

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A': NEW DELHI**

**BEFORE,  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.35/Del/2022  
(ASSESSMENT YEAR 2015-16)**

Dy. CIT Central Circle-27 New Delhi	Vs.	M/s Anshika Consultants Pvt. Ltd. 305, 3 <sup>rd</sup> Floor Bhanot Corner Pamposh Enclave Greater Kailash-I New Delhi-110 048 PAN-AAACA 0423A
<b>(Appellant)</b>		<b>(Respondent)</b>

**Cross Objection No.76/Del/2023  
(ASSESSMENT YEAR 2015-16)**

M/s Anshika Consultants Pvt. Ltd. 305, 3 <sup>rd</sup> Floor Bhanot Corner Pamposh Enclave Greater Kailash-I New Delhi-110 048 PAN-AAACA 0423A	Vs.	Dy. CIT Central Circle-27 New Delhi
<b>(Cross Objector)</b>		<b>(Respondent)</b>

Appellant by	Mr. P. Praveen Sidharth, CIT-DR
Respondent by	Mr. M.P. Restogi, Advocate & Mr. Rajeev Kumar, CA

Date of Hearing	11/07/2023
Date of Pronouncement	13/09/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-31, New Delhi [“Ld. CIT(A)”, for short], dated 27/10/2021 for Assessment Year 2015-16. Grounds taken in this appeal as well as Cross Objection are as under:

**ITA No.35/Del/2022**

- “1. That on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in deleting the addition made on account of u/s 68 of Rs.9,90,00,000/-.*
- 2. That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in law and on facts on restrict the disallowance u/s 14A r.w.r 8D(2)(ii) & (iii) under normal provision of the Act and u/s 115JB of the Act.*
- 3. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.*
- 4. That the grounds of appeal are without prejudice to each other.*
- 5. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

**Cross Objection**

*That in the absence of permission from the higher authority to convert limited scrutiny selected in CASS into full scrutiny, the Assessing Officer has no jurisdiction to frame assessment u/s 143(3) of IT Act under full scrutiny and accordingly the assessment so framed by AO u/s 143(3) of IT Act is invalid and bad in law.*

2. The brief facts of the case are that the assessee filed its return declaring total income of Rs.11,62,680/- and book profit u/s 115JB of the Act at Rs. 51,35,675/-. The assessment order came to be passed on 11/10/2017 u/s 143(3) of the Act by computing the income of the assessee as under:-

<i>Total income declared</i>		11,62,675/-
<i>Add: Disallowance under Rule 8D(2)(iii)</i>		5,85,304/-
<i>Add: Disallowance under Rule 8D(2)(ii)</i>		77,08,149/-
<i>Add: addition u/s 68 of the I.T, Act, 1961 as discussed in Para 5 to 5.20 above.</i>		9,90,00,000/-
<b>Total Taxable Income</b>		10,84,56,128/-

3. As against the above said addition, the assessee preferred an appeal before the Ld. CIT(A), and the Ld. CIT(A), vide order dated 27/10/2021, deleted the addition made u/section 68 of the Act at Rs.9,90,00,000/- and restricted the disallowance u/s 14A of the Act read with Rule 8D(2)(ii) & (iii) in normal provision of the Act and u/s 115JB of the Act to Rs. 25,84,422/-.

4. Aggrieved by the order of the Ld. CIT(A), the Revenue preferred the above appeal in ITA No.35/Del/2022 and challenging the action of the A.O. in converting the 'limited scrutiny' into 'full scrutiny' and by challenging the jurisdiction to frame the assessment order

u/s 143(3) of the Act under full scrutiny, the assessee preferred the C.O. No. 76/Del/2023 before us.

5. The Ld. Departmental Representative contended that the CIT(A) erred in law and on facts in deleting the addition made u/s 68 of the Act of Rs. 9,90,00,000/-, further submitted that in respect of Orbit Contractors and Financial Pvt. Ltd., the A.O. had noted that 'no reply received from them to the notice issued u/s 136(6) of the Act nor did the assessee furnished the copy of bank statement and copy of the returns including audit report' and the CIT(A) failed to controvert the findings of the A.O. regarding the lack of capacity of the loan creditors. Further contended that the CIT(A) has not appreciated that the bank statement analyzed by the A.O. clearly shows that source of funds were not explained and the CIT(A) has erred in law and facts in restricting the disallowance u/s 14A read with 8D(2)(ii) and (iii) of the Rules under normal provisions of Act and u/s 115JB of the Act. Therefore, submitted that, the order of the CIT(A) deserves to be reversed.

6. Per contra, the Ld. Assessee's Representative submitted that the assessee not only filed confirmation, Bank Accounts, PAN but also provided the balance sheet and all the parties are enjoying high revenue and disclosed the income in crores in their respective returns and are having high net worth. Further submitted that, the addition was made by the A.O. on the ground that money routed within group companies hence not genuine, but the A.O. has not doubted the availability and source of funds in the hands of lender Companies. Relying on the findings and conclusion of the CIT(A), the Ld. Assessee's Representative submitted that the CIT(A) analyzed the credentials as well as the evidence available on record and having considering the source of sources of the loans provided which also came from the identified group Companies, rightly accepted the loans and deleted the addition made u/s 68 of the Act, therefore, submitted that the grounds of Appeal of the Revenue are devoid of merits.

7. We have heard both the parties and perused the material available on record. The assessee is a Non Banking Financial Corporation ('NBFC' for short) and one of the holding Companies of

UFLEX Ltd. during the year under consideration, the assessee had received loans from following parties:-

S. No.	Name of the Party	Cheque Details	Amount
(i)	M/s Paramic Goods Pvt. Ltd., 8/ 1, Princip Street, 3 <sup>rd</sup> Floor, Kolkata	Cheque No. 145273 dated 17.7.2014 of HDFC Bank	Rs. 4,90,00,000
(ii)	M/s Jellotic Supply Pvt. Ltd. 10A, Hospital Road, Kolkata- 700072	Cheque No. 000131 dated 26.3.2015 of HDFC Bank	Rs.2,40,00,000
(iii)	M/s Sankhuwala Commercial Pvt. Ltd., 6/3, Madan Street, Kolkata-700072	Cheque No. 000037 dated 20.2.2015 of HDFC Bank Cheque No. 000040 dated 28.3.2015 of HDFC Bank	Rs.2,00,00,000 Rs. 55,00,000
(iv)	M/s Orbital Contractor & Financiers Pvt. Ltd., 16GC Avenue, 7 <sup>th</sup> Floor, Bow Bazar, Kolkata-700072	Cheque No. 000014 dated 30.4.2014 of HDFC Bank	Rs. 5,00,000

8. The assessment has been concluded wherein the A.O. was of the opinion that since the money rotated within the Group Companies hence, the transaction is not genuine and also doubted the availability and source of funds in the hands of lender Companies. Accordingly, made addition u/s 68 of the Act to the tune of Rs. 9,90,00,000/-. In the Appeal the CIT(A) deleted the said addition in following manners:-

“11. Ground nos. 6 and 7 are pertaining to addition made u/s 68 at Rs. 9,90,00,000/- on account of unsecured loans in the names of Jellotic Supply Pvt Ltd of Rs. 2,40,00,000/-, Paramic Goods Pvt. Ltd of Rs. 4,90,00,000/-, Sankhuwala Commercial Pvt Ltd of Rs. 2,55,00,000/- and Orbital Contractors and Financiers Pvt Ltd of Rs. 5,00,000/-. The written submissions as reproduced above and also accompanying documents as well as decisions relied upon by the Ld. ARS have been carefully gone through and decision thereon is being discussed in following paragraphs.

**a) Paramic Goods Pvt Ltd.**

The appellant has shown unsecured loan of Rs. 4,90,00,000/- in the name of this company. In this regard, the AO noticed that this company was registered in Kolkata but later-on on 30.06.2017, it has been shifted to Delhi. The source of funds in the hands of this company is reserve and surplus of Rs. 53,60,06,074/- which included security premium of Rs. 48,91,50,000/- received from associate companies namely M/s Rubicon Mercantile Pvt Ltd and Meghmala Marketing Pvt Ltd, which have common directors. The return of income of the creditor shows income of Rs. 3,26,60,420/-. The AO also examined bank statement of Paramic Goods Pvt Ltd and noticed that the money received by it was transferred on the same date to the assessee. Information u/s 133(6) called for was complied with by the creditor. The Ld. ARS before the AO stated that loan taken was a genuine credit looking to the net worth of the creditor as well as profit of the current year at Rs. 3,26,60,420/-. Although the AO received confirmation u/s 133(6), but on examination of the bank account, she noticed that before issuing the cheque to the appellant of Rs. 4,90,00,000/- on 17.07.2014, the said company received credit of Rs.5,00,00,000/- on 17.07.2014 from Sungrace Buildwell Pvt Ltd, which also happens to be a group company of the Uflex Group. Since

*the credits were received from the group companies, AO noted that merely by routing the money through bank account, the credit cannot be considered genuine even though the taxes are paid by the creditors.*

*In the written submission before me, the Ld. AR has vehemently submitted that the identity of the creditor is duly proved by the Income Tax Assessment records & registration with the ROC and capacity is established by the net worth as on 31.03.2015 at Rs. 59,03,58,074/-. It was also stated that the income returned by the said creditor in A.Y. 2014-15, 2015-16 and 2016-17 was Rs.3,91,15,840/-, Rs. 3,26,60,420/- and Rs. 3,08,27,300/-, respectively. and hence in view of the various decisions of Hon'ble Courts, identity and capacity of the creditor and genuineness of the transaction was clearly proved and thus no addition was called for. The evidences furnished before the AO as well as before me have been carefully considered. Admittedly, the AO has stated that immediate source of loan given to the appellant was the loans received from a group company viz. M/s Sungrace Buildwell P. Ltd.*

*It is noticed from the bank account statement of the creditor that amount of Rs. 5,00,00,000/- was received as refund of loan given on earlier occasion by the creditor to Sungrace Buildwell Pvt. Ltd, which is a company of the Uflex group. Out of such funds of Rs. 5,00,00,000/- received on 17.07.2014 by the creditor (M/s Paramic Goods Pvt. Ltd), the creditor advanced the amount of Rs. 4,90,00,000/- to the appellant on the same date. Genuineness of this creditor company has not been in dispute, nor is there any allegation that this creditor is an entry provider or that cash was deposited at any time prior to advance of loan to the appellant. On perusal of audited financial accounts and bank statement of Paramic Goods Pvt Ltd for A.Y. 2015-16, I find substantial net worth of Rs. 59.03 Crore. The profit and loss account and*



bank statement also reflect regular business activities. Further, the appellant has paid interest @ 10% on the loan amount to the creditor and has deducted TDS thereon. The said interest income is duly disclosed in the ITR of the creditor. The company master data from the website of MCA shows the company status as "active". The creditor has disclosed huge profits in the return of income. The AO i.e. ACIT Circle-1(2), Kolkata has also completed scrutiny assessment u/s 143(3) on 02.11.2017 on the income of Rs. 3,36,98,680/- after making a disallowance u/s 14A at Rs. 10,38,264/- in the case of creditor for A.Y. 2015-16. Further, regarding the AO's observation of common directors among various companies, it is an admitted fact that all the companies under consideration, except Orbital Contractors and Financiers Pvt Ltd, are group companies of the Uflex Group and the said companies are mostly engaged in investment and financing operations. There is nothing unusual about the operations of these companies and also nothing unusual about common directors being there among various companies since these companies belong to the same group. In fact the question of genuineness of loan taken from M/s Paramic Goods Pvt Ltd. was an issue under consideration in the case of a sister concern of the appellant viz M/s A.R. Leasing Pvt Ltd. for A.Y. 2015-16 in appeal no. 277/19-20/17-18 before my predecessor and in this regard it has been held as follows in the said appellate order.

**"b) Paramie Goods Pvt Ltd.**

The appellant has shown unsecured loan of Rs. 5,54,00,000/- in the name of this company In this regard, the AO noticed that this company was also registered in Kolkata but later-on on 30.06.2017, it has been shifted to Delhi. The source of funds in the hands of this company is reserve and surplus of Rs. 53,60,06,074/- which included security premium of Rs. 48,91,50,000/- received from associates companies namely M/s Rubicon Mercantile Pvt

Ltd and Meghmala Marketing Put Ltd, which have common directors. The return of income shows income of Rs. 3,90,35,711/- The AO also examined. bank statement of Paramic Goods Pvt. Ltd and noticed that the money received was transferred on the same date to the Uflex Group of companies. Information u/s 133(6) called for was complied with by the creditor. The Ld. ARs before the AO stated that loan taken was a genuine credit looking to the net worth of the creditor as well as profit of the current year at Rs. 3,90,35,711/ Although the AO received confirmation u/s 133(6), but on examination of the bank account, she noticed that before issuing the cheques to the appellant of Rs. 44,00,000/- on 23.02.2015, Rs. 4,50,00,000/- on 25.03.2015 and Rs. 60,00,000/- on 04.04.2015 (date of credit though received in March, 2015), the said company received credit of Rs. 3,25,00,000/- on 21.02.2015, Rs. 4,50,00,000/- on 25.03.2015 and Rs. 12,00,000/- on 04.04.2015, respectively, from Uflex Ltd, Anshikha Investment Put Ltd and Modern Info Technology Pvt Ltd, the other group companies. Since the credits were received from the rroup companies, AO noted that merely by routing the money through bank account, the credit cannot be considered genuine although the taxes are paid by the creditors.

In the written submission before me, the Ld. AR has vehemently submitted that the identity of the creditor is duly proved by the Income Tax Assessment records & registration with the ROC and capacity is established by the net worth as on 31.03.2015 at Rs. 59,03,58,074/-. It was also stated that the income returned in A.Y. 2014-15, 2015-16 and 2016-17 was Rs.3,91,15,840/-, Rs. 3,26,60,420/- and Rs. 3,08,27,300/-, respectively, and hence in view of the various decisions of Hon'ble Courts, identity and capacity of the creditor and genuineness of the transaction was clearly proved and thus no addition was called for. The evidences furnished before the AO as well as before me have been carefully considered.

Admittedly, the AO has stated that immediate source of loan given to the appellant was the loans received from group companies as per the following details:

Group company	Date	Amount (in Rs.)
Flex Industries Ltd. (incorrectly mentioned as Uflex Ltd.)	21.02.2015	3,25,00,000/-
Anshika Investment Pvt. ltd.	25.03.2015	4,50,00,000/-
Modern Info Technology Pvt. ltd.	04.04.2015 (incorrectly mentioned as 04.04.2016)	1,20,00,000(incorrectly mentioned as Rs.12,00,000/-)

It is also noticed that amount of Rs. 3,25,00,000/- was refund of loan given on 15.12.2014 by the appellant to Flex Industries Ltd. Flex Industries Ltd is flagship company of this group. Anshika Investment Pvt Ltd is regularly assessed with the ACIT Central Circle 27, New Delhi and the same who assessed the appellant, has completed scrutiny assessment u/s 143(3) vide order dated 31.10.2017 without pointing out anything about the source of loan of Rs. 4,50,00,000/- given to the appellant. Modern Info Technology Pvt Ltd is also a group company and amount of Rs. 1,20,00,000/- was part refund of loan given by the appellant in earlier years. Genuineness of these companies has not been in dispute. There is also no allegation that these creditors are entry providers. On perusal of audited financial accounts and bank statement of Paramic Goods Pvt Ltd for A.Y. 2015-16, I find substantial net worth including fixed assets and a solar power plant through its subsidiary Le Samavist Energy Solutions Pvt Ltd worth Rs. 14.30 Crores. The profit and loss account and bank statement also reflect regular business activities. The creditor has disclosed huge profits

in the return of income. The AO Le ACIT Circle-1(2), Kolkata has also completed scrutiny assessment u/s 143(3) on 02.11.2017 on the income of Rs. 3,36,98,680/-

after making a disallowance u/s 14A at R 10,38,264/-in the case of creditor for A.Y. 2015-16. Under these circumstances, identity and capacity of Paramic Goods Pvt Ltd as well as genuineness of the loan transaction cannot be doubted. This view gets support from the various decisions relied upon by the Ld. AR and particularly in the following cases:

**1) PCIT Vs Hi-Tech Residency (P) Ltd (2018) 96 taxmann.com 403 (SC)**

In this case, SLP against the order of Hon'ble Delhi High Court has been dismissed wherein addition made u/s 68 was deleted since the assessee had discharged its onus of establishing identity, genuineness and creditworthiness.

**ii) SMG Estates Pvt Ltd Vs ACIT, ITA No. 1537/Del/2019,**

order dated 12.07.2019. In this case, the addition made u/s 68 has been deleted on the ground that lenders were carrying out regular business activity earning substantial profit and the loan was also repaid subsequently.

**iii) CIT Vs Apex Therm Packaging (P) Ltd (2014) 42 taxmann.com 473 (Guj**

In this case, since the assessee furnished full particulars including income tax returns, balance sheet, P&L account and confirmation etc. and the loans were received through cheques, the addition made u/s 68 was deleted.

in view of the above, I hold that appellant has duly discharged the onus cast on it within the meaning of section 68 in respect of loan received from Paramic Goods Put Ltd and accordingly the addition made on this account is directed to be deleted."

*Under these circumstances, identity and capacity of Paramic Goods Pvt Ltd as well as genuineness of the loan transaction cannot be doubted. The case laws cited by the AO have also been fully distinguished by the appellant, particularly the decision of the jurisdictional High Court in the case of Bikram Singh (Supra), in which case the loans were taken from various individuals whose identity/PAN/addresses/confirmations/sources (capacity) were not provided in most cases and also cash was deposited in the bank accounts of creditors before issuance of cheques for loans, whereas in the instant case of the appellant all necessary documentation, such as loan confirmations, certificate of incorporation, PAN number, copy of ITRS filed, balance sheet and P&L account, bank statements of creditors etc, were provided as evidence of identity, creditworthiness and genuineness of the creditor. Further, there is no finding of any cash deposited in the bank accounts of creditor prior to disbursement of loan and no adverse finding regarding identity and existence of the creditors and further no finding that the creditors were entry operators of any kind. All the loans were interest bearing loans and the related interest income is duly reflected in the ITR of the creditor companies. regarding the creditor company being a shell company on the basis of common Further, the AO's finding directors among group companies and rotation of funds among group companies, is unfounded since there is nothing unusual about common directors among group companies and also nothing unusual about funds flowing from one group concern to another without a gap since the companies in question are into the activity of financing where funds are not kept idle for long. In view of the above, I hold that appellant has duly discharged the onus cast on it within the meaning of section 68 in respect of loan received from Paramic Goods Pvt Ltd and accordingly the addition made on this account is directed to be deleted.*

**b) Jellotic Supply Pvt Ltd.**

The appellant has shown unsecured loan of Rs. 2,40,00,000/- in the name of this company. In this regard, the AO noticed that this company was also registered in Kolkata and has vide order dated 07.04.2017 been amalgamated with 24 companies. The source of funds in the hands of this company is reserve and surplus of Rs. 55,35,62,007/- which included security premium of Rs. 49,45,50,000/- received from associates companies namely M/s Rajnigandha Vincom Pvt. Ltd and Kushal Tradecom Pvt. Ltd, both of which have common directors with the appellant. The return of income shows income of Rs. 4,19,13,592/-. The AO also examined bank statement of Jellotic Supply Pvt. Ltd and noticed that the money received by it was transferred on the same date to the assessee. Information u/s 133(6) called for was complied with by the creditor. The Ld. ARS before the AO stated that loan taken was a genuine credit looking to the net worth of the creditor as well as profit of the current year at Rs. 4,19,13,592/-. Although the AO received confirmation u/s 133(6), but on examination of the bank account, she noticed that before issuing the loan cheque to the appellant, the said company received credit from Cinflex Infotech Pvt. Ltd, which also happens to be a group company of the Uflex Group. Since the credits were received from the group companies, AO noted that merely by routing the money through bank account, the credit cannot be considered genuine even though the taxes are paid by the creditors.

In the written submission before me, the Ld. AR has vehemently submitted that the identity of the creditor is duly proved by the Income Tax Assessment records & registration with the ROC and capacity is established by the net worth as on 31.03.2015 at Rs. 60.85 Crore. It was also stated that the income returned in A.Y. 2014-15, 2015-16 and 2016-17 was Rs.4,03,42,777/ Rs.

4,19,13,592/- and Rs. 4,75,57,926/-, respectively, and hence in view of the various decisions of Hon'ble Courts, identity and capacity of the creditor and genuineness of the transaction was clearly proved and thus no addition was called for. The evidences furnished before the AO as well as before me have been carefully considered. Admittedly, the AO has stated that immediate source of loan given to the appellant was the loans/repayment received from a group company

It is also noticed from relevant bank statement that amount of Rs. 4,15,00,000/- was received as refund of loan on 28.03.2015 by Jellogic Supply Pvt Ltd given on earlier occasion to Cinflex Infotech Pvt Ltd, which is a company of the Uflex group. Out of this refund of loan received from Cinflex Infotech Pvt Ltd, M/s Jellogic Supply Pvt Ltd has advanced an amount of Rs. 2,40,00,000/- to the appellant on 28.03.2015. Genuineness of this company has not been in dispute, nor is there any allegation that this creditor is an entry provider or that cash was deposited at any time prior to advance of loan to the appellant. On perusal of audited financial accounts and bank statement of Jellogic Supply Pvt Ltd for A.Y. 2015-16, I find substantial net worth of Rs. 60.85 Crore. The profit and loss account and bank statement also reflect regular business activities. Further, the appellant has paid interest @ 10% on the loan amount to the creditor and has deducted TDS thereon. The said interest income is duly disclosed in the ITR of the creditor. The current company master data from the website of MCA shows the company status as "amalgamated". The creditor has disclosed huge profits in the return of income. Further, regarding the AO's observation of common directors among various companies, it is an admitted fact that all the companies under consideration, except Orbital Contractors and Financiers Pvt. Ltd are group companies of the Uflex Group and the said companies are mostly engaged in investment and financing operations. There is nothing

*unusual about the operations of these companies and also nothing unusual about common directors being there among various companies since these companies belong to the same group. The case laws cited by the AO have also been fully distinguished by the appellant, particularly the decision of the jurisdictional High Court in the case of Bikram Singh (Supra), in which case the loans were taken from various individuals whose identity/PAN/addresses/confirmations/sources (capacity) were not provided in most cases and also cash was deposited in the bank accounts of creditors before issuance of cheques for loans, whereas in the instant case of the appellant all necessary documentation, such as loan confirmations, certificate of incorporation, PAN number, copy of ITRS filed, balance sheet and P&L account, bank statements of creditors etc, were provided as evidence of identity, creditworthiness and genuineness of the creditor. Further, there is no finding of any cash deposited in the bank accounts of creditor prior to disbursement of loan and no adverse finding regarding identity and existence of the creditors and further no finding that the creditors were entry operators of any kind. All the loans were interest bearing loans and the related interest income is duly reflected in the ITR of the creditor companies. Further, the AO's finding regarding the creditor company being a shell company on the basis of common directors among group companies and rotation of funds among group companies, is unfounded since there is nothing unusual about common directors among group companies and also nothing unusual about funds flowing from one group concern to another without a gap since the companies in question are into the activity of financing where funds are not kept idle for long. Under these circumstances, identity and capacity of Jellotic Supply Pvt Ltd as well as genuineness of the loan transaction cannot be doubted. In view of the above, I hold that appellant has duly discharged the onus cast on it within the meaning of section 68 in respect of loan*



received from Jellotic Supply Pvt. Ltd and accordingly the addition made on this account is directed to be deleted.

**C) Sankhuwala Commercial Pvt. Ltd.**

The appellant has shown unsecured loan of Rs. 2,55,00,000/- in the name of this company. In this regard, the AO noticed that this company was also registered in Kolkata and has vide order dated 07.04.2017 been amalgamated with 24 companies. The source of funds in the hands of this company is reserve and surplus of Rs. 55,65,91,371/- which included security premium of Rs. 49,23,00,000/- received from associate companies namely M/s Achinta Vincom Pvt. Ltd and Godhuli Merchants Pvt. Ltd both of which have common directors with the appellant. The return of income shows income of Rs. 4,60,11,704/-. The AO also examined bank statement of Sankhuwala Commercial Pvt. Ltd and noticed that the money received by it was transferred on the same date to the assessee. Information u/s 133(6) called for was complied with by the creditor. The Ld. ARS before the AO stated that loan taken was a genuine credit looking to the net worth of the creditor as well as profit of the current year at Rs. 4,60,11,704/-. Although the AO received confirmation u/s 133(6), but on examination of the bank account, she noticed that before issuing the loan cheques to the appellant, the said company received credit from Utech Developers Ltd and AKC Retailors Ltd which also happen to be group companies of the Uflex Group. Since the credits were received from the group companies, AO noted that merely by routing the money through bank account, the credit cannot be considered genuine even though the taxes are paid by the creditors.

In the written submission before me, the Ld. AR has vehemently submitted that the identity of the creditor is duly proved by the Income Tax Assessment records & registration with the ROC and capacity is established by the net worth as on 31.03.2015 at Rs. 61.12 Crore. It was

also stated that the income returned in A.Y. 2014-15, 2015-16 and 2016-17 was Rs. 5,27,71,610/-, Rs. 4,60,11,704/- and Rs. 4,53,13,585/- respectively, and hence in view of the various decisions of Hon'ble Courts, identity and capacity of the creditor and genuineness of the transaction was clearly proved and thus no addition was called for. The evidences furnished before the AO as well as before me have been carefully considered. Admittedly, the AO has stated that immediate source of loan given by this creditor to the appellant was the loans received from group companies named above.

It is also noticed that the credit amount of Rs. 2,00,00,000/- was refund of loan given on earlier occasion by the creditor (Sankhuwala Commercial Pvt Ltd) to M/s Utech Developers Ltd, which is a company of the Uflex group. This refund was received from M/s Utech Developers Ltd. and from this source, the amount of Rs. 2,00,00,000/- was transferred by M/s Sankhuwala Commercial Pvt Ltd to the appellant on 20.02.2015 (wrongly mentioned as 20.05.2015 by AO). Similarly, M/s Sankhuwala Commercial Pvt Ltd received repayment of Rs. 1,00,00,000/- from M/s AKC Retailors Ltd and advanced Rs. 55,00,000/- out of this to the appellant. Genuineness of this creditor company has not been in dispute, nor is there any allegation that this creditor is an entry provider or that cash was deposited at any time prior to advance of loan to the appellant. On perusal of audited financial accounts and bank statement of Sankhuwala Commercial Pvt Ltd for A.Y. 2015-16, I find substantial net worth of Rs. 61.12 Crore. The profit and loss account and bank statement also reflect regular business activities. Further, the appellant has paid interest @ 10% on the loan amount to the creditor and has deducted TDS thereon. The said interest income is duly disclosed in the ITR of the creditor. The current company master data from the website of MCA shows the company status as "amalgamated". The creditor has disclosed huge

profits in the return of income. Further, regarding the AO's observation of common directors among various companies, it is an admitted fact that all the companies under consideration, except Orbital Contractors and Financiers Pvt. Ltd are group companies of the Uflex Group and the said companies are mostly engaged in investment and financing operations. There is nothing unusual about the operations of these companies and also nothing unusual about common directors being there among various companies since these companies belong to the same group. The case laws cited by the AO have also been fully distinguished by the appellant, particularly the decision of the jurisdictional High Court in the case of Bikram Singh (Supra), in which case the loans were taken from various individuals whose identity/PAN/addresses/confirmations/sources (capacity) were not provided in most cases and also cash was deposited in the bank accounts of creditors before issuance of cheques for loans, whereas in the instant case of the appellant all necessary documentation, such as loan confirmations, certificate of incorporation, PAN number, copy of ITRS filed, balance sheet and P&L account, bank statements of creditors etc, were provided as evidence of identity, creditworthiness and genuineness of the creditor. Further, there is no finding of any cash deposited in the bank accounts of creditor prior to disbursement of loan and no adverse finding regarding identity and existence of the creditors. and further no finding that the creditors were entry operators of any kind. All the loans were interest bearing loans and the related interest income is duly reflected in the ITR of the creditor company. Further, the AO's finding regarding the creditor company being a shell company on the basis of common directors among group companies and rotation of funds among group companies, is unfounded since there is nothing unusual about common directors among group companies and also nothing unusual about funds flowing from one group concern to another without a gap since the companies in question are

into the activity of financing where funds are not kept idle for long. Under these circumstances, identity and capacity of Sankhuwala Commercial Pvt. Ltd as well as genuineness of the loan transaction cannot be doubted. In view of the above, I hold that appellant has duly discharged the onus cast on it within the meaning of section 68 in respect of loan received from Sankhuwala Commercial Pvt Ltd and accordingly the addition made on this account is directed to be deleted.

**c) M/s Orbital Contractors and Financiers Pvt. Ltd.**

The appellant has shown unsecured loan of Rs. 5,00,000/- in the name of this company. In this regard, the AO noticed that this company was also registered in Kolkata. The source of funds in the hands of this company is reserve and surplus of Rs. 34,05,17,748/-. Information u/s 133(6) called for was un- responded by the creditor. However, the appellant has furnished all necessary evidences such loan confirmation, bank statement of creditors as acknowledgment of ITRS for A.Y. 2014-15 and 2015-16, balance sheet and P&L account for year ending 31.03.2015, copy of company master data, copy of Form 16A issued for interest paid on loan received as well as the sources of the lending company. It is seen that the AO has not pursued obtaining information directly from the lender and has also not asked for the appearance of the directors of the creditor company. The Ld. ARs before the AO stated that loan taken was a genuine credit looking to the net worth of the creditor. On examination of the bank account it is noticed that before issuing the cheque of Rs. 5,00,000/- to the appellant the said company received credit of Rs. 2,00,00,000/- on 30.04.2014 from Utech Developers Ltd, which happens to be a group company of the Uflex Group. Since the credits were indirectly received from the group companies by the appellant, AO noted that merely by routing the money through bank account, the credit cannot be considered genuine even though the taxes are paid by the creditors.

*In the written submission before me, the Ld. AR has vehemently submitted that the identity of the creditor is duly proved by the Income Tax Assessment records & registration with the ROC and capacity is established by the net worth as on 31.03.2015 at Rs. 34.05 Crore. It was also stated that the income returned in A.Y. 2014-15 and 2015-16 was Rs. 2,46,96,540/- and Rs. 37,845/- respectively, and hence in view of the various decisions of Hon'ble Courts, identity and capacity of the creditor and genuineness of the transaction was clearly proved and thus no addition was called for. The evidences furnished before the AO as well as before me have been carefully considered. Admittedly, the AO has stated that immediate source of loan given to the appellant was the loans received from group companies. It is noticed that amount of Rs. 5,00,000/- was advanced by the creditor company out of an amount of Rs.2,00,00,000/-, which was explained as refund of loan given on earlier occasion by the creditor company to M/s Utech Developer Ltd, which is a company of the Uflex group. Genuineness of this creditor company has not been in dispute, nor is there any allegation that this creditor is an entry provider or that cash was deposited at any time prior to advance of loan to the appellant. On perusal of audited financial accounts and bank statement of M/s Orbital Contractors and Financiers Pvt Ltd for A.Y. 2015-16, I find substantial net worth of Rs. 34.05 Crore. The profit and loss account and bank statement also reflect regular business activities. Further, the appellant has paid interest @ 10% on the loan amount to the creditor and has deducted TDS thereon. The said interest income is duly disclosed in the ITR of the creditor. The company master data from the website of MCA shows the company status as "active". The case laws cited by the AO have also been fully distinguished by the appellant, particularly the decision of the jurisdictional High Court in the case of Bikram Singh (Supra), in which case the loans were taken from various individuals whose*

*identity/PAN/addresses/confirmations/sources (capacity) were not provided in most cases and also cash was deposited in the bank accounts of creditors before issuance of cheques for loans, whereas in the instant case of the appellant all necessary documentation, such confirmations, certificate of incorporation, PAN number, copy of ITRS filed, balance sheet and P&L account, bank statements of creditors etc, were as loan provided as evidence of identity, creditworthiness and genuineness of the creditor. Further, there is no finding of any cash deposited in the bank accounts of creditor prior to disbursement of loan and no adverse finding regarding identity and existence of the creditors and further no finding that the creditors were entry operators of any kind. All the loans were interest bearing loans and the related interest income is duly reflected in the ITR of the creditor companies. Under these circumstances, identity and capacity of M/s Orbital Contractors and Financiers Pvt. Ltd as well as genuineness of the loan transaction cannot be doubted. In view of the above, I hold that appellant has duly discharged the onus cast on it within the meaning of section 68 in respect of loan received from M/s Orbital Contractors and Financiers Pvt and accordingly the addition made on this account is directed to be deleted.*

*11.1. In view of the above, Ground No. 6 and 7 stand allowed.”*

9. It is found that the A.O. called for information u/s 136(6) of the Act from all 4 creditors and the A.O. received confirmation from M/s Paramic Good Pvt. Ltd., M/s Jellotic Supply Pvt. Ltd. and M/s Sankhuwala Commercial Pvt. Ltd. The Ld. A.O. also examined the bank statement of the Investor Companies and noticed that the

money received by it was transferred on the same date to the assessee. Apart from the same, necessary documentation such as loan confirmation, certificate of incorporation, PAN Number, Copy of ITR, Balance Sheet and P & L Accounts, Bank statement of creditors etc. were also provided as evidence of identity, creditworthiness and genuineness of the creditor. There is no finding of any cash deposited in the bank account of the creditors prior to disbursement of loan and no adverse finding recorded regarding the identity and existence of creditors and further no findings that the creditors were entry operators of any kind by the A.O. The loans were interest bearing loans and the related interest income is duly reflected in the ITR of the Creditor Companies. The A.O. without having any basis observed that the Creditor Companies are 'shell' Companies on the basis of common Directors among Group Companies and the rotation of funds/money in the Group Companies which is unfounded.

10. In so far as Orbit Contractors and Financial Pvt. Ltd. is concerned, the notice issued u/s 133(6) was not responded by the creditor. The assessee had furnished the necessary

acknowledgment of ITR for Assessment Year 2014-15 and 2015-16, balance sheet and P & L Account for the year ending 31/03/2015, the assessee had also provided copy of company master data, copy of Form 16A issued for interest paid on loan received as well as the source of the lending company. The assessee had provided loan confirmation, Certificate of incorporation and PAN Number, copy of the ITR, balance sheet and P & L Account, Bank Statement of Creditor etc. as evidence for identity, creditworthiness and genuineness of the creditor. The assessee is not required to prove the source of the investment. In this case, the assessee has proved the identity of parties and genuineness of the transaction, which are being transaction through bank. The capacity of the lender cannot be doubted since there was no allegation that the assessee has routed its own money through the investors. Further in the absence of any finding regarding cash deposited in the banks account of the creditor prior to disbursement of loan and no adverse finding regarding the identity and existence of the creditor and since all the loans were interest bearing loans and related interest income is duly reflected in the ITR of the creditor



companies, in our opinion, the CIT(A) has committed no error in deleting the addition. Accordingly, we find no merit in Ground No. 1 of the Revenue.

11. Ground No. 2 is regarding restricting the disallowance u/s 14A read with Rule 8D2 (ii) of the Rules. The Ld. A.O. while making the addition held as under:-

*"5.1 The assessee's contention on this issue cannot be accepted. The Language used in Rule SD is plain and simple. Clause (ii) of Sub-rule (2) of Rule 8D reads as follows:-*

*(iii) An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year."*

*5.2 It is an undisputed fact that at least a part of the income from investment cannot form part of total income Le. their income is exempt. Going by a plain reading of Rule SD(2)(iii) the investment made in promotee companies cannot be excluded while computing the disallowance.*

*5.3. The contention of the assessee that the purpose of investment is not to earn dividend income but to have controlling interest in the respective investee companies and the dividend income incidentally arising cannot be accepted because section 14A is applicable on all exempted income and in case of indirect expenses the method of calculation of disallowance has been provided*

*in Rule 8D. Neither in section 14A nor in Rule 8D any such exclusion of investments in promotee companies has been provided.*

*5.4 The origin of Rule 8D lies in the history of how the issue was being dealt with by various I.T. Authorities. There was clairvoyance that expenses related to exempt income should not be allowed as deduction; however the issues of apportioning the expenses towards exempt and non-exempt and income was mired in controversy. The apportioning was being done arbitrarily by various Assessing Officers. Rule 8D came to put an end to the arbitrariness that came to be associated with this disallowance. The, Act however still provides for an express satisfaction of the AO that the disallowance, if any, made by the assessee is not adequate. In the present case, the assessee has earned dividend income of Rs. 97,83,810/- Income of Rs.49,56,082/- from the interest on loan and rent of Rs.1,32,00,000/-. The other commercial activity being carried out by the assessee is sale & purchase of shares held as investment. In view of the above I am satisfied that assessee's plea that no expense was incurred towards earning the exempt income is not acceptable.*

*5.5 The primary purpose why the assessee company exists, as agreed in the submissions filed, is to hold the shares of its promotee company i.e. M/s. Uflex Ltd. The rest of the activities are secondary and the company would still be running itself even if these secondary activities are not undertaken. The manifest purpose for which the Company is alive is for holding the shares of the promotee company. Most expenses made by the Company are for fulfilling this primary purpose of existence of the Company. Taking the argument further, the income arising out of the primary activity of the assessee i.e. dividend income, is exempt U/s 10(38) of the LT. Act. Thus, there is an overt and direct link between the expenses incurred by*

the assessee and the earning of exempt income. The assessee's locus stand is therefore not correct.

5.6 Now, once it is established that there is a nexus between the expenses incurred and the income earned from investment made in promotee company, there is no reason why such investment should be excluded while computing disallowance under rule 8D. Penalty U/s 271(1)(c) is being initiated for furnishing inaccurate particulars of income.

5.7 In view of the above discussion, average amount of investment is computed as follows:-

Opening Balance Investment	533951321	
Closing Balance Investment	569955593	
	1103906914.	
Average Investment	551953457	
0.5% of Average Investments	2759767	
Total expenditures as per P & L A/c	590554	
Less: Expenses disallowed by assessee itself	18250	
Add: Deduction u/s 35D	13000	
Allowable expenses claimed by assessee	585304	
Disallowable amount u/s 14A read with Rule 8D2 (iii)	585304	
Opening balance of total assets	582505056	
Closing balance of total assets	599606059	
	1182111115	
Average assets	591055557	
Interest expenses as per P & L A/ c.	8255986	
Less: Interest on Advance Income Tax Disallowed by the assessee	1767	8254219
Proportionate interest disallowed under rule 8D2(ii)		7708149

## 6. Computation of Book Profit U/s 115JB

6.1 It is seen that the assessee has not added any disallowance u/s 14 though it has reduced exempt dividend income u/s 10 in the computation of book profit

*u/s 115JB. The Hon'ble Delhi High Court has held in case of CIT(C)-II Vs. Goetze (India) Ltd. (ITA No. 1179/2010) that in view of the specific provision given at Clause (f) of Explanation 1 to Section 115JB disallowance u/s 14A has to be added back to the book profit. Thus, the disallowance made u/s 14 A is added back to the computation of book profit as per the above provision of the Income Tax Act and in view of the above judgment of the jurisdictional High Court.”*

12. The CIT(A) restricting the disallowance made by the A.O. u/s 14A read with Rule 8(D)(2)(i) and (iii) of the IT Rules under normal provision of the Act and u/s 115JB, held as under:-

*“9.2.3. I have considered the contentions of the appellant and findings in the assessment order. As regards the interest expenditure incurred at Ra 82,54,219/-, I find that the total investment made by the appellant as on 31.03.2015 in the Non-Current Investments, being the shares of vi companies is Rs 56,99,55,593/ as against the share capital and reserves/surplus totaling to Rs. 43,85,60,985/-. Since own funds in the form of share capital & reserves/surplus are less than the investments, it is clearly established that the appellant had used borrowed funds for making the investments. Further, the AO has also recorded proper satisfaction for invoking the provisions of section 14A(2) at para 5.4 of the order as reproduced above. In this regard, it has been held by the Jurisdictional High Court in the case of Indiabulls Financial Services Ltd Vs DCM2016) 395 TTR 292 (De) that even an implied dissatisfaction on the claim of disallowance u/s 14A is sufficient to meet the requirement of section 14A(2), whereas in the case of the appellant the satisfaction recorded is full and proper. In view of these facts and also the claim of exempt dividend income of Rs. 97,83,810/-, I hold that AO was satisfied that the*

disallowance u/s 14A r.w.r 8D was certainly called for and accordingly had rightly invoked the provisions of section 14A. From the facts stated above, it emerges that the appellant had used at least part borrowed funds for earning dividend income. The Hon'ble High Court in the case of Avon Cycles Lal Vs CIT (2015) 53 taxmann.com 297 (P&H) Jaffirmed in (2018) 91 taxmann.com 154 (SC) has held that the disallowance out of interest u/s 14A is certainly warranted when mixed funds including interest bearing funds are used for earning exempt income. However, on careful consideration of the submissions of the Ld. AR and the decisions relied upon, I am of the considered view that only the investments made in companies resulting into exempt income during the year under consideration should be considered for the purposes of disallowance u/s 14A r.w.r. 8D, relying upon the decision of Hon'ble Jurisdictional ITAT in the case of ACIT Vs Vireet Investment Put Ltd (2017) 58 ITR (Trib) 313 (Del) (SB) which is binding on me. This view is further supported by the decisions of the jurisdictional High Court in the case of ACB India Ltd Vs ACIT (2015) 62 taxmann.com 71 (Del) and PCIT Vs Caraf Builders and Constructions Pvt Ltd (2019) 101 taxmann.com 167 (Del), wherein it has been held that for computing disallowance under clause (u) of Rule 8D(2), numerical B in clause (ii) refers only to the value of investment which yielded exempt income during the year. Accordingly, the disallowance under Rule 8D(2)(b) is worked out as follows:-

Interest on Loan	Rs. 82,54,219
<u>Average Dividend Yielding Investments</u>	
Opening Investments	172818371
Closing Investments	<u>172818371</u>
	345636742

Average Dividend Yielding Investments

Opening Assets	533951321
Closing Assets	<u>569955593</u>
	<u>1103906914</u>

Average Total Investments 551953457

Proportionate Indirect Interest

Interest on Loan Average Dividend Yielding Investments/Average Total Investment Rs. 2584422

9.2.4. Accordingly, the AO is directed to restrict disallowance of proportionate interest under Rule 8D(2)(ii) to Rs. 25,84,422/- as worked out above considering the average value of investment in the companies which have yielded divided income in this year.

9.2.5. As regards the disallowance out of expenses for administrative cost at 0.5% of the average value of investment, it is noticed that the AO has disallowed a sum of Rs. 5,85,304/- which is equal to the total non-interest expenses debited to the P&L account. The contentions of Ld. AR that bare minimum statutory expenses required for keeping the corporate entity functioning cannot be disallowed, are found to be acceptable and accordingly in view of the decision of Hon'ble Jurisdictional ITAT in the case of ITO VS Madhav Tech (India) Pvt. Ltd [2011-TIOL-546-ITAT-DELI, the AO is directed to exclude the expenses such as legal and professional expenses at Rs. 3,51,346/-, filing fees at Rs. 36,139/- and salary of company secretary at Rs. 1,32,000/-, totaling to Rs. 5,19,485/- from the total expenses claimed in P&L account. Further, as held in the case of M/s Apoorva Extrusion Pvt Ltd Vs ACIT, ITA No. 3943/Del/2013, A.Y. 2009-10, the statutory

*deduction of Rs. 13,000/- claimed u/s 35D cannot also be considered for disallowance. Accordingly the AO is directed to exclude statutory expenses as discussed above and deduction u/s 35D from the total non-interest expenses claimed in P&L account and then re-compute the disallowance u/s 14A. Thus appellant succeeds partly in respect of Ground no. 2, 4 & 5.*

*10. Ground no. 3 pertains to the addition of disallowance made u/s 14A to the book profit computed u/s 115JB. The AO has taken this action keeping in view the specific provisions given in Clause (f) of Explanation-1 to section 115JB and decision of Hon'ble Delhi High Court in the case of CIT(C)-2 Vs Goetze (India) M/s Ltd, ITA No. 1179/2010. In this regard, the Ld. AR has furnished a detailed submission stating that the Hon'ble ITAT Special Bench after considering the decision of Hon'ble Delhi High Court in the case of Goetze (India) Ltd and subsequent decision in the case of Bhushan Steel Ltd, ITA No. 593 of 2015 has decided the issue of addition of disallowance u/s 14A to the book profit u/s 115JB in the favour of assessee in the case of ACIT Vs Vireet Investment Pvt Ltd (2017) 58 ITR (Trib) 313 (Del) (SB). Since the decision of Hon'ble Jurisdictional ITAT which had considered the decisions of Hon'ble High Court, is binding on me, I hold that disallowance made u/s 14A cannot be added to book profit u/s 115JB in view of Clause (f) of Explanation-1. Accordingly the AO is directed to allow the consequential relief and appellant succeeds in respect of Ground no.3.”*

13. Heard the parties, perused the material. The contention of the Assessee's Representative is that the total investment made by the assessee as on 31/03/2015 in Non-current investments, being the shares of various Companies is Rs. 56,99,55,593/- as against

the share capital and reserves/surplus totaling to Rs. 43,85,60,985/- as such no disallowance could have been made u/s 14A of the Act. In our opinion, the assessee has to establish the availability of own fund for making investment in exempted income yielding investment. Unless the assessee established the availability of own funds, we are not in a position to uphold the argument of the Assessee's Representative. Being so, in the interest of justice, we remand the issue to the file of the A.O. with a direction to the assessee to prove the availability of own funds so as to interest in exempted income yielding investments by filing relevant cash flow/fund flow statement for the year under consideration, accordingly, we partly allow the Ground No. 2 of the Revenue for statistical purpose.

14. In the result, Appeal of the Revenue is partly allowed for statistical purpose.

**C.O No. 76/Del/2023**

15. The assessee has not furnished any materials in support of the grounds raised in the C.O and not made any submission either



in writing or oral, in the absence of the same, the Ground raised in the C.O No. 76/Del/2023 is dismissed.

16. In the result, C.O No. 76/Del/2023 is dismissed.

Order pronounced in open Court on 13th September, 2023

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

Dated: 13/09/2023

*Pk/R.N, Srps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI