

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Rajesh Kumar, Accountant Member**

**I.T.A No.908/Kol/2023  
Assessment year: 2015-16**

**DCIT, C.C-4(2), Kolkata.....Appellant**

**vs.**

**Alom Extrusions Ltd.....Respondent**

**7B, Alom House, Pretoria Street,  
Kolkata-700071.**

**[PAN: AAACO3518N]**

**Appearances by:**

Shri S. Dutta, CIT-DR, appeared on behalf of the appellant.

Shri A.K. Tibrewal, FCA & Amit Agrawal, Advocate, appeared on behalf of the Respondent.

Date of concluding the hearing : November 09, 2023

Date of pronouncing the order : December 14, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the department against the order dated 14.06.2023 of the Commissioner of Income Tax(Appeals)-27, Kolkata (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The revenue in this appeal has taken the following grounds of appeal:

*"1. That in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made u/s 68 on account of unsecured loan amounting to Rs.3,00,00,000/- as unexplained cash credit without appreciating the material brought on record and facts evaluated by the A.O in the assessment order.*

*2. That in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of the interest amounting to Rs.4,50,000/- on such unsecured loan.*

*3. The Ld. CIT(A) cited the case law in the order u/s 250 of the Income Tax Act, 1961 cannot be accepted as the facts in this case does not falls to the grounds of appeal filed by the assessee.*

*4. That the Department craves leave to add, modify or alter any of the ground(s) of appeal and/or adduce additional evidence at the time of hearing of the case.”*

3. A perusal of the aforesaid grounds of appeal would reveal that the issue raised by the revenue is regarding the action of the CIT(A) in deleting the addition of Rs.3,00,00,000/- made by the Assessing Officer in respect of unsecured loans treating the same as unexplained income of the assessee.

4. The brief facts are that a search and seizure operation was carried out u/s 132 of the Act on 26.11.2015 by the Income Tax Department in the case of the assessee. However, no incriminating material relating to the assessment year under consideration was found during the course of the said search action. Thereafter, the assessment was carried out u/s 153A of the Act. During the assessment proceedings, the Assessing Officer noticed that the assessee inter alia had received unsecured loans during the year of Rs.3,00,00,000/- from three creditors namely M/s. Leisure Devcon Private Limited, Progress Infra Estate Private Limited and Saffron Devcon Private Limited. The Assessing Officer asked the assessee to prove the identity and creditworthiness of the creditors and genuineness of the transaction. In response, the assessee furnished the relevant documents to explain the identity and creditworthiness of the creditors, nature of the transaction and the source of money received. However, the Assessing Officer was not satisfied with the explanation submitted by the assessee. The Assessing Officer also issued notices u/s

133(6) of the Act and called for confirmations and related documents from the creditors, which were duly complied with by the creditors. Even the director of the assessee company namely Shri Ajay Prakash Jhunjhunwala was also summoned u/s 131 of the Act and his statement was also recorded by the Assessing Officer. However, the Assessing Officer noticed that earlier (prior to search action in the case of the assessee) statement one Shri Devesh Upadhyaya in some other case was recorded by the investigation wing on 01.05.2015, who was an alleged entry operator and who during his statement had admitted that he was an entry operator and he had further stated that the main source of his income was commission earned by providing accommodation entries. He had also provided a list of companies managed and controlled by him. In the said list, the name of the three creditor companies of the assessee was also mentioned. The Assessing Officer, therefore, held that the alleged loans were in fact undisclosed income of the assessee which was routed through the said companies managed by Shri Devesh Upadhyaya. He, therefore, held that the assessee had failed to establish the creditworthiness of the creditors and genuineness of the transaction. He accordingly treated the aforesaid loan amount of Rs.3,00,00,000/- as undisclosed income of the assessee. He further disallowed interest expenses of Rs.4,50,000/- shown to have been paid by the assessee on the said loan to the creditors. Being aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before the CIT(A).

5. The ld. CIT(A) however, by way of a detailed order, deleted the addition so made by the Assessing Officer, observing as under:

*“In his assessment order, the AO made the addition of Rs.3,00,00,000/- u/s 68 by treating the said unsecured loans as bogus. On perusal of the assessment order, it is observed that the AO has raised the following issues while making the said addition and treating the said unsecured loans as bogus:*

1. The AO has referred to a bank statement of the assessee company vide A/c No. 01471600000312 with Punjab & Sind Bank, Old Court House Street, Kolkata –1 as incriminating material. Against such observation the AO has mentioned in his assessment order in Page 3 that “ receipt of Rs. 3,00,00,000/- is further evidenced by the inventoried material being the bank statement of A/c No. 01471600000312 with Punjab & Sind Bank, Old Court House Street, Kolkata –1 maintained by the assessee. It is seen that the amount of Rs.3,00,00,000/- received from the below mentioned company were deposited in this account. This transaction is found from the incriminating documents being the transaction in the bank account, found during the course of search.”

2. The AO while making the said addition heavily relied on the statement of Shri Devesh Upadhyaya, an alleged entry operator who in his statement recorded on oath on 01.05.2015 admitted that he was an entry operator whose main source of income was from commission earned by providing accommodation entries through Jama Kharchi companies to various beneficiaries. Shri Devesh Upadhyaya in reply to Question No. 7 of his statement submitted that his main source of income from commission earned by providing accommodation entries, through Jama Kharchi /shell companies to various beneficiaries. In reply to Question No. 8 of the said statement he provided a list of companies managed and controlled by him. In the said list the names of the above mentioned three companies from whom the assessee company had taken loans during the F.Y: 2014-15 were reflected in Si. No(s) 401, 541 and 589. The AO therefore held that the assessee brought back its undisclosed income in its books of accounts in the guise of loans by way of accommodation entries through the above mentioned three companies managed by Shri Devesh Upadhyaya.

3. The AO has recorded that the assessee was unable to establish the genuineness of the transaction and creditworthiness of the lenders even after giving various opportunities. The AO had even recorded the statement of the director of the assessee company Shri Ajay Prakash Jhunjhunwala during the course of assessment proceedings on 22.12.2017 and as per the AO the director also failed to establish the creditworthiness of the lenders and the genuineness of the transaction.

Now that these three issues raised by the AO on the basis of which the AO has made the said addition, have been identified, it is important to have a look at the enquiries made by the AO. As per the recordings of the AO in his assessment order in Page No.3, the AO has stated that notices u/s 133(6) were issued to all the loan creditors and replies were received from them in most of the cases and that it was noted that in few of the replies the source of loan provided to the assessee company were not explained properly in terms of genuineness and creditworthiness. This statement of the AO, I find is a generalized statement without pointing out in exactly which company the source was not explained. The

appellant company during the course of appeal proceedings also submitted evidences (which have been placed on record) that in response to notice u/s 133(6), all the lender companies duly submitted copies of audited accounts, bank statements, ITR filed for the relevant F.Y, loan confirmation statements and source of funds. The AO therefore was in possession of the said documents, which has also been affirmed by him while recording the statement of Shri Ajay Prakash Jhunjhunwala on 22.12.2017 in Question No. 13. The AO has however not elaborated upon as to in which particular case the source remained unexplained and as to why even after being in possession of all the requisite documents the creditworthiness of the lenders and genuineness of the transactions were not established.

It is observed from the assessment order, that although the Director of the appellant company was summoned u/s 131, in response to which the Director Shri Ajay Prakash Jhunjhunwala appeared and recorded his statement on 22.12.2017, no summons u/s 131 were issued by the AO to the lender companies. The statement of Shri Ajay Prakash Jhunjhunwala recorded on 22.12.2017 therefore becomes very important and the relevant part is reproduced below:

*What is your educational qualification?*

*Ans. I am B. Com.*

*4. Please confirm that the oath has been taken by you and you are made aware of the consequences for giving false statement under oath under the provision of Cr.PC, IPC and I T Act, 1961.*

*Ans. Yes*

*1. Please state the language in which you feel comfortable to give your statement.*

*Ans. English and Hindi.*

*1. Please state your source of Income and if you are assessed to Tax give your PAN.*

*1. Ans: I derive my income from the Directors Remuneration, Rental Income, Income from Investment & Other Sources and my PAN is ACU P1441213.*

*1. What is your annual income?*

*Ans: My average income is approximately Rs.15 lakh*

*1. Please state the nature of work carried out by M/s AlomExtrusion Ltd, M/s AlomPoly extrusion Ltd & M/s Rajbhat Tea Company Ltd ?*

*Ans. M/s. Alom Extrusions Limited is into manufacturing of Aluminum Extruded Products, M/s Atom Poly Extrusions Limited is into manufacturing of HDPE*

*Double Wall corrugated pipes M/s Rajbhat Tea Company Ltd is engaged in business of growing & processing of tea.*

*I am showing the balance sheet of above named companies for the period F.Y 2009-10 to 2015-16, please go through it?*

*Ans: I have seen it.*

*As per balance sheet, it is seen that you have taken unsecured loan in above named companies during the period F.Y 2009-10 to 2015-16, I am showing the list of companies from where you have received unsecured loan, please go through the list ( Annexure A- attached).*

*Ans: I have seen it and the names appearing in the list are the names of companies from where unsecured loan was taken.*

*1. It is seen from the list of unsecured loan taken by M/s Alom Extrusion Ltd, M/s Alom Poly extrusion Ltd & M/s Rajbhat Tea Company Ltd that unsecured loan taken in your companies, are from the Companies, whose names are appearing in the list (Annexure - B) and names of these companies are appearing in the list of data base of shell companies, who have provided accommodation entry in the form of loan/share capital. Please offer your comment.*

*Ans. I cannot comment on any data available with the department. We have already been searched by the department and no evidence in support of the above allegation was found, Also I do not understand the legal meaning of shell/paper companies. In case you have any evidence, which you may have gathered after conducting search and seizure operation on our group, we request you to provide us such evidence. Also in case you intend to rely on any one's statement for using the same against us, we request you to give us copies of such statements and give us opportunity of cross examining them.*

*1. I am showing you statements of the entry operators who have provided accommodation entry in the form of share capital/unsecured loan to your group companies as per (annexure B) referred above. Please go through the same and comment.*

*Ans. Sir, in relation to the query raised by your good self regarding the genuineness/financial credentials/ physical existence of the loan taken from the respective companies. I would like to state that we have taken loan from genuine companies and having financial credential as they have given loan for short term period to meet up our short term finance requirement and we have repaid the same as and when the funds were available with our companies. Say for example Mr. Vivek Agarwal one of the director of M/s Kathleen Vyapaar Private Limited who is brother of my son-in-law. Moreover all the loan creditors are regular income tax assesses and have duly filed their income tax return regularly.*

1. I am showing the replies received from the companies ( appeared in annexure-B), although they had made submission in respect of loan & advances given to your companies in form of unsecured loan enclosing copy of audited books of accounts, copy of bank statement etc, however, it is accepted by the directors/controlling person/ persons related to these companies that they are involve in providing accommodation entries in form of share capital/unsecured loan/ Long Term capital gain/Short term Capital Gain/loss and names of these companies are appearing in the list of data base of shell companies, who have provided accommodation entry in the form of loan/share capital. Please offer your comment.

*Ans: It is not for us to comment on their records. From the replies furnished by them, it is clear that they have provided unsecured loan in our companies, which are duly reflected in our records.*

1. It is seen from the data available with the department that the lender companies mentioned in the above list (Annexure 13) are shell/paper companies and these companies are/were being managed and controlled by known entry operators using various identities dummy/front directors. The shell companies were floated only for the purpose of giving accommodation entry to the various interested beneficiaries parties in lieu of a certain percentage of commission. Hence considering the facts it is evident that the group concerns of Ajay Prakash Jhunjhunwala have received unsecured loan to accumulate their unaccounted income with the help of entry operators.

*Ans. On our part we cannot comment on any data available with the department. We have already been searched by the department and no evidence in support of the above allegation was found. Further, we do not understand the legal meaning of shell/paper companies, In case you have any evidence, which you may have gathered after conducting search and seizure operation on our group, we request you to provide us such evidence. Also in case you intend to rely on any one's statement for using the same against us, we request you to give us copies of such statements and give us an opportunity of cross examining them.*

*It is observed from the statement of Shri Ajay Prakash Jhunjhunwala, that the Director has nowhere admitted that the unsecured loans taken from the three companies tabulated above were actually his own unaccounted money and were brought back into the books of the assessee company. On the contrary the Director has submitted the assessee company was already searched by the department and no evidence in support of the above allegation was found. The AO in his Question No. 13 put before the assessee, discussed the various replies received from the lender companies in response to notice u/s 133(6) wherein the AO has himself mentioned that the lender companies had made submission in respect of loan & advances given to the assessee company in form of unsecured loan enclosing copy of audited books of accounts, copy of bank statement etc. The*

*AO however has not recorded in his assessment order as to whether any further enquiries were made by him to establish that the financial credentials of the lender companies were inadequate to provide the said unsecured loans or as to how and in what manner the AO considered that the said lender companies were not creditworthy enough to advance the said loans. The only reliance that the AO seems to be making is upon the acceptance of “the directors/controlling persons/persons related to these companies that they are involved in providing accommodation entries in the form of share capital/unsecured loan/long term capital gain/short term capital gain/loss...”; as also the assertion by him that “the names of these (bogus) companies are appearing in the list of database of shell companies”.*

*This question itself indicates that the questions posed by the AO were more in the form of fishing expeditions, rather than confronting the Director of the appellant company with hard facts or evidence in the AO’s possession. The A/R of the appellant company has stated that the Director of the assessee company had time and again requested the AO to provide the statement of Shri Devesh Upadhyaya, the alleged entry operator. There is nothing on record to suggest that this statement was provided by the AO to the appellant.*

*It is again clear from the above statement of the Director of the appellant company that the AO was only relying upon the statement of Shri Devesh Upadhyaya and the list of companies mentioned by him as being controlled by him. The Director also raised the issue that no incriminating material was found during the search regarding the said unsecured loans. The AO in his assessment order has referred to a bank statement as incriminating material. The statement is that of a bank account of the assessee vide 01471600000312 maintained with Punjab & Sind Bank, Old Court House Street, Kolkata –1. I find that this bank account was duly declared by the assessee in the return filed u/s 139(1) for A.Y: 2015-16 in Page No. 13 of the ITR and it is not the case that this was an undisclosed bank account of the assessee. Again, in the instant case, I find that the said unsecured loans to the tune of the Rs.3,00,00,000/- were part of the books of account of the assessee company before the search was conducted. On perusal of the audited balance sheet of the appellant company, I find that the said unsecured loans have been reported under Short Term Borrowings (Unsecured Loans from body Corporates) in Item 7 of the said Balance Sheet and it is not the case that the same was not reported while filing the return of income. The Director of the appellant company has also mentioned the same in his answer to Question No. 12 where he has stated that the lender companies gave loan for short term period to meet up the short term finance requirement of the assessee company and that the said loans were repaid by them as and when the funds were available.*

*During the course of appeal proceedings, the appellant produced the evidences of loan repayment in respect of all the three concerns which are tabulated below:*



Name of Loan Creditor	Loan taken		Loan repaid		Interest		TDS
	Date	Amount (Rs)	Date	Amount (Rs)	Date	Amount (Rs)	Amount (Rs)
Saffaron Devcon Pvt Ltd	20.02.2015	50,00,000	04.09.2015	50,00,000	31.03.2016	3,95,902	39,590
	20.02.2015	50,00,000	14.09.2015	50,00,000			
Leisure Devcon Pvt Ltd	20.02.2015	50,00,000	13.06.2016	1,00,00,000	31.03.2016	9,00,000	90,000
	20.02.2015	50,00,000			07.07.2016	1,80,000	18,000
Progress Infra Estate Pvt Ltd	19.02.2015	50,00,000	09.06.2016	1,00,00,000	31.03.2016	9,00,000	90,000
		50,00,000			07.07.2016	1,70,137	17,014
		3,00,00,000		3,00,00,000		25,46,039	254604

*This aspect of loan repayment was forwarded to the AO for his comments along with the documentary evidence adduced by the appellant. The AO in his Remand Report confirmed the repayment of the said loans by the appellant. However in the report, after confirming the repayment of loans, the remand report has raised a suspicious circumstance and stated:*

*“ Now it may be noted that the assessee company had made repayment of the loan to the loan creditors in most of the cases after the date of search operation i.e after 26.11.2015. “*

*He has thereby raised the proposition that these loans were bogus, but were returned on the apprehension of the appellant that they may be discovered due to search.*

*The appellant has also produced copies of bank statements to establish that the loans were repaid through banking channels along with interest after deducting TDS on the same. So to sum up it is now an established fact that the loans from the said three companies were received in a disclosed bank account of the appellant and the loans were duly reflected in the assessee`s books of account and the said loans were also repaid through banking channels. These facts have not been disputed by the AO either in assessment or remand.*

*Therefore it now stands clear that the AO has made the addition solely relying upon the statement of Shri Devesh Upadhyaya, whoin fact was not examined during the search itself with respect, not only of the present transaction, but also*

*in relation to various other aspects of the affairs of the Jhunjhunwala Group. It is noteworthy that The statement of Shri Devesh Upadhyaya was recorded on 01.05.2015, whereas the search on Jhunjhunwala Group of companies was carried out on 26.11.2015. The AO has not brought forward anything which would prove that Shri Devesh Upadhyaya made any direct statement regarding the assessee company in the statement recorded. The unsecured loans which have been considered as bogus, were considered bogus with reference to the statement of Devesh Upadhyaya, with directors of these lender companies not being examined either during the present search or during assessment proceedings and as has been discussed above no incriminating material (an account statement of a disclosed bank statement of the appellant can never be termed as incriminating) was obtained during the search, which is the ultimate weapon in the hands of the Department to unearth evidence. Nothing at all in relation to the so-called jamakharchi companies has been brought on record at any stage either during the search, at the time of recording the said statement or afterwards or even during assessment. In this connection, gainful guidance may be drawn from the decision of the Hon'ble Apex Court in Dhakeswari Cotton Mills Ltd. v. CIT [1954] 26 ITR 775 wherein the Hon'ble Court although held that while the ITO is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted as evidence in a Court of law, but he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. It has repeatedly been held by various judicial authorities that there must be something more than mere suspicion to support any assessment. In the present case, I find that the financials of the lender entities have been held to be unsound. However, no basis for this has been spelt out. From the records it is nowhere apparent that any of these financials were analyzed by the AO to point out as to how these financials were unsound or were shown to Ajay Prakash Jhunjhunwala at the time of recording his statement in order to elicit his comments. Records before me do not shed any light upon the nature of the "unsoundness" of these financials of the lender companies.*

*During the course of assessment proceedings in response to notices u/s 133(6) the lender companies had submitted copies of various documents already listed above and accepted by the AO, including audited balance sheets. A reading of the financials of these lender entities, shows that AO has failed to appreciate their net worth, valuable assets held by them, investments etc. which would justify the amounts lent by them to the appellant. The net worths reflected in the audited balance sheets of the said lender companies clearly show that they had sufficient net worths to allow them to give loans to the appellant. The net worths of the three companies as provided in the Audited Accounts of the said companies are reproduced below:*

<i>Sl. No.</i>	<i>Name of the Lender Company</i>	<i>PAN</i>	<i>Net worth as on 31.03.2015</i>
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1	<i>Leisure Devcon Pvt Ltd</i>	<i>ABCL9021C</i>	<i>Rs.37.56 cr.</i>
2	<i>Saffron Devcon Pvt. Ltd</i>	<i>AAPCS0280G</i>	<i>Rs.39.88 Cr</i>
3	<i>Progress Infraestate Pvt. Ltd</i>	<i>AAF7362J</i>	<i>Rs.42.87 C</i>

*Evidently the net worth of those companies is in crores of rupees and inspite of having in his possession the, it is of note audited accounts of these lender companies the AO has failed to bring anything on record as to why the creditworthiness of the lenders was not considered to have been established.*

*Also, it is noted that unsecured loans were bearing interest and the interest charged thereon had been reflected in the lender's financials as well. No one, either during search or at the time of assessment, has raised any doubts with respect to the interests or the lending rates.*

*I cannot also disagree with the contention of the AR that if at the time of search or thereafter the Department did indeed wish to rely on the statements of third parties to draw any adverse inference against the Appellant, then they were legally bound to furnish a copy of the third party statement to the appellant and then summon the third parties and examine them themselves and thereafter allow the appellant an opportunity to cross examine them. It is only thereafter, and after they were satisfied as to the veracity of the statements proposed to be relied upon, that they could have actually relied upon such statements to make the impugned additions. Since this has evidently not been done, it becomes difficult in law to offer support to either the person taking the statement of Shri Ajay Prakash Jhunjhunwala, the Director or the AO's action of using such third party statements to draw adverse inferences against the appellant. It has to be kept in mind that certain rules of Natural Justice cannot be given a complete go-bye. One such rule is that no material shall be used against an assessee without giving him an opportunity to meet it. No assessment can be made while keeping the assessee in the dark as to the materials to be used against him. In fact even if the material/statement proposed to be used against him is furnished to the assessee, the latter can contest it at the time of assessment and the AO would be legally bound to give an opportunity to the assessee to test the veracity of the statement on the touch stone of cross examination and thereafter only the AO can rely on such a statement. Upon the principles discussed above in relation to the present factual matrix, I find merit in the claim of the appellant that, without providing the purported third party statements, or without first himself personally examining them and allowing the appellant to cross examine, the statement obtained from Devesh Upadhyaya at some other time and completely different circumstances and not during the course of the search of the assessee company, in this regard was unreliable in as much as there was no corroborating material found and/or collected in the course of search conducted against the appellant or even otherwise. Therefore, the said statement of the alleged entry operator could not*

*have been the only material to be used against the appellant to make the impugned additions.*

*The above is a serious fundamental infirmity which rendered the adverse inferences drawn, by relying on such unverified database/statements collected at the back of the appellant, to be legally unsustainable. In this regard, it is apt to refer to the following findings recorded by the Hon'ble Apex Court in the case of Andaman Timber Industries Ltd vs Commissioner of Central Excise in Civil Appeal No. 4228 of 2006 reported in (2015) 62 Taxman 3 (SC), which read as under:*

*"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."*

*It has been held that unless oral evidence is tested on the touch-stone of cross-examination, the veracity of such evidence cannot be assumed to be a fact and it cannot be acted upon to the disadvantage of an assessee.*

*I find that the facts of the instant case at hand is quite similar to the facts discussed by the Hon. jurisdictional High Court in the case of Principal Commissioner of Income-tax v.Sreeleathers\* in [2022] 143 taxmann.com 435 (Calcutta). The facts of the said case were:*

### **FACTS**

- The assessee-firm was engaged in business of trading/retailing of footwear and leather and non-leather accessories. It had filed its return of income and same was selected for scrutiny. Subsequently, notices under sections 143(2) and 142(2) were issued on it.*
- The Assessing Officer noted that the assessee had received certain amount of unsecured loans from various companies out of which 13 companies were allegedly claimed to be paper companies. He thus made addition of amount of unsecured loans in the assessee's total income.*
- The Commissioner noted that the assessee had furnished various documents to prove genuineness and creditworthiness of alleged paper companies however same was rejected by the Assessing Officer. He thus held that it was not enough for the Assessing Officer to dismiss documents furnished by the assessee without consideration but rather should have recorded reasons in writing as to why these documents filed by the assessee did not go to establish the identity of the lender or prove the genuineness of the transaction. In the absence of any such finding, order passed by the Assessing Officer was held to be utterly perverse.*

**The Hon. High Court of Calcutta gave the following judgement:**

*This provision of section 68 deals with cash credits. It states that 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. The crucial words in the said provision are 'assessee offers no explanation'. This would mean where the assessee offers no proper, reasonable and acceptable explanation as regard the amount credited in the books maintained by the assessee. No doubt the burden of proof is on the taxpayer. However, this is only the initial burden. In cases where the assessee offers an explanation to the credit by placing evidence regarding the identity of the investor or lender along with their conformations, it has been held that the assessee has discharged the initial burden and, therefore, the burden shifts on the Assessing Officer to examine the source of the credit so as to be justified in referring to section 68. After the Assessing Officer puts the assessee on notice and the assessee submits the explanation with regard to the cash credit, the Assessing Officer should consider the same objectively before he takes a decision to accept or reject it. If the explanation given by the assessee shows that the receipt is not of income nature, the department cannot convert good proof into no proof or otherwise unreasonably reject it. On the other hand, if the explanation is unconvincing, the same can be rejected and an inference shows that the amount represents undisclosed income either from a disclosed or an undisclosed source. The explanation given by the assessee cannot be rejected arbitrarily or capriciously, without sufficient ground on suspicion or on imaginary or irrelevant grounds. [Para 4]*

*Further to be noted that where the assessee furnishes full details regarding the creditors, it is up to the department to pursue the matter further to locate those creditors and examine their creditworthiness. While drawing the inference, it cannot be assumed in the absence of any material that there has been some illegalities in the assessee's transaction. Thus, more importantly, the onus of proving that the appellant was not the real was on the party who claims it to be so. Bearing the above legal principles in mind, in the instant case, it is clear that the Assessing Officer issued show cause notice only in respect of one of the lender FGD. The assessee responded to the show cause notice and submitted the reply. The documents annexed to the reply were classified under 3 categories namely: to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer has brushed aside these documents and in a very casual manner has stated that mere filing PAN details, balance sheet does not absolve the assessee from his responsibility of proving the nature of transaction. There is no discussion by the*

*Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee has discharged his initial burden and the burden shifts on the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression 'money laundering.' Such usage is uncalled for as the allegations of money laundering is a very serious allegations and the effect of a case of money laundering under the relevant Act is markedly different. Therefore, the Assessing Officer should have desisted from using such expression when it was never the case that there was any allegations of money laundering. Much reliance was placed on the statement of AKA which statement has been extracted in full in the assessment order and it cannot be disputed that there is no allegation against the assessee company in the said statement. There is no evidence brought on record by the Assessing Officer to connect the said entry operator with the loan transaction done by the assessee. Therefore, the statement is of little avail and could not have been the basis for making allegations.*

*The Assessing Officer ignored the settled legal principle and in spite of the assessee having offered the explanation with regard to the loan transaction, no finding has been recorded as regards the satisfaction on the explanation offered by the assessee. Therefore, the Assessing Officer ignored the basic tenets of law before invoking his power under section 68. Fortunately, for the assessee, the Commissioner (Appeals) has done an elaborate factual exercise, took into consideration, the creditworthiness of the 13 companies the details of which were furnished by the assessee. More importantly, the Commissioner noted that all these companies responded to the notices issued under section 133(6) which fact has not been denied by the Assessing Officer. On going through the records and the net worth of the lender companies, the Commissioner (Appeals) has recorded the factual findings that the net worth of those companies is in crores of rupees and they have declared income to the tune of Rs. 45,00,000/- and 75,00,000/-. Therefore, the Assessing Officer if in his opinion found the explanation offered by the assessee to be not satisfactory, he should have recorded so with reasons. However, there is no discussion on the explanation offered by the assessee qua, one of the lenders. Admittedly, the assessee was not issued any show cause notice in respect of other lenders. However, they are able to produce the details before the Commissioner (Appeals) who had rightly appreciated the facts and circumstances of the case. As pointed out earlier, the Assessing Officer brushed aside the explanation offered by the assessee by stating that merely filing PAN details, balance sheet does not absolve the assessee from his responsibilities of proving the nature of transactions. It is not enough for the Assessing Officer to say so but he should record reasons in writing as to why the documents which were filed by the assessee along with the reply does not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender.*

*In the absence of any such finding, it is held that the order passed by the Assessing Officer was utterly perverse and rightly interfered by the Commissioner (Appeals). The Tribunal re-appreciated the factual position and agreed with the Commissioner (Appeals). The tribunal apart from taking into consideration, the legal effect of the statement of AKA also took note of the fact that the notices which were issued by the Assessing Officer under section 133(6) to the lenders where duly acknowledged and all the lenders confirmed the loan transactions by filing the documents which were placed before the tribunal in the form of a paper book. These materials were available on the file of the Assessing Officer and there is no discussion on this aspect. Thus, the tribunal rightly dismissed the appeal filed by the revenue. [Para 5]*

*In the instant appeal also, the AO inspite of having all the requisite documents at his disposal failed to bring on record any reasons to justify his conclusion that the documents which were filed by the assessee along with the reply did not go to establish the identity of the lender or prove the genuineness of the transaction or establish the creditworthiness of the lender.*

*Similarly, the decision of the Hon'ble Rajasthan High Court in the case of CIT Vs A.L. Lalpuria Construction (P) Ltd (215 taxmann 12) is also found to be relevant to the present case wherein also the addition made by the AO alleging unsecured loans to be in the nature of accommodation entry was held to untenable as it was based on uncontroverted oral statement of third party which was obtained prior to the search conducted u/s 132 of the Act upon the assessee. The Hon'ble Court observed that,*

*"2. The revenue has preferred instant appeals U/s 260A of Income-tax Act,1961 ("Act, 1961") assailing judgment of the Tribunal dt.31-3-2010 affirming order of Commissioner (Appeals) dt. 5-3-2008, with modification that on the statement of Kripa Shanker Sharma, the income of Rs. 5 Lacs was assessed in the hands of assessee and it was observed by the Tribunal that the statement of Kripa Shanker Sharma was never confronted and no documentary evidence was supplied to the assessee, in absence whereof the income in the hands of the assessee on the basis of statement of Kripa Shanker Sharma deserves deletion.*

*3. The assessee as alleged carried out construction activities and disclosed income from subcontract and investment in building construction. After the search U/s 132 of the Act,1961 was carried out on 12-4-2005 in the case of another assessee M/s. B.C. Purohit & Company at Jaipur & Kolkata, evidence was gathered and from the investigation it revealed that in the garb of tax consultation the owners and employees of this group were running the racket of providing accommodation entries of gifts, loans, share application money, share investment and long term capital gains in shares. It will be relevant to record that the present assessee might have been in consultation with M/s. B.C. Purohit & Company and a member of the group and has drawn inference regarding providing*

*accommodation entries and the assessing officer was of the view that details made available by the assessee as regards unsecured loans and share application money, reference of which has been made in para-4 of its order, appears to be the accommodation entries and the present assessee was middle man and invoking Sec.68 of the Act, it was considered to be part of the income in the hands of the assessee. However, on appeal preferred before the Commissioner (Appeals) by the assessee U/s 143(3) r/w 147 of the Act, 1961 all the factual statements were examined at length and the Commissioner (Appeals), after due appreciation of material which came on record, observed that from independent enquiry the copies of bank account were obtained by the assessing officer and found that for clearing of the cheques issued by these companies either cash was deposited in the same account or in another account of the group company in fact was M/s. B.C. Purohit of which the present assessee was considered to be one of the group member. However, it was further observed that summons issued U/s 131 of the Act were served upon all such applicant/creditors and their confirmation letters were filed and the companies were assessed to tax being the private limited companies, the existence of their separate legal entity ordinarily could not have been doubted. However on the basis of statement of Kripa Shanker Sharma which was recorded by the search authorities as regards accommodation entries, a sum of Rs. 5 Lacs was assessed in the hands of present assessee alone and as regards other income, it was not considered to be in the hands of the present assessee. Obviously the department being aggrieved preferred appeal before the Tribunal and at the same time, the present assessee filed cross objection regarding part of the income, to the extent of a sum of Rs. 5 Lacs, as being recorded in the hands of present assessee on the basis of statement of Kripa Shanker Sharma. The Tribunal while appreciating the factual matrix came on record observed that after the summons were issued U/s 131 of the Act,1961 to the applicant/creditors and their confirmation letters were filed and the companies were assessed to tax being private limited companies the existence of their separate legal entity ordinarily could not have been challenged more so when the identity of existence of the investor is not disputed and accordingly upheld the view of Commissioner (Appeals), at the same time further observed that merely on the basis of oral statement of Kripa Shanker Sharma recorded before the search authorities that the assessee provided accommodation entries was not sufficient for the income to be assessed for a sum of Rs. 5 Lacs in the hands of the assessee and while allowing the cross objection filed by the assessee dismissed the appeal preferred by the revenue under order impugned.*

*4. We have heard the parties at length and of the view that what has been observed by the Commissioner (Appeals) & the Tribunal appears to be based on factual matrix and there appears no substantial question of law arises which may require interference by this Court to be examined in the instant appeal.*



5. Consequently, the instant appeals are wholly devoid of merit and accordingly stand dismissed."

*In view of the above, and as per the settled principles of law, in my considered opinion, within the present factual matrix, third party information which was available with the Department prior to the search does not by itself constitute material which could be used for making the impugned additions. Further, as noted earlier, these third party information/database comprised uncorroborated statements that have not been subjected to cross-examination, or even any independent enquiry of their own; and therefore an addition of the kind made by the AO cannot be sustained on the basis of standalone, uncontroverted, unconfirmed and uncorroborated statement(s) of third parties.*

*One important aspect that is clear in this case is that the Director of the appellant company, in the course of his statement u/s 131 has stated that he used to take short term loans from the said entities, which were repaid upon availability of money with the appellant company. In two cases the loans were returned about seven months after the search. These facts, though ignored completely by the AO, have nevertheless been commented upon in the remand report, wherein the AO has put forth the suspicion that the appellant, upon realizing that his loans were bogus, repaid them after the search. Though, this is merely at the level of suspicion, it is nevertheless part of the facts and circumstances as they exist in this case. Therefore this proposition needs discussion at this stage, because this proposition attacks the appellant's defence repelling the AO's initial proposition that the lender companies were bogus/shell companies providing only accommodation entries.*

*For this, first of all, it must be noted that the AO has made similar additions in the case of unsecured loans taken by the appellant's group concerns from various companies, holding them to be paper companies. Some of these additions are before me in appeal. These loans, their dates of advance and their repayment dates are given below:*

Name of Loan Creditor	Loan taken		Loan repaid	
	Date	Amount (Rs)	Date	Amount (Rs)
Saffaron Devcon Pvt Ltd	20.02.2015	50,00,000	04.09.2015	50,00,000
	20.02.2015	50,00,000	14.09.2015	50,00,000
Leisure Devcon Pvt Ltd	20.02.2015	50,00,000	13.06.2016	1,00,00,000

	20.02.2015	50,00,000		
Progress Infra Estate Pvt Ltd	19.02.2015	50,00,000	09.06.2016	1,00,00,000
		50,00,000		
Decorum Developers Pvt Ltd	17.06.2015	1,00,00,000	04.09.2015	50,00,000
			14.09.2015	50,00,000
		4,00,00,000		4,00,00,000

Name of Loan Creditor	Loan taken		Loan repaid	
	Date	Amount (Rs)	Date	Amount (Rs)
Continental Fiscal Management Ltd	03.02.2015	30,00,000	28.03.2016	30,00,000
Leisure Devcon Pvt Ltd	20.02.2015	50,00,000	12.01.2016	50,00,000
	20.02.2015	50,00,000	12.01.2016	50,00,000
Progress Infra Estate Pvt Ltd	20.02.2015	50,00,000	04.07.2016	1,00,00,000
	20.02.2015	50,00,000		
Unity Prodev Ventures Pvt Ltd	04.03.2015	50,00,000	18.07.2016	50,00,000
	04.03.2015	50,00,000	28.02.2017	50,00,000
	16.06.2015	50,00,000	06.03.2017	50,00,000
	16.06.2015	50,00,000	08.03.2017	50,00,000
Incredible Nirman Pvt Ltd	15.06.2015	50,00,000	12.07.2016	1,00,00,000
	17.06.2015	65,00,000	13.02.2017	15,00,000

		5,45,00,000	5,45,00,000

Name of Loan Creditor	Loan taken		Loan repaid	
	Date	Amount (Rs)	Date	Amount (Rs)
Continental Fiscal Management Ltd	17.04.2014	50,00,000	01.09.2016	50,00,000
Leisure Devcon Pvt Ltd	19.02.2015	50,00,000	02.08.2016	50,00,000
Saffron Devcon (P) Ltd.	18.06.2015	75,00,000	20.01.2017	50,00,000
	19.06.2015	25,00,000	20.03.2017	50,00,000
Unity Prodev Ventures Pvt Ltd	18.06.2015	50,00,000	18.07.2016	50,00,000
		2,50,00,000		2,50,00,000

The Ld. A/R has explained that the rationale of these loans have not at all been appreciated by the AO. He has said that these loans were taken on account of the expansion plans of the appellant group in terms of manufacturing activities. It was on this account that the companies including the present appellant had undertaken massive loan raising exercise in the F.Y's: 2014-15 & 2015-16. These loans were taken, not only from private companies, but also from banks. The A/R has given the amounts in relation to his companies, in appeal before me as below:

Company Name	FY	Loan from Private Parties	Loan from Banks	Total
Alom Extrusion Ltd	2013-14	10.41 Cr	Nil	10.41 Cr
Alom Extrusion Ltd	2014-15	11.59 Cr	13.72 Cr	25.31 Cr
Alom Extrusion Ltd	2015-16	1.14 Cr	14.84 Cr	15.98 Cr

He has pointed out that these loans were of various kinds, viz. long term, medium term and short term. The A/R has produced his audited books of account to show the effect of these loans upon his business results.

<i>Company Name</i>	<i>FY</i>	<i>Turnover</i>	<i>Net Profit</i>
<i>Alom Extrusion Ltd</i>	<i>2013-14</i>	<i>169.62 Cr</i>	<i>0.75 Cr</i>
<i>Alom Extrusion Ltd</i>	<i>2014-15</i>	<i>165.46 Cr</i>	<i>1.09 Cr</i>
<i>Alom Extrusion Ltd</i>	<i>2015-16</i>	<i>177.65 Cr</i>	<i>1.99 Cr</i>

*He has also brought to my notice the fact that his balance sheet for the financial year 2014-15 showed an increase in the amount of raw materials stocked by Rs. 17.77 Crores.*

*I find that the AO has not taken cognizance of these issues which were admittedly before him. He has selectively picked up these companies, that, as per the information available with him, from Departmental database, were shell companies and held the loans from these companies as bogus and therefore the appellant's own unaccounted funds. The overall facts and circumstances – so crucial to an assessment have been completely ignored by the AO.*

*Coming to the issue mentioned herein above, that the remand report has alleged that the said loans were repaid only on account of the search, and the appellant realizing that his bogus loans had been exposed repaid them, I find that in some cases, (of sizeable amounts), the loans have been repaid before the date of search. In the case of Saffron Devcon Pvt. Ltd, for instance, the entire loan of Rs.1 Crore forming part of the total loan of Rs. 3 crores added by the AO, has been repaid before the date of search. The remand report has made no comment upon this obvious anomaly in its proposition. Further, it is not clear, upon which fact has this proposition been made at all. Shri Ajay Prakash Jhunjunwala, the Director of the appellant company and the main person of this group was admittedly examined under oath on two occasions, first during the search and then u/s 131 of the Act, during assessment. Nowhere is it apparent from an examination of both these statements that the appellant had been confronted with the issue during search. I find that it is only during assessment proceedings, that the AO mentions, in the statement recorded at that time, that the said loan transactions were being shown to Shri Jhunjunwala from the regular books. It is no one's case that these transactions were confronted to Shri Jhunjunwala or anyone else during the search. The mention of entry operator statements, is also not apparent in the earlier statement. It is reasonable to assume that if such an issue had indeed arisen during the search, some such reference would at least have been framed in the second statement or at least in the assessment order where the duly disclosed bank account had been termed by the AO as incriminating material. I find no reference at all to any such issues before the recording of the second statement, dated 22.12.2017 during the assessment. Even the Remand Report, that actually has raised the suspicion is singularly silent upon this issue. The suspicion seems to have been made only as a remark, some possibility or conjecture and is not shown to be based upon any tangible material on record. The question, within the present factual matrix, that arises therefore is how, when the said issue of bogus*

*loans from the alleged shell companies had not been shown to be raised at all, before the assessment proceedings, could it be presumed that the appellant had anticipated that such an issue could be raised during the assessment, and therefore repaid the loan amounts to circumvent future adverse findings during assessment. The proposition raised by the Remand Report, in my opinion, is within the realm of conjecture – without the least bit of evidence, and in fact contrary to reasonableness of a prudent mind. This conjecture, therefore cannot be accepted as the foundation of a huge addition.*

*In view of the above discussion, the additions made by the AO to the tune of Rs.3,00,00,000/- u/s 68 and the consequential disallowance of the interest of Rs. 4,50,000/- on the same is deleted. These grounds raised by the appellant are therefore allowed.*

**Grounds 7 & 8** *against the interest charged u/s 234A& 234B. This ground is consequential in nature and is disposed with directions to the AO to recompute these interests as per law at the time of giving effect to this order.*

**Ground 9** *is general in nature and does not need adjudication.*

*In the result, the appeal is allowed.”*

6. We have considered the rival contentions and gone through the record. The ld. counsel for the assessee referring to the aforesaid detailed observations of the ld. CIT(A) has submitted that the assessee had duly furnished all the details pertaining to the loan transactions including documents relating to the identity and creditworthiness of the creditors and also has duly established the nature and genuineness of the transaction. That the financials of the creditors were duly provided. The ld. counsel in this respect has referred to the various documents on record, copies of which have been placed in the paper-book and has submitted that the assessee has duly furnished the ITR acknowledgement of the assessee, computation of income of the assessee, audited accounts of the assessee, relevant portion of the bank statement from where the payment was made to the aforesaid loan creditors. The ld. counsel has further submitted that all the documents relating to the creditors were also furnished e.g. covering letter of reply

submitted in response to notice u/s 133(6), ITR acknowledgement, audited accounts, ledger for A.Y 2015-16, ledger for entire period till repayment made, account confirmation, bank statements. The ld. counsel has further brought our attention to the relevant paras of the order of the CIT(A) to submit that even all the loans stood repaid. He has referred to the chart reproduced at page 61 of the order of the CIT(A) to show that the loan from three creditors were received namely Saffaron Devcon Pvt Ltd, Progress Infra Estate Pvt Ltd & Leisure Devcon Pvt Ltd in the month of February 2015, whereas, the loan of Rs.1,00,00,000/- from fourth creditor namely Decorum Developers Pvt Ltd was received on 17.06.2015. The loan amount of Rs.1,00,00,000/- each was repaid to the three creditors namely Saffaron Devcon Pvt Ltd, Decorum Developers Pvt. Ltd. and Progress Infra Estate Pvt. Ltd. in the month of September 2015, whereas, the remaining loan of Rs.1,00,00,000/- was repaid to Leisure Devcon Pvt Ltd on 13.06.2016. The ld. CIT(A) has also discussed the rationale of these loans and observed that the same were for expansion plan of the assessee and its group concerns. He has further observed that the loan was not only taken from private parties but also from banks. The ld. CIT(A) has also referred to the statement of the director of the assessee company Shri Ajay Prakash Jhunjhunwala, who was summoned u/s 131 of the Act by the Assessing Officer. The Assessing Officer confronted him relating to the aforesaid loan amounts rationale of which was duly explained by him. The ld. CIT(A) has noted that the Assessing Officer could not find any defect or discrepancy either in the documents and evidences furnished by the assessee and even in the statement of Shri Jhunjhunwala, director of the assessee company. The ld. CIT(A) has also noted the fact that the Assessing Officer has referred to the bank statement as incriminating material, whereas, the

bank statements were duly declared by the assessee in his return of income filed u/s 139(1) of the Act. That the ld. CIT(A) has further noted that the unsecured loan of Rs.3,00,00,000/- were part of the books of account of the assessee company even before the search action was conducted. The ld. CIT(A) has noted that on perusal of the audited balance sheet of the assessee company, it was found that the said unsecured loans have been reported under short-term capital borrowings in item no.7 of the said balance sheet. That the director of the assessee company was duly confronted about the loan transaction, but nothing adverse could be extracted from him by the Assessing Officer. The ld. CIT(A) has also noted that during the appellate proceedings, the assessee had produced evidences of repayment of the loan amounts, whereupon, the remand report was called upon from the Assessing Officer and the Assessing Officer in the remand report duly confirmed the repayment of the loan amount through banking channel. The ld. CIT(A) has also discussed the financials of the creditors to hold that the creditors had sufficient net worth to give loans to the assessee company. It has also been noticed by the ld. CIT(A) that apart from the aforesaid three borrowers, the assessee has also taken loans from other parties which has not been doubted by the Assessing Officer. The ld. CIT(A) thereafter held that the sole basis of the Assessing Officer to make addition was on the basis of an earlier recorded statement of Shri Devesh Upadhyaya, which was neither recorded in the presence of the assessee nor the assessee was ever confronted about the same. Even no incriminating material was found during the course of search action. Even all the creditors have duly confirmed the transactions and also established the source of the credits and the loan being also repaid in a short span of time. The ld. CIT(A), therefore, has rightly held that the

addition made by the Assessing Officer was not justified. In view of this, we do not find any reason to interfere with the order of the ld. CIT(A) and there is no merit in the appeal of the revenue and the same is accordingly dismissed.

7. In the result, the appeal of the revenue stands dismissed.

***Kolkata, the 14<sup>th</sup> December, 2023.***

Sd/-  
**[Rajesh Kumar]**  
लेखा सदस्य /**Accountant Member**

Sd/-  
**[Sanjay Garg]**  
न्यायिक सदस्य /**Judicial Member**

Dated: 14.12.2023.

RS

*Copy of the order forwarded to:*

1. DCIT, C.C-4(2), Kolkata
2. Alom Extrusions Ltd.
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches