आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संदीप गोसाईं, न्यायिक सदस्य के समक्ष
BEFORE: SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 280/JP/2019
Assessment Year: 2012-13

M/s Mahalaxmi Saws Pvt. Ltd., H-39, Road No. 2B, RIICO Industrial Area, Sirsi Road, Bindayaka, Jaipur.	बनाम Vs.	I.T.O., Ward 4(2), Jaipur.
PAN No.: AAECM 4744 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (CA)
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 01/12/2021
उदघोषणा की तारीख / Date of Pronouncement : 22/02/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the ld. CIT(A), Ajmer dated 09/01/2019 for the A.Y. 2012-13. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case, the ld. CIT(A) has grossly erred in confirming disallowance of Rs.14,97,602/- made by ld. AO u/s 14A, arbitrarily and without recording proper satisfaction that the interest bearing funds were applied in making investment in shares, thus the disallowance of Rs. 14,97,602/- deserves to be deleted.

2. On the facts and in the circumstances of the case, the ld. CIT(A) has grossly erred in confirming addition of Rs. 21,80,000/- made by ld. AO U/s 68 by completely ignoring the submission made and evidences adduced, thus addition so made deserves to be deleted.

3. On the facts and in the circumstances of the case, the ld. CIT(A) has grossly erred in confirming disallowance of Rs. 24,486/- made by ld. AO, out of expenses claimed in the Profit & Loss Account by assessee as vehicle and travelling expenses by alleging the same as incurred for non-business purpose, thus disallowance so made deserves to be deleted.

4. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is a company registered under Companies Act,1956 and is engaged in the business of manufacturing of Steel, Disc, and Leather Band Knife from MS Strips etc. Return of income for the year under consideration was e-filed by the assessee on 19.09.2012 declaring loss of Rs.3,99,936/-, which was processed u/s 143(1) of the Income Tax Act, 1961 (in short, the Act) and the case of the assesesee was selected for scrutiny by issuance of notice u/s 143(2) of the Act. Finally the assessment was completed by passing order dated 20.03.2015 determining total income of Rs. 33,02,130/-by making various additions/ disallowances.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the ld. CIT(A), who after considering the submissions of both the parties and the material placed on record, dismissed the

appeal filed by the assessee. Against the order of the ld. CIT(A), the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

5. Ground No.1 of the appeal raised by the assessee relates to challenging the order of the ld. CIT(A) in confirming the disallowance of Rs. 14,97,602/- made by the A.O. U/s 14A of the Act. In this regard, the ld. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the ld. CIT(A) and also relied upon the written submissions filed before the Bench and the contents of the same are as under:

> *"It is submitted that for the year under appeal, assessee has incurred interest expenses of Rs.14,97,602/- on borrowing, which were disallowed by Ld. AO by invoking the provisions of section 14A. While making the disallowance, Ld. AO observed that assessee has made investment in shares of M/s Anil Investments Special Steels Industries Ltd. at Rs.4,33,92,050/- and therefore he invoked the Provisions of section 14A and thereby disallowed a sum of Rs. 11,37,467/- by applying Rule 8D. Apart from this, balance interest of Rs.3,60,135/- was disallowed on the premise that assessee has given interest free loans & advances to its sister concern, Anil Special Steels Industries Ltd. out of borrowed funds. Disallowance so made by ld.A0, was challenged in appeal which were confirmed by Ld. CIT(A). The ld AR has drawn our attention towards Section 14A of the Act and submitted that the heading of section 14A, i.e. "Expenditure incurred in relation to income not includible in total income" itself*

presupposes the existence of exempt income, and then only a particular expenditure can be treated as incurred "in relation to" such income.

Section 14A deals with expenses incurred by a person to earn exempt income. Such expenses are not deductible while computing total income and are disallowed, as otherwise this would result in double advantage to the assessee. For example when agricultural income itself is exempt from taxation, therefore there is no justification to allow deduction of expenditure on agricultural activities in the computation of total income.

Thus, provisions of Section 14A are attracted if and only if:

1. The assessee has certain income which is not includible in his total income under any provisions of the Act.

2. The assessee has incurred expenditure in relation to earning of such income which is exempted under the Act.

It is submitted that during the year under appeal there is no investment which had earned, or for that matter even would have earned, exempt income and thereby there is no occasion to invoke the provisions of section 14A and therefore, the disallowance made is totally unwarranted & in total disregard to the facts and evidence on record and thus deserves to be deleted.

Further, so far as question of disallowance of Rs.1,64,850/- under Rule 8D(iii) is concerned, it is submitted that clause (iii) of Rule 8D, was introduced for the reason that certain expenses on the nature of administrative expenses are bound to be incurred for making investment. However, in the instant case, Ld. AO himself has admitted in assessment order that M/s Anil Special Steels Industries Ltd. is sister concern of assessee and thus no effort was made for

making investment and actually no administrative cost is incurred over such investments.

It is further submitted that language of section 14A is not at all ambiguous and in fact very clear and by virtue of the same, only expenditure actually incurred in relation to income not includible in total income shall be disallowed. In no way, it could be interpreted that it seeks to disallow expenses incurred in relation to future exempt income, as it would be completely against the well recognized "matching concept."

The principle that disallowance u/s 14A can be made only when assessee has actually earned exempt income, has been affirmed by catena of judicial pronouncements. In this regard, reliance is placed on following decisions:

(i) Hon'ble Apex Court in the case of Maxopp Investment Ltd vs. CIT

(ii) Cheminvest Ltd. Vs. CIT reported in 378 ITR 33

(iii) ITAT, Jaipur Bench in Deepak Vegpro (P) Ltd., Alwar Vs. ACIT, in ITA No 110/JP/14 order dated 24.04.2017.

In view of above fact that no exempt income was earned during the relevant previous year, provisions of section 14A will not apply and therefore disallowance made by Ld. AO u/s 14A deserves to be deleted.

On merits it is submitted that out of disallowance of interest u/s 14A, Rs. 9,72,617/-was disallowed as per rule 118D(2)(ii), being proportionate interest. In this regard, during assessment proceedings it was submitted before ld.AO that entire interest of Rs.14,97,600/- paid by assessee was in respect of term loan of Rs.83.20 lacs taken for purchase of plant & machinery, which is directly related to business purpose. However. Ld. AO completely ignored the

submission of assessee and made the disallowance. At this juncture, kind attention of hon'ble bench is invited to Balance Sheet (APB 15 & 20), from perusal of which, it is apparent that out of total investment of Rs. 4,33,92,050/-, a sum of Rs. 2,77,92,050/- represents the amount invested in Convertible Warrants and thus could not form part of total investments eligible for consideration of disallowance u/s 14A read with Rule 8D of the Income Tax Rules, 1962. Ld. AO while computing the disallowance, considered total value of investment, thus the basic approach of the Ld. AO to the issue in hand is patently wrong. Further investment in equity shares was carried over from preceding year and was not made in the year under appeal. Apart from this, ld. AO has failed to bring on record the nexus between the funds borrowed and invested in the equity shares having tax free income. Thus, ld. AO, without appreciating these facts concluded that investment in shares was made out of borrowed funds.

Further, with respect to disallowance of interest of Rs.3,60,135/- made by ld.AO under section 36(1)(iii), it is submitted that Mis Anil Special Steels Industries Ltd. is the main supplier of assessee, accordingly assessee has to make payment to it on regular basis in the ordinary course of business to get the material uninterruptedly. Thus advance of Rs.33,20,370/- made by assessee to Anil Special Steels was in the ordinary course of business. It is further submitted that assessee is having Closing Balance of Unsecured Loan taken from M/s Anil Special Steels Industries Ltd. (ASSIL) of Rs. 3,34,31,537/- (APB 28) out of which a sum of Rs. 83.20 lacs was old term loans given for the acquisition of Plant & Machinery on which interest @ 18% is being paid and balance amount is interest free receipt, meaning thereby that assessee has already received more interest free funds than advance made and no interest bearing fund were utilized during the year for making providing advance to ASSIL,

thus question of making any disallowances is beyond the scope of section 14A and 36 (1)(iii)of the Income Tax Act, 1961. All these facts were brought to the notice of Ld. AO vide submissions made during the course of assessment proceedings (APB 22-25)and ld.CIT(A) during appellate proceedings, which were ignored while making the disallowances.

It is thus submitted that interest bearing funds taken by assessee were utilized wholly and exclusively for the purpose of business, in respect of which no disallowance could be made. In view of above submission, it is prayed that disallowance of Rs.14,97,602/-may please be deleted."

6. On the other hand, the ld. DR has vehemently supported the orders of the lower authorities.

7. We have considered the rival contentions and carefully perused the material placed on record. From the record, we noticed that the assessee has incurred interest expenses of Rs.14,97,602/- on borrowing, which were disallowed by the AO by invoking the provisions of Section 14A of the Act. While making the disallowance, the A.O. observed that the assessee has made investment in shares of M/s Anil Investments Special Steels Industries Ltd. at Rs.4,33,92,050/- and therefore he invoked the Provisions of section 14A and thereby disallowed a sum of Rs. 11,37,467/- by applying Rule 8D of the Income Tax Rules, 1962 (in short, the Rules). Apart from this, balance interest of Rs.3,60,135/- was disallowed on the premise that assessee has

given interest free loans & advances to its sister concern, Anil Special Steels Industries Ltd. out of borrowed funds. The A.O. invoked the provisions of Section 14A of the Act and disallowed the interest expenses. For ready reference, we reproduce Section 14A of the Act is as under:

"[Expenditure incurred in relation to income not includible in total income.

14A. (1) For the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(Emphasis supplied on bold)

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not ,form part of the total income under this Act.'

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001."

From perusal of heading of section 14A, we observed that the "Expenditure incurred in relation to income not includible in total income" itself presupposes the existence of exempt income, and then only a

particular expenditure can be treated as incurred "in relation to" such income. Section 14A deals with expenses incurred by a person to earn exempt income. Such expenses are not deductible while computing total income and are disallowed, as otherwise this would result in double advantage to the assessee. For example when agricultural income itself is exempt from taxation, therefore there is no justification to allow deduction of expenditure on agricultural activities in the computation of total income. Thus, provisions of Section 14A are attracted if and only if:

1. The assessee has certain income which is not includible in his total income under any provisions of the Act.

2. The assessee has incurred expenditure in relation to earning of such income which is exempted under the Act.

8. Our attention was drawn about the fact that during the year under consideration, there is no investment which had earned or for that matter even would have earned, exempt income and thereby there is no occasion to invoke the provisions of section 14A and therefore, the disallowance made is totally unwarranted and in total disregard to the facts and evidence on record. Further, so far as question of disallowance of Rs.1,64,850/- under Rule 8D(iii) of the Rules is concerned, it is submitted by the ld. AR that clause (iii) of Rule 8D, was

introduced for the reason that certain expenses on the nature of administrative expenses are bound to be incurred for making investment. However, in the instant case, the AO himself has admitted in assessment order that M/s Anil Special Steels Industries Ltd. is sister concern of assessee and thus no effort was made for making investment and actually no administrative cost is incurred over such investments. The language of section 14A is not at all ambiguous and in fact very clear and by virtue of the same, only expenditure actually incurred in relation to income not includible in total income shall be disallowed. In no way, it could be interpreted that it seeks to disallow expenses incurred in relation to future exempt income, as it would be completely against the well recognized "matching concept." It is the principle that disallowance u/s 14A can be made only when assessee has actually earned exempt income, has been affirmed by catena of judicial decisions. In this regard, we relied on the decision of the Hon'ble Apex Court in the case of **Maxopp Investment Ltd vs. CIT** has held that *"only that expenditure which is "in relation to" earning dividends can be disallowed u/s 14A & Rule 8D and further the AO has to record proper satisfaction on why the claim of the assessee as to the quantum of suo moto disallowance is not correct*." The Hon'ble Delhi High Court in the case of **Cheminvest Ltd. Vs. CIT 378 ITR 33 (Del)** has held that, "*no*

disallowance u/s 14A can be made in a year in which no exempt income has been earned or received by the appellant." Further, the Coordinate Bench of ITAT, Jaipur Bench in the case of **Deepak Vegpro (P) Ltd., Alwar Vs. ACIT** in ITA No 110/JP/14 order dated 24.04.2017 had deleted the disallowance made by the AO u/s 14A by relying on the Delhi High Court decision in case of Cheminvest Ltd. (supra) for the reason that no dividend income was received during the year.

9. We also observed from perusal of the record that out of disallowance of interest u/s 14A, Rs. 9,72,617/-was disallowed as per Rule 8D(2)(ii), being proportionate interest. In this regard, during assessment proceedings it was submitted by the assessee before AO that entire interest of Rs.14,97,600/- paid by assessee was in respect of term loan of Rs.83.20 lacs taken for purchase of plant & machinery, which was directly related to business purpose. However, the AO completely ignored the submission of assessee and made the disallowance. At this juncture, our attention was drawn towards the Balance Sheet which are available at page No. 15 and 20 of the paper book and from perusal of the same, we observed that out of total investment of Rs. 4,33,92,050/-, a sum of Rs. 2,77,92,050/- represents the amount invested in Convertible Warrants and thus could not form part of total investments eligible for consideration of

disallowance u/s 14A read with Rule 8D of the Rules. The AO while computing the disallowance, considered total value of investment, thus the basic approach of the AO to the issue in hand is patently wrong. Further investment in equity shares was carried over from preceding year and was not made in the year under consideration. Apart from this, the AO has failed to bring on record the nexus between the funds borrowed and invested in the equity shares having tax free income, therefore, we are of the view that the AO without appreciating these facts concluded that investment in shares was made out of borrowed funds. Further, with regard to disallowance of interest of Rs.3,60,135/- made by the AO U/s 36(1)(iii), of the Act, we are of the view that M/s Anil Special Steels Industries Ltd. is the main supplier of assessee, accordingly, assessee has to make payment to it on regular basis in the ordinary course of business to get the material uninterruptedly. Thus, the advance of Rs.33,20,370/- made by assessee to Anil Special Steels was in the ordinary course of business. It was submitted by the ld. AR that the assessee is having Closing Balance of Unsecured Loan taken from M/s Anil Special Steels Industries Ltd. (ASSIL) of Rs. 3,34,31,537/- which is at page No. 28 of the paper book, out of which a sum of Rs. 83.20 lacs was old term loans given for the acquisition of Plant & Machinery on which interest @ 18% is being paid and balance

amount is interest free receipt, meaning thereby that assessee has already received more interest free funds than advance made and no interest bearing fund were utilized during the year for making providing advance to ASSIL, thus question of making any disallowances is beyond the scope of section 14A and 36 (1)(iii) of the Act. Considering the totality of facts and circumstances of the case, we are of the considered view that the interest bearing funds taken by assessee were utilized wholly and exclusively for the purpose of business, in respect of which no disallowance could be made, therefore, we direct to delete the disallowance so made and confirmed qua this issue.

10. Ground No. 2 of the appeal raised by the assessee relates to challenging the order of the ld. CIT(A) in confirming the addition of Rs. 21,80,000/- made by the A.O. U/s 68 of the Act. In this regard, the ld. AR has reiterated the same arguments as were raised before the ld. CIT(A) and also relied upon the written submissions filed before the Bench and the contents of the same are as under:

> *"It is submitted that the assessee has obtained fresh unsecured loan from M/s Pooja Vintrade Pvt. Ltd. amounting to Rs. 2,16,44,037/- out of which Rs.1,94,64.037/- was repaid and balance of Rs.21,80,000/-. Ld. AO doubted the creditworthiness of the lender and made addition of Rs.21,80,000/- in the hands of the assessee. It is pertinent to mention that ld. AO has not doubted the creditworthiness of the lender to the extent of Rs.*

1,94,64,037/- which amount was received by the appellant during the year under appeal and was repaid at a later stage.

At the outset, provisions of section 68 are reproduced for ready reference:

"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 -[2][Assessing] Officer, satisfactory, the sum so credited may he charged to income-tax as the income of the assessee of that previous year"

On perusal of above, it is evident that assessing officer can make addition u/s 68 only under two circumstances, i.e.:

(i) appellant does not offer any explanation about nature and source of such credit or

(ii) explanation offered by appellant is not upto the satisfaction of Ld. AO.

It is further submitted that to come out of rigors of section 68, an assessee has to furnish identity and creditworthiness of the creditor and genuineness of the transaction. In the instant case, assessee has established all the three conditions as under:

- *Identity of creditor: is established as Pooja Vintrade Pvt. Ltd. was holding PAN*
- *Creditworthiness: Assessee had furnished the confirmation and copies of audited Balance Sheet of M/s Pooja Vintrade Pvt. Ltd. (APB 36-37, 44-48)*
- *Genuineness: Loan was taken through account payee cheque*
- *Affidavit of the Director of the company (APB 49)*

In view of above, assessee has discharged the onus as requiredunder section 68 of the Act by proving Identity of creditor, Genuineness of

transaction and Creditworthiness/capacity of creditor. In fact, Ld. AO has not disputed the identity and genuineness of lender rather made the addition solely alleging creditworthiness.

So far as creditworthiness is concerned, assessee has furnished audited Balance Sheet of M/s Pooja Vintrade Pvt. Ltd. which duly incorporates all the entries. It is also submitted that assessee cannot be penalized for non compliance of notices on the part of debtor. In this regard, it is submitted that it is not the case that notice u/s 133(6) remained unserved rather notice remain uncomplied for the reason best known to them. During the course of appellate proceedings, ld. CIT(A) directed to produce the party, however being located outside Jaipur (at Kolkatta), they could not be produced and due to the fact that the borrower is always in subdued capacity, assessee could not compel the lender to appear. However, assessee with best efforts was able to obtain affidavit from director of Pooja Vintra.de Private Ltd., (APB 49) duly confirming the fact that they have advanced loan to assessee in F.Y. 2011-12, which has closing balance of Rs.21,80,000/- as on 31.03.2012, which was furnished before ld.CIT(A), however was brushed aside.

Ld. CIT(A) while confirming the addition has wrongly stated that the assessee has not submitted complete Balance whereas the assessee vide letter dt. 6.3.2017 (APB 8-9) has submitted detailed Balance Sheet (APB 9, 44-48). The ld. AR has relied on the following decisions:

i. *Pr. CIT vs M/s Paradise Inland Shipping Pvt. Ltd., ITA NO. 66 of 2016 (Bom)*

ii. *M/s Kota Dall Mill vs. DCIT in ITA No. 997 to 1002/JP/2018 & 1119/JP/2018,*

On the basis of above observations, Hon'ble bench has allowed the appeal of aforecited assessee on merits as well as on legal issue. It is submitted that in the instant case also, no independent enquiries have been

conducted and statements of sh. Anand Sharma have been heavily relied upon in the instant case of assessee also. Thus this decision is squarely applicable to the case of assessee.

In view of above, it is submitted that addition made and confirmed u/s 68 on account of unsecured loans deserves to be deleted as the addition was made: by completely ignoring the documentary evidences furnished by assessee and by ignoring the fact that in the Balance Sheet of lender company the closing balance of Rs. 21,80,000/- is duly appearing (APB 48). It is thus submitted that assessee has furnished every possible detail to substantiate loan taken and none of which could be rebutted by lower authorities, thus the addition deserves to be deleted. He also relied on the following judicial pronouncements:

(i) Delhi ITAT decision in the case of Phool Singh vs ACIT. ITA No. 2901/Del/2014.

(ii) Commissioner of Income Tax Vs. Bhawani Oil Mills (Raj.) 49 DTR 212

(iii) CIT Vs. Jai Kumar Bakliwal (Raj.) 366 ITR 217.

(iv) Aravali Trading Co. Vs. ITO (Raj.) 187 Taxman 338

(v) CIT v. Ranchhod Jivabhai Nakhava [2012] 208 Taxman 35 (Gui.)

In view of above, it is requested that addition of Rs.21,80,000/- deserves to be deleted."

11. On the other hand, the ld. DR has vehemently supported the orders of the authorities below.

12. We have considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observed that

the assessee had obtained loans from M/s Pooja Vintrade Pvt. Ltd. amounting to Rs. 2,16,44,037/- out of which Rs.1,94,64,037/- was repaid and balance of Rs.21,80,000/- was to be paid. The AO doubted the creditworthiness of the lender and made addition of Rs.21,80,000/- in the hands of the assessee. It is pertinent to mention here that the AO has not doubted the creditworthiness of the lender to the extent of Rs. 1,94,64,037/- which amount was received by the assessee during the year under consideration and was repaid at a later stage. In this regard, re reproduce provisions of Section 68 of the Act 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 -[2][Assessing] Officer, satisfactory, the sum so credited may he charged to income-tax as the income of the assessee of that previous year"*

From perusal of the above Section, it is evident that the A.O. can make addition u/s 68 only under two circumstances, i.e.:

(i) assessee does not offer any explanation about nature and source of such credit or

(ii) explanation offered by assessee is not upto the satisfaction of the AO.

It has also come out of rigors of Section 68 that an assessee has to furnish identity and creditworthiness of the creditor and genuineness of

the transaction. In the instant case, assessee has established all the three conditions as under:

- Identity of creditor is established as Pooja Vintrade Pvt. Ltd. was holding PAN
- Creditworthiness: Assessee had furnished the confirmation and copies of audited Balance Sheet of M/s Pooja Vintrade Pvt. Ltd. which are at page Nos. 36-37 and 44-48 of the paper book.
- Genuineness: Loan was taken through account payee cheque
- Affidavit of the Director of the company which is at page No. 49 of the paper book.

In view of above scenario, the assessee has discharged the onus as required u/s 68 of the Act by proving identity of creditor, genuineness of transaction and creditworthiness/capacity of creditor. In fact, the AO has not disputed the identity and genuineness of lender rather made the addition solely alleging creditworthiness. So far as creditworthiness is concerned, the assessee has furnished audited Balance Sheet of M/s Pooja Vintrade Pvt. Ltd. which duly incorporates all the entries. It was submitted by the ld. AR that the assessee cannot be penalized for non compliance of notices on the part of debtor. In this regard, we are of the view that it is not the case that notice u/s 133(6) remained unserved rather notice remain uncomplied for the reason best known

to them. During the course of appellate proceedings, the ld. CIT(A) directed to produce the party, however being located outside Jaipur (at Kolkatta), they could not be produced and due to the fact that the borrower is always in subdued capacity, assessee could not compel the lender to appear. However, assessee with best efforts was able to obtain affidavit from director of Pooja Vintrade Private Ltd., which is at page No. 49 of the paper book, duly confirming the fact that they have advanced loan to assessee in F.Y. 2011-12, which has closing balance of Rs.21,80,000/- as on 31.03.2012, which was furnished before ld.CIT(A), however was brushed aside. The ld. CIT(A) while confirming the addition has stated that the assessee has not submitted complete Balance whereas the assessee vide letter dated 06.3.2017 which is at page No. 8-9of the paper book has submitted detailed Balance Sheet which are page nos. 9, 44-48 of the paper book. In this regard, we draw strength from the decision of Hon'ble Bombay High Court in the case of **Pr. CIT vs M/s Paradise Inland Shipping Pvt. Ltd.** passed in ITA No. 66 of 2016 has categorically held that:

> *"once the Assessee has produced documentary evidence to establish the existence of such companies, the burden would shift on the Revenue-Appellants herein to establish their case. In the present case, the Appellants are seeking to rely upon the statements recorded of two persons who have admittedly not been subject to cross examination. In such circumstances, the question of remanding the matter for reexamination of such persons*

would not at all be justified. The Assessing officer, if he so desired, ought to have allowed the Assessee to cross examine such persons in case the statements were to be relied upon in such proceedings. Apart from that, the voluminous documents produced by the Respondents cannot he discarded merely on the basis of two individuals who have given their statements contrary to such public documents."

The coordinate Bench of this Tribunal in the case of **M/s Kota Dall Mill vs. DCIT in ITA No. 997 to1002/JP/2018 & 1119/JP/2018**, wherein addition was made u/s 68 on account of unsecured loans, has allowed the appeal of assessee (para 11 pages 72-87) by observing that:

- once the chain of transactions and flow of money from one entity to another and finally to the assessee has not been established, then the addition made merely on suspicion, how so strong it may be, is not sustainable. It is further observed that once the assessee has produced all the relevant record which includes bank statement, financial statements including balance sheet, copy of ROC Master data showing the status of loan creditor company as "active", confirmation of loan given to the assessee.

- except the statement of Shri Anand Sharma and the report of the investigation Wing Kolkata, the AO has not brought on record any other material to controvert or disprove the documentary evidence produced by the assessee.

- in the absence of any discrepancy or fault in the financial statements or in bank accounts to reflect that the transactions in

question are nothing but bogus accommodation entries, addition made by the AC) is not sustainable as it is merely on surmises and conjectures and not on any tangible material disclosing the non genuineness of the transactions.

- not providing cross examination of witnesses, whose statements were relied upon amounts to denial of opportunity and consequently would be fatal to the proceedings.

On the basis of above observations, the Coordinate Bench of this Tribunal has allowed the appeal of assessee on merits as well as on legal issue. In the instant case also, no independent enquiries have been conducted and statements of Sh. Anand Sharma have been heavily relied upon in the instant case of assessee also. In this regard, we also relied on the decision of the Coordinate Bench of Delhi ITAT in the case of **Phool Singh vs ACTT. ITA No.2901/De1/2014**, wherein purchases made by assessee from certain supplier was doubted for the reason that notices issued to them u/s 133(6) returned unserved. It has been categorically held that:

"....assessee is regularly purchasing material from the above party and in the past the assessment under section 143(3) were made in case of the assessee wherein purchases from these parties are accepted. The purchases are made from the party through account payee cheques and the proper adequate bills supporting purchases were submitted. The assessee has submitted the confirmed copy of the account from the books of the supplier and also stated that he is assessed to income tax with ITO Ward 25/4 New Delhi. Further

regarding the address supplied by the assessee on which notices under section 133(6) remained unserved, assessee supplied the same address which is also shown in the income tax return of the supplier. Non compliance of summons under section 131 by the suppliers cannot be the concern of the assessee. It is not the case of the revenue that assessee was asked to produce the supplier.

……

..... The assessing officer made the whole addition by pointing out certain lacunas in the bank account of the suppliers of the assessee, which cannot be permitted. Merely because 133(6) notices issued to the party returned un-served though it was the same address, which was supplied by supplier while filing its income tax return, no fault can be put on the shoulder of assessee. Further, the learned Commissioner (Appeals) confirmed the finding of the learned assessing officer without giving any reason but merely reiterating the findings of the assessing officer. In view of this the addition made by the learned assessing officer of Rs. 2657303 from Suresh HYP Enterprises cannot be sustained and hence, deleted. In the result ground No. 2 of the appeal of the assessee is allowed."

We also draw strength from the decision in the case of **Commissioner of Income Tax Vs. Bhawani Oil Mills (Raj.) 49 DTR 212** wherein it has been held as under:

"INCOME - CASH CREDIT - GENUINENESS - Though only one of the eight creditors appeared in response to the notice given by the AO and confirmed the loan, non-appearance of others by itself cannot be a reason to discard their version - These persons have subsequently filed their confirmationS supported by their affidavits Contents of the affidavits could not be treated as of a lesser importance than the statement given by the creditors before the AO

- Tribunal has dealt with the confirmations given by the creditors in detail and found no reason to doubt the correctness of the impugned cash credits taken from the said creditors - Therefore, the matter deals with appreciation and evaluation of evidence and does not raise any substantial question of law, so as to justify interference."

The Hon'ble Jurisdictional High Court in the case of **CIT Vs. Jai Kumar Bakliwal (Raj.) 366 ITR 217** has held as under:

INCOME — CASH CREDIT — Genuineness — Once the amount was advanced by the creditors by account payee cheque from their respective bank accounts and the said creditors were being assessed to income-tax, then capacity of the creditors and prove that money actually belonged to the assessee himself, addition under s. 68 was not sustainable.

The Hon'ble Jurisdictional High Court in the case of **Aravali Trading Co. Vs. ITO (Raj.) 187 Taxman 338** has held as under:"

"Assessment year 1993-94 — Whether once existence of persons in whose names credits are found in books of assessee is proved and such persons own such credits with assessee, assessee is not required to prove sources from which creditors could have acquired money to be deposited with it — Held, yes — Whether merely because depositors' explanation about sources wherefrom they acquired money is not acceptable to Assessing Officer, it cannot be presumed that deposits made by such creditors are moneys of assessee itself — Held, yes — Whether in order to fasten liability on assessee by including such credits as its incomes from unexplained sources, a nexus has to be established by revenue that sources of creditors' deposit flow from assessee — Held, yes."

The Hon'ble Gujarat High Court in the case of **CIT v. Ranchhod Jivabhai Nakhava [2012] 208 Taxman 35 (Guj.)** had held as under:

> *"Once the assessee has established that he has taken money from the lenders who all are Income-tax assesseewhose PAN have been disclosed, the initial burden u/s. 68 was discharged. Once the A.O. gets hold of the PAN of the lenders, it was his duty to ascertain from the A.O. of those lenders whether in their respective returns they had shown existence of such amount of money and had further shown those amounts of money had been lent to the assessee. If before verifying such facts from the A.O. of the lenders of the assessee, the A.O. decides to examine the lenders and asks the assessee to further have the genuineness and creditworthiness of the transaction, the A.O. does not follow the principle laid down u/s. 68."*

Considering the totality of facts and circumstances of the case, we found merit in the contention of the ld. AR and the case laws relied upon before us are also found support the case of the assessee. No new facts and circumstances has been put forth by the ld. DR, therefore, we direct to delete the addition made and confirmed U/s 68 of the Act.

13. The 3rd ground of appeal raised by the assessee relates to challenging the order of the ld. CIT(A) in confirming the disallowance of Rs. 24,486/- made out of expenses claimed in the P&L account as vehicle and travelling expenses.

14. Having considered the rival contentions and carefully perused the material placed on record. We observed from perusal of the record that the assessee being a private limited company, such disallowance for the personal use or for non-business purposes cannot be made. Further, during the course of assessment proceedings, books of accounts were produced before the AO by the assessee, who has not pointed out any specific defect and in fact book results declared by assessee have been accepted. The expenditures on vehicle and travelling were incurred wholly and exclusively for the purpose of business and under the business expediency and AO cannot walk into the shoe of the businessman to look into the necessity and purpose. The Hon'ble Supreme Court in the case of **S.A. Builders Ltd. Vs. CIT(Appeals) 288 ITR I (SC) has held that** ***"o****nce it is established that there was nexus between the expenditure and purchase of the business (which need not necessarily be the business of the assessee itself) the Revenue cannot justifiably claim to put itself in the arm-chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the circumstances of the case. No businessman can be compelled to maximize his profits."* The Coordinate Bench of Pune Tribunal in the case of **DCIT v. Kolhapur Zilla Sahakari Dudh**

Utpadak Sangh Ltd. (2009)32 SOT 9 (Pune) has held that "*S. 37(1)—For the expenditure to be allowable u/s. 37(1), it may be incurred `voluntarily' and without any 'necessity' and if it is incurred for promoting business and to earn profits, assessee can claim deduction u/s. 37(1), even though there was no compelling necessity to incur such expenditure."* Considering the totality of facts and circumstances of the case, we found merit in the contention of the ld. AR and the case laws relied upon before us are also found support the case of the assessee. No new facts and circumstances has been put forth by the ld. DR, therefore, we direct to delete the addition made and confirmed qua this issue.

15. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 22nd February, 2022.

Sd/-	**Sd/-**
(एन.के.सैनी)	(संदीप गोसाई)
(N.K. SAINI)	(SANDEEP GOSAIN)
उपाध्यक्ष / Vice President	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 22/02/2022
*Ranjan
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Mahalaxmi Saws Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 4(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 280/JP/2019)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar