

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “C” BENCH: NEW DELHI**

**BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA Nos.3906 & 3907/Del/2023

[Assessment Years : 2018-19 & 2019-20]

DCIT, Central Circle-20, Room No.269A, 2 nd Floor E-2, ARA Centre Jhandewalan Extension New Delhi-110055.	vs	Indian Hydro Electric Power Pvt. Ltd. 921A, 9 th Floor, Devika Towers, Nehru Place Delhi-110019. PAN-AADCT7087J
APPELLANT		RESPONDENT
Revenue by	Shri Dayainder Singh Sidhu, CIT DR	
Assessee by	Shri Gaurav Jain, Adv. & Shri Tarun Chanana, Adv	
Date of Hearing	20.08.2025	
Date of Pronouncement	07.11.2025	

ORDER

PER MANISH AGARWAL, AM :

The captioned appeals are filed by Revenue against the common order, dated 26.10.2023 passed by Ld. Commissioner of Income Tax (A)-27, New Delhi [“Ld. CIT(A)”] in Appeal No. CIT(A), Delhi-27/10394/2017-18 & CIT(A), Delhi-27/10802/2018-19 u/s 250 of the Income Tax Act, 1961 [“the Act”] arising out of assessment orders, both dated 30.09.2021 passed u/s 153A of the Act pertaining to Assessment Years 2018-19 & 2019-20 respectively.

2. As these captioned appeals are having identical issues which are inter-linked, inter-connected and this fact has been admitted by both the parties during the course of hearing before us where

common submissions were made for both the years, therefore, both the appeals filed by the Revenue are decided by a common order.

ITA No.3906/Del/2023 [Assessment Year : 2018-19]

3. First we take up the appeal of Revenue in ITA No. 3906/Del/2023 for Assessment Year 2018-19.

4. Brief facts of the case are that assessee company is engaged in the business of developing, building, owning and operating power generation facility and furnished its return of income declaring Income at NIL for AY 2018-19 on 31.03.2019 and claimed loss of INR 11,05,11,469/-. A search & seizure operation u/s 132 of the Act was conducted by Investigation Wing on 07.04.2019 on Moser Baer group and office premises of the assessee was also search as assessee is one of the company of that group. Thereafter, notice u/s 153A of the Act was issued on 18.11.2020, in response to which return of income was filed on 26.03.2021, declaring a loss of INR 11,05,11,469/-. During the search at the residence of Shri Rajiv Agarwal, an employee of one of the companies with Moser Baer Group, some documents were found including an excel sheet titled "Funds Position" from his laptop. This document also contained details of funds received and payments made by the assessee company and were relied upon by the Department to infer receipt of accommodation entries of loans by the assessee company. In the statements recorded on 10.04.2019, Shri Rajiv Agarwal was asked about the nature of entries appearing in the said Excel Sheet found from his laptop and after considering his reply and based on the statement of Sh. Neeraj Jain who was alleged as the mediator/

facilitator for obtaining these loans, additions of INR 25,05,00,000/- was made u/s 68 of the Act for AT 2018-19, treating these loans as unexplained cash credit. Further, addition of INR 25,05,000/- was made u/s 69C of the Act, by alleging the same as payment of commission @ 1% of the loan amount.

5. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 26.10.2023, allowed the appeal of the assessee and deleted the additions made.

6. Aggrieved by the order of Ld.CIT(A), Revenue is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“The Ld. CIT(A) has erred on facts and in law, in deleting the addition of Rs. 25,05,00,000/- made u/s 68 of the Income Tax Act, 1961, on account of unsubstantiated cash credit found to be recorded on incriminating documents seized during the search, by ignoring the facts and circumstances of the case.*
2. *The Ld. CIT(A) has erred on facts and in law, in deleting the addition of Rs. 25,05,000/- made u/s 69C of the Income Tax Act, 1961, on account of 1% commission paid on the total entry which is his unexplained expenditure by ignoring the facts and circumstances of the case.*
3. *The Ld. CIT(A) has erred on facts and in law by accepting the bogus loan transactions made by the assessee as genuine by merely relying on the submissions of the assessee and ignoring the facts revealed by the Assessing Officer about the sham entities.*
4. *The Ld. CIT(A) has erred on facts and in law by accepting the retracted statement of Sh. Rajiv Agarwal and rejecting the original confession made by him u/s 132(4) of the Act during the search operation.*
5. *(a) The Order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*

(b) The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

7. Before us, Ld.CIT DR for the Revenue submits that search action was carried out by the Department on 07.04.2019 on Moser bear group which includes the business premises of the assessee. During the search at the residence of Shri Rajiv Agarwal, one of the employees, an excel sheet titled “Funds Position” was found from his laptop and when he was confronted about the contents of this sheet, it was explained that the entries contained in the said sheet represents the accommodation entries in the form of unsecured loans taken by some of the group companies including the assessee company. He further stated one Shri Neeraj Jain had acted as mediator/facilitator for providing such accommodation entries on commission basis. Ld. CIT DR submits that the statement of Shri Neeraj Jain was also recorded wherein Shri Neeraj Jain also concurred the statements of Shri Rajiv Agarwal that he had provided accommodation entries in lieu of cash to various companies of the group which includes the assessee company also. Ld. CIT DR submits that these statements, though retracted however, cannot be brushed aside and had evidentiary value.

8. Ld. CIT DR further submits that additions were not only based on the statements of aforesaid two persons, but the Investigation Wing had made independent inquiries with respect to the companies from whom loans were received by the assessee wherein it was found that those companies were not traceable at the address given. Ld. CIT DR argued that the lender companies were not found at the

addresses and were not engaged in any regular and genuine business activity, and all were showing very meagre income from other sources and no income was shown from regular business activities. Ld. CIT DR thus contended that the additions were made of INR 25.05 crores in the year under appeal for bogus accommodation entries on the basis of evidences found during search and post search investigation.

9. Ld.CIT DR further submits that the AO has reproduced the statement of Shri Rajiv Agarwal and Shri Neeraj Jain in the assessment order wherein they have categorically admitted that these loans were accommodation entries obtained in lieu of cash. He submits that AO at page 21 has rebutted the submissions made by the assessee and further discussed the lender companies in subsequent pages and thereafter, observed that all the lender companies do not have any fixed assets, inventory and shown very meager income in the form of other income whereas the Revenue from operation were NIL. It is further submitted by Ld. CIT DR that on spot verification through Circle Inspector, it was found that most of the companies have no proper office set up and therefore, it cannot be said that these companies are engaged in real-time business activities. Ld. CIT DR further stated that on perusal of their bank statements, it could be seen that there were credit entries just prior to the entries of the loans to the assessee company. Therefore, by placing heavy reliance on the order of the AO, Ld.CIT DR submits that AO has rightly made the additions which order deserves to be upheld.

10. On the other hand, Ld. AR for the assessee strongly supported the order of Ld.CIT(A) and submits that the loans taken by the assessee were alleged as bogus solely on the basis of statement of Shri Rajiv Agarwal & Shri Neeraj Jain recorded during the course of search and post-search investigation. He submits that there was no incriminating material that was found/seized as a result of search from the possession of the assessee company indicating any unaccounted or unrecorded transactions in the shape of loans etc. Ld. AR submits that excel sheet found from the Laptop of Shri Rajiv Agarwal contains details of the loans taken /repaid from various parties which were duly recorded in the books of accounts thus, the entries found recorded in the said Excel sheet cannot be held as incriminating document. He further submits that Shri Rajiv Agarwal & Shri Neeraj Jain had retracted from their statements recorded where they have admitted the loan entries appearing in the Excel Sheet as accommodation entries within a short period of 15-30 days and as such, these retracted statement cannot be made sole basis for making addition for the alleged bogus accommodation loans.

11. Ld.AR for the assessee drew our attention to the statement of Shri Ratul Puri, Director of the assessee company wherein he categorically denied indulging in any transactions of alleged accommodation entries as has been stated by Shri Rajiv Agarwal in his statement recorded u/s 131(1a) of the Act on 10.04.2019. Ld. AR further drew our attention to the fact that the assessee had filed all the necessary evidences in order to establish identity and creditworthiness of the lender companies and since all transactions were carried out through banking channel therefore, their

genuineness cannot be doubted. Regarding non-availability of these companies at the given addresses, Id.AR stated that some of the companies had changed their addresses and their latest master data as available at the website of Ministry of Corporate Affairs (“MCA”) were also filed before the AO and all such details were available in the Paper Book at pages 188 to 699 filed before us as were filed before the AO.

12. Ld.AR further submits that most of the loans were repaid in subsequent assessment years and necessary confirmations and the copy of ledger account of the year when they were repaid, were also filed before the AO. He submits that once so called statements which were made basis to hold the loans as accommodation entries were retracted and no further inquiries were carried out by the AO at the correct addresses provided by the assessee of the lender companies and no incriminating material was found from the possession of the assessee company, Id. CIT(A) has rightly deleted the additions which order deserves to be upheld.

13. Ld.AR for the assessee also filed a detailed written submission in this regard which is reproduced as under:-

OUR SUBMISSIONS

I. “STATEMENTS CANNOT BE RELIED UPON DEHORS INCRIMINATING MATERIAL

1. *It is respectfully submitted that the additions made by the AO under Sections 68 and 69C of the Act are wholly unsustainable, as they are not based on any incriminating material found during the course of the search conducted under Section 132 of the Act.*

2. The AO has placed primary reliance on the statements of Mr. Neeraj Jain and Shri Rajiv Agarwal. However, both statements were **subsequently retracted**, and the retractions were duly placed on record. Despite this, the AO chose to rely on the untested and uncorroborated statements.
3. Furthermore, the only document referred to in the assessment order is an **excel sheet titled “Funds Position”**, found on the laptop of Shri Rajiv Agarwal an employee of a group company who held **no official position** in the Respondent-Assessee. The said sheet merely contained references to certain financial transactions, including entries labelled as loans received by the Respondent-Assessee. It is submitted that:
 - All such loan transactions mention in the excel sheet were **duly recorded in the books of account** of the Respondent-Assessee;
 - Supporting evidence such as **PAN, bank statements, financial statements, and confirmations** were filed for each creditor;
 - **All funds were received through regular banking channels**, and there is no allegation or evidence of receipt of cash;
 - There was **no indication in the excel sheet** or elsewhere of any cash exchange, unrecorded income, or concealment of any asset.
4. The said excel sheet, therefore, **did not qualify as incriminating material** either factually or in law. The AO failed to establish any direct nexus between the sheet and any alleged undisclosed income of the Respondent-Assessee. In fact, the reliance on such a document found from a third party and unaccompanied by any supporting evidence renders the entire foundation of the addition unsound and untenable.
5. Even the **excel sheet titled “Funds Position”**, which formed the sole basis of the allegation, was **seized from the possession of Shri Rajeev Agarwal**, who is neither a director nor a shareholder of the Respondent-Assessee. The document was not found from the premises or possession of the Respondent-Assessee. Consequently, the **presumption under Section 132(4A) of the Act cannot be invoked** against the Respondent-Assessee, as the foundational requirement that the document must be found in the possession or control of the Respondent-Assessee is not satisfied. The reliance on such a third-party document, without any independent verification or supporting evidence, renders the additions legally untenable.

6. Reliance in this regard is placed on various judicial precedents:

- **ACIT, New Delhi vs. Shyam Sunder Jindal, ITA No. 5671/Del/2016 [ITAT Delhi - 21.05.2025]**

12. From the observation of ld. CIT(A) it could be seen that ld. CIT(A) accepted the contentions of the assessee and **held that no addition could be made as no incriminating material was found/seized with respect to the admission made in the statements recorded during search from the possession of assessee.** It is evidently clear that in the assessment order there is no mention, reference or finding that the additions have been made by the AO based on any incriminating material found/seized during the course of search and seizure in the case of the assessee.

14. It is a settled proposition of law that mere statement u/s 132(4) or u/s 131 is not sufficient to make an addition. A statement made must be relatable to incriminating material found during the search or the statement must be made relatable to some material by subsequent inquiry/investigations.

16. The crux of the aforesaid decision is that a declaration or disclosure made by the person is binding unless it is rebutted by the person by furnishing valid evidences. In the present case, the assessee admitted certain income in the statements recorded u/s 132(4) of the Act, which was later retracted, and reasons for such retraction were explained by making detailed submissions with the help of explanation of seized material, which does not indicate any incriminating material. Thus, the appellant retracted the statement recorded u/s 132(4) of the Act, showing the admission made therein by him was incorrect by filing all the possible documentary evidences, as held in ACIT vs. Shyam Sunder Jindal.

- **Gopal Garg vs. DCIT Central Circle-2 Faridabad, Haryana ITA No. 965/Del/2024 [ITAT Delhi – 07.02.2025]**

6. We have heard both the parties and perused the material available on record. In the present case, original return was filed on 26/09/2015 for Assessment Year 2015-16 and the time limit to issue the notice u/s 143(2) of the Act has already been expired therefore the assessment year under consideration being completed, assessment could not be disturbed in the assessment made u/s 153A of the Act in the absence of any incriminating material found during the course of the search. **As could be seen from the order of the Ld. CIT(A), the Ld. CIT(A) at Paragraph 4.5 observed**

that the addition of Rs. 49 lakhs, (50% in the hands of the appellant) made on account of statement of Rajesh Mangla recorded u/s 132(4) of the Act recorded during the search proceedings in the case of SRS Ltd. The Ld. CIT(A) treating the said statement as incriminating material unearthed during the course of the search proceedings accordingly upheld the certain additions made by the A.O. It is now well settled law that statement recorded u/s 132 of the Act does not constitute incriminating material in the absence of any other corroborative evidence as held in following judicial pronouncements:

7. Further the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt. Ltd. (supra) held that addition cannot be made in the absence of any incriminating material found during the course of search.

8. By respectfully following the ratio laid down by the Hon'ble Supreme Court in the case of Abhisar Buildwell (supra), considering the fact that no incriminating materials/documents or any other evidence was found or seized during the course of search proceedings which resulted in additions against the Assessee, we find merit in Ground No. 3 of the appeal of the Assessee. Accordingly, we quash the assessment order and the order of the Ld. CIT(A). Since, we have allowed the Ground No. 3 and quash the assessment, other Grounds of appeal requires no adjudication.

- **PCIT (Central)-3 vs. Anand Kumar Jain (HUF), ITA No. 23/2021 [Delhi High Court – 12.02.2021]**

“8. Next, we find that, the assessment has been framed under section 153A, consequent to the search action. The scope and ambit of section 153A is well defined. This court, in CIT v. Kabul Chawla,¹ concerning the scope of assessment under Section 153A, has laid out and summarized the legal position after taking into account the earlier decisions of this court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the existence of incriminating material found during the course of the search is a sine qua non for making additions pursuant to a search and seizure operation. **In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of Mr. Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and**

relevance as contemplated under the explanation to section 132(4) of the Act. However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empower the AO to frame the block assessment. This court in Principal Commissioner of Income Tax, Delhi v. Best Infrastructure (India) P. Ltd.,² has inter-alia held that:

“38. Fifthly, statements recorded under Section 132(4) of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal.³”

10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.”

- Best Infrastructure (India) (P.) Ltd. vs. CIT [2017] 397 ITR 82 [Delhi High Court – 01.08.2017]

“38. Fifthly, statements recorded under Section 132 (4) of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal (supra). Lastly, as already pointed out hereinbefore, the facts in the present case are different from the facts in Smt. Dayawanti Gupta (supra) where the admission by the Assessee themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted

sales and purchases, is non-existent in the present case. In the said case, there was a factual finding to the effect that the Assessee were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr. Anu Aggarwal or Mr. Harjeet Singh contained any such admission.”

- **Principal Commissioner of Income Tax (Central)-3 v. Pavitra Realcon Pvt. Ltd., ITA 579/2018, High Court of Delhi:**

“19. Undisputedly, during the period of search, no incriminating material appears to have been found. However, the Revenue proceeded to issue notice under Section 143(2) of the Act on the pretext of the statements of the Directors of the respondent-assessee companies recorded under Section 132(4) of the Act and material seized from the search conducted on Jain group of companies. The assessment order was also passed under Section 143(3) read with Section 153C of the Act making additions under Section 68 of the Act.

20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.

- **CIT v. Harjeev Aggarwal [2016] 70 taxmann.com 95 [Delhi High Court – 10.03.2016]**

23. It is also necessary to mention that the aforesaid interpretation of Section 132(4) of the Act must be read with the explanation to Section 132(4) of the Act which expressly provides that the scope of examination under Section 132(4) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of Section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under Section 132(4) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.

- **Principal Commissioner of Income-tax, Central -3, New Delhi v. M/s PGF Ltd., ITA 528/2019, High Court of Delhi**

7. It is well settled from the judicial precedents cited above that the statements recorded under Section 132, in the absence of any corroborating incriminating material, do not constitute valid grounds for making additions. Moreover, where such statements have been retracted, the AO is duty-bound to consider the retractions and independently verify the facts before relying on them. In the present case, no incriminating material was found during the course of the search in relation to the Respondent-Assessee.

8. In light of the above, it is respectfully submitted that the additions made by the AO in the absence of any **search-based incriminating material** are invalid and liable to be deleted.

II. RETRACTED STATEMENTS CANNOT BE RELIED UPON

9. It is a settled principle of law that retracted statements cannot form the basis for making additions unless they are duly corroborated by independent and credible evidence. In the present case, the AO placed reliance on the statements of Mr. Neeraj Jain and Shri Rajiv Agarwal both of which were subsequently retracted through written communications submitted during the course of assessment. Despite the retractions, the AO failed to undertake any further enquiry or verification, nor was any independent material brought on record to substantiate the contents of the original statements.

10. Significantly, both retractions were made within a **short and reasonable time**, thereby strengthening their evidentiary weight and credibility. Mr. Rajiv Agarwal retracted his statement within **13 days**, on **23.04.2019**, from the date of its original recording on **10.04.2019**. Similarly, Mr. Neeraj Jain issued his retraction within **34 days**, on **08.05.2019**, from the date of his statement. These prompt and unequivocal retractions indicate that the original statements were either made under coercion or given under misapprehension and thus cannot be relied upon without further corroboration.

11. In his retraction dated 23.04.2019, Mr. Rajiv Agarwal asserted that his statement was **extracted under duress**, alleging that he was detained in unauthorized custody for seven days, during which time he and his family were subjected to severe mental harassment. He specifically mentioned that the authorities **threatened arrest of his wife and minor son**, and that his statement was **pre-drafted** and obtained under pressure without being read or understood. Accordingly, he stated

that the statement was neither voluntary nor true, and retracted it in its entirety, emphasizing that no adverse inference should be drawn therefrom. (Page No. 111-113 and Page No. 108-119 of Paper Book for AY 2018-19 and 2019-20)

12. *Likewise, Mr. Neeraj Jain, in his retraction dated 08.05.2019, outlined the **mental and emotional distress** faced by his family during the search and seizure operation. He categorically stated that he was **not the subject of the search** and that his statement was forcibly recorded by linking him with entities over which he had no control or involvement. Mr. Jain further deposed that the authorities **drafted both the questions and answers** and compelled him to sign the statement without any opportunity to review its contents. Consequently, he too **formally retracted** his statement and clarified that no part of it should be used to draw adverse conclusions against the assessee.*
13. *The Hon'ble Rajasthan High Court in **Pr. CIT v. Roshan Lal Sancheti [2023] 150 taxmann.com 66** has recognized that retraction of a statement can be considered valid where it is accompanied by cogent reasons and made within a reasonable time.*
14. *In the present case, the following key features distinguish the factual matrix and reinforce the bona fides of the retractions made:*
 - *The statements of Mr. Rajiv Agarwal and Mr. Neeraj Jain were retracted within a short and reasonable span 13 days and 34 days, respectively. Each retraction was made by way of a detailed written affidavit citing clear grounds including the involuntary nature of the statement, undue pressure, and denial of an opportunity to review the contents. This timely action lends strong credibility to the retraction and demonstrates absence of delay or afterthought.*
 - *No documents, cash, or material incriminating the Respondent-Assessee were found during the search to support the contents of the original statements. The alleged transactions are fully recorded in the books of accounts, supported by confirmations, PANs, financial statements, and banking records.*
15. *In view of the above, and in the **absence of any corroborating material evidence**, the retracted statements lack probative value and are devoid of any evidentiary merit. The Hon'ble Courts have consistently held that retracted statements must be viewed with **extreme caution** and cannot be acted upon unless duly supported by independent material found during search or investigation. Particularly*

in the context of proceedings under **Section 153A/153C**, the law mandates that additions must be based on **incriminating material found during the course of search**, and not merely on **uncorroborated retracted statements**, which stand vitiated by procedural infirmities and violation of the principles of natural justice.

16. This principle has been reiterated in numerous judicial pronouncements, which have held that additions based solely on retracted and untested statements is **legally unsustainable**. Reliance in this regard is placed on the following case laws:

- **CIT v. Jindal Steel & Power Ltd. [2023] 157 taxmann.com 207 (Supreme Court – 06.12.2023)**

51. From the materials on record, we find that the assessing officer had solely relied upon the statements made by Shri S.K. Gupta on 12-12-2006 and 23-12-2006 during the course of the search. **However, the assessing officer overlooked the fact that within a short span of time, Shri S.K. Gupta had retracted from the said statements by filing an affidavit on 5-2-2007.** Thereafter, he reiterated the statements made by him in the affidavit dated 5-2-2007 in a statement recorded on 8-2-2007. We find that in the later statements, Shri S.K. Gupta had categorically stated that he had rendered services to the assessee. He also mentioned that the name of the assessee was not referred to as one of the beneficiaries of the accommodation bills in his earlier statement. He had categorically stated that he had rendered service to the assessee and that the assessee had not obtained any bogus accommodation bills from him. The assessing officer had disbelieved the affidavit as well as the subsequent statement of Shri S.K. Gupta without any justifiable and cogent reason. That apart, when the revenue had relied upon the retracted statement of Shri S.K. Gupta, it ought to have provided an opportunity to the assessee to cross-examine Shri S.K. Gupta, which was however denied. Thus, revenue was not justified in disallowing the claim of professional expenses of the assessee on account of payment to Shri S.K. Gupta and his group of companies.

52. Therefore, we agree with the view taken by the High Court. As noted by the High Court, the entire issue is based on appreciation of the materials on record. The Tribunal had scrutinized the materials on record and thereafter had recorded a finding of fact that there was sufficient evidence to justify payment made by the assessee to Shri S.K. Gupta, a consultant of the assessee, **and that the assessing officer had wholly relied upon the statement of Shri**

Gupta recorded during the search operation, which was retracted by him within a reasonable period. In these circumstances, we are of the view that there is no admissible material to deny the claim of expenditure made by the assessee. Accordingly, this issue is answered in favour of the assessee and against the revenue.

- **CIT v. Harjeev Aggarwal [2016] 70 taxmann.com 95 [Delhi High Court – 10.03.2016]**

“... 24. If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under Section 132(4) is accepted, it would result in ignoring an important check on the power of the AO and would expose Companies to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion **Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of a Company.. ...**”

- **Gajjam Chinna Yellappa vs. Income-tax Officer [2015] 370 ITR 671 [Andhra Pradesh and Telangana -06.11.2014]**

“The Act empowers the Assessing Officers or other authorities to record the statements of the assessee, whenever a survey or search is conducted under the relevant provisions of law. The statements so recorded are referable to Section 132 of the Act. Sub-section 4 thereof enables the authorities not only to rely upon the statement in the concerned proceedings but also in other proceedings that are pending, by the time the statement was recorded.

If the statement is not retracted, the same can constitute the sole basis for the authorities to pass an order of assessment. **However, if it is retracted by the person from whom it was recorded, totally different considerations altogether, ensue. The situation resembles the one, which arises on retraction from the statement recorded under Section 164 Cr.P.C. The evidentiary value of a retracted statement becomes diluted, and it loses the strength, to stand on its own. Once the statement is retracted, the Assessing Authority has to garner some**

support, to the statement for passing an order of assessment.

In I.T.A.No.112 of 2003, this Court dealt with the very aspect and held that a retracted statement cannot constitute the sole basis for fastening liability upon the assessee.

In the instant case, the appellants specifically pleaded that the statements were recorded from them by applying pressure, till midnight, and that they have been denied access outside the society. The Assessing Officer made an effort to depict that the withdrawal or retraction on the part of the appellants is not genuine. We do not hesitate to observe that an Assessing Officer does not have any power, right or jurisdiction to tell, much less to decide, upon the nature of withdrawal or retraction. His duty ends where the statement is recorded. If the statements are retracted, the fate thereof must be decided by law meaning thereby, a superior forum and not by the very authority, who is alleged to have exerted force.

It is not as if the retraction from a statement by an assessee would put an end to the procedure that ensued on account of survey or search. The Assessing Officer can very well support his findings on the basis of other material. If he did not have any other material, in a way, it reflects upon the very perfunctory nature of the survey. We find that the appellate authority and the Tribunal did not apply the correct parameters, while adjudicating the appeals filed before them. On the undisputed facts of the case, there was absolutely no basis for the Assessing Officer to fasten the liability upon the appellants. Our conclusion find support from the Circular dated 10.03.2003 issued by the Central Board of Direct Taxes, which took exception to the initiation of the proceedings on the basis of retracted statements.”

- **DEEPCHAND & CO. v. ACIT [1995] 51 TTJ 421 [Bombay Tribunal - 27-07-1994]**

*The stereotyped mention at the end of the statement that whatever was stated was true and to the best of the knowledge and belief and the statement given was voluntary without any threat, force or undue influence, would not mean that the partners agreed for making additions. **Putting certain expression at the end of the statement cannot be taken as true in view of the retraction. Retraction***

can be made only after understanding the correct meaning and consequences of the statement.

17. Crucially, the AO failed to bring any **independent corroborative evidence** on record to substantiate the contents of the retracted statements. It is a well-established legal principle that **retracted statements, in the absence of supporting material, have little to no evidentiary value**. Therefore, the assessment order having been based solely on such uncorroborated and retracted statements, is **legally unsustainable and liable to be quashed**.

III. DENIAL OF OPPORTUNITY FOR CROSS-EXAMINATION: VIOLATION OF PRINCIPLES OF NATURAL JUSTICE

18. In the present case, the AO made significant additions solely on the basis of statements recorded from third parties, particularly Mr. Neeraj Jain and Shri Rajiv Agarwal. It is pertinent to note that the Respondent-Assessee had specifically requested an opportunity to cross-examine Mr. Neeraj Jain (**refer letter dated 17.09.2021 at Pg. 141 of Paper Book – AY 2018–19) and (refer letter dated 17.09.2021 at Pg. 143 of Paper Book – AY 2019-20)**, but the same was denied by the AO without any justification. It is a settled principle of law that any evidence or statement used against the assessee must be tested through cross-examination if so requested. The failure to allow cross-examination constitutes a gross violation of the principles of natural justice, and any addition made on the basis of such untested statements is legally unsustainable.

19. Reliance in this regard is placed on various judicial precedents:

- **M/s Andaman Timber Industries Vs. CCE (Civil Appeal No. 4228 of 2006)**

"5. 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 is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross examine, the Adjudicating Authority did not grant this opportunity to the

assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However-, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As, far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their exiactory prices remain static. It was not for the Tribunal to have guesswork as to .for what purposes the appellant wanted to cross examine those dealers and what extraction the appellant wanted from them.”

“7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross examination. That apart. the Adjudicating Authority simply relied upon the pricelist as maintained at the depot to determine the price the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the pricelist itself could be the subject matter of cross examination. Therefore, it was not for the Adjudicating Authority to presuppose as to; chat could be the subject matter of the cross examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving ins reasons for accepting or rejecting the submissions.”

“8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid Iwo witnesses was the only basis of issuing the Show Cause Notice.”

- **CIT vs. Ashwani Gupta [2010] 322 ITR 396 (Delhi High Court)**

“the Tribunal has correctly understood the law and applied it to the facts of the case. Once there is a violation of the principles of natural justice inasmuch as seized material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following the approach adopted by us in SMC

Share Brokers (supra), we see no reason to interfere with the impugned order. No substantial question of law arises for our consideration."

- **Sona Electric Company vs. CIT 152 ITR 507 (Delhi High Court)**

*"Then, there is finally, the third question which requires to be examined. The statement of Shri Sardari Lal was recorded on 23rd August, 1969, in the absence of the assessee. On that date, a letter had been submitted on behalf of the assessee to state that the grandmother of Shri Madan Mohan Gupta, managing partner of the assessee, had died and some other date after a fortnight should be fixed. **It seems that the ITO recorded the statement in the absence of the assessee thus excluding cross-examination by the assessee. This shows that the statement of Shri Sardari Lal has to be excluded from consideration.** Significantly, one of the questions put to Shri Sardari Lal by the ITO was as to what was the explanation for all other payments being made either by an account payee cheque or against receipted vouchers and even against a bearer cheque, signature had been taken on the counterfoil. The witness was unable to explain why the assessee had been treated differently. If the so-called receipt signed by Shri Brij Mohan and the statement of Shri Sardari Lal as well as the cheque dated 27th July, 1967, are excluded from consideration, we would be left with a case with no evidence."*

- **Rajuram Savaji Purohit vs. ITO [2024] 169 taxmann.com 18 (Mumbai - Trib.)**

"it is also an admitted fact that no cross-examination was granted to the assessee though materials were considered adversely in its case. The Hon'ble Supreme Court in the case Recently, Hon'ble Supreme Court in the matter of Andaman Timber Industries vs, Commissioner of Central Excise, Kolkata-II (2015, [2015] 62taxmann.com 3/52 GST 355/314 ELT 641 (SC)SC), held that when statements of witnesses are made basis of demand, not allowing assessee to cross-examine witnesses, is a serious flaw which makes order nullity, as it amounts to violation of principles of natural justice. Moreover, if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show cause notice."

20. In the absence of any opportunity for cross-examination, the reliance placed by the AO on third-party statements is in clear violation of the principles of natural justice. Accordingly, such untested and

uncorroborated statements cannot form the basis for making additions and render the assessment legally unsustainable.

IV. FAILURE ON THE PART OF THE AO TO CONSIDER EVIDENCE ESTABLISHING IDENTITY, CREDITWORTHINESS, AND GENUINENESS SUBMITTED BY THE RESPONDENT-ASSESSEE

21. *It is submitted that during the course of assessment proceedings, the Respondent-Assessee has placed on record voluminous, credible documentary evidence and reason for which the loan was taken to conclusively prove the identity and creditworthiness of each lender, as well as the genuineness of each loan transaction. The burden cast upon the assessee under Section 68 has been duly discharged, and there exists no material whatsoever to justify the additions made.*
22. *It is submitted that the unsecured loans received by the Respondent-Assessee during the relevant assessment years were raised for legitimate business purposes, including meeting working capital requirements, financing operational expenses, and supporting business expansion activities. As a company engaged in the hydro-electric power sector, the nature of operations necessitated significant capital deployment, including payments to vendors, project-related expenditures, and servicing of ongoing commitments.*
23. *The receipt of loans through proper banking channels, coupled with the corresponding entries in the books of accounts, confirm the commercial exigency behind availing the said loans. At no point has the AO brought any material on record to indicate otherwise or to suggest that the loan proceeds were used for any purpose other than business.*
24. *Further in order to establish the identity, creditworthiness and genuineness of the lenders the Respondent-Assessee submitted as under:*

Identity of the Lenders

25. *The Respondent-Assessee submitted comprehensive documentation during the assessment proceedings to establish the identity of each lender entity from whom unsecured loans were received. The documents furnished included:*

- *Copy of Permanent Account Number (PAN) of each lender;*
- *Certificate of Incorporation issued by the Registrar of Companies;*

- *Memorandum of Association (MoA) and Articles of Association (AoA);*
- *Company Master Data as available on the Ministry of Corporate Affairs (MCA) portal.*

These documents conclusively established the separate legal existence and identity of the lenders. The AO has not disputed the authenticity or legal status of these entities, nor has any contrary material been brought on record.

Creditworthiness of the Lenders

26. To substantiate the financial capacity of the lenders to advance the loans in question, the Respondent furnished the following:

- *Audited financial statements for the relevant financial years;*
- *Acknowledged copies of Income Tax Returns of the lenders;*
- *Bank statements reflecting adequate balances prior to the transfer of funds.*

The financial records clearly demonstrated that the lenders had the financial capability to advance the loans. The AO did not rebut these documents nor initiate proceedings against the lender companies, thereby accepting their creditworthiness.

Genuineness of the Transactions

The Respondent also submitted extensive evidence to demonstrate the genuineness of the loan transactions, including:

- *Bank statements showing the receipt of loan amounts through normal banking channels;*
- *Signed confirmations of account from each lender;*
- *Details and evidence of repayments, where applicable;*
- *Ledger accounts of lenders maintained in the books of the Respondent;*
- *Interest payment records with TDS deduction, including Form 26AS and TDS certificates.*

These documents collectively establish the bona fide nature of the transactions. The Department has accepted the TDS returns filed by the Respondent and the interest income reported by the lenders.

27. The Respondent-Assessee respectfully submits that the following chart summarizes the documentary evidence furnished during the assessment proceedings to substantiate the identity, creditworthiness of the creditors, and genuineness of the loan transactions:

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S. No	Name	Amount	Identity			Genuineness				Creditworthiness	
			PAN	COA, MOA, AOA	MCA	Interest	TDS Certificate	Confirmation	Repayment	Financial Statement	Income Tax Return
1	CEA Consultant Pvt Ltd	81,400,000	✓	✓	✓	✓	✓	✓	✓	✓	✓
2	LTE Info Technologies Pvt Ltd	63,300,000	✓	✓	✓	✓	✓	✓	✓	✓	✓
3	Tish Consultant Pvt Ltd	34,200,000	✓	✓	✓	✓	✓	✓	✓	✓	✓
4	Attractive Capital Services Pvt Ltd	28,900,000	✓	✓	✓	✓	✓	✓	✓	✓	✓
5	Mover Realtech P Ltd	25,000,000	✓	✓	✓	✓	✓	✓	✓	✓	✓
6	SA Sheilds Security Services P Ltd	5,000,000	✓	✓	✓	✓	✓	✓	✗	✓	✓
7	Lenient Consultant P Ltd	12,700,000	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Total	25,05,00,000									

AY 2019-20 (Page No. 188-699 of Paper Book)

S.No	Name	Amount	Identity			Genuineness		Creditworthiness	
			PAN	COA, MOA, AOA	MCA	Confirmation	Repayment	Financial Statement	Income Tax Return
1	Alps Management Solution	69,000,000	✓	✓	✓	✓	✓	✓	✓
2	CEA Consultant Pvt Ltd	2,000,000	✓	✓	✓	✓	✓	✓	✓
3	LTE Info Technologies Pvt Ltd	40,000,000	✓	✓	✓	✓	✓	✓	✓
4	Wismore Equity Pvt Ltd	25,000,000	✓	✓	✓	✓	✓	✓	✓
5	Tish Consultant Pvt Ltd	10,400,000	✓	✓	✓	✓	✓	✓	✓
6	Evalina Powertech	15,000,000	✓	✓	✓	✓	✓	✓	✓
	Total	16,14,00,000							

28. Despite the availability of this material on record, the AO disregarded these documents and proceeded to make additions solely based on assumptions and uncorroborated third-party statements. Such action is not sustainable in law.

29. Reliance in this regard is placed on the following judgments:

- **CIT v. Lovely Exports (P.) Ltd. [2008] 216 CTR 195 (SC)**, wherein it was held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the department is free to proceed to reopen their individual

assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company.

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

3. Subject to the above, Special Leave Petition is dismissed.

- **CIT v. Flex Plastic & Packaging (P.) Ltd. [2007] 211 CTR 607 (Delhi High Court)**

“5. We find that the assessing officer glossed over certain facts which had been taken note of by both the Commissioner (Appeals) as well as by the Tribunal. The assessee had provided the bank statement of the creditor which had shown sufficient balance at the relevant point of time and given all material particulars to the assessing officer with regard to her creditworthiness and the genuineness of the transaction. On the facts of the case, both authorities held that the transaction was a genuine transaction. We cannot find any fault with the view taken by both the Commissioner (Appeals) as well as by the Tribunal.”

- **CIT v. Gangeshwari Metal (P.) Ltd. [2014] 361 ITR 10 (Delhi High Court)**

“9. As can be seen from the above extract, two types of cases have been indicated. One in which the assessing officer carries out the exercise which is required in law and the other in which the assessing officer 'its back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the assessing officer, after noting the facts, merely rejected the same.

.....

10.There was a clear lack of inquiry on the part of the assessing officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under section 68 of the Act. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law.”

- **CIT v. Dolphin Canpack Ltd. [2006] 204 CTR 50 (Delhi High Court)**

“An ITO is indeed entitled to examine the truthfulness of the explanation. In cases where the credit entry relates to the issue of share capital, the ITO is also entitled to examine whether the alleged shareholders do in fact exist or not. Such an inquiry was conducted by the Assessing Officer in the instant case. In the course of the said inquiry, the assessee had disclosed to the Assessing Officer not only the names and the particulars of the subscribers of the shares but also their bank accounts and the permanent account numbers issued by the Income-tax Department. Superadded to all this was the fact that the amount received by the company was all by way of cheques. That material was, in the opinion of the Tribunal, sufficient to discharge the onus that lay upon the assessee. That was evident from the passage extracted from the order passed by the Tribunal earlier. In the absence of any perversity in the view taken by the Tribunal or anything to establish conclusively that the finding regarding the genuineness of the subscribers and the transaction suffered from any irrationality no substantial question of law arose for consideration in instant appeal to warrant interference. The instant appeal accordingly failed and was dismissed.”

- **CIT v. Jay Dee Securities & Finance Ltd. [2013] 350 ITR 220 (Allahabad High Court)**, wherein it was held that where assessee had produced return of income, PAN and confirmation of shareholders, share application money would be treated as genuine. Relevant paras are reproduced here in under:

“4. The Tribunal recorded findings that the assessee had produced the return of income filed by the relevant shareholders who had paid share application money. The assessee had also produced the confirmation of shareholders indicating the details of addresses, PAN and particulars of cheques through which the amount was paid towards the share application money. The Tribunal thereafter relied upon the judgment of the Supreme Court in CIT v. Lovely Exports (P.) Ltd. [Application No. 11993 of 2007, dated 11-1-2008] wherein it was held that if the assessee produces the names, addresses, PAN details of the shareholders then the onus on the assessee to prove the source of share application money stands discharged. If the Assessing Authority was not satisfied with the creditworthiness of the shareholders, it was open to the Assessing Authority to verify the same in the hands of the shareholders concerned. The Tribunal has relied upon an order of the Supreme Court in case of CIT v. Divine Leasing & Finance Ltd . [2007] 158 Taxman 440 (Delhi).

6. We further find that in Lovely Exports (P.) Ltd. (supra) the Supreme Court held on 11.1.2008 as follows: -

"Delay condoned.

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

3. Subject to the above, Special Leave Petition is dismissed."

7. In view of the decision of the Supreme Court, we dismiss the appeals with observations that the department is free to proceed to reopen their individual assessments of the shareholders whose names and details were given to the Assessing Officer."

- **CIT v. Apex Therm Packaging (P.) Ltd., [2014] 42 taxmann.com 473 (Gujarat)**

"6. We are in complete agreement with the reasoning given by the CIT(A) as well as the ITAT. **When full particulars, inclusive of the confirmation with name, address and PAN Number, copy of the Income Tax Returns, balance sheet, profit and loss accounts and computation of the total income in respect of all the creditors/lender were furnished and when it has been found that the loans were received through cheques and the loan account were duly reflected in the balance sheet, the Assessing Officer was not justified in making the addition of Rs. 33,55,011/-.** Under the circumstances, no question of law, much less substantial question of law arises in the present Tax Appeal. Accordingly, the present Tax Appeal deserves to be dismissed and is accordingly dismissed."

- **Abhijavala Developers (P.) Ltd. v. ITO, [2021] 124 taxmann.com 72 (Mumbai - Trib.)**

"5. We have carefully considered the rival submissions and perused relevant material on record including documents placed in the paper book. After going through the documentary evidences as submitted by the assessee before lower authorities to substantiate these transactions, we find that the assessee had furnished following documents with respect to all the investor/lender entities: —

- Copy of confirmation of Accounts by lender/investor
- Copy of PAN Card of each of the lender/investor
- Copy of Bank Statement of lender/investor
- Copy of ITR Acknowledgement of each of lender/investor

(v) Copy of financial statements of all investor/lender entities

X-X-X

Upon perusal of above documents, we find that the primary onus of establishing the identity of the investor entities, proving their respective creditworthiness and to establish the genuineness of the transactions was duly been discharged by the assessee. The assessee was not required to prove the source of source for this year. Therefore, the onus was on revenue to rebut these evidences by bringing on record cogent material to dislodge assessee's evidences. However, except for the fact that summons remained unserved, there is nothing in the armory of revenue to unsettle the assessee's claim. The allegations are not supported by any corroborative evidences. Once the initial onus was discharged by the assessee, it was incumbent upon revenue to carry out further investigation to support the allegation that the credits were unexplained. However, nothing of that sort has been shown to have been carried out. So far as the information of DGIT (Inv.) is concerned, we find that these were merely third party statements which were never confronted to the assessee and those statements on standalone basis could not form the basis of making additions in the hands of the assessee. It is trite law that no additions could be based merely on doubts, conjectures or surmises. Therefore, the additions as made by Ld. AO, in our considered opinion, are not sustainable in the eyes of law. The settled legal position as enumerated by us in the opening paragraphs duly support the said conclusion. Therefore, we delete the impugned additions as sustained by Ld. CIT(A). The grounds, thus raised, stand allowed."

Hon'ble Delhi High Court in the case of CIT v. Vrindavan Farms (P) Ltd., ITA 71/2015 dated 12.08.2015, wherein the Hon'ble court has held that low income as reflected in the Income Tax Returns of the investor cannot be reason to doubt creditworthiness of the investor. The relevant para is reproduced under for your kind reference: -

"3. The ITAT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the AO by the Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It

was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the share holders.

4. The Court is of the view that the Assessee by produced sufficient documentation discharged its initial onus of showing the genuineness and creditworthiness of the share applicants. It was incumbent to the AO to have undertaken some inquiry and investigation before coming to a conclusion on the issue of creditworthiness. In para 39 of the decision in Nova Promoters (supra), the Court has taken note of a situation where the complete particulars of the share applicants are furnished to the AO and the AO fails to conduct an inquiry. The Court has observed that in that event no addition can be made in the hands of the Assessee under Section 68 of the Act and it will be open to the Revenue to move against the share applicants in accordance with law.”

- **M/s Angel Cement Pvt. Ltd. ITA no. 4691/Del/2016; order dated 18.03.2021**

“63. Again, in so far as the creditworthiness is concerned, these companies have made investments through banking channels duly reflected in the bank statement and have also filed balance sheets and detailed explanation thereafter showing their availability of funds for making the investments. The case of the Department before us has been that these companies had very meager income however the Revenue from the operations did not justify such an investment. First of all, what is required to be seen is whether the lender/investor companies had sufficient funds available with them in the books/ balance sheets and it is not necessary that loan or advances or shares are subscribed, should be out of taxable income only. Either it could be from borrowed funds or from the investments standing in their balance sheet. If the Assessing Officer doubted the source of the fund of the investor companies, then Assessing Officer was required to at least conduct prima facie inquiry from these investors to rebut the assessee’s explanation about the source of the funds in the hands of the investor companies.”

- **ITO Ward -20(3) v. RMP Holding (P) Ltd. ITA no. 6017/Del/2018**

“27. One of the reasons cited by the DR after referring to these judgments was that these companies were showing very meagre income or loss. **In our opinion what is**

required to be seen is, whether these companies has sufficient source of funds duly disclosed in their balance sheet filed along with the income tax return which has been assessed and not disturbed and if the source of funds are disclosed in the books are sufficient to cover up the investments made by them, then whether they have shown lesser income will not lead to inference that they do not have creditworthiness or capacity to make investment. Here in the balance sheets of all the companies there are huge funds available from where they have made investments. It is only by way of inquiry if it is found that these companies are only providing any accommodation entry then a doubt can be created about the creditworthiness of these companies. But without any such prima facie inquiry or material on record to prove that availability of huge investments in their balance sheet are duly supported by source of funds, then it cannot be held that there is a lack of creditworthiness. In view of our detailed finding given above, we hold that the reasoning given by the AO for sustaining the addition cannot be sustained and accordingly on merits the appeal of the assessee is partly allowed.”

30. In light of the extensive documentary evidence submitted by the Respondent- Assessee demonstrating the identity, creditworthiness, and genuineness of the loan creditors, the burden under Section 68 stood duly discharged. Therefore, the AO’s disregard of such material and reliance solely on assumptions is unsustainable in law and the resultant additions are liable to be deleted.

V. AO RELIED SOLELY ON INSPECTOR’S REPORT WITHOUT CONDUCTING ANY INDEPENDENT INQUIRY

31. It is respectfully submitted that the additions made by the AO under Sections 68 and 69C of the Act are vitiated by the lack of any independent or objective inquiry. The AO based his conclusions entirely on a report submitted by the Inspector, who reportedly failed to trace the office addresses of the creditor entities during local verification. On the strength of this solitary fact, the AO concluded that the creditors were non-existent and that the assessee had received accommodation entries in lieu of cash.

32. However, the approach adopted by the AO is fundamentally flawed and contrary to settled principles of law. During the course of the assessment proceedings, the Respondent-Assessee duly furnished the updated and correct addresses of all the creditor companies. These updated addresses were provided in response dated 29.09.2021 to the queries raised by the AO wherein the name, address along with other

details of the lender were asked. To dispel any doubt and ensure clarity, the Respondent not only submitted the current addresses but also furnished comprehensive supporting documents, including lender confirmations, copies of PAN, bank statements evidencing the loan transactions through proper banking channels, and audited financial statements of the creditor companies. Relevant extract of the reply is reproduced below:

For AY 2018-19

S. No.	Name of the Company	PAN	Old Address	New Address
1	M/s Attractive Capital Services P Limited	AABCA1120B	32/1, Gali No 8, G/F, Bhikam Singh Colony, Delhi – 110032	A-8, Shop No. 02, Block -A Kanti Nagar, East Krishna Nagar, Gandhi Nagar, New Delhi – 110031.
2	M/s CEA Consultants P Limited	AAACC2342N	H. No.-146, BLK-H, JJ Colony, Mangol Puri, New Delhi – 110083.	Plot No. A-30, Pvt No. UG-3, Gali No.1, Upper Ground Floor, Madhu Vihar, IP Extn., Delhi – 110092.
3	M/s Lenient Consultants P Limited	AAACL0193Q	Office No. 12, 2nd Floor, DDA Market, Nirman Vihar, Delhi – 110092.	UG-3, Gali No.1, Madhu Vihar, IP Extn., Delhi – 110092.
4	M/s LTE Info Technologies P Limited	AABCL6547R	Old E-143, G.No-2, 20 Feet Road, Baldev Marg, Karawal Nagar, Delhi – 110094.	Shop No.49, Ground Floor, Vardhman Market, Ram Vihar, New Delhi – 110092.
5	M/s Mover Realtech P Limited	AAGCM8877J	H.No. 242, PKT B, Phase 4, Ashok Vihar New Delhi – 110052.	Shop No.8, 32-B G/F (Back Side) Village Patparganj, Mayur Vihar Ph-1, Delhi - 110091.
6	M/s Tish Consultant P Limited	AAACT2343Q	146, Ground Floor, BLK-H, JJ Colony, Mangol Puri, New Delhi – 110083.	Plot No. A-30, Pvt No. UG-3, Gali No.1, Upper Ground Floor, Madhu Vihar, IP Extn., Delhi - 110092.

For AY 2019-20

S. No.	Name of the Company	PAN	Old Address	New Address
1	M/s Attractive Capital Services P Limited	AABCA1120B	32/1, Gali No 8, G/F, Bhikam Singh Colony, Delhi – 110032	A-8, Shop No. 02, Block -A Kanti Nagar, East Krishna Nagar, Gandhi Nagar, New Delhi – 110031.
2	M/s CEA Consultants P Limited	AAACC2342N	H. No.-146, BLK-H, JJ Colony, Mangol Puri, New Delhi – 110083.	Plot No. A-30, Pvt No. UG-3, Gali No.1, Upper Ground Floor, Madhu Vihar, IP Extn., Delhi – 110092.
3	M/s Lenient Consultants P Limited	AAACL0193Q	Office No. 12, 2nd Floor, DDA Market, Nirman Vihar, Delhi – 110092.	UG-3, Gali No.1, Madhu Vihar, IP Extn., Delhi – 110092.
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5	M/s Mover Realtech P Limited	AAGCM8877J	H.No. 242, PKT B, Phase 4, Ashok Vihar New Delhi – 110052.	Shop No.8, 32-B G/F (Back Side) Village Patparganj, Mayur Vihar Ph-1, Delhi - 110091.
6	M/s Tish Consultant P Limited	AAACT2343Q	146, Ground Floor, BLK-H, JJ Colony, Mangol Puri, New Delhi – 110083.	Plot No. A-30, Pvt No. UG-3, Gali No.1, Upper Ground Floor, Madhu Vihar, IP Extn., Delhi - 110092.
7	Alps Management Solution Pvt Ltd	AAMCA3899E	Old E-143, New-E-130 G.No-2, 20FT RD, Baldev Marg, Karawal Nagar, Delhi - 110094	Shop No.49, Ground Floor, Vardhman Market, Ram Vihar, New Delhi - 110092

33. Despite the availability of such detailed and verifiable information on record, the AO failed to initiate any independent enquiry to verify the same. No summons were issued under Section 131 of the Act, nor were any notices sent under Section 133(6) to the lender entities. The AO did not exercise the statutory powers available to him for verification and instead proceeded solely on the basis of an unverified and outdated Inspector's report. This omission reflects a lack of due diligence and vitiates the entire basis of the additions made under Section 68 of the Act

34. The law mandates that the AO must conduct a fair and independent inquiry before drawing adverse conclusions against the assessee. Mere reliance on an **unverified and one-sided report** of the Inspector without any cross-verification or follow-up does not satisfy the threshold required under Section 68 of the Act. Such a mechanical and perfunctory approach violates the principles of natural justice and renders the addition unsustainable.

35. The Hon'ble Courts have consistently held that the **failure to conduct independent verification and blind reliance on Inspector reports or third-party statements** cannot be the basis for adverse findings under the Income-tax Act.

36. Reliance in this regard is placed on the following judgments:

- **CIT v. Kamdhenu Steel and Alloys Ltd. [2012] 361 ITR 220 (Delhi High Court)**

28. The contention of the assessee has been found to be convincing by the Tribunal and the learned Tribunal has allowed the appeal thereby deleting the addition. The Revenue is in appeal before us. **The entire case of the Revenue based on the plea that as per the report, the investing companies were not found at the given addresses and on this basis, argument is raised that the companies are non-existing and the transactions were bogus and not genuine. Here, the case of the Revenue is even weaker than the cases discussed above. It is not even the case that the Directorate of Income Tax (Investigation) has found Mr. Mahesh Garg in such racket of floating bogus companies. We state at the cost of repetition that after the assessee had furnished the evidence, initial onus had been discharged and it was for the AO to make further necessary inquiries which are completely missing.**

29. We are, thus, of the view that no question of law much less substantial question of law arises. This appeal is dismissed.

- **Pr. CIT-5 v. Laxman Industrial Resources Ltd. [2017] 397 ITR 106 (Delhi High Court)**

*This Court notices that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. It was not a case where the share applicants are merely provided confirmation letters. They had provided their particulars, PAN details, assessment particulars, mode of payment for share application money, i.e. through banks, bank statements, cheque numbers in question, copies of minutes of resolutions authorizing the applications, copies of balance sheets, profit and loss accounts for the year under consideration and even bank statements showing the source of payments made by the companies to the assessee as well as their master debt with ROC particulars. **The AO strangely failed to conduct any scrutiny of documents and rested content by placing reliance merely on a report of the Investigation Wing. This reveals spectacular disregard to an AO's duties in the remand proceedings which the Revenue seeks to inflict upon the assessee in this case. No substantial question of law arises. The appeal is dismissed.***

37. In view of the above, the reliance placed solely on the Inspector's report without conducting any independent inquiry or verifying the documents submitted by the assessee is not only inadequate but also contrary to the settled legal position. The additions made on this basis are, therefore, **liable to be deleted.**

VI. ADDITION UNDER SECTION 68 UNJUSTIFIED WHEN LOANS ARE REPAID AND FULLY SUBSTANTIATED

38. It is respectfully submitted that the additions made by the AO under Section 68 of the Act are unsustainable in law and on facts, particularly in view of the fact that a substantial portion of the unsecured loans received by the Respondent-Assessee during the year under consideration stood duly repaid through proper banking channels. The transactions were supported by comprehensive documentation, clearly establishing the identity of the lenders, their creditworthiness, and the genuineness of the loan transactions.

39. Except for a few lender entities where repayments were either pending or only partial repayments were made (due to prevailing business requirements or ongoing financial arrangements), the majority of the loan amounts were repaid in full, thereby further negating the allegation of any fictitious or accommodation entry.

40. *It is a settled legal position that once the Assessee has discharged the initial burden by establishing the identity of the creditor, the genuineness of the transaction, and the creditworthiness of the creditor and more so when the loans are subsequently repaid the provisions of Section 68 cannot be invoked in the absence of any material suggesting that the Assessee's own unaccounted money had been routed in the guise of loans.*

41. *Mere reliance on assumptions, third-party statements or the Inspector's report, in the face of overwhelming documentary evidence and repayments, cannot form the basis for making additions under Section 68. The action of the AO in treating genuine loan transactions as unexplained cash credits is therefore devoid of merit and liable to be set aside.*

42. *Reliance is placed on following judicial pronouncements:*

- **Navyug Iron Traders vs DCIT ITA No. 553/Del/2017 (ITAT Delhi – 24.09.2019)**

6. We have considered the rival submissions and perused the material available on record. It is not in dispute that assessee filed copies of ledger account of all the three creditors along with their ITR, confirmation, bank statement and balance-sheet of the investors. The creditors have confirmed giving advances to the assessee. Since the deal could not be materialized, the assessee returned the amount in question in subsequent year. All the transactions are carried out through banking channel and no defects in the books of account have been pointed out. All the creditors are assessed to tax and have disclosed the transactions to the Income Tax Department. The assessee explained that since parties are not in his direct control, therefore, direct enquiry may be made from the creditors, for which, assessee also deposited fees as required for the same. However, no attempt have been made to verify the transactions from the creditors. Since all the creditors were assessed to tax and their PAN were available to the A.O, therefore, A.O. could have examine the source of their income from the income tax record. But the A.O. did not do anything in the matter. Therefore, decision of the Hon'ble Supreme Court in the case of Orissa Corporation Pvt. Ltd., 159 ITR 78 (SC) would apply. The assessee in these circumstances is able to discharge onus upon it to prove the ingredients of Section 68 of the I.T. Act. We rely upon Judgment of the Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 (Guj.) and Gauhati High Court in the case of Nemichand Kothari 264 ITR 254

(Gauhati). Since in this case the repayment made by assessee in subsequent year have not been disputed by the Revenue Department, therefore, case of assessee would also be covered by Judgment of Hon'ble Gujarat High Court in the case of CIT vs. Ayachi Chandrashekhar Narsangji (supra) and Hon'ble Allahabad High Court in the case of CIT vs. (supra). The authorities Kapoor Chand Mangesh Chand below rejected the explanation of assessee because in response to notice issued by A.O. the creditors did not respond. **The Hon'ble Delhi High Court in the case of Divine Leasing and Finance Ltd., 299 ITR 268 (Del.) held that “ no adverse inference should be drawn if shareholders failed to respond to the notice issued by the A.O. ” Similar view is taken by Hon'ble Delhi High Court in the case of CIT vs. Winstrall Petro Chemicals Pvt. Ltd., 330 ITR 603 (Del.).** Further no material has been brought on record that the credit amount introduced by the creditors was actually emanated from the coffers of the assessee so as to enable it to be treated as undisclosed income of the assessee. We rely upon Judgment of Hon'ble Delhi High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., 307 ITR 334 (Del.). **Considering the totality of the facts and circumstances of the case and that when it is explained that trading advances were received and when the material could not be supplied, amounts have been returned in subsequent year, same could not be disputed by the authorities below to treat the same as undisclosed income of the assessee.** Considering the totality of the facts and circumstances, we do not find any justification to sustain the addition because assessee is able to prove identity of the creditors, their creditworthiness and genuineness of the transaction in the matter. In this view of the matter, we set aside the Orders of the authorities below and delete the entire addition.

- **Principal Commissioner of Income-tax v. Ambe Tradecorp (P.) Ltd. [2022] 145 taxmann.com 27 (Gujarat)**

5. As discussed above, since the requisite material was furnished by assessee showing the identity and since the assessee was not beneficiary when the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness of transaction were well satisfied.

6. The Tribunal rightly recorded in para 29 of the judgment, **“Once repayment of the loan has been established based on the documentary evidence, the credit entries cannot be looked into isolation after ignoring the debit entries despite the debit entries were carried out in the later years. Thus, in the given facts and circumstances, we hold that there is no infirmity in the order of the Ld. CIT-A.”**

7. For the reasons recorded above, no question of law much less substantial questions arises in this appeal.

- **PCIT vs. Bhupendra Champaklal Dalal (2024) 160 taxmann.com 645 (Bom)(HC)**

Section 68 of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment years 1988-89 to 1990-91 - Assessee was engaged in trading in securities and shares - Assessing Officer made addition under section 68 in respect of cash credit entries relating to six individuals as unexplained cash credit - It was noted that Assessing Officer had not properly examined ledger account of assessee because these parties from whom cash was received had share trading transactions and major portion of credit was repaid during year and Assessing Officer had accepted debit entries of trading transactions as genuine - Whether, on facts, additions were to be deleted - Held, yes [Para 7] [In favour of assessee]

- **Ravindra Madanlal Khandelwal v. Deputy Commissioner of Income-tax [2024] 169 taxmann.com 457 (Nagpur - Trib.)**

“19. Accordingly, we set aside the impugned order passed by the learned CIT(A) on this issue and restore the same to the file of the Assessing Officer for verification of the fact as to whether loans were duly repaid back by the assessee either in current year or subsequent years and if so, the same need not be added back. Needless to say that the assessee be provided reasonable opportunity of being heard. Thus, ground no.1, raised by the assessee is allowed for statistical purposes.”

- **Pr. Commissioner of Income Tax-12, Delhi vs. Jagmag Builders ITA No. 325/2024 [Delhi High Court]**

2. The issue itself pertains to additions under Sections 68 and 37 of the Income Tax Act, 1961 [‘Act’] which were made by the Assessing Officer [‘AO’] on account of unexplained unsecured loans and disallowance of interest expenses. We note that the Tribunal while affirming the conclusions which were arrived at by Commissioner of Income Tax (Appeals) has observed as follows:-

“6. From the evidences furnished by the assessee before the departmental authorities, it is established that the entire loan, which is subject matter of addition, as unexplained cash credit has been repaid either in the year under consideration or subsequent assessment years. The entire transaction relating to availing of and repayment of loan has been done through banking channel. All details relating to loan availed and repayments made have been furnished before the departmental authorities, the

details of which have been produced at pages 24 to 29 of the order of learned First Appellate Authority. It is also a fact on record that assessee has furnished all supporting evidences not only to prove the identity of the lenders but even creditworthiness as well as genuineness of the transaction by furnishing their bank statements, income-tax return copy, confirmations etc. Thus, it is evident, assessee has discharged its onus of proving the identity and creditworthiness of the creditors as well as genuineness of the loan transactions. Therefore, in our considered opinion, learned First Appellate Authority was justified in deleting the addition of Rs.2,67,05,959 made under Section 68 of the Act. Since, the addition made under Section 68 of the Act has been deleted, as a natural corollary, the disallowance of interest paid on such loan also has to be deleted. Accordingly, we do so. Grounds are dismissed.”

43. In view of the above submissions, it is respectfully submitted that the additions made by the AO under Sections 68 and 69C of the Act are wholly unsustainable, both in law and on facts. The Respondent-Assessee has duly discharged its onus by establishing the identity, creditworthiness of the lenders, and genuineness of the loan transactions through comprehensive documentary evidence, including confirmations, financial statements, income-tax returns, and bank records. Most of the loans have been repaid through proper banking channels, further substantiating the bona fide nature of the transactions. The AO instead of conducting an objective inquiry, relied solely on retracted third-party statements and an Inspector's report, without any independent verification or corroborative material. It is a settled principle that retracted statements without any supporting evidence cannot be the sole basis for additions especially in search-based proceedings which require incriminating material found during the course of search. Therefore, the findings of the CIT(A) deleting the impugned additions are well-reasoned, legally sound, and merit no interference.”

14. In the last, Ld.AR requested for the confirmation of the order of Ld.CIT(A) wherein the ld. CIT(A) had deleted the additions after due consideration of the facts and the evidences filed by the assessee in support of the loans taken. He prayed accordingly.

15. Heard the contentions of both parties and perused the material available on record. The AO has observed that assessee has obtained accommodation entries in the shape of unsecured loans from various companies as stated by one of the employees, Shri Rajiv Agarwal in his statement, recorded u/s 131(1A) of the Act and further, Shri Neeraj Jain who is being referred as mediator and entry provider has also accepted this fact. Before us, it was the arguments of the assessee that Shri Rajiv Agarwal and Shri Neeraj Jain had retracted from their respective statements before the investigation authorities and necessary copies of the retraction letters as filed were also placed before us in the Paper Book filed by the assessee. It is also stated by the assessee that the Director, Shri Ratul Puri, whose statements were recorded u/s 132(4) on the date of search i.e. 10.04.2019, when the statement of Shri Rajiv Agarwal were also recorded. In these statements, statement of Shri Rajiv Agarwal were confronted to Shri Ratul Puri wherein reply to Question No.16, he stated that Shri Rajiv Agarwal is responsible for business development and managing the source of raw material from various mines in Indonesia. Further, in reply to Question No. 24 again, Shri Ratul Puri had strongly rejected the statements of Shri Rajiv Agarwal wherein he has stated about the genuineness of the loans taken by the assessee company.

16. Similar reply was given by Shri Ratul Puri, in reply to Question No.31 of his statement wherein after confronting the statement of Shri Rajiv Agarwal, Shri Ratul Puri was asked to give his explanation.

17. It was also submitted by the assessee that loans were taken from the existing and genuine companies and all the necessary documents in order to establish their identity, creditworthiness and genuineness of the transactions were filed and after considering all these facts, Ld. CIT(A) has deleted all the additions made by AO. The relevant observation of Id. CIT(A) as contained in para 5.2 of the order are as under:

5.2. “Observations and Findings

5.2.1 While making an addition of Rs.25,05,00,000/- u/s 68 of the Income Tax Act, 1961 on account of alleged bogus loans received during the year, the Id. AO has worked on two premises:

- *Statements of Mr. Rajiv Aggarwal and Mr. Niraj Jain u/s 132(4) recorded by the search party at the time of search.*
- *Analysis of details filed by the appellant in ITR for AY 2018-19.*

5.2.2 Statements of Mr. Rajiv Aggarwal and Mr. Niraj Jain u/s 132(4) recorded by the search party at the time of search.

- i. Apart from the statements of Shri Rajiv Agarwal and Shri Neeraj Jain, there is no mention of any tangible material on record that was found or seized so as to arrive at a conclusion that the appellant company was involved in taking accommodation entries in the form of unsecured loans.*
- ii. The statement of Shri Rajiv Agarwal, relied on by the AO, was confronted to Shri Ratul Puri, main person of the group, in the course of recording his statement on 11.04.2019 wherein he was questioned about accommodation entries allegedly provided to M/s Indian Hydro Electric Power Private Limited. However, Shri Ratul Puri in answer to question number 24 of his statement recorded on 11.04.2019 has denied the same stating that "I do not know why Shri Rajiv Agarwal has stated so. He is responsible for business development and coal sourcing from various mines in Indonesia. I strongly reject the statement of Shri Rajiv Aggarwal". On this categorical denial, no further question was asked either to Mr. Ratul Puri or Mr. Rajiv Aggarwal.*
- iii. In the assessment order, the Id. AO has extracted the excel sheet found in the laptop of Mr. Rajiv Agarwal. As regards the excel sheet extracted, there is nothing incriminating against the appellant in the said excel sheet as all these entries have already been declared by the appellant in its Books of account for relevant AYs.*

- iv. *No evidence was found during the course of search operation conducted by the department on the group regarding any payment of cash or any commission in lieu of amounts received as unsecured loans through banking channels.*
- v. *Further, Mr. Rajiv Agarwal has retracted his statement on 23.04.2019. Thus, the statement of Mr. Rajiv Aggarwal has lost its evidentiary value as the retraction has been made within a reasonable time ie. 13 days. Retraction affidavit of Shri Rajiv Agarwal was filed before the investigation wing on 23.04.2019. No question was asked either by the Investigation Wing or by the Id. AO on retraction of the statement by Mr. Rajiv Aggarwal. Further, the retraction of the statement was also not rejected. Therefore, it can be presumed that the retraction of statement by Mr. Rajiv Aggarwal has been allowed.*
- vi. *Statement of Mr. Niraj Jain is also not found to be of any help in establishing these loans as entries. When Mr. Niraj Jain was shown the statement of Mr. Rajiv Aggarwal, he stated that he had only introduced Mr. Rajiv Aggarwal to those entities which are in the business of providing entries. However, he denied having any knowledge whether such companies actually provided the entries to the appellant company. He was also unaware of the amount of the entries provided by such companies. He also denied being party to the cash transaction between the entry providers and the appellant company.*
- vii. *The issue of addition on the basis of statement of the Appellant u/s 132(4) recorded by the search party at the time of search when there is no corroborating incriminating material has been decided by the jurisdictional High Court (Delhi High Court) in the case of Best Infrastructure (India) Pvt Ltd and Harjeev Aggarwal. The relevant part of the judgements are as under:*
 - vii(a). *in the case of Principal Commissioner of Income vs Best Infrastructure (India) Pvt. Ltd dated 1 August, 2017, Hon'ble Delhi High Court held,*

36. Fifthly, statements recorded under Section 132 (4) of the Act do not by themselves constitute incriminating material as has been explained by this Court in Commissioner of Income Tax v. Harjeev Aggarwal (supra)."
 - vii(b). *In the case of Commissioner of Income Tax vs Harjeev Aggarwal dated 10 March, 2016, Hon'ble Delhi High Court held,*

18. In CIT v. Harkaran Dass Ved Pal: (2011) 336 ITR 8 (Del), this Court expressed the aforesaid view in the following words:-

"This provision clearly stipulates that the undisclosed income of the block period has to be determined or computed "on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such other materials or information

as are available with the Assessing Officer and relatable to such evidence". This Court in Ravi Kant Jain (supra), as indicated above, has already observed that the procedure of assessment under Chapter XIV-B is a special procedure intended to provide a mode of assessment of undisclosed income which has been detected as a result of search. The procedure under Chapter XIV-B is not intended as a substitute to regular assessment and its scope and ambit is limited in that sense to materials unearthed during the search. As pointed out in Ravi Kant Jain (supra), the assessment for the black period can only be done on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such other, materials or information as are available with the Assessing Officer and relatable to such evidence. It is, therefore, clear that the undisclosed income, which is to be determined under Chapter XIV-B, has to be determined on the basis of evidence discovered during the search. It is obvious that where the computation of undisclosed income is based on material other than what was found in the course of the search, the same could not be treated as undisclosed income determined under Clause (c) of Section 158BC.

19. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132 (4) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the Provisions of Chapter XIV-B of the Act.

20. In our view, a plain reading of Section 158BB[1] of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.

21. A plain reading of Section 132 (4) of the Act indicates that the authorized officer is empowered to examine on oath any person who is found in possession or control of any books of accounts, documents, money, bullion, jewellery or any other valuable article or thing. The explanation to Section 132 (4), which was inserted by the Direct Tax Laws (Amendment) Act 1997 w.e.f. 1st April, 1989, further clarifies that a person may be examined not only in respect of the books of accounts or other documents found as a result of search but also in respect of all matters relevant for the purposes of any

investigation connected with any proceeding under the Act. However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the Investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 15BBB(1) read with Section 158B(b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded.

22. In CIT v. Sri Rumidas Motor Transport Ltd: (1999) 238 ITR 177 (AP), a Division Bench of Andhra Pradesh High Court, reading the provision of Section 132(4) of the Act in the context of discovering undisclosed income, explained that in cases where no unaccounted documents or incriminating material is found, the powers under Section 132(4) of the Act cannot be invoked. The relevant passage from the aforesaid judgment is quoted below:

"A plain reading of sub-section (4) shows that the authorised officer during the course of raid is empowered to examine any person if he is found to be in possession or control of any undisclosed books of account, documents, money or other valuable articles or things, elicit information from such person with regard to such account books or money which are in his possession and can record a statement to that effect. Under this provision, such statements can be used in evidence in any subsequent proceeding initiated against such person under the Act. Thus, the question of examining any person by the authorised officer arises only when he found such person to be in possession of any undisclosed money or books of account. But, in this case, it is admitted by the Revenue that on the dates of search, the Department was not able to find any unaccounted money, unaccounted bullion nor any other valuable articles or things, nor any unaccounted documents nor any such incriminating material either from the premises of the company or from the residential houses of the managing

director and other directors. In such a case, when the managing director or any other persons were found to be not in possession of any incriminating material, the question of examining them by the authorised officer during the course of search and recording any statement from them by invoking the powers under section 132(4) of the Act, does not arise. Therefore, the statement of the managing director of the assessee, recorded patently under section 132(4) of the Act, does not have any evidentiary value. This provision embedded in sub-section (4) is obviously based on the well established rule of evidence that mere confessional statement without there being any documentary proof shall not be used in evidence against the person who made such statement. The finding of the Tribunal was based on the above well settled principle."

23. It is also necessary to mention that the aforesaid interpretation of Section 132(4) of the Act must be read with the explanation to Section 132(4) of the Act which expressly provides that the scope of examination under Section 132(4) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of Section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under Section 132(4) of the Act can form a basis for a block assessment only if such statement relates to any Incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.

24. If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under Section 132(4) is accepted, it would result in ignoring an important check on the power of the AO and would expose assesseees to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee.

25. In Commissioner of Income Tax v. Naresh Kumar Aggarwal: (2014) 369 ITR 171 (T & AP), Division Bench of Telangana and Andhra Pradesh High Court held that a statement recorded under Section 132(4) of the Act which is retracted cannot constitute a basis for an order under Section 158BB of the Act."

5.2.3 Analysis of details filed by the appellant in ITR for AY 2018-19.

i. To establish the identity of lenders, their creditworthiness and genuineness of transactions, the details submitted by the appellant company in respect of all the lenders during the course of assessment as well as appellate proceedings are as under:

- Copy of Permanent Account Number.
- Copy of certificate of incorporation.
- Copy of memorandum of association and article of association.
- Company Master data
- Acknowledgement of ITR for the assessment year 2017-18.
- Audited financial statements for the year ended 31st March, 2017.
- Acknowledgement of ITR for the assessment year 2018-19.
- Audited financial statements for the year ended 31st March, 2018.
- Duly signed confirmation of accounts showing name of the lender, PAN, CIN, transactions during the year, closing balance, etc
- Bank statement of lenders for loans received
- Interest ledger in the books of borrower.
- Copy of ledger in the books of the borrower.
- TDS certificate for interest provided in the books of borrower.

The relevant details from the above documents are extracted as under:

S. No.	Name of the Company	PAN	CIN	Address	Opening Balance	Amount of Loan	Interest thereon	Balance as on 31.03.2010
1	M/s Attractive Capital Services P Limited	AABCA1120B	U67120DL1996PTC077619	32/1, Gali No 8, G/F, Bhikam Singh Colony, Delhi-110032	NIL	2,09,00,000	1,41,250	2,90,41,250
2	M/s CEA Consultants P Limited	AAACC2342N	U74899DL982PTC013438	H.No.-146, BLK-II, JJ Colony, Mangol Puri, New Delhi - 110083.	NIL	8,14,00,000	1,55,742	8,15,55,742
3	M/s Lenient Consultants P Limited	AAACL0193Q	U65100DL1988PTC031902	Office No. 12, 2nd Floor, DDA Market, Nirman Vihar, Delhi-110092.	NIL	1,27,00,000	10,453	1,27,10,453
4	M/s LTE Info Technologies P Limited	AABCL6547R	U72900DL2009PTC192207	Old E-143, G.No-2, 20 Feet Road, Baldev Marg, Karawal Nagar, Delhi- 110094.	NIL	6,33,00,000	1,73,184	6,34,73,184
5	M/s Mover Realech P Limited	AAGCM8877J	U70100DL2010PTC210825	H.No. 242, PKT B, Phase 4, Ashok Vihar New Delhi-110052.	NIL	2,50,00,000	3,87,247	2,53,87,247
6	M/s SA Shields Security Services P Limited	AAPCS4944M	U74110DL2011PTC215661	Office No. 2, Khastha # 765 Extended Lal Dora, Burari, Delhi - 110084.	NIL	50,00,000	62,137	50,62,137
7	M/s Tish Consultant P Limited	AAACT2343Q	U74899DL1990PTC042081	146, Ground Floor, BLK-II, JJ Colony, Mangol Puri, New Delhi - 110083.	NIL	3,42,00,000	5,78,673	3,47,78,673



S. No.	Name of the Company	PAN	Whether return of income for AY 2018-19	Date of filing ITR	E-filing acknowledgment number	Whether Statutory Audit	Date of Statutory Audit Report	Whether Audited Financials enclosed
1	M/s Attractive Capital Services P Limited	AAMCA3099E	Yes	29.10.2018	354806671291010	Yes	01.09.2018	Yes
2	M/s CEA Consultants P Limited	AAACC2342N	Yes	20.10.2018	351512491281010	Yes	01.09.2018	Yes
3	M/s Lenient Consultants P Limited	AAACL0193Q	Yes	20.10.2018	352141411281010	Yes	01.09.2018	Yes
4	M/s LTE Info Technologies P Limited	AABCL6547R	Yes	31.10.2018	367547661311018	Yes	03.09.2018	Yes
5	M/s Mover Realtech P Limited	AAGCM8877J	Yes	30.10.2018	3610115611301018	Yes	01.09.2018	Yes
6	M/s SA Shields Security Services P Limited	AAPCS4944M	Yes	29.10.2018	352842851291019	Yes	06.08.2018	Yes
7	M/s Tish Consultant P Limited	AAACT2343Q	Yes	28.10.2018	351751951281018	Yes	01.09.2018	Yes

iii. Ld. AO, herself, has admitted in para 3.5 of the assessment order that confirmations were received from all the above parties.

In the same para of the assessment order, the Id. AO has concluded,

"In view of the above, correct position of law is that the assessee has to furnish enough evidences which can convince the AG about the identity, creditworthiness and genuineness of the transaction."

In this case, appellant has submitted all the material available with it to establish its case. Now it is the duty of the AO to ask specifically what more supporting evidence she would like to have to satisfy herself about the identity, creditworthiness and genuineness of the transaction. The Id. AO cannot pass general remarks that the assessee has to furnish enough evidences which can convince the AO. She had all the options and powers available in the IT Act to call for information/enforce the personal attendance of the principle officers of the lending companies/to record the statement of concerned persons/etc. However, the Id. AO chose not to exercise these powers and even did not examine Mr. Rajiv Aggarwal and Mr. Niraj Jain during the assessment proceeding.

iv. Interest income shown by the lender companies along with TDS deducted on it has been accepted by the Department

v. All the companies from whom unsecured loans had been received by the appellant and which have been held to be bogus are MCA 'Active' compliant. Hon'ble ITAT, Ahmedabad in the case of Adarsh Capital Finstock TS-1193-ITAT-2021 (Ahd) has held that companies with 'Active' status in MCA records cannot be held to be paper / shell companies. Accordingly, addition u/s 68 was deleted by the Hon'ble ITAT. The decision of the Hon'ble ITAT is reproduced hereunder:

16. We have already discussed that the appellant company has sufficiently and reasonably discharged its primary onus under Section 68 of the Act by producing all relevant required documents as asked for by the Revenue. It also appears that the Ld. AO completely relied upon the loose papers and documents found and seized from the premises of third party Le. SCS which even do not contain any noting of receiving or paying cash which could at all lead to the allegation of accommodation entries by the Ld. AD. Finally considering factors inter alia the status of all three companies in question as active as per the Ministry of Corporate Affairs ought not to have been treated as paper/sate companies. All the above facts and flaws have been carefully considered by the Ld. First Appellate Authority in its proper perspective. Thus, considering above factors as discussed by us and further taking into consideration the judgments passed by the Hon'ble Madhya Pradesh High Court and ITAT Mumbai Benches on the identical search proceeding we find no ambiguity in the order passed by the First Appellate Authority in deleting the addition made by the Ld. AO so as w warrant interference. Hence, the appeal preferred by Revenue is found to be devoid of any merit and, thus, dismissed."

vi. It is important to understand that concept of low income, low sales, lower profit growth, no major business activity, etc. are valid criteria when issue of high share price/share premium is under consideration. If a company not having proper business model, regular income and consistent profit growth and still commanding high share price/share premium, the genuineness of its high share price definitely raise doubts. However, in case of lending of money, only criteria is, whether the lender company has sufficient balance in its bank account and in balance sheet. Once company has sufficient balance in its balance sheet may be in the form of various reserves and loan is extended from these reserves through banking channel, then there is not much of scope in raising the doubts on this transaction.

vii. In the present case, though all the lender companies are not having high income yet they have sufficient reserves in their balance sheet to justify the loan extended. All these companies are filing their ITRs on regular basis along with audited financials. In none of these cases, the IT Department has made any addition on account of non-genuine share capital. Once receipts in the form of share capital/share premium etc. has been accepted as genuine then its application in the form of lending/expenditure can not treated as sham/non-genuine.

5.2.4 In view of the above discussion, it is held that addition of Rs.25,05,00,000/- for AY 2018-19 and Rs. 16,14,00,000/- for AY 2019-20 u/s 68 of the Income Tax Act, 1961 on account of alleged bogus loans received during the year are not found to be sustainable and therefore same are deleted and these grounds of appeal are hereby allowed."

18. In the instant case, the Revenue's main allegation is regarding the unsecured loans taken by the assessee company held as bogus and this conclusion was reached on the basis of statement of Shri Rajiv Agarwal, one of the employee and one Shri Neeraj Jain who was stated to be the facilitator and further based on the field inquiries conducted through the Inspector wherein he reported that lender companies were not found available at the given addresses.

19. The statements given by Shri Rajiv Agarwal on 10.04.2019 u/s 131(1a) of the Act, a copy of these statements is placed at page 56 to 62 of the Paper Book and the copies of the exhibits relied upon by the Revenue in the shape of Excel Sheet found from the laptop of Shri Rajiv Agarwal are available at pages 63 to 82 of the Paper Book. It is further seen that Shri Rajiv Agarwal vide letter dated 16.04.2019 filed his retraction from the statements recorded during the search on 10.4.2019 through letter dated 23.04.2019 wherein it is stated by him that Revenue has come to his house at around 3.40 A.M and continued unabated for a considerable period of time of almost three days. He further stated in the said letter that search team has not allowed his family members to leave the residence or to resume their regular activities. After three days of continuous search, when the search at his residence was concluded, he was taken to the office where he was forced to remain presence for further four days. He further concurs the statement of Shri Ratul Puri that he was holding position of President-Business Development with the assessee group and his role is limited to explore various business opportunities alongwith the procurement of raw material for the company's projects at competitive prices for the

benefit of the group. Shri Rajiv Agarwal further deposed in the letter that he was not involved in managing the financial affairs of the assessee company in any manner, nor any of his family members are shareholders nor have any beneficial interest in the entire assessee group. The retraction letter so filed at page 111 to 113 is reproduced as under:-

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ED240621224IN IRS:67661032122
SP:0001 RGAD HQ <110003>
Center No:1.23/04/2019.19:51
To:BY DIR OF I TAX,
PIN:110002, Indraprastha HQ
From:RAJIV AGARWAL,NOIDA
Ut:20ons
Amt:17.70(Cash)Tax:2.70
<Track on www.indiarpost.gov.in>
<Mail 1800 265 6888>



To
The Deputy Director of Income Tax (Investigation)-Unit-3(2)
"C" Block, Civic Centre
New Delhi

Re: Proceedings under section 132 of the Income Tax Act, 1961- M/S Hindustan Power Group, Mr. Deepak Puri, Mr. Ratal Puri and Ms. Neeta Puri

Sub. Statement of Sh. Rajiv Agarwal obtained through force coercion and intimidation

Dear Sir,

1. Search under section 132 of the Income Tax Act, 1961 was conducted at various business as well as residential premises of certain directors and officer bearers of the assessee group i.e M/s Hindustan Power Group. The search lasted for more than 7 days or say 168 hours at a stretch.
2. That since am holding the post of President- Business Development with the assessee group, search commenced on 07.04.2019 at my residential premises by barging into my house at around 3:40 a.m. at night and it continued unabated for a considerable period of time. Pertinent to mention that when the search team barged into my house after midnight and before sunrise my wife was in her night dress and the search team consisting mostly male members did not even allow her to change her clothes. It was after much persuasion that she was allowed to go to the washroom to change her clothes. The search started in my residence immediately thereafter and continued for almost three days and during that period they did not even allow my wife and child to leave the residence. After three days when they completed the search at my residence, the search team took me into custody and transported me to our office where again I was detained for another 4 days. Thus, though there no search warrant in my name or in the name of my family members I was in the custody of the tax officials for almost 7 days at a stretch which is nothing but a blatant or my fundamental right.
3. Because of such illegal actions I along with my entire family suffered mentally and physically. We were neither allowed to sleep nor perform our daily chores without hindrance or discomfort. Our life was made miserable as the entire action and its conduct became a nightmare and shock for me and my family.
4. It is on record that the undersigned rendered due assistance and co-operation to the search party. The visiting teams had checked all the documents and verified all documents as available at my premises. Despite due co-operation, it appeared that the search parties were conducting the above said action on me or my family.
5. The search team also created mental pressure on me to give statements which suited them

which made me to very uncomfortable. In fact, I was put to great discomfort and was made to state whatever suited the whims and fancies of the search parties after they exerted coercion by threatening to involve and arrest my entire family including my wife and son present at that time.

6. Initially, I refused to succumb to their pressure, but later they started exerting pressure on my family. My younger son had recently arrived from abroad after completing his studies and was present at the house when the search took place. With certain punitive vengeance, they commenced cloning the mobile hand sets of my wife as well as my son including his laptops. When I requested the search party to stop this act, they started intimidating me that they shall involve them in the matter, get them arrested and will ruin their social and personal life. In fact, they also issued to summons to my wife during the course of search to intimidate her though she has no connection with the company. The team also seized certain papers pertaining to business of my son from my residence who is a non resident and runs his company. They even threatened to involve him and ruin his business though he is no way associated with the company who is being searched. The IT team, also kept on calling the personnel of the police Force which accompanied them, inside the room wherein the statements were being recorded to threaten me that the said armed forces are there with all authority to arrest the person as per their direction.
7. With all such acts and actions of the search party accompanied by the police, I was frightened, scared, terrified and helpless and was not in the correct frame of mind. In such a situation, I was made to sign certain statements on dotted lines. These statements were typed by the IT people in their own laptop. They themselves typed the questions and answers.. I was totally exhausted as the life, reputation and future of my family was put on stake which was the top most priority for me. I finally was so tired, exhausted, frightened, scared and threatened that I lost control over my senses and signed every paper put forth before me by the search party.
8. It is to be appreciated that the action of the tax department was a complete intrusion to our right of privacy which was devastatingly flouted with no respect for the law of the land. It is not understood as to why and for what reason my wife and son were put to such a distress. Why and for what reasons their handsets and laptops were picked? Why the statement of my wife was recorded who had nothing to do with the assessee group. Why and for what reason the business affairs of my non resident son were questioned? Why and for what reason they were likely to face arrest? Such acts of the search party to jeopardize my family affairs were learnt to be grossly illegal, unethical and unwarranted.
9. With above said threat, coercion and intimidation my statements were got signed forcibly from me. I do not even recall how many statements and documents were forcefully given to me for signing on the dotted lines. All the questions were framed by the authorized officers and the answers/replies were also recorded by them which suited their convenience. All such statements were typed by them in their laptops. printouts were taken by them from outside and were only got signed by me. No independent witnesses were called to ensure fairness and the

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drivers of the vehicles used by the search party were made to sign as witnesses. I was only made a pawn to succumb to their whims and fancies. I am also not aware of the contents of the so called statements as no proper explanation was given to me as to how to read it or to understand it and all these statements/document on which I was forced and coerced to sign are not my statements as it was obtained through force and coercion.

10. It has to be appreciated that I am a professional person and I hold the position of President-Business Development with the assessee group. My role is limited to explore various business opportunities along with procurement of raw material for the company's projects at competitive prices for the benefit of the group. I get a fixed salary from the company and am no way involved in managing the financial affairs of the company. I or any of my family members are neither shareholders or have any beneficial interest in the entire assessee group. Except my remuneration, I do not derive any direct or indirect benefit from the assessee group.
11. At the cost of repetition I state with a heavy heart that the search party exerted great pressure, undue influence and took all possible coercive measures to procure certain statements which were neither read by me nor understood by me or explained to me. The search lasted for such a long duration of 7 days and during this period I was in their custody and hence I was totally exhausted and fatigued.
12. However, when I gathered my senses immediately after a break from such ordeal, I realized that the action of the search party was totally illegal and unwarranted. In fact, the threat to my family loomed so large that I was made to sign certain papers which were even not perused by me.
13. In view of the facts and circumstances as discussed above, I would like to inform you that all the statements which were recorded during the course of search are denied and disputed and I will be able to confirm the correctness of the same after I get to read the same. Therefore, I am categorically retracting the statements recorded during the course of search and no view may kindly be taken on the basis of the contents of the so called statement of mine which were purely procured through exerting coercion, threat and undue influence of the nature described above.

However I make it clear that I am willing to extend all necessary cooperation as and when required.

Thanking You

Yours Sincerely

Rajiv Agarwal

20. It is further seen that other person, Shri Neeraj Jain whose statements were relied by the AO, has also retracted from his earlier statements recorded by the department in terms of letter dated 17.04.2019 filed in the office of ACIT, Unit -3 on 08.05.2019 wherein he stated that his statements were got signed as authored by Income Tax personnel and he neither allowed to read nor understand the contents of those statements and signed on dotted lines. The extracts of the letter as available at pages 114 to 117 of the paper book are reproduced as under:-

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17.04.2019

Sh. Rajeev Kumar Aggarwal
Principal Director of Income Tax,
PDIT (Investigation)-I
Civic Centre
New Delhi

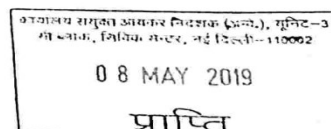
Subject: Retraction of my statement recorded during the income tax search at my residential premises 3rd and 4th floor, C-52, Anand Vihar, Delhi
In the case of : Mr. Deepak Puri, Ms. Neeta Puri, Mr. Ratul Puri, Hindustan Power Projects Pvt Ltd, Indian Hydro Electric Power Pvt Ltd and Moser Bear Solar Ltd

Hon'ble Sir,

It is to bring to your kind notice that I along with my family have been put to great mental agony and undue harassment by personnel of the income tax team who conducted search without any justification or valid reasoning on 09/04/2019 at my residential as well office premises by illegitimately and unlawfully connecting me in the case of the above stated parties/companies, namely Mr. Deepak Puri, Ms. Neeta Puri, Mr. Ratul Puri, Hindustan Power Projects Pvt Ltd, Indian Hydro Electric Power Pvt Ltd and Moser Bear Solar Ltd.

It is not understood as to what led the income tax team to suspect that any money, valuable or other undisclosed assets of the above said parties/companies are lying at my premises which necessitated such an action at my residential as well as office premises resulting into encroachment of my privacy as well as flouting of my fundamental right of freedom and speech for several hours at a stretch.

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It is not understood as to why and for what reason such encroachment by raiding my premises was undertaken by the income tax team which could have otherwise been achieved by calling by and clarifying doubts, if any, in respect of the above said parties or companies in whose case search was targeted.

I was on a business trip abroad and my family was also away at the place of some friend when I learnt that certain income tax personnel have reached my residence. I as a bonafide tax payer returned back on my scheduled time in India with the intent to co-operate with the tax personnel. However, when I came out of the airport exit, I was astonished to see that the entire team of income tax along with security forces were waiting at such exit of the airport to practically arrest me.

I tried my level best to explain but nothing was heard or considered by them. Instead I was put in the vehicle, surrounded by tax and security persons and drove towards my residence as if I was some notorious criminal who would have fleeced otherwise. Such being the situation, I could not understand as to what grave crime I had committed resulting into such behaviour. On my questioning, I was practically rebuked and threatened.

The tax personnel failed to recognise that in case I had done something wrong, I would have preferred to remain outside India. After reaching my residence, I saw entire tax team ready for my interrogation. They created a so called camp office at my residence, started putting queries/questions which were meaningless and baseless and I was neither aware not acquainted with the same.

I was trying to give them honest and actual facts and answers which they were not ready to listen or consider. For several hours, they kept on asking me frivolous and fictitious questions, which I summarily declined to agree to their answer.



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It is also pertinent to mention that my entire family consisting of my wife and two minor children had also reached back home. It may be verified that the visiting tax team did not consist of any ladies. They started searching the private cabinets and almirahs belonging to my wife and children. I informed them with their such an illegal action but they never bothered about it.

On my being questioning them regarding their behaviour as well as my adamant attitude to tell only the truth, they served a summon to my wife also and commenced recording her statement. They even started searching the contents of the mobile phones of my wife and children without any authority and refused any legal assistance for them. They eventually threatened me that I along with my wife and entire family will be made accomplice in the so called tax frauds of the above said parties/companies and therefore whatever they want should be admitted.

In the absence of any lady officer, late night, threat to my wife and family being roped in along with me being exhausted by travel, sleepless nights, harassment meted out and such auxiliary factors and facts, I agreed to submit to their version and signed all papers/pages whatever they put before me for signing.

The so called statement which was got signed was authored by the income tax personnel which I neither read nor was given an opportunity to read or understand. They kept on showing me certain sheets/data in their mobile phones and stated that all such things should be admitted by me. I was neither given a copy nor was made aware as to what were the contents of the said sheets in their mobile phones. They authored all the questions as well as answers and me as well as my wife were merely moot spectators. With no alternative, whatever was told to me I merely performed with the sole intent to push them outside my home and have peace of mind especially for my wife and family.

I was neither allowed to sleep nor to have food or to perform my daily routines. A great amount of inconvenience and harassment was meted out to

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my entire family. I was utterly shocked and remained in such a traumatic state of affair for next few days. Being a responsible citizen I did not come out of the house considering such an action being a social stigma.

However, when I gained some balance of mind and met my close family, they motivated me to raise my voice against such illegitimate and unlawful act of the income tax team. Since I was not made aware about the contents of the statements, I therefore, request your goodself to not to consider the same as true and correct since the same were extracted by them with great amount of harassment, threat, coercion and undue influence. I being a bonafide citizen should be allowed to live peacefully and therefore I have expressed my above said concerns before your goodself.

Considering the above said facts, I hereby retract my statement or other versions as may be communicated till date.

I am available to co-operate with the tax department as and when required, but within the ambit of law and natural justice.

Thanking You

Yours Sincerely



Neeraj Jain

3rd and 4th Floor

C-52 Anand Vihar

Delhi

21. It is further seen that except the so-called statements of Shri Rajev Agarwal and Shri Neeraj Jain, which were retracted within a month by both the persons, no incriminating/supporting material whatsoever was found during the course of search nor brought on record by making independent inquiries by the AO and all the entries pertaining to the assessee company as appearing in the excel sheet containing the details of the loans as found in the laptop of Shri Rajov Agarwal, have already been recorded in the books of accounts of the assessee company. This fact has not been denied or disputed by the Revenue.

22. Since entries contained in the excel sheet are duly recorded in the books of accounts of the assessee and assessee has been able to substantiate all these entries by filing the bank statements and the financial statements of all the lender companies, it cannot be said that excel sheet is the incriminating material. It is further relevant to state that though the year under appeal is unabated year however, the statements recorded during the course of search which were later retracted, cannot be made the sole basis for making the additions, more particularly, when such statements are of third party and therefore, they cannot be constituted as the incriminating material in the case of the assessee. This proposition is supported by the judgement of Hon'ble Delhi High Court in the case of **Best Infrastrucure (India) (P.) Ltd. vs CIT [2017] 397 ITR 82 (Delhi)** in para 38 of the judgement wherein Hon'ble High Court has held as under:-

"38. Fifthly, statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal (supra). Lastly, as

already pointed out hereinbefore, the facts in the present case are different from the facts in Smt. Dayawanti Gupta (supra) where the admission by the Assessee themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non-existent in the present case. In the said case, there was a factual finding to the effect that the Assessee were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr. Anu Aggarwal or Mr. Harjeet Singh contained any such admission."

23. Even otherwise we are in agreement with the argument of Ld. AR that it is a settled law that statement alone cannot be treated as incriminating material for the purposes of making addition for assessment completed u/s 153A / 143(3). It has been held in many judgments that mere statement u/s 132(4) or u/s 131 is not sufficient to make an addition. A statement made must be relatable to incriminating material found during the course of search or the statement must be made relatable to material by subsequent inquiry/investigation.

24. The Hon'ble Rajasthan High Court in the case of **Mantri Share Brokers Pvt. Ltd.** reported in **96 Taxmann.com 279 (Raj.)** has held as under:

"Section 69B of the Income-tax Act, 1961- undisclosed investments (Burden of proof)- whether where except statement of director of assessee-company offering additional income during survey in his premises, there was no other material either in form of cash, bullion, jewellery or document or in any other form to conclude that statement made was supported by some documentary evidence, said sum could not be added in hands of assessee as undisclosed investments - Held, yes [Paras 10-11] [In favour of assessee]."

24.1. Para 10 & 11 of the order is as under:

10. Before proceeding with the matter, it will not be out of place to mention that except the statement in the letter, the AO has no other material on record to assess the income of Rs. 1,82,00,000/-.

11. It is settled proposition of law that merely on the statement that too also was taken in view of threat given in question No.36 as narrated by Mr. Gupta and the same sought to have been relied upon, there is no other material either in the form of cash, bullion, jewellery or document in any other form which can come to the conclusion that the statement made was supported by some documentary evidence. We have gone through the record and find that the CIT (A) has rightly observed as stated hereinabove, which was confirmed by the Tribunal."

24.2. It would not be out of place to mention that this order of Hon'ble Rajasthan High Court has been confirmed by Hon'ble Supreme Court also.

25. In the case of **Smt. S. Jayalakshmi Ammal [2016] 74 taxmann.com 35 (Madras)** the Hon'ble High Court has held that mere statement is not enough to make addition, the relevant observations are as under:

"...While advertng to the above, we are of the considered view that, for deciding any issue, against the assessee, the Authorities under the Income Tax Act, 1961 have to consider, as to whether there is any corroborative material evidence. If there is no corroborating documentary evidence, then statement recorded under Section 132(4) of the Income Tax Act, 1961, alone should not be the basis, for arriving at any adverse decision against the assessee. If the authorities under the Income Tax Act, 1961, have to be conferred with the power, to be exercised, solely on the basis of a statement, then it may lead to an arbitrary exercise of such power. An order of assessment entails civil consequences. Therefore, under judicial review, courts have to exercise due care and caution that no man is condemned, due to erroneous or arbitrary exercise of authority conferred...."

"...If the assessee makes a statement under Section 132(4) of the Act, and if there are any incriminating documents found in his possession, then the case is different. On the contra, if mere statement made under Section 132(4) of the Act, without any corroborative material, has to be given credence, than it would lead to disastrous results. Considering the nature of the order of assessment, in the instant case characterized as undisclosed and on the facts and circumstances of the case, we are of the view that mere statement without there being any corroborative evidence should not be treated as conclusive evidence against the maker of the statement..."

26. In the case of **Naresh Kumar Agarwal** reported in **[2015] 53 taxmann.com 306 (Andhra Pradesh)**, the Hon'ble Court has made following observations in the situation where confession of additional income was made in the statements recorded u/s 132(4) without there being any corroborative material:

"...it is admitted by the Revenue that on the dates of search, the Department was not able to find any unaccounted money, unaccounted bullion nor any other valuable articles or things, nor any unaccounted documents nor any other valuable articles or things, nor any unaccounted documents nor any such incriminating material either from the premises of the company or from the residential houses of the managing director and other directors. In such a case, when the managing director or any other persons were found to be not in possession of any incriminating material, the question of examining them by the authorised officer during the course of search and recording any statement from them by invoking the powers under section 132(4) of the Act, does not arise. Therefore, the statement of the managing director of the assessee, recorded patently under Section 132(4) of the Act, does not have any evidentiary value. This provision embedded in sub section (4) is obviously based on the well established rule of evidence that mere confessional statement without there being any documentary proof shall not be used in evidence against the person who made such statement.."

27. Similarly, the Hon'ble Gujarat High Court, vide its order dated 14.07.2016, in the case of **Chetanben J Shah Legal Heir of Jagdish Chandra K. Shan** in Tax Appeal No. 1437 of 2007, laid down the ratio that no additions can be made in the hands of the assessee merely on the basis of statements recorded, during the course of search, under section 132(4). Hon'ble High Court in the above-mentioned case relied on its earlier order in the case of **Kailashben Manharlal Chokshi** reported in **[2008] 174 Taxman 466 (Guj.)**, wherein a similar ratio was laid down. Further, in the case of **Narendra Garg & Ashok Garg (AOP) [2016]** reported in **72 taxmann.com 355 (Gujarat)**, the Hon'ble Gujarat High Court held as under :

"....It is required to be borne in mind that the revenue ought to have collected enough evidence during the search in support of the disclosure statement. It is a settled position of law that if an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities are required to assist him and ensure that only legitimate taxes are collected. The Assessing Officer cannot proceed on presumption u/s 134(2) of the Act and there must be something more than bare suspicion to support the assessment or addition. In the present case, though the revenue's case is based on disclosure of the assessee stated to have been made during the search u/s 132(4) of the Act, there is no reference to any undisclosed cash, jewellery, bullion, valuable article or documents containing any undisclosed income having been found during the search..."

28. From the close perusal of the assessment order, it is seen that there is no incriminating material found and / or seized during the course of search u/s 132(1) which shows that loans taken by the assessee are bogus or non-genuine.

29. It is a settled law that documentary evidences will always carry more weight than the oral statements, particularly when such oral statements were retracted later by the persons who gave them. After the oral statement were available to the AO, the assessee company proved the oral statement to be incorrect by filing documentary evidences, thereafter the AO did not prove the documentary evidence to be untrue/ bogus/ non genuine. The AO never confronted the documentary evidences to the person whose oral statements were recorded, in the instant case they are Shri Rajiv Agarwal and Shri Niraj Jain. Therefore, the oral statements losses their evidentiary value in light of the documentary evidence placed by the assessee on record. Considering the documentary evidences clearly outweighs the oral evidences relied upon.

30. Further, the Id. AR has also taken a legal plea that no cross examination of the person, whose statement was relied upon, was granted despite specific request made to the AO. The Hon'ble Supreme Court in case of **Andaman Timber Industries vs. CCE in Civil Appeal No. 4228 of 2006** has held as under:

"5. 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 is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However-, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As, far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their exiactory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross examine those dealers and what extraction the appellant wanted from them."

"7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross examination. That apart, the Adjudicating Authority simply relied upon the pricelist as maintained at the depot to determine the price the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the pricelist itself could be the subject matter of cross examination. Therefore, it was not for the Adjudicating Authority to presuppose as to; chat could be the subject matter of the cross examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving ins reasons for accepting or rejecting the submissions."

“8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.”

31. In following judgements, similar view is expressed by various courts:

- CIT vs. Ashwani Gupta [2010] 322 ITR 396 (Delhi High Court)
- Sona Electric Company vs. CIT 152 ITR 507 (Delhi High Court)
- Rajuram Savaji Purohit vs. ITO [2024] 169 taxmann.com 18 (Mumbai - Trib.)

32. Thus, not providing the opportunity of cross examination of the persons whose statements are relied upon for making the additions is not acceptable in the facts of the case. The entire case of the revenue hinges upon the presumption that the loans taken by the assessee are bogus and accommodation entries. However, this presumption or suspicion how strong it may appear to be true but needs to be corroborated by some evidence to establish a link that assessee indulged into this activity. It is quite a trite law that suspicion howsoever strong may be but cannot be the basis of addition except for some material evidence on record. The theory of 'preponderance of probability' is applied to weigh the evidences of either side and draw a conclusion in favour of a party which has more favourable factors in his side. The conclusions must be drawn on the basis of certain admitted facts and materials and not on the basis of presumption of facts that might go against assessee. Once nothing has been proved against the assessee with aid of any direct

material especially when various rounds of investigation have been carried out, then nothing can be implicated against the assessee.

33. On the merits of the addition of unsecured loans, it is seen that to prove the identity, genuineness and creditworthiness of the lender companies, the assessee has filed following details before the AO:

To prove the Identity of the Lender companies:

- Copy of Permanent Account Number (PAN) of each lender company;
- Certificate of Incorporation issued by the Registrar of Companies;
- Memorandum of Association (MoA) and Articles of Association (AoA);
- Company Master Data as available on the Ministry of Corporate Affairs (MCA) portal.

To establish the Genuineness of the Transactions

- Bank statements showing the receipt of loan amounts through normal banking channels;
- Signed confirmations of account from each lender;
- Details and evidence of repayments, where applicable;
- Ledger accounts of lenders maintained in the books of the Respondent;
- Interest payment records with TDS deduction, including Form 26AS and TDS certificates.

To establish Creditworthiness of the Lender companies

- Audited financial statements of all the lender companies for the relevant financial years;

- Acknowledged copies of Income Tax Returns of the lender companies;
- Bank statements reflecting adequate balances prior to the transfer of funds.

34. By filing all the relevant details of the loan creditors before the AO as listed above, assessee has discharged the onus lies upon it. Therefore, there is nothing left on the part of the assessee to prove further. If the AO wanted to inquire further, he has powers under the provisions of section 131 and section 133(6) of the Act which he could have opted for and could have verified whatever is submitted before him. The Hon'ble Supreme Court in the case of **Orissa Corporation** reported in **[1986] 159 ITR 78 (SC)** has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw an adverse inference against the assessee. In the present case as observed above, no such exercise was carried out by the AO.

35. The Hon'ble Allahabad High Court in the case of **Principal Commissioner of Income-tax v. Anshika Consultants (P.) Ltd.** reported in **[2024] 162 taxmann.com 792 (Allahabad)** held as under:-

“INCOME TAX : Where assessee had received unsecured interest bearing loans from three corporate entities and had furnished necessary acknowledgement of return, balance sheet, profit and loss account, etc., to prove identity, creditworthiness and genuineness of transaction of unsecured loan taken by it, addition under section 68 was not warranted.”

36. Similarly in the case of **Deputy Commissioner of Income-tax v. Paswara Papers Ltd.** reported in **[2024] 159 taxmann.com 604 (Allahabad)**, the Hon’ble Court has held as under:

INCOME TAX : Where assessee received loan from various creditors who sold their old jewellery and gave loan to assessee out of sale consideration, since assessee had disclosed name of jewellers to whom jewellery was sold and also established mode of payment through banking channel, and moreover existence of deposits made to assessee by creditors was not in dispute, impugned addition under section 68 with respect to loan could not be sustained.

37. The Co-ordinate Bench of ITAT Delhi in the case of **ITO Vs. Alpha Contech Pvt. Ltd.** in **ITA No.3351/Del/2016** vide order dt. 28.07.2023 held as under:

7. On careful consideration of above rival submission, first of all, we note that the Assessing Officer made addition u/s. 68 of the Act, by observing that despite several opportunity the assessee failed to prove creditworthiness of lender and genuineness of transaction and thus could not discharge onus as per requirement of sec 68 of the Act. The assessee carried the matter before Id. CIT(A) and filed additional evidence under rule 46A of the Rules on which remand report was called wherein the Assessing Officer did not made any adverse comment on the additional documentary evidence of assessee and also admitted that the lender company received amount of Rs. 7,30,62,000/- as share premium reserve during immediately preceding assessment year and amount of loan of Rs. 3.60 crore advanced to the assessee during present assessment year was from the said reserve amount. The remand report of the Assessing Officer supported the case of assessee which was based on the strength of additional evidence filed by the assessee without raising any doubt or discrepancy therein.

8. *We also find and appropriate to reproduce the relevant operative part of first appellate order as follows:-*

The appellant company has received Rs.3,60,00,000/- from M/s Fennie Commercial Pvt. Ltd. as unsecured loan / share application money during the year. The same was added by the AO on the ground that appellant has failed to file confirmation as well as other supporting documents of the lender party before AO to prove identity, genuineness and creditworthiness of the party. During the course of appellate proceedings, appellant filed an application under Rule 46A and filed following documents to prove identity, genuineness and creditworthiness of the party:

- i. Copy of Acknowledgement of IT. Paper Book page no. 48.*
- ii. Copy of Audited Financial Statements along with all the annexures. Paper Book page no. 49-60.*
- iii. Copy of Confirmed ledger account. Paper Book page no. 61.*
- iv. Copy of Bank Statements reflecting the amount given to the assessee company. Paper Book page no. 62-63.*
- v. Copy of confirmation. Paper Book page no. 64.*

These documents were forwarded to the A for carrying out necessary enquiry with reference to the lender party. The Assessing Officer after conducting enquiries with reference to the lender party has submitted remand report vide his letter dated 2.03.2016 which was forwarded by the Addl. CIT, Range 2 vide his letter dated 08.03.2016. The relevant part of the remand report is submitted as under:

"4. As per directions received, the submissions made by the assessee before your good self as well as additional evidence submitted by it for admission at the appellate stage have been carefully perused. Besides, the additional evidence furnished by the assessee has also been independently verified from this Office by way of issue of letter us 133(6) of the Income Tax Act, 1961, to the third party concerned, i.e., to Ms Fennie Commercial Private Limited, 96-AV9, Neelkanth Apartments, Kishan Ganj, Vasant Kunj, New Delhi - 110070.

5. The said party has furnished its detailed reply to the letter issued us 133(6) vide its letter dated 08.01.2016, which is placed on record. The said party has given the details of the share application money of Rs.3.60 crores advanced by it to the appellant company and also produced the ledger account of the assessee company in its books for the relevant period, apart from the copy of the ITR-V in its case, copy of the Audit Report, Balance sheet, P & L Account and annexures. It is also seen from the annexures to the Audit Report that under the head "Loans & Advances (totaling Rs. 7,41,00,000/-), the name of the appellant company is appearing the List of Share application money given

details wherein the sum of Rs.3.60 crores has been shown against the name of the appellant company, amongst other entities to whom share application money had been advanced by this company. As regards the source of investment made by this company, it has been submitted that the same has been made out of its own sources. Further, the perusal of the Balance Sheet of this company shows that it has Share Premium Reserve of Rs.7,30,62,000/-, which is the same as in the immediately preceding previous year, out of which funds have been invested in the appellant company and others.

6. However, it is also seen from the P & L Account filed in this case that this company has no apparent business activity during the relevant period, i.e. during the FY 2010-11, and it has declared a nominal sum of Rs.35,600/- as Consultancy / Commission income. This company has also furnished a copy of the intimation us 143(1) in its case, issued by CPC, Bangalore, in response to the specific query regarding furnishing copy of assessment order passed in its case for AY 2011-12.

7. As regards the present position of the said money advanced by MIs Fennie Commercial Pvt. Ltd. to the appellant company, it has been stated that they have not received any shares from M/s Alfa Contech Private Limited till date and the said Sum is lying as Loans & Advances in their books. However, this company has not furnished copy of its latest IT filed as well as copy of Audit Report, Balance Sheet and P & L Account despite being specifically called for in the letter issued us 133(6) to it.

8. It is also submitted here that as per the Balance Sheet of the appellant company for the AY 2011-12, it has shown a sum of Rs.3.60 crores as "Loans from Body Corporate", as per Schedule 3 annexed to the Balance Sheet and not as Share Application Money. Also, as per details filed by the appellant vide its letter dated 03.02.2014 during the course of the assessment proceedings in its case for AY 2011-12, it has furnished the name of Ms Fennie Commercial Private Limited, PAN AAACF9549A, from whom it had allegedly received unsecured loan of Rs.3.60 crores whereas the said party is showing this Loan & Advance as "Share Application Money".

It is seen from the remand report that Assessing Officer has carried out enquiry with the lender party us 133(6) of the I.T. Act. The said party furnished the detailed reply vide its letter dated 08.01.2016. It has been reported by the AO that Ms Fennie Commercial Pvt. Ltd. has confirmed that it has given share application money of Rs.3.60 crore which has been accounted for by the appellant as unsecured loan in its balance sheet. The AO has also examined the ledger account of the appellant company from the lender party's books of accounts. The

lender party has also filed copy of its return of income, audit report, balance sheet, profit & loss account and annexures. It has been observed by the AO from the annexures of the audit report that lender has shown loans and advances totalling Rs.7,41,00,000/- in its balance sheet. The appellant's name is also appearing in the loan and advances and has been shown as share application money of Rs.3.60 crore in the name of appellant. AO has also verified the balance sheet of the lender company and it is seen that said company has shown share premium reserve in its balance sheet in A.Y. 2010-11 out of which the amount has been given to the appellant. All these facts establish the identity, creditworthiness and genuineness of the transactions. It is seen that the said party has confirmed the transactions with the appellant and source of the money is also explained. M/s Fennie Commercial Pvt. Ltd. is assessed to tax with Ward 9(1). New Delhi and filing its return of income.

The appellant company has filed copies of their bank statement, balance sheets and profit & loss a/c of the lender company before me to prove the identity, creditworthiness and genuineness of the transaction. These facts have been verified by the AO in the remand proceedings and has submitted report in this regard. It is seen that name of the appellant company is appearing in the balance sheet of the lender company. In view of the documents filed by the above named lender company before me as well as AO, it is established that the identity, source, creditworthiness of the lender company and genuineness of the transactions has been established.

I find that the AO has not been able to bring on record any evidence to negate the genuineness of the transaction done by the appellant. Therefore, the addition cannot be sustained only on suspicion and surmises. Considering the fact that the identity, genuineness and creditworthiness of the lender company duly established, the addition made by the A cannot be upheld and hence the AO is directed to delete the addition of Rs.3,60,00,000/- made on account of unexplained income us 68 of the I.T. Act. In support of my above decision, reliance is placed on following judicial pronouncements:

- a. CIT Vs. Fair finvest Ltd. [2014] 44 taxmann.com 356 (Delhi) HIGH COURT OF DELHI "Section 68 of the Income-tax Act, 1961 - Cash credit - Assessment year 2002-03 - Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application and affidavits of directors, Assessing Officer could not make addition on account of share application money solely on basis of investigation report [In favour of assessee.*

Where assessee adduces evidence in support of share application monies, it is open to Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on report of investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between assessee and

alleged hawala operators. Where assessee had filed documents including certified copies issued by Registrar of Companies in relation to share application, affidavits of directors, Form 2 filed with Registrar of Companies by such applicants, confirmations by applicants for company's shares, certificates by auditors, etc., Assessing Officer was not justified in making addition under section 68 on account of share application money merely on general inference to be drawn from the reading of the investigation report. The least that Assessing Officer ought to have done was to enquire into matter by, if necessary, invoking his powers under section 131 summoning the share applicants or directors.

- b. Commissioner of Income-tax v. Mark Hospitals (P.) Ltd. [2015] 58 taxmann.com 226 (Madras) HIGH COURT OF MADRAS "Section 68 of the Income-tax Act, 1961 - Cash credit (Burden of proof - Assessment year 2006-07 - Assessee had obtained unsecured loans from agriculturists and submitted their names and addresses, but did not provide their PAN cards - Assessing Officer made addition under section 68 - It was found that loans were given to assessee through cheques and all creditors had confirmed that they had advanced loans mentioned against their names to assessee and, thus, identity of creditors could not be disputed - Further, all creditors were agriculturists and therefore, they did not have PAN card - Whether, on facts, no addition could be made - Held, yes [Para 6] [In favour of assessee]"*
- c. ITO Vs. Neelkanth Finbuild Ltd., [2015] 61 taxmann.com 132 (Delhi - Trib.), held that "6. Keeping in view the findings given so the Assessing Officer as well as the learned first appellate authority and the documentary finding by the assessee before us, we are of the considered view that the learned first appellate authority has deleted the addition in dispute on the basis of various documentary evidence filed by the assessee before the Assessing Officer as well as before him. The hon'ble Supreme Court of India (sic.) in the case of CIT v. Lovely Exports (P.) Ltd. [2008] 299 ITR 268 (Delhi) which has confirmed the order of the hon'ble Delhi High Court has held that once the identity of the shareholder have been established, even if there is a case of bogus share capital, it cannot be added in the hands of the company unless any adverse evidence is not on record. The learned first appellate authority has examined the documentary evidence filed by the assessee before the Assessing Officer as well as before him and held that the assessee has provided confirmations from all the parties as well as various evidences to establish the genuineness of the transaction, the assessee has also relied upon the judgment of Nemi Chand Kothari v. CIT [2003] 264 IT 254/[2004] 136 Taxman 213 (Gau.) wherein it has been held that it is a certain law that the assessee is to prove the genuineness of transaction*

as well as the creditworthiness of the creditor must remain confined to the transactions which have taken place between the assessee and the creditor. It is not the business of the assessee to find out the source of money of creditors. Similar observation has also been given in the case of S. Hastimal v. CIT [1963] 49 ITR 273 (Mad.) and CIT v. Daulat Ram Rawatmull [1973] 87 IT 349 (SC). The learned first appellate authority has cited various decisions rendered by the hon'ble Supreme Court of India as well as the hon'ble jurisdictional High Court in the impugned order and finally has held that the assessee has substantiated the transaction regarding share application money received by it was genuine transaction and the same were not accommodation entries. He did not find any evidence collected by the Assessing Officer which could prove otherwise and deleted the additions in dispute. As regard the addition of Rs. 12,500 made on account of commission which was presumed to have been allowed by the assessee for obtaining the hawala entry in dispute, the learned Commissioner of Income-tax (Appeals) observed that the Assessing Officer was not able to bring anything on record that it was the assessee's own money which was routed in the form of share application money and has rightly deleted the same.

7. Keeping in view all the facts and circumstances, we are of the considered view that the learned first appellate authority has passed the impugned order under the law and according to the facts of the present case and has rightly deleted the addition in dispute. We find no infirmity in the impugned order and uphold the impugned order by dismissing the appeal filed by the Revenue."

- d. Honorable Supreme Court of India in the case of CIT v. Kamdhenu Steel & Alloys Ltd., SLP (CC) no. 15640 of 2012, dated 17-09-2012 (Supreme Court), wherein the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Revenue against the decision of Hon'ble Delhi High Court in the case CIT v. Kamdhenu Steel & Alloys Ltd. in which it has been held by Hon'ble Court that once adequate evidence/material given by the assessee, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter, in case such evidence is to be discarded or it is proved that the assessee has "created" evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under Section 68 and 69 of the Act."
- e. COMMISSIONER OF INCOME TAX-9 ERSTWHILE CIT-VI versus VRINDAVAN FARMS (P) LTD, ITA 71/2015, ITA 72/2015, ITA 84/2015, the High Court of Delhi held as under :

"3. The ITAT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the AO by the Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the share holders.

4. The Court is of the view that the Assessee by produced sufficient documentation discharged its initial onus of showing the genuineness and creditworthiness of the share applicants. It was incumbent to the AO to have undertaken some inquiry and investigation before coming to a conclusion on the issue of creditworthiness. In para 39 of the decision in Nova Promoters (supra), the Court has taken note of a situation where the complete particulars of the share applicants are furnished to the AO and the AO fails to conduct an inquiry. The Court has observed that in that event no addition can be made in the hands of the Assessee under Section 68 of the Act and it will be open to the Revenue to move against the share applicants in accordance with law.

5. In the facts and circumstances of the present appeals, the Court is satisfied that no substantial question of law arises. The appeals are dismissed."

The facts of the above cited judicial pronouncements are identical with the facts of the appellant case, therefore, the ratio of the above cited judicial pronouncements is squarely applicable to the facts of the appellant case, hence, unsecured loan received by the appellant from M/s Fennie Commercial Pvt. Ltd. cannot be termed as unexplained income of the appellant and cannot be added u/s 68 of the I.T. Act. Therefore, the unsecured loan received from the above mentioned party is treated as genuine transaction and cannot be added us 68 of the I.T. Act. Therefore, the addition of Rs.3,60,00,000/- is deleted.

38. On the issue of discharging the onus, the Hon'ble Delhi High Court in the case of **Mod. Creations (P.) Ltd. v. ITO** reported in **[2013] 354 ITR 282**, 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 creditworthiness of the sub-creditors."

39. It was further observed by the Hon'ble Court as under:

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 creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the ASSESSING OFFICER 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 Ride. 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 or 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 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 Etd (20092-229-178-268 (Delhi) and CIT v. Lovely Exports (P.) Ltd. 2006) 215 CTR 495 (SC)."*

40. The Hon'ble Delhi High Court in the case of **CIT vs. Vrindavan Farms Pvt. Ltd.** etc. in **ITA. No.71 of 2015** dated 12th August, 2015 held as under :

"The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the Assessing Officer had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon'ble High court."

41. The Hon'ble Delhi High Court in the case of **PCIT vs. Agson Global Pvt. Ltd** reported in **[2022]134 Taxmann.com 256 (Delhi)** while allowing the appeal in favour of the assessee towards the additions made u/s 68 of the Act has held as under :

"Section 68 of the Income-tax Act, 1961 – Cash credits (Share capital money) – Assessment years 2012-13 to 2017-18 – Assessee-company received share capital and share premium money from several investors – Assessing Officer made addition in respect of same on account of unaccounted income under section 68 on basis of recorded statement of managing director of assessee-company – Whether since assessee placed sufficient documentary evidence to establish that money which assessee had paid to investors was routed back to it in form of share capital/share premium and identity, creditworthiness and genuineness of investors was proved, there was no justification to make addition under section 68 – Held, yes [Paras 11.4, 11.5 and 14.4] [In favour of assessee]"

42. It is further seen that the except one company, M/s SA Sheilds Security Services Pvt. Ltd., all the loans taken from the remaining companies were repaid in subsequent years and relevant copies of the ledger accounts in the year of payment are also placed before us. It is also seen that no adverse inference was drawn by the revenue in the year of payment and thus question of getting accommodation entries in the guise of loan does not survive.

43. The Hon'ble Gujarat High Court in the case of **PCIT Vs Ojas Tarmake Pvt Ltd** reported in **156 Taxmann.com 75** has observed as under:

“Where appellant showed unsecured loans received during relevant assessment year and AO made addition on ground that appellant failed to discharge onus of liability as laid down under section 68, since amount of loan received by appellant was returned to loan party during year itself and all transactions were carried out through banking channels, impugned addition was to be deleted.”

44. The Hon'ble Jurisdictional High Court in the case of **Pr. Commissioner of Income Tax-12, Delhi vs. Jagmag Builders** in **ITA No. 325/2024** has held as under:

2. “The issue itself pertains to additions under Sections 68 and 37 of the Income Tax Act, 1961 [‘Act’] which were made by the Assessing Officer [‘AO’] on account of unexplained unsecured loans and disallowance of interest expenses. We note that the Tribunal while affirming the conclusions which were arrived at by Commissioner of Income Tax (Appeals) has observed as follows:-

“6. From the evidences furnished by the assessee before the departmental authorities, it is established that the entire loan, which is subject matter of addition, as unexplained cash credit has been repaid either in the year under consideration or subsequent assessment years. The entire transaction relating to availing of and repayment of loan has been done through banking channel. All details relating to loan availed and repayments made have been furnished before the departmental authorities, the details of which have been produced at pages 24 to 29 of the order of learned First Appellate Authority. It is also a fact on record that assessee has furnished all supporting evidences not only to prove the identity of the lenders but even creditworthiness as well as genuineness of the transaction by furnishing their bank statements, income-tax return copy, confirmations etc. Thus, it is evident, assessee has discharged its onus of proving the identity and creditworthiness of the creditors as well as genuineness of the loan transactions. Therefore, in our considered opinion, learned First Appellate Authority was justified in deleting the addition of Rs.2,67,05,959 made under Section 68 of the Act. Since, the addition made under Section 68 of the Act has been deleted, as a natural corollary, the disallowance of interest paid on such loan also has to be deleted. Accordingly, we do so. Grounds are dismissed.”

45. Another major fact is that the AO has not doubted the expenses claimed by the assessee towards the payment of interest to these loan creditors companies though principal amount of loan is alleged as bogus. Once it is alleged that the principal loan is a bogus accommodation entry how the interest paid on such alleged bogus loans could be allowed as genuine expenditure. In the instant case, the AO has not only allowed the interest payment but also accepted the fact of TDS made on such interest payment as genuine and accepted the loss declared by the assessee after claiming such interest as expenditure. This dual approach is further lead to belief that AO has proceeded with preconceived notion of making addition of the loans as bogus without applying his mind to overall facts of the case and the relevant details submitted by the assessee.

46. In view of the above, in our considered opinion no addition could be made in the order passed u/s 153A of the Act on the basis of retracted statements of third parties and further without any incriminating material found/seized during the course of search from the possession of the assessee. Further the assessee has duly discharged the onus lied upon it by establishing the identity, creditworthiness of the lenders, and genuineness of the loan transactions through every possible evidence like confirmations of the lender companies, their Financial Statements, their Income tax records such as their ITR's and PAN, bank statements and further evidences of repayment in subsequent years. Ld. CIT(A) after considering these facts had deleted the additions and we find no infirmity in the said order which is hereby upheld on his issue.

Accordingly, Grounds of appeal Nos. 1, 3 and 4 raised by the revenue are dismissed.

47. In **Ground of appeal No. 2**, revenue has challenged the deletion of addition of Rs. 25,05,000/- being 1% of total loans as commission paid u/s 69C of the Act.

48. Since we have already concurred with the finding of Id. CIT(A) by holding the loans taken by the assessee from various companies as proper and genuine, the addition made u/s 69C towards the commission by alleging the same as paid for obtaining bogus accommodation entry is also not tenable. Accordingly, we uphold the order of Id. CIT(A) in deleting the same. Thus, the ground of appeal No. 2 raised by the revenue is hereby dismissed.

49. In the result, appeal of the Revenue in ITA No. 3906/Del/2018 [AY 2018-19] is hereby, dismissed.

ITA No.3907/Del/2023 [Assessment Year : 2019-20]

50. In this appeal, during the course of hearing, both the parties agreed that facts involved are common and common submissions were made before us. In the case of Revenue in **ITA No. 3906/Del/2018 [AY 2018-19]**, we have already hold that no addition could be made *dehorse* the incriminating material found from the possession of the assessee in the order passed u/s 153A of the Act and further on merits also held that the loans taken by the assessee are genuine which observations are *Mutatis Mutandis* applied to the facts of case under consideration. Accordingly, by

respectfully following the observations and decision taken in the case of Revenue in ITA No.3906/Del/2025 for AY 2018-19, we hereby, confirmed the order of Id. CIT(A) who has deleted the additions made by AO. Accordingly, all the grounds of appeal taken by the revenue are dismissed.

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

52. In the final result, both appeals filed by the Revenue in **ITA Nos. 3906 & 3907/Del/2023** [Assessment Years 2018-19 & 2019-20] are dismissed.

Order pronounced in the open Court on 07.11.2025.

Sd/-

(SUDHIR KUMAR)
JUDICIAL MEMBER

Date:-07.11.2025

Amit Kumar, Sr.P.S

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
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4. CIT(Appeals)
5. DR: ITAT
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ASSISTANT REGISTRAR
ITAT, NEW DELHI