

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

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.1179/Kol/2015**  
Assessment Year :2008-09

Income Tax Officer, Ward-5(2), P-7, Chowringhee Square, 8 <sup>th</sup> Floor, Room No.6, Kolkata-700 069	<b>V/s.</b>	M/s Purbasa Commercial Pvt. Ltd. 5/5 Clive Row, 4 <sup>th</sup> Floor, Room No.26, Kolkata-700001 <b>[PAN No.AAECF 1267B]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Saurabh Kumar, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Subash Agarwal, Advocate
सुनवाई की तारीख/Date of Hearing	15-01-2019
घोषणा की तारीख/Date of Pronouncement	25-01-2019

**आदेश /O R D E R**

**PER S.S.Godara, Judicial Member:-**

This Revenue's appeal for assessment year 2008-09 arises against the Commissioner of Income Tax (Appeals)-2, Kolkata's order dated 29.06.2015, passed in case No.1575/CIT(A)-2/2015-16, in proceedings u/s. 144 r.w.s 263 r.w.s. 143(3) r.w.s 147 of the Income Tax Act, 1961; in short 'the Act'.

Case file perused.

2. The Revenue's sole substantive ground raised in the instant appeal seeks to reverse the CIT(A)'s action deleting unexplained cash credits addition of ₹3.14 lac made in the course of assessment framed on 19.03.2015. The assessee's case before Assessing Officer was that this sum represented its share application / premium raised during the course of relevant previous year. The Assessing Officer held in the course of assessment that assessee had failed to prove identity, genuineness and creditworthiness of the investors

concerned. He therefore invoked sec. 68 of the Act to treat the above share application money as unexplained cash credits. The CIT(A) has deleted the impugned addition vide following detailed discussion:-

*"I have considered the order of AO. and submission of the assessee's documents / evidences placed on records and the case laws rely by both AO & AR of the assessee on the basis of above, I observe as under:*

1. In this case entire addition was made on the premises of that share capital of the assessee company is not genuine as identity & creditworthiness of the shareholders were doubtful and rather where bogus in nature as these shareholders did not exist and the assessee company only converted its black money into white without paying any tax to the revenue. The AO. while making addition has rather gone on record while observing that, the assessee company is one of the sham Company floated by entry operators engaged in Kolkata and transaction relating to issue of shares were made only on the papers. In facts the AO has initiated the proceedings solely on the presumption and having a predetermined set of mind that, the share capitals are bogus.

2. In the other words, the A. O. in the first place has not taken a conscious decisions based on the material facts and the same is made only on presumption and a biased set of mind and in such circumstances the order passed by A.O. does not hold good which is based on mere presumption surmise and conjunctures. The above ratio has repeatedly been reiterated by Hon'ble Supreme Court in the following judgments.

i) Dhakeswari Cotton Mills Ltd. Vs CIT reported in 26 ITR page - 775 wherein it was held:

"In this case we are of the opinion that the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the company to rebut the material furnished to it by him, and, lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result is that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the Income-tax Officer and the Tribunal seems to be based on surmises, suspicions and conjectures. It is somewhat surprising. that the Tribunal took from the representative of the department a statement of gross profit rates of other cotton mills without showing that statement to the assessee and without giving him an opportunity to show that statement had no relevancy whatsoever to the case of the mill in question.

It is not known whether the mills which had disclosed these rates were situate in Bengal or elsewhere, and whether these mills were similarly situated and circumstances. Not only did the Tribunal not show the information given by the representative of the department to the appellant, but it refused even to look at the trunk load of books and papers which Mr. Banerjee produced before the Accountant Member in his chamber. No harm would have been done if after notice to the department the trunk had been opened and some time devoted to see

what it contained. The assessment in this case and in the connected appeal, we are told, was above the figure of Rs. 55 lakhs and it was meet and proper when dealing with a matter of this magnitude not to employ civil Appeal NO- 218 Of 1953, not reported, unnecessary haste and show impatience, particularly when it was known to the department that the books of the assessee were in the custody of, the Sub-Divisional Officer, Narayanganj. We think that both the Income-tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It is thus a fit case for the exercise of our power under article 136.

In the result we allow this appeal, set aside the order of the Tribunal and remand the case to it with directions that in arriving at its estimate of gross profits and sales it should give full opportunity to the assessee to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford full opportunity to meet the substance of any private inquiries made by the Income-tax Officer if it is intended to make the estimate on the foot of those enquiries. It will also be open to the department to place any evidence or material on the record to support the estimate made by the Income-tax Officer or by the Tribunal in its judgment. The Tribunal if it thinks fit may remit the case to the Income-tax Officer for making a fresh assessment after taking such further evidence as is furnished by the assessee or by the department. The cost of these proceedings will abide the result. Case remitted."

*In view of the above judgment, it is apparent that important parameters have been laid down by the apex court wherein revenue has been advised by Supreme Court that caution must be taken that revenue is not exercising power in arbitrary manner and AO cannot give routined or frivolous reasons behind making an addition as in the present case the A. O. has summarily made addition without going in to details to verify the genuineness of the share capital and even to carry out the instructions / directions given by the Ld. C. I. T. while setting aside the order U/s 263 of the Income Tax Act, 1961.*

*3. I Find that Ld. C. I. T. while setting aside the order has given the following direction:*

- i) Examine the genuineness and source of share capital, not on a test check basis, but in respect of each and every shareholder by conducting independent enquiry not through the assessee. The bank account for the entire period should be examined in the course of verification to find out the money trail of the share capital.
- ii) Further the A. O. should examine the directors as well as examine them on oath to verify their credentials as director and reach a logical conclusion regarding the controlling interest.
- iii) The A. O. is directed examine the source of realization from the liquidation of assets shown in the balance sheet after the change of directors, if any.

*4. I find that, though the order of CIT u/s 263 of the Income Tax Act, 1961 is of dated 18/03/2014 the A.O. issued notices u/s 131 of the Income Tax Act,*

1961 to the directors of the assessee Company along with documents on 27/01/2015 and after no compliance on the said date was made, the AO completed the assessment U/s 144 on 19/03/2015. The AO in this order though duly mentioned the fact the assessee company filed reply it failed to produce directors / principal officers of the assessee co. and on this basis only the AO. presumed that the share capital of the assessee company as genuine doubtful share capital and hence liable for the addition U/s 68 of the Income Tax Act, 1961.

However, the above action by the A O. is totally contrary to the ratio of decisions as laid down by the Hon'ble Supreme Court in the case of CIT vs ORISSA CORPORATION PVT. LTD. Reported in 159 ITR page -78 wherein it was held by Hon'ble Supreme Court that the assessee company has given name and address of aliased creditors and it was in the knowledge of revenue that the said creditors were Income Tax Assessee and the Index No. whereas in the file of revenue and the revenue apart from issuing notices U/s 131 did not present the matter further. The revenue did not exercise the coercive power on the said creditors to find out whether they are creditworthy or not in those-circumstances the assessee could not do anything further.

5. In the present case also, I find that the A O. apart from issuing notices U/s 131 only once has not made any effort to pursue the matter further by follow up and examine the shareholders despite the fact all the details regarding such share capital were available in the file of AO. and where I further made available during the course of hearing.

6. I also find that the A O. did not make any efforts to find out the money trail of the share capital as directed by the Ld. C. I T. while setting aside the case and by conducting independent enquiry of each and every shareholders and not though the assessee whereas accrued perusal of the order of the AO. made it clear that enquiry were rather made from the assessee and no effort as to the independent enquiry at the share holders was carried out as directed by CIT & therefore the order-of AO cannot be said to have been carried out in the time of the direction of the Ld. CIT while setting aside the order u/s 263 of the Income Tax Act, 1961. We also find that, the case law relied by the AO and Ld. CIT by passing the order U/s 263 are not applicable to the present case.

7. The decision of apex court in case of Sumati Dayal vs. CIT (214 ITR 801) is not applicable in this case as shares are issued after receiving payment vide a/c payee cheque and the shareholders who are Income Tax Assessee in the Department itself and therefore application of test of human probability does not arise at all.

8. The decision of "Divine Leasing (299 ITR 268) is also not applicable as there is no evidence of commission unaccounted money in form of investment in Share Capital.

9. The CIT has also relied on following Judgment.

- i) Rampyari Devi Saraogivs.CIT 67 ITR 84 (SC)
- ii) Tara Devi Agarwal vs CIT 88 ITR 323 (SC)
- iii) Gee Vee Enterprises vs Addl. CIT 99 ITR 375, 386 (Del)
- iv) CIT vs Sophia Finance Ltd. 205 ITR 98 (Del)
- v) CIT vs Active Traders P. Ltd. 214 ITR 583 (Cal)

- vi) CIT vs NivedanVanijya Niyojan Ltd. 263 ITR 623 (Cal)
- vii) CIT vs Bhagwati Jewels Ltd. 201 ITR 461 (Del)

10. However, the fact of the above case are distinguishable as observed herein above that though the assessee submitted all the details pertaining to it's shareholdings such as Name and address of the share holders, PAN No., Bank A/c and detailed transactions the A. O. could not bring any independent evidence / witness to discard the contention of the assessee.

11. Find that, A. O. also relied on the decision of jurisdiction of IT AT in case of M/S Star Griha Pvt. Ltd. Vs CIT & Bisakha Sales Pvt. Ltd. Vs. CIT but these were ex-party order or the case wherein and the assessee has not submitted any details before Hon'ble IT AT, therefore the case laws relied upon are distinguishable both on the fact & law.

12. I also find that while invoking section 68 in the case of assessee the A. O. himself contradicted while observing that the assessee is having no source of income baring miscellaneous receipt and in such circumstances a company can not to have generated unaccounted money to make itself enable to inflow the same in the garb of share capital therefore it can safely be understood that there is no unaccounted money in the hand of the assessee.

13. I also find that the judgment in case of CIT vs Divine Leasing reported in 299 ITR page - 268 which has been relied by revenue is rather in support of the assessee wherein at Para 18 to 20 Ld. Court has observed as under:

18. "We shall now turn our attention to the facts and details of the present Appeals. The Appeal of the Revenue in respect of Assessment Years 1984-1985 and 1986-87 was rejected on 4-9-2003 by the IT AT Bench comprising Shri R.M. Mehta and Shri Ram Bahadur. With regard to the in between Assessment Year 1985-1986 another Bench comprising Shri H. L. Karwa and Shri B. R.Jain dismissed the Revenue's appeal on 12.8.2005.

19. As would be evident from a perusal of the Table (supra) for the Assessment Year 1984-85 the assessed had filed a Return declaring a loss of RS.25,090/- and consequent upon the addition of Rs.9,53,500/- made under Section 68 the assessment was made on this sum. The IT AT noted that the assessed was a Public. Limited Company which had received subscriptions to the public issue through banking channels and the shares were allotted in consonance with the provisions of the Securities Contract Regulation Act, 1956 as also the Rules & Regulations of the Delhi Stock Exchange. Complete details appear to have been furnished. The IT A T has further recorded that the AO had not brought any positive material or evidence which would indicate that the shareholders 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. By the same Orders dated 4.9.2003 the addition of Rs.76,51,650/- for the Assessment Year 1986-87 deleted by the CIT (A), was upheld.

20. In connection with Assessment Year 1985-86 the ITAT has extracted portions of the Orders of the CIT (A) and we must assume that it did so to adopt that reasoning. The ITAT has not articulated its own reasoning in respect of Ground N01 before it viz. deletion of the addition of Rs.13,05,450/- on account of unexplained shares

subscription; whilst it has done so with regard to the other ground viz. deletion of addition of Rs.9,95,000/- made on account of unexplained loans. The ITAT has categorically held that the assessed has discharged its onus of proving the identity of the share subscribers. Had any suspicion still remained in the mind of the AO he could have initiated '**coercive process**' but this course of action has not been adopted. In view of the concurrent finding pertaining to the factual matrix we find no merit in these Appeals which we accordingly dismiss."

14. I further find that, Hon'ble Delhi High Court in case of CIT Vs Lovely Export has observed as under:

The Calcutta High Court has held in CIT vs. Precision Finance Pvt. Ltd., [1994] 208 ITR 465 that it is not sufficient for an assessee to disclose that credits in their Books had been received through Banking channels; the identity as well as the creditworthiness of the creditor must nevertheless be proved. In Sajan Das and Sons vs. Commissioner of Income- Tax, [2003] 264 ITR 435 (Del) the Division Bench was not convinced that merely because moneys could be identified and traced through banking channels the genuineness of the Gift in question stood established. This is obviously because an assessee can scarcely be heard to say that he does not know all particulars pertaining to the donor. Thereafter, the same dialectic lead the Bench to arrive at the opposite conclusion in Commissioner of Income-Tax vs. R.S.Sibal, [2003] 269 ITR 429 (Del). In C.I.T. vs Makhani and Tyagi (P) Ltd. [2004] 267 ITR 433 (Del) this Court has not given its imprimatur to the inaction of the AO in doing nothing further after the issuance of summons under Section 131 of the Income-Tax Act. It did not condone the AO, failing to issue coercive process, and in this manner attempting incorrectly to shift the burden on the Assessee to establish the legitimacy of the transaction. In Commissioner of Income-Tax vs. Antarctica Investment Pvt. Ltd., [2002] 262 ITR 493 (Del) the Court was satisfied that no interference was justified since the Assessee had produced the Share Application Forms along with confirmation letters and copies of their Accounts, copies of their Bank Accounts of cheque payments and their Auditor's Report. The Assessing Officer's conclusion that the genuineness of the transaction had not been made good was not upheld. This conclusion was reached despite the fact that notices received by one of the common Directors of the two subscribing companies had been ignored and no information was forthcoming from the latter. However, the Under Secretary (Land Revenue, Government of Sikkim, Gangtok) had stated that both the subscribing companies were incorporated in Sikkim and their addresses were disclosed in the return of allotments; the subscribers thus stood identified. Their financial standing or capacity was not investigated by the Court. The decision in Commissioner of Income-Tax vs. Achal Investment Ltd., [2004] 268 ITR 211 (Del) is also on the same lines.

*The above decision of the Delhi High Court has been affirmed by the apex court by dismissing the SLP.*

*I further find that the decision of the Hon'ble High Court of Kolkata in case of CIT vs Precision Finance Pvt. Ltd. 208 ITR 463 is no more applicable in view of the judgment of Hon'ble Supreme Court, in case Lovely Export Supra.*

*15. I observe that in the case of the decision of IT AT Delhi in the case of Rakam Money Matters Pvt. Ltd. Vs. Dept. of Income Tax and it was held that:*

"In the present case, as noted above, the AO has not been able to bring on record any valid material or evidence to discredit the evidences and the explanation given by the assessee company. The only evidence which has been referred by the AO is statement of third parties recorded by the Investigation Wing. Admittedly these statements were not recorded by the AO but were recorded by the Investigation Wing at the back of the assessee. The AO has not even referred to the relevant portion of such statement so as to establish the collusive arrangement the assessee company had with these persons."

*16. I further noticed of ITAT Delhi in the case of Neelkanth Finbuild Ltd. Vs. I.T.O. has held that:*

"Keeping in view of the findings given so Assessing Officer as well as the Ld. First Appellate Authority and the documentary finding by the assessee before us. We are of the considered view that Ld. First Appellate Authority has deleted the addition in dispute on the basis of various documentary evidence filed by the assessee before the Assessing Officer as well as before him. Hon'ble Supreme Court of India in the case of CIT VS. Lovely Export 299 ITR 261 (SC) which has confirmed the order of Hon'ble Delhi High Court has held that once the identity of the share holder have been established, even if there is a case of bogus share capital, it cannot be added in the hands of company unless any adverse evidence is not on record. Ld. First Appellate Authority has examined the documentary evidence filed by the assessee before the Assessing Officer as well as before him and held that the assessee has provided confirmations from all the parties as well as various evidences to establish the genuineness of the transaction, assessee has also relied upon the judgment of Nemi Chand Kothari Vs. CIT 264 ITR 254 (Gauhati) wherein it has held that it is a certain law that the assessee is to prove the genuineness of transaction as well as the creditworthiness of the creditor must remain confined to the transactions which have taken place between the assessee and the creditor. It is not the business of assessee to find out the source of money of creditors.

Similar observation has also been given in the case of Hastimal 49 ITR 273 (Madr) and Daulatram Rawatrnal (1973) 87 ITR 349 (SC). Ld. First Appellate Authority has cited various decisions rendered by the Hon'ble Supreme Court of India as well as the Hon'ble Jurisdictional High Court in the impugned order and finally has held that the assessee has substantiated the transaction regarding share application money received by it was genuine transaction and the same were not accommodation entries. He did not find any evidence collected by the AO which could prove otherwise and deleted the additions in dispute. As regard to the addition of Rs.12,500/- made on account of commission which was presumed to have been allowed by the assessee for obtaining the Hawala entry in dispute, the Id. CIT(A)

observed that the Assessing Officer was not able to brought anything on record that it was assessee's own money which was rooted in the form of share application money and has rightly deleted the same.

Keeping in view all the facts and circumstances, we are of the considered view that the Ld. First Appellate Authority has passed the impugned order under the law and according to the facts of the present case and has rightly deleted the addition in dispute. We find no infirmity in the impugned order and upheld the impugned order by dismissing the appeal filed by the revenue."

*17. In the case of the decision of Madras High Court in the case of CIT Vs. Pranav Foundation Ltd. and it was held that:*

"From the facts as enumerated above, we are of the view that the decision of the Supreme Court in Lovely Exports (P) Ltd. case, referred supra, applies on all fours to the present case, in view of the fact that all the four parties, who are subscribers of the shares, are limited companies and enquiries were made and received from the four 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.

That apart, a reading of the decision of the Supreme Court in Lovely Export (P) Ltd., case, referred supra, makes it clear that the department has a right to reopen the individual assessment if the allegation of bogus shareholding is proved. This is not a case of investment by bogus shareholders. The four limited companies have made investment and that I borne out by records. The Commissioner of Income Tax (Appeals) and the Tribunal on facts, have found that the transactions in this assessee is beyond the pale of controversy and the assessee has explained in no uncertain terms the nature and source of the income.

We find that the decision of the Delhi High Court in Sophia Finance Ltd., referred supra, does not get attracted to the facts of the present case, as rightly held by the Tribunal. That part, the decision of the Calcutta High Court in Commissioner of Income Tax v. Standing Counsel for the Revenue, also does not support the case of the Revenue, as all that the assessee is required to established 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.

Resultantly, we find no merits in the appeal. Hence, no substantial question of law arises for consideration. In the result, the appeal is dismissed. No costs."

18. *In the case of the decision of Madras High Court in the case of CIT Vs. Navodaya Castles Pvt. Ltd. and it was held that*

"Now, when we go to the order of the tribunal in the present case, we notice that the tribunal has merely reproduced the order of the Commissioner of Income Tax (Appeals) and upheld the deletion of the addition. In fact, they substantially relied upon and quoted the decision of its coordinate bench in the case of MAF Academy P. Ltd., a decision which has been overturned by the Delhi High Court vide its judgment in C.I.T v S.M.A.F Academy P. Ltd [ (2014) 206 DLT 277]. In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about ITA No. 320/2012 Page 20 of identity, creditworthiness of shareholders as well as genuineness of the transactions.

In view of the aforesaid discussion, we feel that the matter requires an order of remit to the tribunal for fresh adjudication keeping in view the aforesaid case law. The question of law is, therefore, answered in favour of the Revenue and against the respondent-assessee, but with an order of remit to the tribunal to decide the whole issue afresh. One of the reasons, why we have remitted the matter is that the cross objections of the respondent-assessee questioning notice under Section 147/148 were dismissed as infructuous and even if we decide the issue on merits in favour of the Revenue, the cross objections would get revived and require adjudication. The appeal is accordingly disposed of."

19. *The AR requested in the submission to refer to instruction No. 2/2015 [F.No. 500/15/2014-APA - I] dated 29/11/2015, where it has been clarified by CSDT in the case Vodafone India Services Pvt. Ltd. For A Y. 2009-10, where in the court has held, inter-alia, that the premium on share capital account does not give rise to income. CBDT has given instruction to follow the ruling given above case,*

20. *I have also considered the submission of the assessee in relation to genuineness of share capital in the light of Evidence Act.*

*Based on above discussion and observation and relevant case laws, I have considered the issue and have come to conclusion, based on certain facts:-*

1. The appellant has made his C3Sij that the identity of the shareholders are established beyond doubt and on enquiries made by the AO there is no adverse finding in this aspect,
2. The very fact that most of the subscribers are existing tax assessee and some of them were subject to scrutiny assessment during the same period establish the identity and authenticity of the subscribers,
3. About the genuineness of the transaction there is no finding in the assessment order in adverse or which is subversive to the facts stated by the assessee during the course of assessment proceeding,

4. The creditworthiness of the subscribers to the share capital is proved by submission of their audited annual accounts. The net worth of such subscribers are in excess of the amount invested by each of them.

5. The addition made by A.O. is based on assumptions and suspicion not backed by any authenticity or reasons.

6. The A.O. had not dealt logically and judiciously with the documents submitted during the course of hearing by the assessee and the subscribers to the share capital of the assessee to draw that such share capital is unexplained cash credit.

7. The appellant has made out his case logically and has relied on the documents which are not in doubt.

*Hence, I am inclined to accept the ground No. 1, 2 & 3 of the appellant and direct the AO to delete the addition made under section 68 of the Income Tax Act' 1961.*

1. The AR stated that the assessee had not earned any income which would not form part of the total income.

2. The AR had pleaded that the appellant has not incurred any expenditure which might be related to any exempt income.

3. He further stated that there is no borrowing and there is no claim of any interest on the borrowed fund which might have been utilized to earn any exempt income.

*I have gone through the annual accounts and is of opinion that the arguments of the AR does not hold good that the major funds have been utilized by the assessee towards investments in share. These investments would earn income by way of dividend in future which is an exempt income. The administrative expenditures incurred by the assessee are partly for the investments activities, hence the probability of expenditure relating to exempt income cannot be ruled out. In my opinion section 14A is a justified charging section as the taxable income is net of expenditure so the non taxable or exempt income should also be net of any outgoing. Hence I decline to interfere with the decision of AO on this ground. The addition on account of disallowance is confirmed."*

3. We have given our thoughtful consideration to rival contentions. Learned Addl. CIT-DR vehemently contends during the course of hearing that CIT(A) has erred in law as well as on facts in deleting the impugned addition despite the fact that assessee had failed to satisfy the relevant parameters of identity, genuineness and creditworthiness to its investors' of the share applicant/ premium in issue. He quotes hon'ble apex court's decision in *Sumati Dayal vs. CIT* (1995) 80 Taxman 89/214 ITR 801(SC) and *CIT vs. Durga Prasad More* (1971) 82 ITR 540 (SC) that an assessee's explanation tendered during the course of assessment has to be appreciated as per

human probabilities by removing all blinkers. We notice in this backdrop of facts that Assessing Officer had issued u/s. 131 / 133(6) process to ase's investors. Mr. Agarwal is very fair in informing us that sec. 131 notice stood non-complied. We further find that Assessing Officer had issued his process on test check basis on 03.03.2015 followed by the assessment in issue framed on 19.03.2015. He did not give sufficient time for compliance of the above process in other words during assessment. The fact also remains that CIT(A) has not considered this crucial factual position in his lower appellate order. We therefore deem it appropriate that the Assessing Officer requires to examine the instant sole issue of identity, genuineness and creditworthiness of the assessee's share application / premium of ₹3.14 lac once again as per law after affording adequate opportunity of hearing. We order accordingly.

5. This Revenue's appeal is accepted for statistical purposes in above terms.

Order pronounced in the open court 25/01/2019

Sd/-

(लेखा सदस्य)  
(Dr. A.L. Saini)  
(Accountant Member)  
Kolkata,  
\*Dkp, Sr.P.S

दिनांक:- 25/01/2019 कोलकाता ।

Sd/-

(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

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

1. अपीलार्थी/Appellant-ITO Ward-5(2), P-7, Chowringhee Sq. 8<sup>th</sup> Fl, R.No.6 Kolkata-69
2. प्रत्यर्थी/Respondent-M/s Purbasa Commercial Pvt. Ltd., 5/5 Clive Row, 4<sup>th</sup> Floor  
Room No.26, Kolkat-001
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 ।