - The balance addition under Section 68 should be reinstated, as the assessee failed to discharge the burden of proof or rebut the findings of the AO.
2. Additions Made by the AO Should Be Restored:
  - The AO's findings, based on post-search investigations and corroborated by judicial precedents, justify the additions.
3. Support from Judicial Precedents:
  - Judicial rulings such as *NRA Iron & Steel Pvt. Ltd.*, *Durga Prasad More*, and *Sumati Dayal* uniformly uphold additions where identity, creditworthiness, and genuineness remain unsubstantiated.
4. Further Relief as Deemed Fit:
  - The Hon'ble Tribunal may grant any other relief in the interest of justice.

### Conclusion

The Ld. CIT(A), while acknowledging the suspicious activities of the loan-providing entities, erred in deleting the additions without appreciating:

The substantive evidence gathered by the AO, including the bank trails and findings from the Banka Group search.

Established judicial precedents emphasizing the importance of substance over form in determining the genuineness of transactions.

Judicial principles laid down in landmark rulings such as *NRA Iron & Steel Pvt. Ltd. v. PCIT* [(2019) 416 ITR 135 (SC)], *Sumati Dayal v. CIT* [(1995) 214 ITR 801

(SC)], and CIT v. Nova Promoters and Finlease Pvt. Ltd. [(2012) 342 ITR 169 (Del.)] uniformly support the additions made by the AO in cases involving shell companies, accommodation entries, and tax evasion.

#### Common Prayer

In view of the above submissions, facts, and supporting judicial precedents, the Revenue respectfully prays that:

The order of the Ld. CIT(A) deleting the additions made under Section 68 and on account of commission payments be set aside.

The additions made by the AO, totaling ₹1,75,00,364/-, be restored, as they are based on credible evidence and in line with established judicial principles.

Any other relief that the Hon'ble Tribunal deems fit in the interest of justice may also be granted.

Respectfully Submitted on Behalf of the Revenue”

39. The Id. DR in support of the written submission filed a paper book containing following records:

S.No.	Particulars	Page No.
1	Scrutiny Report Proforma for A.Y. 2014-15	1-3
2	Order of CIT Appeal for A.Y. 2014-15	4-14
3	Assessment Order for A.Y. 2014-15	15-30

40. Per contra, Id. AR of the assessee relied upon the order of the Id. CIT(A) passed by the National Faceless Appellate Center after considering all the submission made by the assessee. To support the order of the Id. CIT(A) Id. AR of the assessee filed the written submissions which is reproduced herein below:

1. The assessee company is a private limited company and is engaged in the Real Estate Business. The assessee company filed its original return of Income for the A.Y. The assessee company filed its original return of Income for the A.Y. 2014-2015 on 21.10.2014 declaring total income of Rs. 36,32,264/-. The case was completed u/s. 143(3) on 29.12.2016 at income of Rs. 62,69,680/-. The assessee company preferred an appeal against the order passed u/s. 143(3) on 29-12-2016 before the Id. CIT(A). The Id. CIT(A) has passed the order in Appeal No. 601/2016-17/JPR on 15/02/2019 deleting the addition made of Rs. 25,05,178/- on account of Loan received and interest paid thereon from M/s. Neelgagan Suppliers Pvt. Ltd.

2. The case was re-opened by the Ld. AO by issuing notice u/s. 148 on 14.03.2019. The Id. Assessing Officer vide assessment order dated 13.12.2019 has made addition of Rs. 1,75,00,364/- u/s. 68 of the Act towards receipts of Unsecured Loans as follows:

During the under consideration the assessee has received unsecured loans from the following parties:

S.No.	Name of person from whom loan was received	Amount (Rs.)
1.	M/s Bhagwat Marcom Pvt. Ltd.	Rs. 25,00,056/-
2.	M/s Coolhut Marketing Pvt. Ltd.	Rs. 25,00,028/-
3.	M/s Gabarial Tieup Pvt. Ltd.	Rs. 25,00,056/-
4.	M/s Neelgagan Suppliers Pvt. Ltd.	Rs. 25,00,056/-
5.	M/s Outlook Vintrade Pvt. Ltd.	Rs. 25,00,056/-
6.	M/s Subhrashi Enclave Pvt. Ltd.	Rs. 25,00,056/-
7.	M/s Viewmore Developers Pvt. Ltd.	Rs. 25,00,056/-

3. It is submitted that Mr. Mukesh Banka has retracted his statement before the Income Tax Department at Kolkata and hence, no reliance can be placed upon the same.

4. The assertion that the unsecured loans received by the assessee are bogus and constitute unexplained cash credits under Section 68 of the Income Tax Act, 1961, is unfounded and lacks merit. This conclusion appears to be based on conjecture rather than a thorough examination of the evidence and explanations furnished by the assessee during the assessment proceedings. A detailed analysis of the facts and legal principles involved reveals significant flaws in the assessment order's findings, which warrant a reversal of the conclusions drawn by the revenue authorities.

5. Identity of the Lenders: The identity of the lender entities has been unequivocally established through substantial documentary evidence. The assessee provided Permanent Account Numbers (PANs), certificates of incorporation, and other statutory documents for each lending entity. These

documents conclusively demonstrate that the lenders are legally recognized entities operating within the framework of Indian corporate law. Furthermore, the loans in question were routed through proper banking channels, with supporting documents such as bank statements and transaction details clearly reflecting the movement of funds. The traceability of funds is a critical factor in establishing the genuineness of the transactions, and the assessee has provided ample evidence to satisfy this requirement.

6. **Creditworthiness of the Lenders:** The financial statements of the lending entities were submitted to substantiate their creditworthiness. These include audited balance sheets, profit and loss accounts, and other financial records, which collectively establish the lenders' ability to extend loans to the assessee. The audited balance sheets reflect adequate reserves, surpluses, and liquidity, thereby supporting the contention that the entities possessed the financial capacity to disburse the loan amounts. The allegation of insufficient income in the hands of these entities is misplaced, as income statements alone cannot provide a comprehensive picture of their financial standing. A holistic assessment of their financial position, including their assets and reserves, demonstrates that the lenders were well-capable of extending loans.

7. **Unsubstantiated Allegations of Shell Companies:** The revenue authorities have relied heavily on third-party statements and field inquiries, such as those from Mr. Mukesh Banka and the Inspector's reports, to allege that the lender entities are shell companies. However, these allegations are unsubstantiated and procedurally flawed. The assessee was neither provided access to these third-party statements nor granted an opportunity to cross-examine the individuals whose testimonies were relied upon. This constitutes a violation of the principles of natural justice, as the assessee has been denied a fair chance to rebut the claims made against it. It is well-established in law that any evidence used against a party must be subjected to scrutiny, including the right to cross-examination. The failure to adhere to this principle invalidates the adverse inferences drawn from such evidence.

8. The absence of directors of the lending entities at the addresses provided in the statutory documents has been cited as evidence of their fraudulent nature. However, this conclusion is both speculative and unfounded. It is not uncommon for companies to operate through multiple locations or to shift their registered offices. Such logistical changes often take time to reflect in statutory records. Moreover, the mere absence of directors at a given address does not, in itself, establish that the entities are non-existent or that the transactions are fraudulent. Concrete evidence, rather than assumptions, is required to substantiate such serious allegations.

9. **Speculative Allegations of Accommodation Entries:** The revenue authorities have further contended that the loans represent the assessee's unaccounted income laundered through a network of shell companies. This

assertion is speculative and devoid of factual support. Under Section 68, the onus placed on the assessee is to prove the identity of the lender, the genuineness of the transaction, and the creditworthiness of the lender. The assessee has discharged this onus by providing substantial documentary evidence, including PAN details, bank statements, audited financials, and other corroborative documents. Once the assessee has fulfilled its obligations under the law, the burden shifts to the revenue authorities to disprove the genuineness of the transactions and establish that the loans are, in fact, accommodation entries. However, the revenue authorities have failed to provide any concrete evidence to substantiate their claims. The reliance on conjecture and unverified reports is insufficient to meet the evidentiary burden required under the law.

10. **Commission and Interest Payments:** The inclusion of alleged commission payments and interest payments as unexplained expenditures further highlights the flawed approach of the assessment order. The assessee has categorically denied making any such commission payments, and there is no corroborative evidence to support the revenue authorities' claims. Interest payments, on the other hand, are legitimate business expenditures incurred in the ordinary course of business. These payments have been substantiated with proper documentation, including bank statements and agreements, and cannot be disallowed without concrete evidence of wrongdoing.

11. **Misplaced Reliance on Judicial Precedents:** The assessment order cites judicial precedents to justify its conclusions, but these precedents are inapplicable to the present case. The decisions relied upon pertain to scenarios with materially different facts and circumstances. The assessee has complied with all statutory requirements, furnished all necessary documentation, and satisfactorily discharged the onus placed upon it under the law. The conclusions drawn in the assessment order are therefore based on assumptions and do not hold water in light of the robust evidentiary support provided by the assessee.

12. **Contradiction in Findings Regarding Loan Repayments:** A critical contradiction in the assessment order's findings further undermines its credibility. While the revenue authorities have treated the original loan amounts as unexplained cash credits, they have simultaneously accepted the repayment of these loans as bona fide. This creates an inherent inconsistency in the logic of the assessment order. The repayment of loans has been substantiated with documentary evidence, including bank statements reflecting payments made through proper banking channels. The acknowledgment of repayments unequivocally validates the existence of the original loan transactions. It would be contrary to principles of logic and natural justice to simultaneously accept the repayments as genuine while alleging that the initial loan receipts were bogus accommodation entries.

13. **Compliance with Section 68:** The fundamental principle underlying Section 68 is to address unexplained credits in the books of the assessee. In the present



case, the assessee has not only substantiated the receipt of loans with credible evidence but has also corroborated the genuineness of the transactions through the repayment of these loans. Any claim that the loan amounts represent the assessee's unaccounted money routed through dubious means collapses when viewed in light of the subsequent repayments. If the lenders were truly non-existent or merely shell entities, as alleged, there would be no verifiable record of repayments, nor would such repayments occur through recognized banking channels.

14. Traceability and Transparency of Transactions: The transactions were conducted entirely through banking channels, ensuring complete traceability and transparency. This eliminates any ambiguity regarding the financial flow and ensures compliance with the provisions of the Income Tax Act. The allegation that the loans are accommodation entries is, therefore, unsustainable in the face of evidence demonstrating the traceability and bona fide nature of the transactions.

15. It is further submitted that no opportunity of cross-examination of Mr. Mukesh Banka was provided to the assessee, and hence, no reliance can be placed upon the same.

16. The Id. CIT(A) vide its order dated 17.04.2024 has deleted the additions made u/s. 68 by observing as under:

6.1 *Ground No 3, 3.2, 3.3 and 3.5 are all directed against the AO making an addition of Rs 1,75,00,364 u/s 68 of the Act. The AO during the reassessment proceedings held that during the year under consideration, the appellant had received unsecured loans from the following companies:*

Sno.	Name of party from whom unsecured loan was received	Amount
1	M/s Bhagwat Marcom Pvt. Ltd.	Rs 25,00,056
2	M/s Coolhut Marketing Pvt. Ltd.	Rs 25,00,056
3	M/s GabarialTieup Pvt. Ltd.	Rs 25,00,056
4	M/s Nelgagan Suppliers Pvt. Ltd.	Rs 25,00,056
5	M/s Outlook Vintrade Pvt. Ltd.	Rs 25,00,056
6	M/s Subhrashi Enclave Pvt. Ltd.	Rs 25,00,056
7	M/s Viewmore Developers Pvt. Ltd.	Rs 25,00,056

6.2 *It is seen that the AO received information from the DDIT(Inv), Unit-1(3), Kolkata that a search and seizure/survey action was carried out in the case of Banka Group on 21.05.2018 and it was found on scrutiny of the findings gathered and subsequent information brought on records that Shri Mukesh Banka provides accommodation to various beneficiaries. Various beneficiaries were identified who have obtained accommodation entry in the nature of bogus unsecured loans or in other forms and the appellant was found to be one of the beneficiaries who have taken accommodation entry in the form of bogus unsecured loans. The AO observed that the parties from whom the appellant received unsecured loans have highly insufficient return income to explain the sources of funds invested in the appellant. The AO also stated that notices u/s 133(6) was issued to these parties*

but no replies were received from them. It was also seen that the AO sought a report from the office of the DDIT Kolkata and the Inspector after visiting the addresses of the lender companies found no evidence of the physical existence of the lender companies at the given addresses. The AO stated that summons u/s 131(1) of the Act was issued to the Directors of the lender companies but no one appeared. The AO arrived at a conclusion that the transaction under consideration entered into by the appellant in taking unsecured loans from the companies managed and controlled by Mukesh Banka was not genuine. Therefore, the AO added Rs 1,75,00,364 shown as unsecured loan and treated it as unexplained income u/s 68 of the Act.

6.3 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. The appellant during the course of appeal proceedings has submitted the documents regarding loan taken and repayment from the lender companies as under:

*M/s. Bhagwat Marcom Pvt. Ltd.*

Copy of ITR Acknowledgement for the A.Y. 2014-2015.  
Bank Statement of M/s. Bhagwat Marcom Pvt. Ltd  
Audited Statement of Accounts

*M/s. Coolhut Marketing Pvt. Ltd.*

Copy of ITR Acknowledgement for the A.Y. 2014-2015.  
Bank Statement of M/s. Coolhut Marketing Pvt. Ltd.–  
Audited Statement of Accounts.

*M/s. Gabarial Tie-up Pvt. Ltd.*

Copy of ITR Acknowledgement for the A.Y. 2014-2015.  
Bank Statement of M/s. Gabarial Tie-up Pvt.  
Audited Statement of Accounts.

*M/s. Neelgagan Suppliers Pvt. Ltd.*

Copy of ITR Acknowledgement for the A.Y. 2014-2015.  
Bank Statement of M/s. Neelgagan Suppliers Pvt. Ltd.  
Audited Statement of Accounts.

*M/s. Outlook Vintrade Pvt. Ltd.*

Copy of ITR Acknowledgement for the A.Y. 2014-2015.  
Bank Statement of M/s. Outlook Vintrade Pvt. Ltd.  
Audited Statement of Accounts.

*M/s. Subhrashi Enclave Pvt. Ltd.*

Copy of ITR Acknowledgement for the A.Y. 2014-2015.  
Bank Statement of M/s. Subhrashi Enclave Pvt. Ltd.  
Audited Statement of Accounts.

*M/s. Viewmore Developers Pvt. Ltd.*

Copy of ITR Acknowledgement for the A.Y. 2014-2015.  
Bank Statement of M/s. Viewmore Developers Pvt. Ltd.  
Audited Statement of Accounts

6.4 I find that the appellant had taken unsecured Loan taken from M/s. Bhagwat Marcom Pvt. Ltd., M/s. Coolhut Marketing Pvt. Ltd., M/s. Gabarial Tieup Pvt. Ltd., M/s. Neelgagan Suppliers Pvt. Ltd., M/s. Outlook Vintrade Pvt. Ltd., M/s. Subhrashi Enclave Pvt. Ltd. and M/s. Viewmore Developers Pvt. Ltd. It is also

seen that these loans were short term loans in nature which were squared off in the subsequent year through Banking Channel as and when your appellant had liquidity. The Hon'ble High Court of Gujrat in case of Commissioner of Income Tax, Rajkot-1 vs Ayachi Chandrashekhar Narsangji [2014] 42 Taxmann.com 251 (Gujrat) has held that where department had accepted repayment of Loan in the subsequent year, no addition was to be made in current year on account of cash credit. It is evident that each transaction were made through banking channels and the appellant has submitted audited Balance Sheets, profit and loss accounts, Acknowledgement of ITR, Bank Statement and furnishing of sources of the amount in the hands of loan creditor as well as loan Confirmation of all lender companies including Loan Confirmation for repayment of Loan. I also find from the Master data in record of MCA Website, the lender companies are active and it have been filed its Balance Sheet in MCA Website and complying with legal requirements under the companies Act. The appellant has also enclosed copy of Assessment orders of all loan creditors whereby the department has accepted the accounts of those companies.

6.5 Under Section 68 of the Income Tax Act, any sum credited in the books of accounts of a taxpayer that cannot be explained by the taxpayer's income or other sources is deemed to be the taxpayer's income for that year. The burden of proof lies with the taxpayer to prove that the cash credit is genuine and not an undisclosed income. The appellant has provided identify of the Loan Creditors by giving their complete Address, PAN, Loan Confirmation, Copy of Acknowledgement for filing of I.T. Return for the A.Y. 2014-15, copy of Assessment Orders, Bank Statement and Audited Statement of Accounts and that it had also provided evidences of genuineness of transaction as all the transactions are through Banking Channels and the loan creditors has categorically confirmed by furnishing supporting documents and evidences and in both the bank. The appellant contented that the genuineness of the transactions cannot be doubted, relying on mere surmises without any material to prove the same as held in the case of Dhakeshwari Cotton Mills Ltd. 26 ITR 775 (SC). I find that the AO has overlooked the net worth of the lender companies and relied only on profit. It is seen that besides the loan granted to the appellant, these lender companies had also given loans to other bodies corporate as well and granting of loan to the appellant is not a solitary transaction. The appellant has furnished the financials of the loan creditor companies and other details as under:-

6.6 Therefore, it is seen from the above that the lender companies have sufficient financial capacity to provide the loans. Therefore, the appellant has discharged the onus of proving the identity, creditworthiness and genuineness of the loan creditors. The appellant has also paid interest to each loan creditor and TDS were deducted u/s 194A in respect of such interest. The loan creditors has also disclosed interest income in their respective tax returns.

6.7 The Hon'ble ITAT Delhi in the case of KMG International Ltd Vs ACIT in ITA No. 5591/Del/2010 Date of Judgement/Order : 21/07/2023 Related Assessment Year : 2007-08 has held that addition under section 68 towards unsecured loan amount unjustified as identity and creditworthiness of creditors and genuineness of transaction duly proved by way of documentary evidences.

6.8 The Hon'ble jurisdictional Rajasthan High Court in the case of *Labh Chand Bohra Vs ITO (2010) 189 TAXMAN 141* held as under:

*"So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat Ram's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment runs contrary to the judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent judgment in Mangilal's case (supra) relying upon Daulat Ram's case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in Mangilal's case (supra)."*

6.9 The Hon'ble Supreme Court in the case of *CIT Vs Orissa Corporation (P) Ltd. 159 ITR 78(SC)* held as follows:

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

6.10 The Hon'ble Agra Tribunal in the case of *S.K. Jain Vs ITO (2004) 2 SOT 579 (Agra)* observed as under:

*"The creditors have confirmed that they have advanced loan to the assessee. In most of the cases, transactions have been routed through bank account. Therefore, asking source of such deposits will amount to asking source of the source which is not permitted under the law as held by the Hon'ble High Court of Patna in the case of *Sarogi Credit Corpn. vs. CIT 1975 CTR (Pat) 1: (1976) 103 ITR 344 (Pat)* and the decision of the Ahmedabad Bench of the Tribunal in the case of *Rohini Builders vs. Dy. CIT (2002) 76 TTJ (Ahd) 521: (2001) 117 Taxman 25 (Ahd)(Mag)*.*

*Once it is established that the amount has been invested by a particular person, be he is a family member or close relative then the responsibility of the assessee is over. The assessee cannot ask that person, who advanced the loan, whether money advanced is properly taxed or not."*

6.11 The Hon'ble Calcutta High Court in the case of *CIT Vs Dataware Pvt Ltd. [ GA to.2856 of' 2011]* had deleted similar addition u/s 68 with reference to unsecured loan creditors. The relevant extracts of the decision is reproduced below:

*"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 admitted 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 than return of the creditor and brand the same as unworthy of credence.*

*So long It is not established that the return submitted by the creditors 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.”*

6.12 The Hon’ble Supreme Court in the case of CIT Vs Orissa Coprn (P.) Ltd [159 ITR 78) has held as follows:

*“In this case the assessee had given the names and addresses of’ the alleged creditors was in the knowledge of the revenue that the said creditors were the income-tax assessee. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assesses, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or wear such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to file conclusion that the assessee had discharged he burden that lay on him, than 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 could arise”*

6.13 The Guwahati High Court in the case of Nemi Chand Kothari Vs CIT [136 Taxman 213) observed that the assessee had obtained loans though account payee cheques and ha had also furnished the name & address of the creditor. In light of the aforesaid observations, they further held as follows:

*“Once the assessed had established that he had received the said amounts from ‘N’ and ‘P’ by way of cheques, the assessee must be taken to have proved that the creditors had the creditworthiness to advance the loans. Thereafter, the burden had shifted to the Assessing Officer to prove the contrary. On failure on the part of the creditors to show that their sub creditors had creditworthiness’ to advance the said amounts to the assessee, these amounts as a corollary, could not have been and ought not to have been, under the law, treated as the assessee’s income mom the undisclosed sources, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or ware owned by, the assessee.”*

6.14 I find that the AO has stated that third party enquiries were made by issuing notices u/s 133(6) and by making field inquiries (by sending Inspector) in the name of such companies, however as no reply was received from such parties, adverse inference was drawn. Also, it is mentioned that summons were issued to directors of above entities u/s 131 & 131(d). I find from the assessment order that the appellant was not confronted with regard to non service or non compliance of summon nor the Inspector’s report as mentioned in Assessment order was ever supplied to the appellant. Various courts have held that noncompliance to notices u/s 133(6) or 131 of the Act by itself is not sufficient to draw an adverse inference.

*In the case of Phool Singh Vs. ACIT (ITAT Delhi) in ITA No. 2901/Del/2014, it has been held by Hon'ble ITAT that, "Merely because 133(6) notices issued to the party returned un-served though it was the same address, which was supplied by supplier while filing its income tax return, no fault can be put on the shoulder of assessee." In 159 ITR 78 (SC) Orissa Corpn. (P) Ltd it was held that when the assessee furnishes names and addresses of the alleged creditors, the burden shifts to the department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the inquiry and to establish the lack of creditworthiness and the mere issue of notice u/s 131 is not sufficient. Thus, the Appellant has discharged the primary burden of establishing the identity and genuineness of the creditor.*

*6.15 The Hon'ble Supreme Court in the case of CIT vs Odeon Builders Pvt. Ltd. in Civil Appeal No. 9604-9605 of 2018 has held as under:*

*S. 68/69 Bogus Purchases: Disallowance cannot be made solely on third party information without subjecting it to further scrutiny. The assessee has prima facie discharged the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return. The AO has also not provided a copy of the statements to the assessee, thus denying it opportunity of cross examination.*

*6.16 The Hon'ble jurisdictional Rajasthan High Court in the case of CIT vs Pooja Agrawal in D.B. Income Tax Appeal No. 385 / 2011 has held that so far as assessee has furnished all the supporting documents in the shape of copy of contract notes regarding purchase and sale of shares, copy of D-mat account etc, the fact of transaction entered into cannot be denied simply on the ground that in his statements appellant denied having made any transactions. Further as payments and receipts were made through account payee cheques and transactions were routed through Kolkata Stock Exchange and there was no evidence that the cash has gone back in appellant's account, it was held by the Court that simply mentioning that findings were on the basis of appraisal report prepared by Investigation wing after considering all the material facts available on record is not sufficient. The Hon'ble Court confirmed the finding of the Tribunal that "The AO has failed to prove through any independent enquiry or relying on some material that the transactions made by the appellant through share P.K. Agrawal were non genuine or there was any adverse mention about the transaction in question in statement of Sh. Pawan Purohit."*

*6.17 The Hon'ble Jaipur bench of ITAT vide order dated 31.08.2022 in the case of Manohar Lal Chug vs. ITO in ITA No. 312/JP/2021 has held that:*

*"6.3. The issue of penny stock and consequent additions made has elaborately dealt with by ITAT Jaipur Bench in the case of Pramod Jain & Others (supra) and relying on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Pooja Agarwal, 160 DTR 0198 (Raj.) deleted the addition by observing as under :- "In view of the above facts and circumstances of the case, we are of the considered opinion that the addition made by the AO is based on mere suspicion and surmises without any 30 ITA No. 312/JP/2021 Shri Manohar Lal Chugh, Jaipur. cogent material to show that the assessee has brought back his*



*unaccounted income in the shape of long-term capital gain. On the other hand, the assessee has brought all the relevant material to substantiate its claim that transactions of the purchase and sale of shares are genuine. Even otherwise the holding of the shares by the assessee at the time of allotment subsequent to the amalgamation/ merger is not in doubt, therefore, the transaction cannot be held as bogus. Accordingly, we delete the addition made by the AO on this account." On further appeal by the department to the Hon'ble Rajasthan High Court, the Hon'ble High Court by referring to the decision of CIT vs. Pooja Agarwal in DB IT Appeal No. 385/2011 dated 11.09.2017 (Raj)(HC) held that nosubstantial question of law arise in this case. 6.4. Thus in view of the above discussion and taking into consideration various documentary evidences produced by the assessee in support of his claim and further relying upon various decisions of this Tribunal as well as the decision of Hon'ble Jurisdictional High Court including the decision in case of CIT vs. Pooja Agarwal (supra) as well as in case of PCIT vs. Pramod Jain & Others (supra), we allow the claim of exemption under section 10(38) of the Act and accordingly delete the addition made by the AO. The order of Id. CIT (A) is set aside."*

6.18 In the case of *Shree Barkha Synthetics Ltd. Vs. Asstt CIT, 2006, 55 taxman 289, Raj*, it has been held as under:

*"The principle relating to burden of proof concerning the assessee is that where the matter concerns money receipts by way of share application from investors through banking channel, he has to prove the existence of the person in whose name the share application is received. Once the existence of the investor is proved, it is not further the burden of the assessee to prove whether that person himself has invested the said money or some other person has made investment in the name of that person. The burden then shifts on to the revenue to establish that such investment has come from the assessee itself. [Para 16]*

6.19 The Hon'ble ITAT, Ahmedabad in the case of *DCIT Circle-1(1)(1), Ahmedabad Vs. J. P. Fincorp Services Pvt. Ltd. [ITA No.2517/Ahd/2016]* has held as follows:

29. *In view of the above, we are of the opinion that, though the transactions of the loan received by the assessee are not free from any doubt but in either of the case, once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in the later years. Thus, in the given facts and circumstances, we hold that there is no infirmity in the order of the Ld. CIT-A. Hence, the ground of appeal of the revenue is hereby dismissed. [Para-29]*

6.20 Further, the Hon'ble ITTA, Kolkata in the case of *Balaji Solutions Limited Vs. Assistant Commissioner of Income Tax Circle-2(1), Kolkata [I.T.A. No. 572/KOL/2022]* pronounced on February 20, 2023 has held as follows:

*"9. Apropos to Ground No. 2 regarding the issue of unexplained cash credit amounting to Rs.25,00,000/- under section 68 of the Act is concerned, we find that the assessee took loan from M/s. Ambala Trafim Pvt. Limited. It is not in dispute before us that the aforesaid loan was interest-bearing loan taken through normal banking channel and was repaid back in the same financial year through banking*

*channel and tax at source has been deducted on the interest paid thereon and all the documentary evidence in order to explain alleged credit has been duly placed before the lower authorities. Since no specific discrepancy has been observed by the lower authorities and the said loan being taken and repaid during the year itself and also considering the income of Rs.15.10 crores offered by the assessee, we do not find any reason to question the genuineness of the said loan. We, therefore, reverse the finding of the Id. CIT(Appeals) and delete the addition of Rs.25,00,000/- under section 68 of the Act and allow Ground No. 2 raised by the assessee."*

6.21 The Hon'ble ITAT Surat in the case of *Rajhans Construction (P.) Ltd. v. ACIT [IT APPEAL NO. 1450 (AHD.) OF 2016] [[2022] 140 taxmann.com 370 (Surat-Trib.)]* has held that:

*"22. In view of the aforesaid factual and legal discussion. We are of the view that when the unsecured loan has been paid within a short 8 span of time for which the assessee has paid interest and deducted tax thereon. Therefore, the Assessing Officer was not justified in making addition under section 68. Thus, substantial ground of appeal is allowed."*

6.22 The Hon'ble Supreme Court dismissed the SLP filed by the revenue against the decisions of Hon'ble HC of Delhi in case of *PCIT-4 vs Hi-Tech Residency Pvt Ltd (96 Taxmann.com 403)* wherein it was concluded that addition made u/s 68 deleted, where assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors to whom shares were allotted by assessee as well as lenders from whom unsecured loans were taken. Also, the Hon'ble Gujarat High Court in the case of *CIT-1 vs Apex Therm Packaging Pvt Ltd (42 taxmann.com 473)* has held that where name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/lenders as well as their confirmation had been furnished, Assessing Officer could not make addition on account of unsecured loan and interest thereon. Therefore, I find that in the present case where the name, address, PAN, copy of IT Returns, balance sheet, profit and loss account of all creditors/ lenders as well as their confirmation had been furnished, AO was not justified in making addition on account of unsecured loan.

6.23 I find that the foundation of the addition made by the AO is the admission of Shri Mukesh Banka vide his statement recorded u/s. 131/132(4) of the Act on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies controlled and managed by Shri Mukesh Banka. However, it is also seen that Shri Mukesh Banka has retracted his statement vide Two Separate Affidavit dated 01/06/2018 and 23/07/2018. Therefore, the statement by itself cannot be solely relied as a fool proof evidence. The Hon'ble jurisdictional ITAT Jaipur in the case of *DCIT V/s Saurabh Mittal, ITA No. 16/JP/2018* has noted as under:

*"We further note that the assessee produced copy of affidavit of Shri. Anil Agrawal who has retracted his statement before the Investigation Wing, Kolkata however, without going into controversy of the retraction of the statement we find that the statement cannot be used by the AO without giving an opportunity to cross examination of Shri Ani1 Agrawal."*

6.24 It may be noted that the assessment in the case of the appellant was completed u/s 143(3) of the Act on 29.12.2016 by the AO making addition of Rs 25,05,178 on ground that the loan alleged to have been taken from M/s Neelgagan suppliers Pvt Ltd is not proved and bogus. Aggrieved, the appellant went in appeal before the Ld CIT(A), Ajmer and the Ld CIT(A) passed the appeal order on 15.02.2019 in Appeal No 601/2-016-17/JPR deleting the addition. The Ld CIT(A) has held as under:-

“4.4 It is seen that the appellant had received loan of Rs 25 lakhs from M/s Neelgagan Suppliers Pvt. Ltd. on 25.03.2014 which was repaid along with interest on 11.03.2015 after deducting the TDS of Rs 28,333/- on interest of Rs 2,54,992/- paid by the appellant to M/s Neelgagan Suppliers Pvt. Limited. The loan of Rs 25 lakhs was received through RTGS. The appellant has filed copy of the bank statement of M/s Neelgagan Suppliers Pvt. Ltd. For the relevant period. It can be seen from the bank statement that either immediately before or after issue of cheque of Rs 25 lakhs to the appellant by M/s Neelgagan Suppliers Pvt. Ltd. On 25.03.2014, there was no cash deposit in the bank account of M/s Neelgagan Suppliers Pvt. Limited. The appellant has filed confirmatory letter, copy of IT. Return of A.Y 2014-15 of M/s Neelgagan Suppliers Pvt. Ltd., Balance Sheet dated 31.03.2014 & Profit & Loss Account for the period ending 31.03.2014 of M/s Neelgagan Suppliers Pvt. Limited. It can be seen that the net worth of M/s Neelgagan Suppliers Pvt. Ltd. As on 31.03.2014 was Rs, 2,48,19,924/-. The appellant has also filed copy of mater date downloaded form site of ROC. The status of M/s Neelgagan Suppliers Pvt. Ltd. has been shown as ‘active’. The AO has not brought on record any evidence to show that the appellant had paid cash out of his unaccounted income to M/s Neelgagan Suppliers Pvt. Ltd. or its representative or middleman for obtaining any accommodation entry of loan of Rs 25 lac from M/s Neelgagan Suppliers Pvt. Limited. I am of the considered view that when the appellant has filed each and every document to prove identity and creditworthiness of the person from whom the unsecured loan of Rs 25 lac was received by the appellant and the AO has not brought on record any evidence to show that any unaccounted income was introduced by the appellant in the form of unsecured loan introduced in the name of M/s Neelgagan Suppliers Pvt. Ltd., then just because the AO could not enforce compliance of the notice issued u/s 133(6) to M/s Neelgagan Suppliers Pvt. Ltd., no addition u/s 68 could have been made by the AO in respect of unsecured loan of Rs 25 lac received from M/s Neelgagan Suppliers Pvt. Ltd. And interest of Rs 5,178/- debited in respect of interest accrued on such unsecured loan. Therefore, in view of the facts discussed by the AO and the various decisions relied upon by the appellant, the addition of Rs 25,05,178/- (Rs 25,00,000 + Rs 5,178) made by the AO u/s 68 is hereby deleted.”

6.25 The same amount of Rs 25 lakhs from M/s Neelgagan Suppliers Pvt. Ltd. has been again added by the AO in the assessment u/s 147/148 dated 13.12.2019. This amounts to double addition of an amount which has already been deleted by the Ld CIT(A) in appeal. In the earlier grounds, the addition made of Rs 25,00,056 on account of unsecured loan from M/s Neelgagan Suppliers Pvt. Ltd. has been held not valid as the further addition made in the re-assessment order tantamount to double addition and therefore has been directed to be deleted.

6.26 *The Hon'ble Jurisdictional ITAT in the case of CIT Vs N. M. Agrofood Products Pvt. Ltd (ITAT Jaipur) Appeal Number : ITA. No. 53/JP/2022 Date of Judgement/Order : 24/08/2022 has held that assessment which are already completed after making proper inquiries cannot be allowed to again reframed merely based on the search without any fresh evidence. Addition was held unsustainable.*

6.27 *In view of the above facts and discussion, and the various judicial decisions as discussed above including the Hon'ble Supreme Court and the jurisdictional High Court and Tribunal as well as the decision of the Ld CIT(A) in the appellant's own case on same issue in the same A.Y 2014-15 against the order passed u/s 143(3) of the Act, I am of the considered view that that the addition of Rs 1,75,00,364 made by the AO u/s 68 of the Act is not sustainable and is directed to be deleted. The appeal on Ground Nos 3, 3.2, 3.3 and 3.4 are thus allowed.*

17. Since assessee company established the Identity of both the lending companies beyond doubt. Under such circumstances Id. AO at best could have assessed such amount in the hands of both the lending companies. Reliance is placed on the following judicial pronouncements, the extracts of which have been set out for the sake of convenience:-

*Kanhaialal Jangid vs. ACIT [2008] 217 CTR 354 (RAJ.): "...We are of the opinion that in rejecting the explanation of the assessee on the undisputed facts is founded on erroneous application of law in the matter. While it was the assessee's burden to furnish explanation relating to such cash credits, the assessee's burden does not extend beyond proving the existence of the creditor and further proving that such creditor owns to have advanced the amount credited in the account of assessee to him. However, the burden does not go beyond to put the assessee under an obligation to further prove that wherefrom the creditor has got or procured the money to be deposited or advanced to the assessee. The fact that the explanation furnished by the creditor about the source from where he procured the money to be deposited or advanced to the assessee, is not relevant for the purposes of rejecting the explanation furnished by the assessee and make additions of such deposits as income of the assessee from undisclosed sources by invoking section 68 of the IT Act, unless it can be shown by the Department that the source of such money comes from the assessee himself or such source could be traced to the assessee itself.*

*In the present case while existence of Sri Devendra Sankhla the creditor is not in doubt, and he has admitted to have advanced the loan to the assessee. The fact that the explanation furnished by Sri DevendraSankhla about his source of such advancement has not been accepted by the Revenue authority cannot lead to any presumption that the source of such advancement by Sri DevendraSankhla emanated from the assessee.*

*Therefore, addition of Rs. 16,000 in the income of assessee as cash credit in the name of Sri DevendraSankhla cannot be sustained. Such addition of income of assessee has to be deleted from the income of assessee..."*



CIT vs. Kamlaben Suresh Chandra Bhatti [2014] 44 taxmann.com 459 (Gujarat): *“...Head Notes - Section 68 of the Income-tax Act, 1961 – Cash credits (Bank deposits) - During assessment proceedings, Assessing Officer made addition to assessee's income in respect of amount deposited in bank account - In appellate proceedings, Commissioner (Appeals) noted that assessee had explained source of a part of amount deposited coming from bank loan and sale of agricultural land - He thus deleted substantial portion of addition made by Assessing Officer - Tribunal confirmed order of Commissioner (Appeals) - Whether since entire issue was based on appreciation of evidence on record, no substantial question of law arose therefrom - Held, yes...”*

Aravali Trading Co v ITO (2008) 220 CTR (Raj) 622 *“Head notes: Income- Cash Credit- Burden of proof- once the existence of the creditor is proved and such persons own the credits which are found in the books of the assessee, the assessee's onus stands discharged and the latter is not further required to prove the source from which the creditors could have acquired the money deposited with him...”*

Labh Chand Bohra v ITO (2010)189 Taxman 141 (Raj): *Sec. 68: Identity and genuineness of Cash Creditor proved- No need to prove the capacity of Cash Creditor – source of source not to be enquired.*

ACIT, Jaipur v M/S Rajasthan Asbestors Cement Co., Jaipur (ITA NO.940/JP/2008): *“Now tribunal has upheld the decision of CIT(A) after holding that once the existence of the creditor is proved and creditors have confirmed the advancement of loans, onus of the assessee stands discharged and that it is not the duty of the assessee to prove the source from which the creditors have advanced the loans”.*

18. APPARENT IS REAL: The transaction is absolutely in accordance with the procedure laid down in the law and fully evidenced. No defects have been pointed out in these. Therefore, the transaction must be accepted as genuine. We rely on the ratio laid down by the Hon'ble Supreme Court in the case of Daulat Ram Rawatmull (1973) 87 ITR 349 (SC), wherein it was held that the onus of proving that the apparent was not real was on the party who claimed it to be so. However Id AO was absolutely silent about the following questions:-

- i To whom cash was given by the assessee company?
- ii On what date cash was given by the assessee company?
- iii Where the cash was given by the assessee company?
- iv How cash was transferred from Jaipur to Mumbai?
- v Who was the person carrying cash on behalf of the assessee company and how much commission did he charge?

19. There is no evidence, to show that the money so received actually belonged to the assessee company. Nowhere the lower authorities suggested that the loan given by lending companies had actually flown from the assessee company. In absence of any such cogent evidence on record, no addition can be made to the income of the assessee merely on suspicion. This ratio is laid down by the Hon'ble Jurisdictional High Court of Rajasthan in the case of Shubh Mines



Private Limited (Income Tax Appeal No. 96/15), vide its order dated 03.05.2016, in which it was held that “In absence of any cogent evidence on record establishing that the money shown to have received as share application money, was as a matter of fact, unaccounted money belonging to the assessee company, the finding arrived at by the AO, which is based on suspicion, has rightly been held not sustainable in the eyes of law. Suffice it to say that the finding arrived at by the CIT (A), affirmed by the ITAT, which remains a finding of fact, cannot be said to be capricious or perverse...”

In the case of Ashwani Gupta [2010] 322 ITR 396 (Delhi), *addition was made on the basis of the statement of a third party and seized documents. Neither the seized documents were provided to the assessee nor was any opportunity of cross-examination of the adverse party given. Hon'ble Delhi High Court, following its own judgment in the case of SMC Share Brokers Ltd. [2007] 288 ITR 345 (Delhi) deleted the addition on the premise that there was violation of the principles of natural justice.*

Hon'ble Supreme Court in the case Andaman Timber Industries (CIVIL APPEAL NO. 4228 OF 2006), vide its order dated 02.09.2015, held that “...not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected”

It was observed by the Apex Court that an order passed in violation of the principles of natural justice is a nullity as held in A.K. Kraipak vs. Union of India A/R – 1970 SC-150 RB. Shree Ram Durga Prasad and Fateh Chand vs. Settlement Commissioner 1989-SC-1038.

20. If the loans have been received and repaid through Account Payee Cheques, the onus on the part of the assessee company stands fully discharged unless the department after reaching the lenders can prove otherwise. Hon'ble Punjab & Haryana High Court in the case of Varinder Rawley [2014] 51 taxmann.com 524 (Punjab & Haryana) held that “....*Head Noted : Section 68 of the Income-tax Act, 1961 - Cash credit (Sale of goods) – Assessment year 2002-03 - Whether where assessee received and returned amount in question by way of account payee cheques and transaction was reflected in bank accounts of assessee as well as creditor who was an income-tax assessee, assessee had sufficiently explained nature and source of credit entry and in such case entry could not be treated as assessee's income when department failed to prove to contrary - Held, yes [Paras 9 and 10] [In favour of assessee]...*”

Hon'ble Calcutta High Court in the case of SAHIBGANJ ELECTRIC CABLES (P) LTD. (1978) 115 ITR 408 (Cal-HC) held that *where the amounts of loan were received by cheque and repayment was also made by cheque through assessee's bankers; and confirmation of creditors along with their income-tax file numbers were furnished the assessee discharged its initial burden and ITO was not*

*justified, in the absence of any further investigation, to reject the evidence and make addition.*

21. Moreover, it is pertinent to note that the loan taken by the assessee company has also been repaid back within a very short duration. When loan stands repaid no addition under Section 68 can be made. Reliance is placed on the judgment of Hon'ble Gujarat High Court in case of Rohini Builders [2002] 256 ITR 360 (Gujarat), in which it was held was under:-

*"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."*

Hon'ble ITAT Ahmedabad in the case of RAS Concepts Pvt. Ltd. vs. Income Tax Officer [2022] 95 ITR 46 (Ahmedabad), held as under: -

*"9.4 In view of the above, we are of the opinion that, though the transactions of the loan received by the assessee are not free from any doubt but in either of the case, once repayment of the loan has been established*

*based on the documentary evidence, the credit entries cannot be looked into in isolation after ignoring the debit entries. Thus in view of the above and after considering the facts in totality, we are not inclined to uphold the finding of the learned Commissioner of Income-tax (Appeals). Accordingly, we set aside the finding of the learned Commissioner of Income-tax (Appeals) and direct the Assessing Officer to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.*

Reliance is also placed on the decision of Hon'ble ITAT Bangalore Bench in the case of Smt. Madhu Solanki – ITA No.974 /Bang/2009 wherein it was held as under:

*"14...AO did not get reply from both the trade creditors and hence he proceeded to assess the outstanding balances, while accepting the purchases made during the year & payments made during the year. The AO has made the addition u/s 68 of the Act and did not invoke provisions of sec. 41(1) of the Act. On the contrary, the assessee has shown that the payments have been made in the succeeding year through banking channels. Accordingly, we are of the view that the revenue could not rely upon the decision rendered in the case of Sureshkumar T Jain. Under these set of facts, we are of the view that the AO could not have made addition of trade creditors u/s 68 of the Act.."*

1.23. Attention is drawn towards the decision of Gujarat High Court in the case of Ojas Tarmake (P.) Ltd. [2023] 156 taxmann.com 75 (Gujarat), in which it was held that *where assessee showed unsecured loans received during relevant assessment year and AO made addition on ground that assessee failed to discharge onus of liability as laid down under section 68, since amount of loan received by assessee was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted.*

22. In light of the above, it is evident that the assessee has satisfactorily discharged its burden of proof under Section 68 by establishing the identity, genuineness, and creditworthiness of the lenders. The adverse findings in the assessment order are based on speculative allegations and procedural lapses, including the denial of natural justice. The acceptance of loan repayments as bona fide further reinforces the genuineness of the original loan transactions. Consequently, the additions made under Section 68 are wholly unjustified and ought to be deleted in their entirety. Any contrary inference would undermine the principles of justice and the integrity of the evidentiary process.

23. **IMPORTANT:** The revenue has not accepted the deletion of so-called Commission Paid by the assessee of Rs. 4,37,509/- & Interest paid of Rs. 44,958/- by the Id. CIT(A). Thus the appeal is self-contradictory. In light of above, the appeals of the revenue deserves to be dismissed.

41. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

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A.	Written submissions dated 02.11.2023 filed before the Hon'ble CIT(A)	A1-A96
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2.	Order dated 15/02/2019 passed by Id. CIT(A) Ajmer in appeal no. 601/2016-17/JPR	17-27
3.	Re-assessment Order dated 13.12.2019 Passed u/s. 147/148 of the I. T. Act, 1961	28-50
4.	Reasons recorded for reopening the assessment u/s 147 of the Income Tax Act.	51-53
5.	Objection against reason recorded filed by the assessee	54-58
6.	Order disposing objections passed by the Assessing Officer dated 14.03.2019	59-61
7.	Bank Statement of assessee company for the A.Y. 2014-15 & A.Y. 2015-16	62-91
8.	Audited Statement of Accounts of the assessee for the year ended 31st March, 2014	92-104
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10.	Documents of loan creditors Companies	
	1. M/s. Bhagwat Marcom Pvt. Ltd	
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	b)	Copy of Return of Income Acknowledgement	118
	c)	Copy of Audited financial statements along with audit report for A.Y. 2014-15	119-133
2.	M/s. Coolhut Marketing Pvt. Ltd.		
	a)	Copy of Bank Statement	134
	b)	Copy of Return of Income Acknowledgement	135
	c)	Copy of Audited financial statements along with audit report for A.Y. 2014-15	136-151
3.	M/s. Gabarial Tieup Pvt. Ltd		
	a)	Copy of Bank Statement	152
	b)	Copy of Return of Income Acknowledgement	153
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	c)	Copy of Audited financial statements along with audit report for A.Y. 2014-15	172-186
5.	M/s. Outlook Vintrade Pvt. Ltd		
	a)	Copy of Bank Statement	187
	b)	Copy of Return of Income Acknowledgement	188
	c)	Copy of Audited financial statements along with audit report for A.Y. 2014-15	189-204
6.	M/s. Subhrashi Enclave Pvt. Ltd.		
	a)	Copy of Bank Statement	205
	b)	Copy of Return of Income Acknowledgement	206
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7.	M/s. View more Developers Pvt. Ltd.		
	a)	Copy of Bank Statement	221
	b)	Copy of Return of Income Acknowledgement	222
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11.	Loan Confirmation of all said companies including loan confirmation for repayment of Loan		238-251
12.	Retraction Statement of Shri Mukesh Banka dated 01.06.2018		252-254
13.	Retraction Statement of Shri Mukesh Banka dated 23.07.2018		255-259
14.	Copy of Receipt of Retraction Statements being submitted by said Shri Mukesh Banka in the office of DCIT, Central Circle 4(2), Kolkata on 05.09.2019		260
15.	Assessment order of aforesaid loan creditors companies		

	<ul style="list-style-type: none"> <li>• M/s. Bhagwat Marcom Pvt. Ltd.</li> <li>• M/s. Coolhut Marketing Pvt. Ltd.</li> <li>• M/s. Gabarial Tieup Pvt. Ltd.</li> <li>• M/s. Neelgagan Suppliers Pvt. Ltd.</li> <li>• M/s. Outlook Vintrade Pvt. Ltd.</li> <li>• M/s. Subhrashi Enclave Pvt. Ltd.</li> <li>• M/s. Viewmore Developers Pvt. Ltd</li> </ul>	261-268 269-276 277-284 285-296 297-308 309-316 317-325
15.	Master data of all aforesaid loan creditors downloaded from MCA website <ul style="list-style-type: none"> <li>• M/s. Bhagwat Marcom Pvt. Ltd.</li> <li>• M/s. Coolhut Marketing Pvt. Ltd.</li> <li>• M/s. Gabarial Tieup Pvt. Ltd.</li> <li>• M/s. Neelgagan Suppliers Pvt. Ltd.</li> <li>• M/s. Outlook Vintrade Pvt. Ltd.</li> <li>• M/s. Subhrashi Enclave Pvt. Ltd.</li> <li>• M/s. Viewmore Developers Pvt. Ltd</li> </ul>	326-327 328-329 330-331 332-333 334-335 336-337 338-339

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2.	<b>Keshav Shroff v. ITO</b> 2024 (7) TMI 1014 dated 28.06.2024 (ITAT Kolkata)	7-10
3.	<b>TO v. Aashna Developers Pvt. Ltd.</b> 2024 (2) TMI 274 dated 10.01.2024 (ITAT Ahmedabad)	11-16
4.	<b>Narmada Concast Pvt. Ltd. v. DCIT</b> 2024 (5) TMI 950 dated 03.01.2024 (ITAT Ahmedabad)	17-21
5.	<b>Bidit Financial Management Pvt. Ltd. v. DCIT</b> 2019 (3) TMI 1701 dated 15.03.2019 (ITAT Kolkata)	22-52
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9	Arvind Sahdeo Gupta v. ITO 2023 (8) TMI 522 dated 08.08.2023 (Bombay High Court)	80-85
10	Madan Mohan Tiwari v. ITO 2021 (11) TMI 496 dated 06.10.2021 (ITAT Delhi)	86-98
11	Amar Partap Steels Pvt. Ltd. v. ITO ITA No. 108/JPR/2024 dated 03.10.2024 (ITAT Jaipur)	99-125

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	SLP preferred by the department against order of Gujarat High Court dated 23.12.2022 [166 taxmann.com 680 (Gujarat)] was dismissed by the Supreme Court.	127-134
13.	CIT v. Orissa Corporation (P) Ltd. Civil Appeal Nos. 13791380 (NT) of 1974 dated 19.03.1986 (Supreme Court)	135-142
14.	PCIT v. Hi-Tech Residency Pvt. Ltd 2018 (7) TMI 1347 dated 19.07.2018 (Supreme Court)	143
	SLP preferred by the department against order of Delhi High Court dated 07.07.2018 [2017 (7) TMI 737] was dismissed by the Supreme Court.	144-145
15.	CIT v. Odeon Builders Pvt. Ltd. 2019 (8) TMI 1072 dated 21.08.2019 (Supreme Court)	146-147
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22.	CIT v. Dataware Pvt. Ltd. ITAT No. 263 of 2011; GA No. 2856 of 2011 dated 21.09.2011 (Calcutta High Court)	178-182
23.	Manohar Lal Chugh v. ITO ITA No. 312/JP/2021 dated 31.08.2022 (ITAT Jaipur)	183-213
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26.	Balaji Solutions Ltd. v. ACIT ITA No. 572/KOL/2022 dated 20.02.2023 (ITAT Kolkata)	238-244
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28.	ITO v. Amar Pratap Steels Pvt. Ltd. ITA No. 173/JPR/2024 dated 18.12.2024 (ITAT Jaipur)	253-305

42. The Id. AR of the assessee in addition to the above written submission so filed vehemently argued that it was the revenues case to establish that based on the documents placed on record the loan were not genuine. Merely someone made a general statement which in fact has been retracted cannot make loan transaction as non-genuine. Even the assessee has repaid those loan to those concerns then how the loan taken be

considered as non-genuine. He also submitted that since the whole basis of making the addition was statement of Mr. Mukesh Banka which in fact has been retracted and those retracted statement cannot be made basis to make the addition. To support the contention Id. AR of the assessee relied upon the decision of Asna Developers and Rohini Builder cited by him in their case law compilation.

43. We have heard the rival contentions and perused the material placed on record. In this appeal revenue challenges the finding of the Id. CIT(A) raising two ground effectively dealing with the deletion of addition of Rs. 1,75,00,364/-. The revenue state that Id. CIT(A) ignored the fact that various beneficiary companies have routed their unaccounted income through M/s Bhagwat Marcom Pvt. Ltd, M/s Coolhut Marketing Pvt. Ltd, M/s Gabarial Tieup Pvt Ltd, M/s Neelgagan suppliers Pvt ltd, M/s Outlook Vintrade Pvt Ltd, M/s Subhrashi Enclave Pvt ltd and M/s Viewmore Developers Pvt. Ltd, in the form of loans and advances during the F.Y. 2013-14 and Bank Account of these companies was used for layering of unaccounted fund in the form of loans and the assessee was one of such beneficiary and thereby Id. CIT(A) was not justified in deleting the additions made by AO without appreciating the facts and circumstances of the case ignoring that the assessee was involved in organized tax evasion by taking

bogus accommodation entry and also has paid commission and for taking accommodation entry. Ld. CIT(A) further erred in holding that loans taken are genuine despite accepting that these companies are engaged in some suspicious activity and indulged in illegal activity and ignoring that the foundation of the addition made by the AO is the admission of Shri Mukesh Banka, an accommodation entry provider of Kolkatta vide his statement recorded u/s 131/132(4) of the Act on 30.05.2018 and 19.07.2018 that these companies are paper/shell companies.

44. Before us both the parties supported the orders of the lower authorities as favorable to them.

45. As is evident from the facts narrated herein above that in this case a ld. AO received information from the DDIT(Inv), Unit-1(3), Kolkata that a search and seizure/survey action was carried out in the case of Banka Group on 21.05.2018 and it was found on scrutiny of the findings gathered and subsequent information brought on records that Shri Mukesh Banka provides accommodation to various beneficiaries. Various beneficiaries were identified who have obtained accommodation entry in bogus unsecured loans and the assessee-appellant found to be one of the such beneficiaries who have taken accommodation entry in the form of bogus unsecured loans from the companies operated by Banka Group. The AO

examined this information and formed reason to believe that accommodation entry in the form of bogus unsecured loan has been brought in by the appellant and that it had failed to disclose fully and truly all material facts necessary for assessment. On the other hands assessee-appellant submitted that the reassessment is not sustainable in view of the very basic fact that there was no reason for reopening and as it does not contain any material establishing live-link for the information & the conclusion to enable a reasonable person to form a prima-facie belief for escapement of income except a report of Investigation Wing. Id. CIT(A) did not agree with the contention of the assessee challenging the re-opening of the case and thereby that ground of appeal was dismissed by him. But while dealing with the merits of the case Id. CIT(A) has allowed the appeal of the assessee which is challenged by the revenue.

46. So far as to the merits of the case the bench noted that revenue challenges directing the Id. AO to delete the addition of Rs. 1,75,00,364/- being the amount of unsecured loan accounted by the assessee in the name of the following parties ;

Sr. No.	Name of person from whom loan was received	Amount Rs.
1	M/s Bhagwat Marcom Private Limited	25,00,056/-
2	M/s Coolhut Marketing Private Limited	25,00,028/-
3	M/s Gabarial Tieup Private Limited	25,00,056/-
4	M/s Neelgagan Suppliers Private Limited	25,00,056/-
5	M/s Outlook Vintrade Private Limited	25,00,056/-



6	M/s Subharashi Enclave Private Limited	25,00,056/-
7	M/s Viewmore Developers Private Limited	25,00,056/-

47. In support of contention of having accepted the unsecured loans from the above parties the assessee vide paper book page 117 to 237 placed on record the copy of Bank statement, Copy of ITR and copy of audited accounts of those depositors. The assessee has also placed on record the copy of loan confirmation of all those depositors vide page no. 238 to 251 which includes even confirmation for repayment of those loans by the assessee.

48. The bench noted that the case of the assessee was re-opened based on the information received from the searched person in case of Banka group wherein Shri Mukesh Banka accepted in a statement that he operates some companies for accommodation entry and they are shell or dummy companies. The Id. AO in the re-opened assessment made inquire on issue of letter u/s 133(6), summons to the director of the depositors and sending the inspector for verification of the address. Except this no other contrary material brought only record but based on that factum Id. AO made the addition in as unexplained credit in the hands of the assessee company ignoring the evidence on record. As regards the identity of the companies Id. AR of the assessee filed latest master data made available from the

Ministry of Corporate affairs website showing that all those depositors companies having the status as active company. Thus, the basis of the revenue that the identity of those companies are not established were not correct because these companies are active. Now going further the bench noted that the assessee appellant had taken unsecured Loan taken from M/s. Bhagwat Marcom Pvt. Ltd., M/s. Coolhut Marketing Pvt. Ltd., M/s. Gabarial Tieup Pvt. Ltd., M/s. Neelgagan Suppliers Pvt. Ltd., Mis. Outlook Vintrade Pvt. Ltd., M/s. Subhrashi Enclave Pvt. Ltd. and M/s. Viewmore Developers Pvt. Ltd., all these loans were for a short period which were squared off in the subsequent year through Banking Channel as and when appellant had liquidity. This repayment aspect of the loan were considered by the revenue and there the identity of those payees were not questioned. On this aspect of the matter the Hon'ble High Court of Gujrat in case of Commissioner of Income Tax, Rajkot-1 vs Ayachi Chandrashekhar Narsangji [2014] 42 Taxmann.com 251 (Gujarat) has held that where department had accepted repayment of Loan in the subsequent year, no addition was to be made in current year on account of cash credit. It is evident that each transactions were made through banking channels and the appellant has submitted audited Balance Sheets, profit and loss accounts, Acknowledgement of ITR, Bank Statement and furnishing of

sources of the amount in the hands of loan creditor as well as loan Confirmation of all lender companies including Loan Confirmation for repayment of Loan. we also find from the Master data in record of MCA Website, the lender companies are active and it have been filed its Balance Sheet in MCA Website and complying with legal requirements under the companies Act. The appellant has also enclosed copy of Assessment orders of all loan creditors whereby the department has accepted the accounts of those companies and there also no adverse view of the loan given were taken by the revenue. Thus, what the provision of section 68 mandates to the assessee-appellant that any sum credited in the books of accounts of a taxpayer that cannot be explained by the taxpayer's income or other sources is deemed to be the taxpayer's income for that year. The burden of proof lies with the taxpayer to prove that the cash credit is genuine and not an undisclosed income. The appellant has provided identify of the Loan Creditors by giving their complete Address, PAN, Loan Confirmation, Copy of Acknowledgement for filing of I.T. Return for the A.Y. 2014-15, copy of Assessment Orders, Bank Statement and Audited Statement of Accounts and that it had also provided evidences of genuineness of transaction as all the transactions are through Banking Channels and the loan creditors has categorically confirmed by furnishing

supporting documents and evidences and in both the bank. The assessee appellant contented that the genuineness of the transactions cannot be doubted, relying on mere surmises without any material to prove the same as held in the case of Dhakeshwari Cotton Mills Ltd. 26 ITR 775 (SC) where the Id AO has overlooked the net worth of the lender companies and relied only on profit. It is seen that besides the loan granted to the appellant, these lender companies had also given loans to other bodies corporate as well and granting of loan to the appellant is not a solitary transaction. The appellant has furnished the financials of the loan creditor companies and other details. Those details shows that the lender companies have sufficient financial capacity to provide the loans. Therefore, the appellant has discharged the onus of proving the identity, creditworthiness and genuineness of the loan creditors. The appellant has also paid interest to each loan creditor and TDS were deducted u/s 194A in respect of such interest. The loan creditors has also disclosed interest income in their respective tax returns. On the aspect of the source of the source we get support from the decision of our own Hon'ble Jurisdictional High Cout in the case of Labh Chand Bohra Vs ITO (2010) 189 TAXMAN 141 wherein the High Court held that *"So far as capacity of the lender is concerned, in our view, on the face of the judgment of Hon'ble Supreme Court, in Daulat*

*Ram's case (supra), and other judgments, capacity of the lender to advance money to the assessee, was not a matter which could be required of the assessee to be established, as that would amount to calling upon him to establish source of the source. In that view of the matter, since this part of the judgment runs contrary to the judgment of the Hon'ble Supreme Court, in Daulat Ram's case (supra), while this Court in a subsequent judgment in Mangilal's case (supra) relying upon Daulat Ram's case (supra), has taken a contrary view, we stand better advised to follow the view, which has been taken in Mangilal's case (supra)."*

49. Here it is also a matter of fact that the assessee – appellant has repaid back within a very short duration all the questioned loan. When loan stands repaid no addition under Section 68 can be made and is held by the judgment of Hon'ble Gujarat High Court in case of Rohini Builders [2002] 256 ITR 360 (Gujarat), wherein the court held that *"The genuineness of the transaction is proved by the fact that the payment to the assessee as well as repayment of the loan by the assessee to the depositors is made by account payee cheques and the interest is also paid by the assessee to the creditors by account payee cheques."*

50. Importantly we note that the revenue challenges the only deletion of loan amount but not the deletion of so-called Commission Paid by the



assessee of Rs. 4,37,509/- & Interest paid of Rs. 44,958/- by the Id. CIT(A).

Thus, the appeal of the revenue itself is contradictory accepted that the fact interest paid by the assessee is genuine than how can the loan cannot.

51. As regards the enquiry with third parties made by the Id. AO by issuing notices u/s 133(6) and by making field inquiries (by sending Inspector) in the name of such companies, however as no reply was received from such parties, adverse inference was drawn. Also, it is mentioned that summons was issued to directors of above entities u/s 131 & 131(d). We note that on this issue the assessee - appellant was not confronted with regard to non-service or non-compliance of summon nor the Inspector's report as mentioned in Assessment order was ever supplied to the assessee- appellant. As is clear from the judicial precedent cited that noncompliance to notices u/s 133(6) or 131 of the Act by itself is not sufficient to draw an adverse inference. In 159 ITR 78 (SC) Orissa Corpn. (P) Ltd it was held that when the assessee furnishes names and addresses of the alleged creditors, the burden shifts to the department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the inquiry and to establish the lack of creditworthiness and the mere issue of notice u/s 131 is not sufficient. Thus, the Appellant has

discharged the primary burden of establishing the identity and genuineness of the creditor.

52. The bench also take into consideration that the whole basis is of the search in Bank group and the information in the form of statement received from the statement of Shri Mukesh Banka, who stated in a statement about the accommodation entry business. That statement of Shri Mukesh Banka was retracted and the copy of the retraction statement was also filed before us. Thus, the very basis upon which the addition was called for has been retracted no adverse inference be drawn. Thus, even on this aspect of the matter we get support of our jurisdictional High Court decision in the case of PCIT Vs. M/s. Esspal International P. Ltd. DB ITA no. 25/2024 dated 03/09/2024 wherein High Court held that the merely based on the retracted statement no addition can be made. The relevant finding of binding judicial precedent is reproduced herein below:

**11. Now *it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an admission by the assessee cannot be said to be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another" (1973) 19ITR18.***

**12.** Therefore, we hold that no substantial question of law arises between the parties and while so, the present Income Tax Appeal is not maintainable.

13. For the foregoing reasons, D.B. Income Tax Appeal No.25/2024 is dismissed.

53. Based on the discussion so recorded herein above we do not find any infirmity in the order of the Id. CIT(A) while deleting the addition of unsecured loan which is under challenge by the revenue. With this discussion the appeal of revenue stands dismissed.

In terms of these observations, the appeal of the revenue in ITA no. 901/JP/2024 stands dismissed.

54. The fact of the case in ITA No. 874 & 875/JP/2024 are similar to the case in ITA No. 901/JP/2024 and we have heard both the parties and persuaded the materials available on record. The bench noticed that the issues raised by the revenue in this appeal No. 874 & 875/JP/2024 are equally similar on set of facts and grounds as that of with the appeal of the revenue in ITA no. 901/JP/2024. Therefore, it is not imperative to repeat the facts and various grounds raised by the revenue and arguments of both the parties. Hence, the bench feels that the decision taken by us in ITA No. 901/JP/2024 for Assessment Year 2014-15 shall apply mutatis mutandis in the case of Kedia Builders and Colonizers Pvt. Ltd. in ITA No. 874 & 875/JP/2024 for the Assessment Years 2015-16 & 2016-17.

In the result, all appeals of the revenue are stands dismissed.

Order pronounced in the open court on 11/03/2025.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/03/2025

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Income Tax Officer, Jaipur
2. प्रत्यर्थी / The Respondent- Kedia Builders and Colonizers Pvt. Ltd., Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 872 to 875 & 901/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar