

3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4.1. Before us, the Id. D/R, submits that the Assessing Officer was not given adequate opportunity to examine all the details filed on record before the Id. CIT(A) and that new evidence were brought on record. He prayed that the issue may be remanded back to the file of the Assessing Officer for fresh adjudication in light of all the evidences on record.

4.2. The Id. A/R, though not leaving his ground did not raise any objection to the matter being set aside to the file of the Assessing Officer for fresh adjudication.

We find that this bench of the ITAT in all such cases has been restoring the matter to the file of the Assessing Officer for fresh adjudication.

5. In the case of Sriram Tie Up Pvt. Ltd. supra at para 6 and 7 held as follows:

*“6. In the case of M/s. Sukanya Merchandise Pvt. Ltd. vs ITO (ITA 291/Kol/2016 dated 15.12.2017) cited by the learned counsel for the assessee, a similar view has been taken by the Co-ordinate Bench of this Tribunal and the similar issue relating to the addition made under section 68 on account of share capital contribution by treating the same as unexplained cash credits is restored back by the Tribunal to the file of the A.O. in almost similar situation after recording its observations / findings as under:*

*We note that the AO pursuant to the order of Ld. CIT had taken note of the directions of the Ld. CIT and issued notice u/s. 142(1) dated 16.08.2013 and has acknowledged that the assessee had furnished the copy of final account, I. T. Acknowledgement, bank statement for the relevant period evidencing the receipt of share application money from the share applicants. Thereafter, the AO makes certain inferences based on the list of shareholders and taking note of the bank statement furnished by the assessee. We note that after the initial notice dated 16.08.2013, thereafter the AO had issued the notice on 26.02.2014 which has been reproduced at page 3 of the reassessment order, wherein AO required the directors of the assessee company to be present before him on 06.03.2014. However, according to the Ld. AR, the assessee received the notice only on 07.03.2014 and thereafter, the assessee requested the AO to provide another opportunity of hearing vide its letter dated 20.03.2014. Thereafter, the AO fixed the date of hearing on 12.03.2014 vide notice dated 10.03.2014. So, according to the assessee company since the directors were not in station till 23.03.2014, the Ld. AR had requested for adjournment till that time. Though the AO has stated*

*note that the Hon'ble Delhi High Court in the case of CIT Vs. Jansampark Advertising & Marketing Pvt. Ltd. in ITA No. 525/2014 dated 11.03.2015 wherein after noticing inadequate enquiry by authorities below have held as under:*

*"41. We are inclined to agree with the CIT(Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.*

*42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT(Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the fact of the allegations of the Revenue that the account statements reveal uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a 'further inquiry' in exercise of the power under Section 250(4). His approach not having been adopted, the impugned order of ITAT, and consequently that of CIT(Appeals), cannot be approved or upheld."*

*In view of the aforesaid order and in the light of the Hon'ble Supreme Court's decision in Tin Box Company (supra) and taking into consideration the fact the order of the Ld. CIT passed u/s. 263 of the Act in similar cases being upheld up to the level of Apex Court, and taking note of Hon'ble Delhi High Court's order in Jansampark Advertising & Marketing Pvt. Ltd. (supra), we set aside the order of the Ld. CIT(A) and remand the matter back to the file of AO for de novo assessment and to decide the matter in accordance to law after giving opportunity of being heard to the assessee.*

*7. We, therefore, consider it fair and proper and in the interest of justice to set aside the orders of the authorities below on the issue in dispute and restore the matter to the file of the A.O. to decide the same afresh after giving the assessee proper and sufficient opportunity of being heard and after taking into consideration the entire evidence already available on record as well as other documentary evidence which the assessee may choose to file in support of its case on the issue."*

6. The Kolkata Bench of the ITAT has passed similar order in many cases on the same issue of additions made u/s 68 of the share capital. It has set aside the assessment to the file of the AO for fresh adjudication, on the lines stated in the above order after giving the Assessing Officer an opportunity to examine the evidence already on record