

**-IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 273 & 317/RJT/2023

(Assessment Year: 2013-14)

(Hybrid Hearing)

Comet Granito Pvt. Ltd., 8A National Highway, Nana Jambudiya, Morbi-363642	Vs.	Deputy Commissioner of Income Tax, Morbi Circle, Morbi
Assistant Commissioner of Income-tax, Circle-1(1), Rajkot, Room No.502, Aayakar Bhavan, Race Course, Ring Road, Rajkot- 360001		M/s Comet Granito Pvt. Ltd. 8-A, National High Way, Nava Jambudiya, Morbi-363642
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCC 9062 H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No. 107 & 110/RJT/2021

(Assessment Year: 2017-18)

Assistant Commissioner of Income-tax, Circle-1(1), Rajkot, Room No.502, Aayakar Bhavan, Race Course, Ring Road, Rajkot-360001	Vs.	M/s. Comet Granito Pvt. Ltd., 8A National Highway, Nana Jambudiya, Morbi-363642
Comet Granito Pvt. Ltd., 8-A, National Highway, Nava Jambudiya, Jambudiya, Morbi- 363642		Assistant/Deputy Commissioner of Income-tax, Morbi Circle, Aayakar Vibhag, J.K.Chamber, 8-A, National Highway, Lalpar, Morbi-363642
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCC 9062 H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by
Revenue by

: Shri Vimal Desai, AR
: Shri Ashish Kumar Pandey, Sr. DR

Date of Hearing
Date of Pronouncement

: 30/09/2024
: 30/12/2024

आदेश/ORDER

PER DINESH MOHAN SINHA, JM:

Captioned two set of cross-appeals filed by the assessee and the Revenue, are directed against separate orders passed by National Faceless Appeal Centre, Delhi/ Ld. Commissioner of Income-tax (Appeals)-11, Ahmedabad, (in short 'Ld.CIT(A)', dated 17.07.2023 and 08.07.2021, under section 250 of the Income Tax Act, 1961 (in short, 'the Act') for assessment years 2013-14 and 2017-18 respectively.

2. As certain facts in cross-appeals are common, thus, all the cross-appeals were clubbed and heard together and a consolidate order is being passed for the sake of convenience and brevity. Assessee's appeal in ITA No.273/Rjt/2023 is treated as "**lead**" case, the grounds of appeal raised are as follows:-

ITA No. 273/Rjt/2023 (AY:13-14)

<i>Sr. No.</i>	<i>Grounds of Appeal</i>
1	<i>The assessment order u/s, 143(3) of the Act is bad in law.</i>
2	<i>The learned Assessing Officer has erred in law as well as on facts in making the addition of Rs.1,82,10,891/- u/s. 68 of account of alleged unexplained unsecured loans and the learned CIT(A) has also erred in law as well as on facts in confirming the same.</i>
3	<i>The learned Assessing Officer has erred in law as well as on facts in making the addition of Rs.1,00,00,000/- u/s. 68 of account of alleged unexplained unsecured loans from four Kolkata based companies and the learned CIT(A) has also erred in law as well as on facts in confirming the same.</i>
	<i>Total Tax Effect</i>

ITA No. 317/Rjt/2023 (AY:13-14) Revenue Appeal:

1.	<i>The Ld. CIT(A) has erred in law and on facts that the claim of the assessee of</i>
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	<i>reduction of Rs. 6,13,51,603/- being the difference due to change in method of depreciation from total income.</i>
2.	<i>The Ld. CIT(A) has erred in law and on facts that the assessee has claimed for change in the method of depreciation only for the year under consideration.</i>
3.	<i>It is, therefore, prayed that the order of the CIT(A) be set aside and that of the AO be restored to the above extent.</i>

3. Ground no. 1 is in general in nature need not to be adjudicated.

4. Facts *qua* Ground No.2 of lead case are stated below:

4.1 The appellant is a closely held private limited company engaged in the business of ceramic vitrified tiles and parking tiles. The appellant filed return of income for A.Y. 2013-14 on 26-09-2013 declaring total income Rs. Nil. (loss of Rs. 2,07,26,116/-). The books of accounts of the assessee was audited by chartered accountant and Audit report in Form No. 3CA and 3CD along with aforesaid etc. filed along with the return.

4.2 That the assessee has unsecured loan of Rs.1,82,10,891/- has been taken from ten parties namely;

- (i) Narbheram Thakarshibhai,
- (ii) Ramniklal T. Boda,
- (iii) Rajendra Punjaram Jadav,
- (iv) Sumit A Shinde,
- (v) Shri Shyam Enterprises,
- (vi) Surya Traders, B.R. Trading Co.,
- (vii) B.R. Trading
- (viii) Ajay Siwach,
- (ix) Atmiya Multitrade Corpo. &
- (x) Nalinkumar Acharya.

The assessee in reply filed salary certificate, proof of land holding, copy of confirmation without the proof regarding source of depositor in bank, in respect of certain depositor. The Ld. AO noted the submission made by the assessee in his regard been verified. On verification of the details submitted by the

appellant it is seen that on the basis of the documents produced in respect of above persons who have given unsecured loans/ shareholders to the assessee, the creditworthiness of the depositor are proved satisfactorily. The genuineness of the transaction creditworthiness and identity of the depositor cannot be held to be genuine. Reliance is placed on decision in the case of CIT v. R. S. Rathod [212 ITR 390 (Raj.)] Roshan Di Hatti v. CIT [107 ITR 938], Kalekhan Mohammand Hanif v. CIT [50 ITR 1 (S.G.)]. Therefore, the depositor of Rs. 1,82,10,891/- credited by the assessee in the name of aforesaid persons is treated as unexplained cash credit u/s. 68 of the I. T. Act.

4.4 Upon appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed appeal with following findings:

“6. DECISION:- The order u/s 143(3), statement of facts and the submission furnished by the appellant have been considered.

6.1 In respect of addition under section 68, onus is on appellant to prove genuineness of transaction and credit worthiness of parties from home unsecured loan has been received.

6.2 Narbhram Thakar:- Rs.3,10,000/- have been received from this party as unsecured loan. It is only mentioned by appellant that the said party has land holding of 1.52 Hector. However there are no any other details filed regarding credit worthiness of party. This person does not file the return of income showing the agricultural income, No income expenditure statement regarding agricultural income has been filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party as per general Indian agricultural profitability train a person can only and Rs 20,000/- maximum per acre. By this calculation, this party can earn maximum up to Rs.80,000/- or one lakh. However in this context, it is not clear how this party has given loan of Rs.3.10,000/- In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.3 Egx Boda:- This party has given unsecured loan of Rs.3,60,000/-. However this party is earning only Rs.2,40,000/- as salary. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs.3,60,000/-. In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.4 Rajendra Jadhav:- This party has given unsecured loan of Rs. 39,50,000/- No proof regarding income of party in terms of return of income etc is filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs. 39,50,000/-. In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.5 Sumit Shinde:- This party has given unsecured loan of Rs. 12,93,000/- No proof regarding income of party in terms of return of income etc is filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs.

12,93,000/- In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.6 Shri Shyam enterprise: This party has given unsecured loan of Rs 5,00,000/- No proof regarding income of party in terms of return of income etc is filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs. 5,00,000/- In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.7 Surya traders:- This party has given unsecured loan of Rs. 49,25,000/- No proof regarding income of party in terms of return of income etc is filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs. 49,25,000/-. In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.8 BR Trading company: This party has given unsecured loan of Rs 37,83,291/-. No proof regarding income of party in terms of return of income etc is filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs. 37,83,291/- In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.9 Ajay Siwach- This party has given unsecured loan of Rs. 20,00,000/- No proof regarding income of party in terms of return of income etc. is filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs. 20,00,000/- In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.10 Atmlya multi trade Corp:-This party has given unsecured loan of Rs. 10,00,000/- . No proof regarding income of party in terms of return of income etc is filed. No Asset liability statement or balance sheet has been filed to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs. 10,00,000/-, In view of this genuineness of the transaction and credit worthiness of the party is not established.

6.11 Nalinkumar:- This party has given unsecured loan of Rs. 87,800 No confirmation is filed. No proof regarding income of party in terms of return of income etc. is filed. No Asset liability statement or balance sheet has been fled to prove credit worthiness of the party. However in this context, it is not clear how this party has given loan of Rs. the transaction 87,600/- In view of this genuineness of and credit worthiness of the party is not established.

4.5. The AR has submitted, during the course of assessment proceedings, the appellant furnished confirmations of all the above depositors, salary certificate, their land holding proofs before the A.O. to discharge the primary onus cast upon the appellant u/s. 68 of the Act.

4.6 The Ld. Sr. DR has heavily relied on the judgement of the CIT(A) .

4.7 We have heard both the parties and perused the documents available on record. We note that ITO observed the credit worthiness of aforesaid depositor, shareholder is not proved. Deposit cannot be held to be genuine hence the receipt is treated assessable income. We further note the Ld. CIT(A) has observed in all cases, this genuineness of the transaction and credit worthiness of the party is not established. We note that lower authority has not exercised their power to enquiry wasted in section 131 and 133(6) of the Act to verify the genuineness of the transaction and creditworthiness of the party. Further of the view that the Revenue should be given one more opportunity to the prayer to his case before the Ld. AO. We note the matter back to the file of Ld. AO to take decisions after giving the assessee reasonable opportunity to be heard.

4.7 In the result, ground no. 2 in ITA No. 273/Rjt/2023, is allowed for statistical purposes.

5. In ground no. 2, the assessee has unsecured loan of Rs.1,00,00,000/- from four parties

(i) Saurav Filmcity Pvt. Ltd.	Rs. 25,00,000/-
(ii) Saurav Gas CNG Pvt. Ltd.	Rs. 25,00,000/-
(iii) Saurav Nursing Home Pvt. Ltd.	Rs. 25,00,000/-
(iv) Saurav Petroleum Pvt.	Rs. 25,00,000/-

5.1 During the course of assessment, The assessee has submitted following documents in support of unsecured of loan.

- ▶ Confirmation from the lenders. Loan received from banking channel
- ▶ Bank statement of the lenders. There is no cash deposit in the bank account of the lenders and the money was advanced to us by clearing receipt from other parties.
- ▶ Return of income of the lenders/depositors to show that lenders are assessed to tax along with tax audit report showing loan to the appellant and worth of the depositor.
- ▶ The loans were interest bearing loans and there is due compliance of TDS on interest on such loans. TDS return deposit
- ▶ That the assessee has discharged primary onus as per section 68 of the Act.

► Audited annual accounts of the lenders.

Upon verification by the Ld. AO about the documents found, copy of acknowledgment of return of income filed by the appellant that nominal income shown in the range of Rs. 6000/- to 12000/-. These company have given a he unsecured loan to other companies and the same are assessed to tax under this circle and return of income suggest that all these companies are shall companies and running only on paper. The appellant was enable to produced this parties for verification. Accordingly a sum of Rs. 1,00,00,000/- is hereby added to the total income of the assessee u/s. 68 of the I.T. Act. and the finding of Ld. CIT(A) are as under:

6.12 Sourav filmcity Pvt Ltd:- This party has given unsecured loan/deposit of Rs 25,00,000/-. From the Balance sheet it's seen that it has earned profit of only Rs 12,121/- Further reserves and surplus as per schedule 2 are only Ps 12,121/- However in this context, it is not clear how this party has given ban of Rs. 25,00,000/- From the publicly available information it is seen that it is involved in Motion picture, radio, television and other entertainment activities. It appears that this transaction is not in line with its stated main business activity. Appellant has not submitted with supporting documents what pitching was made to this party so as to fetch unsecured loan of this big amount. Appellant also has not provided with supporting documents what communication and negotiation did happen with this party to conclude this transaction. Auditor has also mentioned at Sr, no 3 to notes to account that appellant has not submitted Form no 5 and 2 to Ministry of corporate affairs. Also as mentioned by AO in his order; appellant has expressed its inability to produce these parties in front of AO. In this context and looking at meagre income and reserves and surplus, it is not clear how this party has given loan/deposit of Rs. 25,00,000/-. In view of above facts and discussion genuineness of the transaction and credit worthiness of the party is not established.

6.13 Sourav Gas CNG Pvt Ltd.-This party has given unsecured loan/deposit of Rs. 25,00,000/-, From the Balance sheet it's seen that it has earned profit of only Rs. 8446/- Further reserves and surplus as per schedule 2 are only Rs 8446/-. However, in this context, it is not clear how this party has given loan of Rs. 25,00,000/-, From the publicly available information it is seen that it is involved in Steam and hot water supply. It appears that this transaction is not in line with its stated main business activity. Appellant has not submitted with supporting documents what pitching was made to this party so as to fetch unsecured loan of this big amount. Appellant also has not provided with supporting documents what communication and negotiation did happen with this party to conclude this transaction. Auditor has also mentioned at Sr. no 2 to notes to account that appellant has not submitted Form no 5 and 2 to Ministry of corporate affairs even though it has increased authorised share capital and issued equity shares. Also as mentioned by AO in his order, appellant has expressed its inability to produce these parties in front of AO this context and looking at meager income and reserves and surplus, it is no clear how this party has given loan / deposit of Rs. 25,00,000/-. In view of above facts and discussion, genuineness of the transaction and credit worthiness of the party is not established.

6.14 Saurav nursing home Pvt Ltd:- This party has given unsecured loan/ deposit of Rs. 25,00,000 From the Balance sheet it's seen that it has earned profit of only Rs. 6023/-, Further reserves and surplus as per schedule 2 ar only Rs. 6023/-. However in this context, it is not clear how this party has given loan of Rs. 25,00,000/-. From the publicly available information it is seen that it is involved in Human health activities. It appears that this transaction is not in line with its stated main business activity. Appellant has not submitted with supporting documents what pitching was made to this party so as to fetch unsecured loan of this big amount. Appellant also has not provided with supporting documents what communication and negotiation did happen with this party to conclude this transaction. Auditor has also mentioned at Sr. no 3 to notes to account that appellant has not submitted Form no. 5 and 2 to Ministry of corporate affairs even though it has increased authorised share capital and issued equity shares. Also as mentioned by AO in his order, appellant has expressed its inability to produce these parties in front of AO. In this context and looking at meager income and reserves and surplus, it is not clear how this party has given loan/ deposit of Rs. 25,00,000/- In view of above facts and discussion, genuineness of the transaction and credit worthiness of the party is not established.

6.15 Saurav petroleum Pvt Ltd.: This party has given unsecured loan/deposit of Rs. 25,00,000/-, From the Balance sheet it's seen that it has earned profit of only Rs. 4629/-, Further reserves and surplus as per schedule 2 are only Rs. 4629/-. However in this context, it is not clear how this party has given loan of Rs. 25,00,000/-. From the publicly available information it is seen that it is involved in business activity etc. It appears that this transaction is not in line with its stated main business activity. Appellant has not submitted with supporting documents what pitching was made to this party so as to fetch unsecured loan of this big amount. Appellant also has not provided with supporting documents what communication and negotiation did happen with this party to conclude this transaction. Auditor has also mentioned at Sr. no 3 to notes to account that appellant has not submitted Form no 5 and 2 to Ministry of corporate affairs even though it has increased authorized share capital and issued equity shares, as mentioned by AO in his order. Appellant has expressed its inability to produce these parties in front of AO. In this context and looking at meager income and reserves and surplus, it is not clear how this party has given loan/deposit of Rs. 25,00,000/- In view of above facts and discussion, genuineness of the transaction and credit worthiness of the party is not established.

5.2 The Ld. AR has submission is that the appellant has submitted all supported documents regarding loan advances in assessment proceedings, as such discharge the liability u/s. 68 of the Act and Ld. AR relied upon following judgments:

- Delhi High Court in case of Victor Electrodes Ltd. - 329 ITR 271
- Delhi High Court in case of Orbital Communication Pvt. Ltd. 327 ITR 560
- Ahmedabad ITAT in case of Nareshbhai Balubhai Sojitra decision dated 16.02.2016 in ITA No. 2645/Ahd/2011.
- Gujarat High Court in case of Ranchhod Jivabhai Nakhava 208 Taxman 35

- Gujarat High Court in case of Meenaben Lakhani Tax Appeal No. 104 of 2011
- Rajkot ITAT in case of Shri Sagalchand P. Anada decision dated 04.05.2016 in ITA No. 80/Rjt/2013
- Ahmedabad ITAT in case of Banulal Ramprasad Agarwal HUF decision dated 30.05.2014 in ITA No. 3494/Ahd/2010
- Mumbai ITAT (Special Bench) in case of GTC Industries Ltd. 164 ITD 1
- The decision of the Hon'ble CIT(A)-3, Rajkot in case of M/s. Corus Vitrified Pvt. Ltd. decision dated 27.03.2018 in Appeal No. CIT(A)- 3/10552/16-17
- Gujarat High Court in case of CIT vs. Pragati Co-operative Bank Ltd. - 278 ITR 170
- Gujarat High Court in case of CIT vs. Chanakya Developers - 222 Taxman 164
- Supreme Court in case of Goetze India Ltd. - 284 ITR 323
- Rajkot ITAT in case of Kutch District Central Co-operative Bank - ITA No. 227/Rjt/2011
- Delhi ITAT decision in case of Pearey Lall & Sons (EP) Pvt. Ltd. decision dated 31.01.2019 in ITA No. 4373/Del/2015
- Gujarat High Court in case of S. R. Koshti - 276 ITR 165
- Gujarat High Court judgment in case of Mitesh Impex - 270 CTR 66
- Mumbai ITAT in case of Shri Chandrashekhar J. Bahirwani - decision dated 17.06.2015 in ITA No. 7810/Mum/2010 & 6599/Mum/2012:
- Mumbai ITAT in case of Vijaya Silk House Pvt. Ltd. - decision dated 30.09.2015 in ITA No. 4806/Mum/2012
- Gujarat High Court judgment in case of Greenland Infracon Pvt. Ltd. - judgment dated 09.07.2019 in Tax Appeal no. 239 of 2019
- Delhi ITAT decision in case of Pearey Lall & Sons (EP) Pvt. Ltd. decision dated 31.01.2019 in ITA No. 4373/DEL/2015

5.3. Before us Ld. Sr. D.R. submitted the written submission which is reproduced as follows:-

I) On amount being received through banking channel:-

(a) *PCIT Vs Bikram Singh*, [2017] 85 taxmann.com 104 (Delhi)

(b) *Tirath Ram Gupta Vs CIT*, [2009] 177 Taxman 294 (Punjab & Haryana)

(c) *Sajid Khan Vs PCIT*, [2019] 111 taxmann.com 240 (Allahabad)

II) On confirmation of account of loan provided:

(a) *CIT Vs Maithan International*, [2015] 56 taxmann.com 283 (Calcutta)

III) On non-production of directors of companies before AO:

(i) *Ayaana Comtrade (P) Ltd. Vs ITO*, [2019] 104 taxmann.com 66 (Ahmedabad- Trib.)

(ii) *Beutex India P Ltd.*, [2012] 18 taxmann.com 9 (Delhi)

(iii) *Pawankumar N. Sanghvi vs. ITO* (2017) 81 taxman 308 (Ahmedabad-Trib)

(iv) *Pr. CIT vs. BS Infratech* (2024) 161 taxmann.com 668 (Calcutta)

5.4 The ld. D.R. also relied upon the following judgements:-

(i) PCIT v. Bikram Singh (2017) 85 taxmann.com 104 (Delhi)

"25. The law applicable to transactions of this nature is well settled by this Court in Divine Leasing & Finance Ltd. (supra). Both parties have referred to and relied upon this judgment. This Court, after analyzing the entire law on the subject in the context of Section 68 of the Act, held as under:

"...16. In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels;(3)the creditworthiness or financial strength of the creditor/subscriber. (4) If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Shared Application Forms, Share Transfer Register etc. it would constitute acceptable proof or acceptable explanation by the assessee. (5) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the AO take such repudiation at face value and construe it, without more, against the assessee. (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation...."

(ii) Tirath Ram Gupta v. CIT (2009) 177 taxman 294 (Punjab & Haryana)

“a gift cannot be accepted as such to be genuine, merely because amount has come by way of a cheque or draft, through a banking channel, unless identity of donor; his creditworthiness; relationship with donee and occasion are proved - Held, yes”

(xvi) Sajid Khan v. PCIT (2019) taxmann.com 240 (Allahabad)

“The law is well settled that the onus of proving the source of a sum of money found to have been received by the assessee is on him and if he disputes the liability for tax, it is for him to show that the receipt is not income or it is exempted from tax. In the absence of such proof, the revenue is entitled to treat it as taxable income.”

(iii) CIT v. Maithan International (2015) 56 taxmann.com 283 (Calcutta)

“It is well established that credits allegedly based on loan from parties, who are not possessed of sufficient means cannot be accepted as genuine. The Assessing Officer was required to make proper investigation to determine whether the money was really lent by the third party or it has come out of the resources of the assessee himself. Thus the Assessing Officer has failed to apply his mind to all aspects of the case is self-evident. Such non-application of mind constituted passing of an erroneous order which is also prejudicial to the interest of revenue. [Para 11]”

(iv) Ayaana Comtrade (P.) Ltd. v. ITO (2019) 104 taxmann.com 66 (Ahmedabad-Trib)

“In one set of case, the assessee produced necessary documents/evidence to show and establish identity of the shareholder and bank account from which payment was made. The fact that payment was received through bank channels, filed necessary affidavit of the shareholders or confirmations of the directors of the shareholder company. But thereafter no further inquiry was made by the Assessing Officer. The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The Assessing Officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances. The primary requirements, which should be satisfied in such cases is, identification of the creditors/shareholder, creditworthiness of creditors/shareholder and genuineness of the transaction. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct.”

(v) Beutex India (P.) Ltd. v. CIT (2012) 18 taxman.com 9 (Delhi)

“Assessing Officer made addition to assessee's income under section 68 in respect of share application money Commissioner (Appeals) and Tribunal upheld order of Assessing Officer holding that transactions relating to share application money were bogus as assessee had not produced concerned persons for verification”

(vi) Pavankumar N. Sanghvi vs. ITO (2017) 81 taxman 308 (Ahmedabad - Trib)

“8. As I proceed to deal with genuineness aspect, it is important to bear in mind the fact that what is genuine and what is not genuine is a matter of perception based on facts of the case vis-à-vis the ground realities. The facts of the case cannot be considered in isolation with the ground realities. It will, therefore, be useful to

understand as to how the shell entities, which the loan creditors are alleged to be, typically function, and then compare these characteristics with the facts of the case and in the light of well settled legal principles. A shell entity is generally an entity without any significant trading, manufacturing or service activity, or with high volume low margin transactions- to give it colour of a normal business entity, used as a vehicle for various financial maneuvers. A shell entity, by itself, is not an illegal entity but it is their act of abatement of, and being part of, financial manoeuvring to legitimise illicit monies and evade taxes, that takes it actions beyond what is legally permissible. These entities have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much less a Member of this specialized Tribunal, cannot be oblivious of these -ground realities.”

(vii) Pr. CIT vs. B.S. Infratech Ltd (2024) 161 taxmann.com 668 (Calcutta)

“Since assessee had not established capacity of investors to advance moneys for purchase of above shares at a high premium, credit worthiness of those investors companies was questionable and explanation offered by assessee, at any stretch of imagination could not be construed to be a satisfactory explanation of nature of source”

5.5. We have heard both the parties, perused the records and carefully gone through the submissions made by both the parties. We have gone through the findings of the Ld. CIT(A) and noticed that all issues and arguments were considered by Ld. CIT(A), hence, we do not find any infirmity in the order of Ld. CIT(A), thus we dismissed ground no. 3 raised by assessee.

5.6 In the result, ground no. 3 raised by the assessee is dismissed.

6. Now, we shall take revenue's appeal in ITA no. 317/Rjt/2023, wherein the issue raised by the revenue, pertaining to change in method of providing depreciation.

6.1 The assessee has further changed its method of depreciation from WDV to SLM because of this a difference of Rs.6,13,51,603/- was credited under the

head other income. This has been done according to the accounting Standard-6 issued under Companies Accounting Standard Rules. However, this has not been claimed in the return but during the course of assessment proceedings revised computation describing depreciation calculation according to SLM method. However, the claim of the assessee for reduction of an amount of Rs.6,13,51,603/- being the difference due to change in method of depreciation is not entertained.

6.2. Being aggrieved by the order appellant filed appeal before the Id. CIT(A) against the assessment order dated 23-02-2016. The Id. CIT(A) has disposed of the appeal with following remark on order dated 23-02-2016 has observed and made an adjudication as under:-

"8. DECISION: The order u/s 143(3), statement of facts and the submission furnished by the appellant have been considered.

8.1 During the assessment proceedings, the AO disallowed the claim of reduction of Rs 6.13.51.603/- being the difference due to change in method of depreciation from total income of the appellant.

8.2 AO has added this amount stating that AO cannot entertain the claim made by assessee which was not in the original return. However for appellate authority. there are various decisions of higher form where such revised claim is to be entertained in the interest of justice. Delhi ITAT in its decision in Pearey Lall & Sons vs ACIT ITA No. 4373/Del 2015 for AY 2011-12 dated 31.01.2019 has given decision in favor of assessee in same issue, relevant para of the same is reproduced below:

*9. We have carefully considered the rival contentions and perused the orders of the lower authorities. Apparently during year the company has changed the method of providing depreciation on its assets from written down value method to straight line method Therefore, it is difference between the two depreciation methods resulted into excess depreciation provided by the assessee till then in the books of account was of Rs. 19610677/- which is now credited to profit and loss account. While preparing the computation of total income, assessee reduced above sum from the net profit as per profit and loss account as same was not chargeable to tax as it is merely a book adjustment on account of change in the method of depreciation. It is also supported by the guidelines issued by ICAI. The lower authorities have not understood the correct treatment of the same as the above item credited to the profit and loss account is merely book adjustment by which the profit in the books of account have gone up and as it does not have any tax impact, same is correctly reduced from the taxable income of the assessee. It has nothing to do with the claim of the depreciation on assets which is terms of the provision of section 32 of the Income tax Act. Hence we reverse the finding of the lower authorities and direct the Id AO to delete the disallowances of Rs. 19610677/-. Accordingly. Ground No. 1 to 3 of the appeal of the assessee are **allowed**."*

*8.3 In view of this I direct AO to delete the addition and ground of appellant on this issue is upheld and accordingly **ALLOWED**.*

9. In the result, the appellant's appeal is **PARTLY ALLOWED.**”

6.3 Further aggrieved by order of ld. CIT(A) assessee has filed appeal before the Tribunal.

6.4 Ld. AR of the assessee has relied on finding of Ld. CIT(A), whereas Ld. DR submitted that order passed by Ld. CIT(A) is on wrong footing. Ld. AR relied on following judgement.

(xi) ITA No. 4373/Del/2015 Pearey Lall & Sons (EP) Pvt. Ltd. order dated 31-01-2019 (ITAT Delhi)

“9. Apparently during year the company has changed the method of providing depreciation on its assets from written down value method to straight line method. Therefore, it is difference between the two depreciation methods resulted into excess depreciation provided by the assessee till then in the books of account was of Rs 19610677/ which is now credited to profit and loss account. While preparing the computation of total income, assessee reduced above sum from the net profit as per profit and loss account as same was not chargeable to tax as it is merely a book adjustment on account of change In the method of depreciation. It is also supported by the guidelines Issued by ICAI. The lower authorities have not understood the correct treatment of the same as the above item credited to the profit and loss Caccount is merely book adjustment by which the profit in the books of account have gone up and as it does not have any tax impact, same is correctly reduced from the taxable income of the assessee. It has nothing to do with the claim of the depreciation on assets which is terms of the provision of section 32 of the Income tax Act. Hence we reverse the finding of the lower authorities and direct the Id AO to delete the disallowances of Rs. 19610677/-. Accordingly, ground No. 1 to 3 of the appeal of the assessee are **allowed.**”

(xii) CIT vs. Mitesh Impex (2014) 46 taxmann.com 30 (Gujarat High Court)

“38. It thus becomes clear that the decision of the Supreme Court in the case of Goetze (India) Ltd. (supra) is confined to the powers of the assessing officer and accepting a claim without revised return. This is what Supreme Court observed in the said judgment while distinguishing the judgment in the case of National Thermal Power Co. Ltd. (supra) and that is how various High Courts have viewed the dictum of the decision in the case of Goetze (India) Ltd. (supra). When it comes to the power of Appellate Commissioner or the Tribunal, the Courts have recognized their jurisdiction to entertain a new ground or a legal contention. A ground would have a reference to an argument touching a question of fact or a question of law or mixed question of law or facts.”

(xiii) Shri Chandrashekhar J. Bahirwani vs. ACIT, ITA Nos. 7810/M/2010 & 6599/M/2012 order dated 16-06-2015 (ITAT Mumbai)

“Moreover, if the assessee is, otherwise, entitled to a claim of deduction but due to his ignorance or for some other reason could not claim the same in the return of income, but has raised his claim before the appellate authority, the appellate authority should have looked into the same. The assessee cannot be burdened with the

taxes which he otherwise is not liable to pay under the law. Even a duty has also been cast upon the Income Tax Authorities to charge the legitimate tax from the tax payers. They are not there to punish the tax payers for their bona fide mistakes. In view of our above observations, it is held that the assessee is not liable to pay Capital Gains Tax, though originally he had subjected himself to the said tax as per his return of income. The AO is directed to process the claim of refund in this respect as per provisions of the law.”

6.5 We have heard both the parties and gone through the order of the Ld. CIT(A). We find merit in the order of Ld. CIT(A), therefore, we confirm the conclusion reached by the Ld. CIT(A) and thus all the grounds raised by the revenue are disposed accordingly, however we remit this issue back to the file of the assessing officer for statistical purpose, to examine the effect of change in method of providing depreciation as the CIT(A) did not call ground report in respect of effect of change in depreciation method and adjudicate the issue in accordance with law.

6.6 In the result, ground no. 1 and 2 raised by the revenue is allowed for statistical purposes.

7. Now coming to Revenue's ITA No.107/Rjt/2021 for AY 2017-18, wherein the Revenue has raised following grounds:

<i>Sl. No.</i>	<i>Grounds of appeal</i>	<i>Tax effect relating to each ground of appeal (in Rs.)</i>
1	<i>The Ld. CIT(A) has erred in law as well as on facts in deleting the addition of excess stock u/s 69C r.w.s. 115BBE by treating the same as explained expenditure.</i>	<i>Rs.50,00,439/-</i>
2	<i>The Ld. CIT(A) has erred in law as well as on facts in deleting the addition on account of low net profit.</i>	<i>Rs.2,25,18,919/-</i>
3	<i>The Ld. CIT(A) has erred in law as well as fact in deleting addition on account of interest expenses incurred on unsecured loan.</i>	<i>Rs.2,14,000/-</i>
<i>Total tax effect</i>		<i>Rs.2,77,33,358/-</i>

7.1 Whereas assessee has raised in cross-appeal ITA No.110/Rjt/2021 are as follows:-

“1. The assessment order u/s 143(3) of the Act is bad in law. The learned Assessing Officer has erred in law as well as on facts in making the disallowance of Rs.21,90,180/- on account of interest expenses incurred on unsecured loans. The learned CIT(A) has erred in confirming the same to the extent of Rs.19,75,780/-.

The appellant craves leave to add, alter, amend, delete or withdraw one or more grounds of appeal.”

7.2 Now, we shall take ground no. 1 to 3 in revenue's appeal in ITA no. 107/Rjt/2021. The facts of these grounds are as follows:

The appellant is a private limited company engaged in the business of manufacturing of vitrified tiles during the year. The appellant filed its return of income for A.Y. 2017-18 on 31.10.2017 declaring the total income at Rs. Nil. There was a survey carried out u/s. 133A of the Act at the business premises of the appellant on 23.09.2016. During the course of survey excess stock of Rs.50,00,439/- was found and it was admitted by the appellant that the excess stock found during the course of survey proceedings was arising out of unrecorded business income. The appellant duly recorded such disclosure of Ps.50,00,439/- in the books of accounts and adhered to in the return of income. Further, regarding interest on unsecured loan, the appellant submitted that the appeal against the unsecured loans was pending before the CIT(A). Therefore, interest paid during the year cannot be disallowed. Further, the appellant also explained reasons of marginal decline in NP ratio before the AO. However, the AO without appreciating the submissions of the appellant in true perspective, rejected the books of accounts invoking the provisions of Section 145(3) of the Act and made additions viz. (i) addition of excess stock of Rs.50,00,439/- u/s. 69C r.w.s. 115BBE of the Act treating the same as alleged unexplained expenditure and (ii) addition of

Rs.2,25,18,919/- on account of alleged low net profit. (iii) Disallowance of Rs.21,90,180/-on account of interest on unsecured loans,

7.3 Aggrieved by these three additions, the assessee filed appeal before Ld. CIT(A) who has partly deleted addition, therefore, revenue is in appeal before us.

7.4 We have heard both the parties. The Ld. Sr. DR for the revenue submitted that in respect of three grounds raised by the revenue the assessee could not plead his case successfully before assessing officer, moreover, some new arguments made by the assessee during appellate proceedings, were not examined by the assessing officer, therefore, matter may be remitted back to the file of assessing officer.

7.4(a) On the other hand, Ld. Counsel submitted that all issues were there before assessing officer and the additions were deleted by Ld. CIT(A) in right perspective.

We have heard both the parties and noted that in respect of new arguments made before CIT(A), the CIT(A) did not send the matter to the assessing officer for remand respect.

Addition on account of excess stock has not been dealt with properly by Ld. CIT(A), as the assessee was not maintaining the books of accounts in respect of unaccounted purchases.

That, its books of accounts maintained by the assessee does not show unaccounted purchases and out of unaccounted purchases excess stock was generated. Therefore, assessee has to explain before AO, the source of unaccounted purchases. Therefore, issue related to excess stock is being remitted back to the file to the AO.

About addition on account of net profit, we note that since, unaccounted purchases were not considered in the books of accounts, therefore, after considering unaccounted purchases, the net profit ratio should be computed by the AO, and on that basis, ground no. 2 raised by the revenue should be adjudicated. Hence, we remit ground no. 2 raised by revenue, to the file of AO.

Addition on account of interest expenses of Rs. 2,14,000/-, these should also be examined by AO, afresh as we have remitted all issues to the file of AO. Therefore, ground no. 3 raised by revenue is also allowed for statistical purposes.

In the result, ground no. 1, 2 and 3 raised by the revenue are allowed for statistical purposes.

8. Now, we take up assessee's appeal in ITA No.110/Rjt/2021. Before us the assessee argued, that Ld. CIT(A) has confirmed the disallowance to the extent of Rs.19,75,780/- that this expenditure was to be allowed as interest expenditure since the TDS of party was already deducted and the interest paid to those parties as shown in their income tax return. In this way, the interest amount needs to be allowed and the order of the Ld. AO is wrong on the issue of disallowance and duly confirmed by the Ld. CIT(A) is not tenable. We find that in case interest expenses of Rs. 8,57,600/- belong to four parties (i) Saurav Filmcity Pvt. Ltd. (ii) Saurav Gas CNG Pvt. Ltd. (III) Saurav Nurshing Home Pvt. Ltd. (iv) Saurav Petroleum Pvt. From whom we have taken loan and paid interest. The issue is raised in appeal for AY 2013-14 and appeal before us. Since the issue already been remanded back for reconsideration by the Ld. AO. Rest addition of Rs.11,18,180/- interest expense. That, the addition of unsecured loan taken by 5 parties (i) Bholenath Merchants Pvt. Ltd. Rs.85,750; (ii) Blue Rose Dealcom Pvt. Ltd. Rs.2,57,230/-; (iii) Maa Chinmastika Dealers Pvt. Ltd. Rs.1,28,640/-; (iv) Orange Trexim Pvt. Ltd. of Rs.2,18,000/- and (v) Suman Health Care Pvt. Ltd. of Rs.4,28,500/-was added in the total income of assessee. It is noted that this same interest income has already been taxed in the

year 2015-16 and the assessee has settled the dispute. by way of Vivad se Viswas Scheme on 14.12.2021 the order in full and final settlement in Form-5 obtain and placed on record. In the above circumstances, we remand back the case on this issue of disallowance of interest of Rs. 19,75,780/- and direct the Ld. AO to look into this issue and verify and pass appropriate order.

In the result, assessee's appeal in ITA No. 110/Rjt/2021 is allowed for statistical purposes.

9. In the combined result, assessee's appeal ITA No.273/Rjt/2023 is partly allowed for statistical purposes. Whereas Revenue's cross-appeal ITA No.317/Rjt/2023 is allowed for statistical purposes; assessee's appeal ITA No.110/Rjt/2021 is allowed for statistical purposes, *whereas* Revenue's cross-appeal ITA No. 107/Rjt/2021 is remanded back to the Ld. AO for statistical purposes. Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order pronounced in the open court on 30-12-2024

Sd/-

(A. L. SAINI)

ACCOUNTANT MEMBER

Rajkot

Dated: 30 /12/2024

Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

Sd/-

(DINESH MOHAN SINHA)

JUDICIAL MEMBER

By order
Assistant Registrar
ITAT, Rajkot