

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-I', NEW DELHI**

**Before Sh. N. K. Saini, Accountant Member**

**ITA No. 4236/Del/2015 : Asstt. Year : 2005-06**

M/s Mission Verdes Estate Pvt. Ltd., 48, Friends Colony, New Delhi-110065	Vs	ACIT, Central Circle-23, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAACM1160C</b>		

**Assessee by : Sh. Sashi Tulsian, Adv.**

**Revenue by : Sh. F. R. Meena, Sr. DR**

<b>Date of Hearing : 19.09.2016</b>	<b>Date of Pronouncement : 16.12.2016</b>
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**ORDER**

This is an appeal by the assessee against the order dated 10.02.2015 of ld. CIT(A)-30, New Delhi.

2. Following grounds have been raised in this appeal:

*“1. That the CIT (Appeals) erred on facts and in law in upholding the impugned assessment order passed under sections 147 of the Income Tax Act, 1961 which is without jurisdiction, illegal and bad in law since the prerequisite conditions for initiating proceedings under section 147 of the Act were not fulfilled in the present case.*

*2. That the CIT (Appeals) erred on facts and in law in upholding the alleged fair rental value at Rs.11,77,528/- and thereby making an addition of Rs.11,77,528/- under the head income from house property.*

*3. That the CIT(Appeals) erred on facts and in law in upholding the addition of Rs.7,00,000/- received from M/s*

*Golden Techno Build Pvt. Ltd. as unexplained cash credits u/s 68 of the Act.*

*4. That the CIT(Appeals) erred on facts and in law in upholding the aforesaid addition of Rs.7 lacs without appreciating that the appellant had discharged its onus in terms of section 68 of the Income Tax Act, 1961.”*

3. Ground No. 1 is not pressed, therefore, the same is dismissed as not pressed.

4. Vide Ground No. 2, the grievance of the assessee relates to the sustenance of addition of Rs.11,77,528/- on account of income from house property and vide Ground Nos. 3 & 4, the assessee is aggrieved by the sustenance of addition of Rs.7,00,000/- made by the assessee u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as the Act).

5. The facts related to these issues in brief are that a search and seizure operation was carried out at various premises of M/s Today Homes and Infrastructure Pvt. Ltd. The assessee company is one of the associated companies of Today group of cases. The AO issued a notice u/s 148 of the Act on 29.03.2012. In response to the same, the AO did not file its return of income. The AO made the impugned addition by observing in paras 5 to 8 as under:

*“5. During the course of search and seizure proceedings at the residential and business premises of the Jain brothers on 14/09/2010, daily cash books, balance sheet and cheque/bank books were found and seized wherein date wise details of cash received from different parties/concerns through various*

mediators and the date wise details of accommodation entries given to the beneficiary concerns through the mediators, from the various concerns of Jain brothers(i.e. Name of the concern of the Jain brothers giving the entry; name of the bank of the concern of the Jain brothers giving the entry; PO/BC/cheque number; amount of PO/BC/cheque; name of the beneficiary concern in whose favour PO/BC/cheque is issued) have been found. On perusal of these details, it was seen that the M/s Golden Technobuild Pvt. Ltd., from which M/s Mission Viejo Agro Pvt. Ltd. i.e. the assessee has received various amounts during the FY 2004-05 relevant to the AY 2005-06, has taken accommodation entries from the various companies controlled by Jain brothers.

6. The details of various documents/books seized during the course of search and seizure action at the residential and business premises of Jain brothers showing the receipt of cash and the providing of accommodation entries to M/s Golden Technobuild Pvt Ltd including name of the concern of the Jain brothers giving the entry; name of the bank of the concern of the Jain brothers giving the entry; PO/BC/cheque number; amount of PO/BC/cheque; name of the beneficiary concern in whose favour PO/BC/cheque is issued etc are as under:

Bank Book Date	From	To	Bank	Cheque/RT GS	Cheque Date	Amount (In Rs.)	ANN. Who is the No.	Page No.	Mediator	Beneficiary
17-Feb-05	VPC	Golden Techno Build P. Ltd.	KOTAK	28222	17-Feb-05	700,000	A-34	13 Back	Chawla	Mission Viejo

To summarize, innumerable evidences mentioned above clearly establish that this company namely M/s Golden Technobuild Pvt. Ltd. from where funds have been transferred to the assessee belongs to Today group of cases. This is a paper company which is controlled by the dummy directors and has been used as conduit to transfer the money to the assessee. In

*other words M/s Mission Viejo agro Pvt. Ltd. i.e. the assessee is the ultimate beneficiary in respect of the accommodation entries provided by the Jain brothers as mentioned in para-5 supra to M/s Golden Techno build Pvt. Ltd. Therefore, in view of the foregoing discussions, sum of Rs. 7,00,000/- credited in the books of account of the assessee during the financial year 2004-05 relevant to the assessment year 2005-06 fails to pass the test of genuineness within the meaning of Section 68 of the Act.*

*7. Further during the course of assessment proceedings for the AY 2009-10, it was seen that the assessee is one of the co-owner of the property at 48 Friends Colony East, New Delhi in along with other group concerns namely M/s Takshila Distributors Pvt Ltd; M/s Rancho Place Estate Pvt. Ltd. The assessee owns 28.24% of the share in the property at 48 Friends Colony East, New Delhi and this property of the assessee company at 48, Friends Colony East, New Delhi. Further it was noticed that this property was being used by Gambhirs for their residence and was not being used by the assessee as well as the other group concerns for the purpose of their own business or profession, therefore, as per the provision of section 23 of the Act, the sum for which the whole of property at 48, Friends Colony East, New Delhi, might reasonably be expected to be let out was determined at Rs. 41,69,718/-.*

*8. During the FY 2004-05 also the property of the assessee at 48 Friends Colony East, New Delhi was being used by Gambhirs for their residence and not by the assessee company for the purpose of its own business or profession therefore as per the provision of section 23 of the Act, the sum for which the property of the assessee company at 48, friends Colony East, New Delhi, might reasonably be expected to be let out was Rs. 11,77,528/- (41,69,718 x 28.24%) and this amount should have been shown by the assessee as its income from house property*

*in its return of income, but the assessee has shown its income from house property at Rs. NIL in its return of income for the AY 2005-06. Therefore, addition of Rs. 1877528 (7,00,000 + 11,77,528) is added to the income of assessee as discussed above.”*

*Addition:- Rs, 1877528*

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

*"That on perusal of reason to belief supplied by AO it was noticed that AO had found some materials from possession of some Jain brother's during search and seizure action on Jain brother's on 14-9-2010. That from documents obtained from Jain brother's shows that Rs.7,00,000/- has been given from Ms Golden Techno Build Pvt. Ltd. to assessee company. On that very basis AO had added the amount U/s 68 of the Act. We are before your goodself against the addition of Rs.7,00,000/- U/s 68 made by AO.*

*First, that it is an undisputed fact that assessee had received an amount of Rs. 7,00,000/- from M/s Golden Techno Build Pvt. Ltd. during the year. Further the assessee company had not paid any cash against the receipt of such amount. Further the assessee company has provided explanation about the nature and source of such credit.*

*To support the assessee plea we had already filed before AO and again submitting before your goodself as under:-*

- *Copy of PAN card of Technobuild Pvt. Ltd.*
- *Copy of ITR Filing acknowledgement for A Y 2005-06.*
- *Copy of Audited Balance Sheet for A Y 2005 - 06.*
- *Copy of Bank statement showing cheque cleared.*

*To the extent of provisions of Sec 68 is concerned the assessee company has discharged its burden to prove the identity, credit worthiness and genuinty of the transaction.*

*SECOND, that It is purely on the basis of information he had / received from third party investigation and no further enquiries made by (he AO on his own and no new facts brought on record. Now, duty lies on the AO to confirm from his own part/sources by way of issuing notice U/s 133(6) or by deposing some person on job or by any other way he deems fit. However, he never tried to fulfill his job and simply copy pasted the reasons in the assessment order and made addition in a tailor made fashion.*

*Thus, without making/applying his own mind and without making his own enquiries, addition merely on the basis of information from ADIT(INV) is invalid and needs to be deleted.*

*SMT. MEERA KAPOOR VS. CIT (ITA NO. 1395/2008)  
DECIDED VIDE ORDER DTD. 31.08.2012 (DELHI HIGH  
COURT)*

*CIT VS. SFIL STOCK BROKING LTD. 233 CTR (DEL.) 69*

*DIT VS. MRS. RAINEE SINGH 125 TTJ (DEL) 816  
(AFFIRMED BY HIGH COURT IN (2009) 30 DTR (DEL) 105  
/330 ITR 417 (DEL.)*

*THIRD, that AO had relied only on the basis of information, statements and documents received from third party, i.e. Jain brother's, investigation proceedings. Further AO had relied on some backside of page 13 in annexure A - 34 from Jain brother documents. The third party statements and the documents seized from their possession, which were being used against the assessee, were never being confronted to the assessee company*

*at any time during the stage of assessment proceedings. Thus, the AO had violated the principle of natural justice to assessee by not giving an opportunity of being heard to assessee.*

*We rely on following judgements:-*

*VINOD KUMAR PITTIE VS. A CIT (2007) 13 SOT 36(MUM.) (URO)*

*DHANLAXMI PICTURES VS. CIT 144 ITR 452 (MAD.)*

*FOUR, FURTHER WITHOUT PREJUDICE, that at para 5 of page 5, some table detail had been provided by AO stating to be a part of Jain brother documents, which shows that on 17.02.2015 M/s Golden Technobuild Pvt. Ltd. has given Rs 7,00,000/- vide cheque no. 28222 to assessee company through mediator Mr. Chawla.*

*However, we wish to state that we do not know that person Mr. Chawla. Further the details given by the AO is wrong due to the fact that amount of Rs. 7.00,000/- has been received by assessee vide cheque no 0221584 and had no link and no knowledge of cheque no. 28222.*

*FIVE, FURTHER WITHOUT PREJUDICE, it is being submitted that assessee company had received funds front M/s Golden Technobuild Pvt. Ltd. and in respect thereof the assessee had filed all the requisite details and documents before AO to prove the identity, credit worthy and genuinity of transaction. Further the assessee company knows only and only the predecessor company that is M/s Golden Technobuild Pvt. Ltd. It is not (he fault on assessee company that from where (he predecessor company had arranged the funds. If that is the case, than the AO should call and made addition in the hands of M/s Golden Technobuild Pvt. Ltd. and not in the hands of*

*assessee company. Assessee company simply under a bonafide belief had obtained funds from M/s Golden Technobuild Pvt. Ltd. Assessee company had no relation with M/s Jain Brothers.*

*In view of the above submissions we humbly prayed before your good self to kindly delete the additions. ”*

7. It was further submitted as under:

*"That the reasons to belief supplied by AO stated that the alleged property being co-owned by the assessee company and no business was carried on by the company from that premises, but was being used by Gambhir brothers for their residence.*

*That since property being co-owned by assessee company and not used for Us business or profession and being used Gambhir's as residence, therefore AO has made an addition of Rs. 11,77,528/- by invoking the provisions of Sec 23 of the IT Act.*

*First, That as per Sec 22 of IT Act the A V of the property consisting of any building and land appurtenant thereto of which the assessee is an owner. OTHER THAN SUCH PORTIONS OF SUCH PROPERTY AS HE MAY OCCUPY FOR THE PURPOSE OF ANY BUSINESS OR PROFESSION carried on by him the profits of which are chargeable to tax, shall be chargeable to income (ax under the head Income from house property.*

*In other words to charge the income U/H house property the property should not be used for its business or profession.*

*However, in our case it was outrightly stated before Id. AO that the said property was being used for the registered office of the assessee company. To support our contention we had filed the following details before LD AO:-*

- Copy of bank A/c
- Copy of ITR filing acknowledgement.
- Copy of TAN allotment letter.
- Copy of Form 18 showing registered address of the company.

*That we wish to put some light on one of the factor that should be taken due care while judging the provisions U/s 23 in our case is that the assessee company is using the said co-owned premises for their registered office address, from where all statutory compliances were made by the company. However, actual occupation by the company is not relevant and the work office may be different from the registered office of the company from where revenue generating activities can be done. In that situation it cannot be the case that no business activities are carried out by the company from premises.*

*Ld. AO simply added the income without observing and appreciating the facts of the case. AO simply taken that premises owned by Gambhir brother's and premises is co-owned by assessee company, thereby making an addition U/s 23 of the Act.*

*We rely on following judgements:-*

*Balakrishna H. Warni vs. ITO (2010) 321 ITR 519 (Bom)  
CIT VS. SFIL STOCK BROKING LTD. 233 CTR (DEL) 69  
CIT Vs. ATUL JAIN (2007) 164 TAXMAN 33 (DEL/299 ITR  
383 (DEL)  
ITO VS. TAKSHILA DISTRIBUTORS (P) LTD. (2009) 20 DTR  
(DEL.) (TRIB.) 156  
POYSHA INVESTMENTS (P) LTD. 136 TTJ (DEL) (UO) 57*

*SECOND, the Ld. AO has arrived at the valuation of Rs. 41,69,718/- for the property under consideration and has*

*calculated the shares of assessee at Rs. 11,77,528/- being 28.24% of Rs. 41,69,718/-. It is submitted that assessee share is 27.20% (i.e .1050 sq yards co owned out of 3860 sq yards).*

*Now, the basis of calculating the annual value of the property has not been made known nor the calculation thereof has been provided to the assessee. Ld. AO is duty bound to supply the details and documents on the basis of which he relies and using against the assessee, thus, the Ld. AO has acted against the principles of natural justice. Further, it has been held in many authorities that the evidence used against the assessee should be provided and in the absence of the same being provided the AO cannot use it against the assessee.*

*VINOD KUMAR PITTIE VS. ACIT (2007) 13 SOT 36(MUM.)  
(URO)*

*DHANLAXMI PICTURES VS. CIT 144 ITR 452 (MAD.)*

*JOHN TINSON AND COMPANY (P) LTD. AND OTHERS 298  
ITR 407 (DEL)*

*THIRD, FURTHR WITHOUT PREJUDICE, that total area of property is 3860 Sq Yards and out of that area only 1050 sq yards are being co-owned by assessee company. As per the MCD Act valuation the value of the whole property comes to Rs 20,28,670/- and the share of assessee company comes to Rs 5,51,840/- only.*

*Now, in support of this fact following documents were filed before the Ld. AO and now filed before your goodself:-*

- Payment of House tax receipt.*
- Calculation of Annual value as per Municipal Corporation Act.*

*That the valuation as per MCD Act should be followed in the absence of standard rent and actual rent.)*

*We rely on following judgements:-*

*ACIT VS. MAYUR RECREATION AND DEVELOPMENT LTD.  
301 ITR (AT) 324 (SB) (DEL.)*

*The Hon'ble Delhi High Court in case CIT VS. MONI KUMAR  
SUBBA 333 ITR 38 (DEL) (FB)*

*TYPOGRAPHY IN ITA NO. 1213 OF 2011 DTD. 08.08.2014  
has followed the decisions of Delhi High Conn staled above.*

*PARKPAPER INDUSTRIES (P) LTD. (2008) 25 SOT 406  
(MUM.)*

*SATYA COMPANY LTD. 140 CTR (CAL.) 569*

*FOUR, that no basis had been provided for calculating the  
annual value / rental income of the said property. It is purely on  
the basis of information he had and no further.*

*FOUR, that no basis had been provided for calculating the  
annual value / rental income of the said property. It is purely on  
the basis of information he had and no further enquiries made  
by the AO on his own and no new facts brought on record to  
reach at correct facts. He even failed to look into the fact  
submitted by the assessee.*

*SMT. MEERA KAPOOR VS. CIT (ITA NO. 1395/2008)  
DECIDED VIDE ORDER DTD. 31.08.2012 (DELHI HIGH  
COURT).*

*CIT VS SFIL STOCK BROKING LTD. 233 CTR (DEL.) 69*

*DIT VS. MRS. RAINEE SINGH 125 TTJ (DEL) 816  
(AFFIRMED BY HIGH COURT IN (2009) 30 DTR(DEL)  
105)/330 ITR 417 (DEL)*

*FIVE, Ld. AO erred in appreciating the fact that he formed reason to belief from information available from AY 2009-10 for assessing the case for AY 2005-06, without making any adjustment for change of circumstances and economic values. He even failed to think that every year is a different year under the eyes of law and if due to any special reasons he wishes to follow the same judgements than the facts of both the years should be same and it should be subject to some adjustments.*

*SIX, that the facts submitted by the assessee company had no! been adjudicated by the Ld. AO and no new facts has been brought on record by the AO and simply stated that assessee contention is no/ acceptable, in a tailor made fashion.*

*KESHAV SHARES & STOCKS LTD. VS. ITO (2008) 11 DTR  
(DEL) 49.*

8. The Id. CIT(A) after considering the submissions of the assessee confirmed the addition of Rs.7,00,000/- by observing as under:

*“It may be mentioned here that in present case, dummy companies of Jain Brothers has given cheques to again a dummy companies of Today Group namely M/s. Technobuild (P) Ltd., as the appellant is the beneficiary and M/s. Technobuild (P) Ltd. is found to be non functional companies controlled by Sh. Gambhir, main person of Today group, used to channelize accommodation entries. Even settlement commission in Today Group on the application of Today group has held various companies of Today group as dummy/paper companies including M/s. Golden Technobuild (P) Ltd. in its*

*order u/s 245D(4) of I.T. Act. vide order dt. 30.04.2013 in application in the cases of:-*

- 1. Sh. Gulshan Kumar Gambhir, S.A. No. DL/DC53/2011-12/35-IT*
- 2. M/s. Today Hotels (P) Ltd., S.A. No. DL/DC53/2011-12/36-IT*
- 3. M/s. Today Hotels (New Delhi) (P) Ltd., S.A. No. DL/DC53/2011-12/37-IT*
- 4. M/s. Today Homes & Infrastructure (P) Ltd., S.A. No. DL/DC53/2011-12/38-IT*
- 5. M/s. Aerial Estate (P) Ltd., S.A. No. DL/DC53/2011-12/106-IT*
- 6. M/s. Jaimata Realtors (P) Ltd.. S.A. No. DL/DC53/2011-12/107-IT*
- 7. Sh. Rajender Kumar Gambhir, S.A. No DL/DC53/2011-12/53-IT*

*Under these facts and circumstances relying on filing the paper evidences in form of Income Tax Return, Balance Sheet, PAN and bank statement of M/s. Golden Technobuild (P) Ltd. do not prove the genuine of transaction as argued by Ld. AR. Further, addition in the hand of M/s. Golden Technobuild (P) Ltd. also does not help the appellant as M/s. Golden Technobuild (P) Ltd. itself is a dummy/paper company of Today group. Further. I do not agree with the arguments of Ld. AR that the appellant has discharged its primary onus by filing document evidence in support of transaction with M/s. Golden Technobuild (P) Ltd. as the basic findings in that the amount received by the appellant is an accommodation entry which has been obtained by paying cash to Jain Brothers through dummy concern of Jain Brothers and dummy concern of Today group namely, M/s. Golden Tenchnobuild (P) Ltd. Under these circumstances, reliance of Ld. AR on various judicial pronouncement given on different facts do not held the appellant.*

*In fact entire chain of fund flow through various layers of fund transfer through bank accounts of dummy/paper companies are nothing but colourable device to cover the actual transactions. I rely on the decision of Hon'ble Supreme Court in the case of:-*

*i) Mc. Dowell & Co. Ltd. Vs. CTO (1985) 154 ITR 148 (SC) ii) Sumati Dayal Vs. CIT [1995] 214 ITR 801*

*Ld. AR's argument that the addition made by the assessing officer on the basis of mere enquiry by ADIT(Inv.) cannot be sustained. He has relied on various judicial pronouncement. The present case is different on facts of the cases relied by the Ld. AR. In present case, the assessing officer has made the addition after proper utilization of evidences collected during the search. Further the addition is supported by the findings of the Hon'ble Settlement Commission in Today group of cases that the creditor M/s. Golden Technobuild (P) Ltd. is a dummy/paper concern of Today Group to receive accommodation entries. Further, during the search clinching evidences of cash receipt and name of the mediator were found during the search from the premise of Jain Brothers which have to be utilized for assessing income of the assessee.*

*Ld. AR has argued that the appellant does not know Mr. Chawla who has allegedly cited as mediator. In this regard, I have perused the order of settlement commission in Today group where it has been mentioned that Mr. Chawla is rated to promoters and controlling persons of the Today group namely Gambhirs and an advocate appearing for Income Tax matters in Today Group. The appellant definitely belongs to Today group. Therefore, such argument that Mr. Chawla is not known to the appellant cannot be accepted.”*

9. The another addition of Rs.11,77,528/- was also confirmed by observing as under:

*“I have considered the assessment order, written submission and oral arguments of Ld. AR.*

*The property in question namely, 48 Friends colony, New Delhi is owned by four companies of Today Group namely M/s. Takshila Distributors (P) Ltd., M/s. Mission Viejo Agro (P) Ltd. M/s. Rancho Estate (P) Ltd. and M/s. Palos Verdis Estate (P) Ltd. The appellant has 29.4% share in the said property.*

*The basic arguments of Ld. AR is that the house at 48, Friends colony, New Delhi is owned by the appellant alongwith three other companies, namely, M/s. Mission Viejo Agro (P) Ltd., M/s. Rancho Estate (P) Ltd. and M/s. Palos Verdis Estate (P) Ltd. are used for their business purposes except the portion of the property let out which were in turn used by Gambhirs as residences. As the property is used for their own business purposes, the income cannot be taxed under the head 'Income from house property' as per the provision of sec 22 of I.T. Act.*

*I have examined this arguments of Ld. AR closely. Firstly issue to be resolved as to whether entire property at 48. Friend colony is used for Gambhir's Residence exclusively or partly used for the residence of Gambhirs and partly used for business of these company. On this issue, I have perused the evidences contained in the assessment order. During the search, statement of Sh. Vinay Subhikhi, Vice President of the group was recorded u/s 132(4) of I.T. Act. 1961 who have stated that these four owner of 48, Friend's Colony are not doing any business. These four companies just own one asset namely 48, Friends Colony, New Delhi which is used as residences by Mr. G.K. Gambhir and Sh. R.K. Gambhir, main person of Today*

*group. This portion of statement is reproduced in the assessment order.*

*In view of this categorical statement recorded u/s 132(4) by the Vice-President of the group, I do not think that there is any confusion that entire property at 48. Friend's colony is used by Gambhir for residential purposes. Neither the appellant nor the Ld. AR has filed any evidence contrary to the statement of Vice-President of the group.*

*Ld. AR's argument that Gambhir's have used only a portion for residential purposes cannot be accepted as the lease agreement in support of such contention was not produced from where specifically it can be ascertained the exact portion of the property used by Gambhirs.*

*The Ld. AR's further argument is that this address is used the owner companies for Board meeting and communication purposes. Hence, it can be said to be used for business purposes. I do not agree with this argument of Ld. AR also as the group is having huge office establishment at statesman Building. Further, as accepted by Mr. Subhiki, Vice-President of the group that these owner companies do not conduct any business except owning this property. In this circumstances, mere receiving of Dak at this address cannot be term as conducting the business.*

*Considering the entire facts and circumstances, I am of the opinion that the entire property at 48. Friends colony is used for the residential purpose of main person of Today group namely Gambhirs. Therefore, the assessing officer is correct to apply Fair rental value which it might reasonably fetch for the purpose of determining income under the head 'Income from house property' as per the provision of section 23 of I.T. Act.*

*Ld. AR's argument that the assessing officer should have accepted municipal valuation in absence of any further enquiry is also misplaced. In present case, the part of the property is rented to other companies which is acceptably used by Gambhirs for residential purpose. The assessing officer after considering these facts and prevailing rent has estimated the annual ratable value.*

*Accordingly, the addition made under the head 'Income from House Property' is hereby confirmed. These grounds of appeal are dismissed.”*

10. Now the assessee is in appeal. The Id. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the amount of Rs.7,00,000/- was not received by the assessee from any company controlled by the Jain Group as alleged by the AO, the said amount was received from M/s Golden Technobuild (P) Ltd. and the assessee had produced sufficient documentary evidences in the form of PAN card, Certificate of Incorporation, relevant copies of audit report, balance sheet of the said company, copy of ITR filing acknowledgement, copy of confirmation and relevant copy of bank statement. A reference was made to page nos. 32 to 48 of the assessee's paper book which are the copies of the aforesaid documents and it was stated that the said documents established the identity and creditworthiness of the creditor and genuineness of the transaction. Therefore, addition made u/s 68 of the Act was not justified. The reliance was placed on the following case laws:

- *CIT Vs Gangeshwari Metal (P.) Ltd. 30 Taxmann.com 328 (Del.)*
- *CIT Vs Kamdhenu Steel & Alloys Ltd. (2012) 361 ITR 220 (Del.)*

11. It was further stated that the aforesaid amount was received by the depositor M/s Golden Technobuild (P) Ltd. from a company of Jain brothers and the addition of the same had already been made in the hands of M/s Golden Technobuild (P) Ltd. for the assessment year 2005-06, vide assessment order dated 28.03.2013 (copy of the said order was furnished which is placed on record). It was accordingly submitted that the addition made by the AO and sustained by the Id. CIT(A) was not justified.

12. As regards to the another addition of Rs.11,77,528/- on account of income from house property, it was stated that the assessee is having 28.24% shares in the property situated at 48, Friends Colony East, New Delhi, which was used for the business purposes and the assessee's registered office is situated in the said property. It was submitted that the AO made the addition only on the basis of statement of Sh. Vinay Subhiki who stated that the impugned property was used by Gambhirs for their residence. However, the said statement as relied by the AO as well as the Id. CIT(A) cannot form the sole basis of the addition in the absence of any opportunity being provided to the assessee to cross-examine the witness, whose statement was made the basis for the impugned addition. It was further submitted that one of the co-owner

company M/s Palos Verdes Estate Pvt. Ltd., let out its proportionate share to the company, M/s Today Homes & Infrastructure Pvt. Ltd. from October 2004 and was earning rental income there from which was reflected in the accounts of the said company, in the relevant assessment years 2005-06 to 2009-10. It was explained that the company M/s Today Homes & Infrastructure Pvt. Ltd. term had let out the proportionate share of M/s Palos Verdes Estate Pvt. Ltd. to Gambhirs for their residence but they were residing only on the portion let out by M/s Palos Verdes Estate Pvt. Ltd. to the company M/s Today Homes & Infrastructure Pvt. Ltd. However, the assessee's share in the said property was used for the business purposes and registered office was situated in the said property. A reference was made to page no. 28 of the assessee's paper book which is the copy of Registrar of Company (ROC), Master data evidencing the registered office address of the assessee company. It was stated that the addition of Rs.11,77,528/- made by the AO and sustained by the Id. CIT(A) was not justified.

13. In his rival submissions the Id. DR strongly supported the orders of the authorities below and reiterated the observation made in the assessment order and the impugned order.

14. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it appears that the AO made the addition of Rs.7,00,000/- only on this

basis that the amount was received from a company namely, M/s Golden Technobuild (P) Ltd. who in turn received the amount from a dummy company of Jain brothers who were engaged in providing the accommodation entries. It is also noticed that the impugned amount of Rs.7,00,000/- was a part of the addition made by the AO in the hands of M/s Golden Technobuild (P) Ltd. i.e. the creditor from whom assessee received the impugned amount, the said fact is evident from the copy of assessment order dated 28.03.2013 for the assessment year 2005-06 in the hands of M/s Golden Technobuild (P) Ltd. Therefore, on that score alone, the addition made in the hands of the assessee is not justified particularly when the source of the source was proved and the tax has already been charged on the impugned amount. Furthermore, the assessee furnished the copy of confirmation from M/s Golden Technobuild (P) Ltd., which is placed at page no. 3 of the assessee's paper book wherein the said company in its confirmation dated 1<sup>st</sup> April, 2005 clearly stated that an amount of Rs.7,00,000/- was given to the assessee vide cheque no. 221584 dated 20.02.2005. The creditor, M/s Golden Technobuild (P) Ltd. is assessed to tax and filed its return of income for the year under consideration (copy of the acknowledgment is placed at page no. 33 of the assessee's paper book). The assessee also furnished the copy of bank statement of the company M/s Golden Technobuild (P) Ltd. which is placed at page nos. 45 to 47 in the said copy of bank account, the aforesaid entry of Rs.7,00,000/- on 22.02.2005 is reflected. In the present case, the documents furnished by

the assessee, established the identity as well as creditworthiness of M/s Golden Technobuild (P) Ltd. and since the transaction took place through banking channel, the genuineness of the transaction was also proved. Therefore, considering the totality of the facts, I am of the view that the addition made by the AO and sustained by the Id. CIT(A) on account of Rs.7,00,000/- received from M/s Golden Technobuild (P) Ltd. was not justified. Accordingly, the same is deleted.

15. As regards to the another addition of Rs.11,77,528/-, it is noticed that the said amount was added on the basis of presumption that the property at 48, Friends Colony East, New Delhi in which the assessee was having 28.24% was let out to Gambhir brothers but infact, the Gambhirs brothers were the tenant of M/s Today Homes & Infrastructure Pvt. Ltd. who was the tenant of M/s Palos Verdes Estate Pvt. Ltd. Therefore, the addition made by the AO on the basis of presumption was not justified particularly when the assessee had not given property on rent to Gambhir brothers as alleged by the AO. The property in question was used by the assessee for its own business purposes. The said fact is evident from page no. 28 of the assessee's paper book i.e. the copy of ROC master data which revealed that the assessee's registered office is situated at 48, Friends Colony East, New Delhi. Therefore, by considering the totality of the facts, I am of the view that the

impugned addition made by the AO on the basis of presumption that the assessee had let out the property to Gambhir brothers and sustained by the ld. CIT(A) was not justified. Accordingly, the same is deleted.

16. In the result, appeal of the assessee is allowed.

(Order Pronounced in the Court on 16/12/2016)

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 16/12/2016**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**