

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"B" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2346/Mum./2023**

**(Assessment Year : 2011-12)**

Barcelona Mercantile Company Pvt. Ltd.

A/3 & B/2, Damodar Krupa

Above Ashray Hotel, Liberty Garden

Malad (West), Mumbai 400 064

PAN – AACCB6940M

..... Appellant

v/s

Income Tax Officer

Ward-12(1)(3), Mumbai

..... Respondent

Assessee by : Shri Sanjay N. Kapadiaa

Revenue by : Shri Ashok Kumar Ambastha

Date of Hearing – 26/09/2023

Date of Order – 23/10/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 15/06/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2011-12.

2. In this appeal, the assessee has raised the following grounds:-

"1. REOPENING OF THE ASSESSMENT U/S 148 IS BAD IN LAW:

*On the facts and in the circumstances of the case, the Appellant submits that Hon. Commissioner of Income Tax (Appeals) (Hon.CITA) erred in upholding the reopening of the assessment u/s 148 as valid.*

*The Appellant submits that the reopening of assessment u/s 148 be treated as bad in law and consequently the assessment order passed by the assessing officer u/s 143(3) r.w.s.147 vide order dated 28/12/2018 be treated as bad in law and be quashed.*

**2. RELIANCE PLACED ON DECISION OF DCIT M/S LEENA POWER TECH ENGINEERS PVT LTD REPORTED IN (2021) 130 TAXNABB 341(MUM)**

*On the facts and in the circumstances of the case, the Appellant submits that the Hon.CIT(A) erred in treating the facts of the case in case of the Appellant vis-à-vis the addition of Rs.1,50,00,000/- made by the assessing officer u/s 68 similar to the facts of the case in the decision of DCIT M/S Leena Power Tech Engineers Pvt Ltd reported in (2021) 130 Taxman 341(Mum) and upheld the addition of Rs.1,50,00,000/- made by the assessing officer u/s 68 relying on the said decision.*

*On the facts and in the circumstance of the case the Appellant submits that the facts of the case of the Appellant vis-à-vis the addition of Rs.1,50,00,000/- made u/s 68 are very different from the facts of case in the decision of Leena Power Tech Engineers Pvt Ltd and the Appellant further submits that the Hon.CIT(A) erred in applying the ration laid down in the aforesaid decision of Leena Power Tech Engineers Pvt Ltd and upholding the addition made by the assessing officer u/s 68.*

*The Appellant submits that the ration laid down in the decision of Leena Power Tech Engineers Pvt Ltd not be applied in the case of the Appellant and the addition upheld by Hon.CITA relying on the said decision by deleted.*

**3. DECISION OF SUPER GOLD PROPERTIES LTD RELIED UPON NOT CONSIDERED.**

*On the facts and in the circumstances of the case, the Appellant submits that the Hon.CIT(A) erred in not considering the decision in case of Hon. ITAT, Mumbai G Bench in case of ITO M/s Super Gold Properties Ltd in ITA No. 178/M/200 dated 19/10/2020, on which the Appellant relied in the Appellate proceedings.*

*The Appellant submits that ratio laid down in this case be considered in case of the Appellant because Hon. ITAT Mumbai has rejected the appeal filed by the revenue in respect of deletion of the addition in respect of amount received by the said assessee from M/s Minaxi Suppliers Ltd.*

*On the facts and in the circumstance of the case the Appellant submits that the facts of the case of the Appellant vis-à-vis the addition of Rs.1,50,00,000/- made u/s 68 are very different from the facts of case in the decision of Leena Power Tech Engineers Pvt Ltd and the Appellant further submits that the Hon.CIT(A) erred in applying the ration laid down in the aforesaid decision of Leena Power Tech Engineers Pvt Ltd and upholding the addition made by the assessing officer u/s 68.*

*The Appellant submits that the ration laid down in the decision of Leena Power Tech Engineers Pvt Ltd not be applied in the case of the Appellant and the addition upheld by Hon.CITA relying on the said decision by deleted.*

3. DECISION OF SUPER GOLD PROPERTIES LTD RELIED UPON NOT CONSIDERED.

*On the facts and in the circumstances of the case, the Appellant submits that the Hon.CIT(A) erred in not considering the decision in case of Hon. ITAT, Mumbai G Bench in case of ITO M/s Super Gold Properties Ltd in ITA No. 178/M/200 dated 19/10/2020, on which the Appellant relied in the Appellate proceedings. The Appellant submits that ratio laid down in this case be considered in case of the Appellant because Hon. ITAT Mumbai has rejected the appeal filed by the revenue in respect of deletion of the addition in respect of amount received by the said assessee from M/s Minaxi Suppliers Ltd.*

*The Appellant submits the facts of case of the Appellant is similar to the case of Super Gold Properties Ltd and ratio laid down in the said case be applied to the case of the Appellant and relying on the said decision the addition made by the assessing officer and upheld by the Hon. CIT(A) be deleted.*

4. ADDITION OF Rs.1,50,00,000/- MADE U/S 68 BE DELETED.

*On the facts and in the circumstances of the case the Appellant submits that the Hon. CITA erred in confirming impugned addition of Rs. 1,50,00,000 made u/s 68 of The Income Tax Act, 1961 by the learned Assessing Officer.*

*On the facts and in the circumstances of the case the Appellant Further submits that the Appellant has fully discharged its onus to prove identity, genuine and credit worthiness about amount of Rs.1,50,00,000 received from Minaxi Suppliers Ltd by submitting various details and documents in the assessment proceedings and the Appellant proceedings.*

*The Appellant submits that the Hon.CITA has erred in not considering details and documents filed by the Appellant before the assessment proceedings and Appellate proceedings to discharge its onus to prove identity, genuine and credit worthiness and treated the same as not genuine without bringing forth any deficiency in the details and documents filed by the Appellant.*

*The Appellant submits that amount received is genuine and the addition of Rs. 1,50,00,000 made by the assessing officer u/s 68 and upheld by the Hon. CIT(A) be deleted.*

5. TREATING MINAXI SUPPLIERS PVT LTD (MSPL) AS SHEEL COMPANY.

*On the facts and in the circumstance of the case the Appellant submits that the learned assessing officer erred in treating MSPL as a shell company and Hon.CIT(A) erred in upholding the decision of the assessing officer.*

*The Appellant submits that MSPL not to be treated as shell company.*

6. PROVING OF SOURCE OF SOURCE AMOUNT RECEIVED u/s 68.

*On the facts and in the circumstances of the case the Appellant submits that it has discharged its entire onus to prove identity, genuine and credit worthiness in respect of amount of Rs.1,50,00,000/- received form Minaxi Supplier Pvt Ltd and the Appellant submits that the provisions relating to proving source of source u/s 68 are applicable with effect from A.Y. 2013-14 and therefore*

*Appellant submits that it is not required to prove source of source once the onus of proving identity, genuine and credit worthiness is discharged.*

*The Appellant submits that the addition of Rs.1,50,00,000/- made by the assessing officer u/s 68 for the reason that source of source not proved by the Appellant and upheld by the Hon.CITA be deleted.*

**7. JOINT VENTURE AGREEMENT WITH MSPL BE CONSIDERED:**

*On the facts and in the circumstance of the case, the Appellant submitted that the assessing officer has on the basis of surmise and assumption treated the amount received from MSPL as per the joint venture agreement as unexplained.*

*The Appellant submits that the joint venture agreement between the Appellant & MSPL considered for verifying authenticity of transaction and not be ignored on the basis of surmise and assumption.*

*8. The Appellant prays leave to add, to amend, to modify, to delete, any of the grounds of appeal or further grounds of appeal."*

3. The brief facts of the case as emanating from the record are: For the year under consideration, the assessee filed its return of income on 24/09/2011, declaring a total income of Rs.7,59,729. The return filed by the assessee was processed under section 143(1) of the Act. Subsequently, information was received from DDIT (Investigation), Unit-2(1), Kolkata that the assessee is the beneficiary of circuitous transactions of cash deposit, whereby its unaccounted money to the tune of Rs.1.50 crore has been brought back into its bank account using banking channel after layering of funds through bank accounts of non-existing entities and shell companies. Accordingly, on the basis of aforesaid information, proceedings under section 147 of the Act were initiated and notice under section 148 of the Act was issued on 26/03/2018. In response to the aforesaid notice, the assessee filed the return of income on 18/04/2018, declaring a total income of Rs.7,59,792. During the reassessment proceedings, the assessee was asked to explain as to why the amount of Rs.1.50 crore received from M/s Minaxi Suppliers

Private Limited should not be treated as unexplained cash credit under section 68 of the Act and added to its total income. The assessee was asked to produce copy of the return of income, balance sheet, audit report, etc. of M/s Minaxi Suppliers Private Limited along with explaining the money received from the said party. The assessee was also asked to produce the copy of the joint venture agreement and details of the project undertaken with the above party as per the joint venture. In response to the aforesaid notice, the assessee filed copy of return of income, audited accounts, and the director/auditor's report. The assessee also submitted that M/s. Minaxi Suppliers Private Limited was an incorporated entity duly registered under the Companies Act, 1956, and was filing its return of income regularly. It was further submitted that the assessee entered into a joint venture agreement with M/s. Minaxi Suppliers Private Limited and had received Rs.1.50 crore. The assessee also submitted a copy of assessment orders in the case of M/s. Minaxi Suppliers Private Limited for the assessment years 2010-11 and 2012-13.

4. The Assessing Officer ("AO") vide order dated 28/12/2018, passed under section 143(3) read with section 147 did not agree with the submissions of the assessee and held that even though the assessee claims that money has been received from M/s. Minaxi Suppliers Private Limited towards the joint venture, however, no documentary evidence namely copy of the agreement, Memorandum of Understanding, etc. has been submitted by the assessee to substantiate its claim. The AO further held that there is no doubt that the assessee had used M/s. Minaxi Suppliers Private Limited as a conduit to introduce its unaccounted income into its books of account under

the garb of advance received for the joint venture. It was further held that the profit and loss account of the assessee does not show any joint venture activity carried out by the assessee company. Accordingly, the AO disallowed the sum of Rs.1.50 crore received by the assessee by treating the same as unexplained cash credit under section 68 of the Act.

5. The learned CIT(A), vide impugned order, upheld the invocation of proceedings under section 147 of the Act and dismissed the appeal filed by the assessee on merits by placing reliance upon the decision of the coordinate bench of the Tribunal in DCIT v/s Leena Power Tech Engineers Private Limited, [2021] 130 taxmann.com 341 and held that the assessee has used the layers to bring the credit of Rs.1.50 crore to its books of accounts in the name of joint venture investment. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as under:-

*"6.5.4 The above decision is rendered on the same facts where the same layers of transactions were utilised to bring the unaccounted to books as genuine transactions. The appellant has also used the same layers to bring the credit of Rs.1,50,00,000 to his books of accounts in the name Joint Venture Investment. The AO has brought out in the assessment order that the transactions were layered and camouflaged to give the colour of genuineness and has concluded the ultimate beneficiary of the transaction is the appellant. The onus of proving the genuineness does not shift to the AO when these layers are unmasked. The appellant needs to prove that these transactions are genuine beyond doubt and the appellant has not proved the genuineness of the transaction to the satisfaction of the AO and the gamut of transactions show that the ultimate beneficiary is the appellant. Thus, relying on the decision of the Hon'ble ITAT DCIT vs Leena Power Tech Engineers Pvt.Ltd reported in [2021] 130 taxmann.com 341, this appellate authority is of the opinion that there is no need to interfere with the addition made by the Assessing Officer."*

Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. On the basis of the information received from

Investigation Wing, Kolkata that the assessee is a beneficiary of circuitous transaction of cash deposits through various layers and bank accounts and has received Rs.1.50 crore of its unaccounted money after layering of funds through bank channels of various non-existing and shell companies, reassessment proceedings were initiated under section 147 of the Act in the case of the assessee. It is undisputed that the original return of income filed by the assessee was merely processed under section 143(1) of the Act and there was no scrutiny assessment of the return filed by the assessee and its books of accounts. Further, the only data available with the AO was the data provided along with the income tax return. Therefore, we are of the considered view that the information received subsequently from the Investigation Wing, Kolkata constitutes new and tangible material for initiating the reassessment proceedings in the case of the assessee, and on the basis of the aforesaid information, the AO initiated proceedings under section 147 of the Act and issued a notice under section 148 of the Act. In ACIT v. Rajesh Jhaveri Stock Brokers (P.) Ltd, [2007] 291 ITR 500 (SC), the Hon'ble Supreme Court observed as under:

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

*was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction ITO v. Selected Dalurband Coal Co. (P.) Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. v. ITO [1999] 236 ITR 34 (SC)."*

7. Therefore, if there is relevant material on the basis of which a reasonable person can form a requisite belief that income chargeable to tax has escaped assessment, then proceedings under section 147 of the Act can be validly initiated. In the present case, as noted above, on the basis of information received from the Investigation Wing, reassessment proceedings in the case of the assessee were initiated. Further, it is also well settled that the sufficiency or correctness of the material is not a thing to be considered at the stage of recording the reasons. As a result, we find no infirmity in the reassessment proceedings initiated by the AO under section 147 of the Act, and the same are upheld.

8. On the merits, it is the plea of the assessee that the sum of Rs.1.50 crore was received towards the joint venture contribution. In this regard, the assessee has also placed on record an affidavit of the Director of M/s. Minaxi Suppliers Private Limited, forming part of the paper book from pages 20-23, wherein he admitted that the sum of Rs.1.50 crore was paid to the assessee through RTGS for joint venture and the said sum was paid from own funds and not from borrowed funds. In order to substantiate the identity of the creditor, the assessee has placed on record the assessment orders passed under section 143(3) of the Act in the case of M/s Minaxi Suppliers Private Limited for the assessment years 2010-11 and 2012-13. Thus, it is the claim of the assessee that the said entity is regularly assessed to tax. In order to



substantiate the creditworthiness of M/s. Minaxi Suppliers Private Limited, the audited balance sheet, profit and loss account of M/s. Minaxi Suppliers Private Limited for the assessment year 2011-12 has been placed on record by the assessee from pages 3-14 of the paper book. The assessee also submitted that the aforesaid sum of Rs.1.50 crore was subsequently repaid to M/s. Minaxi Suppliers Private Limited in the financial year 2021-22 and in this regard has placed on record the bank statement reflecting the payment of Rs.1.50 crore in three bank transactions. On the contrary, it is the plea of the Revenue that the assessee has brought back its own unaccounted money through various layers and bank accounts of non-existing and shell companies.

9. From the perusal of the record, we find that during the year under consideration, the assessee availed an unsecured loan of Rs.6.20 crore, as noted by the AO on page 5 of the assessment order. However, out of the aforesaid loan, it is undisputed that the Revenue has only made an addition of Rs.1.50 crore received from M/s. Minaxi Suppliers Private Limited. Further from the audited financials of M/s. Minaxi Suppliers Private Limited, we find that investments was decreased from Rs.61,50,83,914 (as on 01/04/2010) to Rs.10 lakh (as on 31/03/2011). We find that in ITO v/s Nextgen Construction Private Limited, in ITA No.3593/Mum./2019, for the assessment year 2011-12, the taxpayer received the money from M/s. Minaxi Suppliers Private Limited, which was treated as unexplained cash credit in its hands under section 68 of the Act on the basis of similar allegations as are made in the present case. While deciding the issue in favour of the taxpayer, after dealing

with similar allegations, the coordinate bench of the Tribunal, vide order dated 25/06/2020, observed as under:-

*"5.1 Upon due consideration of rival submissions and material on record, we find that as per the provisions of Section 68 of the Income Tax Act, 1961, where any sum is found credited in the assessee's books and assessee offers no explanation about the nature and source thereof or the explanation furnished is found to be unsatisfactory, the sum so credited may be charged to Income-Tax as the income of the assessee of that previous year. A proviso has been inserted to the said section by Finance Act, 2012 w.e.f. 01/04/2013 to provide that where the assessee is a company and the sum so credited consists of share application money, share capital, share premium etc., the explanation furnished by the assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded also offers an explanation about nature and source of sum so credited and such explanation is found to be satisfactory. However, this proviso is applicable only from AY 2013-14 and the same is not retrospective in nature as held by Hon'ble Bombay High Court in the case of CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]. The said position has also been reiterated by Hon'ble Bombay High Court in its recent decision titled as Gaurav Triyugi Singh V/s ITO (ITA No.1750 of 207, dated 22/01/2020) which also consider its earlier decision of Pr.CIT V/s Veedhata Towers Pvt. Ltd. (2018 403 ITR 415). More pertinently, the said proviso is not, at all, applicable in case of unsecured loans or deposits, which is the case of the assessee.*

*5.2 It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders / investors to advance such monies and genuineness of the transactions. Once these three ingredients are fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of Lovely Exports P. Ltd. [319 ITR 5], dismissing revenue's appeal, observed as under:-*

*2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment. 3. Subject to the above, Special Leave Petition is dismissed.*

*The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272] & subsequently in CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]. The Hon'ble Delhi High Court followed the said decision in Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84] against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court which is reported at*

107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72] against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court which is reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47] against which revenue's Special Leave Petition has been dismissed by Hon'ble Supreme Court on 18/02/2019 which is reported at 103 Taxmann.com 435. Similar is the recent decision of Hon'ble Bombay High Court in Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020) which has been rendered after considering the principles laid down by Hon'ble Supreme Court in its recent decision titled as Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161].

5.3 Keeping in mind the aforesaid legal position, we find that the assessee, in support of the stated transactions, furnished following documentary evidences with respect to M/s MSPL during assessment proceedings: -

- (i) Copy of ITR for A.Y.2011-12 showing returned income at NIL, filed on 30-09-2011;
- (ii) Copy of Directors Report, Auditors Report, Balance Sheet as at 31-03-2011; Profit and Loss Account for the year ending 31-03-2011 alongwith few schedules;
- (iii) Confirmation of ledger account of the assessee as appearing in the books of Minaxi Suppliers Pvt. Ltd. for the year ending 31-03-2011 showing payments on various dates between May and October 2010 and amount outstanding as at 31-03-2011 at Rs.10,20,00,000.
- (iv) Copy of assessment orders u/s.143(3)
  - a. dated 26-03-2013 for A.Y.2010-11 assessing total income at Rs.8,23,220 and
  - b. dated 11 -02-2015 for A.Y.2012-13 assessing total income at Rs.1,32,500.
- (v) Company master Data showing details of Minaxi Suppliers P. Ltd., showing Jashmin Ramesh Bhayani and Sagar Pankaj Bhayani as its directors

The Ld. AO, in its findings, has accepted the fact that the source of extending the loan by M/s MSPL was liquidation of investment in unquoted shares. Therefore, upon perusal of these documents, it could be said that the assessee had discharged the stated primary onus of Sec.68. It is pertinent to note that the assessee has produced copy of assessment order passed by revenue in the case of M/s MSPL in scrutiny assessment u/s 143(3) for AYs 2010-11 & 2012-13 which would lead to inevitable conclusion that the said entity was a taxable entity and regularly assessed to tax. In both the years, returned income of M/s MSPL has substantially been accepted by the revenue.

5.4 The perusal of assessee's financial statements, for the year, would show that the assessee has received unsecured loans not only from M/s MSPL but also from various other entities. The aggregate of such loans accepted by the assessee is 26.26 Crores at year-end which would show that impugned transactions are not isolated transactions but regularly carried out by the assessee during the course of its business and a part of which has already been accepted by the revenue.

5.5 Undisputedly, the amount received from M/s MSPL was through banking channels. There is no allegation of immediate cash deposit in the bank account of M/s MSPL before granting loans to the assessee. In fact, it is admitted position by Ld.AO that the unsecured loans were sourced by M/s MSPL by

liquidating the investment in unquote shares. The said fact has already been noted by us in preceding para 3.8 of the order.

5.6 The Ld.CIT-DR cited the decision of Hon'ble High Court of Delhi in CIT V/s Navodaya Castles Pvt. Ltd. (367 ITR 306 25/08/2014). However, we find the same to be factually distinguishable since in that case, the assessment order specifically records that there were huge regular cash deposits and thereafter pay order / cheques were issued to the respondent assessee. The same is not the case here since Ld. Assessing Officer records a fact that loans were sourced by liquidating the unquoted investments.

5.7 The case law of Hon'ble Delhi High Court in the case of CIT V/s Jansampark Advertising & Marketing Pvt. Ltd. [2015 56 Taxmann.com 286], would also not apply since upon perusal of para-41 of the judgment, it is quite discernible that the assessee had come up with the proof of identity of some of the entities in question but failed to establish the genuineness and creditworthiness of the transactions. Therefore, the matter was set aside by Hon'ble Court to the file of Ld. CIT(A) for fresh consideration / adjudication. The same is not the case here since the assessee has filed sufficient documentary evidences to establish the fulfillment of three primary ingredients of Sec. 68.

5.8 The case law of Hon'ble Supreme Court in Pr.CIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161] has already been considered by Hon'ble Bombay High Court in its recent decision titled as Pr. CIT V/s Ami Industries (India) Pvt. Ltd. [ITA No. 1231 of 2017, dated 29/01/2020) and after considering the same, Hon'ble Court has taken the view favorable to the assessee. The relevant observations were as under: -

10. Mr. Suresh Kumar, learned standing counsel, revenue has taken us through the assessment order and submits therefrom that it cannot be said that assessee had discharged the burden to prove credit worthiness of the creditors. His further contention is that the assessee is also required to prove the source of the source. In this connection, he has placed reliance on a decision of the Supreme Court in Pr. CIT Vs. NRA Iron & Steel Pvt Ltd. He, therefore, submits that the finding returned by the Tribunal is wholly erroneous and requires to be interfered with by this Court.

11. Per contra, Mr. Padvekar, learned counsel for the respondent submits that from the facts and circumstances of the case, it is quite evident that assessee had discharged its burden to prove identity of the creditors, genuineness of the transactions and credit worthiness of the creditors. He submits that the legal position is very clear in as much as assessee is only required to explain the source and not source of the source. Decision of the Supreme Court in NRA Iron & Steel P Ltd (supra) is not the case law for the aforesaid proposition. In fact, the said decision nowhere states that assessee is required to prove source of the source.

11.1. Referring to the orders passed by the authorities below, Mr. Padvekar submits that in the present case, the investigation wing of the department had carried out detailed investigation at Kolkata and found the source of the credit to be genuine. This report of the investigation wing was not taken into consideration by the Assessing Officer. Therefore, lower appellate authorities were justified in deleting the additions made by the Assessing Officer. Being a finding of fact, no substantial question of law arises in the appeal. Therefore, the appeal should be dismissed.

12. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record.

13. Section 68 of the Act deals with cash credits. As per Section 68, where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year. Simply put, the section provides that if there is any cash credit disclosed by the assessee in his return of income for the previous year under consideration and the assessee offers no explanation for the same or if the assessee offers explanation which the Assessing Officer finds to be not satisfactory, then the said amount is to be added to the income of the assessee to be charged to income tax for the corresponding assessment year.

14. Section 68 of the Act has received considerable judicial attention through various pronouncements of the Courts. It is now well settled that under Section 68 of the Act, the assessee is required to prove identity of the creditor; genuineness of the transaction; and credit worthiness of the creditor. In fact, in *NRA Iron & Steel (P) Ltd (supra)*, Supreme Court surveyed the relevant judgments and culled out the following principles:

"11. The principles which emerge where sums of money are credited as Share Capital/Premium are:

i. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.

ii. The Assessing Officer is duty bound to investigate the credit-worthiness of the creditor / subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders. iii. If the inquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established.

In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

15. It is also a settled proposition that assessee is not required to prove source of source. In fact, this position has been clarified by us in the recent decision in *Gaurav Triyugi Singh Vs. Income Tax Officer-24(3)(1)*.

16. Having noted the above, we may now advert to the orders passed by the authorities below.

17. In so far order passed by the Assessing Officer is concerned, he came to the conclusion that the three companies who provided share application money to the assessee were mere entities on paper without proper addresses. The three companies had no funds of their own and that the companies had not responded to the letters written to them which could have established their credit worthiness. In that view of the matter, Assessing Officer took the view that funds aggregating Rs. 34 Crores introduced in the return of income in the garb of share application money was money from unexplained source and added the same to the income of the assessee as unexplained cash credit under Section 68 of the Act.

18. In the first appellate proceedings, it was held that assessee had produced sufficient evidence in support of proof of identity of the creditors and confirmation of transactions by many documents, such as, share application form etc. First appellate authority also noted that there was no requirement under Section 68 of the Act to explain source of source. It was not necessary that share application money should be invested out of taxable income only. It may be brought out of borrowed funds. It was further held that nonresponding to notice would not ipso facto mean that the creditors had no credit worthiness. In such circumstances, the first appellate authority held that where all material evidence in support of explanation of credits in terms of identity, genuineness of the transaction and creditworthiness of the creditors were available, without any infirmity in such evidence and the explanation required under Section 68 of the Act having been discharged, Assessing Officer was not justified in making the additions. Therefore, the additions were deleted.

19. In appeal, Tribunal noted that before the Assessing Officer, assessee had submitted the following documents of the three creditors:

- a) PAN number of the companies;
- b) Copies of Income Tax return filed by these three companies for assessment year 2010- 11;
- c) Confirmation Letter in respect of share application money paid by them; and
- d) Copy of Bank Statement through which cheques were issued.

20. Tribunal noted that Assessing Officer had referred the matter to the investigation wing of the department at Kolkata for making inquiries into the three creditors from whom share application money was received. Though report from the investigation wing was received, Tribunal noted that the same was not considered by the Assessing Officer despite mentioning of the same in the assessment order, besides not providing a copy of the same to the assessee. In the report by the investigation wing, it was mentioned that the companies were in existence and had filed income tax returns for the previous year under consideration but the Assessing Officer recorded that these creditors had very meager income as disclosed in their returns of income and therefore, doubted credit worthiness of the three creditors. Finally, Tribunal held as under:

"5.7 As per the provisions of Section 68 of the Act, for any cash credit appearing in the books of assessee, the assessee is required to prove the following(a) Identity of the creditor (b) Genuineness of the transaction (c) Credit-worthiness of the party

(i) In this case, the assessee has already proved the identity of the share applicant by furnishing their PAN, copy of IT return filed for asst. year 2010-11.

(ii) Regarding the genuineness of the transaction, assessee has already filed the copy of the bank account of these three share applicants from which the share application money was paid and the copy of account of the assessee in which the said amount was deposited, which was received by RTGS.

(iii) Regarding credit-worthiness of the party, it has been proved from the bank account of these three companies that they had the funds to make payment for share application money and copy of resolution passed in the meeting of their Board of Directors.

(iv) Regarding source of the source, Assessing Officer has already made enquiries through the DDI (Investigation), Kolkata and collected all the materials required which proved the source of the source, though as per settled legal position on this issue, assessee need not to prove the source of the source.

(v) Assessing Officer has not brought any cogent material or evidence on record to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represent company's own income from undisclosed sources.

Accordingly, no addition can be made u/s.68 of the Act. In view of above reasoned factual finding of CIT(A) needs no interference from our side. We uphold the same."

21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

22. In NRA Iron & Steel (P) Ltd (supra), the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The field report revealed that the shareholders were either non-existent or lacked credit-worthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.

21. Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the transactions and creditworthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.

22. Under these circumstances, we find no error or infirmity in the view taken by the Tribunal. No question of law, much less any substantial question of law, arises from the order of the Tribunal. Consequently, the appeal is dismissed. However, there shall be no order as to cost.

5.9 Considering the entirety of facts and circumstances, we are of the considered opinion that the assessee has discharged the primary onus to demonstrate fulfilment of primary ingredients of Sec.68 and it was incumbent upon revenue to dislodge the assessee's claim by bringing on record, cogent material to establish that the assessee's unaccounted money was routed in its books of account in the garb of unsecured loans. However, we are unable to find any such material except for the fact that additions were made merely on suspicious, conjectures and surmises. Therefore, no infirmity could be found,

*in the impugned order, in this regard. We confirm the appellate order. Resultantly, the revenue's appeal stands dismissed."*

10. We find that additions on the basis of similar allegations also came for consideration in another decision in ITO v/s Supergold Properties Private Limited, in ITA No.177-178/Mum./2020, for the assessment year 2011-12, wherein the addition made under section 68 was deleted by the coordinate bench of the Tribunal vide order dated 19/10/2020. It is evident from para 6.5.1 of the impugned order that the aforesaid decision in Supergold Properties Private Limited (supra) was specifically relied upon by the assessee before the learned CIT(A), however without distinguishing the same, the learned CIT(A) dismissed the appeal filed by the assessee. On the other hand, the learned CIT(A), placed reliance upon another decision of the coordinate Bench of the Tribunal in Leena Power Tech Engineers Ltd. (supra). To distinguish the aforesaid decision, the assessee furnished the following distinction on the facts and merits of its case and in Leena Power Tech Engineers Ltd. (supra):-

<i>Sr. No.</i>	<i>Issues &amp; Particulars</i>	<i>In the case of Appellant</i>	<i>In the case of Leena Power Tech Engineers Pvt. Ltd. (130 taxmann.com 341)</i>
1.	<i>Type of Business</i>	<i>Company engaged in the business of joint venture and real estate developments</i>	<i>Company is an investment company.</i>
2.	<i>Nature of credits in the books</i>	<i>Amount received was for joint venture participation in form of advance from Minaxi Suppliers Ltd.</i>	<i>Amount received was towards share application money with huge premium from various companies.</i>
3.	<i>Clearing of balance</i>	<i>The advance received was returned back to the concerned party as evident from copy of bank statements.</i>	<i>No such returning of amount received was carried out since it was a share capital.</i>



4.	<i>Identity, Genuineness and creditworthiness</i>	<i>The appellant filed several documents to prove identity, genuineness and creditworthiness such as PAN, bank statements, audited balance sheet, confirmation letters and affidavit etc. As enlisted on page 3 of CIT(A)'s order.</i>	<i>In absence of documentary evidences the criteria of identity, genuineness and creditworthiness could not be proved by the said assessee.</i>
5.	<i>Documents of party</i>	<i>The appellant filed copy of assessment orders, balance sheet, etc., of Minaxi Suppliers Ltd.</i>	<i>No such documents were made available by the assessee.</i>
6.	<i>Covered by other ITAT orders</i>	<i>In the case of Goldcity Properties Pvt. Ltd. v/s PCIT, (ITA no.2179/Mum./2019) and ITO v/s M/s. Super Gold Properties Ltd. (ITA no.178/Mum./2020) the Hon'ble ITAT have accepted identity creditworthiness and genuineness of M/s. Minaxi Suppliers Ltd.</i>	<i>No such contention and submissions were made before the Hon'ble Bench.</i>

11. However, the learned DR could neither bring any material on record to controvert the findings of the coordinate bench of the Tribunal rendered in a similar factual matrix in Nextgen Construction Private Limited (supra) and Supergold Properties Private Limited (supra) nor could bring any material on record to controvert the aforesaid distinction drawn by the assessee. Therefore, we are of the considered view that the learned CIT(A) erred in not following the decisions rendered in a similar factual matrix in Nextgen Construction Private Limited (supra) and Supergold Properties Private Limited (supra). Accordingly, respectfully following the aforesaid decisions, the

impugned order passed by the learned CIT(A) is set aside and the addition made under section 68 of the Act is directed to be deleted.

12. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 23/10/2023

**Sd/-**  
**PRASHANT MAHARISHI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 23/10/2023**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai