

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.1743/Ahd/2015

निर्धारण वर्ष/Asstt. Year: 2011-2012

DCIT, Cir.1(3) Vadodara.	Vs.	M/s.Torque Holdings LLP 9, Parishram Society Subhanpura, Vadodara PAN : AAGFT 8389 K
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Revenue by :	Shri V.K. Singh, Sr.DR
Assessee by :	Shri K.P. Singh, AR

सुनवाई की तारीख/Date of Hearing : 05/07/2018

घोषणा की तारीख/Date of Pronouncement: 01 /08/2018

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-5, Baroda dated 27.2.2015 passed for the assessment year 2011-12. Grounds of appeal taken by the Revenue read as under:

"1. On the facts and circumstances of the case and in law, whether the Ld.CIT(A) was correct in allowing the appeal of the assessee by deleting the addition of unsecured loan u/s.68 of the Act just by going on assessee's submission on face value and by ignoring the facts brought on record by the Assessing Officer ?

2. The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary."

2. Brief facts of the case are that the assessee has filed its return of income electronically on 30.09.2001 declaring total income at Rs.2,52,030/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts it revealed to the AO that the assessee has received unsecured loans from three concerns. Therefore, he made an inquiry under section 68 of the Income Tax Act and ultimately made an addition of Rs.5.50 crores to the total income of the assessee on the ground that the assessee failed to explain ingredients of section 68. In this way, an assessment order was passed on 29.3.2014 whereby the income of the assessee was determined at Rs.5,86,06,904/-. Though the Revenue has not specified amount, whose deletion it is challenging in the grounds of appeal, but it is in respect of addition made by the AO with the aid of section 68 of the Act. This addition has been deleted by the CIT(A). Therefore, it is assumed that Revenue is challenging deletion of Rs.5.50 crores in the present appeal.

3. As facts emerge out from the record, the assessee has received a sum of Rs.2 crores from M/s.Shashvat Infracon Private Ltd. ("SIPL" for short) on 3.1.2011. This loan was repaid back to SIPL on 4.1.2011 i.e. next day. The second amount considered by the AO is of a sum of Rs.2 crores from General Capital & Holdings P.Ltd. ("GCHPL" for short) on 29.3.2011. The third amount is of Rs.1.50 crores from Kuviiic Reality P.Ltd. ("KRPL" for short) (Ecocity Sports & Recreation P.Ltd.) which comprised of Rs.1.00 crores loan taken on 23.3.2011 and Rs.50 lakhs 22.3.2011. The Id.AO has made a detailed analysis of these loans, background of the directors of the company who have given loans to the assessee, financial health of these concerns, and thereafter doubted the genuineness of the transaction.

4. Dissatisfied with the addition, the assessee carried the matter in appeal before the Id.CIT(A). It has filed written submissions. In the submissions, it has carved out reasons assigned by the AO for making addition and its explanation. The assessee has submitted these details in tabular form which has been reproduced by the CIT(A) in the impugned order. The Id.CIT(A) after taking into consideration submissions of the assessee deleted the addition. The Id.CIT(A) after going through the submissions of the assessee deleted the addition by recording the following finding:

<i>Ld. AO's observations</i>	<i>Your appellant's reply</i>
<i>(C) Background of M/s Associated Tradecom Private Limited.</i>	<i>Your appellant has not taken any unsecured loans during the year from</i>
<i>A closely held company called M/s Associated Tradecom Private Limited was incorporated on 30.09.2008 with total paid-up share capital of One lakh rupees. As on date, paid-up share capital of M/s Associated Tradecom Private Limited is One lakh rupees only. As per the web-site of Ministry of Corporate Affairs, Government of India, Shri Pareshbhai Babulal Shah and Shri Prakashsinh Kaluji Solanki are the two promoters of M/s Associated Tradecom Private Limited.</i>	<i>M/s. Associated Tradecom Pvt. Ltd and as such the reference made by Id. AO is irrelevant. As a matter of fact Id. AO have called copy of ledger account and confirmation of party which was duly submitted.</i>
<i>Details of Returned income of the two promoters of M/s. Associated Tradecom Private Limited for Assessment Years 2010-11, 2011-12 and 2012-13 are provided.</i>	<i>Your appellant has not taken any loans from such directors and as such the reference made by Id. AO is misleading and not relevant.</i>
<i>(D) Background of M/s General Capita/ and Holdings Private Limited.</i>	<i>The Id. AO failed to appreciate the fact that Net Worth of M/s. General Capital</i>
<i>A closely held company called M/s General -Capital and Holdings Private Limited was incorporated on 01.04.2008 with total paid-up share capital of One lakh rupees.</i>	<i>and Holdings Pvt. Ltd. as on 31.03.2011 is Rs. 13,97,51,202/-. The working of net worth as under: Total assets Rs.42,66,51,416/-</i>

<p>-As on date paid-up share capital of M/s General Capital and Holdings Private Limited is One lakh Nineteen Thousand Nine Hundred rupees only. As per the web-site of Ministry of Corporate Affairs, Government of India, Shri Zankarsinh Kishorsinh Solanki and Gitaben Kishorsinh Solanki are the two promoters of M/s General Capital and Holdings Private Limited.</p>	<p>Less: Total Liabilities Rs.28,69,00,214/- Net worth Rs.13,97,51,202/-</p>
<p>Details of Returned income of the present directors of M/s. General Capital and Holdings Private Limited for Assessment Years 2010-11, 2011-12 and 2012-13 are provided.</p>	<p>Your appellant has not taken any loans from such directors and such the reference made by Id. AO is misleading and not relevant. As a matter of fact Id. AO should have concentrated on the funds brought in by M/s General Capital and Holdings P.Ltd., because the promoters/ directors are distinct from the Company. However, Id. AO has deliberately tried to mislead Id. Addl. CIT so that Id. AO can make high pitched addition. The said lender is not only having huge loan funds by way of net worth but also by way of loan funds. The Total loan funds borrowed by said lender are Rs.28,16,97,255/- against which your appellant has borrowed Rs.2,00,00,000/-</p>
<p>(E). Details of Returned income of the present directors of M/s. Shashavat Infracorn Private Limited for Assessment Years 2010-11, 2011-12 and 2012-13 are provided.</p>	<p>Your appellant has not taken any loans from such directors and such the reference made by Id. AO is misleading and not relevant. As a matter of fact Id. AO should have concentrated on the funds brought in by M/s Shashavat Infracorn Pvt. Ltd. because the promoters/ directors are distinct from the Company. However, Id. AO has deliberately tried to mislead Id. Addl. CIT so that Id. AO can make high pitched addition. The said lender is having huge loan funds worth Rs.42,41,51,348/- against which we have borrowed Rs.2,00,00,000/-</p>
<p>(G) Details of returned income of the alleged depositors - M/s. Associated Infracorn Pvt. Ltd., M/s. General Capital and Holdings Pvt. Ltd., M/s. Ecocity Sports & Recreation Pvt. Ltd. alias M/s. Proper-t Home and Estates LIP and M/s. Shashavat Infracorn Pvt. Ltd. for the assessment years 2009-10, 2010-11 and 2011-12 are provided.</p>	<p>The Id. AO failed to appreciate that Net Worth of M/s. General Capital and Holdings Pvt. Ltd. as on 31.03.2011 is Rs.13,97,51,302/- and the loan given by the said lender is Rs. 2,00,00,000/- which is less than 1/5th of the Net Worth of the Lender Company. (2) The Id. AO failed to appreciate that</p>

<p>The Id. AO further stated that it transpires that yearly earnings of the alleged depositors as declared in their respective returns of income is meager and therefore prima-facie it is clear that none of them is financially capable to give unsecured loans amounting to Crores of rupees.</p>	<p>Unsecured Loans claimed to have been taken by M/s. Ecocity Sports & Recreation Pvt. Ltd. alias M/s. Proper-t Home and Estates LLP as on 31.03.2011 is Rs.9,45,41,711/- and the loan given to your appellant by the said lender against such loans is Rs.1,50,00,000/-which is less than 1/5th of the said amount of unsecured loans of the Lender Firm.</p> <p>3) The Id. AO failed to appreciate that Unsecured Loans claimed to have been taken by M/s. Shashvat Infracon Pvt. Ltd. as on 31.03.2011 is Rs.37,79,00,387/- and the loan given by the said lender to your appellant against such loans is Rs.2,00,00,000/- which is less than 1/10th of the said amount of unsecured loans of the Lender Firm.</p> <p><u>In view of above, financial capability of all the three depositors to give loans to your appellant is squarely proved. For asserting financial capability it is not necessary that the lender should have handsome income and only from such income lender can lend the money. On the contrary all the three lenders have more than sufficient borrowed funds from which a very small part has been landed to your appellant.</u></p> <p><u>It seems that Id. AO wanted to make addition by hook or crook and without even going through the requirements of provisions of section 68 of the Act.</u></p>
<p>The Id. AO also argued that the details of returned income of the promoters/present of M/s. Associated Infracon Pvt. Ltd, M/s. General Capital and Holdings Co. Pvt. Ltd. and M/s. Shashvat Infracon Pvt. Ltd. prove that they all are financially very weak in terms of the prevalent inflation and cost of living and most of them are man of no means. Furthermore, from the verification of the ITO-Systems, it is observed that none of the promoters/present directors of M/s Associated Infracon Pvt. Ltd., M/s. General Capital And Holdings Co. Pvt Ltd.</p>	<p>Your appellant reiterates that it has not taken any loans from such directors and as such the reference made by Id. AO that the directors/promoters of the lender companies have not entered into any high value transactions during the period from 01.04.2006 to 31.03.2013 have no significance in the given case.</p> <p>The Id. AO has also not appreciated the fact that the promoters/ directors are distinct entity then the companies which has landed funds to your appellant. The Balance sheet of each</p>

<p>and M/s. Shashvat Infracon Pvt. Ltd., has ever entered into any high value transaction during the period 01.04.2006 to 31.03.2013 and that also suggest that their financial conditions is not strong at least not that strong that the company of which they are one of the promoters/directors, can give unsecured interest free loans of Crores of rupees to others.</p>	<p>Company will prove the worth and funds they have to lend it to your appellant. On the contrary they have landed huge funds and your appellant has borrowed very small part of it.</p>
<p>(H) The Id. AO has given reference of opening and closing bank balances of depositors for the years 2009-10 and 2010-11 and argued that it is pertinent to mention that though the addresses of alleged depositors whose name figure against serial number 1, 2 and 3 are different addresses of Ahmedabad, all these three companies have been maintaining their bank account with one particular bank branch of a particular bank at Ahmedabad. It is observed from the bank entries as appearing in all the bank accounts [through which unsecured loans have been routed] of the above alleged depositors, that only accommodation entries are being rotated through all these banks because if amounts involving accommodation entries which are coming from and going to different parties are sieved therefrom; what is left in the respective bank account, is an amount which is very insignificant compared to the transferred in and transferred out accommodation entries and this very identical features of bank accounts of all the alleged depositors itself proves that none of the alleged depositors is credit-worthy.</p>	<p>In respect of Id. AO's argument regarding accommodation entry, your appellant wishes to submit that loan obtained from Shashavat Infracon Pvt. Ltd. has been repaid in the same month. Similarly, loans obtained from M/s. Associated Tradecom Pvt. Ltd., M/s. General Capital & Holding Company Pvt. Ltd. and M/s. Kuvii Realty Pvt. Ltd. (which is now known as Proper-t Home & Estates IIP) are invested in the capital of M/s. Tectone Motors Pvt. Ltd. In view of said facts, how the sums received through banking channels which are either repaid or invested in the share capital of a Company, showing the clear flow of funds received and deployed, be treated as accommodation entries. The Id. AO with suspicious mind argued that the flow of funds is just an accommodation entry which is far from Your appellant has already furnished copy of Balance sheet of M/s Tectone Motors-Pvt.—Ltd. vide its letter dated 24.2.2014 wherein it is apparent that it has made investment as share capital and your appellant is one of the major shareholder in that Company. Your appellant also wishes to draw your Honour's kind attention to the fact that said Company has made investment in various business assets worth Rs.1Q.34 crores and it is in business of dealing in Honda cars. This fact itself proves that there are no accommodation entries in your appellant's books of account. It may be noted that Id. AO alleged that the accommodation entries are in the books of depositors and not in your appellant's books then where is the question of making addition u/s 68 of the Act in your appellant's case and more so because your appellant has</p>

	<p>deployed those funds in making investment in the business of our subsidiary.</p>
<p>(K). On 15.01. 2014, the Hon'ble Gujarat High Court in the case of Kaushal H Pate Vs. v ITO in Tax Appeals No.884 & 885 of 2013, has held that in case an explanation offered by the assessee about the nature and source of amount credited in its books is not satisfactory the burden is on the assessee to rebut the same. Further, in the above case, the Hon'ble jurisdictional High Court that in case assessee fails to rebut the same, it can be held against the assessee and the said amount credited can be treated as assessee's income u/s 68 of the Income-tax Act, 1961.</p>	<p>The facts of the case law relied upon by Id. AO is that the donors who gave gifts to the assessee were not related to the assessee and there was no occasion for the donors to give sizable gifts to the assessee. More significantly, the resources available to the donors did not justify sizable gifts. The said citation has no applicability in your appellant's case since the facts are totally different. Further, in your appellant's case, the nexus of giving loans i.e. resources are explained and also accepted by Id. AO since Id. AO have, after analyzing balance sheets of the depositors, established that loans to your appellant were given out of unsecured loans taken by them.</p>
<p>(O) The three citations specifically the Apex Court rulings in the case of CIT <u>Lovely Exports (o) Ltd. (216 CTR 195)</u> do Not help assessee at all because from the facts narrated, it is clear that what the assessee has claimed as unsecured loans are nothing but accommodation entries.</p>	<p>The Id.AO has not categorically stated how the facts are different in your appellant's case than that in respect of three case laws relied upon by your appellant. Just to make high pitched addition, Id. AO continued to argue that -loans-received by your appellant are accommodation entries. It may be noted that even if your appellant assumes that depositors in its books have passed accommodation entries, it would neither affect your appellant's source nor nature of transaction as your appellant is nowhere proved to have been part of any such accommodation entries. So far as creditworthiness of depositors is concerned, it can be easily judged from huge funds those depositors have in form of capital or reserves or loan funds. Your appellant cannot ask for the source of source from depositors when those depositors are undoubtedly tax assesseees. Even this has been held by various Courts in favour of assessee.</p>

Fundings of the Id.CIT(A):

"3.3.6. In the light of aforementioned judicial decisions and with these materials on record and under these circumstances, it was not material that some of the directors had business interest in some of the creditors and that in the wake of the material before the Assessing Officer the onus had shifted on to the revenue to prove, if it disputed, as it did, the genuineness of the loans extended to the assessee. The other observation of the Assessing Officer that since the creditors had paid small amounts as tax against their individual assessments, it would demonstrate that the loans advanced to the assessee were not genuine, is also unacceptable. In my considered opinion, the Assessing Officer has adopted an erroneous approach on the aspects of genuineness of the transaction in issue and the creditworthiness of the creditors who lent money to assessee. As noticed above, the first aspect, i.e., identity of the creditors was established before the AO beyond any doubt. It will have to be kept in mind that section 68 of the I.T. Act only sets up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee. It cannot but be gainsaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee's burden to prove either the genuineness of the transactions the creditors and the sub-creditors nor is it the burden of the assessee to prove the creditworthiness of the sub-creditors. These principles have been set by various judicial authorities including jurisdictional High Court has held in the case Apex Therm Packaging (P.) Ltd.(Supra) and Sachitel Communications (P.) Ltd.(Supra) as well as by Hon'ble IT AT in the case of Sarjan Corporation (Supra).

3.3.7. In the light of the above principle, let us examine as to whether the genuineness of the transactions and the creditworthiness of their creditors has been sufficiently proved by the appellant before the AO :-

(i) The fact that there was sufficient balance available with the creditors when cheques have been issued to the assessee company was established.

(ii) It was also established that the funds available at the relevant point in time were not infused into the bank accounts of the creditors by way of cash but were in fact credited to their account again by way of cheques largely on account of business transactions with other parties.

(iii) *The bank accounts as well as returns filed by the creditors who were assessable to tax alongwith their PANs¹ were also available with the Assessing Officer.*

(iv) *The assessee in turn had received the monies by way of cheques in respect of which credits were made in their books of account.*

(iv) *The creditors had also placed on record business details with third parties.*

(v) *The identity and addresses of the third parties were also available.*

(vi) *From the assessment order, it transpires that the AO has presumed adversely about the creditworthiness of the loan creditors on the basis of erroneous and incorrect appreciation of facts. He has commented adversely on the basis of bank of the creditors at the end of the month and not at the time of issue of cheques to the assessee.*

*With this material on record in my view as far as the assessee was concerned, it had discharged initial onus placed on it. In the event the AO still had a doubt with regard to the genuineness of the transactions in issue, or as regards the creditworthiness of the creditors, he had to discharge the onus which had shifted on to it. A bald assertion by the Assessing Officer that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, can be of no avail. The Assessing Officer was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. In my considered view, view the Assessing Officer ought to have analyzed the material before him rather than be burdened by the fact that some of the directors have business connections in the creditors. If the Assessing Officer had any doubt about the material placed on record, which was largely bank statements of the creditors and their Income-tax returns, he could have gathered the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the Assessing Officer. In any event what the Assessing Officer lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that of its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their creditworthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors as held by Apex Court in the cases of *Lovely Exports (P.) Ltd.* [2008] 216 CTR 195(SC) and in the case of *Divine Leasing & Finance Ltd.* [2008] 299 ITR*

268 (Del.). I also agree with the Ld.AR that once the identity of the creditors has been proved as well as their creditworthiness and all payments are received by account payee cheques from the bank accounts whose statements have also been furnished to demonstrate that sufficient balances were available in the account before issue of cheques, addition of such loans cannot be made in the hands of the assessee in view of the settled legal position enunciated by the Apex Court in the case of CIT Vs Orissa Corporation P. Ltd. [1986] 159 ITR 78(SC), Hon'ble Gujarat High Court in the cases of Apex Therm Packaging (P.) Ltd.(Supra), Sachitel Communications (P.) Ltd.(Supra) and Dy. CIT v. Rohini Builders [2002] 256 ITR 360 (Guj.)_as well as by Hon'ble ITAT in the case of Sarjan Corporation (Supra). From the assessment order, it transpires that the Assessing Officer has presumed adversely about the creditworthiness of the loan creditors on the basis of erroneous and incorrect appreciation of facts. He has commented adversely on the basis of bank balance of the creditors at the end of the month and not at the time of issue of cheques to the assessee. Other objection of the Assessing Officer is that all creditors have shown meager incomes in their returns of income and they are maintaining bank accounts in same bank that proves that the loans are not genuine and in fact assessee has obtained "accommodation entries". This approach of the Assessing Officer is clearly against the spirit of aforementioned judicial decisions.

3.3.8. Considering the detailed facts of the case, written submissions of the AR and ratio of the judicial decisions cited above, it is held that the assessee had proved beyond any doubt the identity, creditworthiness and genuineness of the loans amounting to Rs.5,50,00,000/- and addition made by the Assessing Officer under section 68 was not justified, therefore, the same is directed to be deleted. This Ground of appeal is allowed accordingly."

5. With the assistance of the Id.representatives, we have gone through the record carefully. Before we embark upon an inquiry on the facts of the present case, it imperative upon us to take note of section 68 of the Act which reads 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:

6. A perusal of this section would indicate that basically this section contemplates three conditions which required to be fulfilled by an assessee. In other words, the assessee is required to give explanation which will explain the nature of transaction and explain the source of such credits. The explanation should be to the satisfaction of the AO. In order to give such an explanation which could satisfy the AO, the assessee should fulfill three conditions viz. (a) identity of the creditor, (b) genuineness of the transaction, and (c) credit worthiness of the creditor. At this stage, we would like to take note of details compiled by the assessee and submitted before the Id.Revenue authorities which reads as under:

"A.Y.2011-12

Torque Holding LLP (Assessee)

1) Shashwat Infracorn P.Ltd.

2,00,00,000	Repaid back	2,00,00,000
(Received on 03.01.2011)	To Shashwat	(Repaid on 04.01.2011)

→ Now, Source of Funds of Shashwat Infracorn P.Ltd.

Torque Automotive P.Ltd.

03.01.2011 -> Rs.95,00,000

03.01.2011 -> Rs.90,00,000

03.01.2011 -> Rs.15,00,000

Rs.2,00,00,000



Given to Shashwat

12

To Torque Holdings LLP

→ Torque Automotive Pvt.Ltd. has given the funds from CC A/c.

A.Y.2011-12 Torque Holding LLP (Assessee)2) General Capital & Holdings P.Ltd.

2,00,00,000

(Received by Assessee on 29.03.2011)

→ Now, Source of Funds of General Capital & Holdings P.Ltd.

Shashwant Infracorn P.Ltd.

29.03.2011	->	Rs.83,00,000
29.03.2011	->	Rs.1,00,00,000
29.03.2011	->	<u>Rs. 10,00,000</u>
29.03.2011	->	<u>Rs. 7,00,000</u>
		Rs.2,00,00,000

↓
Given to Assessee

↓
To Torque Holdings LLP(Assessee)

→ Now, Source of Funds of Shashwant Infracorn P.Ltd.

29.03.2011	->	Rs.75,00,000
29.03.2011	->	Rs.75,00,000
29.03.2011	->	Rs. 90,00,000
29.03.2011	->	<u>Rs. 13,00,000</u>
		Rs.2,53,00,200

A.Y.2011-12 Torque Holding LLP (Assessee)3) **Kuvic Reality P.Ltd. (Ecocity Sports & Recreation P.Ltd.)****Received by Assessee**

22.03.2011	-	Rs.50,00,000
23.03.2011	-	<u>Rs.1,00,00,000</u>
		Rs.1,50,00,000

Now, Source of Funds of Kuvic Reality P.Ltd.**General Capital & Holdings P.Ltd.**

21.03.2011	-	Rs. 50,00,000/-
23.03.2011	-	<u>Rs.1,00,00,000/-</u>
		Rs.1,50,00,000/-
		= Given to assessee

Now, Source of funds of General Capital & Holdings P.Ltd.**Shashwant Infracorn P.Ltd.**

21.03.2011	-	Rs. 50,00,000/-
23.03.2011	-	<u>Rs.1,00,00,000/-</u>
		Rs.2,00,00,000/-

Given to General Capital & Holdings P.Ltd.

7. Apart from above, the assessee has filed confirmation of account, copy all bank statements, copy of acknowledgement of return of income for the assessment year 2011-12. It has filed copy of audited financial statement of all these creditors. Ledger accounts of these concerns. These facts have been noticed by the CIT(A) while taking note of assessee's written submission on page nos.5 to 11 of the impugned order. A perusal of the above would indicate that Torque Automotive Pvt. Ltd. ("TAPL" for short) has given funds from its cash credit accounts to SIPL. A sum of Rs.2 crores was given by TAPL to SIPL on 3.1.2011. This amount was transferred to the assessee by SIPL. However, the assessee has repaid it back on 4.1.2011 i.e. next day. Thus, as on 31.3.2011 nothing was outstanding against the name of SIPL, and there could not be any unexplained cash credit in the books of assessee against this name. The assessee has filed all the details including bank statement, PAN data, ledger accounts, audited financial results of all these concerns. As far as case of GCHPL is concerned, this concern had received funds from SIPL and the SIPL received the funds from TAPL. The assessee has not only produced the source of funds in the hands of its creditors, rather it has proved the source from where its creditors got the money. Similarly, as far as Kuvic Reality P.Ltd. is concerned, it has received funds from GCHPL and the GCHPL in turn received funds from SIPL. Thus, main source of funds to these concerns is TAPL. Shri Kuren M. Amin is the director of TAPL and also partner in the assessee-firm. From the cash credit account with bank of TAPL, these funds were transmitted to three creditors, and thereafter they reached to the assessee. Before us, the annual report of TAPL for the financial year 2010-11 has been placed on record. This company is authorized dealer of Skoka Auto India Pvt. Ltd. Apart from that it has been doing host of activities. It has achieved a turnover of Rs.2220.02 million during this year. Its earnings before depreciation, interest and

taxation stood at Rs.103.50 million. This is not a concern which is just on a paper. Bank statement showing how funds have been transmitted are also available. For example in SIPL copy of bank statement of Punjab National Bank is placed at page no.123 of the paper book. It has disclosed details of RTGS showing money credited from the account of TAPL and how it has transmitted to other concerns. Similar details have been placed with regard to other creditors.

8. The Id.CIT(A) has gone into all these aspects and thereafter satisfied with the explanation of the assessee that it has discharged its onus cast upon by virtue of section 68 of the Income Tax Act. If we have glance of reasoning given by the AO, then it would reveal that the Id.AO failed to distinguish between share application money by a company vis-à-vis simple loan or deposits received from other concerns. It is pertinent to note that in so far as companies incorporated under Indian Companies Act, whether private limited or public limited, they raise their share-capital through issue of shares though manner of raising of share capital in private company on one hand, and public limited company on other hand, would be different. Share capital and share premium are basically irreversible receipts or credits in the hands of the company. The Id.AO failed to appreciate this aspect while dealing with cash credit. The loans received by the assessee are not irreversible receipts in its hands. These are to be repaid. Therefore, angle of inquiry or degree of investigation in both these aspects would be little different. The Id.AO emphasised on the financial health of the creditors as well as their promoters. Whereas, the Id.CIT(A) emphasised that the assessee has produced basic details of the creditors, their confirmations. Their existence is not in doubt and how they procured funds from TAPL. The TAPL has confirmed all these aspects. Submitted details of loans given by it to those creditors of the assessee. Thus, the assessee has not only proved source but source of

15

source also, which does not otherwise required under the law. Similarly, loan from SIPL was taken only for one day. It has been taking the loan through RTGS and repaid through account payee/RTGS. Bank details were submitted, then how could it be non-genuine ? Taking into consideration all these aspects, we do not find any merit in this ground of appeal raised by the Revenue. It is rejected.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 1st August, 2018 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 01/08/2018