

THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri B.R. Baskaran (AM) & Shri Sandeep Gosain (JM)

I.T.A. No. 2067/Mum/2013 (Assessment Year 2007-08)

DCIT Cent Cir-40 Room No. 653 6 th Floor Aayakar Bhavan M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Luminant Investment Limited Radha Bhavan 121, Nagindas Master Road, Mumbai-400023. PAN : AAACL0834A (Respondent)
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Assessee by	Shri Neel Khandelwal
Department by	Smt. Vidisha Karla & Shri Abhijit Patankar
Date of Hearing	11.8.2017
Date of Pronouncement	27.9.2017

ORDER

The appeal filed by the revenue is directed against the order 26-12-2012 passed by Ld CIT(A)-36, Mumbai and it relates to the assessment year 2007-08. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the addition of Rs.13.92 crores relating to share application money and share allotment money, made by the assessing officer u/s 68 of the Act.

2. We have heard the parties and perused the record. During the year under consideration, the assessee received share application money of Rs.9.96 crores and share allotment money of Rs.3.96 crores. The assessee had issued 19,92,000 shares having par value of Rs.10/- each with a premium of Rs.40/- per share. During the year under consideration, the assessee received share application money of Rs.79,20,000/- on issuing of 7,92,000 shares and premium of Rs.3,16,80,000/-, both aggregating to Rs.3.96 crores. A further sum of Rs.9.96 crores was received towards share application of 19,92,000 shares pending allotment. The aggregate amount received by the assessee during the year was Rs.13.92 crores (Rs.3.96 crores + Rs.9.96 crores).

3. Before the Assessing Officer assessee furnished all the details to prove the identity, creditworthiness and genuineness of the transaction. The Assessing Officer noticed that the Additional DIT (Investigation), Kolkata has conducted an inquiry and recorded statement from a person named Mr. Kishan Kumar Verma, son of Shri Vijay Kumar Verma and in the statement so taken, he had admitted that he had lent his individual bank account as well as bank account of his proprietary concern to a person named Shri Pawan Kumar Agarwal, son of Shri O.P. Agarwal and Shri N.K.Nahata for a commission of Rs.100/- per lakh of rupees. He also submitted that similar transactions were entered with Shri Murari Agarwal. Subsequently, statement of Shri Pawal Agarwal who was former Director of M/s. Mrugiya Electronic Industries P. Ltd. was recorded. In his statement he denied the ownership of the cash but admitted that cheques received from Shri Kishan Kumar Verma and Shri Murari Agarwal were used to invest in share application money of M/s. Chat Computers Pvt. Ltd. (formerly known as M/s. Chitrakut Computers P. Ltd.). The Assessing Officer noticed that the modus operandi adopted in the case of Chat Computers Pvt. Ltd. was similar in nature. According to the Assessing Officer, the Revenue has taken statement from the Directors of various Kolkata based companies and it is clear there from that the assessee had given cash to the above said companies which in turn, issued back cheques/demand drafts of equivalent amount to the assessee. However, the Director of the assessee-company Shri Shri Mukesh Joshti denied the same. Accordingly, he asked for an opportunity to cross examine the directors of the Kolkata based companies. When the Additional DIT (Investigation), Kolkata afforded opportunity to cross examine the directors of the Kolkata based companies at his Kolkata office, assessee submitted that he would exercise his right to cross examination at the time of assessment.

4. Accordingly, during the course of assessment proceedings, the Assessing Officer asked the assessee to produce the directors of the share applicant companies and cross examine them. The assessee replied that the directors of

the applicant companies are witnesses of the Assessing Officer and hence the Assessing Officer should summon them for cross examination.

5. The Assessing Officer however took the view that the assessee has failed to avail opportunity of cross examination. Accordingly, he took the view that the assessee has introduced his own money in the form of share application money and share capital. Accordingly, he assessed aggregate amount of ₹ 13.92 crores as income of the assessee u/s. 68 of the Act.

6. In the appellate proceedings, the learned CIT(A) considered the decision rendered by Hon'ble Delhi High Court in the case of CIT Vs. Stellar Investment Ltd. (2001) 251 ITR 263 and also decision rendered in the case of CIT Vs. Divine Leasing and Finance Ltd. (2007) 158 Taxman 440 (Del). The learned CIT(A) noticed that the assessee has furnished all the details to prove the three main ingredients namely identity, creditworthiness of the creditors and genuineness of the transactions.

7. The learned CIT(A) accepted the contention of the assessee that the Assessing Officer has made addition on presumption and surmises. He noticed that identical addition made by the assessing officer in the sister concerns of the assessee named Gibs Computers Ltd (ITA No.1715 & 3858/M/09), Chat Computers Ltd (ITA No.3859/M/09) and Netscape Software Ltd (ITA No.3852/M/09) has been deleted by ITAT. The Ld CIT(A) also extracted the relevant observations made by ITAT in the order dated 25.1.2012 passed in the case of Gibs Computers Ltd in ITA Nos. 1715 and 3858/M/09. Accordingly he deleted the impugned addition made by the AO.

8. The Ld D.R placed heavy reliance on the order passed by the AO, whereas the Ld A.R strongly supported the order passed by Ld CIT(A).

9. We notice that in the case of Gibs Computers Ltd (supra), the co-ordinate bench had followed the decision rendered by another bench in the case of Netscape Software Ltd. We also notice that another division bench has passed a detailed order in the case of Netscape Software Ltd in ITA No.3852/Mum/2009 and the Tribunal, vide its order dated 19.10.2011 has deleted identical addition by following the decision rendered by the Tribunal in

the case of Chat Computers Ltd (ITA No.3859/Mum/2009 relating to AY 2006-07. It may be noticed that the assessing officer has also referred to the decision taken by him in the case of Chat Computers Ltd. Hence for the sake of convenience, we extract below the relevant portion of hte order passed by the Tribunal in the case of Netscape computer in ITA No.3852/M/2009:-

“22. We shall now see what is the evidence gathered by the AO against the Assessee. It has also to be mentioned that the Director of the Assessee was examined by the AO and in his examination he denied having given cash to the companies which made application for allotment of shares of the Assessee. The copy of the statement of the Director is at page-381 to 387 of the paper book. The other facts with regard to the evidence gathered by the Assessee are in the case of the Assessee are identical to the case of Chat Computers Ltd. (supra) and the Tribunal has already analysed the evidence gathered by the AO against the Assessee and has held as follows:

6 It is evident from the assessment order that the Assessing Officer has not conducted any independent enquiry during the assessment proceedings; but simply relied upon the report of the ADIT(Inv), Unit 1, Kolkata as well as the statements of the directors of various Kolkata based companies, who have paid the application money. The said investigation by the ADIT(Inv) Unit 1, Kolkata was not carried out during the assessment proceedings; therefore, the said investigation was neither the inquiry carried out during the assessment proceedings nor part of the assessment proceedings. It is clear that the scrutiny assessment commenced after about one year from the alleged investigation was over. The Assessing Officer has heavily relied upon the investigation report and proceedings and specifically on the point that the assessee was given opportunity to cross examine the directors of the investing companies, who paid the application money and further, the assessee was also asked by the Assessing Officer to produce the directors, whose statements were recorded by the investigation unit 1, Kolkata for cross examination of them.

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6.2 Since the investigation proceedings were not part of the assessment proceedings in the case of the assessee and even the investigation was not either u/s 132 or u/s 133 of the I T Act. It seems that investigation by the ADIT(Inv) Unit 1, Kolkata is preliminary investigation only to verify the suspicion of any concealment of income. The Assessing Officer, during the course of assessment proceedings asked the assessee to produce the said

directors for cross examination. It is evident from the letter of the Assessing Officer dated 01.10.2008 as well as dated 16.9.2008 that the Assessing Officer did not summon these directors to be present in the office of the Assessing Officer for the purpose of cross examination by the assessee; but on the contrary, the assessee was asked to produce these directors for cross examination purpose. This is a gross violation of principles of natural justice when the Assessing Officer asked the assessee to produce the directors for availing opportunity of cross examination. The Assessing Officer relied upon the statement of the directors of the investing company recorded during the investigation proceedings by the ADIT(Inv) Unit 1, Kolkata. Instead of ensuring the presence of these persons for giving opportunity to the assessee to cross examine, the Assessing Officer asked the assessee to produce them, which in our considered opinion is an absolute unjust and opposite to the rule of law and what procedure demands. Therefore, there is a total denial of opportunity to the assessee to cross examine the persons, whose statements are used against the assessee.

6.3 Further, when the director of the assessee categorically denied, during the investigation, the allegation of giving cash to those investing companies then the onus is on the revenue to prove that the application money received by the assessee is assessee's own money routed through those applicants companies. There is no evidence or material brought on record by the Assessing Officer, except the un-cross examined statements of the third party, to show any movement of cash routed back to the assessee in form of application money in the alleged allotment of cumulative preferential shares. Rather, it is undisputed fact that the application money was received through account payee cheque/bank draft given by the investing companies from their respective bank account. It is also an accepted fact that source of the application money was found in the bank account of the investing companies deposited through account payee cheques; therefore, no cash transaction was found by the Assessing Officer in the bank account of the investing companies.

6.4 The Assessing Officer doubted the movement of cash from the assessee as being passing through various levels and reached to the assessee company. However, no finding has been given to the effect as to how the alleged cash/money of the assessee company routed through various levels finally reached to the assessee. Not an iota of evidence or material has been brought on record to show even, prima facie that the said amount representing application money moved from the assessee and reached to the assessee. Rather, documentary evidence on record exhibits different facts i.e. as per books of account of the assessee as well as those of investing companies together with the return of income, board

resolution go to prove that the said application money was paid by the investing company to the assessee against allotments of the preferential shares. The Investing companies have shown the said amount as investment in their books of account. The money routed through banking channels and through account payee cheques/bank draft, undisputed given by the parties. Even, the source of the application money was found in the bank account of the investing companies not by any cash deposit; but through account payee cheques. Therefore, when all the documentary evidence contradicts the statements of the directors recorded by the investigation unit of the department then such statements alone cannot be taken as the basis much less a good or proper basis for any addition.

6.5 It is settled proposition of law that the statement recorded during the course of investigation without corroborative evidence has no evidentiary value. It is pertinent to mention that the statements recorded in this case are not under search or survey or assessment proceedings therefore the same cannot be used against the assessee without following the due process of corroboration and cross examination. Even otherwise, the statement without cross examination and corroborative evidence cannot be used against the assessee.

6.6 As pointed out by the ld AR of the assessee the credibility of the statements is also not free from doubt as it appears that all the statements are prepared by the department in an identical fashion and manner before those were got signed on different dates. It is apparent that certain identical mistakes are appearing in those statements allegedly recorded on different dates. For example:-

Question no. 4:- Does you company has transaction with the following companies? If so, give details and nature of such transaction:

This mistake "Does you" is appearing in question No. 4, of all the statements, which shows that questionnaire was already prepared and answers were already written in the same manner as it is evident from the answer to question no.6 as under:

Question No. 6 Do you have to say anything else?

Ans: I have gone through the above statement and the same has been recorded correctly and without any fabrication. The above statement gas been given by me without the use of any force, coercion or threat.

The mistake in the answer no. 6 is also identical in all the statements recorded on different dates. Since the statements were recorded by the investigation team of ADIT(Inv) Unit 1, Kolkata and not during the proceedings before any Court of law; therefore, all these facts suggest and indicate to believe that the same are not recorded as a verbatim of what the concerned person stated; but obtained by the department in a mechanical manner. However, without going into validity of the statements when all other records, material and documentary evidences contradict and nullify the statements then the reliance placed by the Assessing Officer on such statement is highly unjustified and improper.

7. *Even otherwise, in the case of the Ashwani Gupta (supra), the Hon'ble Delhi High Court has taken a note of the finding of the Tribunal in para 2 as under:*

“2. The Tribunal has confirmed the order passed by the CIT(A) which held the entire addition made by the Assessing Officer to be invalid and had deleted the same. The CIT(A) had clearly held that the Assessing Officer had passed the assessment order in violation of the principles of natural justice in as much as he had neither provided copies of the seized material to the assessee nor had he allowed the assessee to cross-examine one Mr. Manoj Aggarwal on the basis of whose statement the said addition was made. The CIT(A) also held that the entire addition deserved to be deleted, particularly so, because the transactions also stood duly reflected in his regular returns.”

7.1 *The Hon'ble High Court has held that once there is violation of principles of natural justice by not providing seized material to the assessee as well as cross examination of the persons on whose statements, the Assessing Officer relied upon, amounts to denial of opportunity and would be fatal to the proceedings. The Hon'ble Delhi High Court has observed in para 7 as under:*

“7. In view of the foregoing circumstances, we feel that no interference with the impugned order is called for. The Tribunal has correctly understood the law and applied it to the facts of the case. Once there is a violation of the principles of natural justice in as much as seized material is not provided to an assessee nor is cross-examination of the person on whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to a denial of opportunity and, consequently, would be fatal to the proceedings. Following the approach adopted by us in SMC Share Brokers Ltd. (supra), we see no reason to interfere with

the impugned order. No substantial question of law arises for our consideration.”

8. *Similarly, in the latest decision, the Hon’ble Delhi High Court in the case of Oasis Hospitalities P Ltd (supra), after considering all the relevant decisions on the issue including the decision of the Hon’ble Supreme Court in the case of Lovely Exports P Ltd (supra), decision of the Full Bench of the Hon’ble Delhi High Court in the case of Sophia Finance Ltd reported in 205 ITR 98 (Del)(FB) and the decision in the case of Divine Leasing & Finance Ltd (supra) has observed in paras 11 to 16 as under:*

“ It is clear from the above that the initial burden is upon the assessee to explain the nature and source of the share application money received by the assessee. In order to discharge this burden, the assessee is required to prove :

- (a) the identity of shareholder ;*
- (b) the genuineness of transaction ; and*
- (c) the creditworthiness of shareholders.*

12 *In case the investor/shareholder is an individual, some documents will have to be filed or the said shareholder will have to be produced before the Assessing Officer to prove his identity. If the creditor/subscriber is a company, then the details in the form of registered address or PAN identity, etc., can be furnished.*

13 *The genuineness of the transaction is to be demonstrated by showing that the assessee had, in fact, received money from the said shareholder and it came from the coffers of that very shareholder. The Division Bench held that when the money is received by cheque and is transmitted through banking or other indisputable channels, the genuineness of transaction would be proved. Other documents showing the genuineness of transaction could be copies of the shareholders register, share application forms, share transfer register, etc.*

14 *As far as creditworthiness or financial strength of the creditor/subscriber is concerned, that can be proved by producing the bank statement of the creditor/subscriber showing that it had sufficient balance in its accounts to enable it to subscribe to the share capital. This judgment further holds that once these documents are produced, the assessee would have satisfactorily discharged the onus cast upon him. Thereafter, it is for the Assessing Officer to scrutinize the same and in case he nurtures any doubt about*

the veracity of these documents to probe the matter further. However, to discredit the documents produced by the assessee on the aforesaid aspects, there have to be some cogent reasons and materials for the Assessing Officer and he cannot go into the realm of suspicion.

15 At this stage, we would like to refer to the judgment of the Bombay High Court in the case of *CIT v. Creative World Telefilms Ltd.* (in I. T. A. No. 2182 of 2009 decided on October 12, 2009) [2011] 333 ITR 100. The relevant portion of this order is reproduced below:

"In the case in hand, it is not disputed that the assessee had given the details of name and address of the shareholder, their PA/GIR number and had also given the cheque number, name of the bank. It was expected on the part of the Assessing Officer to make proper investigation and reach the shareholders. The Assessing Officer did nothing except issuing summons which were ultimately returned back with an endorsement 'not traceable'. In our considered view, the Assessing Officer ought to have found out their details through PAN cards, bank account details or from their bankers so as to reach the shareholders since all the relevant material details and particulars were given by the assessee to the Assessing Officer. In the above circumstances, the view taken by the Tribunal cannot be faulted. No substantial question of law is involved in the appeal. In the result, the appeal is dismissed in limine with no order as to costs." (emphasis supplied)

16 The court thus clearly held that once documents like PAN card, bank account details or details from the bankers were given by the assessee, onus shifts upon the Assessing Officer and it is on him to reach the shareholders and the Assessing Officer cannot burden the assessee merely on the ground that summons issues to the investors were returned back with the endorsement "not traceable". The same view is taken by the Karnataka High Court in *Madhuri Investments Pvt. Ltd. v. Asst. CIT* (in I. T. A. No. 110 of 2004, decided on February 18, 2006). In this case also, some of the share applicants did not appear and notices sent to them were returned with remarks "with no such person". Addition was made on that basis which was turned down by the High Court in the following words :

" 6. Having heard the learned counsel for the parties, we notice that whenever a company invites applications for allotment of shares from different applicants, there is no procedure contemplated to find out the genuineness of the address or the genuineness of the applicants before allotting the shares. If for any reason the address given in the application were to be incorrect or for any reason if the said applicants have changed their residence or the notices sent by the Assessing Officer have not been received by such applicants, the assessee-company cannot be blamed. Therefore, we are of the view that the Tribunal was not justified in allowing the appeal of the Revenue only relying upon the statement of Sri Anil Raj Mehta, a chartered accountant."

8.1 The Hon'bl High Court further discussed the issue in paras 20 to 24 as under:

" 20 The observations of the Supreme Court in the case of *Lovely Exports P. Ltd.* [2009] 319 ITR (St.) 5 (SC) go to suggest that the Department is free to proceed to reopen the individual assessments in the case of alleged bogus shareholders in accordance with law and, thus, not remediless. It is, thus, for the Assessing Officer to make further inquiries with regard to the status of these parties to bring on record any adverse findings regarding their creditworthiness. This would be more so where the assessee is a public limited company and has issued the share capital to the public at large, as in such cases the company cannot be expected to know every detail pertaining to the identity and the financial worth of the subscribers. Further the initial burden on the assessee would be somewhat heavy in case the assessee is a private limited company where the shareholders are family friends/close acquaintances, etc. It is because of the reason that in such circumstance, the assessee cannot feign ignorance about the status of these parties.

21 We may also usefully refer to the judgment of the Supreme Court in the case of *CIT v. P. Mohanakala* [2007] 291 ITR 278. In that case, the assessee had received foreign gifts from one common donor. The payments were made to them by instruments issued by foreign banks and credited to the respective accounts of the assessees by negotiations through bank in India. The evidence indicated that the donor was to receive suitable compensation from the assessees. The Assessing Officer held that the gifts though apparent were not real and accordingly treated all those amounts which were credited in the books of account of the assessee, as their income applying section 68 of the Act. The assessee did not

contend that even if their explanation was not satisfactory the amounts were not of the nature of income. The Commissioner of Income-tax (Appeals) confirmed the assessment. On further appeal, there was a difference of opinion between the two Members of the Appellate Tribunal and the matter was referred to the Vice President who concurred with the findings and conclusions of the Assessing Officer and the Commissioner of Income-tax (Appeals). On appeal, the High Court re-appreciated the evidence and substituted its own findings and came to the conclusion that the reasons assigned by the Tribunal were in the realm of surmises, conjecture and suspicion. On appeal to the Supreme Court, the court while reversing the decision of the High Court held that the findings of the Assessing Officer, Commissioner of Income-tax (Appeals) and the Tribunal were based on the material on record and not on any conjectures and surmises. That the money came by way of bank cheques and was paid through the process of banking transaction as not by itself of any consequence. The High Court misdirected itself and erred in disturbing the concurrent findings of fact. While doing so, the legal position contained in section 68 of the Act was explained by the Supreme Court by assessing that a bare reading of section 68 of the Act suggests that (i) there has to be credit of amounts in the books maintained by the assessee ; (ii) such credit has to be a sum of money during the previous year ; and (iii) either (a) the assessee offers no explanation about the nature and source of such credits found in the books, or (b) the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory. It is only then that the sum so credited may be charged to income-tax as the income of the assessee of that previous year. The expression "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. The opinion of the Assessing Officer for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on the record. The opinion of the Assessing Officer is required to be formed objectively with reference to the material on record. Application of mind is the sine qua non for forming the opinion. In cases where the explanation offered by the assessee about the nature and source of the sums found credited in the books is not satisfactory there is, prima facie, evidence against the assessee, viz., the receipt of money. The burden is on the assessee to rebut the same, and, if he fails to rebut it, it can be held against the assessee that it was a receipt of an income nature. The burden is on the assessee to take the plea that even if the explanation is not acceptable, the material and attending circumstances available on record do not justify the sum found credited in the books being treated as a receipt of income nature.

22 We would like to refer to another judgment of the Division Bench of this court in the case of *CIT v. Value Capital Services P. Ltd.* [2008] 307 ITR 334. The court in that case held that the additional burden was on the Department to show that even if share applicants did not have the means to make investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. In the absence of such findings, addition could not be made in the income of the assessee under section 68 of the Act.

23 It is also of relevance to point out that in *CIT v. Stellar Investment Ltd.* [1991] 192 ITR 287 (Delhi) where the increase in subscribed capital of the respondent-company accepted by the Income-tax Officer and rejected by the Commissioner of Income-tax on the ground that a detailed investigation was required regarding the genuineness of subscribers to share capital, as there was a device of converting black money by issuing shares with the help of formation of an investment which was reversed by the Tribunal, this court held that even if it be assumed that the subscribers to the increased share capital were not genuine, under no circumstances the amount of share capital could be regarded as undisclosed income of the company. This view was confirmed by the apex court in *CIT v. Stellar Investment Ltd.* [2001] 251 ITR 263.

24 Having taken note of the legal position in detail, we now proceed to decide each appeal on the application of the aforesaid principles. I. T. A. No. 2093 of 2010 and I. T. A. No. 2095 of 2010”

9 It is clear from the decision of the Hon'ble Delhi High Court in the case of *Oasis Hospitalities P Ltd (supra)* that once the assessee filed copy of PAN, Acknowledgement copy of the return of income of the investing companies, their bank accounts statements for the relevant period; then even the parties were not produced in spite of the specific directions of the Assessing Officer, the addition could not be sustained as the primary onus was discharged by the assessee by producing the PAN, balance sheet, copy of the acknowledgement copy of return of the applicants etc.

10 In the case in hand, there is no dispute about the identity of the applicant companies, who had paid the application money and the source of the application money was also found in the respective bank accounts of the investing companies and there was no trace of cash deposit in the bank accounts of the investing companies, then, the action of the Assessing Officer under influenced of the report of the investigation wing without giving opportunity to the assessee for cross examination of the persons, is not sustainable.

11 *The Assessing Officer has raised some doubts and suspicion about the movement of the money through various levels but could not establish any direct or indirect link of the said outward movement from the assessee and then again received by the assessee in the form of application money. Even the revenue has failed to bring anything on record to show movement of the alleged cash from the assessee.*

12 *The Hon'ble Delhi High Court, in the case of Oasis Hospitalities P Ltd (supra) in para 33 and 34 has observed as under:*

"33 The Tribunal while confirming the aforesaid view of the Commissioner of Income-tax (Appeals) has summarized the discussion as under:

"9. We have carefully considered the rival submissions in the light of the material placed before us. The necessary details were filed by the assessee with the Assessing Officer to show the identity of the person who had applied for the shares. The shares also been allotted to respective persons in respect of which intimation was given to the Registrar of Companies and necessary evidence has also been placed on record in the paper book which found place at pages 23 and 24 of the paper book. The assessee also had placed on record the evidence as well as copy of income-tax returns of the share applicants. Keeping in view all these evidence it cannot be held that the assessee did not establish the identity of the share applicants. If it is so, then the law as pronounced by the hon'ble Supreme Court in the case of CIT v. Lovely Exports P. Ltd. [2009] 319 ITR (St.) 5 is clear that if the share application money is received by the assessee-company from alleged bogus shareholders whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments in accordance with law, but the same cannot be regarded as undisclosed income of the assessee. In this view of the situation, we find no infirmity in the order of the Commissioner of Income-tax (Appeals) vide which addition made on account of share application money has been deleted."

34 *Having regard to the decisions noted above, we are of the view that the addition was rightly deleted by the Commissioner of Incometax (Appeals) and the Tribunal. Requisite documents were furnished showing the existence of the shareholders from bank accounts and even their income-tax details. From bank accounts of these shareholders, it was found that they had deposited certain cash and source thereof was questionable. The Assessing Officer should have made further probe which he failed to do. Moreover, the remedy of*

the Department lies in reopening the case of these investors and the addition cannot be made in the hands of the assessee.”

Thus in view of the above observation of hon'ble High Court when requisite document were produced and available with the A O to establish that no cash was deposited in the bank accounts of the investing companies then without further probe to prove contrary the addition in the hand of the assessee cannot be made.

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13.1 Before us, the ld AR of the assessee has forcibly urged that in view of the decision of the Hon'ble Delhi High Court in the case of Oasis Hospitalities P Ltd (supra) as well as the decision of the Hon'ble Gujarat High Court in the case of Rajeh Babubhai Damania (supra), the issue may be decided on merits on the basis of the material available on record.

14 It is to be noted that it is not the case of any additional evidence or fresh material produced by any of the parties before us which requires examination or investigation to verify the correctness of the new facts first time brought before us. The case of the revenue is that the cash moved from the assessee routed through various level and then reached to the assessee in the form of share application money. The stand of the revenue is not in consonance with the statements of the directors of the investing companies which is the basis of the investigation report as well as addition by the AO. In their statements the directors stated to have received cash from assessee for investing in the preferential share of the assessee company, whereas, this fact was not found to be correct from the record and the revenue also took a stand that the cash was not directly given to the investing companies but routed through various levels. When it was found by the investigating unit as well as recorded by the AO that the fund in the bank account of the investing companies was deposited through a/c payee cheques than it is apparent that the statements of the directors are in total contradiction of the facts emerged from the record as well as stand of the revenue. Hence the said statements do not support the case of the revenue and the reliance place by the AO on such statements is highly misplaced and improper. When the stand of the revenue is in total contraction of the material on record then in view of the latest decision of the Hon'ble Delhi High Court in the case of Oasis Hospitalities P Ltd (supra), we are of the considered opinion that the issue can be decided on merit and need not to be remand to the record of the AO because at the time of the order for the AY 2005-06, the coordinate Bench of the Tribunal was not having the benefit

of the decision of the Hon'ble Delhi High Court in the case cited supra. Further in view of the decision of Hon'ble Gujrat High Court in case of Rajeh Babubhai Damania (supra), we see no reason for giving the A.O. any further innings to fill up the lacunas or lapses in the assessment which would cause a great injustice to the assessee.

15 In view of the above discussion and the facts and circumstances of the case, the share application money cannot be treated as income of the assessee company until and unless it is proved beyond doubt that the assessee's own money has come back through some closely related applicant. Once the identity of the applicant is disclosed and found as correct then, even if the said transaction is suspected by the revenue authorities, the same cannot be treated as income of the assessee company which is a public limited company. Accordingly, we delete the addition made by the Assessing Officer and confirmed by the CIT(A) on this account. However, we may clarify that our findings on the issue are based on particular facts of this assessment year and therefore, would not affect the respective rights of the parties for the other assessment years."

23. The above observations of the Tribunal in our view are squarely applicable to the case of the Assessee also as the statement of the directors of the companies who applied for shares were also similar in the case of the Assessee as well as the case of Chat Computers (supra). The order of the AO as well as that of the CIT(A) in both the cases are verbatim the same.

24. Apart from the above, we also find that the Assessee has filed before the Registrar of Companies return of allotment in respect of the shares which were allotted to the applicants and the same has been taken on file by the Registrar of Companies. Perusal of the same reveals that the shares allotted to the various companies totaling Rs.27,61,50,000/- has been duly shown as shares allotted in those returns. The objections raised by the learned D.R. before us at best could raise doubts about the satisfaction of the three conditions for accepting credit entry in the books of accounts. Those objections cannot be the basis to hold that the Assessee has not satisfactorily explained credit entry in its books of accounts. The investigation referred to by the AO in the order of assessment, as we have already seen has been held by the Tribunal in the case of Chat Computers (supra) to be insufficient to hold that the credits in question were unexplained. We are therefore of the view that the addition of Rs. 27,61,50,000/- being the share capital received by the Assessee during the previous year for which allotment of shares were made and the share application money received pending allotment of Rs.6,42,00,000 cannot be treated as unexplained and the addition made in this regard is directed to

be deleted.”

10. The co-ordinate bench has also considered the documents furnished by the assessee and held that the assessee has discharged the initial burden placed upon it.

11. The assessee has furnished written submissions and therein furnished the details of evidences furnished by it in order to discharge the initial burden of proof placed upon it. For the sake of convenience, we extract below the relevant submissions made by the assessee:-

(1) ***Jaishree Commotrade Pvt. Ltd.*** - This company has made an application for 2,54,000 equity shares and paid a sum of Rs 1,27,00,000 by four demand drafts. An amount of Rs 7,00,000 has been paid by demand draft dated 28th July, 2005 vide draft no 1318 drawn on HDFC Bank, Burra Bazar branch, Kolkata and three other demand drafts dated 6th September, 2005 of Rs 50,00,000, Rs 5 0,00,000 and Rs 20,00,000 bearing nos 1702, 1703 and 1704 respectively drawn on HDFC Bank, Burra Bazar branch, Kolkata. The share applicant is assessed to Income-tax under P.A.No AAACJ7907N. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing the directors of the company to make investments, certificate of incorporation of company and memorandum and articles of association of company.

(2) ***Kanodia Vvapar Pvt. Ltd.*** - This company has made an application for 3,10,000 equity shares and paid a sum of Rs 1,55,00,000 by three demand drafts. An amount of Rs 1,00,00,000 has been paid by two demand drafts of Rs 50,00,000 each dated 25th July, 2005 vide draft nos 415031 and 415032 drawn on ABN Amro Bank, Kolkata branch and a sum of Rs 55,00,000 dated 28th July, 2005 bearing draft no 415677 drawn on ABN Amro Bank, Kolkata. The company is assessed to Income-tax under P.A.No AABCK0756F. The share applicant along with share application form have submitted extract of the board minutes containing board resolution authorizing the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, director's report, balance sheet and profit and loss account as on 31st March, 2006. The share capital and reserves of the company are Rs 1,36,34,000 and Rs 8,13,13,134.30 respectively and loans and advances are ₹ 1,48,45,397.

(3) ***Bansidhar Vvapar Pvt. Ltd.*** This company has made an application for 1,88,000 equity shares ***Vvapar Pvt. Ltd.*** and paid a sum of Rs 94,00,000 by two demand drafts. The sum of Rs 39,00,000 has been paid by demand draft dated 28th July, 2005 vide draft no 242342 drawn on South Indian Bank,

Kolkata branch and second draft of Rs 55,00,000, dated September 30, 2005 bearing draft no 1706 drawn on HDFC Bank, Kolkata. The company is assessed to Income-tax under P.A.No AABCB4390G. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing the directors of the company to make investments, certificate of incorporation of company and memorandum and articles of association of company.

(4) **Platinum Commerce Pvt. Ltd.**- This company has made an application for 3,46,000 equity shares and paid a sum of Rs 1,73,00,000 by four demand drafts. An amount of Rs 1,00,00,000 has been paid by two demand drafts of Rs 50,00,000 each dated 25th July, 2005 vide draft nos 415573 and 415033 drawn on ABN Amro Bank, Kolkata branch and a draft of Rs 23,00,000, dated 13th September, 2005 bearing draft no 753159 drawn on ABN Amro Bank, Kolkata. The company is assessed to Income-tax under P.A.No AABCP8I86E. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing the directors of the company to make investments, certificate of incorporation of company, memorandum and articles of association of company, director's report, balance sheet and profit and loss account as on 31st March, 2006. The share capital and reserves of the company are Rs 1,04,97,000 and Rs 6,49,8 1,300 respectively and loans and advances are Rs 4,64,28,428.

(5) **Yulan Marketing Pvt. Ltd.** - This company has made an application for 4,00,000 equity shares and paid a sum of Rs 2,00,00,000 by four demand drafts drawn on The South Indian Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 25th July, 2005 vide draft no 242341, draft of Rs 75,00,000, dated 12th September, 2005 bearing draft no 812698, draft of Rs 45,00,000 dated 29th December, 2005 and draft of Rs 30,00,000 dated 30th December, 2005. The company is assessed to Income-tax under P.A.No AAACYI8I IC. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, director's report and profit and loss account as on 31st March, 2006. The share capital and reserves of the company are Rs 1,63,97,000 and Rs 1 1,14,20,000 respectively and loans and advances are Rs 69,94,3 13.

(6) **Nilhut Promoters & Fiscal Pvt. Ltd.** - This company has made an application for 3,10,000 equity shares and paid a sum of Rs 1,55,00,000 by three demand drafts drawn on The South Indian Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 25th July, 2005 vide draft no 242336, draft of Rs 75,00,000, dated 12th September, 2005 bearing draft no 810131 and draft of Rs 30,00,000 dated

30th December, 2005 bearing draft no 810150. The company is assessed to Income-tax under P.A.No AABCN5606K. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Sri Rohit Jain and Sri Shyamsukha, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, director's report, balance sheet and profit and loss as on 31st March, 2006. The capital and reserves of the company are Rs 1,63,97,000 and Rs 11,14,20,000 respectively and loans and advances are ₹ 69,94,313.

(7) **Cosmic Trade & Inv. Pvt. Ltd.** - This company has made an application for 4,70,000 equity shares and paid a sum of Rs 2,35,00,000 by six demand drafts drawn on The South Indian Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 25th July, 2005 vide draft no 242335, draft of Rs 60,00,000, dated 8th September, 2005 bearing draft no 242376, draft of Rs 50,00,000 dated 12th September, 2005 and four demand drafts of Rs 25,00,000 each dated 13th September, 2005. The company is assessed to Income-tax under P.A.No AABCC10I4C. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Sri S. Shethi and Sri B.K Patni, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, director's report, balance sheet and profit and loss account. The share capital and reserves of the company are Rs 2,66,70,000 and Rs 15,99,85,439.63 respectively and loans and advances are Rs 8 8,78,748.

(8) **Ventex Trade Pvt. Ltd.** - This company has made an application for 2,98,000 equity shares and paid a sum of Rs 1,49,00,000 by three demand drafts drawn on The South Indian Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 25th July, 2005 vide draft no 242334, draft of Rs 59,00,000, dated 14th September, 2005 bearing draft no 825675, and draft of Rs 40,00,000 dated 30th December, 2005 bearing draft no 825688. The company is assessed to Income-tax under P.A.No AAACV9866A. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Sri S. Shethi and Sri B.K Patni, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, director's report, balance sheet and profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,46,66,908 and Rs 10,88,66,268.64 respectively and loans and advances are Rs 54,73,921.

(9) **Ankita Finvest Pvt. Ltd.** - This company has made an application for 1,90,000 equity shares and paid a sum of Rs 95,00,000 by five demand

drafts drawn on The South Indian Bank, Kolkata. The sum of Rs 25,00,000 has been paid by demand draft dated 25th July, 2005 vide draft no 242339, three drafts of Rs 20,00,000 each dated 13th September, 2005 bearing draft no 824285, 824284, and 824283, and draft of Rs 10,00,000 dated 13th September, 2005 bearing draft no 824287. The company is assessed to Income-tax under P.A.No AACCAI4I4D. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Shri Suresh Kumar Bagaria, the director of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, director's report, balance sheet and profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,72,46,180 and Rs 13,19,12,003.29 respectively and loans and advances are Rs 1,16,42,405.

*(10) **Pentex Expo Pvt. Ltd.** This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by demand draft drawn on The South Indian Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 23rd July, 2005 vide draft no 242340. The company is assessed to Income-tax under P.A.No AABCP486IE. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Shri Suresh Kumar Bagaria, the director of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, director's report, balance sheet and profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on March, 2006 are Rs 1,61,54,610 and Rs 12,01,96,702.16 respectively and loans and advances are Rs 75,19,100.*

*(11) **Tuticorin Trexim Pvt. Ltd.** - This company has made an application for 1,70,000 equity shares and paid a sum of Rs 85,00,000 by demand draft drawn on UTI, 4, Clive Road Branch, Kolkata. The sum of Rs 85,00,000 has been paid by demand draft dated 28th July, 2005 vide draft no 315171. The company is assessed to Income-tax under P.A.No AAAC9539J. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Shri Pramod Sharma and Shri Koda Malia, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company and acknowledgement evidencing filing of return of income.*

*(12) **Snehdeep Impex Pvt. Ltd.** - This company has made an application for 50,000 equity shares and paid a sum of Rs 25,00,000 by demand draft drawn on HDFC Bank Burra Bazar Branch, Kolkata. The sum of Rs 25,00,000 has been paid by demand draft dated 6th September,*

2005 vide draft no 1705. The company is assessed to Income-tax under P.A.No AAECs4057J. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing the director of the company to make investments, certificate of incorporation of company memorandum and articles of association of company.

(13) **Clix Securities Pvt. Ltd.** This company has made an application for 2,11,000 equity shares and paid a sum of Rs 1,05,50,000 by three demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 48,00,000 has been paid by demand draft dated 13th September, 2005 vide draft no 432812, a demand draft of Rs 7,50,000 dated 3rd December, 2005 vide draft no 832821 and a demand draft of Rs 50,00,000 dated 29th November, 2005 vide draft no 432846. The company is assessed to Income-tax under P.A.No AAECs4057J. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing the director of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,28,86,000 and Rs 7,11,83,765.83 respectively and loans and advances are Rs 7,13,528.

(14) **Raiesh Vanijva Pvt. Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 26th November, 2005 vide draft no 879413. The company is assessed to Income-tax under P.A.No AABCR6316C. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 2,02,47,000 and Rs 11,06,70,176 respectively and loans and advances are Rs 60,87,324

(15) **Dabriwal Invest & Finance Pvt. Ltd.** - This company has made an application for 2,00,000 equity shares and paid a sum of Rs 1,00,00,000 by three demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 26th November, 2005 vide draft no 529671, and two demand drafts of Rs 25,00,000 each dated Rd December, 2005 vide draft nos 529676 and 529677. The company is assessed to Income-tax under P.A.No AAACD9089K. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,63,72,000 and Rs 12,37,46,150.64 respectively and loans and advances are Rs 98,47,796.

(16) **Cube Tralin Pvt. Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by a demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 26th November, 2005 vide draft no 789943. The company is stated to have assessed to Income-tax under P.A.No AABCC0768M. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 2,20,00,000 and Rs 2,19,72,000 respectively and loans and advances are Rs 77,16,897.

(17) **Apsara Trex Pvt. Ltd.** - This company has made an application for 2,00,000 equity shares and paid a sum of Rs 1,00,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 26th November, 2005 vide draft no 806495 and a draft of Rs 50,00,000 dated 12th January, 2006 vide draft no 551023. The company is assessed to Income-tax under P.A.No AACCA20I5N.

(18) **Apsara Fintrade Pvt. Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 28th November, 2005 vide draft no 550958. The company is assessed to Income-tax under P.A.No AAACA20I4P. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 2,13,82,000 and Rs 11,23,72,596.19 respectively and loans and advances are Rs 1,17,34,785.

(19) **Bakliwal Finvest Pvt. Ltd.** - This company has made an application for 2,00,000 equity shares and paid a sum of Rs 1,00,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 29th November, 2005 vide draft no 550911 and a demand draft of Rs 50,00,000 dated 29th December, 2005 vide draft no 550921. The company is assessed to Income-tax under P.A.No AABCB3321R. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 2,49,66,000 and Rs 12,34,83,781 respectively and loans and advances are Rs 85,36,653.

(20) **Purnima Vypaar Pvt. Ltd.** - This company has made an application for 20,000 equity shares and paid a sum of Rs 10,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 10,00,000 has been paid by demand draft dated 29th November, 2005 vide draft no 829568. The company is assessed to Income-tax under P.A.No AADCP5588N. The

share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr. Sanjay Kr. Jha and Mr. Rakesh Kr. Mishra, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company and acknowledgement evidencing filing of return of income.

(21) **Clara Vypaar Pvt. Ltd.** - This company has made an application for 20,000 equity shares and paid a sum of **Rs 10,00,000** by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 10,00,000 has been paid by demand draft dated 29th November, 2005 vide draft no 829467. The company is assessed to Income-tax under P.A.No AACCC582E. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr. Sanjay Kr. Jha and Mr. Rakesh Kr. Mishra, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company and acknowledgement evidencing filing of return of income.

(22) **Eco Rubber Products Pvt. Ltd.** - This company has made an application for 20,600 equity shares and paid a sum of Rs 10,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 10,00,000 has been paid by demand draft dated 29th November, 2005 vide draft no 956975. The company is assessed to Income-tax under P.A.No AABCE0703E. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr. Sanjay Agarwal and Mr. Ashish Bhalotia, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company and acknowledgement evidencing filing of return of income.

(23) **Goodfaith Vyapaar Pvt. Ltd.** - This company has made an application for 20,000 equity shares and paid a sum of Rs 20,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 20,00,000 has been paid by two demand drafts of Rs 10,00,000 each dated 29th November, 2005 vide draft no 666691 and 666692. The company is assessed to Income-tax under P.A.No AACCG2846H. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr. Abhishek Agarwal and Mr. Vikash Kumar Bhavsinghka, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company and acknowledgement evidencing filing of return of income.

(24) **Veronica Vinimo^u Limited.** - This company has made an application for 20,000 equity shares and paid a sum of Rs 20,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs

10,00,000 has been paid by demand draft of Rs 10,00,000 dated 29th November, 2005 vide draft no 957379. The company is assessed to Income-tax under P.A.No AABCV9789K. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr. Abhishek Agarwal and Mr. Vikash Kumar Bhavsinghka, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 20,75,000 and Rs 37,52,25,000 respectively and loans and advances are Rs 1,25,856.

(25) Irirs Commrecial Pvt. Ltd. - This company has made an application for 70,000 equity shares and paid a sum of Rs 35,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 35,00,000 has been paid by demand draft of Rs 35,00,000 dated 3rd December, 2005 vide draft no 354409. The company is stated to have assessed to Income-tax under P.A.No AAACI5557R. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,83,82,000 and Rs 11,77,20,000 and loans and advances are Rs 86,48,348.

(26) Wimper Trading & Dist. Pvt. Ltd. - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by two demand drafts of Rs 40,00,000 and Rs 10,00,000 dated 29th November, 2005 vide draft nos 108763 and 108764 respectively. The company is assessed to Income-tax under P.A.No AAACW3 11 8N. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement of evidencing filing of return of income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 41,20,000 and Rs 3,61,90,678.19 respectively and loans and advances are Rs 7,89,274.

(27) Spencers Commotrade Pvt. Ltd. - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by two demand drafts of Rs 40,00,000 and Rs 10,00,000 dated 29th November, 2005 vide draft nos 974759 and 974761 respectively. The company is assessed to Income-tax under P.A.No AAEC63I6A. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr Prakash Kumar Rajgaria and Mr Ashok Kumar Pasari, the

directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income filed, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on March, 2006 are Rs 42,60,000 and Rs 3,75,21,711.60 respectively and loans and advances are Rs 4 1,03,391.

(28) Lehar Vvapaar Pvt. Ltd. - This company has made an application for 40,000 equity shares and paid a sum of Rs 20,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 20,00,000 has been paid by demand draft dated 30th November, 2005 vide draft no 561288. The company is assessed to Income-tax under P.A.No AABCL0976E. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Sri Ashok Kumar Agarwal and Sri Gautam Ghosh, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on ^{31st} March, 2006 are Rs 34,16,750 and Rs 6,30,26,825.5 1 respectively and loans and advances are Rs 88,07, 118.

(29) Padmashree Suppliers Pvt. Ltd. - This company has made an application for 40,000 equity shares and paid a sum of Rs 20,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 20,00,000 has been paid by demand draft dated 30th November, 2005 vide draft no 561330. The company is assessed to Income-tax under P.A.No AADCP6220B. The share applicant along with share application form have submitted extract of the board minutes containing board resolution authorizing Sri Ashok Kumar Agarwal and Sri Gautam Ghosh, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on ^{31st} March, 2006 are Rs 27,50,000 and Rs 5,03,56,34 1 respectively and loans and advances are Rs 63,18,075.

(30) Kiran Tools & Machineries Pvt. Ltd. - This company has made an application for 30,000 equity shares and paid a sum of Rs 15,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 15,00,000 has been paid by demand draft dated 2nd December, 2005 vide draft no 265600. The company is stated assessed to Income-tax under P.A.No AABCK4140R. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Sri Ajay Kumar Jajoo and Sri Kunal Gupta, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income filed, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st

March, 2006 are Rs 66,52,100 and Rs 3,29,04,024.90 respectively and loans and advances are ₹ 2,19,36,454.

(31) **Mysole Engineering Pvt. Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by demand draft drawn on ABN Amro **Bank**, Kolkata. The sum of Rs 50,00,000 has been paid by demand draft dated 2nd December, 2005 vide draft no 392198. The company is assessed to Income-tax under P.A.No AABCM7I27J. The share applicant along with share application form have submitted extract of the board minutes containing board resolution authorizing Sri Sanjay Soni and Sri Kunal Gupta, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 23,21,000 and Rs 4,21,99,000 respectively and loans and advances are Rs 5,57,90,542.

(32) **SAS Concrete & Infrastructure Pvt. Ltd.** - This company has made an application for 60,000 equity shares and paid a sum of Rs 30,00,000 by demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 30,00,000 has been paid by demand draft dated 29th December, 2005 vide draft nos 858928.

(33) **Alex Polymers Pvt. Ltd.** - This company has made an application for 40,000 equity shares and paid a sum of Rs 20,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 20,00,000 has been paid by two demand drafts of Rs 10,00,000 each dated 12th January, 2006 vide draft nos 782660 and 782661.. The company is assessed to Income-tax under P.A.No AACCAI922G. The share applicant along with share application form have submitted extract of the board minutes containing board resolution authorizing Sri Ashim Lahiri and Sri Arindam Banerjee, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 27,21,000 and Rs 2,31,75,000 respectively and loans and advances are Rs 18,81,000.

(34) **Swati Stocks & Securities Pvt. Ltd.** - This company has made an application for 60,000 equity shares and paid a sum of Rs 30,00,000 by two demand drafts drawn on HDFC Bank, G.C.Avenue Branch, The sum of Rs 30,00,000 has been paid by two demand drafts of Rs 15,00,000 each dated 12th January, 2006 vide draft nos 264492 and 264493.. The company is assessed to Income-tax under P.A.No AAECs0629N. The share applicant alongwith share application form has submitted extract of the board minutes containing board resolution authorizing Sri Ramesh Agarwal the

Director of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,03,23,000 and Rs 59,95,66,266.99 respectively and loans and advances are Rs 1,15,92,178.

(35) **Dico Transport Corporation Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by two demand drafts of Rs 25,00,000 each dated 13th January, 2006 vide draft nos 787274 and 787273. The company is assessed to Income-tax under P.A.No AAACD8952H. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr Manish Tibrewal and or Sri Subhash Agarwal the Director of the company to make investments, certificate of incorporation of company, memorandum and articles of association of company and acknowledgement evidencing Filing of return of income.

(36) **Quantaurn Impex Pvt. Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by two demand drafts of Rs 25,00,000 each dated 13th January, 2006 vide draft nos 652771 and 652772. The company is stated to have assessed to Income-tax under P.A.No AAACQ0574G. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr Ramesh Kr Agarwal and or Mr Vikramaditya Jaiswal, the directors of the company to make investments, certificate of incorporation of company memorandum and articles of association of company, acknowledgement evidencing filing of return of income and profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 97,32,500 and Rs 6,34,91,119.25 respectively and loans and advances are Rs 53,39,744.42.

(37) **Dherar Textiles Pvt. Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by two demand drafts of Rs 25,00,000 each dated 13th January, 2006 vide draft nos 467834 and 467835. The company is assessed to Income-tax under P.A.No AABCD0906G. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr Manish Tibrewal and or Mr Subhash Agarwal, the directors of the company to make investments, certificate of incorporation of company, memorandum and articles of association of company, acknowledgement evidencing filing of return of

income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,78,23,000 and Rs 10,09,11,293.12 respectively and loans and advances are Rs 1,31,60,657.

(38) **Plus Jet Finvest Pvt. Ltd.** - This company has made an application for 1,00,000 equity shares and paid a sum of Rs 50,00,000 by two demand drafts drawn on ABN Amro Bank, Kolkata. The sum of Rs 50,00,000 has been paid by two demand drafts of Rs 25,00,000 each dated 13th January, 2006 vide draft nos 388760 and 388761. The company is assessed to Income-tax under P.A.No AABCP9939M. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Sri R. P. Agarwal and Mr R.K.Sharma, directors of the company to make investments, certificate of incorporation of company, memorandum and articles of association of company, acknowledgement evidencing filing of return of income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 1,73,50,000 and Rs 13,21,09,537.50 respectively and loans and advances are Rs 2,59,39,647.

(39) **Rup) Tradecornm Pvt. Ltd.** - This company has made an application for 80,000 equity shares and paid a sum of Rs 40,00,000 by a demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 40,00,000 has been paid by demand draft dated 13th January, 2006 vide draft no 631084. The company is assessed to Income-tax under P.A.No AABCR2685J. The share applicant along with share application form has submitted extract of the board minutes containing board resolution authorizing Mr Arihant Jain and or Mr Itebrata Biswas, the directors of the company to make investments, certificate of incorporation of company, memorandum and articles of association of company, acknowledgement evidencing filing of return of income, profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 2,49,85,200 and Rs 18,11,25,000 respectively and loans and advances are Rs 59, 181420.

(40) **Star Traffin Pvt. Ltd.** - This company has made an application for 80,000 equity shares and paid a sum of Rs 40,00,000 by a demand draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 40,00,000 has been paid by demand draft dated 14th January, 2006 vide draft no 380518. The company is assessed to Income-tax under P.A.No AADCS5989A. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 2,06,82,000 and Rs 10,42,77,598.58 respectively and loans and advances are Rs 73,67,537.

(41) **NKP Holdins Pvt. Ltd.** - This company has made an application for 40,000 equity shares and paid a sum of Rs 20,00,000 by a demand

draft drawn on ABN Amro Bank, Kolkata. The sum of Rs 20,00,000 has been paid by demand draft dated 13th January, 2006 vide draft no 431967. The company is assessed to Income-tax under P.A. No AABCN0557B. The share applicant along with share application form has submitted profit and loss account as on 31st March, 2006. The share capital and reserves of the company as on 31st March, 2006 are Rs 2,22,23,000 and Rs 10,29,48,904.80 respectively and loans and advances are Rs 62,60,859.

12. In our view, the assessee has discharged the initial burden of proof in this year. Accordingly, consistent with the view taken by the co-ordinate bench in AY 2006-07 in the case of Netscape Software P Ltd, we uphold the order passed by Ld CIT(A).

13. In the result, the appeal filed by the revenue is dismissed.

Order has been pronounced in the Court on 27.9.2017.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/9/2017

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS