

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SH. N. K. SAINI, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No. 4304/Del/2014
(Assessment Year: 2001-02)**

Om Logistics Ltd. 130, Transport Nagar, Ring Road, Punjabi Bagh New Delhi	Vs.	ACIT Circle-21 New Delhi
PAN : AAACO4716C		
(Appellant)		(Respondent)

Appellant by : Sh. Ashish Goel, CA.
Respondent by : Smt. Rachna Singh, CIT(DR)

Date of hearing : 15.05.2017
Date of pronouncement : 31.05.2017

ORDER

PER BEENA A. PILLAI, J.M :

1. The present appeal has been filed by assessee against order dated 26.06.2014 passed by Ld. CIT(A)-II, New Delhi for assessment year 2001-02, following grounds of appeal:

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad, both in the eye of law and on facts.*

2. *On the facts and circumstances of the case, the learned CIT(A) has erred in passing the order without giving assessee an opportunity of being heard in violation of principle of natural justice.*

3 (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts ad in law, in confirming the addition of Rs.42,50,000/-*

made by the AO as income from undisclosed sources under Section 68.

(ii) That the above said addition has been confirmed despite the same being made ignoring the material and evidences brought on record by the appellant in support of his contention and by indulging in surmises and conjecture,

(iii) That the above addition was made despite the assessee bringing all the material and evidences on record to prove the identity of the shareholders.

4. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts ad in law, in confirming the above additions despite the same being made in clear violation of the direction of the Hon'ble ITAT.

5. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts ad in law, in rejecting the contention of the appellant that the AO has failed to carry out the investigation as envisaged by the ITAT, particularly verification from the ROC record and the AO of these shareholders, while remanding the matter back to him.

6. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts ad in law, in rejecting the contention that the observation made by the AO that the inspector has made verification by personal visit on 19th December, 2011 in respect of all these 14 parties is practically impossible and as such the same cannot be relied upon.

7. On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts ad in law, in rejecting the contention of the assessee that the additions untenable in the eye of law, having been made on the basis of the material collected at the back of the assessee without providing copy of the same and providing opportunity to rebut the same.

8. The appellant craves leave to add, amend or alter any of the grounds of appeal.

2. Brief facts of case are as under:

Assessment was completed under section 143(3) read with section 147 of the Act on 26.12.2011 at income of Rs. 1,96,40,090/- as against returned income of Rs. 89,19,090/-. On an appeal filed by assessee as well as revenue before this Tribunal, this Tribunal vide order dated 16.04.2010 asked in ITA No. 3197/Del/2009 remanded case back to file of Ld. AO with direction to make further investigation in regard to share application money received from following parties during year under consideration and to decide matter afresh.

S. No.	Name of the Parties	Amount of share Capital/ share application money
1.	Welcome Coir Industrial Ltd.	Rs. 300000 (Share Capital)
2.	Shimmer Marketing Pvt, Ltd.	Rs. 300000
3.	Maa Shakumbhan Store Crusher P Ltd.	Rs. 300000
4.	Suma Finance & Investment P Ltd.	Rs. 200000 (Share Capital)
5.	Onyx Exim & Sales Pvt. Ltd.	Rs. 300000
6.	Hopewin Admark & Consultancy Service Pvt. Ltd.	Rs. 300000
7.	Umeshneh Securities Pvt. Ltd.	Rs. 500000 (Share Capital)
8.	Kiran Bansal	Rs. 150000
9.	Subhash Gupta	Rs. 150000
10.	Vishal Aggarwal	Rs. 200000
11.	Amit Kurnar Singh	Rs. 150000
12.	S.H. Mallick	Rs. 200000
13.	Shiwani Softech Ltd.	Rs. 400000
14.	Rubal Chemical Pvt. Ltd.	Rs. 500000 (Share Capital)

3. Ld. AO accordingly issue notice under section 143(2) of the Act on 05.10.2011, alongwith notice under section 142(1) is requiring assessee to furnish information before assessing officer on 14.10.2011, with supporting evidence in regard to above referred share applicants and alleged share application

money/share capital has been received during the year by assessee. It has been recorded by Ld. AO that in regards to addresses of companies/shareholders, assessee had submitted that, it was not practically possible to submit the latest address of parties as they were no longer the share holders of Assessee. Assessee further submitted that interest and status of the corporate parties were available on ROC site which were filed before Ld. AO.

4. Ld. AO as per directions of this Tribunal vide order dated 16.04.2010 carried out certain and investigation to asserting true facts of identity, genuineness and creditworthiness of transactions made with above parties and assessee. Ld. AO accordingly issued notice dated 16.12.2011 to all parties on latest address provided by assessee, asking them to furnish following information:

- a) *Your income tax particulars including PAN, Assessing Officer/Ward/Circle where being assessee to tax with copy of acknowledgement of latest return of the income filed by you.*
- b) *A note on nature of transactions held with the above mentioned Company/firm during the period from 01.04.2000 to 31.03.2001 giving details of payment received/made, mode of payment and date of payment.*
- c) *Furnish certified copy of ledger A/c of **M/s Om Logistics Ltd.** (aforesaid) for **A.Y. 2001-02** as it appears that in your books of account for the relevant period. Details of tax deducted at source, if any.*
- d) *File copy of balance sheet and profit and loss account for **A.Y. 2001-02** with relevant schedules/annexure in which such transaction is reflected.*

e) Five copy of bank statement highlighting the relevant transactions.

5. It has been further recorded by Ld. AO that all notices issued were received back unserved with remarks of postal authority, “*no such person on address*” or “*left without address*”. Ld. AO appointed inspector to make and door-to-door local enquiries, to find out availability of companies/personal is and their directors. Inspector visited the given addresses of shareholders which includes companies as well as individuals for service of notice under section 133(6) on 15.12.2011, to intimate hearing being fixed on 20.12.2011 at 11:30 AM. The inspector while this report dated 20.12.2011 reported as under:

“As per direction of ACIT, Central circle 21, New Delhi, I visited the above addresses on 19/12/11 for service of the above notices. I found that no such company/person existed at the addresses mentioned above.”

6. Ld. AO further gave another opportunity to assessee on 22.12.2011 which was intimated vide office letter dated 21.12.2011 to produce all authorised persons of company/directors for cross examination before Ld. AO on 23.12.2011 to justify their identity, creditworthiness, genuineness and their existence. However, on 23.12.2011 assessee filed same submission as was filed vide its letter dated 14.11.2011, without there being any new information.

7. Based on which Ld. AO recorded its observation from documents submitted by assessee and made addition of Rs. 1,32,40,090/- in the hands of assessee.

8. Aggrieved by order of Ld. AO assessee preferred an appeal before Ld. CIT(A), who confirmed addition made by Ld. AO.

9. Aggrieved by order of Ld. CIT(A) assessee is in appeal before us now.

10. Ld. AR submitted before us that assessee has provided necessary documents/evidences before Ld. AO wide letter dated 14.11.2011 which included IT particulars, nature of transaction, details of payment, copy of Ledger account, bank statement, balance sheet and profit and loss account. It was submitted that since those parties were not no longer shareholders of assessee, details only in respect of 7 parties being, Welcome Coir Industries Ltd., Shimmer Marketing, Onyx Exim, Hopewin Admark , Maa Shakumbhari, Shivam Softech, Rubal Chemicals, as available with ROC could be filed before Ld. AO. Ld. AR submitted referred to Suma Finance & Investments where refund for AY 2010-11 has been issued by Ld. AO on 23.12.2011 and latest address of Maa Shakumbhari was also filed on 26.12.2011.

11. Ld. AR contends that despite these details provided by assessee, proceedings were completed mechanically and Ld. AO simply issued notice under section 133(6) to 14 parties upon which red notice was returned unserved with various remarks of parties not being available at the given address. Ld. AR submitted that assessing officer was aware about fact that these parties were not in contact with assessee anymore as it was categorically stated by assessee in the letter dated

14.11.2011 that they were no more shareholders of assessee as on date.

12. Ld. AR alleged that assessment order has been passed without conducting proper enquiry, investigation as directed by this Tribunal vide order dated 16.04.2010. It has been vehemently argued by him that assessee discharged its onus in the original proceeding itself and that earlier assessment order has been set aside not because assessee failed to discharge its onus but because on bench of this Tribunal was satisfied that enquiries/investigation conducted by Ld. AO was not sufficient to prove that money received from 14 parties were the unaccounted money of assessee company. He placed reliance upon following decisions:

- *decision of Hon'ble Delhi High Court in the case of CIT vs. Rakam Money Matters Pvt,Ltd. in ITA No. 778 of 2015 dated 13.10.2015;*
- *decision of Hon'ble Delhi High Court in the case of CIT vs. Victor Electrodes Ltd. reported in (2010) 329 ITR 271;*
- *decision of Hon'ble Delhi High Court in the case of CIT vs. Fair Finvest Ltd., Reported in (2013) 357 ITR 146*
- *decision of Hon'ble Delhi High Court in the case of CIT vs. Virendavan Farms (P) Ltd., in ITA No. 71, 72, 85/2015 vide order dated 12.08.2015;*
- *decision of Delhi ITAT in the case of ITO vs. Softline Creations Pvt.Ltd in ITA No. 744/del/2012 dated 10/02/15 which been upheld by Hon'ble Delhi High Court in the case of ITA No. 504/2016 vide order dated 31.08.2016*

13. He has also placed reliance upon following decisions which has been filed before us at the time of hearing:

- *decision of Hon'ble Delhi High Court CIT vs SMC share Brokers Ltd., Reported in (2007) 288 ITR 345*

- *CIT vs Oasis Hospitalities Pvt.Ltd., is and UP Bone Mills India Ltd reported in (2011 333 ITR 119;*
- *Shivank Udyog Ltd vs ITO reported in (2011) (10) TMI 667;*
- *ITO vs Tubecon India Ltd reported in 2015 (11) TMI 292*
- *IT versus Neelkanth Finbuild Pvt.Ltd., in ITA No. 1932/del/2009 wide order dated 01.04.2015*

14. The sum and substance of the above decisions, relied upon by assessee are that, if assessee produced sufficient documentation discharging its initial onus of showing genuineness and creditworthiness of share applicants, it was incumbent upon assessing officer to have undertaken some enquiry and investigation before coming to a conclusion on issue of creditworthiness. He also can vast proposition that is their assessee had filed documents from site of Ministry of Corporate Affairs in respect of share applicants it had discharged requirement of providing details/evidences of creditors.

15. *Per contra* Ld. CIT(DR) submitted that assessee has not discharged its initial onus required under section 68 of the Act. She submitted that three ingredients required to be established by assessee being identity, creditworthiness and most importantly genuineness of transaction has not been established by assessee, either in first round of before Ld. AO proceedings or in subsequent proceedings, when matter was remanded by this Tribunal to assessing officer. She submitted that unless assessee provides with correct details of alleged creditors assessing officer cannot undertake any investigation in respect of same.

16. Ld. CIT DR submitted that assessment at initial stage was reopened in the case of assessee, as there was information received from investigation wing regarding various companies who were carrying on the activity of providing accommodation entries. She submitted that these companies had invested by way of share capital with assessee. Ld. CIT(DR) demonstrated taking us through the details submitted by assessee in respect of some alleged creditors to prove that documents were bogus and there has been no activity that was carried on by alleged creditors. She then on stated that there was a pattern of investment that was followed by all alleged creditors, which was evident from bank statements submitted by these alleged creditors placed in the paper book. She has submitted that no doubt these applications do have filed returns, however it does not show actual state of affairs.

17. Ld. CIT. DR submitted that entire bank statements of alleged applicants has not been filed. Ld. CIT. DR submitted that it is in the second round of assessment that, assessee is claiming inability to provide correct details of these alleged creditors, as they were no longer shareholders of assessee. However, she submitted that even during original assessment proceedings, assessee did not produce these creditors and had expressed its inability/unwillingness. She submitted that Assessing Officer during original assessment proceedings had issued summons under section 131 to these parties under consideration, and required them to appear in person, and

produce various details like, their bank statement for financial year 2000-01, books of accounts for assessment year 2001-02, copy of share certificates allotted by assessee, source of investment etc. She submitted that Ld. AO even during original assessment proceedings had deputed an inspector to visit given addresses of alleged creditors, who had reported that these parties were not available at address given by assessee.

18. Ld. CIT(DR) submitted that assessee had a gain submitted records of these alleged creditors as per ROC, and had requested to issue fresh summons at new addresses found therein. In view of request by assessee an inspector was again deputed to serve summons to parties. But it was informed that none of parties were available at given addresses, as well by the inspector. Ld. AO then informed assessee regarding same vide order sheet entry dated 14.12.2007 wherein assessee submitted that as these companies are avoiding and not cooperating to Department to receive summons sent through inspector, notice under section 131 of the Act may be served through registered post.

19. Ld. CIT DR submitted that all these prove that assessee was never personally interested in providing details of creditworthiness of these parties and genuineness of transactions.

20. In support of her arguments Ld. CIT(DR), placed reliance upon following decisions:

- *CIT vs. Durga Prasad More reported in (1971) 82 ITR 540 (SC)*
- *CIT vs. Precession Finance Pvt/Ltd., reported in 208 ITR 465 (Cal)*
- *CIT vs. United Commercial and Industries Co. Pvt. Ltd., reported in 187 ITR 596 (Cal)*
- *CIT vs. Nova Promoters and Finlease Pvt.Ltd., reported in 342 ITR 169 (Delhi)*
- *Mukesh Shaw vs. ITO reported in 204 taxman 615 (Jharkhand)*
- *CIT vs. N R Portfolio Pvt. Ltd., reported in 29 taxmaan.com 291 (Delhi)*
- *CIT vs. Focus Exports Pvt. Ltd., reported in 2 to 8 Taxmann 88 (Delhi)*
- *Decision of Delhi ITAT in the case of Matchless Glass Services Pvt.Ltd vs. ACIT in ITA No. 31 to 2/del/2012 vide order dated 27.02.2017.*

21. Ld. CIT(DR) submitted that under Section 68 of the Act, assessee has to offer an explanation in regard to any sum credited in the books of accounts she submitted that this could be any sum whether in the form of sale proceeds or receipt of share capital money or share premium etc. Thereafter, Ld. AO is to inquire that explanation offered by assessee is satisfactory or not. Ld. CIT DR vehemently argued that assessee has not established identity, creditworthiness and most importantly genuineness of transaction either in 1st round of assessment proceedings or in the 2nd round of assessment proceedings. She submitted that decisions relied upon by Ld. AR (even though they are recent decisions), do not support case of assessee as those are distinguishable on facts. The principles laid down by various decisions relied

upon by revenue has not been satisfactorily explained by assessee to come out of the primary onus. Unless assessee establishes ingredients under section 68 in respect of creditors know enquiry can be taken up by assessing officer as it would not reach to any conclusion.

22. She supported orders passed by authorities below and submitted that addition may be confirmed.

23. We have perused arguments advanced by both side in the light of records and judicial precedents relied upon by them placed before us.

24. Before proceeding to discuss issue before us, it is pertinent to mention that we are concerned with the alleged share applicants listed herein below:

M/s Shivam Softek Ltd
M/s Maa Shakumbhari Stone Crushers Pvt.Ltd
M/s Welcome Coir Industries Ltd.,
M/s Shimmer Marketing Pvt.Ltd
M/s Hopewin Adark and consultancy Pvt.Ltd
M/s Suma finance and investments Pvt.Ltd
M/s Onyx exempt and sales Pvt.Ltd
M/s Umesh securities Pvt.Ltd
M/s rubal Chemicals Pvt.Ltd
Ms Kiran Bansal
Sh. Vishal Agarwal
Sh. Amit Kumar Singh
Sh. SH Mallick
Sh. Subhash Gupta

25. Let us examine the directions passed by this Tribunal vide order dated 16.04.2010 in respect of 14 alleged creditors. Ld. AR vehemently argued that assessing officer has not followed directions of this Tribunal. For the sake of

convenience relevant portion of order is reproduced herein below:

“ 30. Coming to the addition on account of unexplained share capital/share application money received from 12 parties (names of 12 parties have already been given in para 5 of our order) in respect of which the AO received information from the Investigation Wing that they were engaged in the business of providing accommodation entries, we find that the AO had issued summons u/s. 131 to 10 parties out of 12 parties with a view to examine and verify the genuineness of the transaction, but the summons so issued by the AO could not be served on those persons or parties as they were not found available at the given address. Therefore, it is not the case where the AO has failed to make any enquiry to ascertain the facts came to light from the investigation conducted by the Investigation Wing. Since all the 12 persons, whom notices u/s. 131 were issued by the AO, have not appeared before the AO for his examination and verification, it was totally impracticable on the part of the AO to provide an opportunity to cross examine them by the assessee. It is not the case where these persons were examined by the AO and their statement were recorded by him, and the AO then failed to provide an opportunity to the assessee to cross examine them. The stage of providing opportunities to the assessee to cross examine the person did not arise at all in as much, appearance of all those persons even before the AO could not be procured, despite best efforts made by the AO by issuing summons u/s. 131 and deputing the Inspector to serve the summons on them at the addresses

given. Therefore, in the light of these peculiar circumstances of the case, the CIT(A) was unjustified in deleting the addition in respect of share capital or share application money received from 12 parties on the ground that the assessee was deprived from the opportunity to cross examine the concerned persons. The fact that these persons were not found available at the addresses given by the assessee was also brought to the notice of the assessee. The assessee has not brought any material to prove the actual physical existence of the share applicants except proving their existence on papers. When on an enquiry, conducted by the Investigation Wing, it was found that all these persons were engaged in the business of providing accommodation entries, various documents in the nature of confirmation letters and other details submitted by the assessee cannot be accepted on their face value. The CIT(A) has, therefore, failed to take the note of this fact that when the share applicants were not found available at the addresses given and were not available for AO's examination, how merely on the basis of papers the existence of share applicants can be accepted or how it can be said that the AO has failed to provide the opportunity to the assessee to cross examined them. In the present case, the AO has not merely relied upon the information received from the Investigation Wing, but has also tried to find out whether the share applicants actually exist or not or whether they are engaged in the business of providing accommodation entries to the present assessee. It is beyond the AO's control to prove that the money actually emanated from the coffers of the assessee company, unless concerned share applicants are examined by him. Therefore, in the present case, merely on the basis of certain

documents submitted by the assessee in respect of 12 parties, it cannot be proved and established that the share applicants are in existence and it is a normal transaction of raising share capital money from the alleged share applicants. However, at the same time it is true that information received from the Investigation Wing is also not sufficient to prove and establish that the alleged share capital or share application money has actually emanated from the coffers of the present assessee company. In order to decide this issue as to whether the share capital or share application money received from twelve parties referred to in the report of Investigation Wing, is unaccounted money of the assessee company or any other person, it is necessary to make further enquiry and verification by examining the concerned parties as well as by taking into account other surrounding circumstantial evidences. We, therefore, restore the issue limited to the addition on account of share capital/share application money received from 12 parties, to the file of the AO for his further examination and verification. The AO shall make such further enquiries and investigation as he may think fit and proper. The AO may also make enquiry from the Registrar of Companies or from the respective AO assessing those 12 parties in order to find out as to whether these parties were actually carrying on any business activity as claimed by them either in the return of income filed before the Income Tax Department or in the return filed before the ROC. Needless to mention that the AO shall provide reasonable opportunity of being heard to the assessee by putting all the materials or information that may be gathered by the AO to the assessee for assessee's comments and explanation. In case any person is examined by

the AO, and his statement is intend to be used by the AO against the assessee, the AO shall provide the opportunity of cross examination to the assessee. The assessee shall be at liberty to place or furnish any other evidence or material before the AO so as to justify the identity and existence of the share applicants and the genuineness of the share transaction. We order accordingly.”

31. Similarly, the issue with regard to the addition in respect of two parties viz., (i) M/s. Shivam Softech Ltd. and (ii) M/s. Rubal Chemicals (P) Ltd., whom summons were issued by the AO but could not be served as they were not found available, is also restored back to the file of the AO for his fresh adjudication. The AO shall make such enquiries and investigation as noted above.

32. The view we have taken above by restoring the matter back to the file of the AO to examine the nature of credit of share application money Received from 12 parties in respect of which an information was received from Investigation Wing that these 12 parties were engaged in the business of providing accommodation entries, and in respect of other two parties on whom summons could not be served, has also been taken by the co-ordinate Bench of the ITAT, Delhi Bench – “B”, New Delhi, in the case of ITO vs. Omega Biotech Ltd. (supra), which was referred to by the ld. DR. In that case of Omega Biotech Ltd. (supra), the issue regarding share capital received from 5 companies in respect of which the AO has received information from the Investigation Wing that those 5 companies were not carrying on actual business, but were engaged in the business of providing accommodation entries, has been restored back by the Tribunal to the file of the AO to decide the matter afresh in as much as the summons

issued u/s. 131 of the Act by the AO to those parties could not be served upon them as these parties were not found available at the addresses given. It is, thus, clear that the facts of that case is identical to the facts of the present case, in so far as the 12 parties are concerned, in respect of which an identical information has been received from Investigation Wing that these 12 parties were not carrying on actual business but were engaged in the business of providing accommodation entries, and during the course of assessment proceedings summons issued u/s 131 of the Act, to the ten parties out of twelve parties, and to other two parties, could not be served as they were not found available at the given addresses.”

26. On perusal of findings, this is a categorical observation by this Tribunal that it is not a case where Ld. AO failed to make any enquiry to ascertain facts that came in to light from investigation conducted by investigation wing. We refer to highlighted portions in above preproduction, from order of this Tribunal dated 16.04.2010. This Tribunal has also observed that since none of 14 creditors to whom notices under section 131 were issued by assessing officer has appeared before him for his examination and verification, it was totally impracticable on the part of assessing officer to provide opportunity to cross examination by assessee. This Tribunal has also observed that assessee has not brought any material to prove actual physical existence of share applicants except

proving their existence on papers. This Tribunal further records that on enquiry conducted by investigation wing it was found that all these persons were engaged in business of providing accommodation entries. Various documents in the nature of confirmation letters and other details submitted by assessee cannot be accepted on the face value and therefore, this Tribunal further records that CIT(A) in 1st round of proceedings failed to take note of the fact that when share applicants were not found available at the given addresses and were not available for AO's examination. This Tribunal observed that merely on the basis of certain papers existence of applicants cannot be accepted and it can therefore, be said that AO has failed to provide opportunity to assessee to cross examine them. It was on these background that this Tribunal observed that assessing officer in the original assessment proceedings did not merely on the basis of information from investigation wing but also has tried to find out whether share applicants actually existed or not or whether there engaged in the business of providing accommodation entries to assessee. However, it was beyond control to prove that money actually emanated from the coffers of assessee company unless concerned share applicants were examined by him.

27. It is very pertinent to observe here that this Tribunal was expressing its view that unless assessee provides or brings creditors before assessing officer for examination, assessing officer could not have investigated any further regarding creditworthiness and genuineness of transactions. Tribunal

further records therein that in order to decide this issue as to whether share capital or share application money received from 14 parties referred to in report of investigation wing is unaccounted money of assessee or any other person, it is necessary to make further enquiry and verification by examining concerned parties as well as by taking into account other surrounding circumstances evidences. To our understanding it is on this background that this Tribunal had remanded issue back to assessing officer to make such further enquiries and investigation as he may think fit and proper.

27. Now when we refer to assessment order passed by Ld. AO under section 256 of the Act, we observe that assessing officer had initiated investigation by issuing notice to assessee to produce the alleged creditors before him, alongwith requisites details as called for.

28. We therefore, do not agree with argument advanced by Ld. AR that this Tribunal vide order dated 16.04.2010 had shifted entire onus of proving creditworthiness and genuinenity of transaction upon assessing officer. It is clear from above referred paragraphs that, the Tribunal wanted assessing officer to start by recording statements of alleged creditors, without which he could not have advanced his investigation any further. Similar view was taken by this Tribunal in the case of M/s Shivam Softek Ltd., and M/s Ruble Chemicals Pvt. Ltd., to whom summons u/s.131 was issued by AO, could not be served, as they were not available.

29. Now entire controversy boils down to main issue as to whether assessee has discharged its onus of proving identity, creditworthiness and most importantly the genuineness of the transactions.

30. Before us Ld. AR submitted that assessee had tendered all necessary documents pertaining to alleged creditors by way of reply dated 14.11.2011. On perusal of this letter, which is placed at page 27-37 of paper book, we observe that assessee is claiming that these alleged creditors are no longer shareholders of assessee, and therefore it was not practically possible for assessee to submit their latest address. However, assessee has submitted details of alleged creditors as per Company statutory records as on date. We have gone through each and every creditors and respective documents placed at pages 43-381 of paper book the details of which are as under:

1. Welcome Coir Industries Ltd.

31. The share application form is placed at page 43, which do not contain any day, person who has signed and with what a quality person has issued such a letter. This applicant has applied for 30,000 equity shares of assessee at Rs. 10 per share of relating to Rs. 3 Lacs. The payment has been made by way of check issued from Corporation bank at page 45 of paper book. On perusal of bank statement we observe that it is for a period of 10.05.2000 to 30.05.2000. The opening balance of this bank statement is nil. It is very interesting to note that in this account the 1st deposits by cash is of Rs.

10,000/- against which charges have been deducted on for issue of cheque-book which goes to prove that account was opened very recently. Subsequently there are debits amounting to Rs. 4 Lacs, 5 Lacs and again 5 Lacs, which has been made on 25.05.2000 to various parties. We fail to understand when opening balances “nil”, how could assessee issue cheques amounting to such huge amounts of Rs.14 lakhs on a single date, without their being sufficient balance on a day previous to issuance of these payments.

32. The next document at page 46 is return of income filed by this applicant for assessment year 1999-2000 (but not for A. Y:2001-02) is without PAN number and neither is there any indication of application being made for obtaining same. The return shows there is a carry forward loss amounting to Rs. 1,38,63,160/- which shows that this company did not have any business during previous year relevant to assessment year 1999-2000. The next document is the master data obtained from website Ministry of Corporate Affairs which shows that company was incorporated on 20.12.89 and that last AGM conducted by this company was on 29.09.2009 for approving balance sheet dated 31.03.2009. The next document is annual return of company filed on the basis of balance sheet drawn on 31.03.2009 at page 49 to 69 of paper book. The directors report placed at page 70 further shows that this company was suffering loss of Rs. 2,210/- as compared to previous year loss of Rs. 7,960/-. In the audited

report balance sheet and profit and loss placed at pages 76 to 78 shows that there are huge losses.

33. None of the documents submitted pertains to applicant's position for assessment year 2001-02 which could support argument of Ld. AR that, all documents has been filed by assessee before assessing officer during original as well as subsequent assessment proceeding. None of these documents discharge initial onus cast upon assessee regarding establishing identity, Creditworthiness and most importantly genuineness of transaction.

2. M/s. Shimmer Marketing Pvt.Ltd

34. The share application form is placed at page 85 which do not contain any day. This particular applicant has applied for 30,000 equity shares of assessee at Rs. 10/- per share of relating to Rs. 3 Lacs. The payment has been made by way of cheque issued from Federal Bank at page 87 of paper book. On perusal of bank statement, we observe that balance in this account is quite meager as compared to transactions. Funds have been transferred in the account or clearing mostly on the every basis when cheque for share capital has been issued. The bank statement submitted is only a lease during month of March 2001. Page 86 is acknowledgement of return of income filed for assessment year 2000-2001. The PAN number has been applied for, by form No. 49 is placed at page 89 to 19 of paper book. It is pertinent to note that form No. 49 a does not contain address of this applicant and has been filed with circle 29(5), whereas return has been filed with Central circle 3 (5).

The returns shows that assessee has earned profit from business and profession amounting to Rs.1,789/-. The date of filing return appears to be April 2001, which creates a doubt that it has been filed only for the purposes of creating a façade of existence.

35. At page 91 of paper book, is the master data of M/s. Grassroots Marketing Pvt. Ltd., obtained from website of Ministry of Corporate Affairs which shows that applicant has filed balance sheet dated 31.03.2010. The address that appears in master data, is different from address mentioned in acknowledgement of return of income filed. This is followed by return filed by applicant, with only balance sheet for the year ending 31.03.2010, as an Annexure and profit and loss account of this company has not been placed on record.

36. In the instant case assessee has not any produced relevant information pertaining to assessment year 2001-02 to establish identity, Creditworthiness and genuineness of transaction. There is no single document that has been placed on record which could prove any business activity being carried out by this alleged applicant. The form is submitted are incomplete without having full information in respect of the alleged applicant.

3. Suma finance and investment Ltd:

37. The share application form placed at page 107 and dated where this applicant has applied for 20,000 equity shares of Rs. 10/- each at an aggregate value of Rs. 2 Lacs. The signatory details are not available. The payment has been

made by way of cheque issued from bank of Punjab on 18.05.2000. The bank statement placed at page 109 of paper book pertains to a period from 15.04.2000 to 18.05.2000 and opening balance as of 15th April is nil. Moneys have been deposited and have been withdrawn simultaneously. Page 110 of paper book is acknowledgement of return of income for assessment years 1999-2000, (not for 2001-02) which has not been stamped to prove that it has been filed. The income declared by alleged applicant under the head profit from business is only Rs. 16,910/- and has shown some speculation loss. Page 111 of paper book is the master details of the applicant obtained from the website of Ministry of corporate affairs, which reveals a different address vis-à-vis, address mentioned in return of income. The refund status for assessment year 2010-11 has been filed at page 112 of paper book, which do not establish either creditworthiness or genuineness of transaction entered into between this applicant and assessee during assessment year 2001-02. There is no other detail that has been produced in respect of this applicant.

38. In the instant case assessee has not produced relevant information pertaining to assessment year 2001-02 to establish identity, creditworthiness and genuineness of transaction. There is no single document that has been placed on record which could prove any business activity being carried out by this alleged applicant.

4. Onyx Exim & Sales Pvt.Ltd

39. This undated share application form at page 113 of paper book reveals that this alleged applicant had applied for 30,000 equity shares of assessee of Rs. 10/- each aggregating to Rs. 3 Lacs. This applicant has made payment by way of cheque issued from Canara Bank, which is placed at page 114 of paper book. The bank statement produced at page 115 of paper book is for period 01.03.2001 to 31.03.2001. Peculiar thing observed on this account is that on 1st _____ deposit of Rs. 3,05,818.24/-, which has been withdrawn and then again deposited by way of various checks. One more peculiar thing observed is that this applicant has issued cheque amounting to Rs. 2 Lacs to Shimmer Marketing, whom we have dealt with hereinabove. This creates about that these companies might have made payments to each other. Page 116 of paper book is acknowledgement of return of income filed for assessment year 1999-2000 which has been not attested, as received by Department. The return shows that the applicant earned income under the head profit from business and profession amounting to Rs. 6,563/-. The return does not show PAN number and has mentioned as applied for.

40. The next page being 117 appears to be intimation from department regarding PAN number of applicant. This letter is undated PAN number in hand written Again the format in which letter has been issued is not usual format issued by Department.

41. Page 118 is master details of the applicant obtained from site of Ministry of Corporate Affairs alongwith balance sheet as

on 31st March 2009 at page 120-152, followed by balance sheet as on 31.03.2010 along with respective Annual Returns. At page 164 Balance sheet as on 31.03.2011. None of Balance sheet is coupled with Profit and Loss account for relevant years.

42. In the instant case assessee has not produced relevant information pertaining to assessment year 2001-02 to establish identity, creditworthiness and genuineness of transaction. There is no single document that has been placed on record which could prove any business activity being carried out by this alleged applicant.

5. M/s. Hopwin Admark & Consultancy Services Ltd.

43. Page 172 is share application form. Page 175 is acknowledgment of Return of Income for assessment year 2000-01, which shows PAN number, as applied for. The income declared is Rs. 41,645/- from business and profession. This is followed by master details obtained from web site of Ministry of Corporate Affairs. The Directors Report for year ended 31.03.2011 mentions that applicant has made profit of Rs. 281/- from gross receipt of Rs. 3500/- during year. There is balancesheet for year ended 31.03.2011 placed at page 182 to 186 of paper book, which reveals that there has been no business activity that has been carried on by the applicant. From pages 186 to 197 extracts from balance sheet for year ended 31.03.2010 and 31.03.2011 has been placed, which is of no relevance to establish credit worthiness and

genuinely of transaction which pertains to assessment year 2001-02.

6. Umesneh Securities Pvt.Ltd.,

44. The share application form by this applicant placed at page 199 of paper book is dated 24.04.2000 wherein it has applied for 50,000 equity shares of assessee for Rs. 10/- each aggregating to Rs. 5 lakhs drawn on Keshav of Sahkari Bank Ltd. The bank statement has been placed at page 201 which shows an opening balance of Rs. 5250/- as on 07.04.2000. The bank has debited charges for issuing cheque book amounting to Rs. 50 and subsequently there is a deposit of Rs. 10 Lacs into account. The bank statement also shows subsequent deposits of huge amounts and corresponding cash debits of more than 2 Lacs on various dates. Further bank statement has been provided only for a period of 01.04.2000 to 30.04.2000 with closing balance of Rs. 5415/- in the account as on last date. Page 202 of paper book is the copy of acknowledgement of return filed for assessment year 1999-2000 with a net profit being declared at Rs. 4155/-. It is also observed that return has been filed as on 31.03.2000. Page 203 is another application presented by the applicant for 30,000 equity shares being issued by assessee aggregating value at Rs. 3 Lacs. This payment has been issued by applicant by way of cheque drawn on Keshav of Sahkari Bank Ltd. The next page 205 is bank statement for the period 15.032001 to 07.042001 wherein again opening balance as on 10.03.2001 is 5743. A similar pattern is observed during this

period of deposit of huge amount and subsequent deposits/withdrawals by cash and check on various dates.

45. Page 207 is acknowledgement of return of income filed for assessment year 2000-2001 wherein net profit has been declared as 5642 and return has been filed on 30.03.2001.

46. Applicants master details obtained from website of Ministry of Corporate Affairs have been annexed at page 108 which has a different address. There is no other detail like balance sheet, profit and loss account, audited report, annual returns that has been filed in respect of this applicant for A. Y. 2001-02.

47. In the instant case assessee has not produced relevant information pertaining to assessment year 2001-02 to establish identity, creditworthiness and genuineness of transaction. There is no single document that has been placed on record which could prove any business activity being carried out by this alleged applicant.

7. M/s. Maa Shakumbhari Stone Crushers Pvt.Ltd.,

48. Page 208 is share application form. M/s. Maa Shakumbhari Stone Crushers Pvt. Ltd., has applied for 30,000 equity shares of assessee worth Rs. 10/- share aggregating to Rs. 3 lakh. The applicant has paid money by way of cheque drawn from Federal Bank. Page 210 of paper book is bank statement from 01.03.2001 to 31.03.2001 of applicant wherein there is a pattern of deposit and withdrawal of money. Page 211 is acknowledgement of return of income filed for assessment year 2000-2001 which does not have PAN

numbers being a new case. The address mentioned in the share application form and return of income are different, which does not tally with address mentioned on bank statement. The signatory to share application forms as well as a return of income are different and does not reveal name, capacity in which return of income has been signed.

49. In the instant case assessee has not produced relevant information pertaining to assessment year 2001-02 to establish identity, creditworthiness and genuineness of the transaction.

8. M/s. Sparkle Breweries Pvt. Ltd

50. Page 213 to 214 reveals master details of applicant obtained from website of Ministry of Corporate Affairs wherein date of last approved balancesheet being 31.03.2010 has been mentioned. Page No. 215-223 is handwritten annual return under Companies Act for year ending 31st September 2009, Page 224-237 is annual return for year ending 30.09.2010. Page numbers 234-236 are Annexure to annual return being notice for conducting annual general meeting for approving audited balance sheet as on 31.03.2009, shows registered office of this applicant at 1st floor, plot No. 62, Marble Market, Sector 20, Dwarka, New Delhi whereas master data obtained from Ministry of Corporate Affairs reveals registered address being the 4/4123, Vasant Kunj, New Delhi.

51. This itself shows that none of these addresses are correct as in a small period between 2009 to 2010 applicant has

shown two different addresses as its registered office in a document which has been alleged to be on public domain.

52. The audit report annexed at page 238-264 is for year ending 31.03.2009 and 31.03.2010. Both these audit report do not contain profit and loss account of applicant.

53. The share application form if any, by this company for issuance of shares of assessee is not annexed herewith.

54. In the instant case assessee has not produced relevant information pertaining to assessment year 2001-02 to establish identity, creditworthiness and genuineness of the transaction.

9. M/s. Shivam Softech Ltd.,

55. Page 265 is share application form M/s. Shivam Softech Ltd., has applied for 40,000 equity shares of assessee worth Rs. 10/-, shares aggregating to Rs.4 lakh. The applicant has paid money by way of cheque drawn on Federal Bank. Page 267 of paper book is bank statement from 01.03.2001 to 31.03.2001 of applicant wherein there is a pattern of deposit and withdrawal of money. Page 268 is acknowledgement of return of income filed for assessment year 2000-2001 which does not have PAN numbers and has mentioned "not yet applied" in the column. The applicant has declared a net income of Rs. 14,035/- in the return. Page 269 is master details of applicant obtained from website of Ministry of Corporate Affairs, wherein date of incorporation has been shown to be 14.02.2000. Audited accounts for year ending 31.03.2010 placed at page 288- 296, does not have profit and

loss account of applicant which could bring out true and correct picture of affairs of applicant. Audited accounts for year ending 31.03.2011 has been placed from page 301-311 wherein profit and loss account has been annexed and reveals that income for year ended 31.03.2011 was only Rs. 45,000/- whereas income for year ended 31.03.2010 was Rs.6800/-.

In the instant case assessee has not produced relevant information pertaining to assessment year 2001-02 to establish identity, Creditworthiness and genuineness of the transaction.

10. Rubal Chemicals Pvt.Ltd.

56. This company has applied for 50,000 equity shares of assessee of Rs. 10/- each aggregating to Rs. 5 lakh and payment has been made by cheque drawn on Punjab National Bank. The copy of application of share is placed at page 312 of paper book along with copy of cheque at page 313, of current account No. 5290 placed at page 314-315 which is for a period of 30.03.2000 to 04.05.2000. Page 316 contains acknowledgement of return of income for assessment year 1999-2000 which shows that income under the head “profit from business” and profession at Rs. 14,111/-. The return of income is alleged to have been filed on 24.03.2000 and date on acknowledgement stamp from Department seems to be different date without signature and receipt number. There is no PAN or GIR number that has been mentioned on return. At page 317 of paper book there is an intimation from department issued under section 143(1)(a) of the Act for

assessment years 1997-98 which also does not contain GIR/pan number. Assessment order for assessment and 97-98 has been annexed at page 318-319 of paper book. It is very pertinent to observed that in the assessment order, the income has been declared at Rs. 72,340/- which does not tally with any of figures mentioned in the intimation issued by Department placed at page 317 for the very same assessment.

57. In the assessment order at page 318 the address which was typed has been cancelled and changed with the handwritten address. Page 319 of assessment order does not seem to be in usual format as issued by Department are thereby causing serious doubt on its authenticity. Master details of taint from Ministry of Corporate Affairs is placed at page 320 wherein balance sheet for year ended 31.03.2009 has been filed followed by annual return wherein balance sheet for year ending 31.03.2006 has been detailed at page 322-332 which is followed by annual return for year ending 31.03.2008 at page 333-340 followed by annual return for year ending 31.03.2009 from page 341-346.

In the instant case assessee has not produced relevant information pertaining to assessment year 2001-02 to establish identity, creditworthiness and genuineness of the transaction.

11. Kiran Bansal

58. Share application form issued by this applicant is placed at page 355 of paper book wherein applicant has applied for allotment of 15,000 equity shares of Rs. 10 each aggregating

to Rs. 1 lakh 50,000. The payment has been made by way of cheque drawn on Federal Bank placed at page 434 of people page 435 of paper book is copy of bank statement from 01.03.2001-03.04.2001 a similar pattern of deposit and withdrawals of huge amounts is observed in this statement. Page 358 is this copy of ration card which shows items like sugar, rice and quantity which has been consumed by this applicant in various quarters. In the return of income filed by applicant placed at page 360, shows that applicant was having income from house property at Rs. 49,500 and income from business or profession at Rs. 7,342 for assessment year 2000-2001. There is no document that has been placed in paper book which could prove credibility of this applicant and genuinely of transaction.

12. Subash Gupta

59. Page 61 is share application form submitted by this applicant for allotment of 15,000 equity shares of Rs. 10/- each aggregating to Rs. 1,50,000/-. The payment has been issued by way of cheque drawn on Federal Bank Ltd., is placed at page 362 of paper book. Page 363 is bank statement for the period 01.03.2001 to 30.03.2001 wherein there is a sequence of deposit and withdrawal of money at consecutive dates. Page 364 is a ration card of applicant issued on 10.09.1998 and page 365 is copy of return filed by this applicant for assessment year 2000-2001 which shows that applicant was earning salary income amounting to Rs. 20,000 during year.

There is no document that has been placed in the paper book which could prove credibility of this applicant and the genuinely of the transaction during A. Y. 2001-02

13. Vishal Aggarwal

60. Page 366 is share application form submitted by this applicant for issuance of 20,000 equity shares of Rs. 10/- each aggregating to Rs. 2 Lacs. The payment has been made by this applicant by way of cheque drawn on Federal Bank Ltd., Placed at page 367 of paper book. One more very pertinent thing observed is that signature on the share application form is very much similar to signatures found on share applications of M/s. Maa Shakumbhari & M/s. Shivam Softech.

61. Page 368-369 is further period 05.03.2001 to 31.03.2001 wherein a pattern of deposit and withdrawal has been observed. Page 370 ration card of brother of this applicant wherein applicant's name has been mentioned. Return of income for assessment year 1999 2000 has been placed at page 371 of paper book wherein salary income has been shown amounting to Rs. 48,000 only and income from other sources at Rs. 18,300.

There is no document that has been placed in the paper book which could prove the credibility of this applicant and the genuinely of the transaction for A. Y. 2001-02.

14. Amit Kumaar Singh

62. Page 372 is share application form submitted by this applicant for issuance of 15,000 equity shares of Rs. 10 each

aggregating to Rs. 1,50,000. The payment has been made by this applicant by way of check drawn on Federal Bank Ltd., Placed at page 373 of paper book. The bank statement is placed at page 374 of paper book for a period of 01.03.2001 to 31.03.2001 wherein pattern of deposit and withdrawal has been observed. Page 375 ration card of brother of this applicant wherein applicant's name has been mentioned. Return of income for assessment year 1999- 2000 has been placed at page 371 of paper book wherein salary income has been shown amounting to Rs. 32,000 and income from business and profession at Rs. 23,140/-.

There is no document that has been placed in the paper book which could prove the credibility of this applicant and the genuinely of the transaction for A. Y. 2001-02.

15. S. H. Malick

63. Page 377 is share application form submitted by this applicant for issuance of 20,000 equity shares of Rs. 10 each aggregating to Rs. 2 Lacs. The payment has been made by this applicant by way of cheque drawn on state bank of Bikaner, Placed at page 379 of paper book. Page 379 is copy of pass book for period 24.03.2001 to 27.03.2001 wherein a pattern of deposit and withdrawal has been observed. Page 380 ration card of brother of this applicant wherein applicant's name has been mentioned. Return of income for assessment year 2000-01 has been placed at page 381 of paper book wherein salary income has been shown amounting to Rs. 40,000/- only and income from other sources at Rs. 13,282. It is also observed

that this applicant has been found to be directors and many of companies mentioned herein being alleged share applicants of assessee.

64. There is no document that has been placed in paper book which could prove credibility of this applicant and genuinely of the transaction.

65. On analysis of all above alleged applicants who have alleged to have invested money with assessee, has been found to be non-genuine. None of documents filed before assessing officer during remand proceedings pertained to assessment year 2001-02, and filing of such documents cannot in any manner discharged initial onus cast upon assessee under section 68 of the Act. Even during original assessment proceedings assessee did not provide with correct details like confirmations, personally presenting these creditors or their representatives (as the case may be) before assessing officer, Now the plea taken by assessee that as considerable time has passed and more so that these applicants being no longer shareholders of assessee and therefore, assessee could not provide with current details of these applicants, is very hard to believe. Had these applicants to be genuine in nature assessee would have had complete details, necessary to establish creditworthiness. Had transactions being genuine, these parties would have presented themselves before assessing officer for verification. Time and again, Ld. AR argued that assessing officer has not fulfilled his duties as directed by this Tribunal vide order dated 16/04/10. For

which, we observe that even after providing all wrong details/information to the assessing officer, he attempted to visit these applicants by deputing inspector and also by issuing notices under section 133 (6) of the Act. It is well within the knowledge of the assessee that the assessing officer could have not found these applicants as they never existed in reality.

66. To our mind these documents cannot be relied upon as they do not pertain to period during which monies were introduced into assessee as alleged share application. None the less, assessee has also not produced copies of shares allotted, the folio number etc., to establish that shares were actually issued to these alleged applicants during relevant period, which was very much within realm of assessee. The belief of Ld. AO that unaccounted money is laundered as clean share capital by creating a façade of paper work, routing money through several bank accounts and getting it the seal of statutory approval has not been disproved by assessee in any manner what so ever. Bank statements of alleged subscribing companies are for a very limited period and not for whole year. Analysis of this statement does not throw any light whatsoever on source of funds of alleged subscriber companies. The use of words "any sum found credited in the books" in Section 68 indicates that said section is very widely worded and an Income-tax Officer is not precluded from making an enquiry as to true nature and source thereof even if the same is credited as receipt of share application money.

67. If the amount credited is a capital receipt then it cannot be taxed but it is for Income-Tax Officer to be satisfied that true nature of receipt is that of capital. Merely, because company chooses to show receipt of money as capital, it does not preclude Income-Tax Officer from going into question whether this is actually so. Section 68 would clearly empower him to do so. Where, therefore, assessee represents that it has issued shares on the receipt of share application money then amount so received would be credited in the books of account of the company. The Income-Tax Officer would be entitled to enquire, and it would indeed be his duty to do so, whether the alleged shareholders do in fact exist or not. If the shareholders exist then, possibly, no further enquiry need be made. But if the Income-Tax Officer finds that alleged shareholders do not exist then, in effect, it would mean that there is no valid issuance of share capital. Shares cannot be issued in the name of non-existing persons. The use of the words "may be charged" (emphasis added) in section 68 clearly indicates that the Income-tax Officer would then have the jurisdiction, if the facts so warrant, to treat such a credit to be income of assessee. The onus of satisfactorily explaining such credits remains on person in whose books such sum is credited. If such person fails to offer an explanation or explanation is not found to be satisfactory then sum is added to total income of person.

68. Under such circumstances of facts we are of the considered opinion that assessee has not furnished any

details in respect of alleged applicants for the period under consideration, which could discharge initial onus cast upon assessee u/s 68 of the Act. We feel that it will not serve any purpose to set aside issue again for verification to Ld. AO, as assessee has already admitted in its reply dated 14.11.2011, that these applicants are no longer share holders of assessee and will not be possible to produce their current details. Under above noted facts and documents placed on record, we therefore, do not hesitate to up hold order of Ld. CIT(A). Accordingly, grounds raised by assessee stands dismissed.

In the result, appeal filed by assessee stands dismissed.

Order pronounced in the open court on 31st May, 2017.

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER
Date: 31.05.2017
@m!t

Sd/-

(BEENA A. PILLAI)
JUDICIAL MEMBER