

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.9264 /Del/2019
(Assessment Year : 2016-17)**

ACIT, Circle 23 (2),
New Delhi.

vs.

Signature Global (India) Pvt. Ltd.,
1308, 13th Floor,
Dr. Gopal Das Bhawan,
Barakhamba Road,
New Delhi – 110 001.

(PAN : AACCR3807M)

ASSESSEE BY : Shri Amit Goel, Advocate
Shri Pranav Yadav, Advocate
REVENUE BY : Shri Dharamvir Singh, CIT DR

Date of Hearing : 12.11.2024
Date of Order : 07.02.2025

ORDER

PER S. RIFAUR RAHMAN, AM :

1. This appeal has been filed by the Revenue against the order of Id. Commissioner of Income-tax (Appeals)-8, New Delhi (hereinafter referred to as 'Id. CIT (A)') dated 16.09.2019 for the Assessment Year 2016-17.
2. Brief facts of the case are, assessee filed its return of income for AY 2016-17 on 17.10.2016 disclosing total loss of Rs.44,89,856/-. The case was selected for scrutiny under CASS and accordingly, notices u/s 143(2) and 142 (1) of the

Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. In response, Id. AR of the assessee attended and submitted relevant information as called for.

3. Assessee is engaged in the business of construction and development of affordable housing projects. During assessment proceedings, AO observed that assessee has received share capital of Rs.13,09,86,251/- (622,820 shares @ Rs.210.31 per share) from various individuals. The details of shares issued with share premium are listed at page 2 of the assessment order. In order to verify the genuineness of the share capital, AO issued show-cause notice dated 08.12.2018 to the assessee to explain the identity, genuineness and creditworthiness of the shareholders. In response, the assessee submitted a copy of ITR, confirmation, bank account and computation of income and statement of affairs of the shareholders. The AO analyzed one of the shareholder, Shri Vikas Garg and analyzed the information submitted by the abovesaid shareholder and the AO observed that Vikas Garg has a salary income and other sources of income amounting to Rs.7,20,600/- only. From the record, AO observed that assessee has obtained a loan of Rs.35,00,000/- from Ms. Saroj Devi, however assessee has not furnished details of Saroj Devi. Further, he analyzed the bank statement and observed that assessee has received amount of Rs.4,40,000/- and Rs.35,00,000/- from Tilak Raj and Saroj Devi respectively. He observed that shareholders

having a very miniscule income and maintained a balance of Rs.1 lakh odd. Therefore, he came to the conclusion that shareholders do not have sufficient capacity to make the investment in this company. Accordingly, he proceeded to make the addition of amount of share capital invested by him u/s 68 of the Act.

4. Further he observed that assessee has taken unsecured loans amounting to Rs.83,32,09,963/- from various companies and the details of the unsecured loans are reproduced at pages 4, 5 & 6 of the assessment order and in order to verify the above unsecured loans, a show-cause notice was issued to the assessee dated 08.12.2018 and the assessee was asked to explain the identity, genuineness and creditworthiness of the lenders. In response, assessee submitted copy of ITR, confirmation, bank account and computation of income and balance by some parties. The AO analyzed the individual unsecured loan received by the assessee from nine parties as listed below :-

<i>S.No.</i>	<i>Name of the party</i>	<i>Loan taken during the year</i>	<i>Interest</i>
1	<i>Ace Stone Craft Limited</i>	20000000	1495628
2	<i>Arise Infotech Private Limited</i>	5900000	231436
3	<i>BaseraRealtech Private Limited</i>	5200000	207715
4	<i>Multiplex Fincap Limited (alongwith the interest in proportion to the total loan taken during the concerned A.Y.)</i>	163456456	1744835
5	<i>Radhay Portfolio Limited</i>	2950000	9675
6	<i>SRK Tradelinks Pvt. Limited</i>	15500000	353022
7	<i>Syala Buildwell Private Limited</i>	2500000	100410
8	<i>The Enterprise Pvt. Ltd.</i>	4000000	151890
9	<i>Umang Leasing and Credit Co. ltd.</i>	11750000	44731
	<i>Total</i>	237170947	4339342

5. After analyzing the abovesaid loan creditors and observing that these parties have declared meagre income in their return of income and lend the huge amount to the assessee as unsecured loan, he came to the conclusion that these parties do not have creditworthiness. Therefore, he proceeded to make addition u/s 68 of the Act to the extent of unsecured loan taken from abovesaid nine parties to the extent of Rs.23,71,70,947/- and he also disallowed the interest paid to them u/s 37 of the Act to the extent of Rs.27,02,664/-.
6. Further he observed that assessee has earned exempt income in the form of dividend amounting to Rs.53,19,531/-. He observed that in the present case, provisions of section 14A are applicable read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules'). Accordingly, a show-cause notice was issued to the assessee and was asked to give details regarding disallowance of interest u/s 14A of the Act. In response, Id. AR of the assessee submitted reply vide letter dated 14.12.2018, the same are reproduced as under :-

“...2. NOTE ON DISALLOWANCE U/S. 141A : During the year under consideration the assessee has received tax free dividend income of Rs. 5319531/-. All the dividend has been received on the investment in the shares of SMC Global Securities Ltd. The assessee has not incurred any expenses for earning of dividend income. However, sum of Rs. 1,20,000/- has been disallowed suo-mot u/s. 14A.

There is no new investment made during the year in the shares of SMC Global Securities Ltd. from which dividend has been received.

No efforts were required for earning of dividend income. The dividend income was credited to the bank account of the assessee directly through ECS. The expenses incurred and charges in the Profit and Loss A/c are normal business expenses and these expenses have no relation or nexus with earning of dividend income. Therefore, no further disallowance under section 14A is called for....”

7. After considering the above submissions, the AO relying on the CBDT Circular No.5/2014 dated 11.02.2014 and provisions of section 14A read with Rule 8D determined the disallowance u/s 14A at Rs.44,41,641/-.
8. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A). Before Id. CIT(A), assessee has submitted submissions with regard to addition of share capital/share premium issued to Vikas Garg and made the detailed submissions, which are reproduced by Id. CIT (A) at pages 3 to 7 of his order.
9. After considering the detailed submissions of the assessee and assessment order, Id. CIT (A) deleted the addition with the following observation :-

4.2.2. I have considered the facts of the case, remarks of the A.O. made in the assessment order and also the submission of the appellant. It is a matter of record that before the A.O., the appellant has filed the following details /documents in respect of the aforesaid share capital / premium of Rs. 3936000/- :-

- Complete name and address of shareholder
- Confirmation of the shareholder
- Copy of bank statement of the shareholder
- Copy of statement of affairs of the shareholder
- Copy of ITR acknowledgment of shareholder.

4.2.3. The appellant has discharged its onus u/s 68 of Income Tax Act. The A.O. has not pointed out any discrepancy in the aforesaid documents. The A.O. has not carried out any inquiry or investigation. As a matter of fact, there is no adverse or incriminating information in respect of the shareholder. As per Section 68 of Income Tax Act 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 therefore 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. In the Appellant Company's case, complete detail and documentary evidences in respect of the share capital were available on record with the assessing officer during the course of assessment proceeding. With regard to the remarks of the A.O. that the investor has low income as compared to investment made, in my opinion for the purpose of section 68 of the Act what is relevant is the source of credit in the books of assessee. The investor can have many sources for making the investment viz loans, his owned accumulated funds, accumulated income etc. There is no dispute by the assessing officer with regard to identity and creditworthiness of the shareholder and the genuineness of the transaction. The assessing officer has made the addition on the ground that the assessee failed to explain the source of source of fund.

4.2.4 It is noticed that during the course of assessment proceedings the appellant company has explained to the A.O. that the shareholder Mr. Vikas Garg has received Rs.3500000/- from his mother Saroj Devi and Rs.440000/- from Mr. Tilak Raj,. In the assessment order, the assessing officer has himself mentioned that from perusal of bank statement of Mr. Vikas Garg, it is revealed that Mr. Vikas Garg received funds of Rs. 440000/- and Rs.3500000/- from Mr. Tilak Raj and Saroj Devi respectively.

*4.2.5 However the AO has failed in his duty since neither he had done any further enquiry nor he had asked the appellant to substantiate its claim by furnishing documents such as bank statement of Saroj Devi & Tilak Raj & other relevant details of these persons. Hence keeping in view this fact of lack of enquiry on the part of AO and in the interest of natural & substantial justice I, vide order sheet entry dt 13.08.2019 asked the Appellant to furnish the required details. On perusal of these details I observed that Appellant company has fully discharged its onus regarding addition of Rs.39,36,000/- as Share Capital / Premium by explaining even the source of the source of the amount given as share capital as required by the amended section 68 of the Income Tax Act 1961 and there is no reason to justify the addition made by AO. I, therefore, direct the AO to **delete** the addition of Rs.39,36,000/- This ground of appeal is **allowed.**”*

10. With regard to unsecured loans, assessee has submitted detailed submissions before the Id. CIT (A) which is reproduced at pages 14 to 19 of the appellate order. After considering the above submissions, Id. CIT (A) deleted the same by observing as under :-

“4.3.5 I have considered the facts of the case, remarks of the A.O. made in the assessment order and also the submission of the appellant. It is a matter of record that before the A.O., the appellant has filed the following details /documents in respect of the aforesaid loans.

S.No.	Name of the Party	Amount (Rs.)	Documents submitted as per A.O. himself
1	Ace Stone Craft Limited	20000000	-Copy of ITR -Confirmation of account -Copy of Balance Sheet
2	Arise Infotech Private Limited	5900000	-Copy of ITR -Confirmation of account -Copy of Bank Statement
3	Basera Realtech Private Limited	5200000	-Copy of High Court Order
4	Multiplex Fincap Limited	163456456	-Copy of ITR -Confirmation of account -Copy of Bank Statement
5	Radhay Portfolio Limited	2950000	-Copy of ITR -Confirmation of account -Copy of Bank Statement -Copy of Balance Sheet
6	SRK Tradelinks Pvt Limited	15500000	-Copy of ITR -Confirmation of account -Copy of Bank Statement
7	Syala Buildwell Private Limited	2500000	-Copy of ITR -Confirmation of account
8	Tia Enterprise Pvt. Limited	4000000	-Copy of ITR -Confirmation of account -Copy of Bank Statement
9	Umang Leasing and Credit Co. Ltd.	11750000	-Copy of ITR -Confirmation of account -Copy of Bank Statement

4.3.6 The A.O. has not pointed out any discrepancy in the aforesaid documents. In this case the Appellant has raised a preliminary objection that sum total of the loan received from various companies comes to Rs.23,12,56,456/- however the AO has made an addition of Rs.23,71,70,947/-. This is an apparent

mistake on record hence additions of Rs.23,71,70,947/- made by the AO should -be read as additions of Rs. 23,12,56,456/-.

4.3.7 The AO has neither made any further enquiry on the basis of the details submitted by the Appellant company nor he has asked the Appellant company to explain further by submitting the missing documents. AO has simply rejected all the positive evidences submitted by the Appellant and made the impugned additions.

4.3.8 Keeping in view this fact of lack of enquiry on the part of the AO and in the interest of natural & substantial justice I, vide order sheet entry dt 13-8-2019 asked the Appellant to furnish further details in support of its claim such as Balance Sheets and ledger account of the lender companies and status of owned funds & total funds available with lender companies. On perusal of the details submitted by the Appellant during the Appellate proceedings I have observed that the status of owned funds / total funds available with the lender companies as per their audited balance sheet as on 31.03.2016 was as under :

<i>S.No.</i>	<i>Name of the Party</i>	<i>Amount of funds as per audited balance sheet (Rs.)</i>
<i>1</i>	<i>Ace Stone Craft Limited</i>	<i>23,73,64,412</i>
<i>2</i>	<i>Arise Infotech Private Limited</i>	<i>8,05,82,635</i>
<i>3</i>	<i>Basera Realtech Private Limited (merged with SRK Trade Links Pvt. Ltd.)</i>	<i>48,92,33,139</i>
<i>4</i>	<i>Multiplex Fincap Limited</i>	<i>2,22,31,789</i>
<i>5</i>	<i>Radhay Portfolio Limited</i>	<i>1,11,49,629</i>
<i>6</i>	<i>SRK Tradelinks Pvt Limited</i>	<i>48,92,33,139</i>
<i>7</i>	<i>Syala Buildwell Private Limited</i>	<i>14,30,86,362</i>
<i>8</i>	<i>Tia Enterprise Pvt. Limited</i>	<i>50,16,92,661</i>
<i>9</i>	<i>Umang Leasing and Credit Co. Ltd.</i>	<i>13,60,23,362</i>

It is seen from the details filed that Multiplex Fincap Ltd has

also taken long term loans and advances of Rs. 5,24,81,107/- and short term loan & advances of Rs. 27,45,06,236/- as on 31.03.2016. Thus total available funds & own funds with Multiplex Fincap Ltd is Rs. 34,92,19,132/-

The Delhi bench of the ITAT in the case of ADDL. CIT, SPECIAL RANGE-7, NEW DELHI VERSUS PRAYAG POLYTECH PVT. LTD. 2019 (6) TMI 930 - ITAT DELHI where a similar issue was involved and the ITAT vide its order dated 18th June 2019 has held as under:-

We are of the view that there is no such condition in section 68 that loan can only be advanced out of the taxable income of the current year. The requirement of section 68 are 3 i.e. identity, creditworthiness and genuineness. In the present case admittedly there is no doubt about the identity. As regards the creditworthiness the AO has gone with the presumption that it is only the current year taxable income which can establish the creditworthiness. This presumption of the AO is incorrect. The creditworthiness can be established by showing the source from where the money has been paid. Such money can be paid out of its net worth, out of the loan raised by it or out of income earned by it. The source can be any of such means or mixed of these.

The Delhi bench of the ITAT in the case of ITO Ward 6(2) vs. Computer Home Information Plus Pvt. Ltd. ITA NO. 5680/Del/2016 dated 24.05.2019 where a similar issue was involved and the ITAT has held as under:-

"18. We have also thoroughly examined the financial accounts of the five lender companies. At the very outset, we have to state that income may be a good reason for examining the source of a person but it is certainly not the "be all end all". Let us take an example, if person is drawing salary of Rs. 10 lacs p.a. and purchases a residential flat of Rs. 50 lacs. Can merely on the basis of his income addition be made as unexplained investment? The answer is evidently "No" because that person may have taken housing loan of Rs. 40 lacs to purchase the residential flat."

4.3.9 A similar issue has come up before the jurisdictional

Delhi High Court in the case of Pr. CIT (Central)-I vs. Goodview Trading Pvt. Ltd. ITA No.3777/2016 dated 21.11.2016 wherein addition were made under section 68 on the ground that the creditor had little or no income. The Hon'ble High Court after tabulating the chart of the net worth of each of the creditor held that the creditor had substantial means and the AO was not justified in making the adverse inference on the ground that the creditor had paid minimal or insubstantial amounts as taxed. The Hon'ble High Court approved the inference drawn by the CIT(A) in favour of the assessee on the basis of the net worth of each of the creditor.

The remarks of the A.O. that funds were transferred by the loan creditor to the appellant immediately after it was received by the loan creditor is also no ground for making the addition u/s 68 of the Act. There is no requirement under the law that loan creditor has to keep funds idle in bank accounts for some period before giving^ loan to others. The observation of the AO that there is a corresponding credit entry from other concerns cannot be a conclusive evidence to question their creditworthiness.

4.3.1 There is another aspect of the matter which goes on to prove the genuineness of the transactions. It is seen that the loans taken by the appellant company are for short duration and almost all the loans have been repaid during the year itself and only some small amount in some cases is outstanding as at the year end and that too is mainly on account of interest. The detail of outstanding amount as at the year end is as under:

<i>S.No.</i>	<i>Name of the Party</i>	<i>Loan amount added by A.O. (Rs.)</i>	<i>Outstanding balance as at the year end (Rs)</i>
<i>1</i>	<i>Ace Stone Craft Limited</i>	<i>20000000</i>	<i>1346065</i>
<i>2</i>	<i>Arise Infotech Private Limited</i>	<i>5900000</i>	<i>NIL</i>
<i>3</i>	<i>BaseraRealtech Private Limited</i>	<i>5200000</i>	<i>NIL</i>
<i>4</i>	<i>Multiplex Fincap Limited</i>	<i>163456456</i>	<i>4361540</i>
<i>5</i>	<i>Radhay Portfolio Limited</i>	<i>2950000</i>	<i>8705</i>

6	SRK Tradelinks Pvt Limited	15500000	NIL
7	Syala Buildwell Private Limited	2500000	2590369
8	Tia Enterprise Pvt. Limited	4000000	NIL
9	Umang Leasing and Credit Co. Ltd.	11750000	NIL

4.3.11 It is also pertinent to note that in respect of Multiplex Fincap Ltd where addition of Rs.163456456/- has been made, the total amounts of loans received by the appellant company during the year was Rs. 431970947/- out of which the A.O. made the addition of Rs. 163456456/- and in respect of balance amount of Rs.268514491/-, the accepted the identity, creditworthiness and genuineness of the transaction. It is seen from the submissions filed by appellant that the loan opening balance in case of Multiplex Fincap Ltd was Rs. 7,37,98,543/-, on 01.04.2015. That means the same has been accepted by AO in assessment completed on 14.12.2017 in AY 2015-16. A copy assessment order for AY 2015-16 has been filed in course of assessment proceedings. Thus the identity, genuineness and creditworthiness he already been accepted in AY 2015-16. Further it is, seen from copy assessment order filed in case of Multiplex Fincap Limited that assessment for AY 2016-17 has also been done u/s 143(3) on 14.12.2018 without any adverse inferences about its sources.

The provisions of section 68 are as under:-

“68. Where any sum is found credited in the books—of an assessee maintained of 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:

[Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital,

share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause [23FB] of section 10

.....

4.3.12 The Delhi High Court in its judgement dated 21.12.2015 in case of CIT v Shiv Dhooti Pearls & Investments Ltd. [2015] 64 taxmann.com 329 (Delhi) has again reaffirmed this position. In this case, the assessee had taken loans from a company TIL. The said company confirmed having loan given to assessee. The A.O. however doubted the source of credit in account of TIL (which was TCL). The A.O. concluded that TCL was not a genuine party which could have lent money to TIL, which in turn lent money to assessee company. It was, therefore concluded that the entire chain of lending and borrowing is bogus. The Hon'ble High Court held that there was no requirement in law for the assessee to prove the genuineness and creditworthiness of the sub creditor.

Similar view has been taken in the following case laws

*(1973) 87 ITR 349 (SC) Daulat Ram Rawatmull
 (1976) 103 ITR 344 (Patna) Sarogi Credit Corpn.
 (1966) 59 ITR 632 (Asm) Tolaram Daga
 (1988) 32 TTJ 300 (Pune) (AT)(TM) Suresh Kalmadi*

4.3.13 In the present case, the appellant company has taken

loan and on which it is paying interest so there is a justification for the lender company to advance money to the assessee company. Such loan and interest has been duly reflected by the lender company. The appellant has deducted-TDS as per law which also goes on to prove the genuineness of the transactions. Nothing adverse has come against the lender company. Further, bank statement of lender Company have been submitted to establish the source of the funds along with the balance sheet and the profit and loss account.

4.3.14 The evidences and the explanation has been rejected by the AO merely on the basis of doubt without bringing any material to discredit the document and information on record. The appellant has lead all evidences in support of its contention and the identity, creditworthiness and genuineness of the transaction stand established. In view of the above factual and legal position the addition of Rs.23,71,70,947/- (correct figure 23,12,56,456/-) made by the AO is directed to be deleted. This ground of appeal is allowed.”

11. Similarly, he deleted the consequential interest addition made by the AO.
12. With regard to section 14A disallowance, Id. CIT (A) partly allowed the grounds raised by the assessee by relying on the decision of ACB India Limited (formerly M/s. Aryan Coal vs. ACIT) (2015) 62 taxmann.com 71 (Delhi) as under :-

“4.6.2 I have considered the facts of the case, remarks of the A.O. made in the assessment order and also the submission of the appellant. During the year under, consideration, the appellant company has received tax free dividend income of Rs.5319531/-. The entire dividend has been received on the investment in the shares of SMC Global Securities Ltd. The investments in the shares of SMC Global Securities Ltd were made in the earlier years and no new investment was made during the year in the shares of SMC Global Securities Ltd.

Against this dividend income, the appellant company has made suo-moto disallowance of Rs.120000/-. The assessing officer has applied Rule 8D of Income Tax Rules and calculated the disallowance at Rs.4561641/- and after reducing the suo-moto disallowance of Rs. 1,20,000/- made addition of difference amount of Rs.44,41,641/-.

*4.6.3 The Hon'ble jurisdiction Delhi High Court in the case of **ACB INDIA LIMITED (FORMERLY M/S ARYAN COAL v ACIT [2015] 62 taxmann.com 71 (Delhi)** has held that for computation of disallowance u/s 14A, only the value of investments of which income is not part of total income, and not the total investment itself, is to be considered. The finding of Hon'ble Court is as under :-*

4. The AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT(Appeals) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of Rs.38,61,09,287/- with the figure of Rs.3,53,26,800/- and thereafter arrive at the exact disallowance of .05%.

*4.6.4. The special bench of Delhi Tribunal in the case of **ACIT v Vireet Investment Pvt. Ltd. (2017) 82 taxmann.com 415 (Delhi- Trib) (SB)** has held as under*

11.16 Therefore, in our considered opinion, no contrary view can be taken under these circumstances, we accordingly, hold that only those investments are to be considered for computing average value of investment which yielded exempt income during the year.

4.6.5 In view of the aforesaid judicial' pronouncement, the

A.O. is directed to restrict the disallowance u/s 14A to Rs.29,94,832/- i.e. $\frac{1}{2}$ % of average value of investment (which is Rs.59,89,66,375/-) in SMC Global Securities Ltd from which the dividend income was received. The appellant gets relief of Rs. 14,46,809/-. This ground is partly allowed."

13. Aggrieved with the above order, Revenue is in appeal before us raising following revised grounds of appeal :-

i. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.39,36,000/- on account of unexplained credit in the form of share & security premium u/s 68 of the Income tax Act, 1961.*

ii.

(a) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 23,71,70,947/- on account of unexplained unsecured loan u/s 68 of the Income tax Act, 1961.*

(b) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of Rs.27,02,664/- on account of interest expenses on unsecured loan u/s 68 of the Income tax Act, 1961.*

(c) *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of interest of Rs. 16,36,678/- made by Assessing Officer by way of reduction in WIP.*

iii. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing to restrict the addition u/s 14A r.w.r 8D to Rs. 29,94,832/- by holding that for calculation under this head only those investments are to be considered for computing average value of investment which yielded exempt income during the year.*

iv. *Whether on the facts and circumstances of the case, the Ld. CIT(A) had erred in admitting additional evidences without seeking the remand report from the Assessing Officer.*

14. At the time of hearing, ld. DR of the Revenue made the following submissions :-

“In respect of above appeal, there is error in mentioning the figure of disallowance on account of interest expenses in Revised/Modified Ground of appeal No.2(b) filled by the Revenue . The correct figure of interest disallowed by the Ld. A.O is Rs 43,39,342/-.The AO has been requested to rectify the error and file^ revised Ground of Appeal No.2 (b). Response from the AO is awaited.

It is therefore requested that either Revenue may be allowed further time to modify the Ground of appeal No.2 (b) or Hon’ble Bench may consider the amount of interest disallowed in Ground of Appeal No. 2 (b) as Rs 43,39,342/- in place of Rs 27,02,664/- while adjudicating the instant

In addition to the above, on merit of issues involved, reliance is placed upon following case laws in support of case of Revenue.

1. *HIGH COURT OF BOMBAY in the case of Commissioner of Income Tax, Karnataka (Central), Bangalore v. Sadiq Sheikh [2020] 122 taxmann.com 39 (Bombay)*

Section 68 of the Income-tax Act, 1961 - Cash credit (Burden of proof) - Assessing Officer made certain addition owing to unaccounted cash receipts on ground that assessee failed to establish identity and creditworthiness of creditors from whom he had received a huge amount of Rs. 8.49 crores - On appeal, Tribunal accepted assessee's explanation that said amount was transferred into assessee's bank account from out of bank accounts of his brother-in-law and a close friend and, further, that said creditors confirmed to have made payment to assessee - On basis of above, Tribunal held that identity of source was thus established and requirement of section 68 was proved beyond any doubt by assessee and, therefore, addition made by Assessing Officer was not sustainable - Whether where Tribunal ignored vital facts emanating from record that said creditors had not produced evidence to establish their capacity to raise such a huge amount and also that they were to clear about their precise role in transaction involving said amount, its order was to be set aside - Held, yes - Whether, further, creditors admitting that they had made

payments to assessee was not sufficient to discharge burden placed on assessee by section 68 - Held, yes [Paras 39 and 45] [In favour of revenue]

2. SUPREME COURT OF INDIA in the case of Sadiq Sheikh v. Commissioner of Income Tax, Bangalore [2021] 124 taxmann.com 202 (SC)

Section 68 of the Income-tax Act, 1961 - Cash credit (Burden of proof) - Assessing Officer made certain addition owing to unaccounted cash receipts on ground that assessee failed to establish identity and creditworthiness of creditors from whom he had received a huge amount of Rs. 8.49 crores - On appeal, Tribunal accepted assessee's explanation that said amount was transferred into its bank account from out of bank accounts of his brother-in-law and a close friend and, further, that said creditors confirmed to have made payment to assessee - On basis of above, Tribunal held that identity of source was thus established and requirement of section 68 was proved beyond any doubt by assessee and, therefore, addition made by Assessing Officer was not sustainable - High Court by impugned order held that since Tribunal ignored vital facts emanating from record that said creditors had not produced evidence to establish their capacity to raise such a huge amount and also that they were not clear about their precise role in transaction involving said amount, its order was to be set aside - It further held that creditors admitting that they had made payments to assessee was not sufficient to discharge burden placed on assessee by section 68 - Whether special leave petition filed against impugned order was to be dismissed - Held, yes [Para 1] [In favour of revenue]

3. Delhi High Court in the case of Commissioner Of Income Tax Delhi-V vs. M/S. N.R.Portfolio Pvt. Ltd. 22 November 2013 [ITA No 1018/20211]

“ 23. The contention that the Revenue must have evidence to show circulation of money from the assessee to the third party is fallacious and has been repeatedly rejected, even when Section 68 of the Act was not in the statute. In A. Govindarajulu Mudaliar v. CIT [1958] 34 ITR 807, Supreme Court observed that it was not the duty of the Revenue to adduce evidence to show from what source, income was derived and why it should be treated as concealed income. The assessee must prove satisfactorily the source and nature of cash received during the

accounting year. Similarly observations were made in CIT vs. M. Ganapathi Mudaliar [1964] 53 ITR 623 (SC), inter alia holding that it was not necessary for the Revenue to locate the exact source. This principle was reiterated in CIT vs. Devi Prasad Vishwanath Prasad [1969] 72 ITR 194 (SC), wherein the contention that the Assessing Officer should indicate the source of income before it was taxable, was described as an incorrect legal position. ...”

“31. It would be incorrect to state that the onus to prove the genuineness of the transaction and creditworthiness of the creditor stands discharged in all cases if payment is made through banking channels. Whether or not onus is discharged depends upon facts of each case. It depends on whether the two parties are related or known to each; the manner or mode by which the parties approached each other, whether the transaction was entered into through written documentation to protect the investment, whether the investor professes and was an angel investor, the quantum of money, creditworthiness of the recipient, the object and purpose for which payment/investment was made etc. These facts are basically and primarily in knowledge of the assessee and it is difficult for revenue to prove and establish the negative. Certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus.”

15. On the other hand, Id. AR of the assessee submitted as under :-

1. Ground No. 1 (Share capital/share premium of Rs.39,36,000/- u/s 68)

The documentary evidences relating to amount of Rs. 39,36,000/- are enclosed in the paper book as under: -

S.No.	Name of the Party	Amount (Rs.)	Documents	Page no. of Paper book
1	Vikas Garg	39,36,000	- Explanation given	- 1 – 3
			- Confirmation of Account	- 5
			- ITR acknowledgement	- 6

			- Balance Sheet	- 7
			- Bank Statements	- 8
			- Passport of Vikas Garg	- 284
			- ITR and Computation of Income of Saroj Devi	- 285 – 287
			- Balance Sheet of Saroj Devi	- 288
			- Bank Statement of Saroj Devi	- 289
			- Bank Statement of Tilak Raj Jagdish Prashad (Proprietor Ashok Kumar)	- 290
			- ITR of Ashok Kumar	- 291

1.1. The assessing officer has made addition of share capital / share premium of Rs.39,36,000/- in respect of share capital issued to Sh. Vikas Garg. The addition made by the A.O. is erroneous. There was no reason or basis for the assessing officer to make the addition of u/s 68 of Income Tax Act 1961. The assessee company had furnished before the A.O. all the necessary details and documentary evidences to discharge its onus u/s 68 of Income Tax Act. The documents / details submitted before the A.O. proved not only the identity of the shareholder but also his creditworthiness and the genuineness of the transactions.

The documentary evidences available with A.O. included :-

- Complete name and address of shareholder*
- Confirmation of the shareholder*
- Copy of bank statement of the shareholder*
- Copy of statement of affairs of the shareholder*
- Copy of ITR acknowledgment of shareholder.*

1.2. The remarks of the A.O. that the investor has low income as compared to investment made is no ground for making the addition u/s 68 of the Act. It is humbly submitted that there is no requirement under the law that Investor has to made the investment out of income only. For the purpose of section 68 of the Act what is relevant is the source of credit in the books

of assessee. The investor can have many sources for making the investment viz loans, his owned accumulated funds, accumulated income etc.

- 1.3. Similarly, the remarks of the A.O. that funds were transferred by the investor to the assessee company immediately after it was received by the investor is also no ground for making the addition u/s 68 of the Act. It is humbly submitted that there is no requirement under the law that Investor has to keep funds idle in bank accounts for some period before making investment.
- 1.4. As a matter of fact, there is no dispute by the assessing officer with regard to identity and creditworthiness of the shareholder and the genuineness of the transaction. The assessing officer has made the addition on the ground that the assessee failed to explain the source of source of fund. In this regard, it is humbly submitted that the reasoning given by A.O. is factually erroneous. The provisions of section 68 are as under :-

⁸⁹ 68. ⁹⁰Where any sum is found credited in the books⁹¹ of an assessee maintained for any previous year, and the assessee offers no explanation⁹¹ about the nature and source thereof or the explanation offered by him is not, in the opinion of the ⁹²[Assessing] Officer, satisfactory, the sum so credited may⁹¹ be charged to income-tax as the income of the assessee of that previous year :

⁹³**[Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of [section 10.](#)]

- 1.5. From the perusal of aforesaid provision, it is evident that w.e.f. 01.04.2013, in respect of share capital / share application money / share

premium there is requirement of offering explanation about the nature and source of amount received by the share applicant. **The assessee company has fully complied with the provisions. It has been duly explained to the A.O. that the shareholder Mr. Vikas Garg has received Rs.35,00,000/- from his mother Saroj Devi and Rs.4,40,000/- from Mr. Tilak Raj Jagdish Prasad.** In the assessment order, the assessing officer has himself mentioned that from perusal of bank statement of Mr. Vikas Garg, it is revealed that Mr. Vikas Garg received funds of Rs. 4,40,000/- and Rs.35,00,000/- from Mr. Tilak Raj and Saroj Devi respectively. Therefore, the assessing officer has erred in stating that the assessee failed to give explanation of source of source.

1.6. **Without prejudice to above, it is submitted that the CIT(A) by virtue of power vested in him under section 250 (4) of Income Tax Act, 1961 and also Rule 46A(4) of the Income Tax Rules, 1962 has gone one step further** and also examined the documentary evidences relating to 'source' of 'source'. The CIT(A) after detailed discussion and examination has deleted the addition made by the AO. There is no infirmity in the order passed by CIT(A).

2. **Ground No. 2(a) (Addition of loans of Rs. 23,71,70,947/- u/s 68) :-**

The documentary evidences in respect of loans are included in the paper book are as under: -

S.No.	Name of the Party	Amount (Rs.)	Documents of loan creditor	Page no. of Paper book
1	Ace Stone Craft Limited	20000000	- Confirmation of Account	- 9
			- ITR acknowledgement	- 10
			- Balance Sheet	- 11 – 84
			- Bank Statements	- 85 – 86
2	Arise Infotech Private Limited	5900000	- Confirmation of Account	- 87
			- Balance Sheet	- 90 – 106
			- Bank Statement	- 88 – 89

3	<i>BaseraRealtech Private Limited</i>	5200000	- Confirmation of Accounts	- 107
			- Bank Statement	- 108 – 109
			- High Court Order	- 203 – 222
4	<i>Multiplex Fincap Limited</i>	163456456	- Confirmation of Account	- 110 – 114
			- ITR acknowledgement	- 115
			- Balance Sheet	- 116 – 130
			- Bank Statement	- 131 – 161
			- Assessment Order 143(3)	- 303 – 305
5	<i>Radhay Portfolio Limited</i>	2950000	- Confirmation of account	- 162
			- ITR acknowledgement	- 163
			- Balance Sheet	- 165-180
			- Bank Statement	- 164
6	<i>SRK Tradelinks Pvt Limited</i>	15500000	- Confirmation of account	- 181
			- ITR acknowledgement	- 182
			- Balance Sheet	- 191 – 202
			- Bank Statement	- 183 – 188
7	<i>Syala Buildwell Private Limited</i>	2500000	- Confirmation of account	- 223
			- ITR acknowledgement	- 224 – 225
			- Balance Sheet	- 227 – 240
			- Bank Statement	- 225 - 226
8	<i>Tia Enterprise Pvt. Limited</i>	4000000	- Confirmation of Account	- 241
			- ITR acknowledgement	- 242

			- Balance Sheet	- 246 – 258
			- Bank Statement	- 243 – 245
9	Umang Leasing and Credit Co. Ltd.	11750000	- Confirmation of account	- 259
			- ITR acknowledgement	- 260
			- Balance Sheet	- 263 – 282
			- Bank Statement	- 261 – 262
	Total	23,12,56,456		

2.1. The total of above loans is Rs.23,12,56,456/- whereas the total mentioned by the A.O. in the assessment order is Rs.23,71,70,947/-. Be that as it may be, it is submitted that the entire addition made by the A.O. is erroneous. There was no reason or basis for the assessing officer to make the addition of u/s 68 of Income Tax Act 1961. The assessee company had furnished before the A.O. all the necessary details and documentary evidences to discharge its onus u/s 68 of Income Tax Act. The documents / details submitted before the A.O. proved not only the identity of the creditor but also there creditworthiness and the genuineness of the transactions.

2.2. As per Section 68 of Income Tax Act 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 therefore 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. In the assessee company's case, as explained above, complete detail and documentary evidences in respect of the amount of loans were available on record with the assessing officer during the course of assessment proceeding. Under section 68, the onus of the assessee is discharged if he proves the following: -

- a) identity of the Creditors
- b) genuineness of the transaction
- c) creditworthiness of the creditors

- 2.3. In this case, the identity of the loan creditors is self-established. The creditors are existing income tax assessee. The loan creditor has been allotted PAN by department. The loan creditor is having bank accounts. Therefore, there can be no dispute about their identity. Similarly, the genuineness of the transactions is established beyond doubt. The transactions have taken place by account payee cheques. The assessee company has paid interest on the loan and tax has been deducted at source and deposited into the government account in accordance with the provisions of law. The loan has been repaid back by banking channel. Also the creditworthiness of the loan creditor has been established and proved. The loan creditors are income tax assessee and have confirmed about their transaction with the company.

*In view of the above, it is submitted that the identity, creditworthiness and genuineness of the transactions stand established. **Your honour will appreciate that once the creditor confirms their transaction with the assessee company; their remain no basis for drawing adverse inference in the hand of assessee company. Under such a situation, if the A.O. still doubts the source of the amount lent by the creditor to the assessee company, adverse inference can be drawn in case of the creditor and not in the case of assessee company.***

- 2.4. The remarks of the A.O. that the loan creditors have low income as compared to loans given by them is no ground for making the addition u/s 68 of the Act. It is humbly submitted that there is no requirement under the law that Loan creditor has to give loans out of income only. For the purpose of section 68 of the Act what is relevant is the source of credit in the books of assessee. The loan creditors can have many sources for giving the loans viz loans taken by them, their owned accumulated funds, accumulated income etc.
- 2.5. Similarly, the remarks of the A.O. that funds were transferred by the loan creditor to the assessee company immediately after it was received by the loan creditor is also no ground for making the addition u/s 68 of the Act. It is humbly submitted that there is no requirement under the law that loan creditor has to keep funds idle in bank accounts for some period before giving loan to others.

The assessee has, thus fully discharged the onus cast upon it under section 68 of Income Tax Act, 1961. The assessee has furnished the necessary evidences to prove the identity of the creditor, there creditworthiness and also the genuineness of the transactions. The assessee had explained the source of amount credited in its books by way of confirmation of creditors and other documentary evidences.

2.6. *The Hon'ble Supreme Court in the case of **CIT v. Orissa Corporation Pvt. Ltd. [1986] 159 ITR 78 (SC)**, has held as under: -*

In this case, the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.

2.7. *The assessee company has explained the source of credit in its books of accounts by way of confirmation of the creditor and their bank statement. The A.O. is raising doubt about source of source. In this regard it is most humbly submitted that it is a settled law that the assessee is not required to explain the "Source" of "Source".*

The provisions of section 68 are as under :-

⁸⁹ 68. ⁹⁰Where any sum is found credited in the books⁹¹ of an assessee maintained for any previous year, and the assessee offers no explanation⁹¹ about the nature and source thereof or the explanation offered by him is not, in the opinion of the ⁹²[Assessing] Officer, satisfactory, the sum so credited may⁹¹ be charged to income-tax as the income of the assessee of that previous year :

⁹³[**Provided** that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount

by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

***Provided further** that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of [section 10](#).]*

2.8. *From the perusal of aforesaid provision, it is evident that w.e.f. 01.04.2013, in respect of share capital / share application money / share premium there is requirement of offering explanation about the nature and source of amount received by the share applicant. However, there is no requirement of explaining of source of source in case of loans and other non share capital transactions.*

Requirement of explaining ‘Source’ of ‘Source’ in respect of loans is applicable from A.Y. 2023-24 and subsequent years Reliance in this regard is placed on Delhi ITAT decision dated 31/05/2022 in the case of M/s Mall Hotels Ltd. V. CIT (ITA No. 2688/DEL/2014)

*The Hon’ble Delhi Bench of ITAT in the case of **ACIT v Smt. Prem Anand (ITA No. 3514/Del/2014)** vide its decision dated 13.04.2017 has held that amendment made in section 68 of the Act w.e.f. 01.04.2013 empowers the A.O. to examine source of source in case of share application money / share capital / share premium from 01.04.2013 and this amendment does not give power to the A.O. to examine source of source of non-share capital cases.*

*The Hon’ble **Gauhati High Court in the case of Nemi Chand Kothari v CIT (2003) 264 ITR 254 (Gau)** held as under :-*

"What, thus, transpires from the above discussion is that while Section 106 of the Evidence Act limits the onus of the Assessee to the extent of his proving the source from which he has received the cash credit, Section 68 gives ample freedom to the Assessing

Officer to make inquiry not only into the source(s) of the creditor, but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the Assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the Assessee himself. In other words, while Section 68 gives the liberty to the Assessing Officer to enquire into the source/sources from where the creditor has received the money, Section 106 makes the Assessee liable to disclose only the source(s) from where he has himself received the credit and it is not the burden of the Assessee to show the source(s) of his creditor nor is it the burden of the Assessee to prove the creditworthiness of the source(s) of the sub-creditors. If Section 106 and Section 68 are to stand together, which they must, then, the interpretation of Section 68 has to be in such a way that it does not make Section 106 redundant. Hence, the harmonious construction of Section 106 of the Evidence Act and Section 68 of the Income Tax Act will be that though apart from establishing the identity of the creditor, the Assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the Assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the Assessee and the creditor. What follows, as a corollary, is that **it is not the burden of the Assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the Assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been, eventually, received by the Assessee.** It, therefore, further logically follows that the creditor's creditworthiness has to be judged vis-a-vis the transactions, which have taken place between the Assessee and the creditor, **and it is not the business of the Assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the Assessee.**" (Emphasis Supplied)

The Delhi High Court in the case of *Mod. Creations Pvt. Ltd. v ITO (2013) 354 ITR 282 (Del)* held as under :-

"It will have to be kept in mind that Section 68 of the I.T. Act only sets up a presumption against the Assessee whenever unexplained credits are found in the books of accounts of the Assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the Assessee. This burden, which is placed on the Assessee, shifts as soon as the Assessee establishes the authenticity of transactions as executed between the Assessee and its creditors. **It is no part of the Assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the Assessee to prove the credit worthiness of the sub-creditors.**"

"14. With this material on record in our view as far as the Assessee was concerned, it had discharged initial onus placed on it. In the event the revenue still had a doubt with regard to the genuineness of the transactions in issue, or as regards the credit

worthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the A.O. that the credits were a circular route adopted by the Assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the Assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the Assessee as being mala fide. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements of the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. **In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that of its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors. [See CIT v. Divine Leasing & Finance Ltd. (2008) 299 ITR 268 (Delhi) and CIT v. Lovely Exports (P.) Ltd. (2008) 216 CTR 195 (SC)].**"

The Delhi High Court in its judgement dated 21.12.2015 in case of **CIT v Shiv Dhooti Pearls & Investments Ltd. [2015] 64 taxmann.com 329 (Delhi)** has again reaffirmed this position. In this case, the assessee had taken loans from a company TIL. The said company confirmed having loan given to assessee. The A.O. however doubted the source of credit in account of TIL (which was TCL). The A.O. concluded that TCL was not a genuine party which could have lent money to TIL, which in turn lent money to assessee company. It was, therefore concluded that the entire chain of lending and borrowing is bogus. The Hon'ble High Court held that there was no requirement in law for the assessee to prove the genuineness and creditworthiness of the sub-creditor.

2.9. **Conclusion**

- I. All the loans have been repaid back during the year itself and only small amount of interest payable was outstanding as on 31/03/2016. (Refer page no. 4.3.10 of the CIT(A) order).
- II. The loans were taken during the ordinary course of business for the genuine business needs and interest was duly paid and TDS was duly deducted and paid as per exchequer.

- III. *There is no incriminatory/adverse information from the investigation wing or any other, source in respect of any of the loan creditors.*
- IV. *It is not a case where any of the loan creditor has not responded to any notice issued by the AO.*
- V. *In respect of Multiplex Fincap Ltd it is submitted that loans were received in the last year (F.Y. 2014-15) and the same was duly accepted in the assessment order u/s 143(3). Copy of assessment for A.Y. 2015-16 is at page no. 295 – 299).*
- VI. *The loans received from Multiplex during the year under consideration were of Rs. 42,60,56,456/- out of which the assessing officer has accepted the loans of Rs. 26,26,00,000/- and made the addition of Rs. 16,34,56,456/- . **There can be no logic/ratio for making addition of part amount of loans when the loan creditors have confirmed the entire loan.***
- VII. *The assessment of Multiflex Fincap Ltd for the year under consideration i.e., F.Y. 2015-16 (A.Y. 2016-17) was completed u/s 143(3) without drawing any adverse inference.*
- VIII. *Without prejudice to above, it is submitted that in this case, even the 'source' of 'source' has been duly established. The CIT(A) has made detailed inquires and examination even in respect of the net worth/funds available with the loan creditors. Accordingly, the CIT(A) has passed the order after detailed examination and verification there is no infirmity in the order passed by CIT(A).*

3. **Ground No. 2(b) – Disallowance of Interest on Loan**

This ground is consequential to ground no. 2(a). Since the addition of loans made by the assessing officer itself is erroneous, the addition of interest is also erroneous.

4. **Ground No. 3 (Disallowance u/s 14A- Rs.44,41,641/-)**

During the year under consideration, the assessee company has received tax free dividend income of Rs.53,19,531/-. The entire dividend has been received on the investment in the shares of SMC Global Securities Ltd. The investments in the shares of SMC Global Securities Ltd were made in the earlier years and no new investment was made during the year in the shares of SMC Global Securities Ltd. Against this dividend income, the assessee company has made suo-moto disallowance of Rs.1,20,000/-. The assessing officer has applied Rule 8D of Income Tax Rules and calculated the disallowance at Rs.45,61,641/- and after reducing the suo-moto

disallowance of Rs.1,20,000/- made addition of difference amount of Rs.44,41,641/-.

*It is submitted that the assessing officer has erred in including and considering all the investments for computing the disallowance u/s 14A. The amount of investments which can be considered for computing the disallowance u/s 14A are only those investments from which the assessee has earned tax free income. The Hon'ble jurisdiction Delhi High Court in the case of **ACB INDIA LIMITED (FORMERLY M/S ARYAN COAL v ACIT [2015] 62 taxmann.com 71 (Delhi)** has held that for computation of disallowance u/s 14A, only the value of investments of which income is not part of total income, and not the total investment itself, is to be considered. The finding of Hon'ble Court is as under :-*

4. The AO, instead of adopting the average value of investment of which income is not part of the total income i.e. the value of tax exempt investment, chose to factor in the total investment itself. Even though the CIT(Appeals) noticed the exact value of the investment which yielded taxable income, he did not correct the error but chose to apply his own equity. Given the record that had to be done so to substitute the figure of Rs.38,61,09,287/- with the figure of Rs.3,53,26,800/- and thereafter arrive at the exact disallowance of .05%.

*Reliance is also placed on the Bombay High Court judgements in the case of **CIT v JSW Energy Ltd (2015) (5) TMI 823 (Order dated 30.04.2015)** and **CIT v Essar Teleholdings Ltd (2015) (5) TMI 810 (Order dated 07.08.2014)**.*

*The special bench of Delhi Tribunal in the case of **ACIT v Vireet Investment Pvt. Ltd. (2017) 82 taxmann.com 415 (Delhi-Trib) (SB)** has held as under :-*

11.16 Therefore, in our considered opinion, no contrary view can be taken under these circumstances. We, accordingly, hold that only those investments are to be considered for computing average value of investment which yielded exempt income during the year.

Applying the aforesaid case laws, the disallowance u/s 14A comes to Rs.29,94,832/- i.e. 1/2 % of average value of investment (which is Rs.59,89,66,375/-) in SMC Global Securities Ltd from which the dividend income was received.

Accordingly CIT(A) confirmed the addition to the extent of Rs.29,94,832/-. There is no infirmity in the order passed by CIT(A)

5. Ground no. 4

There is no violation of Rule 46A of the Income Tax Rules, 1962.

5.1. Section 250(4) of the Act is as under: -

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the ⁹[Assessing] Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)].

5.2. Rule 46A(4) is as under: -

(4) Nothing contained in this rule shall affect the power of the Commissioner (Appeals) to direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal, or for any other substantial cause including the enhancement of the assessment or penalty (whether on his own motion or on the request of the Assessing Officer) under clause (a) of sub-section (1) of section 251 or the imposition of penalty under section 271.

5.3. The Hon'ble Jurisdictional Delhi High Court in the case of CIT v. Manish Buildwell Pvt. Ltd. (ITA no. 928/2011) has held as under: -

We are highlighting these aspects only to press home the point that the conditions prescribed in Rule 46A must be shown to exist before additional evidence is admitted and every procedural requirement mentioned in the Rule has to be strictly complied with so that the Rule is meaningfully exercised and not exercised in a routine or cursory manner. A distinction should be recognized and maintained between a case where the assessee invokes Rule 46A to adduce additional evidence before the CIT (A) and a case where the CIT (A), without being prompted by the assessee, while dealing with the appeal, considers it fit to cause or make a further enquiry by virtue of the powers vested in him under sub-Section (4) of Section 250. It is only when he exercises his statutory suomoto power under the above sub-section that the requirements of Rule 46A need not be followed. On the other hand, whenever the assessee who is in appeal before him invokes Rule 46A, it is incumbent upon the CIT (A) to comply with the requirements of the Rule strictly.

5.4. The Hon'ble Jurisdictional Delhi Court in the case of CIT v. Hotchand Techchand Punjabi (ITA No. 701/2023) held as under: -

17.1 Firstly, that the CIT(A) had exercised his powers under Section 250(4) of the Act which was co-equal to that of the AO. It also took note of the fact that notice was issued to the concerned branch of Canara Bank under Section 133(6) of the Act and it was only after information was received from Canara Bank and material evidence furnished by the respondent/assessee, that the addition was deleted. The relevant observations made in this behalf by the Tribunal being apposite are set forth hereafter:

“7. We have considered rival submissions and perused the materials on record. The basic grievance of the Revenue is, learned Commissioner (Appeals) should not have deleted the addition based on additional evidences furnished by the assessee without forwarding them to the Assessing Office for his examination and opinion. It is fairly well settled, powers of the first appellate authority is co-terminus with the Assessing Officer. On a reading of section 250 and 251 of the Act, it is very much clear that learned Commissioner (Appeals) while deciding an appeal can consider and decide any matter arising out of proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised by the appellant.

In fact, sub-section (4) of section 250 of the Act empowers the first appellate authority to make further inquiry as he thinks fit for disposing of the appeal. Even, sub-rule (4) of Rule 46A empowers the first appellate authority to call for and examine evidences and make necessary inquiry. Thus, as could be seen, the statutory provisions empower the first appellate authority make necessary inquiry and call for evidences to decide appeal.

8. In the facts of the present appeal, undoubtedly, learned Commissioner (Appeals) exercising statutory power vested with him has called for and examined necessary evidences for deciding the issue. Such exercise of power by learned first appellate authority assumes importance in the present case considering the fact that the assessee did not get a fair opportunity to represent his case before the Assessing Officer. On a careful reading of the impugned order of learned Commissioner (Appeals) it is very much clear that considering the fact that the assessee did not get a fair opportunity to represent his case before the Assessing Officer, learned Commissioner (Appeals) took the responsibility upon himself to inquire into the matter and in the process has called for necessary evidences, not only from the assessee, but from the concerned bank through the assessee. After examining the evidences, learned Commissioner (Appeals) has factually found that the actual quantum of time deposits in Canara Bank was to the tune of Rs. 9,50,00,000/-. He has further found that even Rs. 9,50,00,000/- deposited in Canara Bank was out of overseas remittances from the income earned by the assessee as a resident in USA for past so many years. No contrary material has been brought on record by the Revenue to disturb the aforesaid factual findings of learned Commissioner (Appeals). Therefore, if, upon examining the material on record learned Commissioner (Appeals) has recorded a factual finding, without pointing out

any deficiency or discrepancy in such finding, the decision of learned Commissioner (Appeals) cannot be reversed merely on the allegation of violation of Rule 46A.”

18. According to us, the Tribunal has reached the correct conclusion. Mr Kumar cannot but accept that the CIT(A) has co-equal powers as that of the AO. The enquiry carried out by the CIT(A) revealed a grave factual error committed by the AO, in noting the figure with regard to the time deposits.

5.5. Reliance is also placed on the following case law: -

- *International Tractor v. CIT(LTU) & ANR – 2022(11) TMI 913 – (Delhi High Court)*
- *International Tractor v. CIT(LTU) & ANR – 2021(4) TMI 1033 – (Delhi High Court)*
- *DICT v. Converteam Group – 2022 (9) TMI 1447 – (ITAT Delhi)*
- *DCIT v. Smt. Devi Tatiparti – 2021 (10) TMI 19 – (ITAT Visakhapatnam)*
- *ITO v. Industrial Roadways – 2007 (3) TMI 292 – (ITAT Bombay – K)*
- *DCIT v. MKU (Armours) – 2014 (11) TMI 847 – (ITAT Lucknow)”*

16. Subsequently, ld. AR has submitted on the case laws relied on by the ld. DR as under:-

“The case laws relied upon by the revenue are not applicable to the case of assessee company because the facts of the case of assessee are totally distinguished from the facts of the case laws relied upon by the revenue.

- *The case law of CIT v. Sadiq Sheik [2020] 122 taxmann.com 39 (Bombay) relied upon by revenue is not applicable to the case of the assessee as the facts are entirely different. In this case law relied upon by the revenue, there were huge amount of cash withdrawal and cash deposit*

in the accounts of creditors and the source of creditors. There are no facts in the case of the assessee before your honour. In this case law relied upon by the revenue, the source of creditors i.e., Prasad Properties was a firm which was not even having any PAN card and they had never filed any return of income. There are no such facts in the case of the assessee before your honour. The Hon'ble High Court in this case as per para 40 of its order it was found that there was no genuine transactions. In the assessee company's case there are no such facts. As a matter of facts, in the case of the assessee the loans have been repaid during the year itself.

- *The case law of **CIT v. NR Portfolio Pvt. Ltd.** relied upon by the revenue is not at all applicable to the facts of the case of the appellant. The case law relied upon by the assessing officer was relating to share capital received from persons who were found to be established entry operators/paper companies by the investigation wing and in respect of whom notice u/s 131/133(6) were returned back unserved and they were found to be non-existent. In the assessee company's case before your honour, there are no such facts."*

17. Considered the rival submissions and material placed on record. With regard to ground no.i raised by the Revenue on the issue of share capital share and share premium, we observed that the Assessing Officer made the addition under section 68 of the Act even though the assessee has submitted the relevant details and claims in respect of identity of the shareholder, confirmation from the shareholder, bank statement and statement of affairs as well as ITR from the shareholder. Further the assessee has submitted source of source of the shareholder i.e. Vikas Garg who has received the loan funds of Rs.35,00,000/- from his mother, Mrs. Saroj Devi and Rs.4,40,000/- from Tilak Raj. As per the

provisions of section 68 of the Act, the assessee has to prove source of source in order to prove the creditworthiness of the investor. In this case, the assessee has already proved identity and by bringing on record source of source of the shareholder to prove the genuineness and also the relevant shareholders made investment in share capital and share premium in the company and the abovesaid issues were considered by the Id. CIT (A) and deleted the addition by observing that the Assessing Officer has failed in his duty since neither it had done any further enquiry nor he had asked the assessee to substantiate its claim by submitting documents such as bank statement of Saroj Devi and Tilak Raj and other relevant details of these persons. He deleted the addition by observing that as far as assessee is concerned, assessee has submitted all the relevant documents and also proved the source of source of the amount invested in the assessee's company as share capital as required by the amended provisions of section 68 of the Act. After considering the facts on record, we do not see any reason to disturb the abovesaid findings. Accordingly, ground no.i raised by the Revenue is dismissed.

18. With regard to ground no.ii(a), we observed that the Assessing Officer observed that the assessee has taken unsecured loan from 9 parties and assessee has submitted copies of ITR acknowledgement, confirmation of the loan creditors and copy of bank statement of all the loan creditors and with regard to Basera

Realtech Private Limited submitted a copy of the Hon'ble High Court order. The Assessing Officer has made the addition after analyzing loan creditors. He came to the conclusion based on the declaration of meager income in the return of income and observed how can they lend huge amount to the assessee as unsecured loans, therefore, he raised doubt of the creditworthiness of these parties. In appellate proceedings, Id. CIT (A) considered the detailed submissions of the assessee and he deleted the addition with the observation that the assessee has submitted all the relevant details/documents in respect of securing unsecured loans from all the nine parties. After considering the details filed on record, he observed that Assessing Officer has not pointed out any discrepancy in the abovesaid documents and not made further enquiries. Further he observed that based on the balance sheet of these lender companies, he observed that the status of own funds/total funds available with these lender companies are much higher than the amount lend by them and he negated the findings of the Assessing Officer on the basis of lending the money merely on the basis of earning of income. He relied on the decision of coordinate Bench in the case of Addl.CIT vs. Prayag Polytech Pvt. Ltd. (supra), ITO vs. Computer Home Information Plus Pvt. Ltd. (supra) and the decision of Hon'ble Delhi High Court in the case of Pr.CIT vs. Goodview Trading Pvt. Ltd. (supra) and came to the conclusion that income alone is not the criteria for making the loan and also

negated the findings of the Assessing Officer that the loan was given immediately after it was received by them and cannot be the ground for making addition u/s 68 of the Act. Finally, he deleted the addition by observing that the assessee has taken loans from these companies for short duration and almost all the loans were repaid during the year itself and only some small amount is outstanding as at the year end and that too is mainly on account of interest. He has reproduced the following chart in his order :-

<i>S.No.</i>	<i>Name of the Party</i>	<i>Loan amount added by A.O. (Rs.)</i>	<i>Outstanding balance as at the year end (Rs.)</i>
<i>1</i>	<i>Ace Stone Craft Limited</i>	<i>20000000</i>	
<i>2</i>	<i>Arise Infotech Private Limited</i>	<i>5900000</i>	<i>1346065</i>
<i>3</i>	<i>Basera Realtech Private Limited</i>	<i>5200000</i>	<i>NIL</i>
<i>4</i>	<i>Multiplex Fincap Limited</i>	<i>163456456</i>	<i>NIL</i>
<i>5</i>	<i>Radhay Portfolio Limited</i>	<i>2950000</i>	<i>4361540</i>
<i>6</i>	<i>SRK Tradelinks Pvt. Limited</i>	<i>15500000</i>	<i>NIL</i>
<i>7</i>	<i>Syala Buildwell Private Limited</i>	<i>2500000</i>	<i>2590369</i>
<i>8</i>	<i>Tia Enterprise Private Limited</i>	<i>4000000</i>	<i>NIL</i>
<i>9</i>	<i>Umang Leasing and Credit Co. Ltd.</i>	<i>11750000</i>	<i>NIL</i>

19. Based on the above finding, Id. CIT (A) came to the conclusion that assessee has proved the conditions imposed u/s 68 of the Act that assessee has found identity, creditworthiness and genuineness of the transactions. Further, he observed that the Assessing Officer has merely rejected the submissions of the assessee on the basis of doubt without bringing any material to discredit the document or information on record. Further he observed that the provisions of section 68 of the Act as existed at that point

out time there is no requirement of proving the source of source in the case of loan transactions. Accordingly, he deleted the addition made by the Assessing Officer.

20. At the time of hearing, Id. DR relied on several decisions in his arguments. We heard the same and we are of the opinion that those case laws are distinguishable to the facts in the present case. Therefore, we are not inclined to disturb the findings of the Id. CIT (A). Accordingly, ground no.ii(a) is dismissed.
21. With regard to ground no.ii(b), we observed that the Assessing Officer has disallowed the relevant interest expenses on unsecured loan u/s 68 of the Act. Since we have already deleted the addition made by the Assessing Officer on unsecured loan, we are not inclined to allow the same. Accordingly, ground no.ii(b) raised by the Revenue is dismissed.
22. Further with regard to ground no.ii(c) deleting the disallowance of interest of Rs.16,36,678/- made by the Assessing Officer by way of reduction in WIP, it is also relating to disallowance of interest expenditure. Since we have already deleted the addition on unsecured loan, this interest expenditure also allowed. Accordingly, ground no.ii(c) is dismissed.

23. With regard to ground no.iii relating to addition u/s 14A read with Rule 8D based on the investment which has yielded the exempt income during the year, we observed that the assessee has earned exempt income of Rs.53,19,531/- during the year and Assessing Officer invoked Rule 8D and disallowed the expenditure of Rs.44,41,641/- after reducing the suo motu disallowance of Rs.1,20,000/-. We observed that ld. CIT (A) partly allowed the ground raised by the assessee on the basis of exempt income i.e. dividend received by the assessee from the investment which has actually yielded exempt income. He came to the conclusion on the basis of decision of Hon'ble Bombay High Court in the case of CIT vs. JSW Energy Limited (supra) and decision of Special Bench of Delhi Tribunal in the case of ACIT vs. Vireet Investment Pvt. Ltd. (supra). After considering the factual matrix in this case, we observed that ld. CIT (A) has rightly applied the provisions of section 14A read with Rule 8D by relying on the settled position of law. Accordingly, ground no.iii is dismissed.
24. With regard to ground no.iv on the issue of admission of additional evidences by the ld. CIT (A) without seeking remand report from the Assessing Officer, after considering the factual matrix in the present case, we observed that u/s 250(4) of the Act, the Commissioner (Appeals) has

power to dispose off any appeal after making such an enquiry as he thinks fit or he was given reference option in case he thinks proper to remand the issue back to the Assessing Officer. Therefore, Commissioner (Appeals) has power to make such call. Further we observed that Rule 46A(4) gives right to the Commissioner (Appeals) to direct the production of any document or examination any witness to enable him to dispose off the appeal and also having power to enhancement of the assessment or penalty. Therefore, the above provisions and rule gives ample power to CIT (A) to make the call and it is not necessary that he has to remand the matter back to the Assessing Officer, it is only an additional power of reference given to him. Similar views were expressed by Hon'ble Delhi High Court in the case of Manish Buildwell Pvt. Ltd. (supra) and Hotchand Techchand Punjabi (supra). Therefore, we are inclined to dismiss ground no.iv raised by the Revenue.

25. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 7th day of February, 2025.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(S.RIFAUH RAHMAN)
ACCOUNTANT MEMBER**

**Dated: 07.02.2025
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-8, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI