

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A”, KOLKATA**

**BEFORE SH. S.S.GODARA, JUDICIAL MEMBER AND
DR. A.L. SAINI, ACCOUNTANT MEMBER**

ITA No. 2101/KOL/2018
[Assessment Year: 2015-16]

Astt. Commissioner of Income Tax, Circle-35, Kolkata.	vs	M/s. Kwaliti Steel Processors, 2nd Floor, 4 India Exchange Place, Dalhousie, Kolkata-700 001. PAN- AAEFK 2197 G
(Appellant)		(Respondent)

Appellant by	Sh. Dhrubajyoti Ray, JCIT.
Respondent by	Sh. Miraj D. Shah, AR.
Date of Hearing	15.01.2020
Date of Pronouncement	19.06.2020

ORDER

PER SH. S.S.GODARA, JUDICIAL MEMBER

This Revenue’s appeal for AY 2015-16 arises against the order dated 30.07.2018 passed by the Commissioner of Income Tax-10, Kolkata in Appeal No.774/CIT(A)-10/C-35/2015-16/2017-18/Kol in proceedings u/s 143(3) of the Income tax Act, 1961 (in short the “Act”).

Heard both the parties. Case file(s) perused.

2. The Revenue's former substantive grievance raised in the instant appeal pleads that CIT(A) has erred in law and on facts in reversing Assessing Officer's action adding stock inventory amounting to ₹98,65,025/- in the course of assessment. The lower appellate discussion under challenge to this effect reads as follows:

“1. I have carefully examined the action of the Ld. AO in making the impugned addition of Rs.98,65,025/- on grounds of discrepancy in stock. The Ld. AO has recorded that a survey operation u/s 133A of the Income Tax Act, 1961 was

conducted on 20.01.2015 in the business premises of the assessee at 4, India Exchange Place, 2nd Floor, Kolkata- 700 001, and after that the case was converted for scrutiny and statutory notices issued in the matter. The Ld. AO has recorded that during the scrutiny there was compliance by the assessee and the Id. A.R for the assessee-firm appeared from time to time to represent the case, filed written submissions and documents as asked for. The jurisdictional facts as recorded by the Ld. AO are that during the course of survey operation conducted on 20.01.2015, the physical stock was verified by survey team in the presence of the assessee firm's employee, Shri Praveen Sharma and the same was duly certified by Sri Jagdish Pd. Goel, one of the partners of assessee firm. According to the Ld. AO, upon the physical verification of stock, the value of stock was determined at Rs.7,24,02,168/- which was duly agreed by Sri Jagdish Pd. Goel but closing stock as per computer extract impounded during the course of survey was found at Rs.5,08,28,744/-. The Ld. A.O has recorded that during the course of assessment proceedings, the assessee was asked explain the difference, and was therefore show-caused vide letter dated 17.11.2017, as to why this excess stock should not be added to the total income as undisclosed purchases. The Ld. AO has recorded that in response to the aforementioned show-cause, the assessee replied that in inventorised and impounded item no.KSP-2, (Page 36-37) in stock summary as 19.01.2015(Page-36) total value is appearing at Rs. 5,08,28,743/-, whereas as per the books of the firm, the figure is Rs. 6,25,37,143/-. Therefore, it was submitted by the assessee that prima facie it was apparent from the said sheet that certain items of stock lying in the opening stock as on 01.04.2014 was taken at Nil value though the stock quantities were reflecting in the said survey sheet. It was explained by the assessee that when the value of opening stock is considered, the total stock value would exactly be the same figure of Rs. 6,25,37,143/-. The Ld. A.O has also recorded that the assessee has furnished a detailed working sheet in respect of stock summary.

2. The Id. AO has stated in the assessment order that the reply of the assessee was considered and not found to be acceptable. As per the Ld. AO it was to be noted that the assessee firm's stock of Rs.7,24,02,168/- was found and physically inventorised by the survey team as on 20.01.2015, whereas the assessee could explain and reconcile stock of Rs. 6,25,37,143/- only. Therefore, the Ld. AO reckoned that there was excess stock of Rs. 98,65,025/- (7,24,02,168 - 6,25,37,143) which remained unexplained. With such a view of the matter, the Ld. A.O added back the impugned excess stock as arrived at by him of Rs. 98,65,025/-, and treated the same as undisclosed purchases u/s 69C of the Income Tax Act, 1961.

3. Quite on the contrary, in appeal, the appellant-firm / Ld. A.R for the appellant firm have argued against the impugned addition as under:

a. While finalizing the Books of Accounts the appellant firm noted that the projected Profit & Loss prepared by the survey team upto 20.01.2015, contained glaring errors such as entire finance cost was not considered, the stock inventory of Associate concern, M/s. Shri Bishandas Iron Works amounting to Rs. 98,65,025/- included in the physical inventory of the appellant firm and Rebate & Discount was taken at an arbitrary figure.

b. Although documentary evidences and impounded Tally Data conspicuously shows that those stock pertains to the Associate concern which was operating from the same common Godown.

c. The discrepancies had been clarified before the Ld A.O by the appellant by stating that figures of Profit and Loss Account drawn upto 20.01.2015 were exactly in conformity with the Profit & Loss Account drawn by the survey team. The exception is that the arbitrary figures of rebate & discount of Rs.52,00,000/- credited by the surveying officers, and only they could explain the same.

d. The survey team took figures of Inventory at Rs.7,24,02,168/- which unfortunately includes inventory figure of our Associate concern of Sree Bishandas Iron Works (PAN - AANFS0164Q) of Rs 98,65,025/-. The list of Inventory of Sree Bishandas Iron Works are given in Annexure-2. The details of our stock statement as at 2014-15 was Rs.6,25,37,1 73/- list attached in Annexure-3.

e. The documentary evidences attached with such inventory list conclusively prove that the survey team wrongly included the said inventory in the Profit & Loss of the assessee. The print out of Books of Account of Sree Bishandas Iron Works would conclusively prove that fact."

f. It was pointed out to the A.O. that " In any case it is now well settled by the decision of the Hon'ble Supreme Court in the case of "CIT vs. S Khader Khan Son reported in (2012) 25 taxmann.com 413(SC)/210 Taxman 248 (SC) that no addition could be made based on statement recorded during survey powers u/s 133A of the Act does not empower the ITO to examine any person on oath and hence the statement recorded thereon has got no evidentiary value". In the case of Anupam Nadi vs. ITO, Ward -46(1), Kolkata.fITA No. 2037/Kol/2014) given by the Hon'ble ITAT 'C' Bench, Kolkata has endorsed the same view.

g. The Godown in which survey u/s 133A was conducted used jointly by the associate concern namely M/s Sree Bishandas Iron Works for convenience of dispatch and delivery of goods. In the proceeding of survey operation u/s 133A the survey team inevitably found certain item of stock which belongs to the associate concern namely M/s Sree Bishandas Iron Works. The appellant during the hearing provided the documentary evidences with respect to such stock of Rs. 98,65,025/-, which conclusively suggest that the these stock was belongs to the associate concern M/s Sree Bishandas Iron Works. The appellant provided the books of account of the associate concern M/s Sree Bishandas Iron Works along with documentary evidences such as invoice copies and challan i.r.o such stock vide its submission dated 30.11.2017. Such books of account were already in the possession of the Department in the impounded Hard drive [Item No.-KSP/HD/I]

h. The appellant and its associate concern M/s Sree Bishandas Iron Works were engaged in the same line of business of Iron and Steel. The aforesaid addition as such was made on the basis of presumption that the excess stock as found in the premises by the survey team would only belong to the appellant and nothing else. Further the Ld A. O relied upon the statement recorded by the survey team of Mr. Jagdish Parshad Goel Partner of the firm, where the total value of stock of Rs.7,24,02,168/ - was prima-facie accepted by the partner and duly signed in the statement recorded. Since the partner was unaware about the break-up of inventories of which goods have been taken into consideration this acceptance was obvious. The appellant firm during the course of hearing reconciled the entire stock found by the survey team conclusively. However, the Ld. A.O only accepted the reconciliation to the tune of Rs.6,25,37,143/- and added the alleged difference in stock of Rs. 98,65,025/ - to the income the appellant without considering the reconciliation in proper perspective by ignoring all the relevant material facts and evidences on record. Further, this alleged stock of Rs.98,65,025/- was duly reflected in the books of account of M/s Sree Bishandas Iron Works and the electronic data of the books of accounts was contained in the impounded Hard Drive which can be easily verified. The relevant portion of the submission dated 22.12.2017 is extracted below:

"The figures of stock of 192.31MT + 52.963 M.T=245.273M.T in Page 8 of the Physical Inventory Sheet, however, pertains to the stock of the Associate firm, M/s. Shree Bishandas Iron Works lying in the premises as both the firm operates from the common godown at 321, G . T. Road (North), P. O. Beturmah, Howrah - 711 202. The tally data of Sree Bishandas Iron Works is also in the impounded Hard Disk kept in your record. The documentary evidences of such stock like

purchase Invoices challans and copies of Books of Accounts/ Stock Books of M/s. Shree Bishandas Iron Works are already submitted for your review and record.

So the Physical Stock Found of Rs, 7,24,02,168/- is fully reconciled as below:

<i>Book Stock of M/s Kwaliti Steel Processors</i>	<i>1,471.37</i>	<i>6,25,37,1437-</i>
<i>Stock of M/s Sree Bishandas Iron Works lying in our premises</i>	<i>245.27</i>	<i>98,65,025/-</i>
	<i>1,716.64</i>	<i>7,24,02,168/-</i>

i. It is pertinent to mention here that in the statement recorded u/s 131 on 20.01.2015 Sri Lalit Kumar Goel had duly pointed out that " I believe that we would achieve approximately around the figure (Rs. 7,24,02,168/-) taken physically inventory of stock at the work shop at 321, G. T. Road(N), Howrah -711 202." After reconciliation at this stage it is established beyond all doubts if the Book Stock of the Associates concern M/s Sree Bishandas Iron Works is taken into account the entire physical stock would conform the stock in Books of Accounts.

j. In the instant case, the assessing officer has exercised his discretion against the assessee and in favour of the revenue. The reason for exercising such discretion is that the alleged stock was found in the common premises of the appellant and such stock inventory was identifiable.[Paper Book pg no. 29-3 7]

k. Here the decision of Calcutta High Court in the case of Principal Commissioner Income-tax, Central-1, Kol. vs Ajanta Footcare (India) (P.) Ltd [2017] 84 taxmann.com 109 (Calcutta) is relevant and operative part is extracted below:

"Unexplained expenditure (Presumption about seized document) - Assessment year 2007-08 - Some scribbled figures were appearing on document seized in search - Assessee disowned this document - Revenue's case was that presumption would be that content of said document would be true and computation made by Assessing Officer would be valid in terms of section 69C - Appellate Authorities exercised their discretion against revenue and in favour of assessee for reason that no stock discrepancy could be demonstrated and there was no corroboration of figures forming basis of addition to income of assessee as was directed by Assessing Officer - No question about said document was put to assessee in course of search - Thus, appellate authorities doubted inherent probative value or quality of above document upon applying their mind on it and found that information contained in or revealed by document was not linked to undisclosed income of assessee and, hence, rejected reasoning of Assessing Officer on basis of which latter came to his finding that figures appearing on said document could be computed to arrive at undisclosed income of assessee -Whether since both appellate authorities had examined said document and found that same could not be connected with assessee's transaction, findings of appellate authorities could not be held to be perverse - Held, yes [Paras 10 and 11] [In favour of assessee]"

l. Your appellant in support of its claim provided all possible and necessary evidences. In the assessment order no definite finding regarding stock discrepancy detected in the course of survey was spelt out although generalized comment was made regarding discrepancy in stock. From the above submission of alleged stock of Rs.98,65,025/- it is clear that no cogent material was unearthed during the survey or post survey investigation or assessment proceedings to suggest that the assessee has indulged in making undisclosed purchases outside its regular books of accounts. Similarly no cogent material has been adduced at any point of time to suggest that amounts have been spent on such undisclosed

purchase outside the books of accounts. The appellant has conclusively reconciled the alleged stock of Rs.98,65,025/- vide its submission dated 30.11.2017.

m. Stock summary of Sree Bishandas Iron Works for the period 01.04.2014 upto survey date i.e. 20.01.2015 is also produced before the Ld. A.O vide our submission 22.12.2017. The stock summary is also produced before your honour for your kind perusal and reference. [Paper Book pg no. 38-64]

n. The appellant has also referred to the answers given by the partner of the firm for the questions raised by the Survey Team to reiterate that Shri Jagdish Parshad Goel, partner of the firm wasn't exactly sure about the valuation of the stock at the time survey statement recorded by the survey team, and that in order to cooperate with the department he agreed to deposit a sum of Rs 47,00,000/- as advance tax based on the projected statement drawn by the survey team.

o. Nevertheless the A.O without considering the reconciliation statement and written explanation in proper perspective unlawfully added back the Associate concern's stock of Rs. 98,65,025/- in the hand of the appellant firm.

4. After carefully examining the action of the Ld. AO and the submissions filed by the appellant along with the relevant Paper Book, I find that there appears to be no dispute about the fact that appellant firm and the sister concern of the appellant firm namely M/s Sree Bishandas Iron Works operate their business from the same godown situated at 321, G.T Road, P.O Belurmah Howrah-711202 which is substantiated through their Registration Certificates and Trade License as submitted by the appellant in paper book pg.no. 65-66 and registration certificates obtained in post GST period.

5. Therefore it papers to be plausible that on physical verification of stock conducted by the survey team in the same premises may have also included the stock of a sister concern functioning from the same premises. The appellant in his written reply in response to the show-cause notice has stated that un-reconciled amount of Rs.98,65,025/- belong to the sister concern namely M/s Sree Bishandas Iron Works, the appellant also produced detailed evidence along with statement reconciling the amount of Rs.98,65,025/- with tax invoices showing the amount of Rs.98,65,025/-belong to the sister concern and the amount also reflected in the stock summary of the sister concern.

6. I have carefully perused the appellant's contention and written submission along with relevant paper book no. 37-68 where it is apparent that the amount of Rs.98,65,025/- belong to the appellant's sister concern namely M/s Sree Bishandas Iron Works. I have also gone through the impounded electronic data printout where the books of accounts of the sister concern also recorded and it is apparent from this record that the stock summary, ledger copies and invoices as produced by the appellant do tally with the electronic impounded data record. Further I have also considered the appellant argument that the assessing officer has exercised his discretion against the assessee and in favour of the revenue. The reason for exercising such discretion is that the alleged stock was found in the common premises of the appellant and such stock inventory was identifiable.[Paper Book pg no.29-37],

7. The appellant also refers the judgment of the jurisdictional Calcutta High Court Order in the case of Principal Commissioner of Income-tax, Central-1, Kol. Vs Ajanta Footcare (India) (P.) Ltd [2017] 84 taxmann.com 109 (Calcutta) is relevant and operative part is extracted below:

"Unexplained expenditure (Presumption about seized document) - Assessment year 2007-08 - Some scribbled figures were appearing on document seized in search -Assessee disowned this document - Revenue's case was that presumption

would be that content of said document would be true and computation made by Assessing Officer would be valid in terms of section 69C - Appellate Authorities exercised their discretion against revenue and in favour of assessee for reason that no stock discrepancy could be demonstrated and there was no corroboration of figures forming basis of addition to income of assessee as was directed by Assessing Officer - No question about said document was put to assessee in course of search - Thus, appellate authorities doubted inherent probative value or quality of above document upon applying their mind on it and found that information contained in or revealed by document was not linked to undisclosed income of assessee and, hence, rejected reasoning of Assessing Officer on basis of which latter came to his finding that figures appearing on said document could be computed to arrive at undisclosed income of assessee - Whether since both appellate authorities had examined said document and found that same could not be connected with assessee's transaction, findings of appellate authorities could not be held to be perverse - Held, yes [Paras 10 and 11] [In favour of assessee]

8. Therefore in view of circumstances of the case and having gone through the submission of the appellant and referring to the paper book pg no.37-66 and checking carefully the impugned amount of 98,65,025/- with impounded data record, in my considered view it is apparent that the alleged undisclosed stock of Rs. 98,65,025/- of sister concern M/s Sree Bishandas Iron Works was lying in the same premises in which survey operation was conducted and considering relevant facts and law as applicable as laid down by the Hon'ble jurisdictional High Court Order, I find that the addition made by the Ld. A.O is not sustainable in the factual matrix. The same is therefore directed to be deleted, and the grounds of appeal 2 & 3 taken by the appellant are allowed."

3. We have given our thoughtful consideration against and in support of the impugned addition. There is no dispute on facts about the department's having carried out survey action at assessee's business premises allegedly suggesting stock inventory of ₹98,65,025/- terming subject matter of the impugned addition. We notice from the case records that the clinching aspect which requires our consideration is that the assessee had duly produced item no. KSP/HD/1 as well as books of its sister concern namely M/s. Sree Bishandas Iron Works indicating the impugned differential stock belonging to the said other party only. Learned DR's vehement contention seeking to rely on the assessee's alleged survey statement goes contrary to the CBDT circular issued way back on 10.03.2003 that mere search/survey statements. do not carry any significance without supportive evidence. We go by the very analogy in the facts of this case and hold that the mere

reliance on the alleged survey statement without having any corresponding evidence in support would not help the Revenue's case. We thus affirm CIT(A)'s action deleting the impugned addition. The Revenue fails in its former substantive grievance.

4. Next comes unexplained cash credits addition of ₹1,00,000/- and interest thereupon of ₹9,43,506/- made in the course of assessment and deleted in the CIT(A)'s discussion as under:

"4. I have carefully considered the action of the Ld.AO in making addition of Rs. 1,00,00,000/- as Unexplained cash credit u/s 68. The Ld. AO noticed from the details available on record and investigation wing that the concerned loan creditors are bogus/paper companies who are involved in giving accommodation entries in the form of unsecured loan in lieu of commission. The assessee in response argued that as regards to the Credit Worthiness of the Loan Creditor M/s Admire Vinimay Pvt Ltd is concerned, the said loan creditor provided the loan of Rs.28,00,000/- out of its Owned Shareholders Fund. The Capital structure of the Loan Creditor is extracted below:

	Amount (Rs.)
(a) Share Capital	1,29,30,000/-
(b) Reserves and Surplus	30,11,30,082/-
Total Shareholders Fund	31,40,60,082/-

Loan given to Kwaliti Steel Processors (appellant) during the year of Rs.28,00,000/-. The loan was given to the appellant in the normal course of business due to exigencies and contingencies and your appellant has duly provided interest on such loan and duly deducted TDS on such interest.

5. It is pertinent to mention that from the financial statements of the loan creditor it is quite apparent that the loan creditor did not raise any share capital or fresh borrowing during the relevant assessment year. [Paper Book pg no 71-96.] Further the said loan creditor in response to the notice issued u/s 133(6) also has submitted its reply along with copy of ITR, Balance Sheet, Profit & Loss, computation, ledger copies along with bank statement, nature of business, copy of MOA & AO A, address proof of company and loan confirmation. The appellant also argued that since the loan amount of Rs.28,00,000/- has been repaid during the year itself the provision of sec 68 of the income tax act, 1961 does not apply in this case. It has also been brought on record by the Ld. A.R for the appellant that this particular Loan Creditor has revenue from operations of Rs.4,68,2,275/- during the subject A.Y 2015-16, and that this figure was also substantially high in the earlier A.Y 2-14-15, being Rs. 8,70,12,823/-, and this surely indicates the capacity of the Loan Creditor. The appellant also refer decision of the Income Tax Appellate Tribunal (Delhi Bench I) in the case of Golden Remedies (P.) Ltd vs Income-tax Officer, Ward 12(2) , New Delhi [[2007] 18 SOT 260 (DELHI)] where it was held that "Whether where assessee had taken loans from three parties through account payee cheques and had repaid same through account payee cheques, which was duly confirmed by each of parties and assessee had also produced bank accounts and permanent account numbers of each of parties to support its case, Assessing Officer was not justified in treating said transactions as non-genuine, and therefore, no addition could be made under section 68 - Held, yes"

6. It was further pleaded by the assessee-firm that the loan given by the loan creditors from their owned fund as the loan creditors does not have any long term loan funds which is clearly substantiate through financial statements of the loan creditors.

The Capital structure of the Loan Creditor is extracted below:

	Amount (Rs.)
(a) Share Capital	1,29,30,000/-
(b) Reserves and Surplus	30,11,30,082/-
Total Shareholders Fund	31,40,60,082/-

Loan given to Kwaliti Steel Processors(appellant) during the year of Rs.28,00,000/-.

7. I have carefully perused the submissions of the appellant and relevant documents. From the books of account it is apparent that the appellant has received loan amount of Rs.28,00,000/- during the year and repaid the same in the year itself. The loan creditors also comply with the notice issued u/s 133(6) and provided the necessary documents. However as regards to the departmental data base report is concerned that the loan creditor is bogus/paper company it was argued by the appellant that no verification has been conducted by the Ld. A.O to proved that the such loan creditor is actually is a bogus/paper company. On the contrary such loan creditor comply with the all requirements which in an ideal world would normally suggest or fulfill all the conditioned. Moreover, the loan amount was duly repaid in the year itself [paper book pg no. 69], therefore in view of the decision of the Income Tax Appellate Tribunal (Delhi Bench I) in the case of Golden Remedies (P.) Ltd vs Income-tax Officer, Ward 12(2), New Delhi [[2007] 18 SOT 260 (DELHI)] the addition imposed on the appellant of Rs.28,00,000/- is deleted.

8. Further, as per the fresh loan of Rs.72,00,000/- taken from M/s Ginni Vinimay Pvt Ltd. is concerned. The appellant has stated that the entire loan was taken through banking channel and the creditworthiness of the company is beyond one's doubt. The company has substantial amount of Reserves and Surplus which is expressively evident from the Financial Statement of the concerned company. The assessee has duly filed the confirmation in respect of each of the parties along with their permanent account number. The assessee even filed the copy of the bank account to prove the amount received by him and the re-payment made to the party through account payee Cheque. The concerned party even also complied with the notice issued by the Ld A.O under section 133(6), Obviously as the Ld. A. O was satisfied with the compliance made he did not make any further enquiry in this regard. The identity of the loan creditor and genuineness were not doubted. As per section 68 of the Income-tax Act, that there must be credit of the amount in the books of account maintained by the assessee such credit has to be a sum of money received by the assessee during the assessment year and the assessee either offers no explanation about the nature and source of such credit found in the books of account or the explanation offered by the assessee in the opinion of the Ld. A. O is not satisfactory. It is only then the sums found credited in the books may be treated to be the income of the assessee of the previous year, "Assessee offers no explanation" has been defined by the Hon'ble Supreme Court in the case of P. Mohanakala (supra) to mean the assessee offers no proper reasonable and acceptable explanation as regards the sum found credited in the books maintained by the assessee.

9. The Capital structure of this Loan Creditor is extracted below:

	Amount (Rs.)
(a) Share Capital	1,61,18,200/-
(h) Reserves and Surplus	28,85,64,745/-

Total Shareholders Fund 30,46,82,945/-

Loan given to Kwaliti Steel Processors (appellant) during the year of Rs. 72,00,000/-. The loan was given to the appellant in the normal course of business due to exigencies and contingencies and your appellant has duly provided interest on such loan and duly deducted TDS on such interest. However as regards to the departmental data base report is concerned that the loan creditor is bogus/paper company it was argued by the appellant that no verification has been conducted by the Ld. A.O to prove that the such loan creditor is actually is a bogus/paper company. On the contrary such loan creditor comply with the all requirements which in an ideal world would normally suggest or fulfil all the conditions. Similarly, in the case of this Loan creditor also, the appellant / Ld. A.R has placed necessary evidence that the Loan Creditor has operating revenue Rs.4,44,78,752/-, and that its credit-worthiness ought not to be doubted.

Further from the financial statements of the loan creditor it is quite apparent that the loan creditor wasn't raised any share capital or borrowing during the relevant assessment year.

Moreover, Ld. A.O had not at all carried out any investigation to show that those companies did not exist but were paper company; they were not having worth of investing and transaction lacked genuinity - Further investigation wing report was not shown to assessee. In the case of Assistant Commissioner of Income-tax, Central Circle-17, Jhandewalan, New Delhi vs Shyam Indus Power Solutions (P.) Ltd, the Hon'ble ITAT Delhi Bench has held that:

"Where assessee had taken unsecured loan and had furnished names and addresses of concerned parties, their PAN and confirmation with bank account and their Income tax returns, and Assessing Officer had not at all carried out any investigation to show that those companies did not exist but were paper company, no addition under section 68 was called for."

10. Reliance also placed in the decision of the Hon'ble ITAT AHMEDABAD BENCH 'SMC' in the case of Pavankumar M Sanghvi vs Income-tax Officer, Ward 3(1)(2),

Vadodara [2017] 81 taxmann.com 308. Where it was held that:

"Where assessee received unsecured loans, but could not produce lenders for verification, and these lenders were found to be shell companies, said loan transactions could not be said to be genuine merely because assessee filed loan confirmations, copies of ledger account and other supporting evidences to justify transactions at the end of assessment proceedings. " And accordingly appeal of the assessee dismissed.

However, in this case, I find that the loan creditors duly filed their confirmation within stipulated time frame along with all the requisitions. Therefore above decision would not properly fit in the instant case. The assessee had not obtained the loans in any public issue but it is privately placed. During the course of assessment proceedings it is not controverted that assessee has submitted details before the Assessing Officer with respect to loan. Namely, and address of lenders their PAN, confirmation of the parties with respect to above transactions, Photocopy of bank accounts of the parties from whom the amount of loans have been paid to the assessee. Photocopy of Income Tax Return of the lenders, Balance sheet of the depositors. On furnishing of information by the assessee of all the companies, from whom the assessee has taken unsecured loan, the Ld. A.O had not at all carried out any investigation to show that those companies do not exist but were paper company; they were not having worth of investing in the company and the transaction lacks genuinity despite having their income tax details and annual accounts. Despite specific request, no details are called for

either from the assessee or from the investor/ lender companies or from bankers and no summons under section 131 of the Income Tax act, 1961 or inquiry letter under section 133(6) of the Income Tax Act, 1961 were issued. No inspector report with respect to the investor/lender company was obtained or available with the Ld. A. O. It also appears that the Report of the Investigation Wing was not shown or confronted to the assessee-firm anytime during the scrutiny proceedings.

11. The Ld. A.O was not precluded from either obtaining the complete details from the MCA Website or from issuing notice u/s 133(6) of the Income Tax Act, 1961 to the Registrar of Companies for obtaining the annual reports, annual returns under the Companies Act and shareholders & director's details since beginning of those companies. He may have also further obtained the DIN (Director's Identification No) of the directors of the companies which is linked with the Permanent Account No or any identification details of the directors. The details from bankers should also have been obtained with respect to the unusual transactions in the account of the investors as Assessing Officer has alleged that the investors have high value transactions. The Directors, persons operating the accounts of those companies should have been examined by vast powers with the Ld. A. O under the Income-tax Act as well as under the other acts. The Ld. A.O may have also intimated and coordinated with the Assessing Officer of those companies about the business activity or their assessment history. The similar information should have been obtained from the bankers of the company with respect to the beneficiaries, the account operating instructions, and authorities of those accounts along with copies of the bank account of these parties since the date of opening of accounts. The details from bankers should also have been obtained with respect to the unusual transactions in the account of the investors as Assessing Officer has alleged that the investors have high value transactions. The above information so collected and on examination of director or major shareholder of the investor/lenders company, the Assessing Officer should have formed his opinion about the existence of those companies and motive behind such companies. After framing the prima facie opinion, he must exercise vast powers available with him under the Income-tax Act with the Assessing Officer of those companies to investigate the correct facts then should have placed before the assessee to rebut it. Strangely, none of the above exercise has been carried out by the Assessing Officer. None of them has been looked at leave aside the exercise of such powers. In such circumstances, it is apparent that Assessing Officer does not have any evidence to allege that loans taken by the assessee is bogus. Hence, that assessee has discharged initial onus cast upon him under section 68 with respect to loan.

12. Further reliance is placed on the decision of Hon'ble Calcutta High Court in the case of CIT-III v Dataware Pvt. Ltd. ITA No. 263 of 2011 wherein it was held as under:

In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

Under the facts and circumstances, I am of the considered view that the addition is merely based on surmises and conjectures and on material not relevant for the case of the appellant-taxpayer. Therefore I find that the additions made by the Ld.

AO are not sustainable on the facts of the case, and the law applicable. The addition of Rs. 1,00,00,000/- is therefore deleted, and the grounds on merit are allowed in favour of the assessee. Ground No 4 therefore stands allowed.

11. *Ground No 5 taken by the appellant - firm relate to the action of the Ld. A.O in disallowing interest amounting to Rs. 19,43,506/- on the impugned loans.*

The impugned matter has been dealt by the Ld. A.O. as under:

Further, the interest paid to the Ginni Vinimay Pvt. Ltd. and Admire Vinimay Pvt. Ltd. on unsecured loan during the year amounting to Rs.6,37,151/- & Rs. 13,06,355/- respectively is also disallowed by the same logic and added to the total income of the assessee as unexplained expenditure u/s 69C.[Addition: Rs. 19,43,506/-]

I am satisfied that the assessee has concealed and furnished inaccurate particulars of income, the penalty proceedings u/s 271(l)(c) are initiated separately.

12. *During the course of appeal proceeding the appellant / Ld. A.R for the appellant-firm have submitted as under:*

Ground No. 5: Regarding disallowance of interest paid to loan creditors of Rs. 19,43,506/-

With respect to the payment of interest on above two additions of loan under section 68 of the income tax act, The Ld. Assessing Officer disallowed interest expenditure paid to these companies on the above-unsecured loan. The TDS has duly deducted on such interest. The recipient has reflected the such income in their ITR. So disallowance of interest paid on such loan by the Ld. A.O has no merit.

13. *FINDINGS & DECISION: While adjudicating the matter of the disputed loans, I have decided the matter in favour of the appellant. As a sequel and corollary, the payment of interest on account of these loans is also held to be genuine, and the addition on account of the disallowance of interest of Rs. 19,43,506/- is also deleted. The ground, as a result stands allowed."*

5. We have given our thoughtful consideration to rival pleadings against and in support of the impugned addition. There is hardly any dispute about the basic fact that the assessee had claimed the impugned sum as unsecured loan coming from two parties i.e. M/s. Admire Vinimay Pvt. Ltd. and M/s. Ginni Vinimay Pvt. Ltd. involving sums of ₹28 lakhs and ₹72 lakhs; respectively. The Revenue's stand as per the Assessing Officer's findings is that these two entities have been found to have been providing accommodation entries in departmental investigation. We note during the

course of hearing that not only the assessee had proved identity, genuineness and creditworthiness of both these entities right in scrutiny but also the said entities duly responded to the Assessing Officer's verification exercise. Coupled with this, we are informed in the light of the lower appellate findings that the impugned unsecured loans already stand paid (supra). All these clinching aspects have gone unrebutted from the Revenue side. We therefore hold in these facts and circumstances that the CIT(A) had rightly deleted the impugned unexplained cash credits addition of ₹1,00,00,000/- as well as interest payment of ₹19,43,506/- in lower appellate discussion. The same stands affirmed. The Revenue's instant second substantive ground is also declined.

6. Before parting, it is noted that the order is being pronounced after ninety days of hearing. However, taking note of the extraordinary situation in the light of the COVID-19 pandemic and lockdown, the foregoing period needs to be excluded. For coming to such a conclusion, we rely upon the decision of the Co-ordinate Bench of the Mumbai Tribunal in the case of *DCIT vs. JSW Limited in ITA No. 6264/Mum/2018 & 6103/Mum/2018, Assessment Year 2013-14, order dated 14th May, 2020.*

7. In the result, this Revenue's appeal is dismissed.

Order pronounced in the open court on 19.06.2020.

**Sd/-
(A.L. SAINI)
ACCOUNTANT MEMBER**

**Sd/-
(S.S.GODARA)
JUDICIAL MEMBER**

Date: 19.06.2020
Bidhan

Copy forwarded to:

1. **Appellant**- Astt. Commissioner of Income Tax, Circle-35, Kolkata.
2. **Respondent**- M/s. Kwaliti Steel Processors, 2nd Floor, 4 India Exchange Place, Dalhousie, Kolkata-700 001.
3. CIT(A)- 10, Kolkata. (Sent through e-mail).
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (Sent through e-mail).

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches