

1. Questionnaire No. 5 of notice dated 23.10.2019:

1.1. In this para, your good self has asked that why the unsecured loan should not be treated as unexplained income. The detail provided by your good self in respect of concerned year is reproduced as under:

| S. No. | Name of Party from whom loan has been raised | Amount outstanding as on 31 st March |
|--------|--|---|
| 1 | A | 6,31,718 |
| 2 | B | 11,25,192 |
| 3 | C | 12,30,148 |
| 4 | D | 10,03,288 |
| 5 | E | 2,25,914 |
| | Total | 42,16,261.51 |

1.2. In this regard, it is submitted that the assessee has duly submitted the detailed information/ documents required by your good self in respect of unsecured loan outstanding in the books of assessee as on 31.03.2012. **(Please refer Annexure -1 of letter filed dated 23.09.2019 for supporting documents)** Your good self may verify the identity, creditworthiness and genuineness of the transaction from the same.

Also, it is pertinent to note that the provisions of section 68 of the Act are attracted in respect of amount credited in books of accounts for which no satisfactory explanation is offered by the assessee. The Basic conditions of the Section 68 of the Act are as under:

- a) Identity of the Party*
- b) Credit worthiness of the Party*
- c) Genuineness of the Transaction.*

The initial burden of proof lies on the assessee, yet once he proves the identity of the creditors/share applicants by either furnishing their PAN numbers or income-tax assessment numbers and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the revenue. [Dwarkadhish Investment (P.) Ltd. Vs. CIT-IV [2010] High Court of Delhi 194 TAXMAN 43]

- 1.3. Therefore, it is submitted that third parties are income Tax assessee and have duly declared income in their respective income tax return and can be evident from their computation of income. Based on above facts and information, it is further submitted that the unsecured loan outstanding in the books of assessee as on 31.03.2012 are genuine and credit worthiness of can be Verified from the same.
- 1.4. Further, in respect of above allegation, it is submitted that the assessee has not received any fresh loan from the above parties during the concerned year. The outstanding balance as on 31.03.2012 is merely a carried forward balance of previous year plus interest accrued to parties on the outstanding balance. For substantiating the same, the detail of unsecured and copy of ledger account of above parties in the books of assessee for the period 01.4.2011 to 31.03.2012 is enclosed for your kind perusal at **Page No.....39-44.....** wherein it is clearly evident that no fresh loan was received.
- 1.5. Your good self can verify the same from the point no. 24(a) of the Tax Audit report of A.Y. 2012-13 (**Refer Page No.....1-9.....**), where in it is stated that assessee has not received any unsecured loan from any party during the concerned year.
- 1.6. Further, it is humbly submitted that the addition cannot be made in respect of loan received in earlier years. The assessee seeks to place reliance on the judgement in case of **CIT Vs. Usha Stud Agricultural Farms Ltd. reported in [2008] 301 ITR 384 (Delhi)**, where in the facts were same as in the instant case such as cash credit was appearing in books of assessee over past four to five years and, thus, it was not fresh credit entry pertaining to relevant assessment year **and on the basis of the same, the Hon'ble Delhi High court held that credit balance in the account of the assessee did not pertain to the year under consideration, the AO was not justified in making the addition u/s.68 of the Act.**

Reliance also placed on below mentioned judicial pronouncements on similar view:

- (i) Similar M/s.Sooraj Leathers vs. ITO, TA No. 305/Mds/2016, Date of Judgment/Order: 22/04/2016, ITAT Madras
- (ii) ITO vs Shri Nasir Khan J. Mahadik (ITAT Mumbai), ITA No. 153/Mum/2010

(iii) ITO Vs shrikamalraheja (ITAT Lucknow), ITA No. 557/LKW/2014, Date of Judgement/Order: 17/03/2016

- 1.7. Therefore, in view of above facts and judicial pronouncements, it is submitted that the unsecured loan outstanding as on 31.03.2012 should not be considered as unexplained income of the assessee. As the liabilities are old, no credit has been made in so far those credits in the books of accounts in the assessment year under consideration. As such, no addition should be made in the hands of the assessee in respect of the same and thus, the allegation may please be dropped.