

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'A', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA Nos. 6319 to 6321 & 6206/Del/2018  
Assessment Years: 2012-13 to 2015-16**

M/s. ACCIL Corporation P. Ltd., Plot No. 1, Sahkar Circle, Sardar Patel Marg, Bais Godam, Jaipur. PAN – AABCB 1885C <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6207 to 6208 and 6317 to 6318/Del/2018  
Assessment Years: 2013-14 to 2016-17**

M/s. ACCIL Auto Steels Pvt. Ltd., 405, Nirmal Tower, 26, Barakhambha Road, Connaught Place, New Delhi PAN – AALCA 0192M <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6209, 6210 & 6211/Del/2018  
Assessment Years: 2012-13, 2014-15 & 2015-16**

M/s. ACCIL Hospitality Pvt. Ltd., 405, Nirmal Tower, 26, Barakhambha Road, Connaught Place, New Delhi PAN – AACCT 5683R <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA No. 6310/Del/2018  
Assessment Year: 2014-15**

M/s. ACCIL International Tourism Pvt. Ltd., 204, Nirmal Tower, 26, Barakhambha Road, Connaught Place, New Delhi PAN – AAJCA 7843D <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6311, 6312 & 6445/Del/2018**  
**Assessment Years: 2010-11, 2014-15 & 2015-16**

M/s. ACCIL Steel Processors P. Ltd., Plot No. 441, Badhkal Pali Road, Faridabad. PAN – AAACU 5133D <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6313 to 6316/Del/2018**  
**Assessment Years: 2013-14 to 2016-17**

M/s. ACCIL Steels Pvt. Ltd., 204, Nirmal Tower, 26, Barakhambha Road, Connaught Place, New Delhi PAN – AACFP 9429A <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6322, 6323, 6204, 6324 & 6325/Del/2018**  
**Assessment Years: 2012-13 to 2016-17**

M/s. ACCIL Hotels & Resorts Pvt. Ltd., 204, Nirmal Tower, 26, Barakhambha Road, Connaught Place, New Delhi PAN – AAJCA 6357Q <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6326 to 6328/Del/2018**  
**Assessment Years: 2014-15 to 2016-17**

M/s. ACCIL Steel & Tubes Pvt. Ltd., 204, Nirmal Tower, 26, Barakhambha Road, Connaught Place, New Delhi PAN – AALCA 0385A <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6329, 6205 & 6330/Del/2018**  
**Assessment Years: 2014-15, 2015-16 & 2016-17**

M/s. ACCIL Ispat & Power Pvt. Ltd., 204, Nirmal Tower, 26, Barakhambha Road, Connaught Place, New Delhi PAN – AAICA 6128N <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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**ITA Nos. 6664 & 6704/Del/2018**  
**Assessment Years: 2014-15 & 2015-16**

M/s. Ultimate Investofin Ltd., D-26, DSIIDC Complex, Kirti Nagar, New Delhi. PAN – AABCS 1872N <b>(Appellant)</b>	<b>vs.</b>	ACIT, Central Circle-29 New Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	S/Sh. Ved Jain & Miss Umang Luthra, Adv. S/Sh. Ashish Goel, & Santosh Gupta, CA
<b>Respondent by</b>	Sh. Sanjay Goyal, CIT/DR

<b>Date of Hearing</b>	12.02.2019
<b>Date of Pronouncement</b>	28.02.2019

**ORDER**

**Per Bench:**

The above bunches of 32 appeals are filed by different assessees of the group against various orders of the Id. CIT(A) for the captioned assessment years.

2. At the outset of hearing, both the parties fairly agreed that the grounds raised and the facts & issues involved in all these appeals are identical to those involved in ITA No. 6319/Del/2018 barring the difference in the amounts of the share capital and/ unsecured loans and therefore, the decision in ITA

No.6319/Del/2018 would equally be applicable in all the above group cases. Accordingly, all these appeals were heard together and are being disposed of by this consolidated order in order to avoid repetition of facts and for the sake of convenience and brevity. We, therefore, take up the appeal no.: ITA6319/DEL/2018 first in the case of ACCIL Corporation Pvt. Ltd. for A.Y. 2012-13. The grounds raised in this appeal read as under :

1. *“On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[CIT(A)] is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the learned AO u/s 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eyes of law.*
3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment framed under Section 153A are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.*
4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the AO is barred by limitation having been passed beyond the statutory period prescribed in the Act.*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the AO has erred in making the assessment without proper service of statutory notices.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the*

*proceedings initiated under Section 153A are bad in law in the absence of any incriminating material belonging to the assessee being found during the search.*

7. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed by the learned AO is bad in law as the same has been passed without application of his own mind.*
8. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming an addition of Rs. 3,11,73,000/- made by the AO on account of share capital and Rs. 43,64,22,000/- on account of share premium received by the assessee u/s 68 of the Act.*  
  
(ii) *That the above addition has been confirmed despite the same being made arbitrarily rejecting the explanation given by the assessee.*
9. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by the Ld. AO rejecting the explanation and evidences brought in record by the assessee to prove the identity and creditworthiness of the investors as well as the genuineness of the transactions.*  
  
(ii) *That the addition has been confirmed without pointing out any defect in the evidences filed by the assessee.*
10. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the addition made by the AO are on the basis of extraneous considerations grossly indulging into conjectures and surmises.*
11. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition made by the AO despite the fact that the above addition was made on the basis of the material collected at the back of the assessee without giving it an opportunity to rebut the same.*

12. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the order was passed relying on the inspector's report which was never confronted to the assessee.*
13. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition despite the fact that the AO has passed the order relying on the statement recorded without giving assessee proper opportunity to cross examine the same.*

3. The brief facts attending to this appeal are that the assessee company filed its return of income on 29.09.2012, which was processed u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on 04.07.2013. Thereafter a search and seizure operation was carried out on 10.12.2015 in Asian Colour Coated Ispat Ltd. group of cases which included Assessee Company too. Based on this search operation, the Assessing Officer issued notice under section 153A on 20.07.2017, asking the assessee-company to file its return of income. In response, the assessee company filed its return on 04.08.2017 declaring the same income as was declared in original return. Thereafter, the Assessing Officer issued statutory notices and in response thereto the assessee company filed the details as asked for. The Assessing Officer, however, not being satisfied with the replies and the evidences submitted by the assessee company made addition of Rs.46,75,95,000/- on account of the share capital received by the assessee company. The Assessing Officer supported its conclusion on the basis of investigations made by Investigation Wing; spot enquiries got made through Inspector regarding existence of share applicants; statements recorded of various directors of share subscribing companies and various decisions relied by the Assessing Officer in

the assessment order. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) and challenged the assessment order both on legal ground as well as on merits of additions. The CIT(A), however, after considering detailed replies of the assessee, dismissed the appeal vide impugned order dated 20.08.2018. Aggrieved by the order of the CIT(A), the assessee is in appeal before us.

4. During the course of hearing, the ld. AR of the assessee submitted that the order passed by the AO as well as CIT(A) is unsustainable both on facts and law. The Ld. AR submitted that it is a case where the AO and CIT(A) has not applied their minds to the facts of the case and has gone by the impression that the share capital raised by the assessee is bogus and are accommodation entries without appreciating the facts that the share capital raised by the assessee is from its group/ Associate Companies and money has not come from any outside companies. In this regard the Ld. AR took us through the assessment order where the assessing officer has quoted the statements of the various employees recorded during the search, on the basis of which the Assessing Officer has drawn adverse inference against the assessee company. It was further contended that as per these statements, the employees, who happen to be directors of various group companies, have stated that they do not know anything about those companies but the fact remains that these are group/ associate companies and the money in these group/ associate companies is not that of the employees. It is not the case where the assessee company is contending that these companies are not group/associate companies and as such it is not in a position to explain the transactions entered into by these

companies. The assessee company all along has contended that these are group/associate companies and the entire shareholding in these group companies belongs to the group/associate and no money has been subscribed by any of the employees or the directors whose statement has been used against the assessee. It was a structure of the group and the entire money and the share capital has been routed within the group/associate from one company to another company and as such it cannot be said that the share capital raised by it represents unaccounted money. It was contended by the Ld. AR that there is no quarrel with the proposition that under section 68, the onus is upon the assessee to explain the identity and the source of the money received by it. In the present case the assessee has led sufficient and credible evidences not only to prove the identity and the source but also source of source and how the same money has re-routed from one company to another company and money is not shown to have come from outsiders. There is no cash deposit. The money has moved from one account of a company to other account of another company and from there it has moved to account of another company and from there it has come back to the original company. All these transactions are duly documented and backed by bank statements and accounts of each of the company. There is a complete trail and full verification. Hence, the conditions of section 68 stand fully satisfied. The ld. authorities below have ignored and have failed to appreciate the facts of the case and that is why they have confirmed the additions by applying case laws which are entirely on different facts.

4.1. It was next contended as to the inspector report dated 12.12.2017 relied upon by the AO, that these companies stood merged before 12.12.2017, the day when the inspector made a visit. Further, the inspector report simply states that on local enquiries, it was gathered that the caretaker/security guard who is normally available on this address is not coming for past few days and hence, AO was not justified in drawing adverse inference against the assessee on the basis of this report. This report in fact confirms that there is a caretaker which is normally available but was not available on the day when inspector visited the spot.

4.2. It was further contended that it is not a case of accommodation entries as is commonly alleged where an entry operator provides cheque in lieu of the cash and hence the ultimate source of money in such case is the cash deposited in the bank by the persons who do not have any credit worthiness and any explanation about the money deposited in the bank. In the present case, the assessee has led credible evidences to the ultimate source of money to demonstrate that it is the money within the group and no unaccounted money or cash has come in the form of share capital. The Ld. AR during the course of the hearing tried to justify complete trail of the money which has come to it as share capital from the group companies and tried to substantiate the same with the bank statements of each of the group companies. It was further contended that there is no adverse statement by anyone or so called entry operators that there is any exchange of cash in lieu of cheque.

4.3. It was next contended that the facts of the present case are entirely different and hence the various case laws referred and relied upon by the AO and the CIT(A) are not applicable as in those cases the share capital had come from outside sources. These persons were either not available and have even confessed of providing accommodation entries in lieu of cash which is not the case here.

4.4. The Ld. AR further submitted that in this case search has taken place on 10.12.2015. On this date, the assessment for the year under consideration stood completed and hence, has not abated. Since, the assessment has not abated no addition can be made in the absence of any incriminating material being found during the search. As per the assessment order, it is evident that no incriminating material was found during the search. The statement recorded cannot be considered as incriminating material in the facts of the case. Accordingly, the additions made by the Assessing Officer and sustained by Id. CIT(A) are not legally tenable on this score too.

5. On the other hand, the Ld. DR supported the orders passed by the authorities below and submitted that during the course of the search statement of various employees/directors of the companies were recorded. In these statements there is a categorical confession that none of the directors knew anything about the companies in which they were directors. The Ld. DR took us through the statement of various such employees as well as the statement of Mr. Vikas Aggarwal, the main person of the group company to support the

orders passed by the authorities below. It was further submitted that this group has made a web of companies and it is difficult to decipher the source of the money. The Ld. DR also filed a written synopsis summarizing the specific facts involved in these appeals as under :

*"It is humbly submitted that the following submissions, summarizing the specific facts involved in all the above stated cases may kindly be considered.*

*A search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out in Asian Colour Coated Ispat Limited Group of cases and other group concerns/individuals on 10-12-2015. The Asian Colour Coated Ispat Ltd. (ACCIL) group is owned and controlled by Sh. Pradeep Aggarwal, Chairman and Sh. Vikas Aggarwal, Vice Chairman. The stated business of the group is manufacturing and sale of colour steel sheets, galvanized steel coil, cold rolled steel etc. and hospitality.*

*2) During the course of search & seizure action, it was found that there are large number of companies, controlled and managed by the same management but have no apparent business and neither do they exist at they given registered addresses. Many of such companies have directors from the family of ACCIL promoters and employee of ACCIL group. It was a so found that such companies were registered at the addresses of the Chartered Accountants of ACCIL group companies, the addresses of the employees of such companies, bogus addresses which do not really exist, as well as at the registered addresses of ACCIL group companies.*

*3) The following characteristics, among others, of companies promoted by the Directors of ACCIL Group were found during the course of search operation.*

- (i). It was found that there are large number of companies, controlled and managed by the same management but have no apparent business and neither do they exist at their given registered addresses. Many of such companies have directors from the family of ACCIL promoters and employees of ACCIL group.*
- (ii). It was also found that such companies were registered at the addresses of the Chartered Accountants of ACCIL group companies, the addresses of the employees of such companies, bogus addresses which do not really exist, as well as at the registered addresses of ACCIL group companies.*
- (iii). Most of these addresses have been found nonexistent. A few addresses which could were located are one or two room rented accommodation and a security guard is deputed there to receive the DAK. No fixed assets, books of accounts, working employees of these shell companies were found.*
- (iv). Share certificates of these companies were pot found at the registered office address given by them.*
- (v). Large capital/share application money/premium/unsecured loans received in these companies.*

(vi). *In many cases, the companies were found to be non-existent at their registered addresses. There were no books of accounts maintained at these addresses. There were no employees working there. There were no business activities of the companies at their addresses.*

*4)The above facts found during the search operation has also been found consistent with the statements of various persons (Copies of statements are made part of the paperbook) who have been made directors to many of these non-functional companies. Mr. Vikas Aggarwal, key person of the ACCIL group, has been given multiple opportunities, initially by the investigation wing and later by the undersigned during the assessment proceedings, to confront these persons. He has not exercised this opportunity. This fact has been brought by Ld. CIT(A) also in his orders which is as follows:-*

*The appellant challenges sufficient opportunity was not granted. I note that Sh. Vikas Aggarwal was shown/given to read statements of various persons. Further, Sh. Vikas Aggarwal specifically chose not to confront these persons (inspite of being given specific opportunity). Reply of the assessee to question 17 in the statements dated 27.01.2016 is*

Q.17	<i>I have confronted the statements of various persons recorded in the course of search and seizure operation u/s 132 of the Income Tax Act, 1961 in ACCIL Group You are given opportunity to confront these persons personally. Do you want to avail this opportunity and confront these persons.</i>
Answer 17	<i>I decline opportunity to confront these persons. I don't want to confront them in person.</i>

*5) the basis of assessment under section 153A has been the findings during the search operation which includes the statements recorded under oath of various persons who have been made directors in these companies, and, the fact that the most of these companies (which has been later claimed as 'investment companies' by the assessee) have been found absolutely non-functional during search operation at their respective addresses, and the fact that the directors in these 'investment companies' have themselves stated under oath about their role as dummy directors in these companies. This finding, collectively considered, are in itself sufficient incriminating material found during the search operation. This incriminating material has been confronted with Mr. Vikas Aggarwal during assessment proceedings to which he could not give any satisfactory reply. These points, inter alia, has been discussed in detail in the point number 8 of assessment orders passed by the undersigned. With regard to the point of incriminating*

*evidence, the Ld. CIT(A) has also concurred with the points made by the AO by clearly bringing the following in his orders which is as below:*

*In fact, the statements themselves constitute evidence, This evidence in the form of statements (detailing the wrong doing of the appellant), has come forth out of search action u/s 132 of the Act. The evidence as detailed by the AO is sufficient incriminating material.*

*Evidence can be both documentary as well as oral. Section 3 of the Indian Evidence Act, 187 lays down that evidence means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to matters of the fact under enquiry, and such statements are oral evidence. Documents, including electronic records, produced for the inspection of the courts, are called documentary evidence. I note that the individuals in questions (whose statements have been relied upon and reproduced by the AO in the assessment order), are Directors of the companies/entities controlled by the controlling persons of the ACCIL Group. The companies that have contributed to the share capital/share application/loans etc. are controlled by the main persons in this group. The contributing companies are artificial judicial person. These companies are controlled by the promoters of ACCIL Group. The companies being artificial juridical persons cannot by themselves give statements. The statements have been given by individuals who are again under the control of promoter of ACCIL Group. As such, the statements emanating in search (or as a result of search), are sufficient incriminating material(s) for purposes of passing the aforesaid assessment order.*

*6) Therefore, in view of the above points, the additions made are on the basis of the evidence found during the search which has further been examined by the AO while giving proper opportunities to the assessee to make submissions as well as to cross-examine the witnesses. Since, the assessee companies has failed to explain the credits in their books in consequence of the search findings, the additions made under section 68 are logical and legal implications of the evidences and material found during the search operation.*

*It is therefore, humbly submitted that the additions made by the Assessing Officer deserves to be upheld. Detailed arguments/submissions will be made at the time of hearing of the appeal.”*

5.1. As to the sustenance of additions even in the absence of any incriminating material, it was submitted by the Ld. DR that from the assessment order of various companies which are in appeals, it is not evident whether these

companies have originally filed the return so as to fall in the category of being assessed earlier. In the absence of such evidence the ratio of the judgments in the case of CIT vs. Kabul Chawla 380 ITR 573(Del) will not be applicable.

5.2. The Ld. DR has relied upon the following decisions in support of his aforesaid contentions:

1. PCIT vs. NDR PROMOTERS PVT LTD (2019-TIOL-172-HC-DEL-IT)

Where Hon'ble Delhi High court held that a case involving make-believe paper work to camouflage the bogus nature of the transactions is to be treated as unexplained credit u/s 68.

2. Prem Castings (P.) Ltd. vs. CIT [2007] 88 taxmann.com 189 (Allahabad) (copy Enclosed) where Hon'ble Allahabad High Court held that additions u/s 68 warrant being sustained where the identities & creditworthiness of investors in the assessee company are not established by the assessee & are also proved incorrect by the Department's Assessee Information System. In such circumstances, assessee cannot resist the additions on grounds that it did not have opportunity to cross-examine relevant witnesses. An assessee company cannot hide behind the shell of a corporate entity to feign ignorance regarding the identity of any person who invests in its share capital.

Prem Casting (P.) Ltd. Vs. CIT 2018-TIOL-274-SC-IT (Copy Enclosed) where Hon'ble Supreme Court held as follows:

*"We do not find any merit in this petition. The Special Leave Petition is accordingly dismissed."*

3. CIT Vs. MAF Academy (P.) Ltd. (361 ITR 258) (Copy Enclosed)

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

*"53.In contrast to the above judgments, in the present case, the Assessee is a private Limited company and in the factual matrix, we have held that the Assessee has not been able to discharge the initial onus and has not been able to establish the identity, creditworthiness of the share applicants and the genuineness of the transactions. Though, in our considered opinion, none of the above judgments, referred to by the*

*Assessee respondent, are applicable in the facts of the present case and in view of the findings recorded by us hereinabove.*

*54. In view of the above, we are of the view that the Assessee has not discharged the onus satisfactorily and the additions made by the Assessing Officer were justified and sustainable.”*

4. CIT Vs. Navodaya Castle Pvt. Ltd.[2014] 367 ITR 306 (Del) (Copy Enclosed)

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

*“20.Now, when we go to the order of the Tribunal in the present case, we notice that the Tribunal has merely reproduced the order of the Commissioner of Income Tax (Appeals) and upheld the deletion of the addition. In fact they substantially relied upon and quoted the decision of its co-ordinate Bench in the case of MAF Academy Pvt. Ltd., a decision which has been overturned by the Delhi High Court, vide its judgment in CIT vs. MAF Academy P. Ltd. [2014] 206 DLT 277; [2014] 361 ITR 258 (Delhi). In the impugned order it is accepted that the assessee was unable to produce directors and principal officers of the six shareholder companies and also the fact that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer has observed that there were genuine concerns about identity, creditworthiness of shareholders as well as genuineness of the transactions.*

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

Navodaya Castle Pvt. Ltd. Vs. CIT (2015-TIOL-314-SC-IT)(Copy Enclosed)

SLP of assessee dismissed by Hon'ble Supreme Court.

5. Konark Structural Engineering (P.) Ltd. Vs. DCIT[2018] 96 taxmann.com 255 (SC) (Copy Enclosed)

where assessee-company received certain amount as share capital from various shareholders, in view of fact that summons to shareholders under section 131 could not be served as addresses were not available, and, moreover, those shareholders were first time assessee and were not earning enough income to make deposits in question, addition made by Assessing Officer under section 68 was to be confirmed; SLP dismissed.

Konark Structural Engineering (P.) Ltd. Vs. DCIT[2018] 90 taxmann.com 56 (Bombay) (Copy Enclosed)

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

6. Pratham Telecom India Pvt Ltd. Vs. DCIT (2018-TIOL-1983-HC-MUM-IT)(Copy Enclosed)

where Hon'ble Bombay High Court held that mere production of PAN numbers & bank statements is sufficient enough to discharge the burden on taxpayer to escape the realms of Section 68.

7. JJ Development Pvt Ltd. Vs CIT (2018-TIOL-395-SC-IT)(Copy Enclosed)

where Hon'ble Supreme Court held that when the assessee fails to provide a convincing explanation with regard to the cash credit before the AO and the same was accepted by the ITAT being a fact finding body, the same cannot be disputed further. Apex Court dismissed the Special Leave to Petition filed by the assessee.

8. DRB Exports (P.) Ltd. Vs. CIT [2018] 93 taxmann.com 490 (Calcutta) (Copy Enclosed)

where Hon'ble Calcutta High Court held that where AO made addition under section 68 in respect of increase in share capital of assessee-company, in view of fact that addresses of most of purported shareholders were identical and they could not be traced out despite notice issued under section 131, Tribunal was justified in confirming impugned addition.

9. CIT Vs. Nipun Builders & Developers (P.) Ltd. (30 taxmann.com 292, 214 Taxman 429, 350 ITR 407,256 CTR 34) (Copy Enclosed)

where Hon'ble Delhi High Court held that where assessee failed to prove identity and capacity of subscriber companies to pay share application money, amount so received was liable to be taxed under section 68. It was held as follows:

*"12.A perusal of the order of the Tribunal shows that it has gone on the basis of the documents submitted by the assessee before the AO and has held that in the light of those documents, it can be said that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought bank in the form of share application money. As noted in the earlier paragraph, it is not the burden of the AO to prove that connection. There has been no examination by the Tribunal of the assessment proceedings in any detail in order to demonstrate that the assessee has discharged its onus to prove not only the identity of the share applicants, but*

*also their creditworthiness and the genuineness of the transactions. No attempt was made by the Tribunal to scratch the surface and probe the documentary evidence in some depth, in the light of the conduct of the assessee and other surrounding circumstances in order to see whether the assessee has discharged its onus under Section 68. With respect, it appears to us that there has only been a mechanical reference to the case law on the subject without any serious appraisal of the facts and circumstances of the case.*

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

10. CIT Vs. Nova Promoters & Finance (P) Ltd. (18 taxmann.com 217, 206 Taxman 207, 342 ITR 169, 252 CTR 187) (Copy Enclosed)

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

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

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

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

*where Hon'ble Delhi High Court that where in order to ascertain genuineness of assessee's claim relating to receipt of share application money, Assessing Officer sent notices to share applicants which returned unserved, however, assessee still managed to secure documents such as their income tax returns as well as bank account particulars, in such circumstances, Assessing Officer was justified in drawing adverse inference and adding amount in question to assessee's taxable income under section 68. It was held as follows:*

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

12. CIT Vs. Frostair (P.) Ltd. (26 taxmann.com 11, 210 Taxman 221) (Copy Enclosed) where Hon’ble Delhi High Court held that where details furnished by assessee about share applicants were incorrect, addition under section 68 was proper. It was held as follows:

*12. The application of the ratio of every decision by a quasi-judicial body like the ITAT has to be nuanced, and contextual. Thus, while the findings in Divine Leasing, Oasis International or even Lovely Exports might be preceded by a general discussion of the correct approach to be adopted by the AO, in a given case where additions are sought to be made on account of share application moneys not found to be genuine, the basic facts of the case cannot be lost sight of. On a proper application of the ratio in Oasis- and subsequently, the Division Bench ruling in CIT V. Nova Promoters & Finance (P) Ltd. [2012] 206 Taxman 207/18 taxmann.com*

217 (Delhi) it is evident that the AO took into account- if we may say so, the exhaustive detail after a painstaking examination of the records after two or three layers of scrutiny- all the material and held that the claim that the amounts claimed to be received on account of share applications were not based on genuine transactions. The CIT(A) upheld that order, after calling for a remand report. In these circumstances, the conclusion of the Tribunal, that the assessee had discharged its onus, appears to be based on a superficial understanding of the law, and an uninformed one about the overall facts and circumstances of the case.

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

13. CIT Vs. NR Portfolio Pvt.Ltd. [2014] 42 taxmann.com 339 (Delhi)/[2014] 222 Taxman 157 (Delhi)(MAG)/[2014] 264 CTR 258 (Delhi) (Copy Enclosed)

Where Hon'ble Delhi High Court held that if AO doubts the documents produced by assessee, the onus shifts on assessee to further substantiate the facts or produce the share applicant in proceeding. It was held as follows:-

*"30. What we perceive and regard as correct position of law is that the court or tribunal should be convinced about the identity, creditworthiness and genuineness of the transaction. The onus to prove the three factum is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons or company had filed income tax details in case of a private limited company may not be sufficient when surrounding the attending facts predicate a cover up. These facts indicate and reflect proper paper work or documentation but genuineness, creditworthiness, identity are deeper and obtrusive. Companies no doubt are artificial or juristic persons but they are soulless and are dependent upon the individuals behind them who run and manage the said companies. It is the persons behind the company who take the decisions, controls and managed them."*

14. CIT vs. Empire Buildtech (P.) Ltd. (366 ITR 110) (Copy Enclosed)

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

15. CIT Vs. Focus Exports (P.) Ltd. (51 taxmann.com 46 (Delhi)/[2015] 228 Taxman 88) (Copy Enclosed)

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

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

10. PCIT Vs. Bikram Singh [2017] 85 taxmann.com 104 (Delhi)/[2017] 250 Taxman 273 (Delhi)/[2017] 399 ITR 407 (Delhi) (Copy Enclosed)

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

11. Rick Lunsford Trade & Investment Ltd. Vs. CIT [2016] 385 ITR 399 (Cal) (Copy Enclosed)

The assessee did not produce books of account or bank accounts or shareholders register. Eight out of fifty six persons from shareholder's list provided by assessee denied subscription. Remaining notices returned with endorsement "not known". Hon'ble Calcutta High Court held that unexplained share application money was rightly treated as assessee's income.

12. Rick Lunsford Trade & Investment Ltd. Vs. CIT [2016- TIOL-207-SC-IT] (Supreme Court) (Copy Enclosed)

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

6. We have heard the rival submissions and have gone through the entire material available on record including the orders of the authorities below and case laws cited by both the parties before us. Now, we proceed to decide the appeal ground-wise.

7. Grounds Nos.1 & 14 are general in nature and need no specific adjudication. Grounds Nos. 2 to 5 & 7 are not pressed and are dismissed as such.

8. Grounds Nos. 8 to 13 are on the issue of addition of Rs. 46,75,95,000/- on account of the share capital. The assessing officer in the assessment order has held that the share capital received by the assessee company is unaccounted income and the assessee has failed to discharge its onus under section 68 of the Act. The CIT(A) has confirmed the finding of the AO. As against this the contention of the assessee is that the share capital received by it is not the unaccounted income but is fully accounted money and routed through the group companies. It is the contention of the assessee company that it has led all the evidences to discharge its onus under section 68 of the Act. Thus, it is important to go through the details and examine the source of the money with the supporting evidence, which are placed by the assessee before us in the tabulated form, which is as under :

## ACCIL CORPORATION LTD. A.Y. 2012-13

## Reconciliation of Shares Capital/Share Premium received during the year as on 31.03.2012

S. No	Particulars/Name of Entity	No Of Shares Allotted	Date of Allotment	Total Amount	Date of Receipt	Amount	Source			Source		
							Party name	Date of Receipt	Amount	Party name	Date of Receipt	Amount
	<b>Details of Addition during the year 2011-12 as under:-</b>											
1	Ankit Infoweb private Limited (Now Merged with TTJ Impex Private Limited)	110,000	31/12/2011	16,500,000	02/08/2011	7,500,000	Nirvana Lifestyle pvt Ltd	02/08/2011	7,600,000	ACCIL Corporation Limited	01/08/2011	45,000,000
					17/11/2011	4,000,000	Studio 90 Associates	14/11/2011	7,500,000			
					17/11/2011	5,000,000	Diva Interior Designs	15/11/2011	5,500,000			

2	Hermes Education Solutions Private Limited	46,500	31/12/2011	6,975,000	02/08/2011	7,000,000	Nirvana Lifestyle Pvt Ltd	02/08/2011	7,100,000	ACCIL Corporation Limited	01/08/2011	45,000,000
3	Home Coziness Resorts & Holidays Private Limited (Now Merged with TTJ Impex Private Limited)	96,000	31/12/2011	14,400,000	17/11/2011	4,000,000	Artys Infrastructure Pvt Ltd	17/11/2011	5,000,000	Asian Colour Coated Ispat Limited	15/11/2011	7,000,000
					17/11/2011	7,000,000			6,000,000			16,000,000
		18/02/2012	3,500,000		ACCIL Hospitality Ltd	04/01/2012	3,500,000					
4	Home Coziness Tours & Travels Private Limited (Now Merged with Locus Infrastructure Private Limited)	23,000	31/12/2011	3,450,000	01/09/2010	3,500,000	Artys Infrastructure Pvt Ltd	01/09/2010	3,500,000	Asian Colour Coated Ispat Limited	31/08/2010	17,073,000
5	Inventive Bio Energy Solutions Private Limited (Now Merged with TTJ Impex Private Limited)	80,000	31/12/2011	12,000,000	17/11/2011	6,000,000	Artys Infrastructure Pvt Ltd	17/11/2011	6,500,000	Asian Colour Coated Ispat Limited	16/11/2011	
					18/11/2011	6,000,000			5,500,000			
6	Locus Infrastructure Private Limited	294,500	31/12/2011	44,175,000	10/08/2010	39,000,000	LogasImpexPvt Ltd	06/08/2010	20,000,000	Karan Overseas	05/08/2010	4,000,000
										Ajanta Traders	05/08/2010	3,200,000
										Shree Krishna Traders	06/08/2010	4,650,000
										Shree Krishna Traders		3,350,000
										Balaji Investments	06/08/2010	4,400,000
										Coral ImpexPvt Ltd		09/08/2010

										rises		
										Shree Krishna Traders	06/08/2010	2,860,000
						Jingle Consultancy Pvt Ltd		8,400,000		TTJ Impex Private Ltd	18/05/2010	5,000,000
										Karan Overseas	05/08/2010	3,400,000
						Morgan Tradex Pvt Ltd		700,000		Karan Overseas	09/08/2010	7,900,000
				20/06/2011	5,200,000	Shree Gopal Enterprises	20/06/2011	1,900,000				
								3,300,000				
7	Maharaja Infratech Private Limited (Now Merged with Locus Infrastructure Private Limited)	392,000	31/12/2011	58,800,000	10/08/2010	44,000,000	Morgan Tradex Pvt Ltd	06/08/2010	20,000,000	ATJ Impex Private Limited	11/05/2010	10,000,000
										Karan Overseas	05/08/2010	3,500,000
										Balaji Investments	06/08/2010	3,300,000
										Om Trading Company	06/08/2010	3,660,000
								09/08/2010	23,850,000	Om Trading Company	09/08/2010	7,496,000
										Shree Krishna Traders		7,154,000
										Karan Overseas		7,900,000
						Logas Impex Pvt Ltd		09/08/2010	50,000			
				10/08/2010	8,500,000	Shree Gopal Enterprises	10/08/2010	8,500,000				
				20/06/2011	6,300,000	Shree Gopal Enterprises	20/06/2011	3,100,000				
								20/06/2011	3,200,000			

8	NityaInfratech Private Limited (Now Merged with VatsallInfra projects Private Limited)	621,800	31/12/2011	93,270,000	01/10/2010	3,000,000	Shree Gopal Enterprises	01/10/2010	8,450,000					
					02/11/2010	1,000,000	Olive Sales Pvt Ltd	02/11/2010	1,000,000					
					20/11/2010	2,000,000	Olive Sales Pvt Ltd	02/11/2010	2,000,000					
					23/12/2010	200,000	Olive Sales Pvt Ltd	23/12/2010	200,000					
					14/03/2011	200,000	Beta Metals & alloy Pvt Ltd	14/03/2011	200,000	Asian Colour Coated Ispat Limited	12/03/2011	5,000,000		
					13/06/2011	3,500,000	Olive Sales Pvt Ltd	13/06/2011	3,500,000					
					20/06/2011	2,250,000	Olive Sales Pvt Ltd	20/06/2011	2,250,000					
					21/06/2011	650,000	Olive Sales Pvt Ltd	21/06/2011	750,000					
					19/09/2011	5,000,000	Beta Metals & alloy Pvt Ltd	19/09/2011	4,500,000	Asian Colour Coated Ispat Limited	17/09/2011	16,000,000		
					19/09/2011	6,000,000			6,500,000					
					27/09/2011	8,000,000	Vardhman Trading Company	24/09/2011	2,000,000					
							Olive Sales Pvt Ltd	27/09/2011	5,900,000					
					27/09/2011	7,000,000	Ambey Traders	23/09/2011	1,200,000					
							Rahul Garg	24/09/2011	837,500					
							Beta Metals & alloy Pvt Ltd	27/09/2011	5,100,000	Asian Colour Coated Ispat Limited	26/09/2011	15,075,000		
					17/11/2011	6,500,000	Olive Sales Pvt Ltd	17/11/2011	6,500,000					
					17/11/2011	7,000,000	Beta Metals & alloy Pvt Ltd		7,000,000	Asian Colour Coated Ispat Limited	16/11/2011	15,000,000		
					17/11/2011	8,000,000	Beta Metals & alloy Pvt Ltd		8,000,000					
					17/11/2011	7,500,000	Olive Sales Pvt Ltd		7,500,000					
					21/11/2011	8,000,000	BDPL Investment Pvt Ltd	18/11/2011	3,500,000					
	Olive Sales Pvt Ltd	21/11/2011	4,500,000											

			31/03/2012		09/03/2012	5,500,000	VatsallInfraprojectsPvt Ltd	09/03/2012	6,000,000	ACCIL Corporation Limited	09/03/2012	10,000,000
					09/03/2012	4,500,000			4,000,000			
					14/03/2012	7,500,000	Benue Sales Pvt Ltd	14/03/2012	7,500,000	Deco Design Solutions LLC	14/03/2012	8,000,000
9	Oscar Agriculture Private Limited (Now Merged with Locus Infrastructure Private Limited)	106,600	31/12/2011	16,000,000	10/08/2010	15,990,000	LogasImpexPvt Ltd	09/08/2010	9,725,000	Om Trading Company		7,250,000
								06/08/2010	3,200,000	Ajanta Traders		3,200,000
							Coral ImpexPvt Ltd	06/08/2010	3,000,000	Om Trading Company	06/08/2010	3,140,000
10	Proactive Telecommunications Private Limited (Now Merged with Rhone Associates Private Limited)	76,600	31/12/2011	11,490,000	07/02/2011	1,000,000	Bhawani Sales Corporation	04/02/2011	1,000,000			
			09/03/2012		09/03/2012	5,500,000	Havant Sales Pvt Ltd	09/03/2012	5,500,000	Asian Colour Coated Ispat Limited	07/03/2012	10,000,000
			13/03/2012		13/03/2012	5,000,000	Havant Sales Pvt Ltd	13/03/2012	5,000,000	Parshavnath media Pvt Ltd	12/03/2012	5,000,000
11	Ujval Networks Private Limited (Now Merged with Rhone Associates Private Limited)	100,000	31/12/2011	15,000,000	07/02/2011	1,500,000	Bhawani Sales Corporation	03/02/2011	1,500,000			
			31/03/2012		09/03/2012	6,000,000	Chiba ElectrotechPvt Ltd	09/03/2012	6,500,000	Asian Colour Coated Ispat Limited	07/03/2012	11,500,000
					13/03/2012	5,000,000		13/03/2012	5,000,000	Parshavnath media Pvt Ltd	12/03/2012	5,000,000
					15/03/2012	2,500,000		14/03/2012	8,000,000	Deco Design Solutions LLC	14/03/2012	8,500,000
13	Viabe Analytical Technology Private Limited (Now Merged with Locus Infrastructure	497,000	31/12/2011	74,550,000	10/08/2010	47,500,000	Jingle Consultancy Pvt Ltd	06/08/2010	3,800,000	Balaji Investments	05/08/2010	3,800,000
							Morgan TradexPvt Ltd		3,700,000	Bhagirath Trading Company	05/08/2010	3,700,000

	ure Private Limited)					Coral Impex Pvt Ltd		20,000,000	Asian Colour Coated Ispat Limited	31/03/2010	10,000,000	
									Beta Metals & alloy Pvt Ltd	18/05/2010	5,500,000	
									TTJ Impex Private Ltd		4,500,000	
									Shree Ambe y Portfolios	06/08/2010	7,900,000	
									HD Realtors Pvt Ltd	07/05/2010	1,648,315	
						Jingle Consultancy Pvt Ltd		20,000,000	Bhagirath Trading Company	05/08/2010	2,000,000	
									Shree Ambe y Portfolios	06/08/2010	7,000,000	
									Ajanta Traders		7,000,000	
									Ajanta Traders		4,000,000	
					10/08/2010	21,500,000	Logas Impex Pvt Ltd	09/08/2010	21,850,000	Shree Krishna Traders	09/08/2010	7,154,000
									Om Trading Company		7,196,000	
									Shree Ambe y Portfolios		7,700,000	
					20/06/2011	5,600,000	Shree Gopal Enterprises	20/06/2011	2,100,000			
									3,500,000			
14	SanchiInfra tech	90,000	18/02/2012	13,500,000	05/01/2012	4,000,000	Havant Sales Pvt Ltd	05/01/2012	3,300,000	Asian Colour	04/01/2012	10,000,000

	Private Limited (Now Merged with Rhone Associates Private Limited)				05/01/2012	6,000,000	Havant Sales Pvt Ltd	05/01/2012	1,500,000	Coated Ispat Limited		
							Benue Sales Pvt Ltd	05/01/2012	5,000,000	Asian Colour Coated Ispat Limited	04/01/2012	9,500,000
					06/01/2012	3,500,000	Benue Sales Pvt Ltd	06/01/2012	4,500,000	Coated Ispat Limited		
15	Regal Tradelink Private Limited	400,000	31/03/2012	60,000,000	01/03/2012	12,500,000	Sunrays Properties & Investment Pvt Ltd	01/03/2012	14,500,000			
					02/03/2012	37,500,000	Sacred Heart Investment co Pvt Ltd	29/02/2012	25,000,000			
							Constructive Finance Pvt Ltd	29/02/2012	11,000,000			
					03/03/2012	10,000,000	Apollo Finance Ltd	02/03/2012	20,000,000			
16	ATJ Impex Private Limited (Now Merged with TTJ Impex Private Limited)	183,300	28/02/2012	27,495,000	15/02/2012	9,000,000	Havant Sales Pvt Ltd	15/02/2012	7,000,000	Asian Colour Coated Ispat Limited	14/02/2012	16,450,000
						9,500,000	Havant Sales Pvt Ltd		7,500,000			
							Benue Sales Pvt Ltd		7,000,000	Asian Colour Coated Ispat Limited	14/02/2012	13,550,000
						9,000,000			6,500,000			
<b>Total</b>		<b>3,117,300</b>		<b>467,605,000</b>		<b>467,890,000</b>						

9. As per the above chart the share allotted during the year of Rs.46,76,05,000/- as against addition of Rs.46,75,95,000/- made by the Assessing Officer. The difference of Rs.10,000/- is on account of the totaling error. These shares have been allotted to 16 companies as per the above chart. During the course of the hearing with the assistance of the Ld. AR & DR, we have tried to verify the trail of the transactions for all these 16 shareholder companies with the relevant documents in support thereof. After verification, the contention of the Ld. AR seems to be acceptable that the money have been routed within the group/associate companies. Each of the transaction may be

verified. It is a case where one company has advanced money to another company which in turn has advanced money to another company and such another company has advanced money to the company where the money was originated. Thus, it is a circulation of the money within the various entities where complete trail right from origin till the end is available with the assessee. All these transactions are verifiable from the bank statements of the respective companies. Thus, the contention of the Ld. AR that the money received by it is not any unaccounted money seems to be justified. The Ld. DR also could not point out any error or flaw in the submission advanced by the Ld. AR explaining step by step the movement of the money from one entity to another entity. All are transfer entries through bank accounts and there is no cash deposit as stated by the Ld. AR on the basis of evidences produced before us. It has been the contention of the assessee company that all these transactions are within the group/associate company. This fact has been taken note of by the Assessing Officer also in para 6.4.2 of the assessment order where he has quoted the reply dated 05.12.2017 as under:

*“It is worth mention that Mr. Vikas Aggarwal & Mr. Pradeep Aggarwal and their family members are the directors of the amalgamated/Investment Company and the entire amount of these companies have made investment in their group of companies. The same facts have been stated before your good self by Mr. Vikas Aggarwal while recording statement under section 131 of the income tax Act.”*

Despite, taking note of the above contention of the assessee, the Assessing Officer instead of examining the contention of the assessee has held in para 8.1 of his order that there has been a careful planning of routing unaccounted money to the main companies of the ACCIL group by creating a web of

companies and executing the requisite paper work. This observation of the assessing officer that it is routing of unaccounted money is factually incorrect. It is in fact the accounted money which has been routed from one company to another company. The Ld. DR could not show any credit which represents unaccounted money as alleged by the Assessing Officer in the assessment order. From the above explanation and the facts of the assessee on record, it is clear that money has not come from outside the group/associate companies. It is the money which is being re-routed within the group/associate companies.

10. As regards the inspector report dated 12.12.2017 relied upon by the assessing officer in para 8.3, we are in agreement with the contention of the Ld. AR that this report is of 12.12.2017 whereas all these companies stood merged much before the date when the Inspector made spot enquiry. Thus, no adverse inference can be drawn on the basis of this report. Further, ongoing through this report we also note that this report merely states that on local enquiries from the nearby shopkeepers. it was gathered that the caretaker/security guard who is normally available on this address is not coming for past few days. Further, details could not be gathered as no authorized person of the company was available at this address. It is also important to point out that it is not the case of the assessee company that these companies are unknown and that they do not have any control over these companies. On the contrary, it has been the stand of the assessee company that these are group/associate companies and it has provided all the details about these companies also.

11. As regards the statements of various employees which have been relied upon by the Assessing Officer to draw adverse inference against the assessee, we are of the view that it has never been the stand of the assessee that these are

not group/associate companies. In fact assessee has all along stated that these are transactions within the group/associate companies. We have also gone through the statement of each of these employees/directors. Ongoing through the same, we find that no one has alleged that the money which is deposited in the bank account of the company is unaccounted money or the source which is dubious. There is no allegation coming out in these statements that any transaction outside the books of accounts have been carried out or any cash transactions have been carried out. In these statements, the main allegation coming out is that these directors were not aware whether they are directors. The issue before the Assessing Officer was the source of the share capital received by the assessee company. For finding out the source, one has to go to the trail of the money received by way of share capital. In case the source is not traceable or the source is such for which there is no satisfactory explanation, the AO will be justified in drawing adverse inference. However, where there is satisfactory explanation as to the nature and source of the credit, no addition could be made u/s. 68 of the Act.

12. Adverting to the various case laws relied upon by the Ld. DR, we are of the view that these case laws are on different facts. In all these cases, the share capital was received from the outsiders. In many of these cases there was allegation of accommodation entry on the basis of the statement of the alleged entry operator having issued cheque in lieu of cash. In many of these cases, the information provided by the assessee was found to be incorrect. In the present case, there is no such statement or involvement of any entry operator. As against this, in the present case the assessee has provided complete trail and source of money. All these companies are group/associate companies, where

the money have been routed and hence the source of the money is clearly identifiable. Thus, it cannot be said that assessee has not discharged its onus under section 68 of the Act.

13. During the course of the assessment proceedings, the assessee company has submitted complete details about the share capital received by it. The assessee company also submitted the confirmation and ITR of each of these creditors. The AO thereafter has not carried out any investigation or verification. The AO has not pointed out any error or mistake in the documents submitted by the assessee. There is no adverse observation about the evidences submitted by the assessee in support of its contention. In fact in the assessment order there is no discussion of the document and evidences submitted by the assessee. Simply the total figure has been added by the Assessing Officer. The Id. CIT(A) has also confirmed the addition without even considering the facts and contention of the assessee. The CIT(A) has totally ignored the facts and in a mechanical way confirmed the order passed by the Assessing Officer. The assessee having submitted the details and explanation with evidences in support thereof, it was incumbent upon the Assessing Officer to verify the same before forming any adverse view against the assessee. Instead of examining the facts and the explanation, the AO has in an arbitrary manner made the addition.

14. The Id. AR before us, though has tried to explain the entire trail and the source of the share capital, and has argued for deletion of the addition, however, taking into consideration the entire facts, we are of the view that in the interest of justice it will be appropriate to restore the matter back to the file of Assessing Officer for carrying out proper verification at his end. Accordingly, we remit this issue to the Assessing Officer to verify the trail of the money

received by the assessee by way of share capital with the direction to make the assessment order afresh on this issue after making proper verification regarding the trail of the money received by the assessee by way of speaking order in accordance with law. In case, the trail of money, as explained by assessee, is found verifiable from the evidences furnished by the assessee, the contentions of the assessee shall be considered to have met the ingredients of section 68 of the Act. Accordingly, grounds nos. 8 to 13 deserve to be allowed for statistical purposes.

15. As regards ground No.13, the contention of the Ld. AR is that in the absence of any incriminating material the addition per se are unsustainable. As against this the contention of the Ld. DR is that from the assessment order it is not evident whether assessee has originally filed the return or not and whether assessment has abated or not consequent upon the search. After considering the arguments of both side and examining the facts, we are in agreement with the contention of the Ld. DR that from the facts, it is not clear whether the assessee has originally filed the return before the date of the search or whether assessment was pending or not as on the date of search. Accordingly, these facts also need examination at the stage of Assessing Officer. Taking into consideration the fact that we have remitted the matter back to the AO on merit for verification of the Share Capital received during the year, we remit this issue also to the Assessing Officer as well for verification of above facts, which are not discernible from the orders of the authorities below. The Assessing Officer shall decide the stand of the assessee after verification, as noted above. Needless to say, the assessee shall be given reasonable opportunity of being heard. In the result the appeal of the assessee deserves to be allowed for statistical purposes.

16. As already noted, our above decision in ITA No. 6319/Del/2018 shall apply *mutatis mutandis* in remaining appeals having identical facts and issues. We have already decided the appeal of ACCIL Corporation Pvt. Ltd. for Assessment Year 2012-13 in ITA No. 6319/Del/2018 and after the detailed discussion and the reasoning given in the said appeal, as aforesaid, we have remitted the issues back to the file of Assessing Officer for deciding them afresh after making proper verification. We, therefore, remit the issue of addition on account of share capital / unsecured loans in all the remaining appeals to the AO to verify the trail of the money received by the assessee by way of share capital/ unsecured loans and that of addition without incriminating material found on search with the same directions as are given in ITA No. 6319/Del/2018, after giving proper opportunity to the assessee of being heard.

17. In the result, all these appeals are allowed for statistical purposes.

Order pronounced in the open court on 28 Feb. 2019.

Sd/-

**(Bhavnes Saini)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 28.02.2019

\*aks\*

*Copy of order forwarded to:*

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi*