

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Shri, M. Balaganesh, Accountant Member

ITA No.1754/Kol/2017
Assessment Year :2012-13

Income Tax Officer, Ward-6(1) P-7, Chowringhee Square, 6 th Floor, Kolkata-69	V/s.	M/s Dhara Vyapaar Pvt. Ltd., 9, Old Court House Street, 1 st Floor, Dalhousie, Kolkata-700 001 [PAN No.AACCD 6819 P]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Rabin Choudhury, Addl. CIT- Sr-DR
प्रत्यर्थी की ओर से/By Respondent	Shri A.K. Tibrewal, FCA& Shri Amit Agarwal, Advocate
सुनवाई की तारीख/Date of Hearing	06-12-2018
घोषणा की तारीख/Date of Pronouncement	28-12-2018

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2012-13 arises against the Commissioner of Income Tax (Appeals)-23, Kolkata's order dated 09.05.2017 passed in case No.242/CIT(A)-23/Wd-6(1)/16-17 reversing Assessing Officer's action adding assessee's share capital of ₹3,17,00,000/-, involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. We find at the outset that CIT(A)'s detailed discussion deleting the above sole addition of unexplained share capital u/s 68 of the Act reads as under:-

"Ground No. 1,2,3,&4

These ground relate to the addition of Rs.3,17,00,000/- u/s 68 on account of share capital raised.

4. Submission of AR :

We would like to inform that M/s. Dhara Vyapaar Private Limited is a private limited company incorporated in the year 2006. The company issued 317,000 equity shares of Rs. 10/- each at a premium of Rs. 90/- per share and all the shares have been allotted during the year.

Now Sir,

What is share premium? A company may issue its shares at a price exceeding their nominal par value, that is, at a premium. (Gower's Principles of Modern Company Law (Fourth Edition) Chapter 10). Share premium is not being distributable as income any more than any capital asset. On a winding up, the surplus moneys in the share premium account would be returned to the shareholders as capital and, so long as the company is a going concern, these same moneys can ordinarily be returned to shareholders through the medium of a reduction petition or, in other words, except under more or less the same conditions under which any capital asset can reach the shareholders' hands. Where shares are issued at a premium, whether for cash or otherwise, the premium is to be carried into a share premium account in the books of the company issuing the shares, and the premium can only be distributed if the procedure for reduction of capital is carried through.

It is a right to receive a proportion of the profits of the company assessed on its winding up and all other benefits available to its members along with the obligations to contribute to its liabilities, all measured by a sum of money which is the nominal value of the share, of course, subject to the control by the regulations of the company -Paulin (Sir William Thomas), In re [1935] 1 KB 26.

Every one of these rights and obligations is created by a statute or under statutory instruments or powers which define their extent, scope, boundaries, and incidence.

The premium is nothing but a class of capital which like share capital is not distributable. The company act stipulated certain restriction of their use. These are not same for the revenue items. In any circumstances, the share premium is very much close to the Share capital.

The reason that a company issues its shares at a premium because the real function of the share premium is to ensure that it prevents new shareholders from reaping undue benefits from the value of the shares, which is derived mainly from the activities of existing shareholders in developing the business. Thus, one of the purposes of the share premium is to balance the position between new and old shareholders.

If new shareholders were allowed to acquire new shares at par value, they would be able to take advantage of the net assets or equity of the company, which includes available reserves accrued by the old shareholders (eg, through total or partial dividend waivers, allowing profits to be reinvested the company, rather than distributed).

Thus Share Premium is distinct from Income, it is a capital.

Again sir,

Provisions of sections 41, 146, 150 of the Indian Companies Act, 1956 detail only the need for maintaining a register of shareholders and of making to the registrar of companies an annual return incorporating changes in the register of members. Such records is .statutorily to be maintained and contains complete record of the number of shares subscribed, allotted and held, along with full and complete addresses of the shareholders. Nowhere the company law authorises the company to seek information from its shareholders regarding the source of their investment in shares.

As per decided case law of Standard Cylinders (P.) Ltd. v. [1998] Taxation 89(4) 76 (Delhi-Trib.), it was held that the company was a separate juristic person and it cannot be asked to prove the source of investments by the shareholders for the subscriptions made by them for shares. It is sufficient if the company furnishes the list of persons with their addresses, and the number of shares held by them. No addition can made for such subscriptions.

In the case [2014] 51 taxmann com 198 (Madras) HIGH COURT OF MADRAS Commissioner of Income-tax, Chennai v Pranav Foundations Ltd . .". [2014] 51 taxmann com 198 (Madras)1 [2015] 229 Taxman 58 (Madras), the Ld Judges observed

"All that the said provision contemplates is that the assessee has to give satisfactory explanation above the "nature and source of such sum found credited in the books of account."

Further that the decision of the Supreme Court in Lovely Exports (P) Ltd case, referred (supra), applies, in view of the fact that all the parties, who are subscribers of the shares, are Registered Private Limited companies and all the companies accepted their investment Thus, the assessee has categorically established the nature and source of the said sum and discharged the onus that lies on it in terms of Section 68 of the Act When the nature and source of the amount so invested is known, it cannot be said to be undisclosed income Therefore, the addition of such subscriptions as unexplained credit under Section 68 of the Act is unwarranted as all that the assessee is required to establish is the nature and source of the subscriber, the creditworthiness and genuineness of the transaction That proof has already been submitted by the assessee and it has discharged its burden in terms of Section 68 of the Act it is always open to the department to proceed against such investors if so advised in view of the decision in Lovely Exports (P) Ltd case referred (supra)

Further Your honour

[2014] 451 taxmann com 204 (Allahabad) HIGH COURT OF ALLAHABAD Commissioner of Income-tax (Central) v Vacmet Packaging (India) (P) Ltd.*_ 'If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the Department is free to proceed to reopen their individual assessments by law, but it cannot be regarded as undisclosed income of assessee company.

Although the assessee is obliged to prove the genuineness of the credits by proving the source of the same, he cannot be forced to prove the source of source of the credit. It is not necessary to bring evidence about the source from which the creditors earned the money deposited by him once the assessee proves the identity and creditworthiness of the creditor. It is beyond the scope of legitimate enquiry.

As per decided case law of ITO v. Shanker Lal Narendra kumar [1995] XVIII Tax world 141 (Jpr.AT), there was a cash credit of Rs. 50,000 from Shri Babulal Chauhan who explained that he sold his car and deposited the amount with the assessee. The ITO asked the creditor about the source from which the car was purchased and it was observed that the assessee was not obliged to prove the source of source.

Allotment of shares has all the features of a contract, viz., offer, acceptance, and its communication. The Supreme Court itself has observe in CIT v. Arvind Narottam [1988] 39 Taxman 368, that 'where the true effect on the construction of the deeds is clear the appeal to discourage tax avoidance is not a relevant consideration'

Further the Tribunal did not approve the action of the Commissioner and cancelled the orders passed by him under section 263 on the following grounds:

- (a) No company is authorised to ask its shareholders to explain the source of their investment.
- (b) Whatever information a company is obliged to keep under the Companies Act was duly furnished to the department.
- (c) There is no provision which makes it obligatory on the company to collect evidence regarding the source of investment by the shareholders.

- (d) The law does not enjoin on anybody to furnish evidence which is not available with him or which he is not authorised to collect.
- (e) No assessee can be called upon to prove the source of source.
- (f) A company is a jurisdic person different from its shareholders and any liability which is legitimately that of the shareholders cannot be fastened on the company.

As per decided case law of CIT v. Stellar Investments Ltd. [1991] 59 Taxman 568 (Delhi) followed by decision of Madras High Court in CIT v. Electro Polychem Ltd. [2007], it was held that even if it can be assumed that the subscribers to the increased share capital were not genuine, under no circumstances could the amount of share capital be regarded as undisclosed income of the company.

Now sir,

Section 68 of the Income Tax Act, 1961 provides that "Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income- tax as the income of the assessee of that previous year".

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (b) Such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10.]

Also this proviso 94 Inserted by the Finance Act, 2012, w.e.f. 1-4-2013. so it does not apply to our case as our matter relates to the A.Y. 2012-13. As per section 68 of the Income Tax Act, 1961 the primary onus is upon the assessee to establish identity of the shareholder, genuineness of the transaction and the capacity of the lender or the depositor.

Hon. Supreme Court, in Kale Khan Mohd. Hanif Vs. CIT, pointed out that the onus on the assessee has to be understood concerning the facts of each case and proper inference drawn from the facts. The law after Section 68 is not different. If the prima facie inference .on the fact is that the assessee's explanation is probable, the onus will shift to the Revenue.

As held in case of Sreelekha Banerjee v CIT [1963] 49 ITR 112 (SC), By merely rejecting unreasonably a good explanation, the department cannot convert good proof into 'no proof In fact, the principle of onus, which the assessee is required to establish the identity, prove the genuineness of the transaction and establish the creditworthiness of the donor, has been reiterated even' in a recent decision of Hon. Delhi High Court in the case of CIT vs. Oasis Hospitalities Pvt. Ltd., 333 ITR 119 (Delhi)(2011). In this case it was held by-the Hon. Court that "The initial onus is upon the assessee to establish three things necessary to obviate tile mischief of Section

68. Those are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise." .
Further Your honour

{2014} 45 taxmann com 204 (Allahabad) HIGH COURT OF ALLAHABAD Commissioner of Income-tax (Central) v Vacmet Packaging (India) (P) Ltd*_ accordance with law, but it cannot be regarded as undisclosed income of assessee-company Similar view has been expressed by Hon'ble Delhi High Court in case of CIT v Divine Leasing and Finance Ltd ~0081 299 ITR 268 (Delhi) The Hon'ble Rajasthan High Court has taken similar view in case of CIT -v Shree Barkha Synthetics Ltd [2003] 182 CTR 175 and again reported in 197 CTR 432 Earlier, the Hon'ble Delhi High Court in case of CIT v Steller Investment Ltd [1991] 192 ITR 287 has taken similar view and this decision of Hon'ble Delhi High Court has been affirmed by Hon'ble Supreme Court in CIT v Steller Investment Ltd [2001]1251 ITR 263 Wherein it is held that-

It is evident that even if it be assumed that the subscribers to the increase share capital were not genuine, nevertheless, under no circumstances can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names the shares had been issued and money may have been provided by some other persons. If the assessment of the persons who were alleged to have advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital could be assessed in the hands of the company itself'

We would like to inform that all the ten applicant companies above have been incorporated with the Registrar of Companies, West Bengal. Secondly, eight out of ten are Non-Banking Financial Company (NBFC) registered with Reserve Bank of India. The copy of certificate of incorporation as NBFC of all the eight companies has been attached in their respective Annexure. We further submit that the share applicant companies are NBFC registered with RBI and as per the NBFC registration condition minimum net worth at least in crores needed to become a NBFC company therefore, there is no question of doubting the identity and availability of funds with the share applicant companies. Thirdly, all the investing company to whom shares have been allotted during the F.Y. 2011-12 are also income tax assessee. The copy of IT Acknowledgement of the shareholders has been attached as Annexure. Further Copies of Allotment advice along with share certificates, share application forms and copy of affidavit of the director of the applicant companies for the purpose of verification of genuineness of transaction has been attached as Annexure. The genuineness of the transaction can also be safely concluded, since the entire transaction has been done through the banking channels duly recorded in the books of account of the assessee and duly reflected in the financial statement of the assessee. The related Bank Statements are attached hereto. In the Bank Statement, the transactions relating to the allotment of shares are duly reflected. Therefore, all the relevant documents have been provided that may be reasonably treated as sufficient to substantiate that the company has entered into a genuine transaction with the shareholders as well as by providing the details mentioned above, the existence and identity of the investing companies has also been justified. As held in the case of Nemi Chand Kothari v. CIT [2003] 264 ITR 254 (Gau.) where in it was held that it cannot be said that a transaction, which takes place by way of cheque, is invariably sacrosanct. Once the assessee has proved the identity of his creditors the genuineness of the transactions, and the creditworthiness of his creditors vis-a-vis the transactions which he had with the creditors, his burden stands discharged and

the burden then shifts to the revenue to show that though covered by cheques, the amounts in question, actually belonged to, or was owned by the assessee himself.

In the case of Shree Barkha Synthetics Ltd. v. Asstt. CIT [2006], it was held that:

"Where the share application money is received by the assessee-company through banking channel, the assessee has only to prove the existence of the person in whose name share application is received; additions could not be sustained where the existence of the investors is not doubted and the investment is not shown to have been made by somebody else."

Further, the creditworthiness of the applicant companies can also be justified as the net worth of all the companies is in a good position. The copy of balance sheet of all the three companies for the purpose of quick reference has been attached for the F.Y. 2011-12 as part of Annexure.

As per the decided case law of CIT v. Glocom Impex (P.) Ltd. [2008] 299 ITR 571 it was held that:

"Once it was established that the shareholder was a genuine person and also creditworthy and that she had the requisite amount for making the investment in question, no addition could be made under section 68 in the hands of the assessee-company; Revenue could not go further to find out whether the person from whom the shareholder had received money through cheque was also a genuine party and creditworthy.

In the case of CIT v. Dolphin Canpack Ltd. [2006] 283 ITR 190 (Delhi), it was held that:

"Tribunal, while observing that complete details including confirmation details of bank account, PAN of subscribers to the shares were furnished by assessee and the payments were made by cheques, was justified in deleting addition under section 68."

In the case of CIT v. Divine leasing & Finance Ltd. [2008] 299 ITR 268 (Delhi), it was held that:

"Assessee-company having received subscriptions to the public/rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 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 company's income from undisclosed sources."

As per decided case Jaw of United Cores (P.) Ltd. v. Asstt. CIT [1998], it was held that since the company furnished documents and supporting material to prove the identity and capacity of subscribers and as they were regular assesseees, the addition made was not held justified.

In CIT v Sahibganj Electric cables (p) Ltd. [1978] 1151TR 408 (Cal.) where the amounts of loan received by cheques and repayments also made by cheques through assessee's bankers, the creditors gave confirmation letters mentioning therein their income tax file numbers. ITO without making any further enquiry, disbelieving the evidence of the assessee made addition. ITAT held the additions not justified as the assessee discharged the onus. High Court held that Tribunal is justified in deleting the addition.

As held in case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 (SC), By merely rejecting unreasonably a good explanation, the department cannot convert 'good proof into' no proof .

The very words " **an undisclosed source**" shows that the disclosure must come from the assessee and not from the department, this is so because the source of the credit in the books of the assessee is within the knowledge of the assessee and section 106 of the Evidence Act requires the assessee, and not the department to disclose it and prove it. But the assessee cannot be presumed to have special knowledge about the source of source or the origin of origin. Even if the credit is in the name of a close relation, e.g. the wife, the assessee cannot be presumed to have knowledge of the source from which the depositor obtained the money. The fact that an assessee was unable to satisfy the authorities as to the source from which the depositor derived the money cannot be used against the assessee.

In ITO v Suresh Kalmadi [1988] 32 TTJ (Pune) TM 300, it was held that where identity of creditor is established and entry shown to be not fictitious, the burden shifts on to the department to show as to why the entry still represented the suppressed income of the assessee. The assessee cannot be called upon to prove the worth of his creditor's creditor. The fact that in the books of the creditors the same amounts had been credited in the name of other parties and that immediately after repayment, the creditors withdrew the money could not lead to any adverse inference when this was their modus operandi and assessee's case was not the solitary transaction.

Explanation regarding source of a deposit given by the assessee cannot be rejected without verifying it. It is for the department to prove that a particular transaction is sham or benami -as held in case of S. Hastimal v. CIT [1963] 49 ITR 273 (Mad.)

The company furnished documents and supporting material to prove the identity and capacity of subscribers and as they were regular assesseees, the addition as show cause is not justified.

For the compliance of the same, we have provided the details as already mentioned above about the companies in whose name the application money is recorded along with the nature and source of the sum so credited. Thus, our primary onus gets discharged. The company furnished documents and supporting material to prove the identity and capacity of subscribers and as they were regular assesseees, the addition show caused not justified. As per decided case law of Standard Cylinders (P.) Ltd. v. [1998] Taxation 89(4) 76 (Delhi-Trib.),

Further, as already stated earlier that share premium amount is capital for a company and should not be treated as undisclosed income of the assessee. All the relevant documents and information has been explained and provided for the purpose of verification of a) identity of shareholders b) genuineness of the transactions and c) creditworthiness of the shareholders. Therefore, no adverse inference needs to draw against the assessee.

1. That the assessee company has received 'share application from

1. M/s Renomex Dealers Private Limited.
2. M/s Riddhi Siddhi Tradevin Private Limited.
3. M/s Value Added IT Consultancy Private Limited.
4. M/s Contship Commodities Private Limited.
5. M/s Diamention Mercantile Private Limited.
6. M/s Giltedge Vincom Private Limited.
7. M/s Mirabelle Tradecomm Private Limited.
8. M/s Mubarak Lubricant Private Limited.
9. M/s Vanraj Merchants Private Limited.
10. M/s Vighnhar Marketing Private Limited.

1. M/s Renomex Dealers Private Limited having its registered office at 18/1, M. D. Road, 5th Floor, Room # 73 Kolkata- 700007

The company has been allotted 2000 equity shares of Rs. 101- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 375879 dated 12/10/2011 for Rs.2,00,000/- drawn on Karur Vysya Bank Limited, Burra Bazar Branch. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Arya Vanijya Pvt. Ltd., the amount has been received on 10/10/2011 through cheque no. 844256 for Rs.2,00,000/-. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement. for Asst. Year 2012-13.They have provided Xerox copy of share certificate. 000000052 vide registered folio no. 54 and distinctive no. 0000615001-0000617000 dt 31.03.2012 allotted to (hem along with their board resolution for their investment in our company. The investor company is registered NBFC (Non-Banking Financial company) registered with Reserve Bank Of India U/s 45 of the Reserve Bank of India Act 1934 vide registration no B.05.05613 dt. 30.09.2003. We at this moment attached the share application form and their allotment advice duly signed by them. (Refer Annexure A-). The Investor Company has also forwarded their notarised affidavit confirming the above fact. The copy of ID proof of the director of the company as well as his IT Acknowledgement for A.Y.2012-13 has also been attached.

List of documents submitted in Annexure "A"

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|------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment | 7. ITR Acknowledgement of the company |
| 3. Share Application Form | 8. Financial statements |
| 4. Letter of Allotment | 9. ID proof and ITR Acknowledgement of the director |
| 5. Share Certificate | 10. Certificate of Registration from RBI |
| 11. Affidavit by the Director | |

2. M/s Riddhi Siddhi Tradevin Private Limited having its registered office at 18/1, M. D. Road, 5th Floor, Room # 73 Kolkata- 700007

The company has been allotted 13,000 equity shares of Rs. 101- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 363783, 363784, 363785, 363786 & 363787 dated 29/09/2011, 01/10/2011, 07/10/2011, 08/10/2011 & 12/10/2011 of Rs. 3,00,000/-, Rs. 3,00,000/-, Rs. 3,00,000/-, Rs. 3,00,000/- & Rs. 1,00,000/- respectively drawn on Karur Vysya Bank Limited, Burra bazar Branch. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from sale of their investment to Jayshree Dealers Pvt. Ltd., Poddar Consultancy Pvt. Ltd., Renomex Dealers Pvt. Ltd. & Som Dealers Pvt. Ltd., the amount has been received on 29/09/2011, 01/10/2011, 07/10/2011, 08/10/2011 & 12/10/2011 through cheque no. 53841, 957652, 375878, 957653, 53842 & 155794 of Rs. For Rs. 3,00,000/-, 3,00,000/-, 3,00,000/-, 2,00,000/-, 1,00,000/- & Rs. 1,00,000/- respectively. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13.They have provided Xerox copy of share certificate No. 000000051 vide registered folio no. 53 and distinctive no. 0000602001-0000615000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. We at this moment attached the share application form and their allotment advice duly signed by them. (Refer Annexure B"). The Investor Company has also forwarded their notarised affidavit confirming the above fact. The copy of ID proof of the director of the company as well as his IT Acknowledgement for A.Y. 2012-13 has also been attached.

List of documents submitted in Annexure "B"

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|-------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment. | 7. ITR acknowledgement |
| 3. Share Application Form | 8. Financial Statements |
| 4. Letter of allotment | 9. ID proof and ITR Acknowledgement of the director |
| 5. Share Certificate | 10. Affidavit by the Director |

3. M/s Value Added IT Consultancy Private Limited having its registered office at 18/1, M. D. Road, 5th Floor, Room # 73 Kolkata- 700007

The company has been allotted 17,000 equity shares of Rs. 101- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 830691 & 830692 dated 12/10/2011 & 14/10/2011 of Rs. 7,00,000/- & Rs. 10,00,000/- respectively drawn on Karur Vysya Bank Limited, Burra bazar Branch. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Arya Vanijya Pvt. Ltd., the amount has been received on 12/10/2011 & 13/10/2011 through cheque no. 844261 & 844260 for RS.7,50,000/- & 10,00,000/- respectively. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13. They have provided Xerox copy of share certificate. 000000038 vide registered folio no. 50 and distinctive no. 0000535001-0000552000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. We at this moment attached their Share application form and allotment advice duly signed by them. (Refer Annexure MC"). The Investor Company has also forwarded their notarised affidavit confirming the above fact. The copy of ID proof of the director of the company as well as his IT Acknowledgement for A.Y. 2012-13 has also been attached.

List of documents submitted in Annexure "C"

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|-------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment. | 7. ITR acknowledgement |
| 3. Share Application Form | 8. Financial Statements |
| 4. Letter of allotment | 9. ID proof and ITR Acknowledgement of the director |
| 5. Share Certificate | 10. Affidavit by the Director |

4. M/s Contship Commodities Private Limited having its registered office at 85, N S Road, Kolkata- 700001

The company has been allotted 25,000 equity shares of Rs. 101- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 385927 dated 27.03.2012 for Rs.25,00,000/- drawn on Central Bank of India. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Aradhna Commercial Pvt. Ltd. and Amritvani Sales Pvt. Ltd., the amount has been received on 26/03/2012 through cheque no. 529297 & 528996 for Rs. 20,00,000/- & 5,00,000/- respectively. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13. They have provided Xerox copy of share certificate. 000000033 vide registered folio no. 45 and distinctive no. 0000300001-0000325000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. The investor company is registered NBFC (Non-Banking Financial company) registered with Reserve Bank Of India U/s 45 of the Reserve Bank of India Act 1934 vide registration no B.05.06269 dt. 19.03.2004. We hereby attached the share application form and their allotment advice duly signed by them. (Refer Annexure O"). The Investor Company has also forwarded their notarised affidavit confirming the above fact.

List of documents submitted in Annexure "D"

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|------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment | 7. ITR Acknowledgement |
| 3. Share Application Form | 8. Financial. statements |
| 4. Letter of Allotment | 9. Certificate of Registration from RBI |
| 5. Share Certificate | 10. Affidavit by the Director |

5. M/s Diamention Mercantile Private Limited having its registered office at 85, N S Road, Kolkata- 700001

The company has been allotted 25,000 equity shares of Rs.10/- each at a premium of Rs.90/- per share. The payment has been made through cheque no. 681750 dated 28.03.2012 for Rs.25,00,000/- drawn on Indian Bank. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Aradhna Commercial Pvt. Ltd., the amount has been received on 27/03/2012 through cheque no. 723266 for Rs. 25,00,000/-. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13.They have provided Xerox copy of share certificate. 000000034 vide registered folio no. 46 and distinctive no. 0000325001-0000350000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. The investor company is registered NBFC (Non-Banking Financial company) registered with Reserve Bank Of India U/s 45 of the Reserve Bank of India Act 1934 vide registration no 8-05.04375 dt. 12.09.2001. We at this moment attached the share application form and their allotment advice duly signed by them. (Refer Annexure E"). The Investor Company has also forwarded their notarised affidavit confirming the above fact.

List of documents submitted in Annexure "E"

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| 1. Confirmation | 7. Bank Account |
| 2. Board resolution for investment | 8. ITR Acknowledgement |
| 3. Share Application Form | 9. Financial statements |
| 4. Letter of Allotment | 10. Certificate of Registration from RBI |
| 5. | 11. Affidavit by the Director |
| 6. Share Certificate | |

6. M/s Giltedge Vincom Private Limited having its registered office at 85, N S Road, Kolkata- 700001

The company has been allotted 80,000 equity shares of Rs. 10/- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 900448, 900457 & 900463 dated 23/03/2012,28/03/2012 & 30/03/2012 for Rs. 30,00,000/-, Rs.25,00,000/- & Rs.25,00,000/- respectively drawn on Indian Bank. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Anunay Sales Pvt. Ltd., Anubhav Comrnonsales Pvt. Ltd. & Unique Dealtrade Pvt. Ltd., the amount has been received on 23/03/2012,28/03/2012 & 30/03/2012 through cheque no. 685958, 685907 & 685990 for Rs. 10,00,000/-, Rs.10,00,000/- & Rs.10,00,000/- respectively. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13.They have provided Xerox copy of share certificate. 000000035 vide registered folio no. 47 and distinctive no. 0000350001-0000430000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. The investor company is registered NBFC (Non-Banking Financial company) registered with Reserve Bank Of India U/s 45 of the Reserve Bank of India Act 1934 v.ide registration no B-05.03758 dt. 23.07.2001. We hereby

attached the share application form and their allotment advice duly signed by them. (Refer Annexure F"). The Investor Company has also forwarded their notarised affidavit confirming the above fact.

List of documents submitted in Annexure "F"

- | | |
|------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment | 7. ITR Acknowledgement |
| 3. Share Application Form | 8. Financial statements |
| 4. Letter of Allotment | 9. Certificate of Registration from RBI |
| 5. Share Certificate | 10. Affidavit by the Director |

7. M/s Mirabelle Tradecomm Private Limited having its registered office at 85, N S Road, Kolkata- 700001

The company has been allotted 80,000 equity shares of Rs. 10/- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 929739, 929741 & 9929753 dated 21/03/2012, 2210312012 s 28/03/2012 for Rs. 35,00,000/-, Rs. 20,00,000/- & Rs. 25,00,000/- respectively drawn on Indian Bank. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Anunay Sales Pvt. Ltd.; Sharanya Dealcome Pvt. Ltd., Radharani Vyapaar Pvt. Ltd. & Unique Dealtrade Pvt. Ltd., the amount has been received on 20103/2012, 19/03/2012, 14/03/2012 & 27/03/2012 through cheque no. 685954, 87304, 966460 & 685985 for Rs. 15,00,000/-, Rs.20,00,000/-, Rs. 25,00,000/- & Rs. 25,00,000/- respectively. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13. They have provided Xerox copy of share certificate. 000000036 vide registered folio no. 48 and distinctive no. 0000430001-0000510000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. The investor company is registered NBFC (Non-Banking Financial company) registered with Reserve Bank Of India U/s 45 of the Reserve Bank of India Act 1934 vide registration no B.05.06607 dt. 16.02.2006. We hereby attached the share application form and their allotment advice duly signed by them. (Refer Annexure G"). The Investor Company has also forwarded their notarised affidavit confirming the above fact.

List of documents submitted in Annexure "G"

- | | |
|------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment | 7. ITR Acknowledgement |
| 3. Share Application Form | 8. Financial statements |
| 4. Letter of Allotment | 9. Certificate of Registration from RBI |
| 5. Share Certificate | 10. Affidavit by the Director |

8. M/s Mubarak Lubricant Private Limited having its registered office at 85, N S Road, Kolkata- 700001

The company has been allotted 25,000 equity shares of Rs. 10/- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 530128 dated 21/03/2012 for Rs. 25,00,000/- drawn on Central Bank of India. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Ruby Tradecom Pvt. Ltd., the amount has been received on 21/03/2012 through cheque no. 347699 for Rs. 25,00,000/-. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13. They have provided Xerox copy of share certificate. 000000037 vide registered folio no. 49 and distinctive no: 0000510001-0000535000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. The investor company is registered

NBFC (Non-Banking Financial company) registered with Reserve Bank of India U/s 45 of the Reserve Bank of India Act 1934 vide registration no B.05-06373 dt. 17.05.2004. We hereby attached the share application form and their allotment advice duly signed by them. (Refer Annexure H"). The Investor Company has also forwarded their notarised affidavit confirming the above fact.

List of documents submitted in Annexure "H"

- | | |
|------------------------------------|---|
| 1. Confirmation | 6. Bank account |
| 2. Board resolution for investment | 7. ITR Acknowledgement |
| 3. Share Application Form | 8. Financial statements |
| 4. Letter of Allotment | 9. Certificate of Registration from RBI |
| 5. Share Certificate | 10. Affidavit by the Director |

9. M/s Vanraj Merchants Private Limited having is registered office at 18A, Ramakanta Bose Street,Kolkata-700003

The company has been allotted 25,000 equity shares of Rs. 10/- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 389680 dated 31/03/2012 for Rs. 25,00,000/- drawn on Central Bank of India. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Maithili Mercantile Pvt. Ltd., the amount has been received on 31/03/2012 through cheque no. 532751 for Rs.25,00,000/-. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13.They have provided Xerox copy of share certificate. 000000039 vide registered folio no. 51 and distinctive no. 0000552001-0000577000 dt .31.03.2012 allotted to them along with their board resolution for their investment in our company. The Investor company is registered NBFC (Non-Banking Financial company) registered with Reserve Bank Of India U/s 45 of the Reserve Bank of India Act 1934 vide registration no B-05.03442 dt. 06.02.2004. We hereby attached the share application form' and their allotment advice duly signed by them. (Refer Annexure I"). The Investor Company has also forwarded their notarised affidavit confirming the above fact.

List of documents submitted in Annexure "I"

- | | |
|------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment | 7. ITR Acknowledgement |
| 3. Share Application Form | 8. Financial statements |
| 4. Letter of Allotment | 9. Certificate of Registration from RBI |
| 5. Share Certificate | 10. Affidavit by the Director |

10. M/s Vighnhar Marketing Private Limited having its registered office at 18A, Ramakanta Bose Street, Kolkata-700003

The company has been allotted 25,000 equity shares of Rs. 10/- each at a premium of Rs. 90/- per share. The payment has been made through cheque no. 284091 dated 31/03/2012 for Rs. 25,00,000/- drawn on Central Bank of India. The Bank statement highlighting the payment portion has been attached. The source for the payment of such amount has been generated from the receipt from sale of shares to Dreamland Vinimay Pvt. Ltd., the amount has been received on 31/03/2012 through cheque no. 389068 for Rs. 25,00,000/-. The confirmation of accounts has been attached. The Investor Company has also provided their Financial Statement and copy of the ITR acknowledgement for Asst. Year 2012-13.They have provided Xerox copy of share certificate. 000000040 vide registered folio no. 52 and distinctive no. 0000577001-0000602000 dt 31.03.2012 allotted to them along with their board resolution for their investment in our company. The investor company is registered NBFC (Non-Banking Financial company) registered with Reserve Bank of India u/s

45 of the Reserve Bank of India Act 1934 vide registration no B.05.05943 dt. 22.12.2003. We hereby attached the share application form and their allotment advice duly signed by them. (Refer Annexure J"). The Investor Company has also forwarded their notarised affidavit confirming the above fact.

List of documents submitted in Annexure" J"

- | | |
|------------------------------------|---|
| 1. Confirmation | 6. Bank Account |
| 2. Board resolution for investment | 7. ITR Acknowledgement |
| 3. Share Application' Form | 8. Financial statements |
| 4. Letter of Allotment | 9. Certificate of Registration from RBI |
| 5. Share Certificate | 10. Affidavit by the Director |

As mentioned above, we are enclosing all details of shares allotted to the shareholders during the F.Y. 2011-12. Further, the investment so received is in the form of application money received towards the equity share capital of our company. Also, we have enclosed the copy of Form-2 filed with Ministry of Corporate Affairs (MCA) showing allotment of shares to the persons, who paid the share application money. Above submissions filed by the appellant are same as produced before assessing officer,

5. Remand Report:

On verification of information contained in paper book and assessment folder it has been observed that M/s Dhara Vyapaar Private limited was incorporated on 11/05/2016. Total capital as on 31/03/2011 was Rs.2,90,97,649/-. Rs.1,70,65,718/- was reported under the head quoted shares, debentures and Mutual Fund and Rs.1,20,44,5851- kept in fixed deposits.

Quantity of authorized shares as on 31.03.2011 was 300000 numbers. Price was fixed at Rs.10/- each. Premium as on 31.03.2011 reported was Rs.2,61,00,000/-. Quantity of equity share issued earlier year' was 300000. Average value of premium received as on 31.03.2011 calculated at Rs.(26100000 :- 300000) = 87 per share.

During the previous year authorized shares increased to 75000 numbers. Quantity of equity shares issued during previous year (617000-300000) =317000 number. Total premium received was Rs:(31700000-3170000) =285300001-. Premium received Rs.(25360000 :- 317000) = 90/- per share.

During the course of assessment proceeding Notice U/S 142(1) dated 10.10.2014 issued by ITO Wd-6(1), Kolkata. Case later on transferred to ITO, Wd-6(1), Kolkata There is no any record/correspondence made during the period 10.10.2014 to 04.02.2015.

Show cause notice issued on 05.02.2015 by ITO, Wd-6(1), Kolkata on account of non-compliance of notice U/S issued 142(1).

In compliance of show cause notice assessee filed application for adjournment of date to present the case in a proper way on 17.02.2015. Later on compliance made and recorded in order sheet.

Summon u/s 131 issued to Director of assessee company, In compliance of summon one of the director appeared on 16.03.2015, inquiry made and statement recorded.

As per the assessment record total number of summons issues u/s 131 to investor company was 9. Summon issued by post. Two summon notices return unserved with postal mark "**addressee moved.**" Seven summon notice served and in compliance of which written request for adjournment of date filed. No fresh summon for personnel attendance found issued to investor companies.

However, all investor company filed audited balance sheet, P& L Account, investment details copy of resolution passed at meeting of the Board of Directors for investment, copy of share certificate and affidavit notarised by Notary wherein investor companies affirmed the purchase of equity share from assessee.

One of the Director of investor company appeared on 16.03.2015, inquiry made and statement recorded.

Identity, creditworthiness and genuineness of investment were cross verified with information contained in paper books and found that.

- Most of the investors were NBFC registered under RBI< Kolkata having office premises.
- It has also been seen that source of fund applied for investment in assessee company were sales proceeds of old shares/equity shares.
- Capital of most of the investor companies were huge and applied in investment loans and advance and other current asset. .
- Investor companies during F.Yr. 2011-12 purchased equity shares from more than one company.
- Transfer of fund made through banking channel and instance of issue of cheque IRTGC after deposit of cash not found.
- Investor companies were found engaged in revenue generating activities.
- Investor companies were PAN holders and filed ITR and report to ROC regularly.

Statements of transactions filed by investor companies cross verified with claim of assessee. No difference found.

I have examined transactions and credit of capital receipt including premium against the allotment of equity shares and reported by assessee for A.Yr. 2012-13 are legally in order. Deficiency of documentary evidences also could not be noticed nor found highlighted in assessment order.

6. DECISION:

Decision: (Ground No.1,2,3,&4)

6(1) I have considered the submission of the appellant and perused the assessment order and the remand report I have also considered the judicial decisions relied upon by the appellant. The facts of the case have already been discussed as above. It is observed that in the year under consideration the appellant company had raised share capital! Share Premium of Rs.3,17,00,000/- from 10 parties on face value of Rs.10/- & premium of Rs.90/-. In the course of the assessment proceedings, to verify the receipt of share capital, the assessing officer issued notices u/s.131 to 09 share applicants and in response, they all confirmed the transactions and submitted the details/documents in respect of the subscription of shares of the appellant as necessitated by the assessing officer. The shareholders also submitted the details of the source of the fund. One of director of appellant company also attended & his statement was recorded. Even director of two investor companies also attended. However, without taking into consideration of the details/documents filed in the course of the assessment proceedings, he made addition of the share capital of Rs.3.17,00,000/-raised during the year U/s 68 of Income Tax Act.

6(2) All the documents related to identity, creditworthiness & genuineness of transactions of investors were with assessing officer. at the time of framing assessment. All these repeated documents were even submitted in appellate proceedings also. Assessing officer nowhere pointed out creditworthiness & genuineness are not proved. He jumped into conclusion that conditions laid down u/s 68 could not be verified.

6(3) Remand Report under rule 46A

As some of the papers submitted before under signed was not before assessing officer, a remand report was called for. Assessing officer submitted comments as under (relevant portion reproduced):-

“Identify, creditworthiness and genuineness of investment were cross verified with information contained in paper books and found that.

- Most of the investors were NBFC registered under RBI< Kolkata having office premises.
- It has also been seen that source of fund applied for investment in assessee company were sales proceeds of old shares/equity shares.
- Capital of most of the investor companies were huge and applied in investment/loans and advance and other current asset.
- Investor companies during F.Yr.2011-12 purchased equity shares from more than one company.
- Transfer of fund made through banking channel and instance of issue of cheque IRTGC after deposit of cash not found.
- Investor companies were found engaged in revenue generating activities.
- Investor companies were PAN holders and filed ITR and report to ROC regularly.

Statements of transactions filed by investor companies cross verified with claim of assessee. No difference found.

I have examine transaction~ and credit of capital receipt including premium against the allotment of equity shares and reported by assessee for A.Yr. 2012-13 are legally in order. Deficiency of documentary evidences also could not be noticed nor found highlighted in assessment order".

In the Remand Report assessing officer examined all aspects of Sec. 68 & found everything legally in order.

6(4) Judicial ruling

In CIT versus Nishan Indo Commerce Ltd (2014) 101 DTR (Cal) 0413, the Calcutta High Court deleted the addition made u/s.68 of the Act for the share capital raised during the year inter-alia holding that once the identity and other relevant particulars of shareholders are disclosed, it is for these shareholders to explain source of their funds and not for assessee- company to show wherefrom these shareholders obtained funds.

In CIT Versus M/s. Dataware Private Limited [ITA T No. 263 of 2011], the Calcutta High Court dismissed the appeal of the revenue holding as under:

"After hearing the learned Advocate for the appellant and after going through the materials on record, we are of the view that no substantial question of law is involved in this appeal.

Both the Commissioner of Income Tax (Appeal) and the Tribunal below have in details considered the fact that the share application money was paid by account payee cheque, the creditor appeared before the Assessing Officer, disclosed its PAN number and also other details of the accounts but in spite of that the Assessing Officer did not enquire further from the assessing officer of the creditor but instead, himself proceeded to consider the profit and loss account of the creditor and opined that he had some doubt about the genuineness of such account.

In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its. Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established. We find that Path the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities. The appeal is thus devoid of any substance and is summarily dismissed."

In CIT versus Mitul Krishna Kapoor [ITA No.333/2009j, the Calcutta High Court vide order dt.09.06.2016 dismissed the appeal of revenue holding as under:

"Addition of a sum of Rs.33 .90 lakhs was made on the basis that the assessee had allegedly taken loan from the corpus fund, which the assessee has denied.

The assessing officer proceeded to add this sum of Rs.33.90 lakhs under section 68. CIT(A) has clearly held that there is no knowledge as to what the corpus fund is. The CIT also opined that there was no material on the basis of which the aforesaid addition could be made and on that basis the CIT deleted the addition. The learned Tribunal concurred with such finding of the CIT(A).

As regards other sum of Rs.72,57,686/- is concerned, the addition was found altogether unmeritorious because "all these amounts are paid by cheque out of accounted fund in the regular books of accounts. A copy of the confirmation along with the bank statement in respect of the assessee's accounts with Bharat Overseas Bank is filed, duly confirmed by Shri A E Medhora on behalf of M/s. Novrojee & Co. A copy of the bank account disclosed and the regular books of accounts were filed before the Ld.CIT(A) which were also made available before the AO. Based on these submissions, the Ld.CIT(A) has deleted the same."

The facts and circumstances of the case, we are sorry to say, depict clear abuse of power of the assessing officer.

We were inclined to impose exemplary costs upon the revenue but refrained from doing so because notice of this appeal has not been given to the respondent. No one has appeared, The question formulated in this case is answered in the affirmative and against the revenue.

The appeal is, therefore. dismissed,"

In ITO versus M/s. Savera Suppliers (P) Ltd. (ITA No. 12/K01/2010), the Kolkata Bench of the Income Tax Appellate Tribunal, following the order of the Calcutta High Court in the case of CIT Versus M/s. Dataware Private Limited (Supra), dismissed the revenue's appeal holding as under:

"5. We have heard the rival submissions. As it is noticed from the assessment order that the assessee has placed before the AO copies of return of income, balance sheet and bank account details as also the PAN of the applicants the assessee has discharged its onus in respect of the share application money received by it. Further, in view of the decision of the Hon 'ble Jurisdictional High Court in the case of CIT vs M/s. Dataware Private Limited (supra) wherein it has been specifically held that so long it is not established that the returns submitted by the creditor has been rejected by its AO, the AO of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness of the transaction through account payee cheque has been established. We are of the view that the finding of the Id.

CIT(A) is on the right footing and does not call for any interference. This view of ours also finds support from the decision of the Hon'ble Supreme Court in the case of CIT vs Lovely Exports (P) Ltd referred to supra.

6. In the result ground Nos. 1 and 2 of the revenue's appeal stand dismissed."

In ITO versus M/s Steel Emporium Ltd [ITA No.1061Koll2012], the Kolkata bench of the Tribunal dismissed the appeal of revenue holding as under:

"10.1 From the aforesaid discussion we find that the Assessing officer has made the addition of the share application money because all the nine companies were having the common address and the notice sent under section 133(6) was received by the single person. Accordingly the Assessing officer opined that the assessee has used its unaccounted money in the share application transactions. However we find that all the money received in the form of share capital is duly supported with the requisite document as discussed above. To our mind the basis on which the addition was made by the Assessing officer is not tenable. The Ld. DR also could not brought anything on record to controvert the findings of the Ld. CIT(A). In view of above we find no reason to interfere in the order of the Ld. CIT(A). Accordingly the ground raised by Revenue is dismissed."

In ITO versus M/s. Harshwardhan Gems Pvt. Ltd [ITA No.1337IKoll2010], the Kolkata bench of the Tribunal dismissed the appeal of the revenue holding as under:

"6. In the instant case also (acts and circumstances are identical as the assessee has prima facie proved the identity of the share subscriber, the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels, the creditworthiness or financial strength of the share subscriber. The relevant details of the address or PAN identity of the share subscriber are furnished to the Assessing officer 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. The revenue would not be justified in drawing an adverse inference only because the share applicant failed to respond to notices. As held by Hon'ble Delhi High Court Assessing officer is duty-bound to investigate the creditworthiness of the share applicant and the genuineness of the transaction. Further, the assessee has discharged its onus of proving the identity of the share applicants. In the given facts the Assessing officer had not brought any material or evidence which would indicate that the share applicants were (a) benamidars or (b) fictitious persons or (c) that any part of the share capital represented the company's own income from undisclosed sources. In view of the facts and precedent before us, we are of the view that CIT(A) has rightly deleted the addition and we confirm the order of CIT(A) on this issue."

In ITO versus M/s. Cygnus Developers (I) Pvt. Ltd. [ITA No.282IKoll2012], the Kolkata Bench of the IT A T held as under:

"8. We have heard the submissions of the learned DR, who relied on the order of Assessing officer. The learned counsel for the assessee relied on the order of CIT(A) and further drew our attention to the decision of Hon'ble Allahabad High Court in the case of CIT vs Raj Kumar Agarwal vide ITA No.179/2008 dated 17.11.2009 wherein the Hon'ble Allahabad High Court took a view that non production of the director of a Public Limited company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the IT AT Kolkata bench in the case of ITO vs Devinder Singh Shant in ITA NO.208/KOI/2009 vide order dated 17.04.2009.

9. We have considered the rival submissions. We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the revenue that the revenue disputed only the proof of identity of the share holder. In this regard it is seen that for A.Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward-9(4), Kolkata and the order of assessment u/s 143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A.Y.2005-06 by ITO, Ward-9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A.Y.2005-06 by the very same ITO~Ward-9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the 'Hon'ble Allahabad High Court as well as ITA T Kolkata Bench, on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the Assessing officer it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the revenue."

In M/s. Prabhu Dhan Infrastructure Pvt, Ltd. versus DCIT [ITA No.1908/Kol/2012] it was held as under:

"6. We have heard the rival submissions and are of the view that addition made by the assessing officer and sustained by CIT(A) deserves to be deleted. It is clear from the evidence on record that Jai Kali Properties (P) Ltd held that investment was Rs.5,00,000/- in Prabhudan Securities Pvt. Ltd as on 31.03 .2004. During the previous year this investments have been liquidated and sale proceeds on such sale has gone into the bank account and the same has been utilised for making investments in the form of share application money in the assessee company by Jai Kali Properties (P) Ltd. Thus it is clear that the assessee has established the identity and creditworthiness and genuineness of the transactions of the receipt of share application money. We, therefore, hold that the addition made by the Assessing officer and sustained by CIT(A) should be deleted."

In ACIT versus M/s. Kunj Alloys Pvt. Limited [ITA No. 257/CTK/2007], it was held as under:

"9. We have heard the arguments of both the sides and also perused the relevant material available on record. Although the Id. D.R. has relied on the order of the Assessing officer in support of the Revenue's case on this issue, the Id. Counsel for the assessee has pointed out that the total amount of Rs.19 .26 crores was raised towards shares by the assessee-Company as well as other group Companies including the amount in question during the assessment years 2001-02 to 2007-08. He has submitted that pursuant to the search conducted in the case of all these group Companies including the assessee-Company, the entire amount of share capital raised was verified by the Assessing Officer and the same was accepted and no addition under section 68 was made by him after having found that the identity and capacity of the concerned creditors as well as .genuineness of the relevant transactions was duly established by group Companies including the assessee-Company, He has also filed summary of the relevant extract of the notings made by the Assessing Officer in this regard, which shows that fresh notices issued by the Assessing Officer under section 133(6) of the Act were duly served on all the shares subscribers and the same were also duly complied with by them by filing the relevant details and documents. In the

light of the said details and documents filed by the concerned share subscribers, it was held by the Assessing Officer that their identity and capacity as well as the genuineness of the relevant transactions were duly established and no addition under section 68 was called for. Keeping in view these submissions made by the Id. Counsel for the assessee, which have not been disputed or controverted by the Id. D.R., we find no justifiable reason to interfere with the impugned order of the Ld. CIT (Appeals) deleting the addition of Rs.1,35,00,000/- made by the Assessing Officer under section 68 and upholding the same on this issue, we dismiss the appeal of the Revenue."

In DCIT versus Zimkele Commoddeal Pvt Ltd (ITA No. 959/KOI/2011), the Kolkata bench of the ITAT, relying on the orders of the Calcutta High Court in the cases of CIT vs Roseberry Mercantile (P) Ltd (Supra) & CIT vs Mitul Krishna Kapoor (Supra), upheld the order of the CIT(A) who deleted the addition made for the share capital raised by the assessee.

Again, in Wellman Wacom Ltd versus JCIT (ITA No.1229/Kol/2012), the Kolkata tribunal deleted the addition made for the share capital raised by the assessee holding that "the evidences filed by the assessee are staring on us and the same cannot be brushed aside or swept under the carpet".

In the case of CIT versus Anshika Consultants (P) Ltd (2015) 93 CCH 0016, the Delhi High Court dismissed the appeal of revenue holding as under:

".6. The onus cast upon the assessee under Section 68 of the Act to satisfy the department about the true identity of an investor, its creditworthiness and' genuineness of a transaction was explained by the Supreme Court in CIT Vs. Lovely Exports (P) Ltd., 216 CTR 195. Whilst, the Assessing Officer acted legitimately in enquiring into, the matter, the inferences drawn by him were not justified at all in the circumstances of the case. Whether the assessee company charged a higher premium or not, should not have been the subject matter of the enquiry in the first instance. Instead, the issue was whether the amount invested by the share applicants was from legitimate sources. The objective of Section 68 is to avoid inclusion of amount which is suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What -is disquieting in the present case is when the assessment was completed on 31.12.2007, the investigation report which was specifically called from the concerned department in Kolkata was available but not discussed by the Assessing Officer. Had he cared to do so, the identity of the investors, the genuineness of the transaction and the creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants' particulars were available with the Assessing Officer in the form of balance sheets income tax returns, PAN details etc. While arriving at the conclusion that he did, the Assessing Officer did not consider it worthwhile to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine that the amount had been routed from the assessee's account to the share applicants' account. As held

concurrently by the CIT (Appeals) and the ITAT, these conclusions were clearly baseless and false. This Court is constrained to observe that the Assessing Officer utterly failed to comply with his duty considers all the materials on record, ignoring specifically the most crucial documents. We place these observations on the record and direct a copy of the judgment to be furnished to the concerned income tax authorities for appropriate action towards reflecting these observations suitably in service record of the concerned Assessing Officer to avoid such instances in the future.

7. For the above reasons, this Court is of the opinion that the concurrent findings of fact, as to the true identity of the share applicants, their creditworthiness and genuineness of the transaction, are based on sound reasoning and do not call for interference. No substantial question of law arises. The appeals are dismissed."

6(5) In view of the facts & circumstances of the case and following the principle laid down in the above discussed judicial rulings, remand report submitted by assessing officer it is held that the addition of Rs.3,17,00,000/- for the share capital raised by the appellant as unexplained cash credit u/s 68 of the Act was not justified and the same is directed to be deleted."

It is vehemently contended at the Revenue's behest that Assessing Officer had rightly made the impugned addition as the assessee failed to prove identity, genuineness and creditworthiness of its investor parties as per hon'ble apex court's decision in Sumati Dayal vs. CIT (1995) 80 Taxman 89/214 ITR 801 (SC), CIT vs. Durga Prasad More (1971) 82 ITR 540 (SC) as well as jurisdictional high court's judgment in (2016) 70 taxmann.com 124 (Cal) Rajmandir Estates (P) Ltd. vs. P.CIT, Kolkata-III affirming this tribunal's order declining various taxpayers' appeals against the CIT's directions u/s. 263 of the Act to the assessing authority for a detailed investigation in various cases of unexplained share capital / premium raised from shell companies. We find no merit in Revenue's instant grievance. It has come on record that the Assessing Officer's remand report filed during the course of lower appellate proceedings had found assessee's impugned share capital / premium against the allotment of its equity shares to be very much legally in order. We have ourselves perused the ITO ward-6(1) Kolkata remand report in question forming part of case file to this effect. We conclude in the peculiar clinching factual backdrop that the Revenue cannot be held to be an aggrieved party

once CIT(A) has deleted the impugned addition based on Assessing Officer favourable remand report. Hon'ble Madras High Court's decision in *Smt. B. Jayalakshmi vs. ACIT* (2018) 90 taxmann.com 486 (Mad) holds in identical facts that the Revenue is not entitled to maintain appeal in these facts and circumstances. We therefore decline Revenue's sole substantive grievance.

3. This Revenue's appeal is dismissed.

Order pronounced in the open court 28/12/2018

Sd/-

(लेखा सदस्य)

(M.Balaganesh)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 28/12/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Income Tax Officer, Ward-6(1),P-7, Chowringhee Sq.6th Fl, Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Dhara Vyapaar Pvt. Ltd., 9, Old Court House Street, 1st Floor, Dalhousie, Kolkata-700001
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।