

**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER**

SN	ITA/IT(SS)A No.	AY	Appellant	Respondent
1	IT(SS)A No. 73/Ahd/2025	2015-16	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., R.S. 380, Vejalpur Road, Panchmahal, Godhra-389001 [PAN : AACCH 0966 K]
2	IT(SS)A No. 74/Ahd/2025	2016-17	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]
3	IT(SS)A No. 75/Ahd/2025	2017-18	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]
4	IT(SS)A No. 76/Ahd/2025	2018-19	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]
5	IT(SS)A No. 77/Ahd/2025	2019-20	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]
6	IT(SS)A No. 78/Ahd/2025	2020-21	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]
7	IT(SS)A No. 80/Ahd/2025	2018-19	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]	DCIT, Central Circle-2, Vadodara
8	IT(SS)A No. 81/Ahd/2025	2019-20	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]	DCIT, Central Circle-2, Vadodara
9	IT(SS)A No. 82/Ahd/2025	2020-21	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]	DCIT, Central Circle-2, Vadodara
10	ITA No. 1277/Ahd/2025	2014-15	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]
11	ITA No. 1278/Ahd/2025	2021-22	ACIT, Central Circle-2, Vadodara	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]
12	ITA No. 1392/Ahd/2025	2021-22	HK Ispat Pvt. Ltd., Panchmahal, Godhra [PAN : AACCH 0966 K]	DCIT, Central Circle-2, Vadodara

Assessee represented by :	Shri Biren Shah, AR
Revenue represented by:	Shri R.P. Rastogi, CIT (DR)

Date of Hearing	13.01.2026 / 15.01.2026
Date of Pronouncement	18.03.2026

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

IT(SS)A Nos. 76 to 78/Ahd/2025 & ITA No. 1278/Ahd/2025 and IT(SS)A Nos. 80 to 82/Ahd/2025 & ITA No. 1392/Ahd/2025 are the bunch of cross appeals filed by the Revenue and assessee respectively against the orders of the Ld. Commissioner of Income-tax (Appeals)-12, Ahmedabad (hereinafter referred to as the "Ld. CIT(A)" in short) of even dated 28.03.2025 under Section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act' in short) for Assessment Year for AY 2018-19 to 2021-22. IT(SS) Nos. 73 to 75/Ahd/2025 and ITA No. 1277/Ahd/2025 are the appeals filed by the Revenue against the orders of Ld. CIT(A), even dated 28.03.2025, for AYs 2015-16, 2016-17, 2017-18 and 2014-15 respectively. ITA No. 1392/Ahd/2025 is the appeal filed by the assessee against the order dated 28.03.2025 passed by the Ld. CIT(A) for AY 2021-22.

2. Since all these appeals pertain to the same assessee, arise out of the same search action, involve common facts and interconnected issues, they were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. We take-up IT(SS)A No.73/Ahd/2025 for AY 2015-16 as the lead case. In this appeal, the Revenue has raised following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 2,98,14,000/- made by the Assessing Officer under the provisions Section 68 of the Act on account of unsecured loans, despite the fact that the Assessee could not substantiate the same with cogent documentary evidences.

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 2,98,14,000/- made by the Assessing Officer under the provisions Section 68 of the Act on account of unsecured

loans, despite the fact that the Assessee could not substantiate the same with cogent documentary evidences.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 2,98,14,000/- made by the Assessing Officer under the provisions Section 68 of the Act on account of unsecured loans by ignoring the fact that financial profile as well as the inquiry conducted in case of lending entities has clearly established the doubtful creditworthiness of these entities and the assessee failed to establish the creditworthiness of the creditors.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of Rs. 2,98,14,000/- made by the Assessing Officer under the provisions Section 68 of the Act on account of unsecured loans by ignoring the fact that addition has been made after the complete modus operandi of availing bogus loans by assessee was unearthed during the search action.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the contention of the Assessee in form of additional evidences submitted in course of the appellate proceedings and deleting the addition of Rs. 2,98,14,000/- on account of unsecured loan without remanding the matter to the Assessing Officer which in clear violation of the Rule 46A of the Income Tax Rules.

5. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the contention of the Assessee in form of additional evidences submitted in course of the appellate proceedings and deleting the addition of Rs. 5,00,000/- on account of unexplained expenditure without remanding the matter to the Assessing Officer which in clear violation of the Rule 46A of the Income Tax Rules.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 5,00,000/- on account of unexplained expenditure ignoring the fact that out of cheque and cash transaction in excel sheet seized during the search, cheque transactions were recorded in the books of account but cash transactions were out of books transactions."

4. Since the facts and issues involved in the other appeals are identical, our findings and conclusions recorded in IT(SS)A No.73/Ahd/2025 for A.Y. 2015-16 shall apply *mutatis mutandis* to the remaining appeals and the grounds raised therein are disposed of accordingly.

5. The brief facts of the case, as per AY 2015-16, are that the assessee company filed its original return of income under section 139(1) declaring total income at Nil. A search action u/s 132 of the Act was carried out in Kothi Group on 05.11.2020, wherein the assessee was also covered. Pursuant to the search, notice under section 153A was issued and assessment was completed determining total income at Rs.3,03,82,267/-.

5.1 During the course of assessment proceedings, the Assessing Officer observed that the assessee had received unsecured loans aggregating to Rs.2,98,14,000/- from seven parties. The Assessing Officer treated the said amount as unexplained cash credits under section 68 of the Act primarily on the basis of certain affidavits found during search and enquiries conducted by the Investigation Wing. Further, on the basis of entries in a seized Excel file, the Assessing Officer made an addition of Rs.5,00,000/- u/s 69C treating the same as unexplained expenditure.

6. Aggrieved by the order of the Assessing Officer, the assessee filed appeal before the Ld. CIT(A), who, after examining the material on record and submissions of the assessee, deleted both the additions.

7. Aggrieved by the order passed by the Ld. CIT(A), the Revenue has preferred an appeal before the Tribunal. Identical issues are involved in the other assessment years forming part of this batch of appeals. The assessee has also filed cross-appeals before the Tribunal for certain assessment years, challenging the additions sustained/confirmed by the Ld. CIT(A).

**ISSUE NO. 1 – ADDITION U/S 68 ON ACCOUNT OF UNSECURED LOANS
(ALL YEARS BY REVENUE AND FOR AYs 2018-19 to 2020-21 BY ASSESSEE)**

8. The Assessing Officer made addition u/s 68 of the Act holding that the assessee failed to establish the creditworthiness of the lenders and that the loans were part of accommodation entry arrangement unearthed during search. The Ld. CIT(A) examined the details lender-wise and recorded that the assessee had furnished confirmations, PAN, copies of income-tax returns and bank statements of

the lenders. The loans were received through banking channels and no cash deposits were found in the bank accounts of lenders immediately prior to advancement of loans. It was also observed that summons issued u/s 131 were complied with and loans were confirmed. In certain cases, assessments of lenders pursuant to the same search were completed without adverse findings.

8.1 On this issue, the Ld. CIT(A) deleted the impugned addition made by the Assessing Officer for AY 2015-16, by observing as under :-

"6. The ground of appeal no. 3 relates to addition on account of unexplained cash credit on account of unsecured loan u/s 68 of the Act amounting to Rs,2,98,14,000/-.

6.1 The brief facts of the case, as derived from the assessment order, are that during the course of the search, affidavits of certain individuals from the Kothi Group-namely, Shri Irfan Kothi, Shri Firdos Kothi, Shri Ubaidulla Kothi, Shri Hasan Kothi, Shri Suleman Kothi, and Smt. Zainabbibi Kothi-were found and seized in digital form, annexed as A-24 at the premises of the appellant's sister concern, Kothi Steel Ltd. These affidavits, executed in 2016, contain details of the assets and liabilities of the respective individuals as of 31.03.2015 and have been reproduced at the beginning of the assessment order. Based on these affidavits, the Assessing Officer observed that the assets declared therein did not reflect any unsecured loans extended to the appellant, M/s HK Ispat Pvt. Ltd., despite the fact that the appellant had received unsecured loans from these individuals in its books of account for the Assessment Years 2015-16 to 2021-22. The AO had further referred to various enquiries conducted by the Investigation wing during the post-search proceedings regarding unsecured loans obtained by the appellant. These enquiries had been mentioned on pages 21 to 26 of the assessment order which include information gathered by issuing summons u/s 131 of the Act to several lenders, Inspector Reports, analyzing the income profiles and bank statements of the lenders, and other relevant verifications. Based on the affidavits of individuals of the Kothi Group and the findings of the investigation wing, the AO while passing the assessment order concluded that the unsecured loans recorded in the books of the appellant were bogus and nongenuine. Accordingly, addition of Rs. 2,98,14,000/- was made on account of unexplained unsecured loan u/s 68 r.w.s. 115BBE of the Act as under:-

SrNo	Name of Depositor	Amount Rs
1	Abedabibi Mehbub Foda	22,05,000
2	Hafsabibi Suleman Kothi	23,38,000
3	Hasan Suleman Kothi	67,34,000
4	Irfan M Firdos Kothi	1,11,00,000

5	<i>Khaleda Jarda</i>	<i>82 000</i>
6	<i>Ubedulla Kothi</i>	<i>3,00,000</i>
7	<i>Zainab Kothi</i>	<i>70,55,000</i>
	<i>Total</i>	<i>2,98,14,000</i>

6.2 In respect of affidavits relied upon by the AO, the appellant during the course of assessment proceedings has submitted that these affidavits were prepared solely for the purpose of obtaining various banking facilities. They were prepared as per prescribed format given by the bank. The bank requires particulars of immovable properties and other liquid assets being held by the individuals of Kothi Group. The banker will certainly do not require details regarding internal transfer of funds between the appellant and individuals of Kothi Groups. The unsecured loans given to the appellant company were neither in the nature of immovable property nor liquid assets of any individual. Hence its details were not incorporated in alleged affidavit. The appellant also emphasized that no corroborative evidence was discovered during the search to support the addition made by the AO. This indicates that the AO relied entirely on the details mentioned in Form 3CD rather than on any incriminating material found during the search. Consequently, the affidavits cannot be considered incriminating in nature, and any addition or proceedings based on them are unjustifiable. The appellant has stated that various documentary evidences were submitted during post search proceedings as well as at assessment proceedings, however AO has found discrepancies in the details submitted by the appellant. Hence, AO has made addition on account of unexplained cash credits of unsecured loans received by the appellant during the year under consideration by observing that the creditworthiness and genuineness is not substantiated by the appellant. During the appellate stage, the appellant has submitted relevant details as were submitted during the assessment regarding the unsecured loans received by the company to establish the creditworthiness of the depositors and the genuineness of the transactions under:

- (i) Confirmation of lender
- (ii) Relevant Extract from bank statement of appellant highlighting transaction with lenders
- (iii) Relevant Extract from banks statement of lender highlighting transaction
- (iv) Return of income of lender
- (v) Ledger copy of lender in books of appellant
- (vi) Explanation on Source of loan given to appellant
- (vii) Extract from books of accounts of the appellant for subsequent year evidencing repayment of loan

6.3 In addition to this, the appellant has raised following arguments vide submissions filed during the course of appellate proceeding:-

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(i) The appellant submitted relevant documents such as PAN Card, return of income and bank statement highlighting entries of loan given along with entries providing details of source, confirmation, etc pertaining to the lenders and discharged its primary burden of proving the identity, genuineness of transactions and creditworthiness of the lenders.

(ii) The appellant has submitted that the creditworthiness of the parties cannot be doubted merely on the basis that income offered in their return of income is low. Since the return of income cannot be the criteria to ascertain the creditworthiness of a person.

(iii) The appellant has submitted that if the Assessing Officer has concerns regarding the veracity of source of income in hands of lender, he ought to have issued requisite notice as per provision of section 133(6) of the Act, which AO has not made.

(iv) The appellant submitted that there is no clinching evidence with the Assessing officer in order to establish that unsecured loan is unexplained. The appellant contended that during the course of search proceeding not even single evidence was found to prove that cash was paid in lieu of unsecured loan. Further, the appellant stated that neither any cash trail found by the Assessing officer which proves that cash is exchanged in lieu of unsecured loan procured nor any statement has been recorded of any lender party or any other party which can raise doubt on the genuineness of loan procured by the appellant.

(v) The appellant contended that Lenders have sufficient bank balance at their end before lending money to the appellant company, which beyond doubt establish creditworthiness of lenders. The appellant has submitted that loan has not been received from any entry provider but majority loan has been received from group relatives, directors and associates.

(vi) The appellant has contended that the finding of A.O. that the appellant has procured bogus loan is without referring to any single seized material or noting which prove that cash was routed against any cheques received by the appellant. Further, the appellant has emphasized that AO has not brought any evidences on record to prove that the appellant has given cash in lieu of cheques or even during exhaustive search carried out at the appellants premises, no such details were found. The Assessing Officer has merely relied upon report from investigation Wing but when the appellant has submitted sufficient evidences during the course of assessment proceedings, he ought to have made independent enquiries with such depositors rather than relying upon report from investigation department.

(vii) The appellant submitted that the Finance Act 2022, has amended provisions of section 68 of the Act. As per amended provisions, the assessee

needs to explain source to source of sum credited to his bank account, the appellant submitted that such amended provisions not applicable to current year, thus the appellant should not be asked regarding source of source of lender.

(viii) The appellant has also claimed that loans take during the year are repaid in current year or subsequent period hence such loans cannot be subject matter of addition u/s 68 of the Act. The appellant has also relied upon various judicial pronouncements in support of its contentions.

6.4 I have carefully considered the relevant facts on record, observation of the AO as well as the submissions filed by the appellant. The brief facts as emanating from the assessment order are that Assessing Officer has treated loan taken by the appellant from various parties for Rs.2,98,14,000/- as bogus mainly relying upon post-search investigation analysis by investigation Wing, which is summarized in assessment order. During the course of assessment proceedings as well as appellate proceedings the appellant has submitted various evidences which are summarized as under:

<i>Sr. No.</i>	<i>Name of Lender</i>	<i>Amount of addition as per assessment order</i>	<i>Remark</i>
<i>1</i>	<i>Abedabibi Mehbub Foda</i>	<i>22,05,000</i>	<i>A statement giving explanation on source of loan is attached herewith vide Paper Book Page no. 163 Confirmation of account is attached vide Paper Book Page 159 Copy of ITR of Lender is attached vide Paper Bock Page no. 160. Relevant extracts from bank statement of the lender are attached vide paper book Page No. 161 - 162.</i>
<i>2</i>	<i>Hafsabibi Suleman Kothi</i>	<i>23,38,000</i>	<i>A Statement giving explanation on source of loan is attached herewith vide Paper Book Page no. 171 Confirmation of account is attached vide Paper Book Page 164 Copy of ITR of Lender is attached vide Paper Book Page no. 165 Relevant extracts from bank</i>

			<i>statement of the lender are attached vide paper book Page No. 166 - 170.</i>
3	<i>Hasan Suleman Kothi</i>	<i>67,34,000</i>	<i>A statement giving explanation on source of loan is attached herewith vide Paper Book Page no. 183</i> <i>Confirmation of account is attached vide Paper Book Page 172</i> <i>Copy of ITR of Lender is attached vide Paper Book Page no. 173</i> <i>Relevant extracts from bank statement of the lender are attached vide paper book Page No. 174 - 182</i>
4	<i>Irfan M Firdos Kothi</i>	<i>1,11,00,000</i>	<i>A statement giving explanation on source of loan is attached herewith vide Paper Book Page no.202</i> <i>Confirmation of account is attached vide Paper Book Page 184</i> <i>Copy of ITR of Lender is attached vide Paper Book Page no. 185</i> <i>Relevant extracts from bank statement of the lender are attached vide paper book Page No.186 - 201</i>
5	<i>Khaleda Jarda</i>	<i>82,000</i>	<i>A statement giving explanation on source of loan is attached herewith vide Paper Book Page no. 21 0</i> <i>Confirmation of account is attached vide Paper Book Page 203</i> <i>Copy of ITR of Lender is attached vide Paper Book Page no. 204</i> <i>Relevant extracts from bank statement of the lender are attached vide Paper book Page No. 205 - 209</i>
6	<i>Ubedutla Kothi</i>	<i>3,00,000</i>	<i>A statement giving explanation on source of loan is attached herewith vide Paper Book Page no.214</i>

			<p>Confirmation of account is attached vide Paper Book Page 211 Copy of ITR of Lender is attached vide Paper Book Page no,212 Relevant extracts from bank statement of the lender are attached vide Paper book Page No. 213.</p>
7	Zainab Kothi	70,55,000	<p>A statement giving explanation on source of loan is attached herewith vide Paper Book Page no.237 Confirmation of account is attached vide Paper Book Page 215 Copy of ITR of Lender is attached vide Paper Book Page no. 216 Relevant extracts from bank statement of the lender are attached vide Paper book Page No. 217 - 236</p>

6.5 Before dealing with observation of the Assessing Officer and submission filed by the appellant, it is relevant to refer to provision of Section 68 of the Act prevailing in year under consideration as under:

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

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

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23F8) of section 10.

6.6 *It is relevant to refer to following judicial pronouncements wherein above referred section is elaborately discussed....*

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6.9 *With this back ground, it is found that the appellant has submitted copies of confirmations, PAN, return of income, bank statement of lenders as well as bank statement of the appellant wherein loan received from such parties are duly reflected, thus the appellant has submitted necessary details which were the basis of addition made by AO. The-se facts are also acknowledged by Assessing Officer in assessment order. While passing the assessment order, the AO has merely stated that unsecured loan in the books of the appellant across the year are not found to be genuine and are found to be given by individual who do not have creditworthiness to extend such loans. However, the AO has not doubted source of such loan nor stated that any cash was deposited prior to giving loan to the appellant. So far as sources of sources are concerned, it is observed that amendment relating to providing source of source has been introduced in Finance Bill 2022, which will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years. Thus, the provision of section 68 of the Act prevailing at relevant point of time do not require assessee to prove source of source.*

6.10 *It is found that unsecured loan taken by the appellant in year under consideration has been repaid by the appellant in current year or subsequent years. The appellant has submitted necessary evidences to prove that repayment of such loan is through account payee cheque which is not doubted by Assessing officer in entire assessment order. The appellant has relied upon various decisions of Jurisdictional High court as well as the Tribunal in support of such claim which are relevant to the facts of the case. It is relevant to refer to ratios laid down by few Courts as under:*

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6.11 *with the above referred background and judicial pronouncements, loan taken by the appellant from each party and its applicability as per provision of section 68 of the Act is adjudicated in subsequent paras.*

6.12 So far as loan taken from Abedabibi Mehboob Foda for Rs.22,05,000/- is concerned (Sr. No.1), the appellant has submitted sufficient evidences as tabularized herein above (para 6.4) which prove that the appellant has discharged its onus as cast u/s 68 of the Act. [It is observed that depositor is relative of promoter Director and funds received from AK Traders as well as her savings were used for making deposits. The Assessing officer in assessment order has referred to summons issued u/s 131(1A) by investigation department wherein she has admitted that loan was given out of her savings and income earned from Embroidery with regard to observation of Assessing officer that there was credit entry of Rs.22,05,000/- in the bank account of depositor which was used for giving loan to the appellant, it was explained that depositor has received such funds from AK Traders, Group entity of Kothi Group and same was advanced to the appellant, hence, source of source is proved. It is observed that the appellant has repaid Rs.2,00,000/- in current year and Rs.20,00,000 in subsequent assessment year Thus, addition u/s 68 of the Act made by Assessing Officer for Rs.22,05,000/- is deleted.

6.13 So far as loan of Rs.23,38,000/- from Hafasabibbi Suleman Kothi, (Sr. No.2). the appellant has submitted sufficient evidences as tabularized herein above which prove that the appellant has discharged its onus as cast u/s 68 of the Act. It is observed that depositor is the wife of promotor of the appellant company. Before giving loan to the appellant there is no cash deposit in depositor's bank account. The Assessing Officer in assessment order has referred to summons issued u/s. 131(1A) by investigation department wherein she has admitted that loan was given out of her savings and income earned from Embroidery. The issue regarding lower income shown by depositor is adjudicated by various courts as discussed herein above. The appellant has submitted bank statement of depositor from which it is apparent that said depositor has sufficient funds in his bank account. The loan taken during the year is repaid in year under consideration and subsequent year. Considering the facts discussed herein above addition made by Assessing Officer for loan taken for Rs.23,38,000/- is deleted.

6.14 So far as loan from Hasan Sulaiman Kothi for Rs.67,34,000/- (Sr. No.3) is concerned, the appellant has submitted sufficient evidences as tabularised herein above which prove that appellant has discharged its onus as cast u/s 68 of the Act. It is observed that depositor is son of one of the promoters of the Group who has given loan to the appellant as and when required. There is running account of said depositor with the appellant Company. On perusal of such details, it is found that said person has given loan of R\$, 3.76 crores from AY 2015-16 to 2021-22 and the appellant has repaid loan of Rs.3.47 crores during such period. It is also observed that there is no cash deposit in depositor's bank account prior to loan given to the appellant. The Assessing Officer himself in the assessment order has mentioned that said depositor in

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response to summons issued u/s 131(1A) has confirmed that he has received remuneration from the appellant and loan has been given out of such savings. It is found that loan taken during the year has been repaid in subsequent period. Considering the facts discussed herein above addition made by Assessing Officer for loan taken of Rs.67,34.000/- is deleted

6.15 So far as lq2n from Irfan Kothi for Rs.1,11,00,000/- (Sr. No. 4) is concerned the appellant has submitted sufficient evidences as tabularized herein above which prove that the appellant has discharged its onus as cast u/s 68 of the Act. It is observed that depositor is one of the Director-cum-promoter of the appellant Group who has given loan to the appellant as and when required. There is running account of said depositor with the appellant company. on perusal of such details, it is found that said person has given loan of Rs. 3.31 crores from AY 2015-16 to 2021-22 and the appellant has repaid loan of Rs.3.03 crores during such period. It is also observed that there is no cash deposit in depositor's bank account prior to loan given to the appellant. The Assessing officer himself in the assessment order has mentioned that said depositor in response to summons issued u/s 131(1A) has confirmed that he has received remuneration from the appellant and loan has been given out of such savings. It is observed that assessment order u/s 153C of the Act for AY 2015-16 to 2021-22 was passed by same Assessing officer on 28.12.2022 wherein he has not doubted the sources of loan given to the appellant. When the assessment of the depositor has been completed u/s 153C of the Act pursuant to same search as has been carried out in present case, addition u/s 68 of the Act for loan taken from such party does not survive. It is found that loan taken during the year has been repaid in subsequent period. Considering this fact, addition made by Assessing Officer for 1,11,00,000/- is deleted.

6.16 So far as loan taken from Khaleda Jarda for Rs 82,000/- is concerned (Sr No 5), the appellant has submitted sufficient evidences as tabularised herein above which prove that the appellant has discharged its onus as cast u/s 68 of the Act. The Assessing officer in assessment order has referred to summons issued u/s 131(1A) by investigation department wherein she has admitted that loan was given out of her savings and income earned by her. The issue regarding lower income shown by depositor is discussed in preceding paras along with relevant judicial decisions. The appellant has submitted bank statement of depositor from which it is apparent that no cash deposits are made prior to giving loan to the appellant. It is a matter of fact that loan taken during the year has been repaid in subsequent assessment year. Thus, addition u/s 68 of the Act made by Assessing Officer for Rs.82,000/- is deleted.

6.17 So far as loan from Ubaidulla Kothi for Rs.3,00,000/- (Sr No. 6) is concerned, the appellant has submitted sufficient evidences as tabularised herein above which prove that the appellant has discharged its onus as cast u/s

68 of the Act. It is observed that depositor is one of the Director-cum-Promoter of Appellant Group who has given loan to the appellant as and when required. There is running account of said depositor with the appellant company. On perusal of such details, it is found that said person has given loan of Rs. 1.63 crores from AY 2015-16 to 2021-22 and the appellant has repaid loan of Rs.1 .83 crores during such period. It is also observed that there is no cash deposit in depositor's bank account prior to loan given to the appellant. The Assessing Officer himself in the assessment order has mentioned that said depositor in response to summons issued u/s 131(1A) has confirmed that he has received remuneration from the appellant and loan has been given out of such savings. It is observed that assessment order u/s 153C of the Act for AY 2015-16 to 2021-22 was passed by same Assessing Officer on 10-05-2023 wherein he has not doubted the sources of loan given to the appellant. When the assessment of the depositor has been completed u/s 153C of the Act pursuant to same search as has been carried out in present case, addition u/s 68 of the Act for loan taken from such party does not survive. It is found that loan taken during the year has been repaid in subsequent period. Considering this fact, addition made by Assessing Officer for Rs.3,00,000/- is deleted.

6.18 So far as loan of Rs. 70,55,000/- taken from Zainabbibi Kothi (Sr. No 7 of table) is concerned the AO has observed that the appellant has submitted evidences as required u/s 68 of the Act. It is observed that depositor is wife of one of the Director and shareholder. It is observed that in year under consideration the appellant has taken loan of Rs.70,55,000/- only which has already been repaid in subsequent assessment year. So far as observation of Assessing Officer that income shown in return of income by such depositor does not match with transactions carried out by her, it is observed that she has shown taxable income of Rs.50.83 lakhs from AY 2015-16 to AY 2020-21 and there is frequent debit and credit transactions of loan with the appellant (running account), which clearly justify genuineness of the loan taken by the appellant. The Assessing officer himself in his assessment order has stated that in response to summons issued u/s 131(11A) by Investigation Wing, depositor has stated that she has given unsecured loan to the appellant out of her savings and income shown in return of income. As stated supra, the appellant is not required to prove source of source. Considering this fact, addition made by AO for Rs.70,55,000/- is deleted.

6.19 In view of above discussion and relying upon the decisions referred supra, addition made by Assessing officer for Rs.2,98,14,000/- is deleted as discussed herein above."

8.2 Heard the arguments of both the parties and perused the material available on record. At the outset, it is relevant to understand the business of the assessee and

the relevance of the evidence submitted during the assessment. It is a well-settled legal proposition that the initial onus lies on the assessee to establish the identity of the creditor, the creditworthiness of the creditor, and the genuineness of the transaction. In the case before us, we find that the assessee has undisputedly filed all the relevant documents before the Assessing Officer. Specifically, we refer to the assessee's submission in response to show cause notice in the assessment proceeding which is reproduced at para 5.1 of the order, wherein it was stated:

".....(iii) Your Honour had called for documents pertaining to identity, genuineness and creditworthiness of the parties from whom the said loans are taken or accepted during the year in response to which assessee has already submitted tabulated summary of name, address, PAN of each party, details of transactions during the year, mode of receipt, details of source, confirmations, ledger accounts, IT Returns, Bank Statements, PAN Card, and various supporting evidences..

(iv) A perusal of the above table shows that all the parties are genuine and assessed to income tax and have confirmed their transactions with the assessee company. It further shows that all the transactions are through bank only and therefore legitimate. Further the sources of the loans from the said parties have been explained by way of supporting documents such as bank statements, IT Returns, Computation, and ledger accounts. Further all the above loans were taken for business purpose only as is clearly evident from the bank statements of the assessee company submitted.

.....
.....

(xi) Here, in the given case of the assessee the transactions are confirmed by the lenders themselves by way of confirmations. Their PAN, bank statements and copy of I.T. Returns has also been submitted to prove their identity and creditworthiness."

In our opinion, the assessee has successfully discharged the primary onus cast upon it by Section 68 by submitting loan confirmations, bank statements, and PAN data. The assessee has provided sufficient evidences to discharge its onus as cast u/s 68 of the Act. Once this initial burden is met, the onus shifts to the Revenue to disprove the evidence provided. The Ld. CIT(A) has given finding of each lender based upon evidences which are already on record of Assessing Officer, hence contention of revenue that Ld. CIT(A) has admitted additional evidences without Rule 46A is incorrect.

8.3 We find that the action of the Assessing Officer in making the addition is based on assumption without bringing any corroborative evidence to substantiate the allegation that the loans were bogus. The Assessing Officer has heavily relied upon the Investigation report obtained during the course of search. However, based upon the evidences submitted by the assessee, the Assessing Officer has not made any independent inquiries, such as issuing notices under Section 133(6) or summons under Section 131, to verify the contents of the confirmations. It is beyond our comprehension to believe that the Revenue can treat a transaction as "bogus" solely on the basis of a preliminary report from wing when the assessee has produced a bank-verified trail of funds. As held by the Hon'ble Delhi High Court in PCIT vs. Adamine Constructions (P.) Ltd (supra), the Assessing Officer cannot proceed based only on a report received without making necessary further enquiries into the bank accounts or other particulars available. The Revenue has placed sole reliance on digital affidavits found during the search to justify the addition. We find that these affidavits, prepared for banking purposes and following a specific format for liquid assets and immovable property, cannot be termed as "incriminating material" regarding the existence of inter-family loans. The loans were already recorded in the regular books of account and subject to audit long before the search. Furthermore, it is a matter of record that for directors like Irfan Kothi and Ubedulla Kothi, the same Assessing Officer accepted the sources of their funds in their individual assessments under Section 153C of the Act. It is inherently contradictory for the Revenue to accept the source in the hands of the lender while calling the transaction bogus in the hands of the borrower. Lenders like Hafsabibi Suleman Kothi and Abedabibi Mehboob Foda are close relatives of the promoters. The fact that they may show lower annual income in their tax returns does not preclude them from having accumulated capital or savings from various sources or from group entities like AK Traders. The bank statements of these lenders showed that the funds were available at the time of the transfer.

8.4 It is relevant to mention that the assessee has furnished evidence showing that the majority of these loans were repaid through account payee cheques, either

in the year under consideration or in subsequent years. As held by the Hon'ble Gujarat High Court in the case of CIT vs. Ayachi Chandrashekhar Narsangji [42 taxmann.com 251], when the Department accepts the repayment of a loan in a subsequent year, the original loan cannot be treated as an unexplained cash credit. The logic is sound, an assessee would not "repay" its own undisclosed income to a family member or director through a recorded banking channel, as it would create a permanent trail of the very funds it sought to hide. The loan taken by the assessee are running loan account and Assessing Officer has made addition for credits only ignoring significant payment in current year as well as subsequent years. The Ld. CIT(A) has correctly reproduced chart of repayment of loan in the appellate order. Similarly, in PCIT v. Ambe Tradecorp Pvt. Ltd. (145 taxmann.com 27), the Gujarat High Court held that where the assessee furnished necessary material to prove identity of the lenders and the loan was repaid in the subsequent year, even the ingredients of creditworthiness and genuineness were deemed satisfied, and therefore, no addition under section 68 could be made. Again, in PCIT v. Ojas Tarmake Pvt. Ltd. (156 taxmann.com 75), it was held that where the unsecured loan was repaid within the same year through banking channels, the addition under section 68 was wholly unwarranted. The Surat Tribunal in Rajhans Construction Pvt. Ltd. v. ACIT (140 taxmann.com 370) also held that repayment of loan within a short span of time, along with interest, goes to the root of genuineness and the Assessing Officer is not justified in making addition under section 68 of the Act.

8.5 We have meticulously reviewed the analysis carried out by the Ld. CIT(A). The Ld. CIT(A) has elaborately discussed subject matter and critically analysed section 68 of the Act and relevant factors. The Ld. CIT(A) has dealt with addition made for each lender separately and found that loans have been repaid in current year or subsequent years wherein Assessing Officer has not doubted such repayment. The Ld. CIT(A) observed that for Irfan Kothi and Hasan Kothi, the assessments under Section 153C were completed by the same Assessing Officer without any adverse findings regarding their capacity to lend. This is a critical

factual finding that effectively estops the Revenue from taking a contrary stand in the assessee's case. The Ld. CIT(A) correctly highlighted that the AO's reliance on "secondary" evidence (Inspector reports on residence and subjective interpretations of returns) cannot override primary evidence (bank transfers, PAN, and confirmations) unless the primary evidence is proven to be forged or fraudulent. The Ld. CIT(A) also correctly noted that the 2022 amendment to Section 68 regarding "source of source" is prospective and does not apply to the assessment year under consideration. Considering such facts, there is no reason to deviate from the detailed finding given by Ld. CIT(A). Reliance is being placed on the following decisions:-

- i) Decision of ITAT Ahmedabad in case of M/S. HIREN SILK MILLS VERSUS THE INCOME TAX OFFICER, WARD-1 (2) (2) SURAT. I.T.A No.2271/AHD/2016.

"12. After appreciating the facts and hearing the parties at length, we find that in all the cases, assessee had already submitted before the Id. AO, PAN cards of all the depositors and even notarized copy of proof of identities have been submitted. Assessee had also submitted acknowledgement of Return of Income of all the depositors and bank passbook which reflects the credit worthiness of the depositors. Since all the confirmations from the depositors have been submitted, so there was no conclusion of any afterthought or make believe transactions. All the transactions are duly recorded in the regular books of accounts. Therefore, genuineness of those cannot be doubted. Even otherwise, Hon'ble jurisdictional Gujarat High Court in the case of DCIT Vs. Rahini Builders along with PAN and confirmation, then in that eventuality no additions are sustainable. Even in the case of CIT Vs. Ranchhold Jivabhai Nakhava (supra) it has categorically been held Hon'ble jurisdictional Gujarat High Court that when once the initial onus has already been discharged by the assessee, then in that eventuality it was the duty of the Id.AO to ascertain from the Id.AO's of those lenders, whether in the respective returns they have shown existence of such amount of money or not. The Id.AO in the present case has not carried out any such exercise as has been laid down by the Hon'ble Gujarat High Court in the case of CIT vs. Ranchhod Jivabhai Nakhava(supra).

Thus, the additions made by the Id.AO in the case of assessee are against the principles laid down u/s.68 of the Act. Therefore, considering the totality of the facts and circumstances of the case, we are of the view that no addition could have been made by the Id.AO as in the present case the assessee has already discharged his initial onus. Therefore, the unsecured loan received by

the assessee cannot be termed as unexplained. Thus, no addition on that account is sustainable. Since we have deleted the addition on account of unexplained Unsecured Loans, therefore, as a consequence, we also delete the additions made on account of interest paid on the above loan."

- ii) Decision of ITAT Ahmedabad in case of SHRI JIVRAJ V. DESAI PROP. M/S MAHADEV ENTERPRISE VERSUS THE DCIT, CENTRAL CIRCLE-2 (1), AHMEDABAD IT(SS)A. No: 102/AHD/2017.

HELD THAT - The provision of section 68 of the Act fastens the liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the lenders. These liabilities on the assessee were imposed to justify the cash credit entries under section 68 in the case of CIT Vs. Precision finance (p) Ltd (1993 (6) TMI 17-CALCUTTA HIGH COURT)

Admittedly the assessee has discharged its onus by furnishing the necessary details such as a copy of ledgers, confirmation, bank details, etc. in support of identity of the parties.

There is also no doubt that the transaction for the loan received from M/s Master Developers was carried out through the banking channel as evident from the submission of the assessee before the Id. CIT-A-we find the assessee has discharged his onus regarding the identity and genuineness of the transactions. Thus, the ledger copies filed by the assessee without signature cannot be the basis of treating the Impugned transaction of loan as unexplained cash credit under section 68 of the Act after ignoring the bank statement and confirmation filed by the assessee. Thus there is no doubt that the transaction of the loan was carried out through the banking channel Therefore there cannot be any doubt about the genuineness of the transactions.

Coming to the 3rd condition, e. creditworthiness of the parties, regarding this it is also pertinent to note that M/s Master Developers did not file the income tax returns for the assessment years 2008-09 to AY 2010-11 under section 139 (1) of the Act. But M/s Master Developers has filed the returns of income in response to the notice issued under section 148 of the Act, declaring the income which has been elaborated in the preceding paragraph. Indeed, the returns were filed by the M/s Master Developers subsequent to the assessment order dated 30-03-2015 declaring the income which has been elaborated in the preceding paragraph. As such the income declared by the M/s Master Developers in its income tax returns were duly accepted by the Revenue. Though, these returns were filed by MD subsequent to the assessment in the hands of the assessee, but these returns in our considered view are crucial for

determining the net worth of MD. These returns were filed before the learned CIT (A) and no doubt was raised on these returns.

Assessee in respect of source of fund in the hands of the lender i.e. MD has furnished the sufficient documentary pieces of evidence such as bank statement, ledger copy of MD and Shri Rajnibhai Desai in the books of each other including the details of the income of MD which has been elaborated in the preceding paragraph. Therefore, in our considered view, the assessee has discharged its onus imposed under section 68 of the Act.

The assessee in the present case has duly explained the source of money received in its hands. The assessee is not answerable to justify the source of the source of the money received by it.

Assessee has furnished the basic details about the loan taken from MD such as, confirmation, bank statement, source of money received by MD Le. Rajni bhai Desai but the AO has not made any verification from such parties. As such, the case of the entire group was centralized and all the relevant documents of MD and Rajni bhai Desai were available before the AO. But the AO has not made any reference to such documents and arrived at the conclusion that the impugned amount represents unexplained cash credit under section 68 of the Act.

Assessee before the learned CIT (A) has furnished the copies of the income tax return filed by MD but the learned CIT (A) without considering the same insisted for financial statements of MD. If the assessee has not furnished the details of MD, then the CIT (A) could have easily collected the same from the office of the income tax Department. But he has not done so.

Once the assessee has discharged primary onus by proving the identity of lender, genuineness of transaction and capacity to advance the loan then it is the burden of the revenue to prove it otherwise.

Creditworthiness of MD cannot be doubted merely on the ground that the assessee failed to furnish the financial statement. As such, MD has declared the income in its income tax return as evident from the preceding paragraph which is running into crores of rupees and there was no defect of whatsoever was pointed out by the authorities below. - Decided in favour of assessee.

iii) CIT vs. Ranchhod Jivabhai Nakhava, 208 Taxman 116 (Guj.)

The assessee is an individual and is engaged in the business of trading of iron scrap. In the Accounting Year in question, the assessee claimed to have taken the following loans:

- 21-

- (1) Smt. Manjula J. Shah Rs.4 lac
- (2) Shri Mital J. Shah Rs.3 lac
- (3) Shri Vaibhav J. Shah Rs.8 lac

During the course of proceeding, the assessee had produced confirmation letters from these depositors and the photocopy of their PAN card. It further appears that the assessee had received loans by Accounts Payee Cheque from these three persons. The Assessing Officer, without verifying whether those three creditors in their respective income tax return had shown those transactions, decided to examine those three persons under Section 131 of the Income Tax Act. Those persons stated that before receiving the cheques, the assessee had given cash to them which was deposited in the account of M/s. Vaibhav Enterprises on different dates, and against that, they had received cheque and out of that balance they had deposited the money with the assessee.

The assessee was given opportunity to cross-examine two of the lenders. In the cross-examination, both the lenders had confirmed giving loan to the assessee, and in response to the question of the assessee about the source of the money, it was stated that they had received cash from the assessee which they had deposited in M/s.Vaibhav Enterprises and from that account cheques were issued in favour of the lenders, and in turn, the lenders issued cheques and deposited with the assessee. They, however, confirmed that signature and address on the confirmation letters were theirs. They further stated that they did not know the assessee but the father of Mital J.Shah & Vaibhav J.Shah and the husband of Manjula Shah knows the assessee.

The Assessing Officer issued a show-cause notice, which was replied by the assessee stating that the assessee had produced confirmation letters of the lenders who are assessed to tax and had given their passbooks and it was also stated that they had received loan from M/s.Vaibhav Enterprises and the source of money deposited by them is a loan from M/s.Vaibhav Enterprises. He further stated that as all those persons, the lenders as well as the persons who had deposited the money in his bank account and issued cheques in favour of the assessee are all assessed to income tax, therefore, the assessee cannot be asked to prove the source of money.

The Assessing Officer, however, on consideration of the above facts, added Rs.15 lac in the hand of the assessee under Section 68 of the Act.

Being dissatisfied, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) and the said appellate authority, on consideration of the above materials, came to the conclusion that all the three lenders and other entity, namely, M/s.Vaibhav Enterprises, of which Jayendra Kanji Shah was the proprietor, are assessed to income tax regularly and the Assessing

Officer did not examine the books of account of M/s.Vaibhav Enterprises. The appellate authority further came to the conclusion that suddenly the lenders made confessional statement to the Assessing Officer that the appellant had given them money and the same were deposited in the bank account; however, later on, they had stated that the money was given by some other person whom they did not know. According to the Commissioner of Income Tax (Appeals), the statement of the lenders were full of inconsistency and incongruity and thus it was not a fit case of believing those persons.

The Commissioner of Income Tax (Appeals), thus, deleted the said amount.

Being dissatisfied, the Revenue preferred appeal before the Commissioner of Income Tax (Appeals) and by the order impugned, the Tribunal has affirmed the order passed by the Commissioner of Income Tax (Appeals).

Being dissatisfied, the Revenue has come up before us.

After hearing Mrs. Bhatt, the learned advocate appearing on behalf of the appellant and after going through the materials on record, we are unable to accept her contention that in this case the Revenue has discharged its onus and it was for the assessee to further prove the genuineness and creditworthiness of the creditors.

In our view, once the assessee has established that he has taken money by way of accounts payee cheques from the lenders who are all income tax assesseees whose PAN have been disclosed, the initial burden under Section 68 of the Act was discharged. It further appears that the assessee had also produced confirmation letters given by those lenders.

Once the Assessing Officer gets hold of the PAN of the lenders, it was his duty to ascertain from the Assessing Officer of those lenders, whether in their respective return they had shown existence of such amount of money and had further shown that those amount of money had been lent to the assessee. If before verifying of such fact from the Assessing Officer of the lenders of the assessee, the Assessing Officer decides to examine the lenders and asks the assessee to further prove the genuineness and creditworthiness of the transaction, in our opinion, the Assessing Officer did not follow the principle laid down under Section 68 of the Income Tax Act.

If on verification, it was found that those lenders did not disclose in their income tax return the transaction or that they had not disclosed the aforesaid amount, the Assessing Officer could call for further explanation from the assessee to prove the genuineness of the transaction or creditworthiness of the same. However, without verifying such fact from the income tax return of the creditors, the action taken by the Assessing Officer in examining the

lenders of the assessee was a wrong approach. Moreover, we find that those lenders have made inconsistent statement as pointed out by the Commissioner of Income Tax (Appeals) and in such circumstances, we find that both the Commissioner of Income Tax (Appeals) and the Tribunal were justified in setting aside the deletion as the Assessing Officer, without taking step for verification of the Income Tax Return of the creditors, took unnecessary step of further examining those creditors. If the Assessing Officers of those creditors are satisfied with the explanation given by the creditors as regards those transactions, the Assessing Officer in question has no justification to disbelieve the transactions reflected in the account of the creditors. In other words, the Assessing Officer had no authority to dispute the correctness of assessments of the creditors of the assessee when a co-ordinate Assessing Officer is satisfied with the transaction.

We, thus, find that in the case before us the Tribunal below rightly set-aside the deletion made by the Assessing Officer, based on erroneous approach by wrongly shifting the burden again upon the assessee without verifying the Income Tax return of the creditors. The position, however, would have been different if those creditors were not income tax assesseees or if they had not disclosed those transactions in their income tax returns or if such returns were not accepted by their Assessing Officers.

No substantial question of law is, thus, involved. We find no merit in this Appeal and the same is dismissed."

- (iv) Hon'ble Gujarat High Court in case of Principal Commissioner of Income Tax Vs. RSA DIGI Prints vide Tax Appeal No: 503 of 2017 dated 06/09/2017

"3. From the materials on record, Commissioner of Income Tax (Appeals) and Tribunal both had come to the conclusion that the assessee had produced the copy of PAN card, address confirmation, copy of the return and the bank statements of the payee for the present assessment year as well as in the earlier assessment year where such an issue had cropped up. Essentially, Commissioner of Income Tax (Appeals) as well as the Tribunal held that the assessee established the genuineness of transaction, creditworthiness of payee and the source of the payment. The issue hinges on appreciation of material on record. No question of law arises. Tax Appeal is dismissed."

- (v) Decision of Hon'ble Gujarat High Court in case of Dharmadev Finance in 43 taxmann.com 395

"Section 68 of the Income-tax Act, 1961 Cash credits (Burden of proof) Various additions were made to assessee's income on account of cash credits - It was found that in respect of said credits assessee had filed PAN of creditors, their confirmation and their bank statement which established their

creditworthiness Moreover, transactions were made through banking channels - Whether any addition could not be made to assessee's income under section 68-Held, yes [Para 5] [In favour of assessee]"

- (vi) Decision of Hon'ble Gujarat High Court in case of Pratapbhai Virjibhai Patel Vs. Income Tax Officer [2014] 45 taxmann.com 151 wherein it was held as under.

"Section 68 of the Income-tax Act, 1961 Cash credit (Loans) -Assessing Officer treated a part of loan taken by assessee, taken from agriculturists, as non-genuine and made addition under section 68 However, assessee produced copy of 7/12 extract from land register maintained by land revenue, loan confirmation letter, copy of DD purchased by creditors, copy of voter ID and their address to prove genuineness of loans It was also submitted that as all creditors were agriculturists, so it was difficult to maintain books of account by them - Further, repayment of impugned loan had been made by assessee Whether since assessee reasonably provided identity of creditors, capacity of creditors as well as genuineness of loan, addition made by Assessing Officer was to be deleted - Held, yes [Para 5] [In favour of assessee]"

- (vii) Decision of Hon'ble Gujarat High Court in case of CIT Vs. Apex Therm Packaging (P.) Ltd [2014] 42 taxmann.com 473 (Gujarat)

"Section 68 of the Income-tax Act, 1961- Cash credit (Unsecured loan) - Assessment year 2007-08 - Whether when full particulars, inclusive of confirmation with name, address and PAN Number, copy of income tax returns, balance sheet, profit and loss account and computation of total income in respect of all creditors/lenders were furnished and when it had been found that loans were furnished through cheques and loan account were duly reflected in balance sheet, Assessing Officer was not justified in making addition - Held, yes [Para 6] [In favour of assessee]"

8.6 So far as observation of Assessing Officer that lenders have shown meagre income in their returns of income; it is observed that such the appellant has submitted relevant explanation. Merely because such lenders have shown meagre income, loan received by the appellant cannot be held to be non-genuine. Hon'ble Jurisdictional Ahmedabad ITAT in the case of D.J. Stock Broking Pvt. Ltd. Vs ITO in ITA NO 313/Ahd/2017 dated 03/03/2020 has held as under:

".....The document was submitted by the assessee in order to demonstrate that it has received money through account payee cheques. PAN details were submitted in order to demonstrate that this assessee is assessable to tax, and it proves its identity. That concern, responded to the notice received under section 133(6) of the Act. The AO, thereafter did not conduct any inquiry. We

deem it appropriate to mention that investigation wing of the department is able to unearth details of various accommodation entry providers mainly Kolkatta based companies, but the AO nowhere observed that these concerns were ever engaged in providing accommodation entries, and this fact came to notice of the Department through its investigation wing. Thus, if he has any doubt, he should have called for further information from the share applicants. He should have asked the assessee to produce directors of share applicant companies or Shri Anil Kumar who is brother of one of the directors. The AO could have issued summons under section 131 of the Income Tax Act. But instead of conducting any inquiry, he just draw certain inference for disbelieving the documents produced by the assessee or received by him in response to his notice under section 133(6) of the Act. it is also pertinent to observe that quantum of income mentioned in the return of income cannot be criteria to judge creditworthiness of share applicants. In the case of M/s.Ami Industries (India) P.Ltd. (supra), Hon'ble Bombay High Court has also considered this aspect. In that case also, existence of share applicants was not in doubt. Only doubt raised by the AO was that they have declared very meager income in their returns of income. Therefore, he doubted their creditworthiness. This conclusion did not meet approval of the Id.CIT(A), ITAT or the Hon'ble High Court. Therefore, in view of the above discussion, we are of the view that since the AO failed to conduct inquiry even on the second remand report called for by the Id. CIT(A), his conclusion are without any supporting evidence. In view of the above discussion, we allow this ground of appeal, and delete the impugned addition."

It is also relevant to refer to following decisions wherein courts have held that only because depositor has shown lower income, addition u/s 68 cannot be made.

(i) The Hon'ble Delhi High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA. No.71 of 2015 dated 12th August 2015

"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 YOUR GOODSELVES 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.

(i) Decision of Delhi ITAT in the case of the ACIT, CENTRAL CIRCLE-13, NEW DELHI v/s M/S. SUPREME PLACEMENT SERVICES (P) LTD., NEW DELHI dated 17th March 2021 in ITA No 5259/Del./2013

"6.15. The Ld. D.R. heavily relied upon Judgment of the Hon'ble Supreme Court in the case of PCIT vs., NRA Iron & Steel (P.) Ltd., (supra). In this

case the Investors were being non-existing and have not having capacity to invest funds and that detailed enquiry conducted by the A.O. support his findings that Investors were non-existing and share capital was bogus. However, in the case of assessee A.O. did not doubt the identity of the Investors. The A.O. did not doubt the source of the Investor companies of Kolkata and mentioned their source in the assessment order itself and in respect of Mumbai Investors, A.O. did not refer to sufficiency of funds with them as per their annual reports which we have mentioned in this Order now. In the case of assessee A.O. did not make any enquiry, therefore, the facts of the case of assessee are clearly distinguishable from the Judgment in the case of PCIT vs., NRA Iron & Steel (P.) Ltd., (supra) relied upon by the Ld. D.R.

6.16. The A.O. merely doubted the financial capacity of the Investors because they have reported low income in their return of income. This cannot be the sole basis to doubt the explanation of assessee. It may be suspicion of the A.O. only without bringing any evidence on record. Rather the documentary evidences produced on record clearly support the explanation of assessee. The Hon'ble Bombay High Court in the case of Ami Industries (India) Pvt. Ltd., (supra) has distinguished the Judgment of NRA Iron & Steel (P.) Ltd., (supra) as reproduced above. It may also be noted here that the case of M/s. Adamine Construction Pvt., Ltd., (supra) is connected with the case of Bhushan Steel Group of cases as is also attributed in the case of assessee and on identical facts the Tribunal has dismissed the appeal of Revenue and the Order of the Tribunal has been confirmed by the Hon'ble Delhi High Court by dismissing the appeal of the Revenue and the Judgment of the Hon'ble Delhi High Court have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Revenue. Therefore, the issue is covered in favour of the assessee by the Judgment of Hon'ble Delhi High Court in the case of M/s. Adamine Construction Pvt., Ltd., (supra). Considering the totality of the facts and circumstances of the case in the light of documentary evidences on record and the decisions referred to above, we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the addition. Accordingly, the appeal of the Department is dismissed.

7. In the result, appeal of the Department dismissed."

8.7 While passing the assessment order, the Assessing Officer has heavily relied upon Investigation report obtained during the course of search. It is observed that during the course of assessment proceedings, the appellant has submitted evidences in support of loan taken by it which is summarized herein above (para 6.4). However, based upon such evidences, the Assessing Officer has not made any

independent inquiries to come to conclusion that the appellant has taken bogus loan from parties mentioned in assessment order. The Hon'ble Delhi High Court in the case of PCIT vs Adamine Constructions (P.) Ltd. [2018] 99 taxmann.com 44 wherein it was held as under:

"2. We notice that the search in the premises of the Bhushan Steel Group, had led to survey in the premises of various other assessees including M/s Adamine Construction Pvt. Ltd., and in the end the additions made in that case too were deleted. The deletion again concurrently by the lower appellate authorities was upheld by this Court recently in respect of the same assessee for an earlier assessment. Here too, the Court has considered the materials. What is evident is that the AO went by only the report received and did not make the necessary further enquiries - such as into the bank accounts or other particulars available with him but rather received the entire findings on the report, which cannot be considered as primary material. The assessee had discharged the onus initially cast upon it by providing the basic details which were not suitably enquired into by the AO.

3. No question of law arises; the appeal is consequently dismissed."

The SLP filed by the Department was dismissed by the Hon'ble Supreme Court in [2018] 99 taxmann.com 45. Hon'ble ITAT Ahmedabad in case of Deem Roll Tech Ltd vs. DCIT [2018] 92 taxmann.com 72:

"1. Section 68 of the Income-tax Act, 1961 Cash credits (Share application money) - Assessment year 2011-12 - During relevant year, assessee received certain amount as share capital - Assessing Officer issued notice to assessee directing him to furnish identity, confirmation, creditworthiness of share applicants In response to said notice, assessee filed confirmation from applicants, bank statements, their PANs and, copies of their returns - Assessing Officer thereafter directed assessee to produce applicants before him - Since assessee failed to produce those applicants, Assessing Officer made addition of share capital to assessee's income under section 68-Whether on facts, by submitting confirmation, bank statements, copies of returns, PAN data, assessee had discharged primary onus cast upon it by section 68 and thereupon, it was Assessing Officer who had to carry out investigation and demonstrate that those materials were not sufficient for discharging onus cast upon assessee - Held, yes - Whether since, Assessing Officer failed to carry out any inquiry for falsifying evidence submitted by assessee in support of its explanation, impugned addition made by him was to be set aside -Held, yes [Para 11][In favour of assessee]"

Hon'ble High Court of Bombay in the case of CIT v. Orchid Industries Pvt. Ltd, [I.T.A No. 1433 of 2014], [2017] 88 taxmann.com 502 wherein it was categorical stated that merely the parties were not traceable and did not appear before the AO in response to summons, it does not mean that the transaction can be treated as bogus if the documentation shows the genuineness of the transaction. Only because those persons had not appeared before the Assessing Officer would not negate the case of the Assessee. It is relevant to refer to decision of Hon'ble Ahmedabad ITAT in the case Sunit Choksi in I.T.(SS)A No. 37 to 43/Ahd/2021 A.Ys. 2012-13 to 2018-19 dated 08/08/2023 as under:

"13.7. On careful consideration of the relevant facts on records, the CIT[A] observed that the AO has made addition of unsecured loan taken from four parties u/s.68 of the Act mainly relying upon investigation report (Kolkata based parties) of ADIT and considering loan taken through Mr. Barun More as accommodative loan. Before dealing with contention of the AO, it is observed that though AO has observed that unsecured loan from Kolkata based parties are non-genuine for the reason that such parties are not found at their addresses in post-search proceedings, it is observed that AO has also made addition of Rs.1,59,42,626 being loan received from Indian Infotech and Software Limited which is Mumbai based party. During the course of assessment proceedings, the assessee has submitted confirmation of such parties, PAN copies, Return of Income, Annual Accounts and Bank statements of depositors to the AO and from such details, it is apparent that all the unsecured loans were received through account payee cheques and AO has not found that no cash has been deposited prior to issuance of cheque to the assessee or assessee's unaccounted money is introduced in the bank accounts of the Creditors. The assessee has also made interest payment to such creditors after deducting TDS.

13.7. It is further observed that during the course of search, no incriminating evidences were found which can prove that the assessee has made cash payment against loan received from such parties or no statement of such creditors are recorded by AO which can prove that such parties are bogus or providing accommodating entries. It is settled position of law that addition cannot be made merely on presumption and when the Assessee has discharged his initial onus casted under section 68 of the Act, the AO ought to have brought evidences to disprove such evidences. In absence of any corroborative evidence brought on record by the AO, addition made by him under Section 68 of the Act cannot be upheld.....

13.8. The Ld. CIT[A] further held that the AO in his show cause notice as well as in assessment order has referred inquiry report pertaining to

loan taken from Anamika Dealmark Pvt. Ltd. from whom assessee has taken loan for Rs.80,00,000 in current year and in such report, it was stated that such party was not found at address 3rd Floor, 28, Baroda Charan Bhattacharjee Lane, West Bengal. It is observed that during the course of assessment proceedings, the assessee has submitted copy of Return of Income of such party (AO has also received it from departmental record as mentioned in assessment order) and on perusal of such details, it is found that communication address was mentioned as Chamber No.121, Asha Chambers, 68 Bentick Street, Kolkatta and it is apparent from assessment order that no such inquiry was made by the AO at such address. The assessee has submitted legal notice issued by the creditors which contained address of the above creditors and on such address, no inquiry was made by the AO. Even the creditors are Private Limited Companies and all parties are regularly filing their ROC Return and from website of ROC, the AO could have easily obtained addresses of the company and their directors, and would have made further inquiries. But the AO has relied upon investigation report during post search proceedings, however he has independently not made any inquiry during assessment proceedings or issued notice u/s.133(6) of the Act or summons u/s 131 of the Act even though assessee has submitted complete details of loan taken from such parties. In present Assessment Year 2015-16, the assessee has taken loan of Rs.1,59,42,626/- from M/s. Indian Infotech and Software Ltd and such depositor has communication address is of Mumbai and not Kolkatta and even during post search inquiry, no inquiry was made at Mumbai/Jaipur/Delhi based companies hence investigation report of Kolkatta Based company cannot be applied on Mumbai- based companies. It is relevant to consider decision of Hon'ble Gujarat High Court in case of PCIT Vs. D & H Enterprises [2016] 72 taxmann.com 91 wherein it is held as under:

"Section 68, read with section 131. of the Income-tax Act, 1961-Cash credit (Advance) - Assessment years 2006-07 and 2007-08-In scrutiny, it was revealed that assessee had shown advances from 84 persons towards investment in land Assessee submitted that these were received as advance booking amounts through cheques in ordinary course of business - Assessee had filed confirmations of all persons, copies of their bank statements, income tax returns, etc.

- Assessing Officers was not satisfied and made additions of certain amounts for both assessment years Assessing Officer could have easily verified these sums from details available, merely Whether since because summons could not be served upon some parties or they did not appear before him, transactions could not be held to be non-genuine-Held, yes [Para 7] [In favour of assessee]."

13.9. Hon'ble Delhi High Court in the case of PCIT vs Adamine Constructions (P.) Ltd. [2018] 99 taxmann.com 44 held as under:

.....

13.10. In other words, on one hand cases where the AO has conducted an inquiry and disproved whatever submitted by the assessee and in other hand, the AO simply assumed existence of such facts. All Hon'ble High Courts are unanimous in their approach that where the AO remained silent, did not conduct any inquiry, and merely on the basis of certain details submitted by the assessee draw an inference in such cases, he cannot simply doubt the stand of the assessee.

.....

Ratio of above referred decisions are squarely applicable on present cases more particularly in case of assessee as exhaustive search was carried out and no evidences were found which prove that assessee has obtained accommodative loan from the above persons and cash is exchanged against such loans.

.....

15.3. We have given our thoughtful consideration and perused the materials available on record. The addition made by the Assessing Officer invoking Section 68 does not hold it good, since the assessee has filed the confirmation from the lenders, Bank statements, Income Tax Return of the creditors, Financial Statements, etc. Thus the assessee has discharged its initial onus namely identity of the creditors, genuineness of the transactions and creditworthiness of the creditors. Further the Assessing Officer has disbelieved the same, but has not considered the repayment of loans by the assessee in the very same assessment year and subsequent assessment years. Thus the credit worthiness of the lenders, genuineness of the transactions are proved. Therefore the I addition made by the Assessing Officer u/s. 68 of the Act is not sustainable in law."

8.8 With this back ground, it is found that the appellant has submitted copies of confirmations, PAN, return of income, bank statement of lenders as well as bank statement of the appellant wherein loan received from such parties are duly reflected, thus the appellant has submitted necessary details which were the basis of addition made by AO. These facts are also acknowledged by Assessing Officer in assessment order. While passing the assessment order, the AO has merely stated

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that unsecured loan in the books of the appellant across the year are not found to be genuine and are found to be given by individual who do not have creditworthiness to extend such loans. However, the AO has not doubted source of such loan nor stated that any cash was deposited prior to giving loan to the appellant. So far as sources of sources are concerned, it is observed that amendment relating to providing source of source has been introduced in Finance Bill 2022, which will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years. Thus, the provision of Section 68 of the Act prevailing at relevant point of time do not require assessee to prove source of source.

8.9 It is found that unsecured loan taken by the appellant in year under consideration has been repaid by the appellant in current year or subsequent years. The appellant has submitted necessary evidences to prove that repayment of such loan is through account payee cheque which is not doubted by Assessing Officer in entire assessment order. The appellant has relied upon various decisions of Jurisdictional High Court as well as the Tribunal in support of such claim which are relevant to the facts of the case. It is relevant to refer to ratios laid down by few Courts as under.

(i) Decision of High Court of Gujarat in the case of Principal Commissioner of Income-tax v/s. Ambe Tradecorp (P.) Ltd vide 145taxmann.com27 dated 05.07.2022 wherein it was held as under:

"Section 68 of the Income-tax Act, 1961 Cash credit (Bogus loan) Assessment year 2012-13 Assessee received loans from two parties Assessing officer treated same to be sham for reason that creditworthiness of loan givers was not established and, accordingly, made addition under section 68 It was noted that Tribunal recorded findings of facts that assessee had furnished details such as copy of ledger account, bank statements, income-tax returns, balance sheet etc. of loan givers - It was also recorded that notice under section 133(6) was issued to said loan givers which were duly responded by them, therefore, identity of parties could not be disputed-It was also noticed that assessee was not beneficiary as loan was repaid by assessee in subsequent year Whether, on facts, identity and creditworthiness of parties and genuineness of loan transactions were well established,

therefore, impugned addition made under section 68 on account of said loan amount was unjustified - Held, yes (Paras 3.4, 3.5 and 5) [In favour of assessee]

(ii) Decision of ITAT Ahmedabad in the case of A.C.I.T, CENTRAL CIRCLE-1 (2), AHMEDABAD vs. M/S. REAL MARKETING PRIVATE LIMITED; NEMINATH TRADERS PVT. LTD. AND M/S. REAL MARKETING PRIVATE LIMITED vs ITO, WARD-5 (3), AHMEDABAD [2014] vide order dated 19.05.2023 2023 (5) TMI 1050 ITAT AHMEDABAD

"Addition u/s 68-bogus credit of loan-expenses incurred for taking such bogus entry - AO doubted the creditworthiness merely on the basis that the loan party was showing meagre income in income tax return - HELD THAT:-As far as creditworthiness of the loan party is concerned, the same can be viewed from a different angle i.e. there may be funds in the form of capitals, reserve & surplus and loans. Undoubtedly, the learned CIT-A has given finding that huge additions were made in the assessment framed with respect to the loan party under the provisions of section 68 If these additions are deleted by the higher forum, then it becomes evident that there was sufficient fund available with the loan creditors. Likewise, if these additions are confirmed by the higher forum, then also it becomes evident that there was sufficient fund available with the loan creditor. In our considered view, in either of the case, the creditworthiness of the parties cannot be doubted.

We find that in the case on hand, the credit of unsecured loan, the assessee is only liable to explain the source of credit in its books not in the books loan creditor. In the case on hand, the assessee has duly explained the source of credit in its books by providing the details of identity of the creditor, genuineness of transaction and creditworthiness was also established by furnishing details. The assessee cannot be expected to explain the source of funds in the books of the creditor and if the AO have any doubt with regard genuineness of fund in the books of creditor, then the same should be verified at the creditor end and not from the assessee.

We hereby hold that the assessee on merits discharged the onus cast under section 68 of the Act. Once the loan amount credited in the books of the assessee found to be genuine and addition under section 68 of the Act is deleted, in our considered view the corresponding estimated expenses against such loan cannot be sustained. Decided against revenue.

Treating the credit of share application money and unsecured loan as unexplained cash credit under section 68 HELD THAT: Once the

repayment of the loan received is established, then the genuineness cannot be doubted. In this respect we find support and guidance from the judgment of Hon'ble Gujarat High Court in the case of the CIT Vs. Rohini builders [2001 (3) TMI 9-GUJARAT HIGH COURT) Appeal of assessee allowed."

(iii) Decision of Hon'ble ITAT Surat in the case of M/S White Willow Vishram Apartment Versus Income Tax Officer, Ward-1 (3) (5) vide order dated 14.08.2023 vide ITA No. 370/SRT/2022:

"Addition on account of unsecured loan Addition of unsecured loans, merely on the basis of the statement of Rajendra Jain [entry provider]-CIT(A) upheld the addition of unsecured loan as well as disallowance of interest expense by holding that to prove the genuineness of unsecured loan it is the duty of assessee as mandated u/s 68 to prove the identity, creditworthiness and genuineness of such transactions - HELD THAT:- We find that in response to the show cause notice, the assessee furnished loan confirmation, PAN, bank statement along with ITR of lenders. We further find that assessing officer in order to verify the genuineness of such loan transactions issued notice u/s 133(6), such notice was duly served upon both the lenders. Both the lenders filed their respective reply. AO recorded that complete details as desired by him was not furnished. AO by referring the modus operandi alleged entry provider treated the loan transaction as accommodation entry and also disallowed the interest expenses. We find that before Ld. CIT(A) the assessee made similar submissions as argued before us.

CIT(A) neither verified the repayment of loan nor sought any remand report from Assessing Officer. Such evidence is self-sufficient to prove the facts that the loan amount alongwith interest was repaid. We find that assessee placed on record copy of their bank statements, reflecting the repayment of loans on 22.03.2016.

We find that in the case of Ayachi Chandershekhar Narsangi [2013 (12) TMI 372-GUJARAT HIGH COURT) held that when the department has accepted repayment of loan in subsequent year and no addition was to be made on account of loan.

We find that such plea of repayment of loan was not raised for the first time before Tribunal, rather categorically contended before Ld CIT(A) as well. We find that repayment of loan was made much before passing of assessment order. The assessing officer passed assessment order on 26.12.2016, however, the loan with current year interest was repaid on 22.03.2016. No evidence was brought on record if receipt of loan was circulated transaction. Decided in favour of assessee."

(iv) Decision of Hon'ble ITAT AHMEDABAD in the case of Manibhadra Securities Services P. Ltd. Versus Ito, Ward-2 (1) (4) Ahmedabad. vide order dated 24.08.2022 vide ITA No.2507 and 1302/Ahd/2018:

"Addition u/s 68 unexplained cash credit -liability on the assessee to provide the identity of the lenders, establish the genuineness of the transactions and creditworthiness of the parties - HELD THAT:- Undisputed fact that the majority amount of loan received by the assessee was refunded to the loan parties. It implies that the assessee was not the beneficiary of the loan received by it as alleged by the AO. The majority amount of loan has been repaid by the assessee in the year under consideration itself except a sum of Rs. 1,05,05,000.00. Therefore, it is difficult to hold that the assessee was the ultimate beneficiary of the impugned amount. Thus, we can assume that the impugned transaction was the business transactions between the assessee and the loan parties.

We hold that the amount of loan received by the assessee represents the unexplained cash credit in its books of accounts. Accordingly, we set aside the finding of the CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is allowed."

(v) Decision of HIGH COURT OF GUJARAT in the case of (V) Commissioner of Income-tax, Rajkot-I v. Ayachi Chandrashekhar Narsangji [2014] 42 taxmann.com 251 wherein it was held as under:

"Head Note:

Section 68, read with section 143, of the Income-tax Act, 1961 Cash credit [Loans] - Assessment year 2006-07-Assessing Officer framed assessment under section 143(3) wherein he made addition of Rs. 1.45 crore under section 68 on ground that loan taken from one 'IA' was not explained satisfactorily - On appeal, Commissioner (Appeals) was satisfied with respect to genuineness of transaction and creditworthiness of 'IA' and, therefore, deleted addition - It was found that total loan of Rs. 1.60 crore was advanced to assessee, out of which Rs.15 lakh was repaid - Therefore, an amount of Rs.1.45 crore remained outstanding to be paid to 'IA' Balance loan amount was repaid by assessee in immediately next financial year Whether when Department had accepted same, addition made by Assessing Officer was to be deleted Held, yes [Para 6] [In favour of assessee]"

8.10 In view of the foregoing discussion, we are of the considered opinion that the assessee has successfully discharged its onus under Section 68 of the Act. The

identity of the lenders is established through PAN cards and returns; their creditworthiness is proven through bank statements and their own tax assessments; and the genuineness of the transactions is reinforced by the fact that the funds moved through banking channels and were largely repaid. The Assessing Officer's decision to make the addition was based on a mechanical adoption of an investigation report and a misconstruction of digital affidavits that were prepared for banking purposes and not for tax declarations. The AO failed to conduct any independent inquiry, such as examining the parties or issuing third-party notices, despite having all the evidence on record. We find no infirmity in the order of the Ld. CIT(A). The deletion of the addition of Rs. 2,98,14,000/- is consistent with the facts of the case and the legal principles laid down by the Hon'ble Supreme Court and the Jurisdictional High Court. Consequently, the grounds raised by the Revenue on this issue are dismissed and that of the assessee are allowed.

ISSUE NO. 2 - ADDITION U/S 69C ON ACCOUNT OF UNEXPLAINED EXPENDITURE BASED ON SEIZED EXCEL SHEETS (ALL YEARS) - BY REVENUE

9. The Assessing Officer treated certain entries marked as "Cash" in seized Excel file as unexplained expenditure under section 69C of the Act. The Ld. CIT(A) recorded that the amount represented cash withdrawal from disclosed SBI bank account and was duly reflected in the regular books of account. The seized sheet was found to be in the nature of internal working of fund movement. For AY 2015-16, the Ld. CIT(A) deleted the addition in question by observing as under:-

"7. The ground of appeal No.4 relates to addition of Rs 5,00,000/- being unexplained cash transaction u/s 69C of the Act.

7.1 The brief facts of the case are that during the course of search, digital data was seized as Annexure - A/48, which contains various excel sheets having several entries where cash is written. During the post search inquiry, the appellant has claimed that these sheets are working for funds planning prepared by the appellant which includes fund flow, cash flow, LC payments, cash withdrawn from bank including name of the person who went to withdraw the funds, notings for cash discount to debtors, etc., which is duly recorded in books of account. The appellant has reiterated its submission

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before the Assessing officer. During the course of assessment proceedings, the Assessing officer has identified certain transactions which were duly recorded in books of account for which no addition has been made. However, where the notings were of "cash" , the Assessing officer has considered such amount as unexplained expenditure u/s 69c of the Act.

The Assessing Officer has made addition of following entries in year under consideration.

<i>Sheet Name</i>	<i>Remarks</i>	<i>Amount</i>
<i>March</i>	<i>Cash</i>	<i>5,00,000</i>

7.2 During the course of Appellate proceedings, the appellant has reiterated its contentions as were raised before the Assessing Officer and submitted tabular chart and explained that these figures are projections or expected cash flow or cash withdrawals duly recorded on books of account. The tabular chart is already reproduced in the appellant's submission hence same is not repeated here.

7.3 I have carefully considered the relevant facts on record, observation of the AO as well as the submissions filed by the appellant. So far cash notings of Rs.5,00,000/- is concerned, the appellant has explained that such amount was withdrawn from SBI account in year under consideration in the month of March. It is found that withdrawals made from bank account in cash has been noted in seized paper and such withdrawals are duly recorded in books of account maintained by the appellant, such amount cannot hold to be explained expenditure u/s 69C of the Act. The explanation of the appellant is found to be acceptable even on the ground that in some of the notings, it was mentioned as "SBI cash", which denotes cash withdrawal from bank account with SBI. Considering this fact, the addition of Rs.5,00,000/- made by Assessing Officer is deleted."

9.1 We have heard the arguments of both the parties and perused the material available on record. We find that the action of the Assessing Officer in making the addition is on assumption without bringing any corroborative evidence to substantiate that the amount represented an unexplained expense. Upon holistic consideration of the facts, we observe that the assessee has successfully established a live nexus between the digital notation "Cash (S.B.I.)" and the actual withdrawal of Rs. 5,00,000/- from the SBI bank account on 14.03.2015. The assessee had submitted the cash book and bank statements during the assessment proceedings

itself, which clearly recorded this transaction. The Assessing Officer at para 6.1 of the assessment order has reproduced contention filed by assessee before Investigating authority wherein also it was explained that "...These sheets are workings for fund planning prepared by HK Ispat Private Limited. There are various notings for various fund flow, cash flow, LC payments, cash withdrawn from bank including name of the person who went to withdraw, notings for cash discount to the debtor..." Similar explanation has been provided by the assessee in the assessment proceedings. Since the Assessing Officer has been unable to bring on record any instances of unaccounted receipts or expenses that have not been subjected to tax, and has failed to controvert the factual evidence proving the recorded source of the cash, the addition cannot be sustained. We find that the Ld. CIT(A) has correctly analyzed all aspects of the matter, including the physical verification of the bank trail. There is no reason for us to believe that a notation in a planning sheet represents a "bogus" expense when the corresponding amount is clearly reflected in the audited books of account and the bank-verified trail. The Assessee has explained that noting in such loose sheets represents entries already recorded in books of account like cash withdrawal from bank, sales made to parties, discount given to parties etc. which is not contravened by Ld. CIT(DR). Accordingly, we find no reason to interfere with the findings of the Ld. CIT(A) on this issue. The deletion of the addition of Rs. 5,00,000/- is hereby confirmed.

The ground raised by the Revenue on this issue for all the aforesaid years is dismissed.

ISSUE NO. 3 – ESTIMATION OF PROFIT @ 6% ON ALLEGED BOGUS PURCHASES (AYs 2018-19 AND 2019-20) – BY REVENUE & ASSESSEE

10. In AY 2018-19 and 2019-20, the Assessing Officer treated certain purchases from M/s AH Traders and M/s Kush Enterprise as bogus based on GST investigation and other enquiries and made addition of entire purchase amount. The Ld. CIT(A) restricted the addition to 6% of such purchases.

10.1 The Revenue is aggrieved by restriction to 6%, whereas the assessee challenges confirmation of 6% addition and contends it should be taxed as business income.

10.2 The brief facts relating to this case are that, during the assessment proceedings, the Assessing Officer focused on the quantitative and qualitative details of purchases recorded in the books of account. On perusal of page No.30 of Annexure A-30 seized from the premises of Kothi Steels Ltd (Party A-8), the Assessing Officer identified several supplier names that appeared suspicious. The Assessing Officer coordinated with GST authorities to obtain search reports, GSTR-1, and GSTR-2A data for these suppliers. The subsequent investigation revealed that several parties, including M/s AH Traders, were flagged by the GST Department as fictitious entities or paper concerns involved in the generation of bogus invoices to facilitate wrongful utilization of Input Tax Credit (ITC). The AO identified purchases from M/s AH Traders totaling Rs. 99,49,624/- as bogus. The Assessing Officer based this conclusion on the report of an inspector who conducted field inquiries and found the registered premises of AH Traders to be closed, with no evidence of trading in iron scrap. Furthermore, the AO noted a pattern of immediate cash withdrawals following RTGS payments from the assessee to these suppliers. Consequently, the AO disallowed the entire purchase amount of Rs. 99,49,624/- under Section 69C of the Act, treating it as unexplained expenditure.

10.3 On appeal, the Ld. CIT(A) upheld the AO's finding that the suppliers were non-genuine but disagreed with the 100% disallowance. Relying on jurisdictional precedents, the Ld. CIT(A) restricted the addition to 6% of the purchase value, concluding that in cases where sales are not doubted, only the profit element embedded in the purchases can be brought to tax. The relevant finding of Ld CIT(A) is as under:

"8.6 I have carefully considered assessment order and submission filed by the appellant. During the year under consideration, the appellant has made purchases of Rs.99,49,624/- from AH Traders which was considered to be bogus by Assessing Officer. During the course of assessment proceedings, the

appellant has submitted various evidences being purchase invoices, lorry receipts, GST returns, stock register, bank statement to prove the genuineness of the transactions. The Assessing Officer has prima facie treated such purchases to be bogus purchases on the basis of allegation of bogus purchase by group concern being Kothi Steel who was also covered under GST search. However, the appellant has submitted that it had purchased goods from AH Traders whose GST number has not been cancelled and proprietor of such concern is filing income tax as well as GST returns. On perusal of assessment order, it is apparent that Assessing Officer had made addition for bogus purchase from AH Traders on the ground that Inspector report during post-search inquiry suggests that premises of said concern was closed. Against this observation the appellant has claimed that due to Covid lockdown, business activity of said concern was reduced. However, in assessment order the Assessing Officer has pointed out that even during Covid period AH Traders had shown substantial business transactions which creates doubt regarding genuineness of purchase by the appellant from said concern. It is observed that Assessing Officer had pointed out that AH Traders at some of the instances have withdrawn cash subsequent to payment made by the appellant against which the appellant has claimed that said concern has withdrawn the cash to make payment to suppliers. These evidences also create certain doubts regarding genuineness of purchases made from AH Traders. On the other hand, the appellant has claimed that Assessing Officer has not doubted the stock register, movement of goods and more importantly sales shown by the appellant. The appellant without prejudice to the above, has stated that reasonable profit margin should be taxed against the so called bogus purchases and submitted the details of gross profit ratio on year-to-year basis as under:-

Assessment Year	G.P. Ratio
2015-16	2.8%
2016-17	3.03%
2017-18	3.20%
2018-19	3.62%
2019-20	3.29%
2020-21	2.69%

8.7 In view of the above discussed facts, it is construed that even if, purchases made from AH Traders is considered to be bogus, addition cannot be made for entire amount but to the extent of profit margin embedded on such purchases. Once the AO has accepted the sales therefore, the entire purchases from AH Traders cannot be disallowed. Certain percentage of profit on such purchases needs to be taxed in the hands of the appellant to cover up irregularities and evidences relating to purchases made from AH Traders. Similar issue has been dealt with by Hon'ble High Court of Gujarat in the case of PCIT vs Keshri Exports [2024] 168 taxmann.com 528 (Gujarat), wherein it is held as under.

"Section 69, read with section 260, of the Income-tax Act, 1961 Unexplained investments (Bogus purchases) Assessment year 2013-14 Assessing Officer received information from Investigation Wing that assessee had obtained non-genuine purchase bills from a group which was engaged in business of issuing non-genuine purchase bills, unsecured loans and accommodation entries Assessing Officer, thus, reopened assessment and made addition of entire amount of non-genuine purchase bills to income of assessee Tribunal estimated addition in respect of bogus purchases at rate of 6 per cent of such purchases-It was noted that in case similar to assessee, High Court held that conclusion arrived at by Tribunal of restricting disallowance at 6 per cent was based on facts before it which were duly analysed and thus, no interference was called for in findings of Tribunal - Whether, thus, following aforesaid view, Tribunal was justified in estimating addition at rate of 6 per cent of bogus purchase - Held, yes (Para 7) [In favour of assessee]"

Decision of Hon'ble Gujarat High Court in case of Principal Commissioner of Income Tax Vs. Deepak Banwarilal Agarwal Tax Appeal No. 67 of 2024 dated 23/01/2024:

"Section 69, read with section 260, of the Income-tax Act, 1961 - Unexplained investments (Bogus purchases) Assessment year 2008-09- Assessing Officer received information from Investigation Wing that assessee had obtained non-genuine purchase bills from a group which was engaged in business of issuing non-genuine purchase bills, unsecured loans and accommodation entries Assessing Officer, thus, reopened assessment and made addition of entire amount of non-genuine purchase bills to income of assessee Tribunal estimated addition in respect of bogus purchases at rate of 6 per cent of such purchases It was noted that in case similar to assessee, High Court held that conclusion arrived at by Tribunal of restricting disallowance at 6 per cent was based on facts before it which were duly analysed and thus, no interference was called for in findings of Tribunal - Whether, thus, following aforesaid view, Tribunal was justified in estimating addition at rate of 6 per cent of bogus purchase Held, yes (Para 7) (In favour of assessee)."

Decision of Hon'ble Gujarat High Court in case of Principal Commissioner of Income Tax Vs. Surya Impex Tax Appeal No. 674 of 2022 dated 16/01/2023

"Section 69C, read with section 148, of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment year 2009-10 Assessing Officer received information from Investigation Wing that assessee-firm received accommodation entries in form of bogus

purchases from one I group - He, thus, reopened assessment and made 100 per cent addition in income of assessee with respect to said purchases Tribunal observed that assessee filed detailed evidence consisting details of purchase, PAN and addresses of parties, purchase invoice, stock register, day to day register and sales register Furthermore sales was not disputed by Assessing Officer Tribunal thus, limited addition in respect of bogus purchases at rate of 6 per cent of such purchases on ground that profit margin of said industry was 5 per cent to 6 per cent-It was noted that Assessing Officer's inquiry was merely based on report of investigation wing and statement of J group-Whether since Assessing Officer and Commissioner (Appeals) while dealing with case of J group and other parties involved in providing such entries chose to make addition at rate of 3 per cent to 5 per cent, Tribunal was justified in estimating addition at rate of 6 per cent Held, yes (Para12) [In favour of assessee]."

Decision of Hon'ble Gujarat High Court in case of Principal Commissioner of Income Tax Vs. Jigisha Satishkumar Mehta Tax Appeal No. 388 of 2022 dated 29/08/2022 wherein it was held as under:

"Section 69C, read with section 147, of the Income-tax Act, 1961 - Unexplained expenditure (Bogus purchases) - Assessment year 2010-11 An information was received from State Sales Tax Authority relating to bogus purchases made by assessee from hawala biller, namely, NE-On basis of same, a reopening notice was issued upon assessee Assessing Officer further passed assessment order under section 144 read with section 147 and made addition under section 68 towards said bogus purchases -It was noted that Assessing Officer had made addition only on basis of information received from Sales Tax Department of State without any further inquiry being carried out as to whether purchases made by assessee were genuine or not in order to come to conclusion that assessee was also one of beneficiaries of bogus billing of said dealer - Whether in absence of any dependable material for Assessing Officer to come to conclusion about bogus purchases made by assessee to make addition of entire purchases under section 68 as income, Commissioner (Appeals) and Tribunal were right in restricting addition to 5 per cent of alleged bogus purchases Held, yes [Paras 5, 5.1 and 5.3] (In favour of assessee)."

Decision of Hon'ble Gujarat High Court in case of Dilkhush Annraj Babel Vs. I.T.O Ward 2(3)(7) Tax Appeal No. 443, 444, 445, 446, 447, 448 and 456 of 2023 dated 29/10/2024 wherein it was held as under.

"Section 69C, read with section 147, of the Income-tax Act, 1961- Unexplained expenditure (Bogus purchases) Assessment year 2008-09-

Assessee was engaged in business of trading in diamonds - On basis of information received from DIT (Inv.) that assessee was one of beneficiary of bogus purchase bills provided by one PJ Group, Assessing Officer reopened case of assessee -Assessing Officer after considering reply filed by assessee, made addition of entire purchases in hands of assessee treating same as bogus purchases Commissioner (Appeals) held that Assessing Officer had not rebutted or discharged material evidence furnished by assessee nor doubted sales and considering documentary evidence produced on record by assessee, he restricted addition to extent of 5 per cent-Tribunal increased said addition to 6 per cent - Whether, on facts, reopening was to be held as valid - Held, yes Whether since High Court had confirmed addition of 6% of purchases in number of similarly situated assesseees who had been found taking accommodation entries from PKJ, in order to maintain consistency, no interference was required to be made in impugned order in estimating addition at 6 per cent - Held, yes [Paras 7 and 10] [In favour of revenue].

In view of above discussion and relying upon the decisions referred supra, it is reasonable to restrict addition of bogus purchase to the extent of 6% of purchases from AH Traders which works out to Rs.5,96,977/- (6% of Rs.99,49,624/-). The remaining addition of Rs. 93,52,647/- made by the Assessing Officer is deleted. The ground of appeal No.5 is partly allowed."

10.4 Aggrieved by the order of the Ld. CIT(A), both Revenue and assessee filed appeal before the Tribunal on this issue.

10.5 Before us, the Ld. DR reiterated on the facts mentioned in the order of the Assessing Officer and the Ld. AR supported its argument as was made before Assessing Officer as well as in appellate proceedings that entire purchases is genuine. The Ld AR argued that it had produced comprehensive documentation to support the purchases, including purchase invoices, E-way bills, and bank statements. It was emphasized that E-way bills are generated through a government portal and can only be issued by registered dealers, indicating that the suppliers were active on the GST portal at the time of the transactions. The assessee submitted that it should not be penalized for the subsequent cancellation of a supplier's registration or their failure to maintain a physical presence during a post-search inquiry conducted years later. The Ld AR pointed out that the Assessing

Officer did not doubt the production volume, the consumption of raw materials, or the final sales recorded in the books. The production yield and material consumption ratios were audited by independent cost auditors and tax auditors and were found to be in line with industry standards. The Ld AR further explained the cash withdrawal pattern noted by the AO. It was submitted that the scrap industry often involves procurement from small, unorganized vendors and "feriwalas" who do not possess bank accounts or the infrastructure to accept digital payments. Consequently, the first-tier scrap traders (like AH Traders) often withdraw cash to settle their liabilities with these small vendors. The assessee maintained that it had no control over the banking habits or cash requirements of its suppliers. The Ld AR has also stated that if an addition is to be made, it should be restricted to the "differential addition being profit estimated on bogus purchase as reduced by net profit shown in the books of account.

10.6 We have heard the arguments of both the parties and perused the material available on record. It is undisputed fact that during the course of the assessment proceedings, the assessee has submitted tax invoices along with delivery challans, complete purchase register, copy of the bank statements reflecting sources of payment for purchase, GST returns, tax audit reports etc. The assessee before lower authorities has also stated that proprietor of AH Trader, party which is in dispute has remained present before ADIT during post search inquiry. The appellant has brought on record that GST number of AH Traders was still in existence and GST department has not debarred such entity from business transactions. On perusal of the assessment order, it is found that during the course of search, no evidences was found which can suggest that assessee has received cash against such bogus purchase allegation. There is force in the argument of Ld AR that it had produced comprehensive documentation to support the purchases, including purchase invoices, E-way bills, and bank statements. It was emphasized that E-way bills are generated through a government portal and can only be issued by registered dealers, indicating that the suppliers were active on the GST portal at the time of the

transactions. The assessee submitted that it should not be penalized for the subsequent cancellation of a supplier's registration or their failure to maintain a physical presence during a post-search inquiry conducted years later. On the other side, it is found that Assessing Officer had to certain extent established that the named suppliers, AH Traders and TC Traders, were not in a position to supply the goods recorded in the invoices. The findings of the GST Department and the physical verification by the inspector were considered strong enough evidence to classify these as non-genuine suppliers. The Ld. CIT(A) noted that the "circular flow of money" observed in the bank statements strongly suggested that these were accommodation entries. Considering all these aspects, argument of Ld. AR that no addition is warranted cannot be accepted.

10.7 With this background, it is found that the Assessing Officer has even not doubted the book results including sales shown by the assessee. When a manufacturing company's production and sales are accepted or trading concerns sales are accepted, the cost of raw material is an essential expenditure for earning the income. Disallowing 100% of that cost would mean taxing the assessee on a figure far exceeding its actual profitability. The AO has not doubted quantitative records maintained by the assessee as well as sales shown by the assessee hence the Ld. CIT(A) has correctly estimated profit on such alleged bogus purchase. The AO has even not doubted the sources of purchases as shown in books of account hence even on this ground 100% of such purchases cannot be disallowed. In CIT vs. Bholanath Poly Fab Pvt. Ltd. (2013) 355 ITR 0290 (Guj), the Court reinforced this logic. It held that whether the purchases were bogus or the parties were bogus was a question of fact. If the quantity of goods sold matches the quantity shown as purchased (plus opening stock), then the purchases themselves are genuine in volume, even if the source mentioned is not correct. As a natural corollary, only the profit element embedded in such purchases should be subjected to tax. The Ld CIT(A) has correctly followed binding decisions of Hon'ble Gujarat High court in the case of PCIT Vs Kesari Exports 168 taxmann.com 528. Deepak Agarwal Tax Appeal

No 67 of 2024 dated 23/01/2024 etc. In PR. Commissioner of Income Tax 1, Surat v. M/s Surya Impex (2023) 451 ITR 395 (Guj), the Court upheld the ITAT's decision to restrict the addition to 6%. The Court found that a 6% disallowance rate for bogus purchases is "fair and reasonable" in cases involving accommodation entries where the actual movement of goods is in doubt but the business turnover is admitted.

The Ld. CIT(A) has correctly identified that the 6% rate is the current standard adopted by the Hon'ble Gujarat High Court for such transactions.

Ergo, the decision of the Ld. CIT(A) is hereby affirmed. In the result, the appeals of the Revenue as well as assessee on this ground are dismissed.

ISSUE NO. 4 – ESTIMATION OF GROSS PROFIT @ 6% ON DIFFERENCE IN STOCK (ASSESSEE'S APPEAL – AY 2021-22)

11. The brief facts relating to this issue are that, during the course of search, physical stock was found at Rs. 16,80,12,000/-, whereas as per books of account available at the time of search, stock was reflected at Rs. 20,84,26,720/-. Thus, there was a difference of Rs. 4,04,14,720/-, with book stock exceeding physical stock. The Assessing Officer treated the said difference as unexplained and made addition of Rs. 4,04,14,720/-. In appeal, the Ld. CIT(A) held that the discrepancy represented stock already sold outside the books and estimated profit @ 6% on the difference, thereby sustaining addition of Rs. 24,24,883/- and deleting the balance amount of Rs. 3,79,89,837/-.

11.1 During the course of the assessment proceedings, the Assessing Officer observed that during a search on 05/11/2020, a government-approved valuer (M/s IS Associates Pvt. Ltd.) valued the physical stock at Rs. 16,80,12,000/-. However, the tally data taken during the search reflected a book stock value of Rs. 20,84,26,720/-. The Assessing Officer rejected the assessee's objections regarding the valuer's methodology, concluding that the valuer adopted a scientific basis by following the recommendations of the Institute of Scrap Recycling Industries Inc. (ISRI). The

Assessing Officer noted that the valuer's methods were sound because they used logical assumptions of bulk volume and density, visual inspections, and applied market rates based on local feedback for a huge, unorganized scrap yard. As the book stock was higher than the physical stock by Rs. 4,04,14,720/-, the Assessing Officer treated the difference as unaccounted sales/unexplained stock and made an addition of the same amount.

11.2 On further appeal, Ld CIT(A) has estimated net profit @ 6% on deficit of stock as book stock was higher than physical stock. The relevant finding of Id CIT(A) is reproduced herein below:

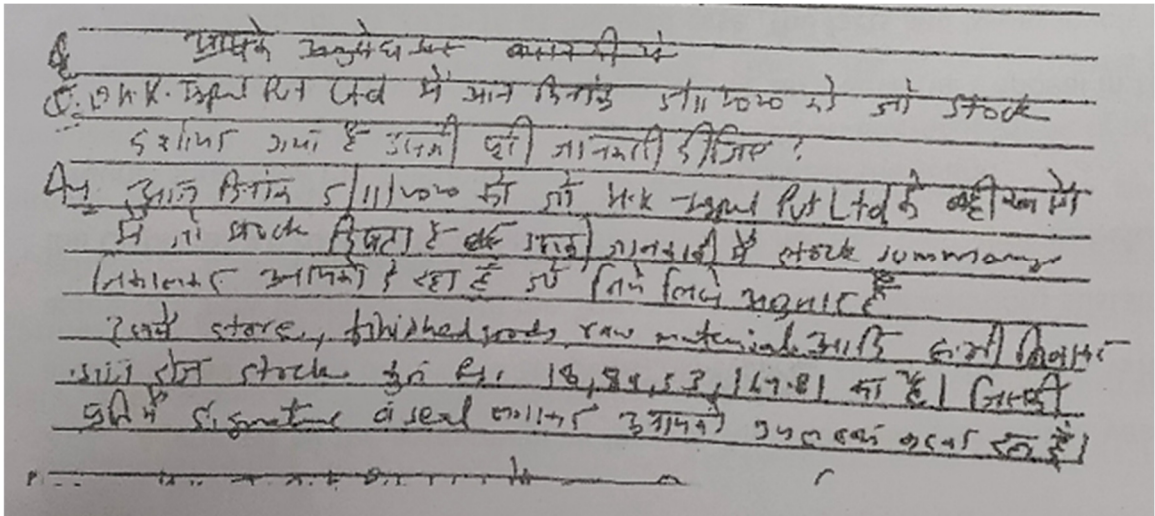
"9.5 I have carefully considered assessment order and submission filed by appellant. The core issue in present ground of appeal is that AO made addition of Rs. 4,04,14,720/- representing the difference between the book value of the stock declared by appellant, for Rs. 20,84,26,720/- and the valuation arrived at by the scrap valuer, M/s IS Associates Pvt. Ltd., during the search proceedings at Rs. 16,80,12,000/-. It is observed that AO has considered book value of stock as on the date of search at Rs. 20,84,26,720/- whereas according to appellant such value was Rs. 18,89,53,164/-for which following tally data was provided."

11.3 Aggrieved by the order of the Ld. CIT(A), assessee filed appeal before the Tribunal on this issue. The revenue has not further filed appeal against order of CIT(A) which means that it has accepted the observation of CIT(A) to the extent of Rs 3,79,89,837/-. The Ld. AR has claimed that the department valuer's report was based on pure estimation and approximation rather than precise measurements or actual counting. The valuer even explicitly affixed the word "Approx" in the report. The valuer erroneously included "MS Pole" in the stock valuation, an item that the assessee does not even deal in. He further explained that real-time accounting is not always feasible for a large manufacturing unit. Several purchase, sale, and production entries were pending on the date of the search. After incorporating these, the actual stock as per the books was Rs. 19,20,11,382/- against valuer report of Rs 20,84,26,720/-. The Id AR has further explained that out a critical flaw in the valuer's report as it completely omitted the "stock of stores" (consumables and

maintenance items), which was valued at Rs. 2,51,66,950/- in the books. If this amount is excluded from the assessee's updated book stock (Rs. 19.20 Cr - Rs. 2.51 Cr), the resulting figure is Rs. 16,68,44,432/- which is very close to the valuer's figure of Rs. 16,80,12,000/-, leaving no room for unaccounted sales.

11.4 We have heard the arguments of both the parties and perused the material available on record. It is observed that during the course of search, department valuer has conducted an inspection and submitted a report on 06/11/2020, estimating the physical stock as of the search date at Rs. 16,80,12,000. Simultaneously, the Assessing Officer extracted the book stock data from the company's Tally software, which allegedly reflected a value of Rs. 20,84,26,720. The Assessing Officer compared these two figures and identified a discrepancy of Rs 4,04,14,720 and made addition of the same. The Ld. CIT(A) observed that the Assessing Officer had not disputed the closing stock reported at the end of the year. Relying on the principle that only the profit element of unrecorded sales should be taxed rather than the entire turnover, the CIT(A) restricted the addition to 6% of the alleged deficit for Rs. 24,24,883 and relief of Rs. 3,79,89,387/- was provided. The department has not challenged the provided by the Ld. CIT(A) and only assessee has contested addition confirmed by the Assessing Officer.

11.5 The first point of contention is the base figure for book stock. The Assessing Officer used Rs 20,84,26,720. The Assessee asserts that the actual book stock on that day was Rs. 18,89,53,165, which was later updated to Rs. 19,20,11,382 after accounting for pending transactions. We find significant merit in the Assessee's position. The statement of Mr. Anwar Bidani, the Senior Accountant, recorded under oath on 05/11/2020, is an exceptionally strong piece of evidence. He gave a specific figure and a category-wise breakdown of the stock summary. The excerpts of said statement is reproduced herein below:



Handwritten notes in Hindi on lined paper. The text discusses stock valuation and assessment. It mentions 'HK Ispat Pvt Ltd' and 'stock' multiple times. A specific figure 'Rs. 18,89,53,165/-' is written. The notes appear to be a summary or a set of instructions related to the assessment process.

It was categorically stated that book stock including stores, finished goods and raw material is Rs 18,89,53,165/- whereas while passing the assessment order, the AO has considered such figure at Rs 20,84,26,720/- without any basis. It is observed that during the course of assessment proceedings, assessee has stated that actual inward and outward quantities prior to date of search was to be entered in tally stock register and after making such entries, correct book stock as on the date of the search was Rs. 19,20,11,382. The Assessing Officer has not doubted such reconciliation. It is a matter of fact that AO has not rejected the books of account even though he has found discrepancies in stock as per tally and physical stock found during the course of search. The Ld. CIT(A) has also held that AO has not doubted closing stock. Considering this fact, correct book stock as on the date of the search is considered to be Rs.19.20 crores.

11.6 The most critical flaw in the Revenue's case is the exclusion of "stores" from the physical valuation report. The Tally data and the accountant's statement both confirm that the company held "stores and consumables" valued at Rs. 2.51 Crores. These include refractory materials and maintenance spares necessary for an induction furnace operation. The valuation report by M/s IS Associates Pvt. Ltd. is reproduced in the assessment order. On perusal of the report's categories, it is evident that only TMT Bars, Scrap Bars, and MS Poles were quantified. While

computing physical stock as on the date of the search, Departmental Valuer has arrived at figure of Rs.16.80 crores which does not include value of closing stock of store material whereas stock as per books of account clearly includes store of Rs.2.51 crores. The CIT(A) dismissed this reconciliation as an "afterthought". An explanation based on a categorization of items already existing in the books of accounts at the time of search cannot be an afterthought. If the Tally records on 05/11/2020 already showed separate heads for "Stores" and "Raw Materials," and the valuer's report shows he only counted "TMT Bars," the mismatch is a demonstrable fact from the record, not a later fabrication. Considering such fact, the recomputed book value of stock (excluding store) is Rs.16.68 crores as against estimated stock valued by Departmental Valuer at Rs.16.80 crores. It is a matter of fact that Departmental Valuer has not carried out actual quantification of physical stock but has estimated such stock on the date of search which is apparent from his valuation report. Considering these facts as well as during the course of search, no evidence regarding unaccounted purchase/sale was found, minor discrepancies in valuation of stock as per books of account as well as physical stock does not lead to any unaccounted stock or suppression of stock.

11.7 The addition sustained by the learned CIT(A) of Rs. 24,24,883 is found to be devoid of merit. The Revenue has not produced any corroborative evidence such as evidence of cash movement, parallel cash books, or clandestine manufacturing logs to suggest that the Assessee was selling goods outside the books. In the absence of such evidence, and given the successful reconciliation of the stock figures using the Assessee's contemporaneous Tally data and search statements, the entire addition must be deleted. The AO's reliance on the valuer's report, despite its admitted "approximation" and its categorical omission of stores, was a reversible error. In the result, we set aside the order of the Ld. CIT(A) to the extent of the sustained addition of Rs. 24,24,883/- and direct the Assessing Officer to delete the same. Hence this ground of appeal is allowed.

**ISSUE NO. 5 - THE UNEXPLAINED EXPENDITURE U/S 69C OF THE ACT - RS. 41,31,648/- (ASSEESSEE'S APPEAL - AY 2021-22)
SEIZED MATERIAL PAGE NO. 44 OF ANNEXURE A-1.**

12. The assessee has raised following grounds relating to addition of Rs.41,31,648/- as unexplained expenditure u/s 69C of the Act for AY 2021-22.

"3. In law and in the facts and circumstances of the Assessee's case, learned CIT(A) has erred in confirming the addition of Rs.41,31,648/- as unexplained expenditure u/s 69C of the Act. The addition was on the basis of seized material page No.44 of Annexure-A-1."

12.1 The relevant facts of the case are that, During the assessment proceedings, the Assessing Officer referred to Page No. 45 of Annexure A-1, seized during the course of the search. Before the Assessing Officer, the assessee submitted that as the documents were unsigned and undated, no addition could be made. The Assessing Officer rejected this claim on the ground that the loose paper contained the name "HK." The Ld. CIT(A) confirmed the addition made by the Assessing Officer, observing as follows:-

"8.1 During the course of assessment proceeding, the AO observed that during the course of search at residential premises of Shri Irfan Kothi, director of the appellant company Page No 45 of Annexure A-1 was seized which is reproduced at page no 33 and 34 of the order. During the course assessment proceedings, the AO in show cause notice dated 19/09/2022 asked the appellant to explain entries in such loose material and the appellant in its submission stated that these are details of payments/projected purchases and other expenditure for various parties. The appellant has contended that as loose material is unsigned and undated, no addition can be made The Assessing Officer has not accepted explanation of the appellant and observed that the appellant is required to prove sources of such expenditure. The AO has also observed that loose material Page No 44 contains noting of "H.K" which means it pertains to the appellant and as the appellant has failed to prove sources of such payment, such amount is added u/s 69C of the Act.

8.2 During the course of appellate proceedings, the appellant has reiterated its contentions as was raised before AO and stated that as loose material relied upon by AO nowhere contains signature or date, no addition should be made in current year. The appellant in its alternate contention has also stated that as AO has made addition of huge amount, it tries to reconcile entries in such loose material with books of account and based upon such reconciliation as

reproduced in the appellant's submission, the appellant contends that such loose maternal pertains to AY 2014-15 and entries mentioned in loose material is duly recorded in books of account. The appellant has contended that entries in loose material mainly tallies with books of account and when notings are projected figures, it mainly reconciles with entries in books of account hence no addition for unexplained expenditure should be made.

8.3 I have carefully considered assessment order and submission filed by the appellant. While passing the assessment order, the AO has referred to Page No 44 and 45 of Annexure A-1 seized from the premises of director and treated noting as unexplained expenditure of the appellant. The page no.44 is reproduced herein below fore ready reference:

H.K. 8.		09		H.K. 6.	
...	19,188.17	...	07.00	...	2000.00
...	527.00	...	1603.75	...	220.70
...	1,138.12	...	20.50	...	101.70
...	12,095.54	...	101.00	...	1,992.20
...	92.20	...	54.00	...	1,370.00
...	202.50	...	25.10	...	1,710.00
...	107.80	...	16.30	...	50.00
...	45.00				
...	83.80				
...	2,881.20				
...	70.80				
...	520.20				
...	1,172.08				
...	7.48				
...	204.75				
...	4,547.75				
...	29.00				
...	61.25				
...	1,950.00				
...	34.30				
TOTAL	33094.24		7007.78		6219.46

35097.09

6219.46

On perusal of relevant seized material, it is observed that notings contains "HK" which is nothing but name of the appellant. The AO in assessment order has contended that notings has to be read by adding two zero which is not disputed by the appellant either before AO or undersigned. The appellant itself before AO has contended that notings relates to details of payment/projected purchase & other expenditure which means that such notings cannot be held to be dumb document as claimed by the appellant. Though notings contains no date, it does

not mean that addition cannot be made as the appellant itself has contended that notings relates to payment hence the appellant is required to prove sources of such payment and whether such notings are recorded in books of account or not. Even on this ground, contention of the appellant that as notings does not contain date, no addition can be made cannot be accepted.

8.4 Further, it is observed that as notings referred by AO from seized material do not contain any date, the AO has taxed such amount in the year of search. However, the appellant has tried to explain that notings pertains to AY 2015-16 and not current year as notings matches with entries in books of account of said assessment year. It is observed that while passing the assessment order, the AO has not tried to establish notings with actual expenditure/ transactions recorded in books of account nor the appellant has submitted relevant facts before AO. The appellant's claim that the expenditure transactions recorded on pages 44 and 45 form part of the books of accounts for AY 2015-16 cannot be accepted, as the appellant failed to explain these transactions during the assessment proceedings despite being provided with sufficient opportunities to do so. Therefore, afresh claim of the appellant cannot be accepted in absence of application under Rule 46A for the admission of additional evidence produced by the appellant at the appellate stage in respect of unexplained expenditure recorded on seized pages. In view of the above, the addition of Rs 41,31,648/- made by the AO is confirmed, and ground of appeal No. 4 is dismissed."

12.2 Aggrieved by the order of the Ld. CIT(A), assessee filed appeal before the Tribunal on this issue.

12.3 Before us, the Ld. AR submitted that the loose material referred to by the Assessing Officer does not contain signature or assessment year to which it pertains. He submitted that merely because such noting contain "HK" does not mean that it represented unexplained expenditure of the assessee. The Ld. AR has also stated that entries in loose material are projected figures and it mainly reconciles with the books of account as stated before Ld. CIT(A).

12.4 On the other hand, the Ld. DR has relied upon the orders of the of the Assessing Officer and Ld. CIT(A).

12.5 We have heard the arguments of both the parties and perused the material available on record. On perusal of the order of the Ld. CIT(A), it is apparent that

addition made by the Assessing Officer was confirmed mainly on the ground that evidences submitted before him was not provided with the Assessing Officer. Therefore, in the interest of natural justice, we set aside this issue to the file of Assessing Officer for verification of the notings against actual transactions recorded in the books of account and to decide the issue in accordance with law. Accordingly, this ground of appeal is allowed for statistical purposes.

**ISSUE NO. 6 - DISALLOWANCES U/S 36(1)(va) - Rs.2.65 lakhs.
(ASSEESSEE'S APPEAL FOR AY 2018-19)**

13. In AY 2018-19, the Ld. CIT(A) confirmed disallowance of employees' contribution deposited beyond due date under respective Acts. Since the amount was deposited beyond due date prescribed under the respective Act, the disallowance is in accordance with law. This ground of assessee is dismissed.

**ISSUE NO. 7 - DISALLOWANCES U/S 37 - Rs.27,809/-
(ASSEESSEE'S APPEAL FOR AY 2018-19)**

14. This ground was not pressed by the Ld. AR; therefore, the same is dismissed as not pressed.

**ISSUE NO. 8 - LEGAL GROUNDS CHALLENGING VALIDITY OF ASSESSMENT
UNDER SECTION 153A (ASSEESSEE'S GROUNDS IN AYs 2017-18 to 2019-20)**

15. The assessee has raised legal grounds in certain years contending that the assessments u/s 153A are invalid in absence of incriminating material. The Ld. CIT(A) has recorded a finding that seized Excel sheets and related material constituted incriminating material.

15.1 We have heard the rival contentions and perused the material available on record. We find that the assessments have been completed based on the material found and seized during the search. Placing reliance on the order of the ITAT in the case of ACIT Vs. M/s. Benefit Tradelink Ltd. in IT(SS)A No.535/Ahd/2019 dated

- 54-

20.03.2025, since assessment is based on seized material the appeal of the assessee on this ground is dismissed.

16. In the result, all the appeals filed by the Revenue for AYs 2014-15 to 2021-22 are dismissed. The appeals filed by the assessee for AYs 2018-19 and 2019-20 are partly allowed, the appeal for AY 2020-21 is allowed, and the appeal for AY 2021-22 is partly allowed for statistical purposes.

Order pronounced in the open court on 18.03.2026

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 18.03.2026

**btk

Sd/-

(DR. B.R.R. KUMAR)
VICE-PRESIDENT

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(□ पील) /The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल /Guard file.

आदेशानुसार/ BY ORDER,

True Copy

सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad