

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4867/Del/2011
(Assessment Year: 2008-09)

ITO, Ward-9(1), New Delhi	Vs.	Sohail Financials Ltd, C-19, Kirti Nagar, New Delhi PAN: AABCS3643M
(Appellant)		(Respondent)

Revenue by :	Shri S.K. Tewari, Sr. DR
Assessee by:	None
Date of Hearing	24/09/2018
Date of pronouncement	28/09/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the revenue against the order of the ld CIT(A)-XII, New Delhi dated 24.08.2011 for the Assessment Year 2008-09, raising following effective two grounds of appeal:-

“1. The ld CIT(A) erred in law and on facts in deleting the addition of Rs. 19400000/- made by the AO u/s 68 of the IT Act without appreciating that the fact of the instant case are clearly distinguishable from those of Lovely Export (P) Ltd.

2. *The ld CIT(A) erred in law and on facts on deleting the addition of Rs. 97000/- made by the AO on account of*

commission paid on accommodation entries from undisclosed sources.”

2. The brief facts of the case is that the assessee is a company who filed its return of income on 09.08.2008 declaring income of Rs. 703204/-. During assessment proceeding, it was found that the assessee has issued share capital with premium of Rs. 1.94 crores to 8 companies. The share applicant companies are found to be operated by one of the accommodation entry provider Mr. Tarun Goyal, Shri Pramod Kumar and Harpreet Singh. The Investigation Wing on 15.09.20018 conducted search u/s 132 of the Act at the office premises of Shri Tarun Goyal, Chartered Accountant. The statement of Shri Tarun Goyal and Ms. Ritu Saxena was recorded on oath on 02.12.2008. The assessee has issued share capital of Rs. 38.80 lakhs at a share premium of Rs. 155.20 lakhs totaling to Rs. 1.94 crores to these companies. The ld AO issued notices to the assessee but it was not complied. Therefore, the ld AO issued show cause notice to the assessee to explain why the addition of Rs. 1.94 crores should not be made in the hands of the assessee, as the assessee has not produced any details of share capital with respect to identity, and creditworthiness of investors and Genuineness of the

transaction. The ld AO also asked to produce individuals/ directors of these companies along with respective documents. The assessee did not comply firstly. However, the part details were furnished along with an affidavit on stamp paper of Rs. 10 signed by the Directors of the respective companies. Various judicial precedents were also cited so to state that addition could not be made. As the assessee did not produce the Directors of the share applicants , ld AO issued summons u/s 131 of the Act on 12.11.2010. None of the investors complied with Summons. AO issued another show cause notice on 16.11.2010 referring to various statements and search carried out at the premises of Shri Tarun Goyal, Chartered Accountant. The ld AO further stated that the signature of Tarun Goyal, Shri Pramod Kumar, Harpreet Singh and Ritu Saxsena on the affidavits submitted by the assessee, did not match with the signatures of those persons on the statement recorded by the investigation wing on oath. It was further stated that the affidavits were also executed on stamp paper purchased on 13.03.2007 but those stamp papers were used on 28.10.2010 after a gap of almost 3 ½ years. It was further stated that one Notarized Officers on 28.10.2010 also signs all these affidavits. The ld AO further informed that **Shri Tarun Goyal, a chartered accountant, is an accommodation**

entry provider and is not doing any real business. It was further mentioned that Shri Pramod Kumar, is a peon, Shri Harprit Singh is accountant and Ms. Ritu Saxsena is the receptionist of Shri Tarun Goyal. They are the directors of these companies. The ld AO further noted that in the statement of Shri Tarun Goyal all these persons were found to be accomplice of Shri Tarun Goyal in providing accommodation entries in the form of share capital and in various other forms. Assessee did not respond to this notice also and summons was not complied. Therefore, the ld AO also issued another show cause notice on 15.11.2010 repeating the same fact and asking the assessee to produce those persons. The assessee did not respond to any of the notices and thereafter the ld AO made an addition of Rs. 1.94 crores u/s 68 of the Act as the assessee failed to produce relevant evidence with respect to identity, creditworthiness, and genuineness of the transactions.

3. The ld AO dealt with the whole issue as under:-

“Thereafter notices u/s 143(2) & 142(1) dt. 20/07/2010 & 30/09/2010 were issued. There was no compliance to these notices.

As the assessee had not submitted the requisite details and produced the books of A/cs upto 15/10/2010, vide notices u/s 143(2) & 142(1) and show-cause dated 15/10/2010 to assessee was asked to show cause as to why the share capital and share premium raised amounting to Rs. 1,94,00,000/-, may not be added to the income. The

assessee had shown addition to share capital at Rs. 38,80,000/- and share premium at Rs. 1,55,20,000/-, totaling to Rs. Rs. 1,94,00,000/-.

As no details of share capital raised during the year with evidences in support of identity, genuineness of transaction and creditworthiness of the parties, had been submitted, the assessee was asked to produce all the individuals and the directors / principal officers of the companies/ firms alongwith all the documents and to prove their identity, creditworthiness and genuineness of the transactions.

The assessee was also told that in case they are not able to substantiate their claim, the amount received as share application will be treated as undisclosed income, being unexplained .cash credits u/s 68 of the Income-tax Act, 1961 and the share capital raised amounting to Rs. 1,94,00,000/- would be added to the income. Notices u/s 143(2) S. 142(1)' fixing the case for 21/10/2010 were also enclosed.

There was no compliance on 21/10/2010.

On 10/11/2010, Shri Amitoj Aneja, CA & AR, of the assessee attended and filed fresh POA alongwith part details vide letter dt. 10/11/2010. The assessee company is engaged in the business of Investment and Finance.

The assessee filed the details of share capital addition on 10/11/2010 vide letter dated 10/11/2010 along with the affidavits on stamp papers of Rs. 10/- dated 28/10/2010, signed by the Directors of the respective companies.

The assessee vide submissions dt. 10/11/2010, has relied on the judgments of Hon'ble SC In case of CIT vs Lovely Exports (P) Ltd (2008) 6 DTR (SC) 308 and the jurisdictional HC in CIT vs Dwarkadhish Investment (P) Ltd (2008) 2 DTR (Del) 7 (107 TAXMANN 321) & CIT vs Winstral Petrochemicals (P) Ltd (2010) 233 CTR (Del) 392.

In the case of CIT v. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Delhi), it has been held that In the case of a public issue, the company concerned cannot be expected to know every detail pertaining .to the identity as well as financial worth of each of its subscribers. The company must, however, maintain and make available to the

Assessing Officer for his perusal' all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking the tightrope of sections 68 and 69. The burden of proof can seldom be discharged to the hilt by the assessee; if the Assessing Officer harbours doubts of the legitimacy of any subscription, he is empowered, nay duty bound, to carryout thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company. A distillation of the precedents yields the following propositions of law in the context of section 68 : The assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber; (4) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders' register, share application forms, share transfer register, etc., it would constitute acceptable proof or acceptable explanation by the assessee; (5) the Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, "without more, against the assessee; (7) the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, the genuineness of the transaction and the veracity of the repudiation.

The Hon'ble Delhi High Court in the case of CIT vs Dwarkadhish Investment (P) Ltd (2008) 2 DTR (Del) 7 (167 TAXMANN 321), has followed the ratio of the case of CIT v. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Delhi)

The present case of the assessee cov. is differentiable from the case of CIT Vs. Lovely Exports Pvt. Ltd.. CIT vs Dwarkadhish Investment (P) Ltd (2008) 2 DTR (Dei) 7 (167 TAXMANN 321) and CIT v. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Delhi) cited above, as in the present

case of case assessee coy, it has given cash to receive the accommodation entries by way of cheque, in the form share application money, as admitted by Sh. Tarun Goval and his associates in his statement recorded by the Investigation Wing.

In the case of *Lovely Exports (P) Ltd.* 216 CTR 195(SC), *CIT vs Dwarkadhish Investment (P) Ltd* (2008) 2 DTR (Del) 7 (167 TAXMANN 321) and *CIT v. Divine Leasing & Finance Ltd.* [2007] 158 Taxman 440 (Delhi), the shareholders had not denied the fact that they had contributed to the share capital of the company. In the case of the assessee company, the shareholders have admitted the fact that they are mere name lenders and the actual money belongs to the appellant. The appellant is a private limited company and not a public limited company. In the case of private limited company, it is the company which approached the parties to subscribe to its share capital. Unlikely in the case of public limited company, where there is an offer to the general public to subscribe and the company is not aware of the whereabouts of the share holders. In a private to subscribe and the company is not aware of the whereabouts of the share holders. In a private Limited company, the directors of the companies personally have a close contract with the share holders.

According to section 3 of the Evidence Act, a fact is said to be proved when, after considering the matters before it the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Section 114 of the Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. The aforesaid provisions are nothing but recognition of broad principles of common law governing the issue under consideration.

In the case of *Gordhandas Hargovandas & Another Vs CIT* (126 ITR 560) (Bom.) the Hon'ble High Court observed as under:-

Though in isolation each piece of evidence may appear to be of little weight, on an overall appreciation it would be

permissible to consider their cumulative effect and decide one way or the other.

In the case of M/s Gold Leaf Capital Corporation India Pvt. Ltd. Vs. JCIT, the Hon'ble ITAT, New Delhi vide order dated J. 1/01/2008 in ITAT No. 237(del)/2002 for Asstt. Year 1995-96 observed as under with regard to-genuineness of transactions u/s 68.

"On going through the decision in the case of Divine Leasing & Finance (Supra) and other relevant case law it is clear that the degree of onus would depend upon the facts of each case and no standard degree of proof can be applied generally to all cases, irrespective of the nature of receipts because in the case of share investment for public placements the degree of proof may be light but in the case of private placement it may be stringent, the reason being a public issue cannot be made by a Private Limited Company. However with requisite permission the share capital can be received through private placement normally to known persons / companies. Similar would be the position when the shares are allotted by a Public Company on private placement basis".

From the above facts it emerges that the person who had subscribed to the share capital are only name lenders. In the case of private placement of shares the onus on the company is much more than in the case of loan creditors. As for in the case of a loan the company is at least under an obligation to return back the loan, but in the case of a private placement of shares, the subscriber parts with his money permanently thus the share subscriber has to be in constant touch with company.

The alleged share holders have stated under oath in the statement recorded u/s 131 that their companies were providing accommodation entries. When the alleged shareholders have denied subscribing to share capital, neither the identity nor the creditworthiness of the share holders can be said to have been established in this case.

Therefore, the ratio of the judgement in the cases of CIT Vs. Lovely Exports Pvt. Ltd.. CIT vs Dwarkadhish Investment (P) Ltd (2008) 2 DTR (Del) 7 (167 TAXMANN 321) and CIT v.

Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Delhi), is not applicable in the case of the assessee cov.

Thereafter, summons u/s 131 dated 12/11/2010 were issued to the parties as mentioned at S.no. 1 to 8 below requiring the persons who had signed the affidavits on 28/10/2010. on stamp papers of Rs. 10/- as mentioned in the table below, to attend this office personally on 23/11/2010 with the following:

- 1) Statement of account of M/s Sohail Financials Ltd., for the period 01/04/2007 to 31/03/2008 (pertaining to AY 2008-09).*
- 2) Personal identification and Nature of transactions with M/s Sohail Financials Ltd.*
- 3) Your signatures duly verified by your bank and your original Photo Identification Card.*
- 4) The assessee company M/s Sohail Financials Ltd., has submitted affidavit(s) dated 28/10/2010, duly signed by you in your capacity as director of the company. You are requested to confirm whether these affidavits were signed by you on 28/10/2010.*
- 5) PAN and Circle/Ward, where assessed to tax, alongwith the Photocopy of Acknowledgement of the Income-tax Return filed alongwith the Balance Sheet & Profit & Loss account with relevant schedules for AY 2008-09, reflecting the above transactions / investments.*
- 6) Photocopy of your bank statement for the period 01/04/2007 to 31/03/2008 (pertainina to AY 2008-09).*
- 7) In case the above investment was made in cash the evidence regarding the source of cash and copy of the Cash Book is required to be produced.*

Another show-cause dated 16/11 /2C1G was issued to the assessee. whereby assessee company was again asked to show cause as to why the share capital & share premium raised amounting to Rs. 1,94,0,000/-, may not be added to the income. This show cause alongwith the notices u/s 143(2) & 142(1) dt. 16/11/2010 were sent by Speed Post

and were also received by Sh. Amitoi Aneia. CA & AR of the assessee on 19/11/2010 by signing, on both the show cause and the notices.

The following show cause dated 16/11/2010, was issued to the assessee company:

“Vide the show cause dt. 15/10/2010 you were required to produce all the individuals and the directors / principal officers of the companies / firms, alongwith all the documents and to prove their identity, creditworthiness and genuineness of the transactions.

The details filed by you on 10/11/2010 show that you have received the share capital and share premium amounting to Rs. 1,94,00,000/- from the following parties:

S. No.	Name	Address	Affidavit Signed by	Share Capital	Shares Premium	Total (Rs.)
1	M/S Tejasvi Investment Pvt. Ltd.	13/34, W.E.A IVth Floor Karol Bagh New Delhi-110005	Tarun Goyal	4,80,000	19,20,000	24,00,000
2	M/s Campari Fiscal Services Pvt. Ltd.	13/34, W.E.A IVth Floor Karol Bagh New Delhi-110005	Pramod Kumar	4,80,000	19,20,000	24,00,000
3	M/s Thar steels Pvt. Ltd.	203, Dhaka Chambers 2069/39. Naiwala Karol Bagh New Delhi-110005	Tarun Goyal	4,60,000	18,40,000	23,00,000
4	M/s Sai Baba Investment Pvt. Ltd.	13/34, W.E.A. IVth floor Main Arya Samaj Road Karol Bagh New Delhi-110005	Pramod Kumar	1,60,000	6,40,000	8,00,000
5	M/s Bhavani Portfolio Pvt. Ltd.	13/34, W.E.A. IVth floor Main Arya Samaj Road Karol Bagh New Delhi-110005	Ritu Saxena	4,00,000	1,60,000	2,00,000
6	M/s Rishabh Shoes-Private Ltd.	13/34, W.E.A. IVth floor Main Arya Samaj Road Karol Bagh New Delhi-110005	Pramod Kumar	4,00,000	1,60,000	2,00,000
7	M/s Taurus Iron & Steel Co. Pvt. Ltd.	13/34, W.E.A. IVth floor Main Arya Samaj Road Karol Bagh New Delhi-110005	Tarun Goyal	6,00,000	24,00,000	30,00,000
8	M/s DU Securities Pvt. Ltd.	203, Dhaka Chambers 2069/39. Naiwala	Harpreet	9,00,000	36,00,000	45,00,000
	TOTAL			38,80,000	152,00,000	194,00,000

A search u/s 132 of the Income-Tax Act, 1961 was conducted at the office premises of Shri Tarun Goyal/, Chartered Accountant at 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi by the Investigation Wing on 15/09/2008.

The statements of Sh. Tarun Goyal, Sh. Parmod Kumar and Sh. Hamreet Singh were recorded on oath during the search operations on 15/09/2008 and the statement of Ritu Saxena was recorded on oath on 02/12/2008.

Vide letter dated 10/11/2010, you have also furnished the affidavits on stamp papers of Rs. 10/- signed & notarized on 28/10/2010, signed by the Directors of the respective companies as mentioned in the table above. The perusal of these affidavits reveals the following:

- I) That the signatures of Sh. Tarun Goyal, Sh. Parmod Kumar, Sh. Harpreet Singh and Ritu Saxena on these affidavits dated 28/10/2010 do not match with the signatures of the above persons on the statements recorded on oath during and after the search operations by the Investigation Wing.
- II) The perusal of the above affidavits reveals the following:

S No.	Name N :	Stamp paper No.	Date of purchase of Stamp papers	Name of the Vendor who sold the paper	Address of Vendor	Name of the Notary Public who attested the Affidavits on 28/10/10	Regd No
1	M/S Tejasvi Investment Pvt. Ltd.	DELHI 10AA	25/05/2007	S. P. Srivastava	L. No. 325 Tis Hazari Court, Delhi	Sudha Shankar	28/06 Ap
	M/S Tejasvi Investment Pvt. Ltd.	DELHI 16AA	26/02/2008	- do -	- do -	- do -	- do -
2	M/s Campari Fiscal Services Pvt. Ltd.	DELHI 16AA	23/02/2008	- do -	- do -	- do -	- do -
	M/s Campari Fiscal Services Pvt. Ltd.	DELHI 09AA	22/03/2007	- do -	- do -	- do -	- do -
3	M/s Thar steels Pvt. Ltd.	DELHI 14AA	04/01/2008	- do -	- do -	- do -	- do -
	iM/s Thar steels Pvt. Ltd.	DELHI 10AA 566633	16/06/2007	- do -	- do -	- do -	- do -
4.	M/s Sai Baba Finvest ! Pvt. Ltd.	DELHI 12 AA	04/10/2007	- do -	- do -	- do -	- do -
	M/s Bhavani Portfolio Pvt. Ltd.	DELHI 12AA	10/09/2007	- do -	- do -	- do -	- do -
6.	M/s Rishabh Shoes Private	DELHI 09AA	08/05/2007	- do -	- do -	- do -	- do -

	Ltd.	943132					
7.	M/s taurus Iron & Steel 7 Co. Pvt. Ltd.	DELHI 12AA 750343	03/10/2007	- do -	- do -	- do -	- do -
	DU Securities (P) R Ltd.	DELHI18AA 117016	3/04/2008	- do -	- do -	- do -	- do -
8.	DU Securities (P) Ltd	DELHI08AA 962277	13/03/ 2007	- do -	- do -	- do -	- do -

It is strange that though the stamp papers were purchased as long as back as 13/03/2007, the same were signed on 28/10/2010 i.e. after a gap of almost three and a half years. All The affidavits were attested/notarized by Sudha Shankar Mishra on 28/10/2010.

1. **During the course of search it was established that Sh. Tarun Goyal had floated many companies for the purpose of providing accommodation entries. .**
2. **All the companies floated by Sh. Tarun Goyal are not carrying out any genuine activity and are merely being used to provide accommodation entries. Hence all the companies of Sh. Tarun Goyal are 'bogus'.**

The network of companies run by Shri Tarun Goyal is only doing the business of providing accommodation entries to various beneficiaries and are not doing any real business, hence these companies are 'BOGUS'.

All the companies are operating from the office of Shri Tarun Goyal, addresse at 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi and at his former office viz. 203, Dhaka Chambers, 2069/39, Naiwala, Karol Bagh, New Delhi.

The directors of the company are none but former and present employees of Shri Tarun Goyal. Sh. Tarun Goyal has been using them for merely signing all the documents, bank cheques and also for transporting and exchanging cash and cheques in order to provide accommodation entries.

At the time of search on 15/09/2008, the statement of Sh. Tarun Goyal was recorded on oath. As per his statement, he has accepted that he provides accommodation entries and

his various companies are used for this purpose. Sh. Tarun Goyal has also described the modus operandi for providing accommodation entries.

At the time of search on 15/09/2008, the statement on oath of the employees present at the premises of Shri Tarun Goyal were recorded. These include Sh. Pramod Kumar, his peon, Sh. Harpreet Singh, Accountant. In their statements they stated that they were mere employees of Sh. Tarun Goyal: and they were signing various documents related to many companies at his behest, as and when asked by Sh. Tarun Goyal.

Ms. Ritu Saxena, former receptionists, in her statements recorded on oath, has stated that various bank accounts were opened in her name by Sh. Tarun Goyal, who himself operated these accounts and deposited cash in them. As such, she could not refuse the same as she was mere employee. All the passbooks, cheque-books, various important documents were in his total control.

In view of the above, you are required to produce all the individuals and the directors / principal officers of the companies / firms, alongwith all the documents to prove their- identity, creditworthiness and genuineness of the transactions.

In case the you are not, able to substantiate your claim, the amount received as share application will be treated as your undisclosed income, being unexplained cash credits u/s 68 of the Income-tax Act, 1951 and the share capital raised by you amounting to Rs. 19400,000/- would be added to your income as follows:

<i>Income as per the Income Tax Return e-filed</i>	<i>Rs. 7,03,200/-</i>
<i>Add: addition as discussed above</i>	<i>Rs. 1,94,00,000/-</i>
<i>Taxable income</i>	<i>Rs. 2,01,03,200/-</i>

You are hereby granted an opportunity to represent-your case on 23/11 /2010. Please note that this is a final opportunity. In case no reply is received by this date, the assessment would be decided on merits and ex-parte assessments u/s 144 would be completed in the case on the basis of the materials available on record.

In case you wish to appear in person or make a written submission or have anything else to state' you may do so on that date.

Notices u/s 143(2) & 142(1) fixing the case for 23/11/2010 are enclosed. "

On 23/11/2010, neither any reply was submitted nor any adjournment was sought and nobody attended this office in response to summons u/s 131.

There was also no compliance by the assessee company on this date in response to notices u/s 143(2) & 142MT dt. 16/11/2010.

Thereafter another show cause, alongwith notices u/s 143(2) & 142(1) dated 25/11/2010, was issued to the assessee company, by Speed Post, which is reproduced below:

" Please refer to this office notices u/s 143(2) & 142(1) of the I.T. Act, 1961, for AY 2008-2009 dt. 16/11/2010 and the show 'cause dt. 16/11/2010. Vide this show cause dt 16/11/2010 you were required to produce all the individuals and the directors / principal officers of the companies / firms, alongwith all the documents and to prove their identity, creditworthiness and genuineness of the transactions.

Even earlier, vide this office notices u/s 143(2) & 142(1) of the I.T. Act, 1961, for AY 2008-2009 dt. 15/10/2010 and the show cause dt. 15/10/2010, you were required to produce all the individuals and the directors / principal officers of the companies / firms, alongwith all the documents and to prove their identity, creditworthiness and genuineness of the transactions.

The details filed by you on 10/11/2010 show that you have received the share capital and share premium amounting to Rs. 1,94,00,000/- from the following parties:

to.	Name	Address	Affidavit Signed by	Share Capital	Shares Premium	Total (Rs.)
1	M/S Tejasvi Investment Pvt. Ltd.	13/34, W.E.A IVth Floor Karol Bagh New Delhi- 110005	Tarun Goyal	4,80,000	19,20,000	24,00,000
2	M/s Campari Fiscal Services Pvt. Ltd.	13/34, W.E.A IVth Floor Karol Bagh New Delhi- 110005	Pramod Kumar	4,80,000	19,20,000	24,00,000

3	M/s Thar steels Pvt. Ltd.	203, Dhaka Chambers 2069/39, Naiwala Karol Bagh New Delhi-110005	Tarun Goyal	4,60,000	18,40,000	23,00,000
4	M/s Sai Baba Fin vest Pvt. Ltd.	13/34, W.E.A. IVth floor Main Arya Samaj Road Karol Bagj New Delhi-110005	Pramod Kumar	1,60,000	6,40,000	8,00,000
5	M/s Bhavani Portfolio Pvt. Ltd.	13/34, W.E.A. IVth floor Main Arya Samaj Road Karol Bagj New Delhi-110005	Ritu Saxena	4,00,000	1,60,000	2,00,000
6	M/s Rishabh Shoes Private Ltd.	13/34, W. E. A. IVth floor Main Arya Samaj Road Karol Bagj New Delhi-110005	Pramod Kumar	4,00,000	1,60,000	2,00,000
7 /	M/s Taurus Iron & Steel Co. Pvt. Ltd.	13/34, W.E.A. IVth floor Main Arya Samaj Road Karol Bagj New Delhi-110005	Tarun Goyal	6,00,000	24,00,000	30,00,000
8	M/s DU Securities (P) Ltd.	203, Dhaka Chambers 2069/39, Naiwala Karol Bagh New Delhi-110005	Harpreet Singh	9,00,000	36,00,000	45,00,000

Vide this show cause dt 16/11/2010, you were told that:

"The contents of the above show cause dt. 16/11/2010 were again reproduced in this show cause".

However, till date, you have neither produced any of the above directors nor any written submission has been received till date.

This office had issued summons u/s 131, by Speed Post to all the above companies at the addresses mentioned in the affidavits filed by you. The following summons u/s 131, issued to the companies at S.no. 3 & 8, have been received back Unserved with the Remarks "Left without address."

S No.	Name	PAN:	Address	Affidavit signed by
3.	M/s. Thar Steels Pvt. Ltd	AABCT5923D	203, Dhaka Chambers 2069/ 39, Naiwala Karol Bagh, New Delhi	Tarun Goyal
8.	M/s. DU Securities (P) Ltd	AACCD0002E	203, Dhaka Chambers 2069/ 39, Naiwala Karol Bagh, New Delhi	Harpreet Singh

There has been no compliance to the other summons u/s 131, issued to the companies mentioned at S.no. 1, 2, 4, 5, 6 & 7, which have not been received back unserved.

In view of the above, you are required to produce all the individuals and the directors / principal officers of the companies / firms, alongwith all the documents to prove their

identity, creditworthiness and genuineness of the transactions.

In case the you are not able to substantiate your claim, the amount received as share application will be treated as your undisclosed income, being unexplained cash credits u/s 68 of the Income-tax Act, 1961 and the share capital raised by you amounting to Rs. 1,94,00,000/- would be added to your income.

In case you wish to appear in person or make a written submission or have anything else to state, you may do so on that date.

Notices u/s 143(2) & 14271) fixing the case for 30/11/2010 are enclosed.

On 30/41/2010 an adjournment application was received and the case was adjourned to 03/12/2010. However, on 03/12/2010, the assessee once again failed to respond. There has been no compliance till date. The perusal of the above shows the following:

A search u/s 132 of the Income-Tax Act,1961 was conducted at the office premises of Shri Tarun Goyal, Chartered Accountant at 13/34', WEA, Arya Samaj Road, Karol Bagh, New Delhi by the Investigation Wing on 15/09/2008.

- 1. The signatures of Sh. Tarun Goyal, Sh. Parmod Kumar, Sh. Harpreet Singh and Ritu Saxena on these affidavits signed and notarized on 28/10/2010 and submitted in this office on 10/11/2010, do not match with their signatures on their statements recorded on oath during and after the search operations by the Investigation Wing of the Income Tax Department.*
- 2. It is strange that though the stamp papers were purchased as long back as 13/03/2007, the same were signed on 28/10/2010 i.e. after a gap of almost three and a half years.*
- 3. All the affidavits were attested/notarized by Sudha Shankar Mishra on 28/10/2010, i.e. all the directors presented themselves before the Notary Public, Sudha Shankar Mishra on 28/10/2010, for signing the affidavits.*

4. A. During the course of search it was established that Sh. Tarun Goyal had floated many companies for the purpose of providing accommodation entries.

B. All the companies floated by Sh. Tarun Goyal are not carrying out any genuine activity and are merely being used to provide accommodation entries. Hence all the companies of Sh. Tarun Goyal are 'bogus'.

The network of companies run by Shri Tarun Goyal is only doing the business of providing accommodation entries to various beneficiaries and are not doing any real business, hence these companies are 'BOGUS'.

All the companies are operating from the office of Shri Tarun Goyal, address at 13/34, WEA, Arya Samaj Road, Karol Bagh, New Delhi and at his former office viz. 203, Dhaka Chambers, 2069/33, Naiwala, Karol Bagh, New Delhi.

The directors of the company are none but former and present employees of Shri Tarun Goyal. Sh. Tarun Goyal has been using them for merely signing all the documents, bank cheques and also for transporting and exchanging cash and cheques in order to provide accommodation entries.

At the time of search on 15/09/2008, the statement of Sh. Tarun Goyal was recorded on oath. As per his statement, he has accepted that he provides accommodation entries and his various companies are used for this purpose, Sh. Tarun Goyal has also described the modus operandi for providing accommodation entries.

At the time of search on 15/09/2008, the statement on oath of the employees present at the premises of Shri Tarun Goyal were recorded. These include Sh. Pramod Kumar, his peon. Sh. Harpreet Singh. Accountant. In their statements they stated that they were mere employees of Sh. Tarun Goyal and they were signing various documents related to many companies at his behest, as and when asked by Sh. Tarun Goyal.

Ms. Ritu Saxena. former receptionist, in her statement recorded on oath, has stated that various bank accounts were opened in her name by Sh. Tarun Goyal, who himself operated these accounts and deposited cash in them. As such, she could not refuse the same as she was mere

employee. All the passbooks, cheque-books, various important documents were in his total control.

4. In response to summons u/s 131. dt. 16/11/2010. neither any reply was submitted nor any adjournment was sought and nobody attended this office on 23/11/2010.
5. The assessee company was granted an opportunity to produce the above individuals and the directors / principal officers of the above companies, alongwith all the documents requisitioned.

The above opportunity was granted to the assessee three times vide issue of show cause notices dt. 15/10/2010, 16/11/2010 and 25/11/2010.

Till date the assessee company has not produced any of the above individuals or any of the directors / principal officers of the above companies, alongwith all the documents requisitioned. The assessee company has also not been able to prove the creditworthiness of the above share applicants and genuineness of the transactions.

The above shows that the assessee company has nothing to say in the matter. As the assessee company has also not been able to substantiate its claim, therefore the above amount received is treated as undisclosed income, being unexplained cash credits u/s 68 of the Income-tax Act. 1961 and the amount of Rs. 1,94.00,000/- is hereby added to the income.

Instead of producing the above said directors, has only tried to relied on the judicial decisions as mentioned above.

In the cases of the above judicial decisions, the shareholders had not denied the fact that they had contributed to the share capital of the company. In the case of the assessee company, the shareholders have admitted the fact that they are mere name lenders and the actual money belongs to the appellant.

The signatures of Sh. Tarun Goyal, Sh. Parmod Kumar, Sh. Harpreet Singh and Ritu Saxena on these affidavits dated 28/10/2010 do not match with the signatures of the above

persons on the statements recorded on oath, during and after the search operations by the Investigation Wing.

It is strange that though the stamp papers were purchased as long as back as 13/03/2007, the same were signed on 28/10/2010 i.e. after a gap of almost three and a half years. All the affidavits were attested/notarized by Sudha Shankar Mishra on 28/10/2010

It has already been shown vide the discussion above that the ratio of the judgement in the cases of CIT Vs. Lovely Exports Pvt. Ltd.. CIT vs Dwarkadhish Investment (P) Ltd (2008) 2 DTR (Del) 7 (167 TAXMANN 321) and CIT v. Divine Leasing & Finance Ltd. [2007] 158 Taxman 440 (Delhi), is not applicable in the case of the assessee cov.

Till date the assessee company has not produced any of the above individuals or any of the directors / principal officers of the above companies, alongwith all the documents requisitioned for cross examination. The assessee company has also not been able to prove the creditworthiness of the above share applicants and genuineness of the transactions.

The above shows that the assessee company has nothing to say in the matter. As the assessee company has also not been able to substantiate its claim, therefore the above amount received is treated as undisclosed income, being unexplained cash credits u/s 68 of the Income-tax Act. 1961 and the amount of Rs. 1.94.00.000/- is hereby added to the income.

Therefore, the addition to share capital and share premium account by the company i.e. the total capital addition of Rs. 1,94,00,000/- is hereby added to the income of the assessee company. In view of the facts mentioned above, I am satisfied that the assessee has concealed its income and furnished inaccurate particulars of income. Therefore, penalty proceedings under section 271(l)(c) of the Income Tax Act, 1961 are being initiated separately.

Therefore, it is concluded that the assessee paid Rs. 1,94,00,000/- plus commission @ 0.5% admitted by Shri Tarun Goyal. Thus, the assessee paid Rs. 1,94,00,000/- plus commission of Rs. 97,000/- to Shri Tarun Goyal for which it has failed to explain any source. Therefore, Rs.

1,94,97,000/- is hereby added to the income of the assessee under section 68 of the Income Tax Act, 1961, being unaccounted money in the hand of the assessee for which it has failed to offer any explanation.

Keeping in view the facts mentioned above, I am satisfied that the assessee has concealed the particulars of its income to the tune of Rs. 1,94,97,000/-. Therefore, penalty proceedings under section 271(l)(c) of the Income Tax Act, '1961 are being initiated separately."

{ bold highlight provided by us }

4. The ld AO noted that these are all accommodation entries therefore, he further added 5% commission expenses incurred by the assessee on the accommodation entries. The percentage was taken as admitted by Shri Tarun Goyal, Chartered Accountant in his statement. Consequently, the assessment u/s 143(3) of the Act was passed on 13.12.2010 determining the total income of the assessee at Rs. 20200200/-.
5. The assessee challenged the same before the ld CIT(A), who dealt with the above issue as under:-

"Ground No. 1, 4. 5 and 6

I have considered the facts stated above by the assessee as well as perused the assessment order by the Assessing Officer. The appellant received the share application money to the extent of Rs. 1,94,00,000/- from different legal entities. Their confirmation letters, copies of share application forms, the registration No. and date of incorporation of applicant companies, their PAN with assessing officer's detail, appellant company bank account ., detail of "share allotment in Form 2 submitted to the ROC have been furnished by him. Since the identity and existence of the share applicants are proved, the share application money/ share capital have been routed through banking channel, and the shares have also

been allotted to them, the said share applications money share capital have been routed through banking channel, and the shares have also been allotted to them, the said share application money amounting Rs. 1940000/- cannot be taxed in the hands of the company on the basis of law postulated by various courts below:-

Hindustan Link & Resins Ltd. Vs Deputy Commissioner of Income Tax (HC) (Guj.) (2011) 60 DTR 18 it is held that:-

“...Income - Cash credit - Share application money — None of the authorities have recorded any findings to the effect that the identity of the depositors had not been established by the assessee - Case of the Revenue is that the assessee has failed to explain the source of such cash as well as creditworthiness of the depositors -Department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company - However, under no circumstances, can the amount of share capital be regarded as the undisclosed income of the assessee. ”

Commissioner of Income Tax-IV Vs M/s Dwarkadhish Capital (P) Ltd. Delhi High Court IT A No. 911/2010

In any matter, the onus of proof is not a static one. Though in section 68 proceedings, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/share application by either furnishing their PAN number or Income tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the/ onus of proof would shift to the Revenue. Just because the creditors/share application cobjd not be found at the address given, it would not give the Revenue the 'right to invoke section 68. one must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need to to prove the source of source.

We also find that in the case of the respondent assessee itself, a Division Bench of this Court in Commissioner of Income Tax Vs Dwarikadhish Investment (P) Ltd. (2008) 176 Taxman 321 (Delhi) had dealt with a similar issue with regard to the assessment year 1997-98. The

relevant portion of the order passed by the Division Bench in the said judgement is reproduced hereinbelow:-

“3 The Assessing Officer required the assessee to furnish details and documents. The assessee produced copies of sale and purchase bills of the share brokers through whom the transactions took place and photocopies of confirmations of persons who had contributed the fresh share application money. The assessee furnished the PAN(GIR) numbers of the application, the details of the cheque number and dates. The assessee contended that letters sent to the shareholders had not been responded to.

- 1. The Assessing Officer required the assessee to furnish bank statement to substantiate the money availability with the assessee and also to prove the genuineness of the transactions. This not having been done, the Assessing Officer got enquiries made through an Income Tax Inspector who found that none of the applications were found to exist at the address given in the confirmations. However, the report of the Income Tax Inspector was furnished to the assessee on 22nd February 2000 and the assessment order was passed on the very next day, that is 23rd February 2000 giving the assessee no time to respond.*
- 2. Before the CIT(A) the assessee furnished additional evidence, copies of which were sent by the CIT(A) to the Assessing Officer for comments. Despite reminders, no response was received from the Assessing Officer by the CIT(A) on the additional evidence. The CIT(A) then admitted the additional evidence. After examining the entire record, the CIT(A) deleted the addition on account of the unexplained share application money for*
- 3. In the appeal by the Revenue, the Tribunal found that the facts of the case were no different from those in the case of the group company of the present assessee namely M/s Dwarikadhish Financial Services. In the said case the Tribunal had deleted the addition made by the Assessing Officer on account of unexplained share application money. The said decision was upheld by this Court in its order in CIT Vs Dwarkadhish Financial Services {2005} 148 Taxman 54.*
- 4. That apart, the Tribunal again examined the documents giving the details of each of the applications. It noted that the above documents were available on the file of the AO?*

Accordingly it dismissed the Revenue's appeals. Learned counsel for the revenue sought to distinguish this Courts decision in the case of the group of the assessee on 'the ground that the facts there were different. However, we find, that the findings of the CIT(A) as extracted hereinabove are sufficient to show that the additions made by the Assessing Officer were not justified. The reasoning and conclusions arrived at concurrently by the CIT(A) and the Tribunal suffer from no perversity and are consistent with the law as explained by this court in Commissioner of Income Tax Vs Divine Leasing and Finance Ltd. (ITA No. 53/2005 decided on 16th November, 2006) reported in (2007) 207 CTR (Dei) 38 and in particular para 16 which reads thus:

“In this analysis, a distillation of the precedents yields the following propositions of law in the context of section 68 of the I T Act. The assessee has to prima facie prove (1) the identity of the creditors/subscriber; (2) the genuineness of the transaction, namely whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditors/ subscriber; (4) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders register, shared Application Forms, share Transfer Register etc., it would constitute acceptable proof or acceptable explanation by the assessee; (5) the Department would not be justified in drawing an adverse inference only because the creditors/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditors/subscriber denies or repudiates the transaction set up. by the assessee nor should the AO take such repudiation at face value and construe it, without more, against the assessee; (7) the assessing Officer is duty-bound to investigate the creditworthiness of the creditors/subscriber the genuineness of the transaction and the veracity of the repudiation.”

- 9 We are of the view that no substantial question of law arises in these appeals accordingly, these appeals are dismissed.”
- 10 We are also informed that a Special Leave Petition against the aforesaid Division Bench judgement in the case of the respondent assessee has been dismissed by the Supreme

Court. Accordingly, we are of the opinion that no question of law arises in the present cases as the matter is fully covered by the judgement of the Supreme Court in Lovely Exports (P) Ltd. (supra) as well as Division Bench judgement of this Court in the case of the responded assessee itself.

Commissioner of Income Tax Vs Lovely Exports (P) Ltd (2008) 216 CTR 195 : (2008) 6 DTR (SC) 303

Income cash credit-share application money if the share application money is received by the assessee company from alleged bogus shareholders, whose names are great the AO, then the Department is free to proceed to reopen their individual be regarded as undisclosed income of Commissioner of Income Tax Vs Value Capital Services (P) Ltd. (2009) 221 CTR (Del) 511 : (2008) 307 ITR 334

"Income-cash credit-share application money-CIT(A) accepted the existence of the application - it is very difficult for the assessee to show the creditworthiness of strangers-Revenue has not shown that the application did not have the means to make the investment and that such investment actually emanated from the coffers of the assessee company - Addition rightly deleted by the Tribunal - "No substantial question of law arises."

With regard to the addition of Rs 97,000/- on account of commission which was disallowed is also being deleted as I have held that the share capital of Rs 1,94,00,000/- cannot be taxed in the hands of company. Hence total addition of Rs 1,94,97,000/- is deleted."

[underline supplied by us]

6. The main reason for deleting the addition was that the assessee has filed confirmation letters, copies of the share application form, registration no and date of incorporation of the applicant companies with their PAN and bank account no of the appellant company, details of share allotment in form No. 2 submitted to ROC. Therefore, the 1d CIT (A) held that since the identity and existence of the share applicants are true the share application

money and the share capital have been routed through banking channel an amount of Rs. 1.94 crores cannot be added in the hands of the assessee. The ld AO aggrieved with the order of the ld CIT (A) has preferred an appeal before us.

7. The ld CIT DR submitted a written submission raising several contentions relying on several judicial precedents which is as under:-

“In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to addition made u/s 68 of I.T.Act:

1. *CIT Vs MAF Academy (P.) Ltd (361 ITR 258)*

where Hon’ble Delhi High Court held that where assessee, a private limited company, sold its shares to unrelated parties at a huge premium and thereupon within short span of time those shares were purchased back even at a loss, share transactions in question were to be regarded as bogus and, thus, amount received from said was to be added to assessee's taxable income under section 68 It was held as follows:

“53. In contrast to the above judgments, in the present case, the Assessee is a private limited company and in the factual matrix, we have held that the Assessee has not been able to discharge the initial onus and has not been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transaction.

Though, in our considered opinion, none of the above judgments, referred to by the Assessee respondent, are applicable in the facts of the present case and in view of the findings recorded by us hereinabove.

54. In view of the above, we are of the view that the Assessee has not discharged the onus

satisfactorily and the additions made by the Assessing Officer were justified and sustainable ”

2. *CIT Vs Navodava Castle Pvt Ltd f20141 367 ITR 306 (Del)*

where Hon’ble Delhi High Court accepted that since the assessee was unable to produce the directors and the principal officers of the six shareholder companies and also that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer had observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

"20. Now, when we go to the order of the Tribunal in the present case, we notice that the Tribunal has merely reproduced the order of the Commissioner of Income-tax (Appeals) and upheld the deletion of the addition. In fact, they substantially relied upon and quoted the decision of its co-ordinate Bench in the case of MAF Academy P. Ltd., a decision which has been overturned by the Delhi High Court, vide its judgment in CIT v. MAF Academy P. Ltd. [2014] 206 DLT 277 ; [2014] 361 ITR 35% (Delhi)). In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.

21. In view of the aforesaid discussion, we feel that the matter requires an order of remit to the Tribunal for fresh adjudication keeping in view the aforesaid case law."

*Navodava Castle Pvt Ltd Vs CIT (2015-TIQL-314-SC-IT)
(Copy Enclosed)*

SLP of assessee dismissed by Hon’ble Supreme Court

- 3 *CIT Vs Nipun Builders & Developers (P.) Ltd (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407, 256 CTR 34) where Hon'ble Delhi High Court-held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68. It was held as follows:*

“12. A perusal of the order of the Tribunal shows that it has gone on the basis of the documents submitted by the assessee before the AO and has held that in the light of those documents, it can be said that the assessee has established the identity of the parties. It has further been observed that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought back in the form of share application money. As noted in the earlier paragraph, it is not the burden of the AO to prove that connection. There has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68. With respect, it appears to us that there has only been a mechanical reference to the case-law on the subject without any serious appraisal of the facts and circumstances of the case.

13. We, therefore, answer the substantial question of law framed by us in the negative, in favour of the revenue and against the assessee. The appeal of the revenue is allowed with no order as to costs ”

- 4 *CIT Vs Nova Promoters & Finlease (P) Ltd (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187)*

where Hon'ble Delhi High Court held that amount received by assessee from accommodation entry providers in garb of share application money, was to be added to its taxable income under section 68. It Was held as follows:

“41. In the case before us, not only did the material before the Assessing Officer show the link between the entry providers and the assessee-company, but the Assessing Officer had also provided the statements of Mukesh Gupta and Rajan Jassal to the assessee in compliance with the rules of natural justice. Out of the 22 companies whose names figured in the information given by them to the investigation wing, 15 companies had provided the so-called "share subscription monies" to the assessee. There was thus specific involvement of the assessee-company in the modus operandi followed by Mukesh Gupta and Rajan Jassal. Thus, on crucial factual aspects the present case stands on a completely different footing from the case of Oasis Hospitalities (P.) Ltd. (supra).

42. In the light of the above discussion, we are unable to uphold the order of the Tribunal confirming the deletion of the addition of Rs. 1,18,50,000 made under section 68 of the Act as well as the consequential addition of Rs. 2,96,250. We accordingly answer the substantial questions of law in the negative and in favour of the department. The assessee shall pay costs which we assess at Rs. 30,000/-.”

5. CIT Vs Ultra Modern Exports (P.) Ltd (40 taxmann.com 458, 220 Taxman 165) (Copy Enclosed)

where Hon'ble Delhi High Court held that where in order to ascertain genuineness of assessee's claim relating to receipt of share application money, Assessing Officer sent notices to share applicants which returned unserved, however, assessee still managed to secure documents such as their income tax returns as well as bank account particulars, in such circumstances, Assessing Officer was justified in drawing adverse

inference and adding amount in question to assessee's taxable income under section 68. It was held as follows:

“9. As noticed previously, the CIT (A) was of the opinion that the assessee had discharged the basic onus which was cast upon it after considering the ruling in Lovely Exports (P.) Ltd. 's case (supra). The material and the records in this case show that notice issued to the 5 of the share applicants were returned unserved. The particulars of returns made available by the assessee and taken into consideration in paragraph 3.4 by the AO in this case would show that the said parties/applicants had disclosed very meager income. The AO also noticed that before issuing cheques to the assessee, huge amounts were transferred in the accounts of said share applicants. This discussion itself would reveal that even though the share applicants could not be accessed through notices, the assessee was in a position to obtain documents from them. While there can be no doubt that in Lovely Exports (P.) Ltd. (supra), the Court indicated the rule of "shifting onus" i.e. the responsibility of the Revenue to prove that Section 68 could be invoked once the basic burden stood discharged by furnishing relevant and material particulars, at the same time, that judgment cannot be said to limit the inferences that can be logically and legitimately drawn by the Revenue in the natural course of assessment proceedings. The information that assessee furnishes would have to be credible and at the same time verifiable. In this case. 5 share applicants could not be served as the notices were returned unserved. In the backdrop of this circumstance, the assessee's ability to secure documents such as income tax returns of the share applicants as well as bank account particulars would itself give rise to a circumstance which the AO in this case proceeded to draw inferences from. Having regard to the totality of the facts, i.e., that the assessee commenced its business and immediately sought to infuse share capital at a premium ranging between Rs 90-190 per share and was able to garner a colossal amount of Rs. 4.34 Crores. this Court is of the opinion that the CIT (Appeals) and the IT AT fell into error in holding that AO could not have added back the said amount under

Section 68. The question of law consequently is answered in favour of the Revenue and against the assessee."

6. *Konark Structural Engineering (P.) Ltd. Vs DCIT T20181 90 taxmann.com 56 (Bombay)*

where Hon'ble Bombay High Court held that where assessee-company received certain amount as share capital from various shareholders, in view of fact that summons served to shareholders under section 131 were unserved with remark that addressees were not available, and, moreover, those shareholders were first time assesseees and were not earning enough income to make deposits in question, impugned addition made by AO under sec. 68, was to be confirmed

- 7, *Prem Castings (P.) Ltd. Vs CIT f20171 88 taxmann.com 189 (Allahabad)*

where Hon'ble Allahabad High Court held that where assessee company had received share capital from various contributors and admitted that alleged investors were close friends and business associates of its directors, burden was upon assessee to disclose true and correct details of said investors and since identity of alleged investors was never established additions made under section 68 was justified

- 8 *CIT Vs Frostair (P.) Ltd (26 taxmann.com 11. 210 Taxman 221) where Hon'ble Delhi High Court held that where details furnished by assessee about share applicants*

were incorrect, addition under section 68 was proper. It was held as follows:

12. The application of the ratio of every decision by a quasi-judicial body like the IT AT has to be nuanced, and contextual. Thus, while the findings in Divine Leasing, Oasis International or even Lovely Exports might be preceded by a general discussion of the correct approach to be adopted by the AO, in a given case where additions are sought to be made on account of share application moneys not found to be genuine, the basic facts of the case cannot be lost sight of. On a proper

application of the ratio in Oasis - and subsequently, the Division Bench ruling in CIT v. Nova Promoters & Finlease (P) Ltd [2012] 206 Taxman 207/ 18 taxmann.com 217 (Delhi) it is evident that the AO took into account - if we may say so, in exhaustive detail, after a painstaking examination of the records after two or three layers of scrutiny- all the materials and held that the claim that the amounts claimed to be received on account of share applications were not based on genuine transactions. The CIT (A) upheld that order, after calling for a remand report. In these circumstances, the conclusion of the Tribunal, that the assessee had discharged its onus, appears to be based on a superficial understanding of the law, and an uninformed one about the overall facts and circumstances of the case.

13. In view of the above reasons, the questions of law in these appeals are answered in favour of the revenue. The orders of the Assessing Officer are restored. The appeals are to succeed and are therefore allowed.

- 9 *CIT Vs N R Portfolio Pvt Ltd r20131 29 taxmann.com 291 (Delhi)/r20131 214 Taxman 408 (Delhi)/r20131 263 CTR 456 (Delhi)*

where Hon'ble Delhi High Court held that if AO doubts the documents produced by assessee, the onus shifts on assessee to further substantiate the facts or produce the share applicant in proceeding.

- 10 *CIT Vs Empire Builtech (P.) Ltd (366 ITR 110)*

where Hon'ble Delhi High Court held that u/s 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities.

- 11 *CIT Vs Focus Exports (P.) Ltd (51 taxmann.com 46 (Delhi)/r20151 228 Taxman 88)*

where Hon'ble Delhi High Court held that where in respect of share application money, assessee failed to provide complete address and PAN of certain share applicants whereas in case of some of share applicants, there were transactions of deposits and immediate

withdrawals of money from bank, impugned addition made under section 68 was to be confirmed

10 PCIT Vs Bikram Singh HTA No.55/20171 (Delhi)

where Hon'ble Delhi High Court held that even if a transaction of loan is made through cheque, it cannot be presumed to be genuine in the absence of any agreement, security and interest payment. Mere submission of PAN Card of creditor does not establish the authenticity of a huge loan transaction particularly when the ITR does not inspire such confidence. Mere submission of ID proof and the fact that the loan transactions were through the banking channel, does not establish the genuineness of transactions. Loan entries are generally masked to pump in black money into banking channels and such practices continue to plague Indian economy

11 Rick Lunsford Trade & Investment Ltd Vs CIT T20161 385 ITR 399 (Cal) (The assessee did not produce books of account or bank accounts or shareholders' register Eight out of fifty six persons from shareholders' list provided by assessee denied subscription. Remaining notices returned with endorsement "not known". Hon'ble Calcutta High Court held that unexplained share application money was rightly treated as assessee's income

12 Rick Lunsford Trade & Investment Ltd Vs CIT r2016-TIQL-207-SC-IT1 (Supreme Court)

where Hon'ble Supreme Court dismissed SLP upholding that it is open to the Revenue Department to make addition on account of alleged share capital u/s 68, where the assessee company has failed to show genuineness of its shareholders."

8. This appeal is filed in the year 2011 before us. The first hearing took place on 5.1.2012 where the representative of the assessee remained present and sought adjournment. Subsequently hearings are fixed for 11 times, every time assessee's

representative sought adjournment and in last two hearings, none appealed on behalf of the assessee. Today also despite notice none appeared on behalf of the assessee and therefore the issue is decided on merits of the case as per information available on record.

9. We have carefully considered the contention of the ld DR and perused the orders of the lower authorities. On careful examination of the whole facts, it is established that the assessee has obtained accommodation entry in the form of share capital of Rs. 1.94 crores from Shri Tarun Goyal, Chartered Accountant, and accommodation entry provider. The whole addition has been made by the ld AO with respect to the share allotment made to eight companies to whom share capital of Rs. 38.80 lakhs has been issued at a premium of Rs. 155.20 lakhs. This shows that assessee company has issued the shares of its company at premium of four times its face value i.e. shares of face value of Rs 10/- each are issued at a premium of Rs 40/- each. Shares of Rs 10/- are sold at Rs 50/- . The assessee is a private limited company admittedly carrying on the business of investment and finance. The assessee being a private limited company cannot invite the public for subscription of its shares as prohibited by the provisions of the companies act. Therefore, it is apparent that

Assessee Company has accepted the share application or allotted share of this company only to the known persons/ entities of the promoters of the company or to the existing shareholders. They cannot be wanderers. The appellant company has also not demonstrated before us the outstanding capabilities or the business of the assessee company, which can command the huge premium. Before the 1d CIT (A) or before the 1d AO the assessee could not show the business model to justify the premium of such a huge amount. Assessee also could not produce the directors of the new allottees companies before the 1d AO. Therefore, it is apparent that assessee company or its directors do not know are not acquaintances of the assessee company. Further, the investigation of the Income tax department elaborately discussed by the 1d AO shows that shares are allotted to the companies owned and controlled by Shri Tarun Goyal, CA, who is an accommodation entry provider. The directors of the applicant company are stated to be the peon, accountant, and receptionists of Tarun Goyal. This emphatically shows that premium collected by the assessee on issue of meager share capital of the assessee is not genuine. Even otherwise, the assessee has not attempted to show the genuineness of this premium sum. Furthermore, no business details of these eight

companies and the purpose for which these eight companies have made investment in the assessee's company were shown before the lower authorities. It is very surprising that unknown companies invest in unknown company without any business purposes and without any expectation of return or without any expectation of growth makes such a huge investment. In view of this, the whole investment is proved by the 1d AO not genuine purpose.

10. The 1d CIT (A) has deleted the addition with respect to following evidence shown to her. We deal with all the evidences shown based on which the 1d CIT (A) has deleted the additions.
11. In the findings at page no 14 of the order, The 1d CIT (A) has deleted the addition holding that assessee has shown
 - a. Copies of share application forms
 - b. PAN and AO details
 - c. Appellant companies bank statement
 - d. Details of share allotment in form no 2
 - e. share application money/share capital have been routed through banking channel

Based on above evidences 1d CIT (A) has held that assessee has proved identity, creditworthiness, and genuineness of the

shareholders. We examine each of these evidences and their relevance.

a. Copies of share application forms

These forms are the basic documents where the name and address of the shareholder, details of the number of shares applied, face value of the shares, premium of the shares, and signatories' details are mentioned. It is coupled with the Memorandum of Articles and Articles of Association of the applicant company. In the MOA and AOA, the certificate of incorporation is mentioned. This gives the basic details of the applicants of the shares. It is also between the issuer assessee company and share applicants. It does not prove creditworthiness or the genuineness of the transaction but merely gives some identification of the shareholder. Generally, in case of accommodation entries paper work is complete at the initial stage only. Even at the most the share application form shows the bank instrument stating cheque no , name of the bank, it does not show the bank account number of the assessee. It cannot be said that same is available in cheque because it has already been encashed and not in the possession of the assessee as well

as the shareholders. It goes back to the bank. Even the branch details are also not available. Therefore share application forms are not showing any details which can lead for verification of the necessary ingredient u/s 68 of the act.

b. Relevance of submission of Permanent Account Number

Permanent Account number is allotted by Income Tax Department if any company assessee submits the details such as name, address, nature of business et. along with the certificate of incorporation issued by the Registrar of Companies. On such application, the income tax department allots the same. The relevant form is form is 49 A of The income Tax Rules 1962. Even the name of the directors is also not required to be given by applicant. It is to be submitted to Registrar of companies and not to Income tax Department. Therefore, only evidence that is submitted by the company is the certificate of incorporation. Even the address of the company is also to be taken from that document submitted by the applicant before Registrar of companies. The nature of business submitted in form No 49A is also at the time of formation of company is taken as submitted to ROC. The Income tax Department neither has

any authority to verify even the address of the company. Therefore, even the whereabouts of the company is also not verified by the income Tax department. The current practice is also to be noted that at the time of formation of the company itself the Permanent account number is allotted to the company. Hence, it cannot be said that there is any iota of proof of even identification of the company when the transaction takes place Therefore Permanent Account number. AT the most when the company was formed the above documents serves as the identity of the company. When the assessee is required to discharge its onus u/s 68 of the Income Tax Act, assessee is required to prove the cotemporary identity of the depositor and not the identity when the company was formed. Income Tax Department has nothing to do with the details submitted before The Registrar of companies. Even other wise the assessee cannot rely on the forms submitted in other regulatory laws to shred its responsibility cast up on under the Income tax Act. What assessee has done under the other laws is restricted to the object and purposes of that law and not for the onus u/s 68 of the act.

c. Relevance of submission of form no 2

Form no 2 is mandated to be filed by the company whose shares are allotted pursuant to section 75 (1) of the companies Act 1956. The form merely shows the date of allotment and name and address of the subscriber to the shares and the nature of shares allotted. This form has nothing to do with the identity, creditworthiness, and genuineness of the allottees of those shares. There is no other details are made available in that form. As this form is to be filed by the assessee company by merely submitting the name and address of that shareholder along with the amount of shares allotted to the Registrar of companies. This form is also not submitted for scrutiny of the Income tax Department at the time of allotment. Merely filing a declaratory form in The companies Act 1956, which is formed for all together different purposes and object, which is not at all having the similar purposes and object as of the Income tax Act, does not have any relevance while testing of the identity, creditworthiness and genuineness of the depositor u/s 68 of the act.

d. Relevance of producing certificate of incorporation or website data of MCA

Hon'ble Delhi High court in 367 ITR 306 with respect to the certificate of incorporation and Permanent Account number as under:-

“14. Certificate of incorporation, PAN etc. are relevant for purchase of identification, but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor. It is in this context, the Supreme Court in CIT v. Durga Prasad More [1971] 82 ITR 540 (SC) had observed—

"Now we shall proceed to examine the validity of those grounds that appealed to the learned judges. It is true that the apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real. In a case of the present kind a party who relies on a recital in a deed has to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to

show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents."

e. Sanctity of the transaction entered in to by cheque

Now a days it is naïve to believe that the transactions entered in to through banking channel proves identity, creditworthiness, and genuineness of the transactions. The many reason are that in cash assessee could not have accepted such a huge amount. Necessarily accommodation entries are an exercise of introducing unaccounted money in to the books of accounts of the assessee without payment of taxes and therefore to give it a colour of genuinity the transactions are entered through banking channel. The accommodation entries are only with the object of camouflaging unaccounted money as tax paid and genuine money. One of the ways to do this is routing them in the books of accounts of the assessee through cheque.

Therefore, by very nature generally accommodation entries are introduced in the books by banking channels.

f. Bank statement of appellant

Bank statement of appellant company will show the banking transactions entered in to by the company. That is not the dispute at all the money has been deposited in the bank account of the assessee company therefore naturally such entries would be shown in those bank account. However, the question is to whom this money belongs to, whether such person is credit worthy of depositing such sum and whether the depositing such sum is a genuine transfer of funds as share capital. The bank statement of the appellant does not prove it. Further, the bank statements of the shareholder applicants are not furnished.

g. Non deposit of cash in the bank accounts of the shareholders

Certain times it is said that there is no deposit of cash in the bank account of the depositor shareholders prior to issue of cheques of share capital to the assessee company and further transactions are through banking channel, addition cannot be made u/s 68 of the act. There is no law shown to us that transactions entered in to by the

banking channel are genuine. No such provision was found by us in The Income Tax Act too. Equally, we also could not find any provision of the law either under the Income Tax Act or under any other law that when the cash is deposited in the bank account of depositors shareholders the transactions become non genuine. Both the propositions cannot be looked in to isolation but should be seen coupled with other circumstances of the whole transactions. It is also equally important that cash is routed through many bank accounts by the entry operators to build the bank balance in the parties and then brought in to the banking transactions in the books of the depositor companies. Therefore generally the cash is never deposited in the bank account of the shell companies but are routed through various other accounts . Shell companies also credit the bank balance by selling of investments in other beneficiary companies to another shell company and generate bank balance through banking channel in their bank accounts. Therefore it is necessary to prove genuineness of the transactions, sources of the money in the bank account of the depositor with the

business of the investors of the shareholder companies.

Apparently, in this case assessee failed to prove it.

12. Therefore we hastened to add that production of one documents or non production of one documents cannot be used against or for the assessee while deciding the case of the assessee so far as the issue of introduction of unaccounted money in the guise of share capital and its taxation u/s 68 of the act. The whole transaction needs to be examined after keeping all the circumstances in perspective while deciding the issue.
13. The Ld CIT (A) has not provided any answer in order that despite the following findings of the ld AO how the issue of share capital to non descript bogus companies operated by accommodation entry provider Mr. Tarun Goyal is a genuine transaction:-

- a. The signatures of Sh. Tarun Goyal, Sh. Parmod Kumar, Sh. Harpreet Singh and Ritu Saxena on these affidavits signed and notarized on 28/10/2010 and submitted in this office on 10/11/2010, do not match with their signatures on their statements recorded on oath during and after the search operations by the Investigation Wing of the Income Tax Department. Therefore strong doubt

was cast on the affidavits itself by ld AO. Assessee failed to show any material on that aspects.

- b. It is strange that though the stamp papers were purchased as long back as 13/03/2007, the same were signed on 28/10/2010 i.e. after a gap of almost three and a half years. No explanation was provided by the assessee.
- c. All the affidavits were attested/notarized by Sudha Shankar Mishra on 28/10/2010, i.e. all the directors presented themselves before the Notary Public, Sudha Shankar Mishra on 28/10/2010, for signing the affidavits.
- d. During the course of search it was established that Sh. Tarun Goyal had floated many companies for the purpose of providing accommodation entries.
- e. All the companies floated by Sh. Tarun Goyal are not carrying out any genuine activity and are merely being used to provide accommodation entries. Hence, all the companies of Sh. Tarun Goyal are 'bogus'.
- f. Further no evidences could be placed that how the assessee company invited these shareholders to make an investments in assessee company without any

substances. No evidences led before lower authorities about any business case/ justification for that. No subsequent returns or appreciation in the share value of the assessee company was shown to us. It is simply a façade to introduce unaccounted money in the garb of share capital.

14. Further apparently the shareholder/ share applicants in the assessee company are alleged to be bogus. This allegation of the ld AO was based on various statements of the directors of the company who provided share application. On this allegation, there is stoic and deafening silence by the assessee before the assessing officer. None of them was produced after repeated opportunities and summons by the ld AO. This proves that the evidences collected by the ld AO stares at the face of the assessee company that shareholders are shell companies. Therefore higher burden lies in the case of the assessee private limited company to establish the creditworthiness of the shareholders and genuineness of the transaction of issue of share at a premium. Assessee miserably failed to do so. Hon Gujarat High court held in case of Pravinkumar M Sanghvi V ITO 404 ITR 601 that When the assessee has maintained stoic silence on being told

about these lenders being alleged to be shell entities, it cannot be believed that these are genuine business transactions.

15. Now we come to various decisions cited before 1d CIT (A). On the issue of share application money whether can be added u/s 68 of the act, There is plethora of judicial precedents where the additions u/s 68 are contested by the assessee. The honourable Delhi High court in 367 ITR 306 has compartmentalized them in two segments in general as under :-

“13. As we perceive, **there are two sets of judgments and cases, but these judgments and cases proceed on their own facts.** In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholders, bank account from which payment was made, the fact that payments were received thorough banking channels, filed necessary affidavits of the shareholders or confirmations of the directors of the shareholder companies, but thereafter no further inquiries were conducted. **The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money.**

The assessing officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances. The primary requirements, which should be satisfied in such cases is, identification of the creditors/shareholder, creditworthiness of creditors/shareholder and genuineness of the transaction. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct.”

16. Therefore the principles laid down by the courts are on set of those facts and circumstances, moments there is slightest change in the facts of the case such principles becomes non-applicable. Further when the issue of share capital is shrouded by the involvements of accommodation entry providers, who are not traceable by the Income tax department when called by issue of summons and also by the assessee company who is enjoying the money, it is apparent that to whom the money belongs to. The preponderance of probabilities shows that Share capital and Share premium are camouflaged to introduce the unaccounted money in the books of accounts

without payments of taxes. These facts in its entirety show that assessee has not proved the genuineness of the shares allotted. This case before us falls in the second category of cases noted in para no. 13 by Hon Delhi high court in 367 ITR 306.

17. Further, the ld CIT (A) has held that assessee is not supposed to prove the source of the source of the funds. In the present case even the source of the original funds is also not shown from which bank account the funds have come and what is the nature of the funds available with the share applicants. Assessee neither furnished the bank account statement nor the Income tax Return of those shareholders.
18. Further with respect to the various affidavits rejected by the ld AO, the Hon Delhi High court in case of CIT v. Nova Promoters and Finlease P. Ltd. [2012] 342 ITR 169 (Delhi) has held as under :-

“26. In the light of the above facts, the evidentiary value of the affidavits is open to serious doubts. The Indore Bench of the Madhya Pradesh High Court in the case of Smt. Gunwantibai Ratilal v. CIT [1984] 146 ITR 140 (MP) explained the judgment of the Supreme Court in the case of Mehta Parikh and Co. v. CIT [1956] 30 ITR 181 (SC) and held that the said decision cannot be considered to have laid down the proposition that

unless the deponents of the affidavits are cross-examined, the affidavits cannot be rejected. It was explained that the decision of the Supreme Court lays down "that if there is no material whatsoever on record for doubting the veracity of the statements made in the affidavits and if the deponents have also not been subjected to cross-examination for bringing out the validity of their statements, then the Tribunal would not be justified in doubting the correctness of the statement made by the deponents in the affidavits." Thus, the affidavits need not be accepted as reliable when there is enough material on record to doubt the veracity of the transaction. In such a case it cannot be said that the affidavits can be rejected only after cross examination. In the present case, there is enough material on record to negate the claim of the genuineness of the transactions and in the light of over-whelming material, the plea that the Assessing Officer should not have rejected the affidavits without cross-examination of the deponents has no force. The said exercise has resulted in complete miscarriage of justice."

19. Natural Justice is the necessary ingredient of any judicial process. In this case the ld AO has used the statement of Shri

Tarun Goyal and his accomplices for making the addition. Question that may arise is whether assessee was granted proper opportunity to explain its stand. We are mindful of this. The LD AO has given many opportunities after stating full facts to the assessee on various occasion during the assessment proceedings. Assessee did not rebut it. Further before us also the case was fixed for hearing more than 10 times, ld AR of assessee always sought time. Not a whisper was raised before ld AO or ld CIT (A) nor before us about the copy of statement of Mr Tarun Goyal and others. Over and above this, assessee has produced the confirmation signed by Mr Tarun Goyal and all others whose statements are used by the ld AO. Furthermore, the assessee has submitted the affidavits of those persons. Assessee has never requested for cross-examination of those persons. Assessee is a private limited company, shareholders are necessarily known to the company, and there is no whisper about any dispute between them, assessee producing confirmation, and affidavits of those persons, no request for cross-examination ever made, and no request for statement of those persons ever made. In these circumstances, we are of the view that complete opportunity was granted to the assessee at all times, but assessee does not want to avail it for reason best known to it.

20. We also draw support from decision of Honourable Delhi High court in 342 ITR 169 where in it has been held that :-

“32. The Tribunal also erred in law in holding that the Assessing Officer ought to have proved that the monies emanated from the coffers of the assessee-company and came back as share capital. Section 68 permits the Assessing Officer to add the credit appearing in the books of account of the assessee if the latter offers no explanation regarding the nature and source of the credit or the explanation offered is not satisfactory. It places no duty upon him to point to the source from which the money was received by the assessee. In *A. Govindarajulu Mudaliar v. CIT* [1958] [34 ITR 807](#) (SC) this argument advanced by the assessee was rejected by the Supreme Court. Venkatarama Aiyar J., speaking for the court, observed as under (at page 810) :

"Now, the contention of the appellant is that assuming that he had failed to establish the case put forward by him, it does not follow as a matter of law that the amounts in question were income received or accrued during the previous year, that it was the duty of the Department to adduce evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of

such evidence, it is argued, the finding is erroneous. We are unable to agree. Whether a receipt is to be treated as income or not, must depend very largely on the facts and circumstances of each case. In the present case, the receipts are shown in the account books of a firm of which the appellant and Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs. 80,000 and the other being receipt of Rs. 42,000 from business of which he claimed to be the real owner. When both these explanations were rejected, as they have been it was clearly open to the Income-tax Officer to hold that the income must be concealed income. There is ample authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the accounting year, the Income-tax Officer is entitled to draw the

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inference that the receipt are of an assessable nature. The conclusion to which the Appellate Tribunal came appears to us to be amply warranted by the facts of the case. There is no ground for interfering with that finding, and these appeals are accordingly dismissed with costs." (emphasis supplied)

Section 68 recognizes the aforesaid legal position. **The view taken by the Tribunal on the duty cast on the Assessing Officer by section 68 is contrary to the law laid down by the Supreme Court in the judgment cited above. Even if one were to hold, albeit erroneously and without being aware of the legal position adumbrated above, that the Assessing Officer is bound to show that the source of the unaccounted monies was the coffers of the assessee, we are inclined to think that in the facts of the present case such proof has been brought out by the Assessing Officer.**

The statements of Mukesh Gupta and Rajan Jassal, the entry providers, explaining their modus operandi to help the assessee's having unaccounted monies convert the same into accounted monies affords sufficient material on the basis of which the Assessing Officer can be said to have discharged the duty. The statements refer to the practice of taking cash and issuing cheques in the guise of subscription to share capital, for a consideration in the form of commission. As already pointed out, the names of several companies which figured in the statements given by the above persons to the Investigation Wing also figured as share applicants subscribing to the shares of the assessee-company. These

constitute materials upon which one could reasonably come to the conclusion that the monies emanated from the coffers of the assessee-company. The Tribunal, apart from adopting an erroneous legal approach, also failed to keep in view the material that was relied upon by the Assessing Officer. The Commissioner of Income-tax (Appeals) also fell into the same error. If such material had been kept in view, the Tribunal could not have failed to draw the appropriate inference.”

“39. The ratio of a decision is to be understood and appreciated in the background of the facts of that case. So understood, it will be seen that where the complete particulars of the share applicants such as their names and addresses, Income-tax file numbers, their creditworthiness, share application forms and share holders' register, share transfer register, etc., are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under section 68 and the remedy open to the Revenue is to go after the share applicants in accordance with law. We are afraid

that we cannot apply the ratio to a case, such as the present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed "accommodation entry providers", whose business it is to help assesseees bring into their books of account their unaccounted monies through the medium of share subscription, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the involvement of the assessee in such modus operandi is clearly indicated by valid material made available to the Assessing Officer as a result of investigations carried out by the Revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a pre-meditated plan—a smokescreen—conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio. In our understanding, the ratio is attracted to a case where it is a simple question of whether the assessee has discharged the burden placed upon him under section 68 to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In

such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him. The case before us does not fall under this category and it would be a travesty of truth and justice to express a view to the contrary.”

The facts of the case before us are more or less similar to the issue decided by Hon High court. [Underline supplied by us]

21. The Id CIT (A) has rest her decision solely based on the Decision of Lovely exports P Ltd (Supra). The hon. High court in 367 ITR 306 has considered the above h decision and held as under :-

“16. In the said case, the Division Bench had also examined the decision of the Supreme Court in Lovely Exports (P.) Ltd. (supra) and other cases in which the assessee had succeeded. It was noticed that in the case of Lovely Exports (P.) Ltd. affidavits/confirmations of shareholders were filed and income tax record numbers of the shareholders were made available, but the Assessing Officer, who had sufficient time, failed to carry out inquiry and examination. reference was made to the observations in Divine Leasing (supra) to the effect that there

cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment as share capital must be firmly excoriated by the Revenue, but when there is preponderance of evidence to show absence of culpability, the assessee should not be harassed by the Revenue. A delicate balance must be maintained between the two interests. In Divine Leasing (supra), the following proposition was elucidated:—

"In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. The assessed has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the creditworthiness or financial strength of the creditor/subscriber. (4) If relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Share Application Forms, Share Transfer Register etc. it would constitute acceptable proof or acceptable Explanation by the assessed. (5) The Department would not be justified

in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessed nor should the AO take such repudiation at face value and construe it, without more, against the assessed. (7) The Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation."

22. Further, in para No. 18 Hon'ble High Court with respect to the decision of Lovely Exports Pvt. Ltd has held as under:-

"18. Lovely Exports (P.) Ltd. (supra) was also considered and distinguished in N.R. Portfolio (P.) Ltd. (supra) and it was held that the entire evidence available on record has to be considered, after relying upon CIT v. Nipun Builders and Developers [2013] 350 ITR 407/214 Taxman 429/30 taxmann.com 292 (Delhi), wherein it has been held that a reasonable approach has to be adopted and whether initial onus stands discharged would depend upon facts and circumstances of each case. In case of private limited companies, generally persons known to directors or

shareholders, directly or indirectly, buy or subscribe to shares. Upon receipt of money, the share subscribers do not lose touch and become incommunicado. Call money, dividends, warrants, etc. have to be sent and the relationship remains a continuing one. Therefore, an assessee cannot simply furnish some details and remain quiet when summons issued to shareholders remain un-served and uncomplied. As a general proposition, it would be improper to universally hold that the assessee cannot plead that they had received money, but could do nothing more and it was for the Assessing Officer to enforce shareholders' attendance in spite of the fact that the shareholders were missing and not available. Their reluctance and hiding may reflect on the genuineness of the transaction and creditworthiness of the creditor. It would be also incorrect to universally state that an Inspector must be sent to verify the shareholders/subscribers at the available addresses, though this might be required in some cases. Similarly, it would be incorrect to state that the Assessing Officer should ascertain and get addresses from the Registrar of Companies' website or search for the addresses of shareholders themselves. Creditworthiness is not proved by showing issue and receipt of a cheque or by furnishing a copy of statement of bank account,

when circumstances requires that there should be some more evidence of positive nature to show that the subscribers had made genuine investment or had, acted as angel investors after due diligence or for personal reasons. The final conclusion must be pragmatic and practical, which takes into account holistic view of the entire evidence including the difficulties, which the assessee may face to unimpeachably establish creditworthiness of the shareholders.”

23. Further with respect to the argument of examination of “source of source”, while examining cash credit u/s 68 of the act , the Hon Calcutta high court in case of CIT v. Sophia Finance Ltd. [1994] 205 ITR 98 (Delhi) at page no 104 and reiterated by Hon Calcutta High court in Rajmandir Estates Pvt. Ltd. v. Principal CIT [2016] 386 ITR 162 (Cal) has held as under :-

“Secondly, depending upon the facts of each case, the Income-tax Officer may even be justified in trying to ascertain the source of the depositor, assuming he is identified, in order to determine whether that depositor is a mere name-lender or not.”

Therefore, in such a case where the investors are merely name lenders AO is duty bound to enquire the source of source of depositors. Assessee has failed to show it in this case.

24. On careful consideration of assessment order, it is apparent that Id AO has given a detailed reason for making the addition. He has shown that the affidavits of the depositor is the self serving evidence, the directors of the depositor companies are peon, accountant and receptionist of Mr. Tarun Goyal, a chartered accountant, who operated only as an accommodation entry provider. Further companies who invested could not prove their substance and the company who allotted the shares also could not shows its business case with respect to the share allotment at such a huge premium. Further failure to produce directors of shareholder companies despite repeated requests and also non-service of summons to the parties at the address given and providing historical evidences which were generally obtained at the time of obtaining accommodation entries, shows on preponderance of probabilities shows that All these facts cumulatively proves culpable mind of the assessee in the whole transaction.

25. Recently, coordinate bench in case of 96 Taxmann.com 602 in case of Pee Aar Securities Ltd. v. Deputy Commissioner of Income-tax, Circle-14(1), New Delhi has held as under:-

“28. We are unable to lay hands on any of the decisions of Hon'ble jurisdictional High Court which is contrary to the

approach so adopted in this judicial precedent. Let us, in this light, revert to the facts of the case before us. The assessee before us is a private limited company, which is, by law, prohibited from offering its securities for subscription by general public. It cannot, therefore, be really open to the assessee to say that we have no clue about who the subscribers to the share capital are; these cannot be rank outsiders or walk in subscribers- as perhaps in the cases of public limited companies. Yet, all that the company has to offer, to establish genuineness of transactions of subscribing to the shares, are the bank statements. The assessee is not able to produce the brains behind these companies and the documents with respect to their financials either. As for the other documents, these documents have to be there for issuance of share capital anyway- genuine subscription or not so genuine subscription. Genuineness of a transaction cannot be demonstrated on the basis of these documents. The assessee has not been able to produce the principal officers of these entities, but then, given the way the facts about these entities have unfolded, the reasons for the limitations of the assessee are not difficult

to seek. As per decisions of this Tribunal filed by the assessee on his own, these entities, as indeed other entities in Tarun Goyal group, were never involved in any genuine business anyway and were only in the business of providing accommodation entries. The shell entities, like these two entities before us, have every semblance of a genuine business- its legal ownership by persons in existence, statutory documentation as necessary for a legitimate business and a documentation trail as a legitimate transaction would normally follow. The only thing which sets it apart from a genuine business entity is lack of genuineness in its actual operations. The operations carried out by these entities, are only to facilitate financial manoeuvring for the benefit of its clients, or, with that predominant underlying objective, to give the colour of genuineness to these entities. These shell entities, which are routinely used to launder unaccounted monies, are a fact of life, and as much a part of the underbelly of the financial world, as many other evils. Even a layman, much a Member of this specialized Tribunal, cannot be oblivious of these ground realities. It would, therefore, not really be appropriate for

us to be swayed by the documents like PAN cards, board resolutions passed by these entities, copies of distinctive share certificates, copies of letter from these two entities confirming the fact of share subscriptions and extracts from the minutes of meeting of the directors. As for the bank statements of these companies, as rightly pointed out by the learned Departmental Representative, these statements show the lack of genuineness. So far as Mahanivesh's bank statement with IDBI Bank is concerned, what is filed before us is the page containing entries from 1st June 2004 to 30th June 2004. On 1st June, this bank statement shows a credit balance of Rs 46,681. On 1st June, there is a credit of Rs 60,000 and the immediately following day, there is a withdrawal of Rs 50,000. On 8th June, there is a credit of Rs 10,00,000, and on the same day a debit of the same amount is also made. On 11th June, there are credits of Rs 20,00,000 and on the same day a debit of Rs 20,00,000 is given showing payment to the assessee. On 22nd June, there are credits of Rs 19,97,995 and, on the same day, another debit of Rs 20,00,000 is made showing payment to some other company. On 25th June and 28th June, it is the

same story again though the amounts or debits and credits are Rs 15,00,0000 and Rs 10,00,000 respectively. As regards the other bank account of Geefcee in ABN Amro Bank is concerned, the situation is no better. On 3rd June, i.e. opening day of this bank statement, there is a credit balance of Rs 5,742.32. On June 9, there are deposits of Rs 20,10,000 and, on the same day, a payment of Rs 20,15,000 is made leaving a balance of less than Rs 1,000. On 11th June, there are deposits of Rs 10,00,000 and on the same day, there is a payment of Rs 10,00,000. On 16th June again, it is the same story but the amount is now Rs 20,00,000. On other dates in the ABN Amro Bank statement, as given to us, is the same story. What do we conclude from these statements? The overnight balance in the bank accounts are of small amounts and the payments made from these accounts are almost at the time of making payment are transferred from other sources, for which no explanation is available. This is typical of a situation in which the bank accounts are used as a conduit to launder the ill gotten money. It is impossible for even a layman, leave aside Members of this specialized Tribunal, to come to the conclusion that these

transactions represent bonafide investment transactions. It is also important to note that there is nothing else about the genuine business activities, even if any, of the investor companies, about the backdrop of the promoters about the relationship these people had with the companies, and we are to take the call on genuineness only on the basis of these two bank statements for a limited period. We are unable to come to a positive conclusion about the bonafides of the investors on the basis of these bank statement, and quite to the contrary to the claim made by the assessee, these statements show lack of bonafides. Hon'ble Supreme Court has, in the case of Durga Prasad More (supra), observed that "human minds may differ as to the reliability of a piece of evidence but in that sphere the decision of the final fact finding authority is made conclusive by law". This faith in the Tribunal by Hon'ble Courts above makes the job of the Tribunal even more onerous and demanding and, in our considered view, it does require the Tribunal to take a holistic view of the matter, in the light of surrounding circumstances, preponderance of probabilities and ground realities, rather than being swayed by the not so

convincing, but apparently in order, documents and examining them, in a pedantic manner, with the blinkers on. We may also add that the phenomenon of shell entities being subjected to deep scrutiny by tax and enforcement officials is rather recent, and that, till recently, little was known, outside the underbelly of financial world, about modus operandi of shell entities. There were, therefore, not many questions raised about genuineness of transactions in respect of shell entities. That is not the case any longer. Just because these issues were not raised in the past does not mean that these issues cannot be raised now as well, and, to that extent, the earlier judicial precedents cannot have blanket application in the current situation as well. As Hon'ble Supreme Court has observed in the case in *Mumbai Kamgar Sabha v. Abdulbahi Faizullabhai* AIR 1976 SC 1455 "It is trite, going by Anglophonic principles that a ruling of a superior court is binding law. It is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu we cannot impart eternal vernal value to the decisions,

exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark". Genuineness of transactions thus cannot be decided on the basis of inferences drawn from the judicial precedents in the cases in which genuineness did come up for examination in a very limited perspective and in the times when shell entities were virtually non-existent. As the things stand now, genuineness of transactions is to be examined in the light of the prevailing ground realities, and that is precisely what we have done. We are of the considered view that there is nothing to establish genuineness of the share subscription transactions on the facts of this case. The assessee does not know anything about these companies or these persons. The assessee has no documents about their financial activities or their balance sheets. The assessee is a private limited company and these entities could not have therefore been rank outsiders like walk in investors and yet the assessee does not throw enough

light on these entities. A lot of emphasis is placed on bank transactions, on PAN cards and on board resolutions but all these factors have to be present in the cases of shell companies involved in money laundering as well. Nothing, therefore, turned on these documents so far as genuineness aspect is concerned. It is also a settled legal position that the onus of the assessee, of explaining nature and source of credit, does not get discharged merely by filing confirmatory letters, or demonstrating that the transactions are done through the banking channels or even by filing the income tax assessment particulars. In the case of CIT v. United Commercial and Industrial Co (P.) Ltd [1991] 187 ITR 596/56 Taxman 304 (Cal) , Hon'ble Calcutta High Court has held that "it was necessary for the assessee to prove prima facie the identity of creditors, the capacity of such creditors and lastly the genuineness of transactions". Similarly, in the case of CIT v. Precision Finance (P.) Ltd [1994] 208 ITR 465/[1995] 82 Taxman 31 (Cal), it was observed that "it is for the assessee to prove the identity of creditors, their creditworthiness and genuineness of transactions". There is thus no escape from proving genuineness of a

transaction. The assessee has failed to do so. We, therefore, confirm the addition in respect of alleged share subscriptions received from these two companies- namely Mahanivesh and Geefcee. As regards the addition in respect of commission, we have seen that there is a categorical finding that these entities were arranging the accommodation entries on the basis of 2.5% commission. We, therefore, confirm this addition as well.

29. Before parting with the matter, we may briefly deal with the contention of the assessee that since amendment in Section 68, with respect to addition for unverified share capital subscription, was effective from 1st April 2012, it can only be prospective and it will not apply for this assessment year. On a conceptual note, every specific amendment to the law, particularly when it is disadvantageous to the taxpayers and is enacted ex abundanti cautela (as a measure of abundant caution) is generally, fraught with, what tax academicians and policymakers term as, the risk of its 'kill effect'. The risk is that when a specific provision, to make the things clear and beyond any doubt, is enacted with respect to a particular point of time and a particular consequence is

envisaged by the provision, interpretation of the law or treaty will invariably be inclined to draw to the inference that no such consequence was envisaged by the legislature or the treaty prior to the amendment coming into force. That is a common and fairly well accepted approach. There is, however, a rider. The rider is that even on the first principles and in a situation in which a binding judicial precedent or judicial analysis of the pre-amendment legal has already come to the same conclusions, as indicated by the specific amendment as a measure of abundant caution, such a "kill effect" is ruled out. That precisely is the situation before us. In such cases, the impact of amendment remains confined to the areas on which either (i) on the areas on which, with the help of pre- amendment provisions, the judicial conclusions are at variance with the conclusions arrived at with the help of amendment; or (ii) such areas have remained intact from the judicial precedent. Viewed thus, merely because there is a specific amendment to Section 68 with effect from 1st April 2012, it does not affect the interpretation of Section 68 on the basis of the binding

judicial precedents, de horse this amendment, and the first principles.

30. In view of these discussions, as also bearing in mind entirety of the case, we are unable to see any merits in the grievances raised by the assessee. The conclusions arrived at by the learned CIT(A) are correct and donot call for any interference. While we have carefully perused all the judicial precedents cited at the bar, it is not possible to specifically deal all of these precedents as all of them are not really relevant in the perspective of our approach or are somewhat repetitive in effect.”

26. Honourabel Supreme court in case of Sumati dayal [214ITR 801] with respect to provision of section 68 of the act has held that :-

“It is no doubt true that in all cases in which a receipt is sought to be taxed as income, the burden lies upon the Department to prove that it is within the taxing provision and if a receipt is in the nature of income, the burden of proving that it is not taxable because it falls within an exemption provided by the Act lies upon the assessee. (See Parimisetti Seetharamamma [1965] 57 ITR 532 at page 536). But, in view of section 68 of the Act, where any sum is found credited in the books of the assessee for any previous year,

the same may be charged to income-tax as the income of the assessee of that previous year if the explanation offered by the assessee about the nature and source thereof is, in the opinion of the Assessing Officer, not satisfactory. In such a case there is, prima facie, evidence against the assessee, viz., the receipt of money, and if he fails to rebut it the said evidence being unrebutted, can be used against him by holding that it was a receipt of an income nature. While considering the explanation of the assessee the Department cannot, however, act unreasonably. (See Sreelekha Banerjee's case [1963] 49 ITR (SC) 112 at page 120).”

It is further held that:-

“In our opinion, the majority opinion after considering the surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winnings from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence. “

In the present case assessee before lower authorities could not rebut the relationship of the assessee, a private limited company with Shri Tarun Goyal and his accomplices in making investment at such a huge premium. The surrounding circumstances and test of Human probabilities also shows that there is no reason to invest those companies in the shares of the assessee company at such a huge premium. Therefore the ratio laid down by the Hon Supreme court squarely applies in the case of assessee.

27. Based on above, we are of the opinion that the ld CIT (A) has deleted the addition based on irrelevant documents, which does not prove the identity, creditworthiness, and genuineness of the shareholders/transactions. Therefore in view of above facts we reverse the order of the ld CIT (A) deleting the addition u/s 68 of the act of Rs 1,94,00,000/- from 8 companies whose creditworthiness and genuineness of the transaction of issue of shares at a high premium and restore the order of the ld AO. Accordingly ground no 1 of the appeal of the ld AO is allowed.

28. As the accommodation entries are taken from Mr Tarun Goyal, CA, who has confirmed the rates of accommodation entries, we find no infirmity in the order of the ld AO in making addition on that basis where the assessee could not prove that no such

expenditure is incurred. Accordingly, addition of Rs 97,000/- of unaccounted expenditure is also confirmed. Ground No 2 of the appeal is allowed.

29. In the result, appeal of the ld AO is allowed.

Order pronounced in the open court on 28/09/2018.

-Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 28/09/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating member	
Date on which the typed draft is placed before the other member	
Date on which the approved draft comes to the Sr. PS/ PS	
Date on which the fair order is placed before the dictating member for pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	
date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	