

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

**Before Shri P.M. Jagtap, Vice-President (KZ)  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1033/KOL/2017  
Assessment Year: 2014-2015**

***M/s. Lalbaba Seamless Tubes Pvt. Limited,.....Appellant  
13A, Rangers Club, Govt. Place East,  
Kolkata-700 069  
[PAN: AABCL 2668 M]  
-Vs.-***

***Deputy Commissioner of Income Tax,.....Respondent  
Circle-3(1), Kolkata,  
Aayakar Bhawan  
P-7, Chowringhee Square, Kolkata-700 069  
-AND-***

**I.T.A. No. 1637/KOL/2017  
Assessment Year: 2014-2015**

***Deputy Commissioner of Income Tax,.....Appellant  
Circle-3(1), Kolkata,  
Aayakar Bhawan  
P-7, Chowringhee Square, Kolkata-700 069***

**-Vs.-**

***M/s. Lalbaba Seamless Tubes Pvt. Limited,.....Respondent  
13A, Rangers Club, Govt. Place East,  
Kolkata-700 069  
[PAN: AABCL 2668 M]***

**Appearances by:**

*Shri Vikash Surana, FCA, for the assessee*

*Dr. P.K. Srihari, CIT (D.R.) & Shri S.C. Mohanti, JCIT, Sr. D.R., for the Revenue*

Date of concluding the hearing : January 29, 2019

Date of pronouncing the order : April 12, 2019

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (Kolkata Zone):-**

These two appeals, one preferred by the assessee being ITA No.1033/KOL/2017 and the other preferred by the Revenue being ITA No. 1637/KOL/2017 are cross appeals, which are directed against the order

of Id. Commissioner of Income Tax (Appeals)-1, Kolkata dated 07.04.2017.

2. First we take up the appeal of the assessee, which involves a solitary issue relating to the addition of Rs.6.22 crores made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of unexplained cash credit under section 68 and the same is raised by the assessee by way of the following ground:-

*"1.(a) For that the Ld. CIT (A) erred in Law as well as on facts in confirming the addition made Rs.6,22,00,000/- as unexplained cash credit u/s 68 on the ground that "identity and creditworthiness/source of income could not be established satisfactorily" when, the appellant duly furnished cogent evidences to substantiate the capacity of the loan creditors and genuineness of the transactions, the identity was duly established and the loan creditors duly confirmed the transactions with the appellant as recorded in their audited accounts, including repayment of loan thereof, the appellant's onus thus gets discharged, further the loan creditors had sufficient network to advance loans to the appellant.*

*(b) For that the Ld. CIT (A) erred in confirming the cash credit u/s 68 when both the lower authorities failed to appreciate that interest was duly accounted for by the loan creditors and declared as their Income in their audited accounts on which TDS duly deducted by the appellant.*

*(c) For that the Ld. CIT (A) erred in confirming the cash credit u/s 68, when, inspite of giving the Assessing Officer a 2<sup>nd</sup> innings during remand proceedings, no nexus could be established that the source of creditors' deposits emanated from the Appellant".*

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing of Cold Drawn Seamless Pipes. The return of income for the year under consideration was filed by it on 29.09.2014 declaring a loss of Rs.6,45,82,182/-. As noted by the Assessing Officer, during the course of assessment proceedings, unsecured loans taken by the assessee-company were increased by Rs.7,74,26,996/- in the year under consideration. He, therefore, required the assessee to furnish the

details of unsecured loans taken during the year under consideration. In reply, the details of unsecured loans were furnished by the assessee along with the loan confirmations, balance-sheets, Bank statements and source of funds of the concerned loan creditors. On perusal of the said details and documents, the Assessing Officer arrived at a conclusion that the creditworthiness of the loan creditors was doubtful for the following reasons:-

*“(1) Alliance Infra Properties Pvt. Ltd:- During the year the assessee received of Rs.15,00,000 as a unsecured Loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee, it was apparent that M/s Alliance Infra Properties Pvt. Ltd had no real business activities and its disclosed income was only Rs.40,310, and the income of the earlier year was nil in revenue from operation. There was negative Reserve and Surplus balance. As per the bank statement there was peak balance only of Rs.10,750. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount 15,00,000 is treated as cash credit under section 68 of the LT. Act in the hand of the assessee. Addition:- Rs. 15,00,000*

*02. M/s Bhima Agencies Pvt. Ltd:- During the year the assessee received of Rs 40,00,000 as a unsecured loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee, it was apparent that M/s Bhima Agencies Pvt. Ltd had no real business activities its disclosed income was only Rs.20,115 and the income of the earlier year was nil in revenue from operation. There was negative Reserve and Surplus balance. As per the bank statement there was peak balance only of Rs.40,766. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.40,00,000 is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee Addition:- Rs.40,00,000/-*

03. *M/s Cranberry Enterprises Pvt. Ltd:- During the year the assessee received of Rs.30,00,000 as a unsecured loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee, it was apparent that M/s Cranberry Enterprises Pvt. Ltd had no real business activities and its disclosed income was only Rs. 48,931. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.30,00,000 credited in the books of the assessee is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs. 30,00,000*

04. *M/s Dalmia Industrial Development Limited:- During the year the assessee received of Rs.1,45,00,000 as unsecured loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee it was apparent that M/s Dalmia Industrial Development limited had no real business activities its disclosed income was only Rs.9 70,005 and in the earlier year the revenue from operation was nil. There was negative Reserve and Surplus. As per th bank statement there was peak balance only Rs.1,76,664. During the year the company M/s Dalmia Industrial Development Limited issued 20,000,000 share at the face value Rs. 10/-per share. The total capital received during the years of Rs 20,00,00,000 out of which the company give loan entries to other companies Rs.11,58,13,568. The assessee was one such beneficiary. The company had no owned fund to give loan entry to other companies. The AIR was asked to produced the director of the said company to establish the creditworthiness of the transaction. There was no evidence for establishing the creditworthiness of the loan creditors except dry documents. The funds received by the creditor were given out immediately on the same day to others. It has been amply documented by the Income Tax Department Investigation wing and assessment orders of assessing officers of the Department that these companies are created and exists only for providing bogus funds in lieu of commission through layered rotation of funds in Banks. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.1,45,00,000 credited in the books of the assessee is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs.1,45,00,000/-*

05. *M/s Derby Mercantile Pvt. ltd:- During the year the assessee received of Rs.37,09,712 as unsecured loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank*

*statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee it was apparent that M/s Derby Mercantil Pvt. Ltd had no real business activities and its disclosed income was only Rs.16,556 and in the earlier year the revenue from operation was nil. There was negative Reserve and Surplus balance. As per the bank statement there was peak balance only Rs.8,387. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company its apparent that this is 'shell' company which existed solely for providing bogus fund in lieu of commission. Therefore, the creditworthiness of the loan creditor is not established. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.37,09,712 credited in the books of the assessee is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs. 37,09,712/-*

*06. M/s Imperial Retails Pvt. ltd:- During the year the assessee received of Rs.80,00,000 as a unsecured loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee it was apparent that M/s Imperial Retails Pvt. Ltd had no real business activities its disclosed income was only Rs.22,950, while in the earlier year there was no revenue from operations. There was negative Reserve and Surplus balance. As per the bank statement there was peak balance of only Rs.1,62,567. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company its apparent that this is 'shell' company which existed solely for providing bogus fund in lieu of commission. Therefore, the creditworthiness of the loan creditor is not established. Therefore I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.80,00,000 credited in the books of the assessee is treated as cash credit under section 68 of the LT. Act in the hand of the assessee. Addition:- Rs. 80,00,000*

*07. M/s Moonnight Dealers Pvt. ltd:- During the year the assessee received Rs.80,20,416 as unsecured loan from this company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee it was apparent that M/s Imperial Retails Pvt. Ltd had no real business activities and its disclosed income of the year was only Rs.22,950, while in the earlier year revenue from operation was zero. The Reserve and Surplus balance was negative. As per the bank statement there was pick balance only Rs.1,62,567. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company its apparent that this is 'shell' company which existed solely for*

*providing bogus fund in lieu of commission. Therefore, the creditworthiness of the loan creditor is not established. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.80,00,000 credited in the books of the assessee is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs. 80,00,000/-*

*08. M/s Pashupati Advisory Pvt. Ltd:- During the year the assessee received of Rs.30,00,000 as unsecured loan from this company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee. Its apparent that the M/s Pashupati Advisory Pvt. Ltd had no real business activities its disclosed income was only Rs.8089 but while last year there it was nil from revenue from operations. There was negative Reserve and Surplus balance. As per the bank statement there was peak balance of only Rs.50,000. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company its apparent that this is 'shell' company which existed solely for providing bogus fund in lieu of commission. Therefore, the creditworthiness of the loan creditor is not established. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.30,00,000 credited in the books of the assessee is treated as cash credit under section 68 of the LT. Act in the hand of the assessee. Addition: Rs.30,00,000/-*

*09. M/s Satvichar Promoters Pvt. Ltd:- During the year the assessee received Rs.50,00,000 as unsecured loan from this company. The A/R furnished loan confirmation, Balance sheet and Bank statement. After perusal of records furnished by the assessee, it becomes apparent that the M/s Satvichar Promoters Pvt. Ltd had no real business activities. The A/R could not furnish any evidence of filing of Return of Income. There was negative Reserve and Surplus balance. As per the bank statement there was peak balance of only Rs.9000. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.50,00,000 is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs.50,00,000/-*

*10. Hardsoft Commercial Pvt.ltd:- During the year the assessee received of Rs.30,00,000 as unsecured loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of*

records furnished by the assessee, it was apparent that the M/s Hardsoft Commercial Pvt. Ltd had no real business activities and its disclosed income was only Rs.15,624 while in the earlier year the revenue from operation was nil. There was negative Reserve and Surplus balance. As per the bank statement there was peak balance of only Rs.7210. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.30,00,000 is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs. 30,00,000/-

11. Swarnim Commosale Pvt. Ltd:- During the year the assessee received of Rs.38,00,000/-- as unsecured loan " " from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee, it is apparent that M/s Swarnim Commosale Pvt. Ltd had no real business activities and its disclosed income of the year was only Rs.36,889 while the revenue from operation in the earlier year was zero. There was negative Reserve and Surplus balance in the balance sheet. As per the bank statement there was peak balance was only Rs.18,274. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount Rs.38,00,000 is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs. 38,00,000/-

12. Utmost Traders Pvt. Ltd: During the year the assessee received of Rs.45,00,000 as unsecured loan from the company. The A/R furnished loan confirmation, Balance sheet, Bank statement and copy of ITR acknowledgment. After perusal of records furnished by the assessee, it was apparent that the M/s Swarnim Commosale Pvt. Ltd had no real business activities and its disclosed income was only Rs.6463 while revenue from operation in the earlier year was zero. There was negative Reserve and Surplus balance. Equal amount of fund was received before its full transfer to assessee as loan. As per the document filled by the A/R of the aforesaid company it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the

*loan. Therefore, the amount Rs.45,00,000 is treated as cash credit under section 68 of the I.T. Act in the hand of the assessee. Addition:- Rs. 45,00,000/-*

*13. Venkateshwar Equipment Parts Pvt. Ltd:- During the year the assessee received of Rs.45,00,000 as unsecured loan from the company. The A/R furnished loan confirmation, Bank statement. There was only fund received and the same day the aforesaid fund transfer. The A/R did not furnish copy of Balance sheet and ITR of the creditor. As per the document filed by the A/R it is apparent that this is a zero net worth company with no real business, and used only for providing bogus fund in lieu of commission. Therefore, I am of the opinion that the loan creditor company has no creditworthiness for advancing the loan. Therefore, the amount of Rs.45,00,000/- is treated as cash credit under section 68 of the I.T. Act in the hands of the assessee. Addition: Rs.45,00,000/-“.*

On the basis of the above observations recorded by him, the Assessing Officer treated the concerned unsecured loans as unexplained cash credit and an addition of Rs.6,22,00,000/- was made by him to the total income of the assessee.

3. The addition of Rs.6.22 crores made by the Assessing Officer was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record including the remand report submitted by the Assessing Officer, the Id. CIT(Appeals) confirmed the addition made by the Assessing Officer under section 68 for the following reasons given in his impugned order:-

*“On careful consideration of the contentions of the A/R of the appellant, it is Inferred therefrom that, firstly, an objection was raised regarding non-appearance of the directors of all the 13 companies before the A.O in response to summons issued u/s 131 of the I.T. Act that the date prescribed for attendance was a Saturday i.e.25-03-2017 at 4 p.m and that no specific documents were requisitioned by the A.O and that the appellant had already all relevant documentary evidences in the form of a Paper Book before the A.O and absence of mention cross-examination in the summons form. In this regard, it is inferred that appellant has been unable to controvert the finding of the A.O regarding the non-existence of the companies at their given addresses intimated to the A.O and the reason adduced i.e. asked to appearance by directors on a Saturday, is an after-thought as it is a matter of information in the public domain that the Department had through wide publicity intimated the*

*general public that offices would be functioning on the said weekend to facilitate the submission of taxes for the PMGKY scheme. Further, the absence of mention of examination of Directors pertains to a procedural matter, which does not effect the validity of the statements recorded or their admissibility regarding the evidentiary value of the averments made by the deponent under the CPC/Income- Tax Act.*

*In support of his contentions, the A/R relied upon the decisions of the Rajasthan High Court in Aravali Trading Co. Vs. ITO 220 CTR 622, held that neither the provision of 68 nor on general principle, it can be said that once the existence of Loan Creditors are proved and such loan creditors own such credits with the assessee, there is no reason to disbelieve the transaction. It has been held by various Courts that where lender is assessed to tax and loan confirmation with particulars of PAN are filed no addition 'could be made u/s 68 as held in CIT Vs. Orissa Corporation (P) Ltd. (159 ITR 78)(SC). The IT Department has accepted the returns of the loan creditors it should go to mean that the' amounts given by these Loan Creditors were also genuine as the concerned Assessing Officer accepted all the loan creditor's of income and their corresponding sources of funds and investments. As far as credit-worthiness or sources of the creditor/subscriber is concerned, it was argued that is proved once the bank statement of the creditors/is produced showing that it had sufficient balance in its accounts, once these documents are produced, the assessee would have satisfactorily discharged it's onus cast upon him. It was thus submitted that the loan creditors had sufficient net worth of their own so as to advance loan to the asse see company A.O has to establish bring cogent material on record in case he nurtures any doubt about the veracity of these documents to probe the matter further, but not merely on basis of suspicion.*

*As regards the issue of establishing the genuineness of an amount credited to the books of accounts of the appellant company, it is well established that the onus to prove his explanation satisfactorily to the Assessing Officer was on the assessee. The appellant has miserably failed to discharge such onus. From the above decision, it is apparent that the genuineness of the impugned transactions of receipt of the impugned amounts from the 13 companies as Unsecured loans totalling Rs.6,22,00,000/- as detailed in the above paragraphs cannot be determined without looking into the human probability aspects, surrounding circumstances such as relationship of the entities Le companies shown as cash creditors and the recipient i.e appellant company. It is also pertinent to mention that if the assessee fails to establish any of the essential ingredients of a cash credit i.e identity, mode of receipt and credit- worthiness / sources of the cash creditors, the impugned transactions i.e Unsecured loans cannot be*

*treated as genuine. In this regard, it is pertinent to refer to the decision in Sajan Dass and Sons v. CIT [20.03] 264 ITR 435 (Delhi) wherein the Hon'ble Delhi High Court held that mere identification and showing movement through banking channels is not sufficient. Similar view was taken in Sandeep Kumar v. CIT (293 ITR 294) (Del), Jaspal Singh 290 ITR 306 (P & H), Yash Pal Goel, 310 ITR 75/76(P&H) and Rajeev Tandon vs. Assistant Commissioner of Income Tax in ITA No. 77 of 2007 dated 13.7.2007 as also in Subhash Chander Sekhri v: Deputy CIT [2007] 290 ITR 300 (P&H). In the present case also, it is not established that unsecured loan creditors i.e 13 companies which were found to have meager cash balances/capital in their books of accounts had capacity to make the loans.. Therefore, the A.O was justified in upholding the addition of the amount claimed as impugned unsecured loans. In Ram Lal Agrawal v. CIT [2006] 280 ITR 547 (All), the Hon'ble Allahabad High Court held that where there is a finding given by the Income-tax authorities that creditworthiness of depositors was not proved, the amount could be assessed as income of the assessee. In Sunil Siddharthbhai v. CIT [1985] 156 ITR 509 (SC), the Hon'ble Supreme Court held that it is the right of the Income-tax authorities to consider genuineness of the transactions and to penetrate the veil and ascertain the truth. It is within their power to consider whether a particular transaction was to evade tax. In K. Ramasamy v. CIT [2003] 261 ITR 358 (Mad), it was held that veil can be pierced in exceptional circumstances. The Income-tax authorities are entitled to look at the reality of the transaction. Moreover, the decisions in ITO v Diza Holdings P. Ltd. [2002] 255 ITR 573 (Ker); Raunaq Ram Nand Lal v. CIT [2002] 254 ITR 617 (P & H); Smt. Iva Gogoi v. CIT [2002] 254 ITR 576 (Gauhati); CIT v. Precision Finance Pvt. Ltd. [1994] 208 ITR 465 (Cal); Rajshree Synthetics Pvt. Ltd. v. CIT [2002] 256 ITR 331 (Raj); R. B. Mittal v. CIT [2000] 246 ITR 283 (AP) ; CIT v. United Commercial and Industrial Co. P. Ltd. [1991] 187 ITR 596 (Cal); M. A. Unneeri Kutty v. CIT [1992] 198 ITR 147 (Ker); Nemi Chand Kothari v. CIT [2003] 264 ITR 254 (Gauhati); and Hindusthan Tea Trading Co. Ltd. v. CIT [2003] 263 ITR 289 (Cal) support the view that Revenue authorities are entitled to consider genuineness of the transactions and to penetrate the veil in order to ascertain the truth. They are entitled to look into the surrounding circumstances to find out the realities of the transactions shown to have been entered into by the parties.*

*In view of the above discussion, I am of the view that considering the inferences drawn from materials on record by the A.O it is held that the appellant was unable to establish the genuineness of the impugned Cash creditors as their identity and credit-worthiness/sources of income could not be established satisfactorily. Therefore, I hold that there is no infirmity in the finding of the A.O in treating the impugned unsecured loans from the 13 companies totalling Rs.6,65,09,712/- (corrected as Rs.6,22,00,000/-) as unexplained*

*cash credits u/s 68 of the I.T. Act, 1961. As a result, the impugned addition on account of treating the cash credits amounting to Rs.6,27,00,000/- is confirmed. This ground is partly allowed”.*

4. We have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has submitted that the relevant documents in the form of loan confirmations of the concerned loan creditors, their balance-sheets, Bank statements, etc. were filed by the assessee during the course of assessment proceedings before the Assessing Officer, but he still doubted the creditworthiness of the concerned loan creditors without giving any opportunity to the assessee of being heard on the issue. He has submitted that when this position was brought by the assessee to the notice of the Id. CIT(Appeals), he remanded the matter to the Assessing Officer for giving such opportunity. He has submitted that the Assessing Officer, however, asked the concerned loan creditors to appear on Saturday when only one creditor could appear. He has submitted that even though the said creditor admitted the loan given to the assessee as accommodation entry, he subsequently retracted the said admission. He has contended that proper and sufficient opportunity thus has not been given either by the Assessing Officer or by the Id. CIT(Appeals) to the assessee to prove the creditworthiness of the concerned creditors and urged that this issue may be sent back to the Assessing Officer for giving such opportunity to the assessee. Keeping in view all the relevant facts of the case, we are of the view that the assessee deserves to be given one more opportunity to explain the relevant cash credits representing unsecured loans in terms of section 68 and since the Id. D.R. has also not raised any objection in this regard, we set aside the impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after giving the assessee one more opportunity of being heard.

As undertaken by the Id. Counsel for the assessee, the assessee shall make due compliance before the Assessing Officer and produce the

concerned loan creditors along with the relevant documentary evidence for examination/verification of the Assessing Officer.

**5. In the result, the appeal of the assessee is accordingly treated as allowed for statistical purposes.**

6. Now we shall take up the Revenue's appeal being **ITA No. 1637/KOL/2017**. At the outset, it is noted that there is a delay of 61 days on the part of the Revenue in filing the appeal before the Tribunal. In this regard, the Revenue has filed an application seeking condonation of the said delay and keeping in view the reasons therein, we are satisfied that there was a sufficient cause for the delay of 61 days on the part of the revenue for filing this appeal before the Tribunal. Even the Id. Counsel for the assessee has not raised any objection in this regard. The said delay is accordingly condoned and this appeal of the revenue is being disposed of on merit.

7. In Ground No. 1, the revenue has challenged the action of the Id. CIT(Appeals) in deleting the addition of Rs.4,39,92,000/- made by the Assessing Officer under section 68 read with section 158BBE on account of alleged undisclosed sales.

8. In the manufacturing of Cold Drawn Seamless Pipes, main raw materials used by the assessee-company was MS Round. As per the Tax Audit Report furnished by the assessee, the yield of finished goods from the raw materials was shown at 84%. In this regard, it was noted by the Assessing Officer that raw material in the form of MS Round consumed by the assessee during the year under consideration was 97,97,346 Kgs. As per the standard yield of 84% given in the Tax Audit Report, the finished products produced by the assessee, according to the Assessing Officer, should have been 82,29,770 Kg. As noted by the Assessing Officer, the assessee, however, had shown production of 76,01,309 of Cold Drawn Seamless Pipes only during the year under consideration. There was thus a shortage of 628.46 Metric Ton in the production shown by the assessee

and in the absence of any satisfactory explanation offered by the assessee for the said shortage, the Assessing Officer treated the same as undisclosed sale of the assessee. The value of such sale worked out at Rs.4,39,92,000/- by applying the average rate of 70,000/- per Metric Ton accordingly was added by the Assessing Officer to the total income of the assessee by treating the same as undisclosed sale under section 68 read with section 158BBE of the Act.

9. The addition of Rs.4,39,92,000/- made by the Assessing Officer on account of alleged undisclosed sale was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the material available on record, the Id. CIT(Appeals) deleted the said addition for the following reasons given in his impugned order:-

*"The rival contentions and judicial pronouncements were considered. It is found that the A.O has made the addition of the impugned amount of Rs.,4,39,92,200/- based on the arithmetical working out of the value of the shortage of 628,461 kgs 70,000 MT from analysis of quantitative consumption of raw materials and production of finished materials by the appellant company. The appellant's AR has mainly argued that the AO has made addition on arbitrarily without reference to relevant material on record and ignoring the audited book results, which were based upon excise records and without pointing out any material defects. It was also contended that the AO has ignored the quantum of work in progress, in working out the shortage, which mainly accounts for the estimated 16% shortage treated as unexplained sales. In this regard, it was also explained that the closing stock as per audited accounts included in the valuation of inventory of closing WIP 579604 kgs as per annexure in paper book viz. PB-1 pg 99 & 100 thereof. It was also argued that the treatment of the value of the purported shortage of 628.46 MTs valued at 4,39,92,200/- as unexplained income u/s 68 of the I.T. Act was unwarranted as the appellant company derived income from business of manufacture of MS Pipes and additional income was liable to be treated as the company's business income as held by various higher courts.*

*In view of the above discussion, I find that there is sufficient merit in the submissions of the appellant that the AO has made the addition in an arbitrary and capricious manner, without reference to the material on record, considering the fact that the AO has made the addition of*

*Rs.4,39,92,200/- as unexplained income u/s 68 treated 16% difference between raw material and finished goods as shortage, merely on the basis of arithmetical working of quantitative figures from the annexures to the company's audit report without analyzing the stage wise manufacturing process and the constituents of the opening/closing stock of raw materials, consumption thereof as reflected in the work in progress (WIP) and inflow/outflow of finished materials. The AO has neglected to factor in the quantity of WIP i.e. work in progress amounting to 57,9604 kgs or the quantity of raw material along with quantum of burning loss & generation of scrap etc which are an intrinsic part of the manufacturing pmrocedss, which substantially accounts for the apparent shortage of 16% worked out at a estimated 628,461 kgs, without confronting the sasme to the appellant to explain the reasons with reference to the book results as eflexted in the audited accounts.*

*The AO has also not followed the proper procedure in not confronting the alleged discrepancies to the appellant or affording an adequate opportunity as per principles of natural justice. He has also not made any relevant enquiries or examined the relevant supporting documentary evidences viz. Excise/stock registers and related vouchers etc relating to the manufacturing process nor made an effort to has established any patent defect in the books of account or method of accounting to substantiate the estimated addition. In this regard, it is well settled by judicial decisions relied upon by the AR a nd that of the Hon'ble Supreme Court in the case of S.N. Namasivayam Chjettiar -vs.- CIT 38 ITR 579 (SC) wherein it was held that "whether power to compute profits under proviso to section 13 of 1922 Act, arises only where no method of accounting has been regularly employed by assessee or where method employed is such that income, profits and gain could not properly be deduced therefrom - held, yes." In view of the above discussion and the ratio of the cited case laws, it is held that the AO was not justified in arbitrarily treating the value of quantitative shortage based on mere arithmetical working as unexplained income u/s 68 without establishing any patent material defects lin the method of accounting or the book results of the appellant company. Accordingly, the addition made by the AO was unwarranted and is directed to delete the addition of Rs.4,39,92,200/-. This ground is allowed".*

10. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted on behalf of the assessee before the Id. CIT(Appeals) as well as before us, only final production of 76,01,309 Kgs. was considered by the Assessing Officer to arrive at the conclusion that the actual yield was less than the standard

yield of 84% and the closing WIP of 5,79,604 Kgs. which also involved the consumption of raw material was completely ignored by the Assessing Officer. The Id. Counsel for the assessee has contended that this vital factor, however, was rightly appreciated by the Id. CIT(Appeals) and on such appreciation, he rightly deleted the addition made by the Assessing Officer after having found that the yield was normal. However, as rightly pointed out by the Id. D.R. in this regard, the Closing WIP alone cannot be taken into consideration for determining the actual yield and it is only the difference of the Closing WIP and Opening WIP that has to be considered as the increase in WIP alone will require consumption of raw material during the year under consideration. Moreover, it is also observed that no explanation whatsoever was offered by the assessee in respect of the shortage in production yield as pointed out by the Assessing Officer during the course of assessment proceedings and the Assessing Officer thus never got an opportunity to verify the explanation of the assessee in respect of the low yield or shortage in production, vis-a-vis consumption of raw material from the relevant record. Keeping in view all these facts of the case, we consider it fair and proper and in the interest of justice to restore this issue to the file of the Assessing Officer for deciding the same afresh after giving the assessee proper and sufficient opportunity of being heard and after verifying the working furnished by the assessee while explaining the low yield or shortage in production. Ground No. 1 of the revenue's appeal is accordingly treated as allowed for statistical purposes.

11. As regards Ground No. 2 of the revenue's appeal, it is observed that the issue involved therein relating to the deletion by the Id. CIT(Appeals) of the disallowance of Rs.6,25,576/- made by the Assessing Officer on account of belated payment of employees' contribution towards P.F. and ESI is squarely covered in favour of the assessee, inter alia, by the decision of the Hon'ble Calcutta High Court in the case of Vijay Shree Limited (ITAT 245 of 2011 dated 06.09.2011), wherein it was held that

delayed payment of employees contribution towards P.F. cannot be disallowed under section 43B if the same is deposited before the due date of filing of the return of income. Respectfully following the said decision of the Hon'ble Jurisdictional High Court, we uphold the impugned order of the Id. CIT(Appeals) giving relief to the assessee on this issue and dismiss Ground No. 2 of the Revenue's appeal.

**12. In the result, the appeal of the assessee is treated as allowed for statistical purposes, while the appeal of the Revenue is treated as partly allowed for statistical purposes.**

Order pronounced in the open Court on April 12, 2019.

**Sd/-**  
**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**Sd/-**  
**(P M. Jagtap)**  
**Vice President (KZ)**

***Kolkata, the 12<sup>th</sup> day of April, 2019***

- Copies to :*
- (1) M/s. Lalbaba Seamless Tubes Pvt. Limited,  
13A, Rangers Club, Govt. Place East, Kolkata-700 069*
  - (2) Deputy Commissioner of Income Tax,  
Circle-3(1), Kolkata, Aayakar Bhawan  
P-7, Chowringhee Square, Kolkata-700 069*
  - (3) Commissioner of Income Tax (Appeals)-1, Kolkata,*
  - (4) Commissioner of Income Tax- ,*
  - (5) The Departmental Representative*
  - (6) Guard File*

*By order*

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

***Laha/Sr. P.S.***