

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.1322/Del/2015  
Assessment Year: 2010-11

Anju Chawla A-7, Nirman Vihar Delhi-110092 PAN AALPC1212B	Vs	ACIT Central Circle-IX, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Ved Jain, Advocate Sh. Kislaya, Parashar, Advocate
Respondent by	Sh. N. K Bansal, Sr. DR

Date of hearing:	27/09/2018
Date of Pronouncement:	12/10/2018

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 15.12.2014 of the CIT(A)-27, New Delhi relating to A. Y. 2010-11.

2. The first issue raised by the assessee in the grounds of appeal relates to the orders of the CIT(A) in confirming addition of an amount of

Rs.1,53,62,570/- made by the Assessing Officer on account of unexplained loan.

3. Facts of the case, in brief are that the assessee is an individual and derives income from house property, capital gain and income from other sources. A search and seizure operation u/s 132 of the Income Tax Act 1961 alongwith survey operations u/s 133 A of the Income Tax Act 1961 were undertaken at various residential and business premises of Aseem kumar Gupta & Group and other beneficiary group of cases on 26.03.2010. Shri Aseem Kumar Gupta was providing accommodation entries to several beneficiaries with the help of several bank accounts opened in the name of several proprietary concerns and companies in which either he himself, or his employees, were director or proprietor. The search & survey covered the premises of Sh. Aseem Kumar Gupta, Several associates/ employees of Sh. Aseem Kumar Gupta, Several Intermediary companies & some beneficiaries including that of the assessee. The assessee filed return of income on 17.10.2011 declaring total income of Rs.8,45,910/-.

4. During the course of assessment proceedings, the Assessing Officer noticed that a sum of Rs. 1,53,62,570/- was credited in the books of the appellant which comprised of loan of Rs. 1,47,50,000/- said to have been received from M/s Ganpati Fincap Services Pvt. Ltd. and interest of Rs.6,12,570/- credited on account of the said loan. The Assessing Officer observed that during the course of assessment proceedings u/s 153C in the case of M/s Ganpati Fincap Services Pvt. Ltd. it was established that the said company did not have any real business activity and was a fictitious entity fully controlled by Sh. Aseem Kumar Gupta for providing accommodation entries as admitted by him in his statement recorded on 26.03.2010 at the time of search and survey and again on 23.11.2011 during the course of assessment proceedings. The Assessing Officer incorporated in the assessment order the relevant portion of the statement of Sh. Aseem Kumar Gupta

recorded on 26.03.2010 during the course of survey u/s 133A of the I.T. Act, 1961 at 2D, DDA Flats Gulabi Bagh, New Delhi. The Assessing Officer also incorporated in the assessment order the relevant portion of the statement of Sh. Aseem Kumar Gupta recorded u/s 131 on 23.11.2011 wherein he again admitted to have provided accommodation entries to several beneficiaries with the help of bank accounts opened in the name of several proprietorship concerns and companies owned and fully controlled by him. The Assessing Officer also mentioned in the assessment order the names of those proprietary concerns which are owned and fully controlled by Sh. Aseem Kumar Gupta, in which cash received from the beneficiaries was being deposited and also the names of some of the private limited companies which were also owned and fully controlled by Sh. Aseem Kumar Gupta for using as intermediaries for layering cash and cheques issued to various beneficiaries. In his statement dated 23.11.2011 recorded u/s 131 of the I T Act, 1961 Sh. Aseem Kumar Gupta admitted to have used the bank accounts of all the entities as mentioned in the assessment order including that of Ganpati Fincap Services Pvt. Ltd.

5. The Assessing Officer observed that plenty of material was seized from the office premises of Sh. Aseem Kumar Gupta at 2-D, Gulabi Bagh, which established that several companies and proprietorship concerns owned by Sh. Aseem Kumar Gupta or controlled by him were being managed and operated from there for providing accommodation entries. The Assessing Officer enumerated such seized material in the assessment order as under:

"Cash deposits slips: Some cash deposit slips annexurized as Annexure A-7 have been seized from 2D, MIG DDA Flats, Gulabi Bagh, Delhi-07. These are evidences that establish that cash has been deposited into accounts of various entities owned or controlled by Sh. Aseem Kumar Gupta such as Surya

Enterprises, Maharaja Enterprises, S. R. Securities, M/s S. G. Portfolio Pvt. Ltd., Shhiva Traders, M.K. Trading Co, M/s Ganpati Fincap Services Pvt. Ltd., Aseem Kumar Gupta, M/s Chotti Leasing & Finance Pvt. Ltd. Surya Enterprises, ABM Traders etc.

Annexure A-8, A-9 and A-10 seized from 2D, MIG DDA Flats, Gulabi Bagh, Delhi-07 that contains signed cheque books in which name of the payee is blank. Such cheques have been signed by M/s S.G. Portfolio Pvt. Ltd. M/s Ganpati Fincap Services Pvt. Ltd. Sh. Aseem Kumar Gupta on behalf of M/s Shey Infradevelopers Pvt. Ltd. Sh. Aseem Kumar Gupta on behalf of Maya Jail Securities, and Sh. Aseem Kumar Gupta on behalf of M/s Sushre Securities Pvt. Ltd. Sh. Aseem Kumar Gupta in his individual capacity, ABM Tradres, KMC Portfolio Pvt. Ltd., M/s Chotti Leasing & Finance Pvt. Ltd. M/s SAM Portfolio Pvt. Ltd. SR Securities.

Annexures A-21, A-22 to A-33, A35 to A37 seized from 2D, MIG DDA Flats, Gulabi Bagh, Delhi- 07 that contains details of accommodation entries. These details include - date, company name, party name, deposit amount, withdrawal amount, balance. There is a direct one to one correlation between deposits and withdrawals mentioned against the names of most of the parties. There is temporal nexus between deposits and withdrawals.

Letter head/ letter pads of M/s Ganpati Fincap Services Pvt. Ltd. M/s Moderate Credit Corporation Pvt. Ltd. M/s Ravnet Soutions Pvt. Ltd. M/s Chotti Leasing & Finance Pvt. Ltd.

KMC Portfolio Pvt. Ltd. M/s. Shushree Securities Pvt. Ltd. M/s. SAM Portfolio Pvt. Ltd. placed as annexure A-14 were seized during the course of search at premises.

Stumps belonging to various entities found at 2D, MIG DDA Flats, Gulabi Bagh, Delhi-07 whose impressions appear at page numbers 1-6 of Anneuxre A-14. These stamps are in the names of various entities, some of which are listed below-

M/s S.G. Portfolio Pvt. Ltd., M/s Shushre Securities Pvt. Ltd. M/s SAM Portfolio Pvt. Ltd. M/s Ravnet Solutions Pvt. Ltd., Chotti Leasing and Finance (P.) Ltd., Suma Finance & Investment Ltd., now known as M/s Moderate Credit Corporation Pvt. Ltd. M/s Ganpati Fincap Services Pvt. Ltd., Mayajaal Securities Pvt. Ltd. etc."

6. On the basis of the statements recorded of Sh. Aseem Kumar Gupta, material seized during the search and survey operation, fund flow chart etc. the Assessing Officer observed that undoubtedly and evidently it was established that Sh. Aseem Kumar Gupta was running the business of providing of accommodation entries with the help of entities owned by him or used and fully controlled by him and M/s Ganpati Fincap Services Ltd. was one of such intermediary company used by Sh. Aseem Kumar Gupta for the purposes of providing accommodation entries.

7. The Assessing Officer also observed that Sh. Aseem Kumar Gupta provided a list of beneficiaries in which the name of the assessee, her husband and their HUF was clearly mentioned as beneficiary alongwith amounts of benefit derived. The Assessing Officer observed that in list of beneficiaries the name of M/s Ganpati Fincap Services Pvt. Ltd. was mentioned against the name of the assessee as an intermediary company used for providing accommodation entry to the assessee. The Assessing Officer observed that in the said list of beneficiaries even the cheque numbers, dates and bank accounts used for providing accommodation entries were mentioned. The Assessing Officer incorporated in the assessment order the relevant portion of list of beneficiaries given by Sh. Aseem Kumar Gupta.

8. It was also noted by the Assessing Officer that the cheque numbers, the date wise amounts, the bank details and the names of the companies that were used for providing accommodation entries exactly matched with the so called loans taken by the assessee from M/s

Ganpati Fincap Services Pvt. Ltd. The Assessing Officer, therefore, observed that there was not an iota of doubt that the so called loan taken by the assessee from M/s Ganpati Fincap Services Pvt. Ltd. was merely an accommodation entry.

9. The Assessing Officer also observed that the facts M/s Ganpati Fincap Services Pvt. Ltd. was not actually in existence or had capacity to lend such a huge loan further strengthened by the statement of the husband of the assessee Mr. Raj Kumar Chawla recorded on 14.12.2011. The Assessing Officer incorporated the relevant portion of the statement of Mr. Raj Kumar Chawla in the assessment order and observed that from the statement of Mr. Raj Kumar Chawla one thing was very clear that although Mr. Raj Kumar Chawla was sole decision maker in M/s Ganpati Fincap Services Pvt. Ltd. yet he did not know anything about the affairs of the company M/s Ganpati Fincap Services Pvt. Ltd. The Assessing Officer observed that Mr. Raj Kumar Chawla, who was the sole decision maker of M/s Ganpati Fincap Services Pvt. Ltd. was not able to tell the source of funds that were used by the said company to provide alleged loan to him. The Assessing Officer observed that this established that M/s Ganpati Fincap Services Pvt. Ltd. was not in existence or had no capacity to advance such a huge loan to the assessee.

10. The Assessing Officer further observed that from the bank statement of the entities (proprietorship concerns and companies) fully controlled or owned by Sh. Aseem Kumar Gupta it was noticed that funds were flown into the bank account of the assessee from the bank accounts of the entities fully controlled or owned by Sh. Aseem Kumar Gupta. The Assessing Officer incorporated a flow chart in the assessment order depicting the flow of funds starting from the cash deposits till funds finally reached to the account of the assessee via various intermediary companies. The copy of the funds flow chart, as

incorporated in the assessment order, was provided to the assessee and she was asked to explain the genuineness of the alleged loan taken from M/s Ganpati Fincap Services Pvt. Ltd. The Assessing Officer observed that the assessee failed to furnish any plausible explanation in this regard.

11. On the basis of the statement of Sh. Aseem Kumar Gupta, material seized during the search and survey operations, list of beneficiaries provided by Sh. Aseem Kumar Gupta, the statement of the husband of the assessee and the fund flow chart incorporated in the assessment order, the Assessing Officer observed that undoubtedly and evidently it was the unaccounted cash of the assessee which was deposited in the bank accounts of bogus proprietary concerns that was routed back to the assessee through cheque disguised as loan from M/s Ganpati Fincap Services Pvt. Ltd. after layering it in to several intermediary companies. He accordingly made addition of Rs.15362570/- to the total income of the assessee on account of unexplained loan.

12. Before CIT(A) the assessee made elaborate submissions and filed additional evidence u/s Rule 46A. The Ld. CIT (A) called for a remand report from the Assessing Officer. After considering such remand report the Ld. CIT (A) confirmed the addition made by the Assessing Officer by observing as under :-

*12. I have considered the facts of case, written submissions of the appellant, findings of the Assessing Officer, additional evidence filed under Rule 46A, remand report of the Assessing Officer and the rejoinder of the appellant thereto. I have also perused the case laws relied upon by the Assessing Officer in support of his findings and the case laws relied upon by the appellant in support of its case. The Assessing Officer made the impugned addition because he found the creditor M/s Ganpati Fincap Services Pvt. Ltd. to be non-existent and a fictitious entity created only for the purpose of providing accommodation entries and, therefore, its identity, creditworthiness and genuineness of the transaction was also doubtful.*

12.1 *In the instant case it was found by the Investigation Wing of the Department that the appellant was one of the beneficiaries who had received an accommodation entry in the form of share capital from the company fully controlled by Sh. Aseem Kumar Gupta, namely M/s Ganpati Fincap Services Pvt. Ltd. In the statement recorded during the course of survey proceedings u/s 133A of the IT Act, 1961 at his residence 2D, DDA Flats, Gulabi Bagh, New Delhi, Sh. Aseem Kumar Gupta had given a statement before the Investigation Wing that he was providing accommodation entries through various fictitious paper companies/concerns controlled by him after receiving cash and after charging commission. In his statement, Sh. Aseem Kumar Gupta admitted that basically the cash was being introduced in the concerns whose proprietor was one Sh. Manoj Gupta, who acted on his directions and the cash introduced in these concerns was routed back to the beneficiaries through cheques disguised as per the requirement of the beneficiary after layering it into several intermediary companies, whose directors were employees of Sh. Aseem Kumar Gupta. Sh. Aseem Kumar Gupta, admitted that accommodation entries were provided in the form of bogus expenses, share application money and unsecured loans etc. and the commission charged for providing the accommodation entries was in the range of 25 paisa per 100 rupees. The list of beneficiaries provided by Sh. Aseem Kumar Gupta, clearly mentioned the name of the appellant, her husband and their HUF.*

12.2 *The material seized from the office premises of Sh. Aseem Kumar Gupta, in the form of cash deposit slips, signed cheque books, documents containing details of accommodation entries, letter heads, letter pads of M/s Ganpati Pineap Services Pvt. Ltd., and other material on record was sufficient enough to establish that Sh. Aseem Kumar Gupta was running the business of providing accommodation entries with the help of entities owned by him and controlled by him and M/s Ganpati Fincap Services Pvt. Ltd. was one of such intermediary companies used for the purpose of providing accommodation entries. Merely because the intermediary companies were registered with the ROC, were filing returns of income, having PANs, maintaining bank accounts etc. did not establish their identity as these companies might have been existing on papers or in real sense not at all in existence. The appellant's duty to establish the source of funds does not cease by merely furnishing these documents. The concept of shifting onus does not mean that once certain documents / details are provided, the appellant's duties are over. If on verification, the credibility of the evidence filed is found to be a doubtful, the onus shifts back to the appellant and, at that stage, if the appellant falters, the*



*consequence may well be an addition u/s 68 of the IT Act, 1961.*

12.3 *In the instant case, on the basis of material found during the course of search and survey proceedings and on the basis of statements of Sh. Aseem Kumar Gupta, recorded during the course of survey proceedings and during the course of assessment proceedings, there was enough evidence with the Assessing Officer to establish that the credit entry appearing in the books of the appellant was an accommodation entry routed through fictitious entities existing on papers only. In this case it was admitted by the entry provider before the investigation Wing that he was giving accommodation entries after receiving cash and after charging his commission. The Hon'ble High Court of Delhi in the case of Commissioner of Income Tax vs. Independent Media Pvt. Ltd. 2010 Taxman 14 (2012), while dealing with doubtful cash credits, held that if the explanation adduced by an assessee with regard to identity and creditworthiness of the subscriber companies and genuineness of transactions was not acceptable for valid reasons, Assessing officer could make addition u/s 68 of the IT Act, 1961. It is important to keep in mind that it may not be the responsibility of the assessee to prove the source of the source but nothing precludes the Assessing Officer to make enquiry in respect of the source as well to establish that both the source and its source are part of a larger chain of paper companies engaged in the business of providing accommodation entries to the willing tax evaders. This has been established beyond doubt in this case with sufficient material on record.*

12.4 *While dealing with the cases of fake loan from paper companies, the test of human probabilities has to be applied to understand if the apparent is real and if the transaction fails to with stand the test of human probabilities it has to be taken as an in-genuine transaction even if documentary evidences suggest otherwise. This is so because what is apparent may not be real.*

12.5 *In view of the above discussion it is held that the Assessing Officer validly came to the conclusion that the credit entry in the books of the appellant in the garb of share capital through accommodation entry from an entry provider represented the income of the appellant which was liable to be taxed in the year under consideration and rightly added the same to the income of the appellant for the assessment year under consideration by invoking the provisions of section 68 of the IT Act, 1961. Accordingly, the addition of Rs.1,53,62,570/- made by the Assessing Officer is *confirmed*.*

13. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

14. The Ld. Counsel for the assessee, at the outset filed, a copy of the order of the Tribunal in the case of the husband of the assessee Sh. Raj Kumar Chawla vide ITA No.1323/Del/2015 order dated 26.09.2018 for A. Y. 2010-11. Referring to the said order he submitted that in the husband's case also an amount of Rs. 2,29,73,630/- was added by the Assessing Officer on account of loan received from M/s. Ganpati Fincap Private Limited and interest of Rs.8,98,630/- paid to the said party. The CIT(A) had confirmed the addition made by the Assessing Officer and the Tribunal after considering the various decisions and facts of the case had deleted the addition. Therefore, this being a covered matter in favour of the assessee by the decision of Tribunal, the ground raised by the assessee should be allowed.

15. The Ld. DR on the other hand heavily relied order of the CIT(A).

16. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer made addition of Rs. 1,53,62,570/- on account of loan received from M/s. Ganpati Fincap Private Limited which includes Rs.6,12,570/- on account of interest on the said loan on the ground that the said company was giving mere accommodation entries and did not have any business activity. Further the assessee also failed to establish the existence or credit worthiness of M/s. Ganpati Fincap Private Limited. We find the Ld. CIT (A) upheld the action of the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. We find identical issue had come up before the coordinate bench of the Tribunal in the case of the husband of the assessee Sh. Raj Kumar Chawla wherein the Assessing Officer

had made addition of Rs.2,29,73,630/- being the loan of Rs. 2,20,75,630/-received from M/s. Ganpati Fincap Private Limited and interest there on at Rs.8,98,630/- both totalling Rs.2,29,73,630/-. We find the CIT(A) had upheld the addition made by the Assessing Officer and on further appeal by the assessee, the Tribunal in ITA No. 1323/Del/2015 order dated 26.09.2018 deleted the addition by observing as under :-

11. *We have considered the rival submissions and perused the material available on record. In this case, it is an admitted fact that assessee filed copy of the loan agreement with calculation of interest before AO along with confirmation of the account of the assessee with investor, ledger account in the books of accounts of the assessee along with copy of ITR of investor and copy of the bank statements. All the documents have not been disputed by the AO through any evidence on record. The investor is admittedly NBFC and was in business of giving loan to others for business purposes. It is a registered company. The balance sheet of the investor shows loan have been given to the assessee, the investor was having net worth as noted above to give loan to the assessee. The assessee submitted complete details before AO. The balance sheet of the investor company shows that share capital, reserves and surplus and share application money were same in assessment year under appeal as well as in the preceding AY 2009-10. It would, therefore, prove that there is no new fund received by the investor company so as to prove that it has received any unaccounted cash amount from any third person. The loan amounts have been received through banking channel, which is supported by the bank statement of the investor. Therefore, allegation of the AO that amount have been received as accommodation entry on routing the cash is improper and such finding have*

*not been corroborated by any material or evidence on record. The findings of the AO are unjustified that cash have been routed in this case for giving loan because in the course of the search, no material was found that any cash has been paid by the assessee. The statements of various persons were recorded during the course of search as well as post search proceedings and in none of the statements, anybody has made allegation against assessee of providing cash. The assessee specifically submitted before Ld. CIT(A) that all the statements of Sh. Aseem Kumar Gupta along with various documents seized at his premises have been obtained at the back of the assessee and have never been provided to the assessee. Even the assessee has never been accorded an opportunity to cross examine Sh. Aseem Kumar Gupta. The assessee, therefore, pleaded that action of the AO of passing the assessment order is against principle of natural justice and the assessment order passed by the AO is liable to be quashed as nothing was confronted to the assessee at the stage of the assessment proceedings. There is no finding given by the AO on such submissions of the assessee in the remand order passed by the AO. The Ld. CIT(A) has also not dealt with the submissions of the assessee specifically in the appellate order. It is well settled law that any material evidence collected at the back of the assessee and not confronted to the assessee at assessment stage could not be read in evidence against the assessee. We rely upon the decision of the Hon'ble Supreme Court in the case of Kishanchand Chelaram vs. CIT 125 ITR 713. The authorities below solely made addition against the assessee because of the material seized during the course of search from Sh. Aseem Kumar Gupta and his statement recorded at the back of the assessee. Therefore, such material cannot be used against the assessee. The assessee also filed PB 269 which is retraction letter by Sh. Aseem Kumar Gupta to the AO, retracting from his statement given at the time of search. Therefore, there*

were no basis to make addition against the assessee. It may also be noted here that the assessee appeared before the AO for recording his statement as a director of the investor company in which he did not deny giving of loan by the investor company to the assessee. Ld. DR pointed out certain discrepancies and the answers not given by the assessee specifically to the questions raised by the AO. However, it would not be material because the investor company has confirmed giving loan to the assessee, which was corroborated by the loan agreement subject to interest and as an NBFC it was its business activity to give loan to others. Therefore, such discrepancy in his statement would not be relevant to reject the explanation of the assessee. The AO also recorded in the assessment order that the investor has been assessed by him u/s 153C for assessment years 2004-05 to 2010-11, it was an existing company and assessed to tax. The assessee, therefore, proved that investor is in existence. There is no evidence brought on record, if assessee gave any cash to the investor company for giving loan. The assessee proved that investor had sold investment during the year and has given advance to the assessee. The onus upon assessee to prove identity of the investor, its creditworthiness and genuineness of the transaction have been duly discharged. It is well settled law that assessee is not required to prove sources of the source. We, rely upon the decision of the Hon'ble Delhi High Court in the case of Dwarkadhish Investment P. Ltd. 330 ITR 298 and decision of the Gujarat High Court in the case of Rohini Builders Ltd. 256 ITR 360. It may be noted here that it is a case of interest bearing loan taken by the assessee and there is nothing illogical and there is no material found during the course of search or any adverse statement against the assessee about the loan as explained above. Ld. Counsel for the assessee referred to the assessment order u/s 143(3) of the Act dated 27.12.2011 in the case of Sh. Manoj Kumar proprietor of AMB Traders and

*Shiva Trading Company, copy of which is filed at page 28 of another paper book. Ld. Counsel for the assessee rightly pointed out that this addition cannot be made on the ground of source of the source as the AO himself has recorded a finding in the case of source of the source i.e. Sh. Manoj Kumar, that the cash deposited belongs to Sh. Manoj Kumar. AO noted in the case of Sh. Manoj Kumar that he had deposited cash in his bank account, therefore, total cash deposit of Rs. 18,81,45,000/- and Rs. 50,93,77,676/- as other deposits. Therefore, one substantive addition is made in the case of Sh. Manoj Kumar, no further addition should be made in the hands of the assessee. Therefore, there were no basis to make the addition against the assessee. In support of above findings, we rely upon the following decisions:*

- i. *“CIT vs. Fair Investment Ltd., 357 ITR 146 in which it was held that A.O. did not summon investors and did not make efforts. There is no finding that material disclosed was untrustworthy. The Appellate Authorities rightly deleted the addition.*
- ii. *Decision of Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., (2008) 216 CTR 195 in which it was held as under:*

*“If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the 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. ”*

- iii. *Decision of Hon’ble Jurisdictional High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors. 361 ITR 220 (Del.) in which it was held as under:*

*“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability u/s 68; AO failed to carry his suspicion to logical conclusion by further investigation and, therefore, addition u/s 68 was not sustainable.”*

- iv. *Decision of Hon hie jurisdictional High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12<sup>th</sup> August, 2015*

*(Del.), in which it was held as under :*

*“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.”*

- v. *Decision of jurisdictional High Court in the case of CIT vs. Laxman Industrial Resources Pvt. Ltd., ITA.No. 169 of 2017 dated 14<sup>th</sup> March, 2017, in which it was held as under :*

*“The CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon’ble Apex Court in the case of Lovely Exports Pvt. Ltd. (supra) and judgement of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008] 299ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon’ble High Court in view of the above findings noted that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.”*

- vi. *Decision of the Hon’ble Supreme Court in the case of Earth Metal Electric Pvt. Ltd., vs. CIT dated 30<sup>th</sup> July, 2010 in SLP.No.21073 of 1999, in which it was held as under :*

*“We have examined the position, we find that the shareholders are genuine parties. They are not bogus and fictitious therefore, the impugned order is set aside. ”*

- vii. *Decision of Hon’ble M.P. High Court in the case of CIT vs. Peoples General Hospital Ltd., (2013) 356 ITR 65, in which it was held as under:*

*“Dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted. CIT v. Lovely Exports P. Ltd. [2009] 319ITR (St.) 5 (SC) applied.”*

- viii. *Decision of Hon’ble jurisdictional High Court in the case of CIT vs. (i) Dwarkadhish Investment P. Ltd. (ITA No. 911 of 2010) and (ii) Dwarkadhish Capital P. Ltd. (ITA No. 913 of 2010) (2011) 330 ITR 298 (Del.) (HC), in which it was held as under:*

*“In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the initial burden of proof lies on the assessee yet once he proves the identity of the creditors/ share applicants by either furnishing their PAN 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 applicants could 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 not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs. 71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified.”*

- ix. *Decision of Hon’ble jurisdictional High Court in the case of CIT vs. Winstral Petrochemicals P. Ltd., 330 ITR 603, in which it was held as under:*

*“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee. ”*

- x. *Decision of Hon’ble jurisdictional High Court in the case of CIT vs. Value Capital Services P. Ltd., (2008) 307 ITR 334 (Del.) (HC), in which it was held as under:*

*“Dismissing the appeal, that the additional burden was on the Department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the*



*coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose.”*

12. *Considering the facts of the case, in the light of the material on record, it is clear that assessee produced sufficient documentary evidences before AO to prove the ingredients of Section 68 of the Act. The AO, however, did not make further enquiry on the documents filed by the assessee. The AO has thus, failed to conduct scrutiny of the documents at assessment stage and merely suspected the transaction between the investor company and the assessee because some materials found during the course of search in the case of Sh. Aseem Kumar Gupta or his statement recorded, but these would not prove anything against the assessee. It is not reported, if any, cash was found deposited in the account of the investor before making investment in assessee company. Therefore, the totality of the facts and circumstances of the case, clearly prove that assessee discharged its initial onus to prove the identity of the investor company, its creditworthiness and genuineness of the transaction in the matter. We, accordingly, set aside the orders of the authorities below and delete the addition of Rs. 2,29,73,630/- on account of unexplained loan. Ground nos. 1 to 7 of the appeal of assessee are allowed.*

17. Since the facts of the instant case are identical to the facts of the case decided by the Tribunal in the case of husband of the assessee Shri Raj Kumar Chawla, therefore, in absence of any contrary material brought to our notice against the order of the Tribunal in the case of Sh. Raj Kumar Chawla, husband of the assessee, we hold that the assessee has discharged the initial onus cast on her to prove the identity of the investor company, its credit worthiness and genuineness of the transaction. We, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. The first issue raised by the assessee is accordingly allowed.

18. The second issue raised by the assessee in the grounds of appeal relates to the order of the CIT(A) in confirming the addition of Rs.10,99,904/- on account of income from house property made by the Assessing Officer on following properties :-

1. Flat at I. P. Extension, Delhi
2. A-58, Nirman Vihar, Delhi
3. 20-GF, Global Flyover, Gurgaon

19. Facts of the case in brief are that the Assessing Officer during the course of assessment proceedings observed that the assessee was owner several immovable properties as reflected in the balance sheet. During the year the assessee has declared rental income in respect of property located at B-223, GK-1, New Delhi and 18- Commercial Complex Karkardooma. However, no rental income has been declared in respect of other properties. Therefore, rental income in respect of properties should be prima facie, taken u/s 23 (1) (a) of the IT Act. He, therefore, asked the assessee to explain as to why income from house property should not be taken on these properties as per provision u/s 23 (1) (a) of the Income Tax Act. Rejecting the various explanation given by the assessee and keeping in view the fair market rent in the area in which the properties are situated, the Assessing Officer determined the annual value of the above 3 properties at Rs.1,75,692/-,Rs.11,22,000 and Rs.2,73,600/- respectively totaling to Rs.15,71,292/-. After allowing deduction of Rs.4,71,388/- u/s 24 (a) from the annual value of Rs.15,71,292/- of the above properties, the Assessing Officer made addition of Rs. 10,99,904/- to the total income of the assessee.

20. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer by observing as under :-

%9. I have considered the facts of the case, written submissions of the appellant and the findings of the Assessing Officer in the assessment order. The criteria for charging the annual letting out value to tax, is the ownership of the property coupled with r inherent capacity of being let out. The charge is levied on the owner of the house /property and it is immaterial whether the owner is in possession and enjoying the /property or had let it out on rent or given otherwise for the use to a third person. The charge is levied on the owner of the house property and it is immaterial whether the owner is in possession and enjoying the basis for assessing the tax under the head 'income from house property' is the ownership of the property and not necessarily the actual realization of income. The property must be capable of being let out in order to be charged to tax under the provisions of section 22 of the IT Act, 1961.

19.1 In the instant case, the criteria for charging the annual letting value of the properties in question to tax was fulfilled. The appellant was the owner of the properties which had the inherent capacity of being let out. The basis for assessing the tax under the head 'income from house property' is ownership of the property and not the actual realization of income. The property must be capable of being let out in order to be charged to tax under the provisions of section 22 of the IT Act, 1961. Therefore, considering these facts, I see no reason to interfere with the Assessing Officer's action in charging the annual let out value of the properties in question to tax and making the impugned addition. Accordingly, the addition of Rs. 10,99,904/- made by the Assessing Officer on account of "income from house property" is **confirmed.**"

21. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

22. After hearing both the sides, we find identical issue had come up before the Tribunal in the case of the husband of the assessee Sh. Raj Kumar Chawla. We find the Tribunal vide ITA No. 1323/del.2015 order dated 26.09.2018 in ITA No. 1323/Del/2015 had set aside the orders of the authorities below and directed the Assessing Officer to adopt the annual rental value of the properties with certain directions. We, therefore, restore this issue to the file of the Assessing Officer with direction to adjudicate the issue afresh in the light of the decision of the Tribunal in the case of the husband of the assessee. The second issue raised by the assessee in the grounds of appeal is accordingly allowed for statistical purposes.

23. In the result, the appeal filed by the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 12.10.2018

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
**JUDICIAL MEMBER**

*\*NEHA\**

*Date:-12.10.2018*

Copy forwarded to:

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

Sd/-  
**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	05.10.2018
Date on which the typed draft is placed before the dictating 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	12.10.2018
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	