

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

IT(SS)A No.121/Ind/2019
Assessment Year: 2015-16
&
IT(SS)A No.103/Ind/2020
Assessment Year: 2014-15

ACIT(Central)-1
Indore : Appellant
V/s
Shri Ankit Patidar
Indore
PAN:AQIPP4362J : Respondent

Revenue by	Shri Rajib Jain, CIT-DR
Respondent by	Shri Girish Agrawal & Ms. Nisha Lahoti, ARs
Date of Hearing	04.08.2021
Date of Pronouncement	04.10.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeals filed at the instance of the Revenue for A.Y. 2014-15 & 15-16 are directed against the orders of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT(A)-

III] Bhopal & Indore dated 19.03.2020 & 15.03.2019 which are arising out of the common order u/s 143(3) r.w.s. 153A of the Income Tax Act 1961(In short the 'Act') dated 29.12.2017 framed by DCIT, Central-1, Indore.

The Revenue has raised following grounds of appeal in IT(SS)A No.121/Ind/2019 (A.Y. 2015-16):

“1.On the facts and in the circumstances of the case Ld. CIT(A) erred in deleting the addition of Rs.3,35,00,000/- made by the assessing officer u/s 68 of the Income Tax Act, 1961 by not appreciating the findings of the assessing officer.”

And in IT(SS)A No.103/Ind/2020 (A.Y. 2014-15):

“1.On the facts and in the circumstances of the case Ld. CIT(A) erred in deleting the addition of Rs.3,00,78,041/- made by the assessing officer u/s 68 of the Income Tax Act, 1961 by not appreciating the findings of the assessing officer with regard to the lender companies which were paper entities controlled by the assessee with dummy directors.”

2. Facts and circumstances of both the departmental appeals are similar and the lead case relates to assessment year 2015-16, therefore, we shall take up the appeal for assessment year 2015-16 at first. Brief facts of the as culled out from the record are that the assessee is an individual and son of Shri Dinesh Patidar, who is the Managing Director of Shakti Pumps (India) Limited, the flagship company of Shakti Pumps Group. The assessee is having

source of income as salary received from Shakti Pumps (India) Ltd and Shakti Irrigation India Ltd. He is also having other income from interest and dividend on his investment etc. Search and seizure operations u/s 132 was carried out on the business as well as residential premises of the Shakti Pumps Group including the assessee along with other concerns/business associates on 21.01.2016. A panchnama was drawn for the residential premises at 354 Saket Nagar, Indore which included name of the assessee as he resides at the said premises, jointly with other members of the family. Notice u/s 153A was issued to the assessee for A.Y. 2015-16 on 06.01.2017 and notice u/s 143(2) for A.Y. 2015-16 was issued on 10.08.2017. In response to the above notices, the assessee filed return of income for A.Y. 2015-16 on 12.04.2017 declaring total income of Rs.22,94,790/-. The AO during the assessment proceedings observed that the assessee has applied for shares of Shakti Pump (India) Ltd for Rs. 12 crores. Thus, the assessee was asked to explain the source of the share application money. In reply, the assessee had given details of fund which had been utilized for making the said investment by him. From the details submitted by the assessee,

the AO noted that assessee has taken loans from the following companies:-

ASSESSMENT YEAR	Amount	Loans taken from
2014-15	3,00,78,041/-	ML Securities & Finance Pvt Ltd (MLSF)
2015-16	2,34,08,000/-	ML Securities & Finance Pvt Ltd (MLSF)
2015-16	3,17,00,000/-	Roulex Investment & Finance Pvt Ltd (Roulex)

The AO further observed that both the companies i.e. ML Securities & Finance Pvt Ltd & Roulex Investment & Finance Pvt Ltd are paper companies and the creditworthiness of these companies are not proved by the appellant. The AO observed that both the companies does not have any real business activity and are non-existent and non-functional shell/paper company. Accordingly, the Assessing Officer treated the above unsecured loans as unexplained cash credits u/s 68 of the I.T. Act and made addition of Rs.3,17,00,000/- taken from Roulex Investment & Finance Pvt Ltd (Roulex). The Assessing Officer further noted that the loan amount of Rs.2,34,08,000/- taken from ML Securities & Finance Pvt Ltd (MLSF) includes the surrender amount of Rs.2,16,08,000/- by ML Securities & Finance Pvt Ltd

(MLSF), therefore, the addition of Rs.18,00,000/- is being made in the hands of the assessee.

3. Being aggrieved, the assessee approached the Id. CIT(A) and Id. CIT(A) having gone through the facts and submissions thereof in the light of the certain judicial pronouncements deleted the additions. Now, the Revenue is in appeals before this Tribunal.

4. Before us, the Id. CIT-DR defended the assessment order and submitted that both the companies i.e. ML Securities & Finance Pvt. Ltd & Roulex Investment & Finance Pvt. Ltd are paper companies and the creditworthiness of these companies were not proved by the assessee, therefore, the Assessing Officer was justified in making the additions as both the companies did not have any real business activity and were non-existent and non-functional shell/paper company. On the other hand, learned Counsel for the assessee reiterating the submissions made before the Revenue Authorities relied upon the order of the Id. CIT(A) and submitted that on consideration of the facts/circumstances of the case, material available on record and submissions thereof in the light of the judicial precedents, the Id. CIT(A) rightly deleted the addition, therefore, the order of Ld. CIT(A) deserves to be sustained.

5. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that the ld. CIT(A) made detailed discussion on facts, material, submissions and judicial pronouncements and deleted the addition on the ground that the AO erred in making additions merely on the basis of statements of directors of lender companies and without providing opportunity of their cross examination before making the impugned addition. Ld. CIT(A) also noted that provisions of section 68 are not applicable in the case of the assessee when no books of accounts are required to be maintained by the assessee. The ld. CIT(A) was of the view that the AO erred in making additions on suspicion, surmise and conjecture basis and without having any incriminating material on record found from the residential premises of the assessee relating to the year in which additions have been made. Further, ld. CIT(A) observed that the AO erred in not appreciating the documentary evidences filed in support of creditworthiness of the lender and genuineness of the transaction including explaining source of source to the last leg of the impugned transactions. The ld. CIT(A) decided the issue as under:

“4.2.6 I have considered the facts of the case, material evidences on record & written submissions filed by the ld AR of the appellant. I have also given my thoughtful consideration to the facts and findings of the AO inter alia material brought on record. At the outset there is no denying of the fact that appellant has taken loan from M/s ML Securities Finance Private Limited and M/s Roulex Investment and Finance Private Limited. The Ld AR has vehemently challenged the arbitrary approach of the AO mainly on four major Counts:

(a) The AO erred in making additions merely on the basis of statements of directors of lender companies and without providing opportunity of their cross examination before making the impugned addition;

(b) Provisions of section 68 are not applicable in the case of appellant, when no books of accounts are required to be maintained by the appellant;

(c) The AO erred in making additions on suspicion, surmise and conjecture basis and without having any incriminating material on record found from the residential premises of the appellant relating to the year in which additions have been made;

(d) The AO erred in considering the documentary evidences filed in support of creditworthiness of the lender and genuineness of the transaction including explaining source of source to the last leg of the impugned transactions;

(a) Making additions merely on the basis of statements of directors of lender companies and without providing opportunity of their cross examination:-

Directors of the two lender companies whose statements were recorded during the course of search are –

a. ML Securities and Finance Pvt. Ltd. : Shri Vikas Patidar and Shri Harinarayan Patidar

b. Roulex Investment and Finance Pvt. Ltd. : Shri Rakesh Patidar

In the case of Roulex, the AO relied on the statement of one Shri Mukesh Patidar who in fact is not the director of Roulex though bearing identical name.

It is an admitted fact that ML Securities and Finance Pvt. Ltd. was also covered under the search operations of the Shakti Pump Group. Both the directors of this lender company were also covered under the same search operations and were assessed by the same AO under section 153A rws 143(3). This is also an admitted fact that statement of Shri Harinaryan Patidar and Shri Vikas Patidar was recorded on oath during the course of their search on 22.01.2016.

Similarly, Roulex Investment and Finance Pvt. Ltd. was also assessed u/s 153A including its director Shri Rakesh Patidar who was covered under the same search operation. The other director of Roulex, Shri Mukesh Patidar son of Shri Laxmichand Patidar was not covered under the search operations and no statements under oath were recorded in his case.

The AO vide para no 8.3 of the assessment order stated that Shri Dinesh Patidar has confessed that loan given to Shri Ankit Patidar by ML Securities and Finance Pvt. Ltd. has been brought in the books of account by layering of funds through banking channels and the same amount was provide in cash by Shri Dinesh Patidar. However, appellant has brought to my notice that no such

statement was given by Shri Dinesh Patidar in relation to the addition made by the AO in A.Y. 2015-16 in the hands of the appellant, which is also evident from the statement of Shri Dinesh Patidar placed on record. The said statement of Shri Dinesh Patidar is in respect of loan taken in MLSF which was offered to tax by him in the hands of MLSF i.e. the lender company.

Further, statement of Shri Harinaryan Patidar and Shri Vikas Patidar were also recorded on 22.01.2016 both of them have never denied to the facts that they were not the directors of the lender company. However, both of them has admitted that they have been receiving remuneration of Rs.2,500/- p.m. as directors for signing various documents and Shri BR Patidar being CA assisted them in professional and financial matters of the company. The AO vide para no 8.7 stated that Shri B R Patidar CA has been paying sum of Rs. 2,500/- as director's remuneration, however, it is an important fact that Shri Harinaryan Patidar and Shri Vikas Patidar are the signatories to the bank account of ML Securities Finance Private Limited and not Shri BR Patidar. It is the general prevailing practice for completing the regulatory compliances that documents are prepared and completed by the CA and Tax professionals which are then sent to the concerned authorized signatories for obtaining their signatures for meeting the compliance requirements. Incase signatories have queries, they can always ask their professional for putting their signatures. Such a practice is prevalent out of convenience for the CA and Tax professionals.

The AO vide para no 8.10 of the assessment order noted that Shri Vikas Partidar during statement recorded on oath was asked about investment of crores of rupees in the shares of SPIL in FY 2011-12 & 2012-13. In reply Shri Vikas Partidar submitted that he is unaware of the transaction and no such investment was made by either Shri Harinaryan Patidar or Shri Vikas Patidar. Infact, the investments were made by M/s ML Securities Finance Private Limited and not individually by Shri Harinaryan Patidar or by Shri Vikas Patidar as corroborated from the duly audited financial statements of ML Securities and Finance Pvt. Ltd. placed on record in the paper book.

Appellant has strongly contended that in the case of lender Roulex statement of some Mukesh Patidar s/o Shri Rameshwar Patidar was recorded, wherein, he stated that he does not know any such company. However, Shri Mukesh Patidar s/o Shri Rameshwar Patidar is not the director of Roulex but **Shri Mukesh Patidar s/o Shri Laxmichand Patidar** is the director of Roulex whose statement was never recorded during the course of search operation. It was submitted that Ld. AO under a mistaken belief relied on statement of a person who was not connected with the lender company Roulex.

It was stated by the appellant that statements of Shri Rakesh Patidar, director of Roulex was also recorded under oath who was covered under the same search operations and was assessed by the same AO. These statements of Shri Rakesh Patidar also contain similar averments as in the case of MLSF, relating to the professional engagement of CA B.R. Patidar for the lender company.

Appellant in the course of appellant proceedings strongly objected on the misquote of statement by the AO of Shri K C Kankariya, CA wherein fact about carrying out of business activity of the lender company in Mumbai was stated to which AO produced in the order as 'no real business activity' is carried out in

Mumbai. Such a mis-quote by the AO shows his biased approach pre-conceived mindset in dealing with the subject matter.

Apart from the above, no opportunity of cross examination of the directors of the lender companies was provided to the appellant before making the impugned addition. This has been held by the Hon'ble Supreme Court in the case of **Andaman Timber Industries Vs. Commissioner of Central Excise Kolkata in Civil Appeal No.248 of 2006** that in absence of cross-examination of parties, the assessment proceedings to be quashed. Further, the Hon'ble Gujarat High Court in the case of **Praful Chunilal Patel Vs. M.J. Makwana [236 ITR 832 (Guj)]** and **JCIT & Ors. Vs. George Willimson (Assam) Ltd. [258 ITR 126 (Guj)]** has held that statement of third party cannot be relied upon without having any corroborative evidence. Similarly, Hon'ble Supreme Court in the case of **Kishanchand Chellaram V/s. CIT 125 ITR 713 (SC)** has held that adverse inference cannot be drawn against the assessee from the statement of third parties. Similarly, Ld. AR of the assessee has relied upon the decision of Hon'ble High Court in the case of **CIT V/s. Indrajit Singh Suri (2013) 33 Taxmann 281 (Guj.)** that where additions were made on the basis of statements of persons who were not allowed to be cross examined by the appellant, additions were not sustainable. It is a serious flaw on principles of natural justice which renders the order a nullity.

(b) Invoking provisions of section 68 of the Act when appellant is not required to maintain the books of account:-

The additions have been made by the AO u/s 68 of the Act. I find it utmost important to quote the provisions of section 68 of the Act which clearly states that;

“ when any sum is found credited in the books of account of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.”

Provisions of section 68 are applicable in the case where any sum is credited in **books of accounts** which is not the case of the appellant. In the case of appellant the main source of income are salary, director's remuneration, interest and dividend on investment, according to which the appellant is not required to maintain the books of account as per provisions of section 44AA. This fact was also brought to notice of the assessing officer while replying to question no A-17 and A-27 of questionnaire u/s 142(1) of the Act. Hon'ble Apex Court in the case of **Baladin Ram vs CIT (1969) AIR 351, 1969 SCR (1) 800** has held that the income from undisclosed sources can only be assessee u/s 68 if it is found credited in the books of account of that previous year. Similar view was adopted by High Court Bombay in the case of **Bhaichand N Gandhi [1982] 141 ITR 67 (Bom)** which was followed by ITAT Mumbai in the case of **CIT vs Manasi Mahendra Pitkar (2016) 73 taxmann.com 68 (Mumbai)**. The following case laws also support the case of the appellant:-

- **CIT vs Taj Bore Wells 291 ITR 232 (Madras)**

- *ITO vs Narendra Kishore Goswami ITA No 249 & 250/Agra/207 for AY 2003-04*
- *ITO vs Sanyasi Majhi 13 ITD 61 (Cal)*

In a recent decision by Hon'ble Delhi ITAT in the case of Vinesh Maheshwari 103 taxmann.com 274 order dated 01.03.2019, the issue of invoking section 68 where no books of accounts are required to be maintained as per section 44AA and also the issue of providing opportunity of cross examination to the assessee has been dealt extensively along with analysis of various judicial precedents in favor of the appellant.

This is settled legal fact that bank account statement are not books of account but only represent part of books of account of the bank itself. Thus, the AO was not justified in treating bank account statement of appellant as books of account and subsequently made additions u/s 68 of the Act for the unsecured loans taken by the appellant from the two lender companies.

(c) Additions made on conjecture, surmises and suspicion basis without having any incriminating material on record in respect of additions made:-

*The AO has grossly erred in making addition simply on the basis of guess work, assumption and presumption. It is well settled that no addition can be made as a leap in the dark. The AO is not entitled to make a guess without evidence. The assessment of any particular year cannot be based on mere suspicion or bare guess, but on a legitimate material from which a reasonable inference of any unexplained cash credit can be made. Hon'ble Supreme Court in the case of **Dhakeshwari Cotton Mills Ltd. v/s CIT (1954) 26 ITR 775 (SC)** has held that although strict rules of Evidence Act do not apply to income tax proceedings, still assessment cannot be made on the basis of imagination and guess work. It has been held in the case of **Umacharan Saha & Bros co. v/s CIT 37 ITR 21 (SC)** that suspicion, however strong cannot take place of evidence. Similar views have been expressed by Apex court in the case of **Dhiraj Lal Girdharilal v/s CIT (1954) 26 ITR 736 (SC)**. Also, once the assessee has discharged its onus of proving that the parties under consideration are genuine, now the ball lies in the court of AO to prove that the claim of appellant is false. The statements which forms the sole basis of the impugned additions contain averments which are predominantly directed to a practicing Chartered Accountant Shri B R Patidar who is also covered under the same search operations and has been assessed by the same AO. Moreover, it is a fact that both the lender companies and its directors were assessed by the same AO under section 153A rws 143(3). Cases of various persons covered under a search operation are centralized under one Assessing Officer with an objective of coordinated investigation. It is seen that AO failed to achieve the objective of such a coordinated approach while asking the assessee to produce the directors of the lender companies when they are being assessed by himself including the two lender companies.*

No incriminating material relevant to the additions made has been referred by the AO which pertains to the loans availed by the assessee from the two lender companies. It is seen that during the course of impugned assessment proceedings, the AO called for information from the assessee and took an adverse view merely on the basis of statements recorded of the two directors of MLSF and one

incorrect person in the case of Roulex. Various courts have very categorically held in favor of the assessee on the issue of additions made in absence of incriminating material relevant to such additions. It is important to note that assessee is covered under the search operation by way of panchnama drawn for his residential premises at 354 Saket Nagar, Indore from where nothing incriminating was found during the course of said search relating to the additions made by the AO.

The AO ought to have connected the cash credit in the form of unsecured loans with independent cogent evidence that the moneys emanated from the coffers of the appellant and which could prove that the claim of appellant is incorrect, which is missing in the present case of appellant. Thus, the AO has no locus standi to assume that the loan availed by the appellant is not genuine.

(d) Creditworthiness of lender companies and genuineness of the transaction proved including the source of source:-

Appellant before the AO as well as before me has filed copies of PAN, bank account statement of lenders, audited balance sheet, profit and loss statement and confirmations of lenders. Appellant during appellate proceedings submitted that MLSF is a Non Banking Finance Company (NBFC) registered with Reserve Bank of India vide certificate of Registration No B-03-00134 dated 23.05.2013. Further MLSF is financed by IFCI Ltd which is a recognized government undertaking. During the year under consideration appellant has taken loan of Rs. 2,34,08,000/- from MLSF out of which the AO made an addition of Rs. 18,00,000/- as noted in Para 8.41 of his order. Appellant has also filed copies of ITRs with computation, PAN, Memorandum and Article of Association, Certificate of Incorporation issued by ROC and bank account statement. On perusal of the same it was observed that the entire loan taken from MLSF was taken through cheques.

MLSF and its directors are also covered under the same search operations of Shakti Pumps Group and their cases were centralized before the AO who completed their assessment for the same seven years under section 153A rws 143(3).

From the audited profit and loss account of MLSF available in the paper book, its revenue from operations is tabulated which reflects its business activities and earnings –

S. No.	A.Y.	Revenue from Operations & Other Income (Rs.)
1	2010-11	9,28,158
2	2011-12	23,12,795
3	2012-13	25,91,657
4	2013-14	32,17,514
5	2014-15	65,67,248
6	2015-16	4,17,30,979

Further, Roulex is company incorporated on 23.03.1994 and is engaged in the business of borrowing and lending, making investment in shares and other financial arrangements. Appellant has also filed copies of ITRs with computation, PAN, Memorandum and Article of Association, Certificate of Incorporation and

bank account statement. The entire loan availed from Roulex of Rs. 3,17,00,000/- in A.Y. 2015-16 was taken through cheques.

From the audited profit and loss account of Roulex available in the paper book, its revenue from operations is tabulated which reflects its business activities and earnings –

S. No.	A.Y.	Revenue from Operations & Other Income (Rs.)
1	2010-11	3,24,718
2	2011-12	2,65,026
3	2012-13	4,69,649
4	2013-14	68,24,060
5	2014-15	1,45,49,195
6	2015-16	3,74,64,375

It has been contended by the appellant that both the companies have been assessed by the same Assessing Officer u/s 143(3) rws 153A. The directors of MLSF i.e. Shri Harinarayan Patidar and Shri Vikas Patidar and that of Roulex i.e. Shri Rakesh Patidar have also been assessed by the same AO for all the seven years covered by search operations. The loans given by these lender companies are duly recorded in their audited books of accounts and have been verified by the same AO and accepted in their respective assessments. The AO vide para 8.29 required the assessee to produce the directors of the lender companies for examination, however, the AO failed to notice that both the lender companies and their directors have been assessed by him u/s 143(3) rws 153A. As noted above, the AO has failed in understanding the objective of centralization of cases for coordinated investigation for which orders are passed under section 127 of the Act.

Further, interest income earned by the lender companies on the loans given by them has been accepted and assessed by the same AO in their assessments.

The loan party furnished the loan confirmation, copy of bank account and proof of filing of the return. By filing the above documents the appellant is able to establish the –

i. Identity of the creditors - the creditors are income tax payer and filed the loan confirmations and are assessed by the same AO. It is worth noting the fact that in case of loan from MLSF, only part of the loan of Rs. 18,00,000/- has been added in the hands of the appellant. For the balance amount, the AO has accepted it to be income of the lender company which it has offered in its own hand. When such an acceptance is acknowledged by the AO in the hands of the lender company and only a part of the amount is considered by him for the purpose of making the addition in the hands of the appellant, the lender company cannot be held to be non-existent.

ii. Genuineness of the transaction- the appellant has taken the loan through banking channel. The appellant is in the receipt of loan by cheque. Bank statements of lender companies MLSF and Roulex are placed on record and perused. While explaining the source of source, the appellant has furnished bank statements of Shakti Irrigation India Ltd, Vintex Tools Pvt. Ltd. and Shri Subhash

Patidar which are placed on record and perused. All these corroborative evidences establishes the genuineness of the loans taken by the appellant.

Appellant has also paid interest to the lender companies on the loans borrowed and the same have been offered to tax by the respective lender companies in their regular income tax return and have been accepted as well as assessed by the same Assessing Officer in their assessment made under section 153A rws 143(3).

iii. Creditworthiness of the creditors - the creditors are income tax payer and filing the income tax return. The companies have not only given the loan to the appellant but to other parties also. MLSF is a NBFC duly registered with RBI and is financed by IFCI which is a government undertaking. Roulex is a company incorporated in 1994 and deals in investment in shares and securities. When a government undertaking of the stature IFCI Limited has financed MLSF, I fail to understand how it can be held by the AO as non-existent, non-functional and a shell/paper company. Similarly, in the case of Roulex, during the course of survey at its office premise in Mumbai, the auditor of this company CA K.C. Kankariya explained in his statement recorded during the course of survey about its whereabouts, there is no case for the AO to hold it as non-existent, non-functional and a shell/paper company.

From the above it is clear that the appellant has satisfied all the three conditions required for genuineness of the transaction. The same view has been upheld by Honb'le ITAT in the following cases:-

i. Umesh Electricals v/s Asst. CIT(2011) 18 ITJ 635 (Trib.-Agra): (2011) 131 ITD 127 : (2011) 141 TTJ

Establishment of identity and credit-worthiness proved- Assessee produced the bank account of creditor in his bank account on the same day on which loan was given- Assessee furnished the cash flow statement of creditor-Based on inquiry, AO noted that creditor was engaged in providing accommodation entries-HELD- In group cases, it has been held that there was no evidence against the creditor to prove that he was providing accommodation entries-Further, mere deposit of money by the creditor on the same day, does not establish that the loan is not genuine-Assessee has proved the source of credit and also the source of source - Addition cannot be made.

ii. Aseem Singh v/s Asst. CIT (2012) 19 ITJ 52 (Trib.-Indore)

Identity and credit-worthiness proved-Assessee took loan of Rs.1,00,000/- confirmation of creditor was filed-Lower authorities made addition u/s 68 holding that amount was deposited in cash in the bank account of lender immediately prior to date of loan – HELD- Assessee has established the identity-The party has confirmed the transaction-If AO doubted the transaction, AO should have called creditor u/s 131-Addition cannot be made.

Thus, appellant has furnished all the required details in order to prove genuineness of the transaction and creditworthiness of the creditor.

4.2.7 *Nevertheless, appellant has explained source of source till the last layer. In the case of Roulex, the lender company Roulex has taken loan from*

Vintex Tools Pvt Ltd. The source of funds for Vintex Tools Pvt Ltd was out of income earned and offered to tax and reserve and surplus in various years.

Hon'ble jurisdictional MP High Court in the case of Metachem Industries (2001) 245 ITR 160 (MP) has held that law does not cast any obligation on the assessee to explain the source of source for the amount borrowed. However, appellant has explained the source of source also. Appellant has explained the source of source to the last leg of the transactions by placing all the relevant documentary evidences on record in the paper book which were produced before the AO.

It is most important to mention here that both the lender companies i.e. ML Securities Finance Private Limited and Roulex Investment and Finance Private Limited were assessed with the same assessing officer under section 153A rws 143(3). Even the directors of these lender companies were covered under the search operation and were assessed by the same AO under section 153A rws 143(3). Hence, the AO had before him all the records and documents of the lender companies including those of the directors for verification of the facts and documents presented in support of his contention. Thus, the AO has erred totally, in overlooking the key facts and documents on record and in continuously stressing merely on the statements of directors recorded behind the back of the appellant.

4.2.8 *As far as case laws relied upon by the A.O. are concerned, on perusal it is seen that none of the case laws relied upon by the A.O. are applicable to the facts of this case. The case laws referred by AO are as under:-*

(a) ACIT vs Nakoda Fashion (P) Ltd ITA No 1716/Ahd/2012.

Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credit (Share application money) - Assessment year 2009-10 - Assessing Officer treated share capital and share premium received by assessee from 5 companies as unexplained cash credit - Whether since there were materials to show that companies through which share capital and share premium had been received were just paper companies and were engaged in providing accommodation entries, mere furnishing of particulars or mere fact of payment by account payee cheque or submission of confirmation letter by share applicants would only prove their identity and by itself, not enough to establish their creditworthiness and genuineness of transactions and therefore, addition made under section 68 was to be confirmed - Held, yes

In the present case, the lender companies were also covered by search operations and were assessed by the same AO in whose case the AO has accepted interest income and no specific defect has been pointed out by the AO.

(b) CIT vs P Mohankala 291 ITR 278 (SC)

Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment years 1993-94 to 1996-97 - Assessing Officer rejected explanation of assessee that amounts credited in their respective accounts were gifts from NRI and added said amount to income of assessee as income from undisclosed sources, on ground that so called gifts were not real and genuine - On appeal, Commissioner (Appeals) as well as Tribunal did not accept explanation of assessee and confirmed finding of Assessing Officer - High Court, however, reappreciated evidence available on record and substituted its own findings for that of Tribunal - High Court held that reasons assigned by Tribunal and other authorities were in realm of surmises,

conjectures and suspicions - Whether since findings of fact arrived at by authorities below were based on proper appreciation of facts, material available on record and surrounding circumstances, High Court committed error in disturbing concurrent findings of facts - Held, yes

In the above mentioned case, Hon'ble Apex Court has rejected the plea of assessee for gifts received from NRI which were not explained by the assessee. However, in the case of appellant no such issue of gifts from NRI pertains and the appellant has explained and proved the genuineness of the transaction and creditworthiness of the lenders. Therefore, facts of both the case are entirely different to each other.

(c) *CIT vs Durgaprasad More 82 ITR 540 (SC)*

In the above mentioned case, source of investment was not explained by the assessee. However, in the case of appellant, appellant has explained source of source duly supported by corroborative documentary evidences.

(d) *Sumati dayal vs CIT 214 ITR 801 (SC)*

Section 68 of the Income-tax Act, 1961 - Cash credits - Assessment years 1971-72 and 1972-73 - Assessee had shown certain amounts in capital accounts in books claiming same to be winnings from horse races - She filed sworn statement to effect that she started going for races only towards end of year 1969 and had no experience in races but she purchased jackpot tickets on combination worked out by her on basis of advice given by her husband - She had allegedly won 16 jackpots besides trebles - Assessing Officer disbelieved her version and taxed amount as income from undisclosed sources - Settlement Commission by its majority order upheld assessment order holding that it was reasonable to infer, on facts, that assessee did not participate in races but purchased winning tickets after events with unaccounted money - Whether matter in question had to be considered in light of human probabilities - Held, yes - Whether having record to conduct of assessee as disclosed by her in sworn affidavit as well as other material on record, an inference could reasonably be drawn that winning tickets were purchased by her after race event - Held, yes - Whether, therefore, finding of majority of Settlement Commission that amount in question was not winnings from horse races but income from undisclosed sources was justified - Held, yes

In the above mentioned case, the assessee has claimed certain amounts in capital account from winnings from horse races. But in reality assessee has purchased lottery tickets out of unaccounted money. However, facts of the case of appellant are entirely different from the above cited case. Moreover, when the primary and direct evidences provide all the explanation, the surrounding circumstances bear no significance.

(e) *NR Portfolio Pvt Ltd 9ITA No 1019/2011 dated 22.11.2013*

Section 68 of the Income-tax Act, 1961 - Cash credit [Share money] - Assessment years 2002-03 and 2003-04 - Whether creditworthiness or genuineness of transaction depends on whether two parties are related or known to each, manner or mode by which parties approached each other, whether transaction was entered into through written documentation to protect investment, whether investor professes and was an angel investor, quantum of money,

creditworthiness of recipient, object and purpose for which payment/investment was made, etc. - Held, yes - Whether certificate of incorporation of company, payment by banking channel, etc. cannot in all cases tantamount to satisfactory discharge of onus - Held, yes - Assessee was a private limited company and had received from other companies substantial amount of share application money of Rs. 63.80 lakhs and Rs. 75.60 lakhs in two consecutive years - Other than share application forms, no other agreement between assessee-company and third companies had been placed on record - Persons behind these companies were not produced by assessee - On other hand, assessee-company adopted non-cooperative attitude before Assessing Officer once they came to know about directed enquiry and investigation being made - Whether evasive and transient approach before Assessing Officer was limpid and perspicuous and, therefore, addition made in respect of impugned amount was to be upheld - Held, yes

In the above mentioned case, the assessee has adopted non cooperative attitude before the AO and person behind these companies were not produced for examination. However, in the case of appellant, the appellant has provided all the available details regarding the lenders. It is also important that the AO of the lenders is also same as that of the appellant. Therefore, the key persons of the lender companies were directly and readily available before the AO who made their assessments also during the same time. Thus, it is not the case were appellant has deliberately tried to put things out of picture.

4.2.9 *Therefore, in view of the above discussion, the AO was not justified in making addition of Rs. 3,35,00,000/- in AY 2015-16 on account of unsecured loan of Rs. 18,00,000/- from M L Securities Pvt Ltd and Rs. 3,17,00,000/- from Roulex Investment and Finance Pvt Ltd. Thus, keeping in view facts of the case, the documentary evidences filed by the appellant and the case laws cited above, the addition made by the AO amounting to **Rs. 3,35,00,000/-** in AY 2015-16 is **Deleted**. Therefore, this ground in appeal is **allowed**. ”*

6. On consideration of above, we find both the lender companies, MLSF and Roulex were also covered under search proceedings conducted in the case of Shakti Pumps Group with Roulex by way of survey under section 133A. Directors of MLSF i.e. Shri Harinarayan Patidar and Shri Vikas Patidar and for Roulex i.e. Shri Rakesh Patidar were also covered under the said search operations. Both the lender companies and the aforesaid

directors have been assessed by the same AO under section 143(3) r.w.s. 153A who had passed the impugned assessment orders for the assessee. Thus, the Assessing Officer failed to achieve the objective of such a coordinated approach while asking the assessee to produce the directors of the lender companies when they are being assessed by himself including the two lender companies. The ld. CIT(A) also noted the same. Further, the Assessing Officer did not appreciate the fact that the companies have not only given the loan to the assessee but to other parties also. MLSF is a NBFC duly registered with RBI and is financed by IFCI which is a government undertaking. Roulex is a company incorporated in 1994 and deals in investment in shares and securities. When a government undertaking IFCI Limited has financed MLSF, then how it can be held by the AO as non-existent, non-functional and a shell/paper company. Similarly, in the case of Roulex, during the course of survey at its office premise in Mumbai, when the auditor of this company CA K.C. Kankariya explained in his statement recorded during the course of survey about its whereabouts, then there is no case for the AO to hold it as non-existent, non-functional and a shell/paper company. Further, we find that no opportunity of

cross examination of the directors of the lender companies was provided to the assessee before making the impugned addition. We also find that in absence of incriminating material relevant to the addition made and making basis merely on the statements recorded of the two directors of MLSF and one incorrect person in the case of Roulex, in the light of the various courts which have held that in absence of incriminating material relevant, such additions are unjustified. It is important to note that assessee is covered under the search operation by way of panchnama drawn for his residential premises at 354 Saket Nagar, Indore from where nothing incriminating was found during the course of said search relating to the additions made by the AO. We find that both the lender companies had significant revenue from their operations, fact of which was taken note of, by the Ld. CIT(A) while addressing the creditworthiness and genuineness of the loan transactions. Reported revenue from operations for AY 2015-16 of ML Securities & Finance Pvt. Ltd. was Rs.4,17,30,979 and for Roulex Investment and Finance Pvt. Ltd. was Rs.3,74,64,375. Books of account of both the companies are audited and financial statements were placed on record along with their bank statements as filed before us at page nos. 157 &

205 of the paper book. We find that the assessee before the AO as well as Id. CIT(A) had filed copies of PAN, bank account statement of lenders, audited balance sheet, profit and loss statement and confirmations of lenders and also copies of ITRs with computation, PAN, Memorandum and Article of Association, Certificate of Incorporation issued by ROC and bank account statement as noted by the Id. CIT(A) at page 30 para (d) in the impugned order. We further find that interest income earned by the lender companies on the loans given by them has been accepted and assessed by the same AO in their assessments as noted by the Id. CIT(A) at page 32 of the impugned order. We find that in case of loan from MLSF, only part of the loan of Rs. 18,00,000/- has been added in the hands of the assessee and for the balance amount, the AO has accepted it to be income of the lender company which it had offered in its own hand. When such an acceptance was acknowledged by the AO in the hands of the lender company and only a part of the amount was considered by him for the purpose of making the addition in the hands of the assessee then the lender company cannot be held to be non-existent. Therefore, we find that the assessee went on to explain the source of source to the last leg of the loan transaction by along with furnishing all the corroborative documentary evidences, which are all placed in the paper book. We find that in the case of Roulex,

the lender company Roulex has taken loan from Vintex Tools Pvt Ltd. and the source of funds for Vintex Tools Pvt Ltd was out of income earned and offered to tax and reserve and surplus in various years. Hon'ble jurisdictional MP High Court in the case of Metachem Industries (2001) 245 ITR 160 (MP) has held that law does not cast any obligation on the assessee to explain the source of source for the amount borrowed. However, in the present case, the assessee had explained the source of source to the last leg of the transactions by placing all the relevant documentary evidences on record in the paper book which were also produced before the AO. We find that Hon'ble Jurisdictional Bench of Indore ITAT in the case of AG8 Ventures Limited – IT(SS)A No. 83, 84, 86, 87, 109, 110/IND/2019 vide order dated 16.02.2021 held as under:

“Para 216 – “Before moving further to examine the facts we would like to go through the judicial precedents with regard to the issue that where in case no corroborative material is found during the course of search having its nexus with the income surrendered during the course of search whether the addition can be made merely on the basis of statement recorded during the course of search. Though Ld. Counsel for the assessee has referred and relied on plethora of judgments, we find that this Tribunal has dealt with this issue. In the case of ACIT vs Shri Sudeep Maheshwari, ITA 524/ Ind/ 2013, vide order dated 13.02.2019, this Tribunal observed as under:-.....”

Para 217 – “Recently, in Ajit Singh Melhotra vs ACIT, IT(SS)A 63/ Ind/ 2019 vide order dated 22.10.2020, this Tribunal after considering various judgments including those of Hon'ble Gujarat High Court as well as Hon'ble Apex Court and also following its own decision in the case of ACIT vs Shri Sudeep Maheshwari (supra) observed as under:-.....”

Para 218 – “On going through the above judgments it is judicially settled that an addition made on the basis of mere surrender of income during the course of search without referring to any of the incriminating documents is not binding on the assessee and the same cannot be used against the assessee as an evidence.”

Para 221 – “We therefore in the light of settled judicial precedents and respectfully following the decision of this Tribunal in the case of ACIT vs Shri Sudeep Maheshwari (supra) and Ajit Singh Melhotra V/s ACIT (supra) which were decided after considering the settled judicial precedence by the Hon'ble courts are of the considered view that Ld. AO was not justified in making the additions merely on the basis of statement given during the course of search without referring to any incriminating material in the case of assessee company, and further Ld. CIT(A) was not justified in enhancing this addition”

7. Hon'ble Delhi High Court in the case of Anand Kumar Jain (HUF) – ITA No. 23/2021, order dated 12.02.2021 held as under:

“Para 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.....” [emphasis supplied]

Para 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.....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."

8. We find that the Hon'ble jurisdictional Indore ITAT Bench in the case of Ariba Foods Pvt. Ltd. & Others in ITA No. 736/Ind/2019, appeal by the Department, vide order dated 11.01.2021 decided the identical issue. In that case, we find that the Ld. CIT(A) made identical observations and gave similar findings on the facts duly supported by relevant case laws all of which had been upheld by the Hon'ble Bench in favour of the assessee by dismissing the appeal of the Department. Most of the findings and observations by Ld. CIT(A) and the affirmations thereto by the Hon'ble Bench carry identical verbiage as in the case of the present appeal before us.

9. We also find that in assessee's own case for AY 2014-15 with identical issue except for difference in the quantum of loan from ML Securities and Finance Pvt Ltd, the Ld. CIT(A)-3, Indore in appeal no. IT-11810/17-18, order dated 19.03.2020 has relied on the decision of Ld. CIT(A) - 3, Bhopal in the present appeal and deleted the similar addition towards unsecured loan u/s 68. Even before us, the Revenue could not controvert the factual findings recorded by the ld. CIT(A) by bringing any contrary material on record, therefore, in consideration of above facts,

submissions, material available on record in light of the aforesaid judicial pronouncements, we do not find any infirmity in the order of the ld. CIT(A). The same is confirmed. Thus, the deletion of addition of Rs. 3,35,00,000 made u/s 68 by the Ld. AO towards unsecured loans is confirmed. Accordingly, the only ground raised in the departmental appeal for the assessment year 2015-16 is dismissed.

10 So far as the departmental appeal for the assessment year 2014-15 is concerned, we find that the facts and circumstances of this case are similar to that of 2015-16, therefore, our decision taken for the assessment year 2015-16 shall prevail in the assessment year 2014-15 too having similar set of facts and circumstances. Both the parties submitted that the arguments advanced for the assessment year 2015-16 above may also be considered for the assessment year 2014-15. Further, for the assessment year 2014-15 in the impugned order, the Ld. CIT(A)-3, Indore has also relied upon the order of Ld. CIT(A) – 3, Bhopal for the assessment year 2015-16. Thus, following the same detailed discussion and reasoning thereof as narrated for the assessment year 2015-16 above, we do not find any infirmity in the order of the ld. CIT(A) for the assessment year 2014-15 too.

Accordingly, the only ground raised in the departmental appeal for the assessment year 2014-15 is also dismissed.

11. In the result, both the departmental appeals i.e. IT(SS)A No.121/Ind/2019 for the assessment year 2015-16 and IT(SS)A No.103/Ind/2020 for the assessment year 2014-15 are dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 04.10.2021.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 04.10.2021

!vyas!

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/
DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore