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ORDER SHEET
ITAT/7/2026
IA NO: GA/1/2026
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
MS UNIQUE FINANCE AND SECURITIES PVT LTD

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 27th July, 2026.

Appearance:
Mr. Prabir Bhowmick, Adv.
Mr. Aishwarya Rajyashree, Adv.
. . .for the appellant.

Mr. S.M. Surana, Adv.
Mr. B. Sengupta, Adv.
. . .for the respondent.

The Court: Heard learned counsel appearing for the appellant.

Mr. Bhowmick, learned counsel appearing for the appellant raises the following questions of law:

(a) WHETHER the Learned Income Tax Appellate Tribunal was justified on facts for deleting the addition of income of Rs. 7,22,90,000/-on the account of unexplained loan credit under section 68 of the Income Tax Act, 1961 without considering that the assessee failed to establish the identity, creditworthiness and

genuineness of the loan transactions during the course of assessment proceedings ?

(b) WHETHER the Learned Income Tax Appellate Tribunal was justified in law observing that all three loan creditors have responded to the Notices under section 133(6) of the Income Tax Act, 1961 ignoring that the loan creditor did not respond to the Notice under section 133(6) of the Income Tax Act, 1961 during the assessment proceedings?

(c) WHETHER the Learned Income Tax Appellate Tribunal was justified on facts in denying that non-compliance to the of Notice under section 133(6) of the Income Tax Act, 1961 by the loan creditor company is a reason for dissatisfaction of the Assessing Officer regarding the genuineness of the source of the Cash Credit ?

Perused the assessment order, order passed by the CIT appeals and the impugned order of the Tribunal dated 13th May, 2025. Paragraphs 5, 6, 7 and 8 of the Tribunal's order are read as under:-

"05. The Id. AR vehemently submitted before us that the issue is squarely covered in favour of the assessee in its own case by the decision of the co-ordinate Bench in the A.Y. 2017-18 in ITA No. 355/KOL/2024 vide order dated 01.04.2025, wherein the addition made by the Id. AO and confirmed by the Id. CIT (A) on account of unsecured loan taken from Ratio Distributors Pvt. Ltd. of ₹1,74,00,000/- was deleted by the tribunal while deleting other loans from four parties of ₹1,75,00,000/- thereby deleting the aggregate addition of ₹349,00,000/- made by the Id. AO. The Id. AR submitted that the assessee has taken loan from the same party of

₹7,22,90,000/- which was partially repaid during the year and the remaining balance was repaid in the subsequent assessment years. The ld. AR stated that the assessee has filed in the assessment proceedings, the copies of loan confirmation from lender, copy of audited financial statement, copy of ITR, copy of assessment order framed in the case of the lender u/s 143(3) of the Act, copy of certificate of enlistment, copy of municipal tax receipt, Copy of MCA Master Data, copy of bank statement of Ratio Distributors Pvt. Ltd. and AO has not pointed out any infirmity in the said evidences. The ld. AO has made the addition on the ground that the notice u/s 133(6) of the Act issued to the lender was not complied with. Similarly, the ld CIT (A) has confirmed the finding of the Id. AO without giving any cogent finding on the evidences filed by the assessee. The ld. AR therefore prayed that the order of ld. CIT (A) is wrong and against the facts on record as no addition can be made on the ground that there was no compliance to notice issued u/s 133(6) of the Act by the lender when assessee has furnished all the evidences/ details qua the lender before both the authorities below. The ld. AR therefore, prayed that in view of the decision of the co-ordinate bench in assessee's own case as referred to above order of ld. CIT (A) may be set aside and the ld. AO may be directed to delete the addition.

06. The ld. DR on the other hand relied heavily on the orders of the authorities below by submitting that the addition was rightly made by the AO and confirmed by the ld. CIT (A) by giving a clear-cut finding that the assessee is a beneficiary of accommodation entries in the form of unsecured loan from Ratio Distributors Pvt. Ltd., who received funds from

other shell companies and therefore, the appeal of the assessee may kindly be dismissed by upholding the order of Id. CIT (A).

07. After hearing the rival contentions and perusing the materials available on record, we find that the assessee had taken a sum of ₹7,22,90,000/- during the year from M/s Ratio Distributors Pvt. Ltd. as unsecured loan. The assessee has filed before the Id. AO the copy of confirmation from the loan creditor, copy of audited financial statements, copy of ITR, assessment order u/s 143(3) framed in the case of loan creditor for A.Y. 2013-14 and bank statement etc. We note that neither the Id. AO nor the Id. CIT (A) has commented on the evidences filed by the assessee and merely made the addition on the ground that the notice u/s 133(6) of the Act was not complied with by the loan creditor. In our opinion, the addition cannot be made merely on the ground that there was no compliance to the letter issued u/s 133(6) of the Act when assessee has filed all the details/ evidences before the Id. Assessing Officer. We also note that the loan has been repaid partially in the current year and remaining in the subsequent assessment years. Further, we note that the assessee has also taken ₹1,74,00,000/- from Ratio Distributors Pvt. Ltd. in A.Y. 2017-18, which were added by the Id. AO to the income of the assessee as unexplained cash credit u/s 68 of the Act and also confirmed by the Id. CIT (A) and the co-ordinate Bench vide order dated 01.04.2025 in ITA No. 355/KOL/2024 for A.Y. 2017-18, in assessee's own case deleted the addition. The operative part of the decision is as under:-

"06. After hearing the rival contentions and perusing the materials available on record, we find that the assessee has raised unsecured loans from five parties which are mentioned by the AO in the assessment order from whom aggregate amount of ₹3,49,00,000/- was raised during the impugned financial year. We also note that the assessee has taken the said loans on interest which has been paid after deduction of tax at source. Besides the loans were raised through banking channels. The assessee has filed before the Id. AO various documents with respect to the above loan creditors which are available from page no.2 to 172 of the Paper Book. We have also examined the comparative statement in which the details as to capital and reserves, profit declared and turnover of the loan creditors were available and find that the parties have creditworthiness to advance loans to the assessee. Even the notices were issued u/s 133(6) of the Act to these lenders by the Id. AO were duly responded and all the information/details were furnished. The only ground on which the Id. AO made the addition was the report of the investigation wing and the statement of Shri Pankaj Agarwal, however we note that the nowhere Shri Pankaj Agarwal has ever mentioned or uttered about the assessee. Therefore, we do not subscribe to the conclusion drawn by the Id. CIT (A) that these loans were taken from shell companies by routing assessee's own money. The case of the assessee find support from the decision of PCIT vs. Sreeleather (supra), wherein the Hon'ble court has held that the reliance cannot be placed on the statement of person who has never

made any allegation against the assessee in his statement and no evidence was brought on record by the Id. AO to connect the entry operator to the assessee that loan transactions done with the assessee. The Hon'ble High Court has also noted that the assessee in that case had filed all the evidences before the Id. AO qua the loan creditors and even the notice issued u/s 133(6) of the Act were duly responded. Similarly, in the case of CIT vs. Dataware (supra), the Hon'ble jurisdictional High Court has held as under:-

"After hearing the learned Advocate for the appellant and after going through the materials on record, we are of the view that no substantial question of law is involved in this appeal. Both the Commissioner of Income Tax (Appeal) and the Tribunal below have in details considered the fact that the share application money was paid by account payee cheque, the creditor appeared before the Assessing Officer, disclosed its PAN number and also other details of the accounts but in spite of that the Assessing Officer did not enquire further from the assessing officer of the creditor but in stead, himself proceeded to consider the profit and loss account of the creditor and opined that he had some doubt about the genuineness of such account. In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the

creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence. So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established. We find that both the Commissioner of Income Tax(Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities. The appeal is thus devoid of any substance and is summarily dismissed. In view of dismissal of the appeal, the connected application has become infructuous and the same is disposed of accordingly. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities."

07. Considering these facts of the assessee in the light of the above decisions, we are inclined to hold that the assessee has duly proved the identity and creditworthiness of the loan creditors and the genuineness of the transactions and the AO has not brought any material on record to prove to the contrary. Therefore, we set aside the order of the Id. CIT (A) and direct the AO to delete the addition.

08. In the result, the appeal of the assessee is allowed."

08. In the above decision the coordinate bench has held that the all the ingredients of section 68 were proved. Besides the addition can not be made merely on the ground that there was no compliance to the notices issued u/s 133(6) or 131 of the Act as has been held in the following decisions:

(1) CIT Vs. Orissa Corporation Pvt. Ltd. (1986) 159 ITR 78 (SC):

(ii) CIT Vs. Orchid Industries Ltd. 397 ITR 136 (Bom):

(iii) Crystal Networks Pvt. Ltd. Vs. CIT 353 ITR 171 (Kol):

(iv) ITO Vs. M/s. Cygnus Developers India Pvt. Ltd.(ITA No. 282/Kol/2012)

and

(v) Joy Consolidated Pvt. Ltd. Vs. ITO (ITA No. 547/Kol/2020."

As the question concerning the authenticity of the loan creditors was vigorously contested by the appellant in the present appeal, the Tribunal, in its considered judgment, undertook a thorough and meticulous examination of every facet of the dispute. The Tribunal delved deeply into the voluminous evidentiary record, scrutinizing not only the primary financial instruments—such as detailed bank statements and comprehensive books of account—but also the ancillary yet critical documentation substantiating the genuineness of the transactions. This included a careful review of the statements of interest accruing on the loans, which were cross-verified against the corresponding ledger entries, as well as the formal records evidencing tax deducted at source (TDS) in respect of such loans, thereby confirming adherence to statutory mandates and lending credence to the creditors' claims.

Upon a holistic evaluation of the material on record, it is manifestly evident that the findings of the Tribunal are anchored in a rational and exhaustive appreciation of both the facts and the applicable legal framework. The assertions advanced by the appellant, though argued with considerable vigor, do not give rise to any substantial question of law that would warrant interference by this Court. The mere fact that a party dissents from the conclusions reached does not suffice to elevate a factual controversy to the status of a legal question. There is no discernible error of law, no perversity in the reasoning, and no fundamental procedural irregularity that would merit appellate intervention.

Consequently, the appeal, being devoid of merit, along with the connected application, is dismissed in its entirety, with no order as to costs.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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