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2025:DHC:9908-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 13.11.2025

\+ **ITA 494/2024**

PRINCIPAL COMMISSIONER OF INCOME TAX-4 DELHI
.....Appellant

versus

KRBL INFRASTRUCTURE LTD .....Respondent

**Advocates who appeared in this case**

For the Appellant : Mr. Abhishek Maratha, SSC, Mr. Apoorv Aggarwal, JSC, Mr. Parth Samwal, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha and Ms. Muskan Goel, Advocates..

For the Respondent : Mr. Sachit Jolly, Senior Advocate with Ms. Mansha Anand, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE V. KAMESWAR RAO**
**HON'BLE MR. JUSTICE VINOD KUMAR**

**JUDGMENT**

**V. KAMESWAR RAO, J.**

1. This appeal has been filed by the appellant/Revenue under Section 260A of the Income Tax Act, 1961 (the Act, hereinafter) against the order dated 08.06.2024 passed by the Income Tax Appellate Tribunal, ("ITAT") in ITA No.3963/DEL/2019 for the Assessment Year (AY) 2014-15 whereby

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the ITAT has dismissed the appeals filed by the appellant/Revenue.

2. At the outset, it may be stated that though the ITAT was concerned with two appeals being ITA No.3962/DEL/2019 and ITA 3963/DEL/2019 both relating to AY 2014-15. The subject matter of this appeal as is noted from the prayer clause is only in respect of the decision of the ITAT in ITA No.3963/DEL/2019. The appeal was admitted on 04.08.2025 on the following two substantial questions of law:-

> "(1)Whether in the circumstances of the case, the ITAT has erred on facts and in law deleting the addition of Rs.10,00,00,000/- on account of unsecured loan received from M/s Shashi Foods India Pvt. Ltd. and interest amounting to Rs.1,03,10,760/- paid on such loan?
> (2)Whether on the facts and in the circumstances of the case and in law, the ITAT erred in confirming the order of the CIT(A) in the light of the decision of the Supreme Court in the case of Pro CIT (Central-3) vs. Abhisar Buildwell Pvt. Ltd. Ors (2023) 149 Taxmann.com 399(SC)?"

3. We shall narrate the facts to be noted for the consideration of this appeal. Inasmuch as, a search and seizure operation under Section 132 of the Act was carried out on KRBL Group on 30.03.2016. A warrant of authorisation under Section 132 of the Act was issued against the respondent KRBL Infrastructure Ltd., 5190, Lahori Gate, Delhi-ll0006. The respondent/ assessee had filed the return of its income on 25.08.2017 declaring a loss of Rs.3,49,55,515/-. The said returns of income were processed under Section 143(1) of the Act and a mandatory notice under Section 143(2) of the Act was issued by the Assessing Officer ("AO") which was duly served upon the assessee.

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4. The AO completed the assessment and passed the assessment order dated 31.12.2017 under Section 153A read with Section 143 (3) of the Act at an income of Rs.7,53,55,250/-. The AO made an addition of Rs.10,00,00,000/- on account of a bogus unsecured loan and a disallowance of Rs.1,03,10,760/- on account of interest paid on the alleged bogus unsecured loan. The assessee, aggrieved by the assessment order dated 31.12.2017, preferred an appeal, Appeal No. 178/17-18 for AY 2014-15 before the Commissioner of Income Tax (Appeals)-24 ["CIT (A)"], which was partly allowed vide order dated 30.01.2019. The addition of Rs.10,00,00,000/- made by the AO was deleted, and the disallowance of Rs.1,03,10,760/- was reduced to Rs.84,00,000/-.

5. The Revenue preferred an appeal against the order of the CIT(A) before the ITAT, which was dismissed vide order dated 08.06.2023, which is now under challenge before us.

6. Mr. Abhishek Maratha, learned Senior Standing Counsel appearing for the appellant/Revenue submitted that during the course of investigation into the KRBL Group, it has been found that KRBL Ltd is purchasing bogus bills from a firm controlled by one Dinesh Jain. For examination of this issue, a team of the Income Tax Department visited the office of Dinesh Jain on 06.06.2016 and a statement was also recorded. In his statement, Dinesh Jain accepted that he is providing bogus bills to parties on a commission basis; further, he accepted that the firm controlled by him is not doing any real business.

7. During the search and assessment proceedings, it was found that the assessee has received an unsecured loan of Rs.10,00,00,000/- from Shashi Foods India Pvt. Ltd. ("Shashi Foods") during the year under consideration.

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Therefore, to verify the veracity of the unsecured loans taken by the assessee, the AO asked the assessee to prove genuineness of the transactions, creditworthiness and the identity of the proprietor of Shashi Foods. In this regard, a show-cause notice dated 08.12.2017 was served to the assessee. In response thereof, the assessee submitted its reply dated 13.12.2017, whereby it claimed that the loan had been taken for the purpose of business through proper banking channels. Interest was paid on the amount and TDS was deducted.

8. It is the contention of Mr Maratha that the reply of the assessee was considered but not found tenable as enquiries conducted during the course of search, post search, and in the course of assessment proceedings show that the loan taken from Shashi Foods is not genuine.

9. During the course of the search and survey operation, Gian Chand Sethi, Director of Shashi Foods was asked about the source of loans and advances given by Shashi Foods of Rs.2.45 crore and Rs.10 crore to KRBL Foods Ltd and KRBL Infrastructure Ltd ('KRBL Group') respectively in the FY 2013-14. He stated that these loans were given to the KRBL Group when one Mr. Anil Mittal approached him through one Mr. K V Kapoor. He offered this loan with interest at the rate of 9%. For the source of the loan, Gian Chand Sethi stated that these are sales proceeds corresponding to purchases, payments of which are due. In order to verify the statements of Gian Chand Sethi, a notice under Section 133(6) of the Act was issued during the course of assessment proceedings to Shashi Foods on 21.11.2017 regarding the source of funds, rate of interest charged, name of brokers, details of balance sheet and P&L A/c, etc. Shashi Foods filed its reply on 15.12.2017 wherein it was stated that the company had sufficient funds to

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lend the money to these companies. However, there was no reply regarding the source of these funds. However, Gian Chand Sethi, in his statement on 30.03.2016, reiterated that the source of funds was the sales proceeds corresponding to those purchases, payments of which are due. From the balance sheet submitted by Shashi Foods details of trade payables were taken and it was observed that in FY 2013-14, there were 12 parties which have been shown as creditors, and a total amount of Rs.34.96 crore was pending.

10. The AO further deputed two Income-Tax Inspectors to ascertain the existence of the 12 parties named by Shashi Foods and addresses of these parties were taken from the bills which have been impounded during the course of the survey from the premises of Shashi Foods and from the MCA website. Out of these, only four parties have been found at the addresses which have been mentioned in the bills. Mr. Maratha stated that the impounded bills from one Deepak Kumar & Brothers and Asharfi Overseas (P) Ltd. were found unsigned; in the same handwriting; lacking details and appear to be bogus. His contention is that therefore, the claimed source of funds by Gian Chand Sethi is not genuine.

11. He further stated that the analysis of the bank accounts of Shashi Foods reveals that funds were routed through multiple entities, including those controlled by Dinesh Jain, who admitted to providing bogus bills to inflate purchases. This cash trail confirms that the source of funds is not genuine, and thus the AO held that Shashi Foods lacks its own funds to lend, making its creditworthiness doubtful.

12. Mr. Maratha further stated that as per Section 68 of the Act, the primary onus to prove that the loan amount is genuine is on the assessee, and

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as such a show-cause notice was issued as to why the unsecured loan taken from Shashi Foods should not be considered as undisclosed income and added to income under Section 68 of the Act.

13. It is the case of the appellant, as contended by Mr. Maratha that a mere submission that a loan has been received through banking channels does not mean that it is genuine. In the case of the assessee, the lenders do not appear to have the financial worth to lend such huge sums, and there is also no explanation as to its relationship with the lenders. Further, there was no collateral security taken in lieu of the loans, which leads to the conclusion that the loan is not genuine. Further, the assessee has also submitted in its reply that "Oral understanding was made and the loans were guaranteed for repayment, personally by the directors of KRBL Ltd., to the said lenders." As per Mr. Maratha, this is factually wrong as during the search proceedings, statements of the directors of KRBL Ltd. were recorded on oath, in which they categorically denied any knowledge of these lenders.

14. He has referred to the judgment of this Court in ***CIT v. Nova Prompters and Finlease (P) Ltd., 342 ITR 169 (Del)*** to contend that as per Section 68 of the Act, where any sum is found credited in the books of the assessee, and the assessee offers no explanation about the nature and source of the same or the explanation offered by him is not found to be satisfactory in the opinion of the AO, the sum credited may be charged to tax as the income of the assessee of the relevant year. The identity, creditworthiness and genuineness of transactions have to be explained by the assessee if the sum is found credited in its books of account. The identity, creditworthiness/ financial strength of the lenders and genuineness of such loans have to be established by the assessee. The burden of proof of these is on the assessee.

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It is only after the assessee submits the requisite documents to prove the identity, creditworthiness/financial strength of the lenders and genuineness of such loans, the burden of proof shifts to the AO.

15. He has also referred to the judgment of this Court in ***CIT v. N. R. Portfolio Pvt. Ltd.*** bearing ***ITA No. 1081 of 2021***, wherein it is observed as under:

> *"29. In CIT Vs. Nipun Builders and Developers [2013] 350 ITR 407 (Del), this principle has been reiterated, holding that the assessee and the Assessing Officer have to adopt a reasonable approach, and when the initial onus on the assessee would stand discharged depends upon the facts and circumstances of each case. In the case of private limited companies, generally, persons known to directors or shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call monies, dividends, warrants, etc. have to be sent, and the relationship is/was a continuing one. In such cases, therefore, the assessee cannot simply furnish details and remain quiet even when a summons is issued to shareholders under Section 131 return unserved and uncompiled. This approach would be unreasonable as a general proposition as the assessee cannot plead that they had received money, but could do nothing more and it was for the assessing officer to enforce shareholders' attendance. Some cases might require or justify visit by the Inspector to ascertain whether the shareholders/subscribers were functioning or available at the addresses, but it would be incorrect to state that the assessing officer should get the addresses from the Registrar of Companies website or search for the addresses of shareholders and communicate with them. Similarly, creditworthiness was not proved by the mere issue of a cheque or by furnishing a copy of the statement of the bank account. Circumstances might require that there should be some evidence of a positive nature to show that the said subscribers had made a genuine investment, acted as angel investors, after due diligence or for*

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*personal reasons. Thus, finding or a conclusion must be practicable, pragmatic and might in a given case take into consideration that the assessee might find it difficult to unimpeachably establish the creditworthiness of the shareholder.*

*30. What we perceive and regard as the correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three facts is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos, or the fact that third persons or a company had filed income tax details in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up. These facts indicate and reflect proper paperwork or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage companies. It is the people behind the company who take the decisions, controls and manage them.*

*31. The respondent herein is a Private Limited Company. It is not the case of the respondent that the Directors or persons behind the companies making the investment in their shares were related or known to them. It is highly implausible that an unknown person had made substantial investment in a private limited company to the tune of Rs.63,80,100/- and Rs.75,60,200/- in two consecutive assessment years 2002-03 and 2003-04 respectively, without adequately protecting the investment and ensuring appropriate returns. Other than the share application forms, no other agreement between the respondent and third companies had been placed on record. The persons behind companies were not produced by the respondent. On the other hand respondent adopted prevaricate and non- cooperation before the Assessing Officer once they came to know about the directed enquiry and the investigation being made. Evasive and transient approach before the Assessing Officer is limpid and perspicuous. Identity, creditworthiness or genuineness of the transaction is not*

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*established by merely showing that the transaction was through banking channels or by an account payee instrument. It may, as in the present case require entail a deeper scrutiny. It would be incorrect to state that the onus to prove the genuineness of the transaction and the creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Whether or not the onus is discharged depends upon the facts of each case. It depends on whether the two parties are related or known to each; the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment, whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are basically and primarily in the knowledge of the assessee and it is difficult for the revenue to prove and establish the negative. Certificate of incorporation of the company, payment by banking channel, etc. cannot in all cases be tantamount to satisfactory discharge of onus. The facts of the present case noticed above speak and are obvious. What is unmistakably visible and apparent cannot be spurred by formal but unreliable pale evidence ignoring the patent and what is plain and writ large."*

16. The submission of Mr. Maratha is that in terms of Section 68 of the Act, the 'triple test' of establishing the identity, genuineness and creditworthiness, must be satisfied before any addition is made, and the burden of proof in this regard lies with the assessee, as the applicability of these tests depends upon the facts and circumstances of each case.

17. It is stated that the case of the assessee was selected under CASS for the AY 2014-15 for the reason that there was a large increase in unsecured loans during the year, low income in comparison to high loan advances, investment in shares and a high increase in the annual lettable value of the house property. As the search and seizure action had taken place, the

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proceedings abated as per the second proviso to Section 153A of the Act. Accordingly, notice dated 02.05.2017 under Section 153A of the Act was issued to the appellant company requiring it to file the return for AY 2014-15. An abated assessment year refers to an assessment year for which the assessment or reassessment proceedings were pending on the date when a search under Section 132 or requisition under Section 132A of the Act was initiated, and these proceedings automatically get terminated (abated) upon the commencement of the search. He has provided the following definitions and characteristics of abated assessment as reproduced below:

> *"An abated assessment year is one where assessment or reassessment proceedings were pending before the AO on the date of search initiation These proceedings automatically abate when search proceedings under Section 153A begin*
> *The abatement is specifically provided under the second proviso to Section 153A (1) of the Act*
> *The concept of abated assessment years is crucial in search assessments as it determines the scope of the jurisdiction of the AO and the nature of evidence required to make additions in the reassessment proceedings under Section 153A. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the AO."*

18. In this regard, he has placed reliance on the judgment of the Supreme Court in ***PCIT v. Abhisar Buildwell (P.) Limited*** bearing ***Civil Appeal No.6580 of 2021***.

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19. He submitted that the assessee has been rotating the money within its own group (KRBL) and the Dinesh Jain Group for the purpose of accommodation entries. His contention is that this is not a case where the AO is going into 'source of the source' but had done the entire exercise to verify the correctness of the statement made by Shashi Foods and Gian Chand Sethi to prove the creditworthiness of Shashi Foods and the genuineness of the transactions.

20. Mr. Sachit Jolly, learned Senior Counsel for the respondent submitted that the order of the ITAT dated 08.06.2023 is purely factual in nature and as such does not give rise to any substantial question of law.

21. His argument is that the onus on the assessee to prove the identity, creditworthiness and genuineness of the creditor and the transaction was duly discharged by the assessee. He laid stress on the fact that Shashi Foods has confirmed extending the loan to the respondent and that it is also not in dispute that the loan was repaid in the Financial Year (FY) 2015-16.

22. He submitted that non-availability of creditors of Shashi Foods cannot be the ground for doubting the creditworthiness of the lender and genuineness of the transaction, more so when its creditors pertain to the FY 2013-14, whereas, the spot inspection was carried out on 31.12.2017 i.e., there is a big hiatus between the date of the transactions and the date on which the inspection was carried out. He further stated that in any case, this Court in ***CIT v. Victor Electrodes Ltd. (2010) 329 ITR 271 (Delhi)*** has held that the assessee, in the context of Section 68 of the Act, is under no obligation to produce the directors or representatives of the companies who invested in the share capital of the assessee therein. The mere fact that a

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party was not found at a given address would not vitiate the genuineness of the transaction.

23. According to him, this Court has held that the source of the funds in the hands of the lender can only be analysed in the assessment proceedings of the lender and not in the assessment proceedings of the recipient of the loan. He has drawn our attention to the judgment in the case of ***Sheela Overseas Private Ltd. v. Principal Commisisoner of Income-Tax, Delhi-08 and Ors., ITA No. 546/2023*** decided on 28.05.2025 to contend that the requirement for the assessee to prove the 'source of the source' would not extend to unsecured loans taken prior to the year 2022, as the said requirement was only brought in through an amendment to Section 68 of the Act made *via* the Finance Act, 2022.

24. In support of his submissions, Mr. Jolly has relied upon the judgments in ***CIT v. Fair Finvest Ltd., (2013) 357 ITR 146 (Delhi), CIT v. Dwarkadhish Investment (P.) Ltd., (2011) 330 ITR 298 (Delhi)*** and ***CIT v. Kamdhenu Steel & Alloys Ltd., ITA No. 972/2009*** decided on 23.12.2011.

25. Having heard the learned counsel for the parties and perused the record, there is no dispute that the search and seizure operation under Section 132 of the Act was carried out on KRBL Group on 13.03.2016. Pursuant thereto an assessment order dated 31.12.2017 under Section 153A read with Section 143(3) of the Act was passed on an income of Rs.7,53,55,250/-.

26. The AO made an addition of Rs.10,00,00,000/- on account of a bogus unsecured loan and a disallowance of Rs. 1,03,10,760/- on account of the interest paid on the said alleged bogus loan.

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27. Before we come to the order passed by the ITAT, it is necessary to refer to the order passed by the AO highlighting the relevant considerations which made the AO make addition of Rs.10,00,00,000/- and also the disallowance of Rs.1,03,10,760/-, in paragraphs 5.1 to 5.3 of the assessment order, in the following manner:-

> *"5.1 Investigation in respect of Sh. Dinesh Jain:*
>
> *5.1.1 During the course of Investigation in cases of KRBL group, it has been found that KRBL Ltd is purchasing its purchase by taking bogus bills from firm control by Shri Dinesh Jain. For examination of this issue, team of Income Tax Department visited the office of Shri Dinesh Jain on 06.06.2016 and statement of Sh. Dinesh Jain also recorded. In his statement Shri Dinesh Jain accepted that he is providing bogus bills to parties on commission basis, further he accepted that the firm controlled by him are not doing any real business. The firm controlled by Shri Dinesh Jain are as under.-*

| *Sl. No.* | *Name of the Firm* |
|---|---|
| *1.* | *M/s Shiv Ganga Rice Traders,* |
| *2.* | *M/s Shri Giriraj Traders,* |
| *3.* | *M/s Om Prakash Amit Kumar* |
| *4.* | *M/s Haryana Agro Food Products* |
| *5.* | *M/s Shri Adieshwar Traders* |
| *6.* | *M/s DV International* |
| *7.* | *M/s Padam Shri Enterprises* |
| *8.* | *M/s Vishal Food Products* |
| *9.* | *M/s Shri Ganga Sales Corporation* |
| *10.* | *M/s Neki Ram Overseas* |
| *11.* | *M/s Jain Foods Products* |

> *5.2 Investigation of unsecured loan from M/s Shashi Food India Pvt. Ltd :*

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*5.2.1 Statement of Sh Gian Chand Sethi:*

*Statement of Sh. Gian Chand Sethi, Director of Shashi Foods (India) Pvt. Ltd and father of Sh Shashi Bhushan Sethi, & Sh. Chandan Sethi, Directors of M/s Gautam Techagro \ India Private Limited, was recorded during the survey proceedings u/s 133A on 31/03/2016 at 357, Tarun Enclave, Pitampura, Delhi. Sh Gian Chand Sethi stated that M/s Shashi Foods (India) Pvt Ltd is in the business of wholesale trading of rice and pulses with its registered office at 2737, 1st Floor Naya Bazar New Delhi.*

*5.2.2 During the course of search & survey operation, Shri Gian Chand Sethi was asked about the source of loans and advances given by M/s Shashi Foods (India) Pvt Ltd of Rs 2.45 Crs and Rs 10 Crs given to MIs KRBL Foods Ltd and MIs KRBL Infrastructure Ltd respectively in FY 2013-14, Sh Gian Chand Sethi stated that he has given these loans to KRBL group when Sh Anil Mittal approached him through Sh K V Kapoor. He offered this loan at the rate of interest of 9%. For the source of loan, Sh Gian Chand Sethi stated that these are sale proceeds corresponding to those purchases, payments of which are due.*

*5.2.3 During the course of assessment proceedings a notice U/S 133(6) was issued to M/s Shashi Foods Ltd on 21. 11 .2017 regarding the source of funds, rate of interest charged, name of the brokers and balance sheet and P&L a/c etc. In compliance to notice u/s 133(6) M/s Shashi foods India Pvt Ltd filed its reply on 15.12.2017 in the DAK of office. In the reply, M/s Shashi foods India Pvt Ltd submitted that Late Shri Karanvir Kapoor introduced us and interest was charged at 9%. Further, on source of fund it has been submitted that company was having sufficient fund to lend the money to these companies. It is important to mention that, M/s Shashi foods India Pvt Ltd did not give reply regarding the source of funds. However, Shri Gian Chand Sethi in his statement on 30.03 .2016 stated that source of funds was sale proceeds corresponding to those purchases, payments of which are due. From the balance sheet*

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*submitted by M/s Shashi Foods India Ltd., details of trade payables has been taken and it has been observed that in F.Y 2013-14 there are 12 parties which have been show n as creditors and total amount of Rs 34.96 Cr was pending. The details of these parties are as under:-*

| *Sl. No.* | *Name of the Party* | *Amount payable (in Rs)* |
|---|---|---|
| *1.* | *Asharfi Overseas P. Ltd.* | *2,87,60,975.75* |
| *2.* | *Asutosh Foods* | *29,03,966.40* |
| *3.* | *Dawat Foods Ltd.* | *3,86,37,600.00* |
| *4.* | *Deepak Enterprises* | *3,66,02,713.65* |
| *5.* | *Deepak Kumar & Brothers* | *3,35,89,374.28* |
| *6.* | *Garg Trading Corporation* | *5,37,15,481.00* |
| *7.* | *L T International Ltd.* | *35,41,350.00* |
| *8.* | *L T Foods Ltd.* | *3,25,21,000.00* |
| *9.* | *Mahesh Agro P. Ltd.* | *6,02,51,452.75* |
| *10.* | *Narain Foods* | *1,29,34,362.50* |
| *11.* | *S. K. Agro Pvt. Ltd.* | *3,89,08,380.00* |
| *12.* | *Vijay Shree Enterprises* | *72,69,213.00* |
| | ***Total*** | ***34,96,35,844.33*** |

*5.2.4 To examine whether the existence these parties and source of fund as expla ined by Shri Gian Chand Sethi are genuine or not ITIs of this charge Shri Rohit Raj & Shri Dinesh Kumar were deputed to enquire about these parties. Address as of these parties has been taken from the bills which have been impounded during the course of survey from premise of M/s Shashi Foods Ind ia PVI. Ltd. and from MCA site.*

*5.2.5 The report submitted by the ITIs is reproduced as below:*

***Inspector's report***

*As directed by the Assistant Commissioner of Income Tax, Central Circle-7, New Delhi vide letter dated 20,12.2017 we were assigned duty to enquiry about the*

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*existence of parties which have been shown Trade Payables in the case of M/s Shashi Foods (India) Pvt. Ltd. In connection with this report is as under:-*
*(1) M/s Asharfi Overseas Pvt. Ltd.*
*AAACK5823G*
*264/1B, Chadha Market, Naya Bazar,*
*Delhi.*

*We went to Naya Bazar on 20.12.2017 and found nowhere this address i.e. 2640/1B in Chadha Market. When enquired at the address 2640 /1 where the shop in the name of Ram Swaroop Rajendra Prasad is situated and there, some Shri Rajendra Prasad Singla, owner of the shop (as stated by him) said that M/s Asharfi Overseas Pvt. Ltd. is also exists at this address, However there was no such address and also there was not any mentioning of the name which shows that this company is working at this address. Even nearby owners of the business entities at Chadha Market do not aware about M/s Asharfi Overseas Pvt. Ltd.*

*(2) Ashutosh Foods*
*2656, 2nf Floor, Naya Bazar,*
*Delhi-110006*

*We visited at this address on 20,12.2017 where we did not find Ashutosh Foods, There was a trader/entity Preetam Overseas, here some Vijay stated that Ashutosh Foods had closed long before.*

*(3) M/s Deepak Enterprises*
*AAMPK063B*
*4067, Naya Bazar, Delhi.*
*We visited and found M/s Deepak Enterprises at this address.*

*(4) M/s Deepak Kumar & Brothers*
*AAJPK4066F*

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*4037, Delhi*
*We visited but did not find M/s Deepak Kumar & Brothers at this address.*

*5.2.6 From the above report it can be observed that only four parties have been found at their addresses which have been mentioned in bills impounded in the course of survey. From premise of M/s Shashi Foods India Pvt. Ltd. Further, in respect to Narain Foods no information has been submitted by M/s Shashi Foods India Pvt. Ltd. nor we were able to locate the existence of this party. Rest of the parties has not been found at their address rather than some other firm is working at given address .*

*5.2.7 Here it is important to mention that on examination of page no. 177,178, I88 & 189 of annexure A-I I & page no. 166 to 176, 180 to 184 of A-09 from the office of M/s Shashi foods India Pvt Ltd and M/s Gautam Techagro India Pvt ltd impounded by party KO-09, it has been found that these papers are issued bills from M/s Deepak Kumar & Brothers which were neither signed by issuing party nor receiving party unlike other bills impounded. Further, on examination it has been found that all such bills issued are in the same handwriting and in same style claimed to be on different dates. No transport details are mentioned on the bills, unlike other bills. Further, on perusal of bills from M/s Asharfi overseas (P) Ltd impounded during the course of survey in annexure A-09 by party KO09 it has been found that the bills are bogus. No details regarding the TIN, address, phone no etc are mentioned. It is important to mention that to M/s Asharfi Overseas (P) Ltd Rs 2,87,60,950/- is due from M/s Shashi Foods India Ltd. A sample scan copy is reproduced below :*

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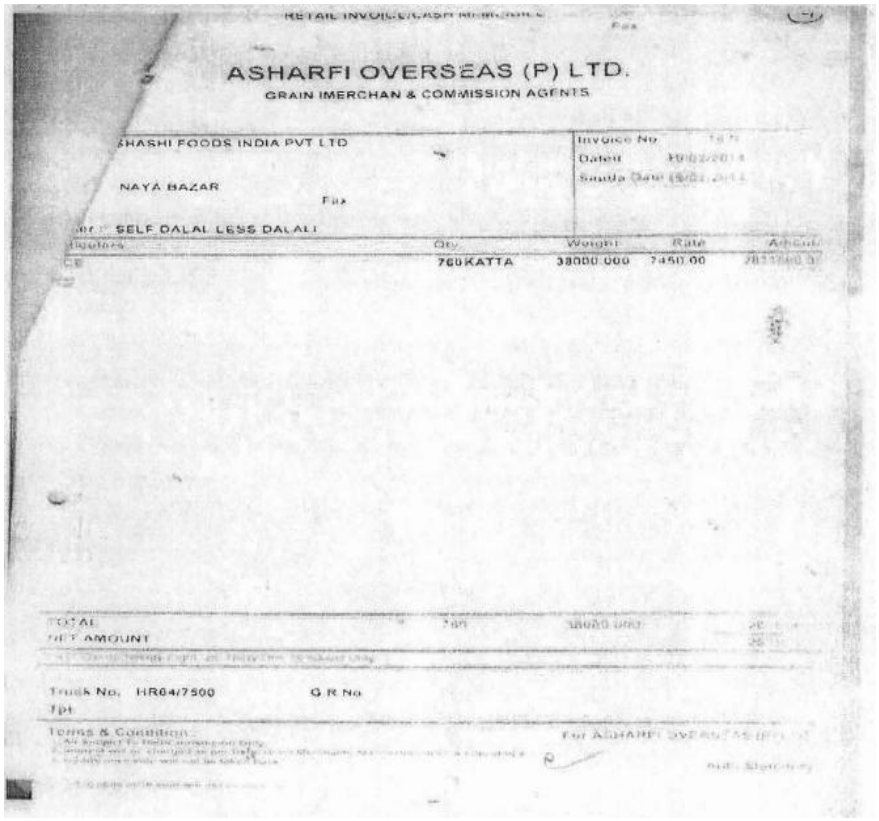

ASHARFI OVERSEAS (P) LTD.
GRAIN IMERCHAN & COMMISSION AGENTS

SHASHI FOODS INDIA PVT LTD
NAYA BAZAR
Fax
SELF DALAL LESS DALALI

| Qty. | Weight | Rate |
|---|---|---|
| 760 KATTA | 38000.000 | 7450.00 |

TOTAL
NET AMOUNT
Truck No. HR64/7500 G.R.No
Tpt
Terms & Condition

*Thus, from the above discussion it is clear that the source of fund as explained by Shri Gian Chand Sethi in his statement is not found genuine.*

*5.2.8Analysis of Bank Accounts of M/s Shashi Foods India Pvt Ltd and fund movement:*

*On Analysis of bank account of M/s Shashi Foods India Pvt. Ltd it has been observed that fund has been routed through banking channel and layering has been done with bank accounts of many entities. A cash trail has also been made in case of M/s Shashi Foods India Pvt Ltd by investigation department. In this cash trail it has been observed that money has been received by M/s Shashi Foods Ltd from M/s Gautam Tech Agro Pvt Ltd and M/s Gautam Tech Agro had transactions with the entities which are controlled by Shri Dinesh Jain such as Haryana Agro Food Product, M/s Giriraj*

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*Traders. Firms Controlled by Shri Dinesh Jain are engaged in providing bogus bills to M/s KRBL Ltd and other entit ies. And same has been accepted by Shri Dinesh Jain in his statement recorded u/s 131 of the act on 06.06.2016. In which he admitted that he provides bogus bills to M/s KRBL Ltd and other entities who wants to inflate their purchases . Thus, from the cash trail it is established that source of fund is not genuine and from bank statement of M/s Shashi Foods India Ltd it can easily concluded that it does not have its own fund to lend money. Thus creditworthiness of M/s SFIPL is doubtful.*

*5.3 Trail of funds:*

*The sources of funds used for giving loans to different companies/entities of M/s KRBL group has been examined & reproduced as below:*

*5.3.1 Loan given to M/s KRBL Infrastructure Ltd.*

*The loan given by M/s Shashi Foods India Pvt Ltd to M/s KRBL Infrastructure Ltd. in A.Y 2014-15 was returned to M/s Shashi Foods India Pvt Ltd in FY 2015-16, out of the total money received Rs. 9.70 Crs was given to M/s KRBL Ltd as payment against purchases. The trail of the fund is presented below:*

*Bank account of M/s Shashi Foods India Pvt. Ltd*

| *Date* | *Particulars* | *Amount Received* | *Amount Paid* |
|---|---|---|---|
| *16-10-15* | *KRBL Infra* | *50,00,000* | |
| *16-10-15* | *KRBL Infra* | *20,00,000* | |
| *16-10-15* | *Gautam Techagro India Pvt Ltd* | | *65,00,000* |
| *17-10-15* | *KRBL Infra* | *50,00,000* | |
| *17-10-15* | *KRBL Infra* | *50,00,000* | |
| *17-10-15* | *Gautam Techagro India Pvt Ltd* | | *55,00,000* |
| *17-10-15* | *Gautam Techagro India Pvt Ltd* | | *50,00,000* |
| *23-10-15* | *KRBL Infra* | *50,00,000* | |
| *23-10-15* | *KRBL Infra* | *50,00,000* | |
| *23-10-15* | *Gautam Techagro India Pvt* | | *70,00,000* |

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| | | | |
|---|---|---|---|
| | *Ltd* | | |
| *23-10-15* | *Gautam Techagro India Pvt Ltd* | | *30,00,000* |
| *26-10-15* | *KRBL Infra* | *50,00,000* | |
| *26-10-15* | *KRBL Infra* | *50,00,000* | |
| *26-10-15* | *Gautam Techagro India Pvt Ltd* | | *70,00,000* |
| *27-10-15* | *Gautam Techagro India Pvt Ltd* | | *20,00,000* |
| *30-10-15* | *KRBL Infra* | *50,00,000* | |
| *30-10-15* | *KRBL Infra* | *50,00,000* | |
| *30-10-15* | *G A Grain Merchant* | | *80,00,000* |
| *30-10-15* | *Gautam Techagro India Pvt Ltd* | | *40,00,000* |
| *02-11-15* | *KRBL Infra* | *50,00,000* | |
| *02-11-15* | *KRBL Infra* | *50,00,000* | |
| *02-11-15* | *Gautam Techagro India Pvt Ltd* | | *80,00,000* |
| *04-11-15* | *Gautam Techagro India Pvt Ltd* | | *30,00,000* |
| *05-11-15* | *KRBL Infra* | *50,00,000* | |
| *05-11-15* | *KRBL Infra* | *50,00,000* | |
| *05-11-15* | *Mahesh Agro Pvt Ltd* | | *50,00,000* |
| *06-11-15* | *Gautam Techagro India Pvt Ltd* | | *20,00,000* |
| *06-11-15* | *Gautam Techagro India Pvt Ltd* | | *25,00,000* |
| *09-11-15* | *KRBL Infra* | *50,00,000* | |
| *09-11-15* | *KRBL Infra* | *50,00,000* | |
| *09-11-15* | *Gautam Techagro India Pvt Ltd* | | *45,00,000* |
| *09-11-15* | *Mahesh Agro Pvt Ltd* | | *50,00,000* |
| *09-11-15* | *Mahesh Agro Pvt Ltd* | | *5,00,000* |
| *10-11-15* | *KRBL Infra* | *5000000* | |
| *10-11-15* | *KRBL Infra* | *5000000* | |
| *10-11-15* | *Gautam Techagro India Pvt Ltd* | | *70,00,000* |
| *12-11-15* | *Mahesh Agro Pvt Ltd* | | *30,00,000* |
| *17-11-15* | *KRBL Infra* | *5000000* | |
| *17-11-15* | *KRBL Infra* | *5000000* | |
| *18-11-15* | *Mahesh Agro Pvt Ltd* | | *65,00,000* |
| *18-11-15* | *Mahesh Agro Pvt Ltd* | | *35,00,000* |
| *24-12-15* | *KRBL Infra* | *3000000* | |
| *27-01-2016* | *KRBL Infra* | *6350400* | |

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| | | | |
|---|---|---|---|
| *27-01-2016* | *Gautam Techagro India Pvt Ltd* | | *64,00,000* |
| | | *10,63,50,400* | *10,49,00,000* |

*Out of the total funds of Rs. 10,63,50,400 received from M/s KRBL Infrastructure Ltd, Rs. 9.70 Crs was transferred to M/s KRBL Ltd as shown below by Gautam Techagro India Pvt. Ltd. Further out of total fund of Rs. 80,00,000 received by G A Grain Merchant on 30-10-20 15, it transferred Rs. 75,00 ,000 to M/s Gautam Techagro India Pvt Ltd, which, in turn , transferred the said fund to M/s KRBL Ltd.*

*The details of funds sent by M/s Gautam Techagro India Pvt Ltd to M/s KRBL Ltd are shown below as reflecting in the bank transaction statement of M/s Gautam Techagro India Pvt Ltd:*

| *Date* | *Particulars* | *Amount Received* | *Amount Paid* | *Balance* |
|---|---|---|---|---|
| *16-10-2015* | *Shashi Food* | *65,00,000* | | *65,00,000* |
| *17-10-2015* | *KRBL Ltd* | | *70,00,000* | *-5,00,000* |
| *17-10-2015* | *Shashi Food* | *55,00,000* | | *50,00,000* |
| *17-10-2015* | *Shashi Food* | *50,00,000* | | *1,00,00,000* |
| *19-10-2015* | *KRBL Ltd* | | *40,00,000* | *60,00,000* |
| *19-10-2015* | *KRBL Ltd* | | *60,00,000* | - |
| *23-10-2015* | *Shashi Food* | *70,00,000* | | *70,00,000* |
| *23-10-2015* | *Shashi Food* | *30,00,000* | | *1,00,00,000* |
| *26-10-2015* | *KRBL Ltd* | | *50,00,000* | *50,00,000* |
| *26-10-2015* | *KRBL Ltd* | | *50,00,000* | - |
| *26-10-2015* | *Shashi Food* | *70,00,000* | | *70,00,000* |
| *27-10-2015* | *KRBL Ltd* | | *50,00,000* | *20,00,000* |
| *27-10-2015* | *Shashi Food* | *20,00,000* | | *40,00,000* |
| *27-10-2015* | *Suraj Dal Mills Pvt Ltd* | *10,00,000* | | *50,00,000* |
| *27-10-2015* | *KRBL Ltd* | | *50,00,000* | - |
| *30-10-2015* | *Shashi Food* | *40,00,000* | | *40,00,000* |
| *30-10-2015* | *GA Grain Merchant* | *75,00,000* | | *1,15,00,000* |
| *31-10-2015* | *KRBL Ltd* | | *69,00,000* | *46,00,000* |
| *31-10-2015* | *KRBL Ltd* | | *31,00,000* | *15,00,000* |
| *02-11-2015* | *Shashi Food* | *80,00,000* | | *95,00,000* |
| *03-11-2015* | *KRBL Ltd* | | *60,00,000* | *35,00,000* |

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| | | | | |
|---|---|---|---|---|
| *03-11-2015* | *KRBL Ltd* | | *40,00,000* | *-5,00,000* |
| *04-11-2015* | *Shashi Food* | *30,00,000* | | *25,00,000* |
| *06-11-2015* | *Mittal Agro India* | *49,94,999* | | *74,94,000* |
| *06-11-2015* | *Shashi Food* | | | *74,94,000* |
| *06-11-2015* | *KRBL Ltd* | | *75,00,000* | *-5,001* |
| *06-11-2015* | *Shashi Food* | *25,00,000* | | *24,94,000* |
| *06-11-2015* | *KRBL Ltd* | | *25,00,000* | *-5,001* |
| *09-11-2015* | *Shashi Food* | *45,00,000* | | *44,94,999* |
| *09-11-2015* | *KRBL Ltd* | | *80,00,000* | *-35,05,001* |
| *10-11-2015* | *Shashi Food* | *70,00,000* | | *34,94,999* |
| *10-11-2015* | *KRBL Ltd* | | *20,00,000* | *14,94,999* |
| *10-11-2015* | *S S Enterprise* | *35,00,000* | | *49,94,999* |
| *12-11-2015* | *KRBL Ltd* | | *35,00,000* | *14,94,999* |
| *12-11-2015* | *KRBL Ltd* | | *65,00,000* | *-50,05,001* |
| *18-11-2015* | *Bhatia Finvest* | *50,00,000* | | *-5,001* |
| *18-11-2015* | *KRBL Ltd* | | *60,00,000* | *-60,05,001* |
| *18-11-2015* | *S S Enterprise* | *50,00,000* | | *-10,05,001* |
| *18-11-2015* | *KRBL Ltd* | | *40,00,000* | *-50,05,001* |
| | | | *9,70,00,000* | |

*The above fund trails establish that the unsecured loan advanced by M/s Shashi Foods India Pvt Ltd to the KRBL group of companies are rotating between the companies managed by KRBL Group & companies & Sh. Gian Chand Sethi and Sh. Dinesh Jain is connecting link between them in transfer ring the fund.*

*It is relevant to mention that M/s Gautam Techagro India Pvt Ltd has huge transaction with firms/companies which are generating bogus/fake bills of M/s KRBL Ltd. It is pertinent to mention that the firms/companies like M/s Haryana Agro Food Products, M/s Giriraj Traders, which proprietor's Sh, Dinesh Jain have stated that he only generate bogus/fake bills, have sale and purchase transaction with M/s Gautam Techagro India Pvt Ltd."*

28. On appeal by the assessee, the CIT(A) has set aside the order of the AO by stating in paragraph 5.2.1, 5.2.2, 5.2.3 and 5.2.4 as under:

*"5.2.1 The appellant vide Ground No.1 has challenged the*

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*addition of Rs.10,00,00,000/- as unexplained credit u/s 68 of the Act on the ground that full facts and documentary evidences of identity, creditworthiness and genuineness of the transactions in respect of unsecured loan of Rs.10,00,00,000/- from M/s Shashi Foods (India) Pvt. Ltd. were produced before the AO and hence addition made is unjustified and therefore should be deleted. In Ground No.2 the appellant has contested the disallowance of interest of Rs.19,10,760/- in respect of the aforesaid loan from M/s Shashi Foods (India) Pvt. Ltd u/s 37(1) of the Act on the ground that firstly no such expenditure was claimed and secondly such an expenditure is genuine expenditure. In Ground No. 3 the appellant has contested the disallowance of interest of Rs.84,00,000/- in respect of the loan from M/s Index Securities & Research Pvt. Ltd. u/s 37(1) of the Act on the ground that firstly no such expenditure was claimed and secondly such an expenditure is genuine expenditure.*

*5.2.2 On due consideration I find that during the year the appellant has claimed to have taken loan of Rs.10,00,00,000/- from M/s Shashi Foods (India) Pvt. Ltd. and had also paid interest of Rs.19,10,760/- on the said loan. In the assessment order the AO has referred to statements recorded during the search action and enquiries in post search proceedings. During the survey proceedings u/s 133A of the Act on 31.03.2016 the statement of Sh. Gian Chand Sethi, Director of M/s Shashi Foods (India) Pvt. Ltd. was recorded. Sh. Gian Chand Sethi confirmed that the loan was given by M/s Shashi Foods (India) Pvt. Ltd. to the appellant @ 9% interest out of the sale proceeds. During the course of assessment proceedings the AO made independent enquiry from M/s Shashi Foods (India) Pvt. Ltd. and issued notice u/s 133(6) of the Act. In response to notice u/s 133(6) of the Act M/s Shashi Foods (India) Pvt. Ltd. filed reply and confirmed that loan was given to the appellant and interest was also charged on such loan @9% per annum and the company was having sufficient fund to lend money. However, the AO was not convinced with the reply of the M/s Shashi Foods (India) Pvt. Ltd. Since Sh. Gian Chand Sethi stated in his statement on 31.03.2016 that the source of funds was sale proceeds corresponding to those purchases payments*

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*of which are due, the AO investigated the outstanding creditors of such company and deputed Inspectors to make enquiries about such creditors. Inspectors reported that out of 12 creditors only four parties were found on their address. The AO also observed that some of the bills of creditors of M/s Shashi Foods India Pvt. Ltd. are suspicious. The AO also made analysis of the bank statement of M/s Shashi Foods (India) Pvt. Ltd. and observed that M/s Shashi Foods (India) Pvt. Ltd has received funds from M/s Gautam Tech Agro Pvt. Ltd which in turn had transactions with the entities controlled by Shri Dinesh Jain. Thus, the AO made the addition for the said loan by holding that the appellant failed to establish the identity, creditworthiness and genuineness of the transaction and also disallowed the interest paid on the said loan.*

*5.2.3 On due consideration, I find that loan was undisputedly received from M/s Shashi Foods (India) Pvt. Ltd. through banking channels and interest was also paid on such loan. The Director of M/s Shashi Foods (India) Pvt. Ltd. has also confirmed in his statement recorded during the survey and even in response to the notice issued u/s 133(6) of the Act that it has advanced loan to the appellant. It is also evident that M/s Shashi Foods (India) Pvt. Ltd. has granted loan out of funds credited in its bank account. Hence creditworthiness of the aforesaid creditor cannot be doubted. Therefore, all the essential ingredients of section 68 of the Act are duly satisfied, as neither the identity of the creditor can be disputed nor its creditworthiness and genuineness of transactions. The creditor has duly confirmed twice in respect of advancement of loan to the appellant hence genuineness of the transaction can also be not doubted. The appellant placed on record all the evidences to discharge the onus cast on the appellant and therefore the burden shifted to the AO to prove otherwise. The AO failed to rebut the evidences placed on record by the appellant. The AO made enquiry in respect of the purchases of M/s Shashi Foods (India) Pvt. Ltd. and I am of the view that same is wholly immaterial in so far as the examination of loan received by the appellant is concerned, as whether some of the purchases of M/s Shashi Foods (India) Pvt. Ltd. is genuine or not cannot be*

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*examined in the case of the appellant, and the same can be subject matter of examination in the case of the aforesaid creditor only. In fact, findings of the enquiries were not confronted to the appellant. In any case, all such enquiry is only with regard to the examination of the source of source, which is impermissible as has been held in umpteen number of judicial pronouncements. In any case, once the lender has confirmed the loan transactions in his statement and also in response to the notice U/S 133(6) and submitted the necessary documents, the identity and creditworthiness of the lender stood proved. The Joan was given through proper banking channel to earn interest and therefore the genuineness of the loan stands proved. Thus, the onus cast upon the appellant u/s 68 regarding the loan taken from M/s Shashi Foods (India) Pvt. Ltd. stood discharged.*

*5.2.4 In view of the facts, evidences and position of law, the loan taken from the M/s Shashi Foods (India) Pvt. Ltd. in AY 2014-15 is held to be genuine and no disallowance of the interest paid on the genuine loan can be made. I hereby delete the addition of Rs.10,00,00,000/- on account of the loan taken from M/s Shashi Foods (India) Pvt. Ltd. u/s 68 of the Act made by the AO. Since the loan has been treated as explained, the interest paid on the said loan cannot be disallowed and hence the disallowance of addition of Rs.19,10,7601- for interest paid to M/s Shashi Foods (India) Pvt. Ltd. on the loan of Rs.10,00,00,000/- is hereby also deleted. Thus Ground Nos. 1 and 2 are allowed."*

(emphasis supplied)

29. In the impugned order, the ITAT agreeing with the conclusion drawn by the CIT(A) has in paragraphs 6, 7 and 8 stated as under:

*"6. We have considered rival submissions and perused the materials on record. Undisputedly, in the year under consideration, the assessee had availed unsecured loan of Rs.10 crores from M/s. Shashi Foods India Pvt. Ltd. The*

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*Assessing Officer has treated the unsecured loan as unexplained cash credit u/s. 68 of the Act. The primary reason for doing so is, as per the post search investigation carried out in case of M/s. Shashi Foods India Pvt. Ltd., it was found that the said entity has availed bogus purchase bills from some other entities controlled by Shri Dinesh Jain. Thus, the Assessing Officer has held that since, the source of fund is itself doubtful due to the creditor indulging in bogus purchase, the unsecured loan cannot be treated as genuine. From the facts and materials on record, it is evident that in course of post search enquiries conducted in case of M/s Shashi Foods India Pvt. Ltd., statement was received from the Director of the said concern, specifically, asking about the unsecured loan given to the present assessee. In response to the query raised, the Director of M/s. Shashi Foods India Pvt. Ltd. has clearly and categorically confirmed of having advanced unsecured loan at the interest rate of 9%.*

*7. Further, in course of assessment proceedings, the Assessing Officer again issued notice u/s. 133 (6) of the Act to M/s Shashi Foods India Pvt. Ltd. seeking confirmation of the loan transaction. In response to the said notice, the creditor again furnished a confirmation accepting the fact that it has advanced loan of Rs. 10 crores to the assessee with interest rate of 9%. It is further evident, in response to specific query raised by the Assessing Officer regarding availability of fund for advancing loan, the Director of M/s. Shashi Foods India Pvt. Ltd. had stated that the loan was advanced from the amount received from sales corresponding to the purchases, payment for which was still outstanding. Notably, to substantiate the genuineness of loan transaction, in addition to confirmation from the creditor, the assessee had furnished all other documentary evidence such as Income-tax return, copies of the creditor, bank statements of the creditor, audited financial statements of the creditor etc. As against such evidences brought on record by the assessee, no contrary material has been brought on record by the Assessing Officer to firmly establish on record that the unsecured loan advanced to the assessee is non-genuine.*

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*8. As discussed earlier, the primary reason, for which the Assessing Officer treated the loan transaction as non-genuine is, the purchases made by M/s. Shashi Foods India Pvt. Ltd. are doubtful. Assuming that the source of purchases in case of M/s. Shashi Foods India Pvt. Ltd. may be doubtful, that by itself does not establish the fact that the entire purchase of M/s. Shashi Foods India Pvt. Ltd. are not genuine since, it is the contention of M/s. Shashi Foods India Pvt. Ltd. that the unsecured loan was sourced from the amounts received on sales corresponding to the purchases, payment for which is outstanding. On scrutiny of the assessment order, we have not found any adverse observation of the Assessing Officer with regard to the sales effected by M/s. Shashi Foods India Pvt. Ltd. In fact, the Assessing Officer has not conducted any enquiry with regard to the sales made by M/s. Shashi Foods India Pvt. Ltd. as to whether they are genuine or not. It is also relevant to observe, on examination the balance sheet of M/s. Shashi Foods India Pvt. Ltd., the Assessing Officer has noticed outstanding trade creditors of more than Rs. 34 crores. Though, the Assessing Officer has observed that enquiry conducted could find only four creditors available in the given addresses, however, that does not conclusively prove that the rest of the trade creditors are non-existing. When the creditor has stated that unsecured loan was funded out of the sale proceeds available with it and there are outstanding trade creditors, without any contrary material brought on record by the Assessing Officer, such statement cannot be rejected merely on conjectures and surmises. More so, when the assessee had furnished all documentary evidence relating to the creditor not only to prove the identity and creditworthiness of the creditor but genuineness of the transaction, In view of the aforesaid, we do not find any reason to interfere with the decision of learned first appellate authority in deleting the addition made u/s. 68 of the Act and the interest paid on the unsecured loan, Grounds are dismissed."*

(emphasis supplied)

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30. It is noted that the reasons for the CIT(A) to set aside the order of the AO is that the creditworthiness of Shashi Foods cannot be doubted, as undisputedly the loan was received through proper banking channels and even interest was also paid on the same. Therefore all essential ingredients of Section 68 of the Act are duly satisfied as the identity of the creditor, its creditworthiness and genuineness of transaction were all satisfied.

31. The CIT(A) has also stated that though the AO had made an enquiry in respect of the purchases of Shashi Foods, but the same would be immaterial insofar as the examination of the loan received by the respondent/ assessee is concerned, as the same cannot be examined in the case of the present assessee and can be subject matter of examination only in the case of the aforesaid creditor.

32. The ITAT has agreed with the conclusion drawn by the CIT(A).

33. The finding of the AO in paragraph 5.5 is that the assessee had failed to furnish the identity and creditworthiness of Shashi Foods and genuineness of the loan. The assessee has also not submitted any details as to why the lender has given such a huge amount without any agreement or collateral. The AO held that a mere submission that the loan has been received through banking channels does not mean that the transaction is genuine. Shashi Foods had tried to explain its worth by stating that there are 12 parties who are its creditors and a total amount of Rs.34.96 crores was pending payment. However the AO, based on the inspectors report has concluded that out of 12 parties only four have been found at their address.

34. The submission of Mr. Maratha is that the reply of the assessee was considered but was not found tenable as enquiries conducted during the course of search, post search and in the course of assessment revealed that

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the loan advanced by Shashi Foods was not genuine. According to him, as per Section 68 of the Act, the primary onus to prove that the loan amount is genuine is on the assessee and the mere fact that the loan was received through banking channels does not mean that it is genuine. Further there was no collateral security taken. According to him, all of these would lead to the conclusion that the loan was not genuine.

35. We are not in agreement with the submission made by Mr. Maratha. The loan advanced was in the FY 2013-14, i.e., AY 2014-15. The identity of the creditor has been proved by documentary evidence and also through the statement of the Director of Shashi Foods recorded during the survey proceedings and also in reply to the notice under Section 133(6) of the Act. It has also been established that Shashi Foods advanced the loan out of the funds credited in its bank account, proving the creditworthiness of the entity. Though the AO had held that Shashi Foods did not have the necessary funds in its bank account to provide the loan, the findings of the CIT(A) and the ITAT are at variance with the observation of the AO inasmuch as that the loan has been advanced from the bank account of Shashi Foods. In any case, the Revenue has not placed on record anything to show that in the AY 2014-15, the requisite funds to advance the loan were not available in the bank account of Shashi Foods.

36. So, it follows, the genuineness of the loan was and the creditworthiness of Shashi Foods have been proved by establishing that:

(i) The same was received through banking channels;

(ii) the loan has been repaid in the next financial year between 2015-16;

(iii) repayment of the loan is with interest.

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37. Though the Revenue has raised an argument that the purchases made by Shashi Foods from other third entities were not genuine, the same is immaterial insofar as the assessment proceedings of the respondent is concerned. The initial onus cast upon the respondent/ assessee to show the genuineness of the transaction having been duly discharged, the question as to whether the funds at the hands of Shashi Foods were obtained through genuine purchases or not cannot be gone into by the Revenue. This we say so, for the reason that once the assessee discharges its initial onus of proving the identity and creditworthiness of the creditor and also the genuineness of the transaction, it is not incumbent upon the assessee to prove the genuineness of the funds at the hands of its lender, i.e., the 'source of the source' of the funds.

38. The law with regard to this is no more *res integra*. This Court in the judgment titled ***Dwarkadhish Investment (P) Limited (supra)*** it has held in paragraph no.8 as under:-

> *"8. In any matter, the onus of proof is not a static one. Though in Section 68 proceedings, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke Section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the 'source of source'."*

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39. On similar lines, the High Court of Gujarat in the case of ***Deputy Commissioner of Income Tax v. Rohini Builders, (2002) 256 ITR 360 (Guj)*** in paragraph no.7 has stated as follows:

> *"7. xxx xxx All the loans were received by the assessee by account payee cheques and the repayments of loans have also been made by account payee cheques along with the interest in relation to those loans. xxx xxx It is also pertinent to note that in respect of some of the creditors the interest was credited to their accounts/paid to them after deduction of tax at source and information to this effect was given in the loan confirmation statements by those creditors filed by the assessee before the Assessing Officer. Thus it is clear that the assessee had discharged the initial onus which lays on it in terms of section 68 by proving the identity of the creditors by giving their complete addresses, GIR numbers/permanent accounts numbers and the copies of assessment orders wherever readily available. It has also proved the capacity of the creditors by showing that the amounts were received by the assessee by account payee cheques drawn from bank accounts of the creditors and the assessee is not expected to prove the genuineness of the cash deposited in the bank accounts of those creditors because under law the assessee can be asked to prove the source of the credits in its books of account but not the source of the source as held by the Bombay High Court in the case of Orient Trading Co. Ltd. v. CIT [1963] 49 ITR 723. 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. xxxx"*
>
> (emphasis supplied)

40. Even in the latest decision in ***Sheela Overseas Private Limited (supra)*** relied upon by Mr. Jolly, this Court in paragraph no.17 has observed as under:-

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> *"17. It is seen from the above that the requirement of explaining the source of the source of funds credited as unsecured loans in the books of accounts was introduced by virtue of the Finance Act, 2022. The same was not applicable during the relevant assessment year - AY 2015-16. Thus, in our view, the Assessee cannot be burdened with the requirement to explain the source of funds of Mr. Hitesh Bhatia."*
>
> (emphasis supplied)

41. In the present case, the assessee has established the identity of the lender. Even the creditworthiness of the lender cannot be in question. The loan transaction having been effected through proper banking channels, i.e., through the bank accounts of the parties, there cannot be any cavil to the genuineness of the transaction, as it is clear from the foregoing judicial pronouncements.

42. Further, the present case relates to the AY 2014-15, prior to the amendment brought about by the Finance Act, 2022 requiring assessees to prove the 'source of the source' of funds credited as unsecured loans. As such, the contention that the genuineness of the funds of Shashi Foods needs to be examined is devoid of any merit.

43. As a necessary corollary to our conclusion, the plea of Mr. Maratha that out of the 12 creditors of Shashi Foods, the identity of only 4 could be ascertained, would also be immaterial and irrelevant, as the same would relate to enquiring into the source of the source of the funds received by the assessee.

44. We find that the ITAT, in paragraphs 6 to 8 of the impugned order which we have already reproduced above, has concluded on the aforesaid lines. We are in agreement with the same.

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45. The decisions of this Court in ***Nova Prompters and Finlease (P) Ltd (supra)*** and ***N. R. Portfolio Pvt. Ltd. (supra)*** relied upon by Mr. Maratha would not be applicable to the facts of this case, in view of our finding that the assessee has duly discharged the onus of proving the identity and creditworthiness of the creditor and also the genuineness of the transaction.

46. Mr. Maratha has endeavored to assert that money is being circulated amongst the Dinesh Jain Group and KRBL Group in the guise of payment against purchases, by relying upon the transactions of the FY 2015-16, between Shashi Foods, Gautam Techagro India Ltd. and KRBL Ltd. His case is that out of the amount of Rs. 10.63 crore received by Shashi Foods as repayment of the loan, Rs. 9.70 crore was transferred to KRBL Ltd. through Gautam Techagro India Ltd. Further, an amount of Rs. 75 lakhs was transferred by GA Grain Merchant to Gautam Techagro India Ltd, which then routed the funds to KRBL Ltd. Suffice it to state, the present issue relates to the genuineness of the loan transaction of the FY 2013-14, i.e., AY 2014-15. The issue whether the transaction was a genuine loan or an accommodation entry, which is a pure question of fact, was considered by the CIT(A) and the ITAT. The genuineness of the transaction has been affirmed by the two authorities below, holding that the loan transaction having been effected through proper banking channels, cannot be considered to be bogus. Needless to state, such a finding relating to the FY 2013-14 (AY 2014-15) is not perverse, and is certainly a plausible view. If that be so, there is no occasion for us to examine the veracity of later transactions between entities of FY 2015-16 (AY 2016-17) for deciding the instant issue, i.e., whether the CIT(A) and the ITAT erred in deleting the addition made

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by the AO in the assessment proceedings for the AY 2014-15 with respect to the respondent.

47. Insofar as the substantial question of law (2) is concerned, the submission of Mr. Maratha is that the AO does not have to restrict himself to first verify if any incriminating evidence has been found, though in the present case, it was found, and as such the ITAT erred in confirming the order of the CIT(A) in view of the judgment in ***Abhisar Buildwell (supra)***. Suffice it to state, the AO in his order has not made any reference to any incriminating material, based on which the additions were made. In any case, we have already held that the ITAT was justified in upholding the order of the CIT(A) on merits. As such, this submission would not come to the aid of the Revenue.

48. In view of our above discussion, in the facts of this case, both the substantial questions of law are answered in favour of the respondent/ assessee and against the appellant/ Revenue.

49. The appeal is, accordingly, dismissed.

**V. KAMESWAR RAO, J**

**VINOD KUMAR, J**

**NOVEMBER 13, 2025**
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