

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.5242/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2010-11)

DCIT Central Circle-6(4) R.No. 1925, 19 th Floor, AIR India Building, Nariman Point, Mumbai- 400021	बनाम/ v.	M/s. Hakmans Financial Services & Securities Private Ltd., 105, Sagar Shopping Centre, JP Road, Andheri (East), Mumbai- 400058
स्थायी लेखा सं./PAN:AAACH1513N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:		Shri. Manoj Kumar Singh (DR)
Assessee by:		Shri. Yogesh Jojode (AR)

सुनवाई की तारीख /**Date of Hearing** : 16.05.2019

घोषणा की तारीख /**Date of Pronouncement** : 31.07.2019

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by Revenue, being ITA No. 5242/Mum/2016, is directed against appellate order dated 20.05.2016 in Appeal No. CIT(A)-41/DCCC-39/IT-90/12-13, passed by learned Commissioner of Income Tax (Appeals)-54, Mumbai (hereinafter called "the CIT(A)"), for assessment year (AY) 2010-11, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 11.03.2013 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2010-11.

2. The grounds of appeal raised by revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

1. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition u/s.68 of the IT Act without appreciating the fact that the assessee, even during the appellate proceeding could not establish the genuineness of claimed transaction and creditworthiness of the lenders?."*

2. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition u/s.68 of the IT Act without appreciating the fact that the basic tenets for satisfying genuineness of cash credits, being identity, creditworthiness of the lenders and genuineness of the transaction are cumulative and not isolated i.e. all three need to be satisfied?"*

3. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition u/s.68 of the Act solely on the basis of AO's report that the source of the source of the credit had been establish ignoring the fact that the very basics of genuineness of the transaction itself and creditworthiness of the lenders were never established?"*

4. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition u/s.68 of the IT Act ignoring the fact that one of the directors of the assessee company had time and again deposed on oath in other cases that he, through his various entities was involved in the proves of providing accommodation entries for bogus capital?,"*

5. *"Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of unaccounted commission earned by the assessee in the name-lending activities to provide accommodation entries without appreciating the fact that Shri Jagdish Purohit, one of the director of the assessee company was found to be involved in the process of providing accommodation entries through his various entities?"*

The appellant prays that the order of Commissioner of Income Tax(Appels) on the above grounds be set aside and that DCIT be restored. The appellant craves leave to amend or alter any ground or add a new ground, which

may be necessary. Last date for filing second appeal is 22.08.2016 . However, the appeal should be filed immediately.”

3. The brief facts of the case are that the assessee has claimed itself to be a finance company. However , it is an admitted position that the assessee has not brought any approvals from Reserve Bank of India(RBI) to conduct business as Non-Banking Finance Company(NBFC), which is a mandatory requirement for conducting business of Finance, Investment and Financial Services. It was observed by AO that the assessee company has advanced share application money of Rs. 3,13,90,000/- to following two entities namely , as under:-

<i>M/s. Emerald Electronics P Ltd.</i>	<i>Rs. 2,66,00,000</i>
<i>M/s. Murliwala Realtors P Ltd.</i>	<i>Rs. 47,90,000</i>

3.2 The assessee was asked by the AO to file its bank statement showing aforesaid transaction, account confirmation with PAN, Sources of loan funds received, bank statements of M/s. Emerald Electronics Private Ltd. and M/s Murliwala Realtors Private Limited and complete details of the aforesaid transactions.

3.3 The assessee in its reply filed bank statement maintained with Central Bank of India, New Marine Lines Branch, Mumbai. The AO observed from said bank statement that on 22.03.2010 , an amount of Rs. 8.00 lakhs was received by transfer vide cheque number 520881 and on the same day , the said amount was transferred to Central Bank Account of M/s. Murliwala Realtors Private Ltd. maintained with the same branch of Central Bank of India with New Marine Lines, Mumbai. The AO observed that assessee did not file its bank statements for the entire previous year relevant to impugned assessment year and has merely filed bank statement for relevant period wherein receipt of aforesaid cheque was reflected. The AO asked assessee to explain

complete details of receipt of aforesaid loan with complete details and sources of loan. The assessee filed ledger account of Central Bank of India as appearing in its books of accounts which reflected that the said amount of Rs. 8,00,000/- was received from Nabela Finvest Private Limited. The assessee claimed that said amount was received from Nabela Finvest P. Ltd., but further details such as detail of cheque number was not given. The assessee did not file any further evidences such as account copy or confirmation letter from Nabela Finvest Private Ltd.. The AO also observed that ledger account copy of the bank was not signed by any competent person. The AO doubted genuineness of the ledger copy filed by the assessee.

3.4 The AO observed that the assessee has declared share speculation profit of Rs. 79,340/- as gross income and net income declared was only Rs. 8875/-. The AO observed that assessee has not explained sources of loan amount of Rs.8,00,000/- with satisfactory and cogent evidences. The AO also observed that reasons for routing funds by Nabela Finvest Private Limited through assessee to Murliwala realtors Private Limited were not satisfactorily explained and also that assessee has not admitted any income out of this transaction. The AO observed that the assessee is appeared to be helping money laundering by routing unaccounted funds of some persons through several layers of bank accounts to make detection by investigation authorities difficult. The AO treated the said amount of Rs. 8,00,000/- as an unexplained credit u/s 68 of the 1961 Act as no satisfactory explanation for the debit and credit entries in the bank account was given by the assessee which stood added by the AO to the returned income and assessed as income of the assessee, vide assessment order dated 11.03.2013 passed by the AO u/s 143(3) of the 1961 Act.

3.5 The AO further observed that assessee has received an amount of Rs. 39.90 lakhs on 20.10.2009 in its Central Bank of India Bank account maintained with New Marine Lines Branch which was transferred on the same day to the bank account of M/s. Murliwala

Realtors Private Ltd., maintained with same branch of Central Bank of India at New Marine Lines Branch, Mumbai. The AO again noticed the same peculiarity wherein the assessee has filed an incomplete bank account showing only specific transaction on 20.10.2009. The AO asked assessee to give complete details of the transaction. The assessee in reply filed ledger copy of the Central Bank of India bank account as is appearing in its books of accounts in which there was an entry stating that the amount was received from one M/s Rotuda Capital and Finance Private Limited. The AO observed that assessee has stated that the said amount of Rs. 39.90 lacs was received through cheque on 16.10.2009 but cheque number was not given by the assessee. The assessee did not file further evidences such as account copy or confirmation letter from said M/s Rotuda Capital and Finance Private Limited. The AO also observed that ledger account copy of the bank was not signed by any competent person. The AO doubted the genuineness of the ledger copy filed by the assessee. The AO observed that the assessee has declared share speculation profit of Rs. 79,340/- as gross income and net income declared was only Rs. 8875/-. It was held by the AO that sources of amount of Rs. 39.90 lakhs were not proved through proper and satisfactory evidences. The AO also observed that the assessee has also not explained reasons as to why Rotuda Capital & Finance Pvt. Ltd. routed the funds through the bank account of the assessee to reach to the account of M/s. Murliwala Realtors P. Ltd.. The AO also observed that the assessee has not declared any income out of these transactions. The AO observed that assessee is appeared to be helping money laundering by routing unaccounted funds of some persons through several layers of bank accounts to make detection by investigation authorities difficult. The AO treated the said amount of Rs. 39,90,000/- as an unexplained credit u/s 68 of the 1961 Act as no satisfactory explanation for debit and credit entries in the bank account is given by the assessee which stood added by the AO to the returned income and assessed as income of the assessee, vide assessment order dated 11.03.2013 passed by the AO u/s 143(3) of the 1961 Act.

3.6 The AO further observed that similarly in Central Bank of India, New Marines Branch of the Bank, the assessee has received an amount of Rs. 1.50 crores and Rs. 1.16 crores on 03.02.2010 and 04.02.2010 respectively. The AO observed that on 04.02.2010, the aforesaid amounts were transferred to the account of M/s Emerald Electronics Private Limited. The AO observed that as per bank statements the amount of Rs. 1.50 crores was received from Kukreja Builders Private Limited on 03.02.2010 while Rs.1.16 crores was received from Nabela Finvest Private Limited on 04.02.2010. The assessee filed ledger copy of Central Bank of India bank account as is appearing in its books of accounts. The assessee did not furnish cheque numbers in both these cases. The assessee did not furnish further evidences such as confirmations from these parties. The AO also observed that copy of bank account was not signed by any competent person. The AO doubted genuineness of the ledger copy filed by the assessee. The AO observed that the assessee has declared share speculation profit of Rs. 79,340/- as gross income and net income declared was only Rs. 8875. It was held by the AO that sources of amount of Rs. 266.00 lacs were not proved by assessee through proper and satisfactory evidences. The AO also observed that assessee has also not explained reasons as to why Kukreja Builders Private Limited and Nabela Finvest Private Limited routed their funds through bank account of the assessee to reach to the account of M/s. Emerald Electronics Private Limited. The AO also observed that assessee has not declared any income out of these transactions. The AO observed that assessee is appeared to be helping money laundering by routing unaccounted funds of some persons through several layers of bank accounts to make detection by investigation authorities difficult. The AO treated the said amount of Rs. 2,66,00,000/- as an unexplained credit u/s 68 of the 1961 Act as no satisfactory explanation for the debit and credit entries in the bank account is given by the assessee which stood added by the AO to the returned income and assessed as income of the assessee, vide

assessment order dated 11.03.2013 passed by the AO u/s 143(3) of the 1961 Act.

3.7 Further it was observed by AO that one of the Directors of the assessee company Mr. Jagdish Purohit is having a dubious track record as he was found to be merely a name lender who gives accommodation entries by accepting cash deposited in bank accounts for issuance of cheques and giving back cash after deducting service charges or commissions for the above services. It was observed by AO that said Mr. Jagdish Purohit has given a statement on 15.10.2008 before learned ADIT(Inv.) to that effect . The said Mr. Jagdish Purohit in his statement recorded before ld. ADIT(Inv.) has admitted that he had received cash back against the pay orders given for accommodation entries for which he earned commission income for providing accommodation entries. The AO observed that aforesaid Mr. Jagdish Purohit retracted his statement after 39 months which was not believed by AO of the assessee while framing assessment of the assessee for AY 2007-08 and also for framing assessment order in the case of M/s Poonam Investments and Financial Consultants Private Limited which was one of the connected case in the group. The AO relied upon the decision of Hon'ble Supreme Court in the case of Sumati Dayal v. CIT (1995) 214 ITR 801(SC). The AO held that assessee could not be a genuine investor or a genuine person providing financial services and he is only name lender for commission purpose for some other persons. It was observed by the AO that several layers of bank accounts were used to show the transaction as a legitimate transaction done through banking channel and transactions were not satisfactorily explained by the assessee as to sources of funds brought into its bank account which led AO to make additions to the income of the assessee to the tune of Rs. 3,13,90,000/- introduced which was treated as an unexplained credit in the books of accounts of the assessee which was brought to tax as income of the assessee u/s 68 of the 1961 Act , vide assessment order dated 11.03.2013 passed by the AO u/s 143(3) of the 1961 Act.

4. Being aggrieved by assessment order dated 11.03.2013 passed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal before learned CIT(A). The assessee filed certain additional evidences before learned CIT(A) and prayed for their admission keeping in view provisions of Rule 46A of the Income-tax Rules, 1962. The remand report was called by learned CIT(A) from AO on these additional evidences submitted by the assessee for the first time before learned CIT(A). The AO duly submitted its remand report before learned CIT(A) objecting to admission of these additional evidences u/r 46A of the Income-tax Rules, 1962. The AO, however, submitted in its remand report that the assessee has filed bank statement of Emerald Electronics Private Limited and Murliwala Realtors Private Limited during Remand Report proceedings and now assessee has not only submitted source of share application but also source of source of share application, which was found to be in order. The learned CIT(A) admitted these additional evidences filed by the assessee by invoking provisions of Rule 46A of the 1962 Rules. The Ld. CIT(A) after considering the contentions of the assessee and Remand Report submitted by AO deleted the addition to the tune of Rs. 3,13,90,000/- , by holding as under vide appellate order dated 20.05.2016 :-

“ 8.4.1 I have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to delete the addition of Rs. 3,13,90,000/- made on account of source of investment in share application money paid to M/s Emerald Electronics P Ltd and M/s Murliwala Realtors Pvt Ltd. The appellant's main contention is that the source of said investment of Rs. 3,13,90,000/- are properly explained and hence the same should be deleted. The contentions of the appellant have been considered carefully. During the course of appellate proceedings the appellant had submitted certain additional evidences, as discussed above, and the same were forwarded to the Ld. AO for his verifications, with a request to submit the remand report. In pursuance of same, as detailed above, the Ld. AO has submitted the remand report vide his letter dated 15.05.2016 and has explained that "it is to humbly submit the assessee has submitted the source of share application money and also

source of source is explained, which has been found in order” From the remand report submitted by the Ld. AO it is evident that in view of addition evidences submitted and verification made by him, the Ld. AO has found that not only the source, but source of source of investment made in impugned share application have been found to be order. In view of the said report of the AO, the addition of Rs. 3,13,90,000/- made on account of investment in share application money is DELETED. Accordingly, the Ground Nos. 2 and 3 raised in appeal are ALLOWED.

4.2 Further additions of Rs. 15,69,500/- as were made by the AO on protective basis with respect to commission income on these accommodation entries, were deleted by Ld. CIT(A) vide appellate order dated 20.05.2016, by holding as under:-

“9.41 have considered the submissions of the appellant and perused the materials available on record. The appellant has requested to delete the addition of Rs. 15,69,500/- made protectively on account commission income. The appellant's main contention is that the Ld. AO has made the said addition on ad hoc basis that too without any basis. The contention of the appellant has been considered carefully. As discussed above, in view of the remand report submitted by the Ld. AO, the source of investments made in share application of Rs. 3,13,90,000/- has been found to be properly explained and hence the above referred additions of Rs. 3,19,90,000/- has been deleted. Since the investment in share application money has been found to be genuine, so there is no question of earning any commission of the same. In view of the facts and circumstances of the case, the protective addition made of Rs. 15,69,500/- (wrongly mentioned in grounds of appeal as Rs. 16,69,500/-) is DELETED. Accordingly, the Ground No. 4 raised in appeal is allowed. “

5. The Revenue is aggrieved by appellate order dated 20.05.2016 passed by learned CIT(A) and has filed an appeal with tribunal. The Ld. DR drew our attention to various ground of appeal raised by the revenue in its appeal filed by the tribunal challenging the appellate order passed by learned CIT(A). Our attention was drawn by learned DR to assessment order passed by the AO. It was submitted that assessee has advanced share applications money to the tune of Rs. 3,13,90,000/- in aggregate , to M/s Emerald Electronics Private Limited(Rs. 2,66,00,000/-) and Murliwala Realtors Private Limited(Rs.

47,90,000/-) and sources and genuineness of these share application money could not be proved satisfactorily by the assessee, keeping in view mandate of Section 68 of the 1961 Act. It was submitted by ld. DR that complete bank account statements were not produced by the assessee. Our attention was drawn to statement of Mr. Jagdish Purohit, Director of the assessee company given before ADIT(Inv.) wherein he admitted that he is involved in providing accommodation entries in lieu of commission income. The Ld. DR submitted that confirmations were not filed by assessee. It was however submitted by learned DR that no notices u/s. 133(6) nor summons u/s. 131 were issued by the AO or learned CIT(A) to these parties. It was further submitted by learned DR that additions of Rs. 15.69 lacs made by the AO were protective in nature and were towards commission income earned by assessee on providing the services of providing bogus accommodation entries . The Ld. AR on the other hand relied upon the appellate order passed by Ld. CIT(A) wherein all these additions stood deleted by learned CIT(A). The Ld. Counsel for the assessee drew our attention at the outset to the order giving effect passed by the AO to give effect to the appellate order passed by Ld. CIT(A) , dated 27.06.2016 wherein total income after giving effect to appellate order passed by Ld. CIT(A) order was computed to be Rs. 8,800/- by the AO , which also happened to be returned income. The said order passed by the AO is placed in file . It was submitted that remand report dated 15.02.2016 was submitted by AO on directions of learned CIT(A) with respect to additional evidences filed by the assessee before learned CIT(A). The said Remand Report is placed in file . On being asked by the Bench after observing the audited financial statements of the assessee for the financial year ended 31.03.2010 which are placed in paper book from page no. 2 to 7, wherein the assessee had total Share Capital and Reserves and Surplus , in aggregate to the tune of Rs. 14.53 crores as at 31.03.2010, the investments made by the assessee are to the tune of Rs. 7.7 crores as at 31.03.2010, while the Loans and Advances granted by the assessee including share applications money pending allotment were to the tune

of Rs. 15.11 crores as at 31.03.2010, the assessee explained that it has not received any interest/divided income from these huge investments as well loans and advances granted by it to various entities. On further perusal of aforesaid Balance Sheet as at 31.03.2010, it was observed by the Bench that current liabilities including advances received and sundry creditors were to the tune of Rs. 8.55 crores, the assessee explained that no interest was paid on the borrowings /payable as is outstanding in its books of accounts as at 31.03.2010. The learned counsel for the assessee submitted that certain additional evidences were filed by it before learned CIT(A) by way of confirmations from parties, copies of bank statements etc. and the AO in its Remand Report dated 15.02.2016 has stated that the assessee has submitted the source of share application money and also source of source is explained, which has been found to be in order. The learned counsel for the assessee made prayers before the Bench for upholding of appellate order passed by learned CIT(A) and confirm the deletion of additions as were upheld by learned CIT(A), while learned DR on the other hand has prayed for upholding assessment order passed by the AO.

6. We have considered rival contentions and perused the material on record including orders of authorities below and paper book filed by the assessee. We have observed that the assessee has claimed itself to be Non Banking Finance Company, engaged in providing activities of providing Finance, Investments, Financial Services etc. . However , the assessee has not brought on record any licence/approval granted by RBI to carry on business as NBFC which is a mandatory requirement for any NBFC to carry on business of Finance, Investments, Financial Services etc. in India . The assessee has also filed paper book containing 75 pages which is placed in file. The perusal of various documents including the audited financial statements filed by the assessee also nowhere mentions/reveals that assessee is holding any licence/approvals granted by RBI to carry on business of Finance, Investments, Financial Services etc.. The

assessee company has advanced share application money of Rs. 3,13,90,000/- to following two entities namely , as under:-

M/s. Emerald Electronics P Ltd. *Rs. 2,66,00,000*

M/s. Murliwala Realtors P Ltd. *Rs. 47,90,000*

The AO has invoked provisions of Section 68 of the 1961 Act to make additions to the income of the assessee as the assessee could not prove genuineness of the sources for making aforesaid payments towards share applications money advanced by the assessee during the year under consideration. The learned CIT(A) on the other hand granted relief to the assessee based on additional evidences filed by the assessee during the course of appellate proceedings before learned CIT(A) by invoking Rule 46A of the 1962 Rules. The Remand Report was called by learned CIT(A) from the AO who objected to admission of these additional evidences which were mainly confirmations from the parties from whom the money was raised for making payments for share application money and their bank statements. The AO, however, commented in its Remand Report that source of application money as well source of the source stood explained , which led learned CIT(A) to delete the additions and grant relief to the assessee. The facts are dealt with by us in details in preceding para's of this order and there is no dispute between rival parties so far as facts are concerned. The facts are not repeated by us again as they were dwelt upon in details in preceding para's of this order. The whole controversy revolves around the mandate of Section 68 of the 1961 Act and whether the assessee had satisfied the mandate of Section 68 of the 1961 Act.

We are of the considered view that Section 68 of the Act creates a legal fiction which cast obligation on the assessee to explain to the satisfaction of the AO about nature and source of credit in case any amount is found credited in the books of the assessee maintained for any previous year. This creates a legal fiction and in case the assessee did not offer explanation to the satisfaction of the AO as to the nature and source of credit of any amount found credited in the books of the

assessee for any previous year by cumulatively satisfying the AO about the identity and creditworthiness of the creditor and about the genuineness of the transaction , the amount found credited in the books of the assessee shall be treated to be the income of the assessee as unexplained income under legal fiction created by Section 68 of the Act. The Section 68 of the Act created a legal fiction which does not require that the Revenue has to show the sources of the income before bringing the amount to tax since the amount is found to be credited in the books of the assessee in case the assessee has not offered explanation to the satisfaction of the AO. Thus, section 68 of the Act cast obligation on the assessee where any sum is found credited in the books of an assessee maintained for any previous year , and the assessee offers no explanation about the nature and source of credit thereof or the explanation offered by the assessee is found not satisfactory in the opinion of the AO, the sum so credited may be treated as income and charged to income-tax as income of the assessee of that previous year. The burden/onus is cast on the assessee and the assessee is required to explain to the satisfaction of the AO cumulatively about the identity and capacity/creditworthiness of the creditors along with the genuineness of the transaction to the satisfaction of the AO. All the constituents are required to be cumulatively satisfied. If one or more of them is absent, then the AO can make the additions u/s 68 of the Act as an income. There are companies which are widely held companies in which public are substantially interested which comes out with an initial public offers wherein shares are listed on stock exchanges and widely traded , wherein members of public make subscriptions in pursuance to the Prospectus issued by the company . Issue of shares in these cases to general public in India as well abroad are approved, regulated and monitored by various authorities who are engaged in regulating and managing securities market such as Securities and Exchange Board of India(SEBI) , Stock Exchanges, Government of India etc. . These members of public who make subscription are widely scattered all

over the country or even outside India as any person entitle to apply as per the conditions prescribed in the prospectus can place an application subscribing to the shares of the company by depositing duly filled in application along with application money with the designated authorized recipients of the company stipulated in the prospectus such as bankers, brokers, under-writers, merchant bankers, company offices etc . These shareholders who are member of public are un-known persons to the company issuing shares and the company issuing shares have no control/mechanism to verify their creditworthiness etc. and the burden of proof in such cases is different, but there is another class of companies which are closely held companies in which public are not substantially interested who are mostly family controlled closely held companies and they raise their share capital from their family members, relatives and friends and in these companies since share capital is received from the close knit circles who are mostly known to the company/promoters, the onus as required u/s 68 of the Act is very heavy to prove identity and capacity of the shareholders and genuineness of the transaction. The onus of widely held company could be discharged on the submissions of all the information contained in the statutory share application documents and on not being satisfied the AO may proceed against the shareholders u/s 69 of the Act instead of proceeding against the company, but in the closely held companies the share capital are mostly raised from family, close relatives and friends and the assessee is expected to know the share subscribers and the burden is very heavy on the assessee to satisfy cumulatively the ingredients of Section 68 of the Act as to identity and establish the credit worthiness of the creditors and genuineness of the transaction to the satisfaction of the AO , otherwise the AO shall be free to proceed against the assessee company and make additions u/s 68 of the Act as unexplained cash credit. The use of the word 'any sum found credited in the books ' in Section 68 indicates that it is widely worded and the AO can make enquiries as to the nature and source thereof . The AO

can go to enquire/investigate into truthfulness of the assertion of the assessee regarding the nature and the source of the credit in its books of accounts and in case the AO is not satisfied with the explanation of the assessee with respect to establishing identity and credit worthiness of the creditor and the genuineness of the transactions, the AO is empowered to make additions to the income of the assessee u/s 68 of the Act as an unexplained credit in the hands of the assessee company raising the share capital because the AO is both an investigator and adjudicator. In our considered view, merely submission of the name and address of the creditor, income tax returns, Balance Sheet/statement of affairs of the creditor and bank statement of the creditor is not sufficient as the AO is to be satisfied as to their identity and creditworthiness as well as to the genuineness of the transaction entered into.

Before, we proceed further, it is important at this stage itself to analyse the audited financial statements of the assessee company for the relevant previous year 2009-10. We have carefully perused the audited financial statement of the assessee for the previous year ended 31.03.2010 and we have observed that assessee has shown meagre revenue from operations vide income from share speculation to the tune of Rs. 79,340/- on a total balance sheet size of Rs. 14.53 crores. The net income offered for taxation is meagre amount of Rs.8,880/-. The assessee has granted huge loans and advances to the tune of Rs. 15.11 crores(including advances towards share application money to several companies) on which no interest income has been received by the assessee. The total interest income on these loans of Rs. 15.11 crores earned during the entire financial year was Rs. Nil. This has to be read in context of claim of the assessee that it is an NBFC company. It is highly incomprehensible and unacceptable that NBFC whose main business is of Finance will deploy its funds in loans without any interest which defies all logic and cannons of commercial expediency. The assessee had made investments in various entities to the tune of

Rs. 7.7 crores during the previous year under consideration, for which no reasons and justification for making such a huge investment in these unlisted companies are brought on record. The financial viability of these investee companies, returns of investments, reasons, justifications and valuation of these unlisted shares in which the assessee made investments are not brought on record. Merely submissions of paper trail in the form of bank statements and confirmations, share application forms etc is not sufficient to discharge onus cast on the assessee under the provisions of the 1961 Act. The assessee has its own issued and subscribed share capital to the tune of Rs. 64.09 lacs as at 31.03.2010 as per audited financial statements, as against which share premium raised by assessee company was Rs. 13.88 crores. There appears to be no reasons and justification supported by the strength of its audited financial statements or strength of business model/project carried on by assessee as is reflected/translated in its financial statements or background of the promoters/ management, which could justify issuance of its shares at such a huge share premium wherein its shares could command such a huge valuation, rather contrarily the revenue streams of assessee are meagre and negligible defying commercial expediency, as it has gross income only from share speculation to the tune of Rs. 79,340/- and an accumulated losses of more than Rs. 22 lacs as on 31.03.2010. On Balance Sheet size of more than Rs. 15 crores (If the current liabilities are also considered as part of the liabilities along with share capital/share premium, the size of Balance Sheet would be more than Rs. 23 crores instead of Rs. 15 crores +), the total expenses claimed by the assessee were meagre to the tune of Rs. 52,000/- for the whole year on account of salaries and wages (Preceding Year-Rs.52,000/-) to run a business of size of more than Rs. 23 crores which again defy all cannons of commercial expediency. The assessee has incurred other expenses of meagre amount of Rs. 18,465/- during the entire year under consideration. The gross revenue from operations are meagre Rs. 79,340/- which was

share speculation profit earned during the year under consideration. In the preceding year, gross income from operations were meagre amount of Rs. 1,47,750/- which was again share speculation profit . Thus, there is a huge inconsistency between revenue streams and the size of its Balance Sheet wherein the assessee is claiming itself to be an NBFC , which is against the spirit of doctrine of commercial expediency in conducting normal business affairs. It is incomprehensible and unacceptable against the doctrine of commercial expediency that an NBFC which is formed for undertaking Finance business would grant all loans free of interest. If the expenses incurred by assessee during the year under consideration were compared with size of its sundry creditors, another inconsistency emerges which is against commercial expediency is the reporting of huge sundry creditors to the tune of Rs. 3.21 crores as at 31.03.2010 which could not be justified if the size of expenses incurred during the year under consideration is compared. Thus, there are no justification for such a huge magnitude of holding sundry creditors which is not supported by business conduct of the assessee. Similar is the position of advances received of Rs. 5.34 crores as at 31.03.2010. The other peculiar inconsistency vis-a-vis normal business conduct noticed is that the assessee has advanced share application money to the tune of Rs. 14.30 crores as at beginning of the year, whereas Rs. 3.14 crores was further investments in share application money during the year under consideration, while Rs. 6.4 crores was reflected as return of share application money during the year under consideration which was granted towards share subscription of various entities in earlier years, which is a unique feature in the Balance Sheet of the assessee that share application money which were given by the assessee to various entities being closely held Private Limited Companies to subscribe to their shares are refunded by these investee companies. Under normal circumstances, the shares are subscribed with a long term vision after considering business model/revenue streams and after conducting due diligence of the investee company. The refund of

share application money by a Private Limited closely held unlisted company is generally not a normal phenomenon which is against normal conduct of business. It is not a case that assessee subscribed in IPO being launched by a Public Company and on being unsuccessful owing to over-subscription , the share application money stood refunded. We have stated all these peculiar features/inconsistency in audited financial statements of the assessee for the year ended 31.03.2010 vis-a-vis normal business conduct of a normal business , so as to highlight that all these features which are present in assessee's audited financial statements are peculiar features of a paper/shell company which is not engaged in genuine business activities but is engaged in clandestine activities of providing bogus accommodation entries by way of share money, loans and advances wherein illegitimate and ill-gotten moneys' of beneficiaries are routed in a clandestine manner to launder money through several layers of entities and bank accounts with an intent to defraud Revenue casting a serious shadow of doubt on the genuineness of these transactions. These financial parameters clearly defy all commercial logics and expediencies despite the established and accepted doctrine that Revenue cannot govern the manner in which business men shall organise its business affairs as it could not sit in the arm chair of the businessmen but at the same time it is also established principles in taxing statute that this leeway cannot be extended to such an extent that business men organises its affairs in a manner to defraud Revenue which will entitle Revenue to lift corporate veil and see who all are behind the smoke screen of corporate veil to defraud Revenue. Under the presence of these extra-ordinary circumstances being present in assessee's audited financial statement vis-a-vis normal business conduct governed by commercial expediency , onus is now very heavy on assessee to bring on record cogent evidences and material to substantiate that its transactions are genuine and are not merely smoke screen or camouflaged with an intent to defraud Revenue. We have also observed that in all these cases wherein the

assessee made investments to the tune of Rs. 3,13,90,000/-, the assessee has received money in its bank account immediately prior to investing the money in these investee company's wherein amounts were received in bank account of the assessee from different entities and immediately on being received an equivalent amount were transferred to the investee company . The perusal of the bank account of the assessee maintained with Central Bank of India at New Marine Lines Branch, Mumbai will reveal that (paper book /page no. 16 and 17) average bank balance maintained by assessee in its aforesaid bank account with Central Bank of India, New Marine Lines, Mumbai is an meagre amount of merely Rs. 16,000/- (approximately). Thus average bank balance maintained by assessee in the aforesaid bank account is meagre sum of Rs. 16,000/- while huge amounts of money suddenly comes into this bank accounts which immediately finds its exit into some other bank account, which is another peculiar feature of a shell company engaged in laundering money by providing bogus accommodation entries through a web of shell companies and bank accounts. We have carefully gone through the orders of the authorities below and we are afraid that the assessee is not able to discharge its onus as is casted u/s 68 of the 1961 Act as the assessee could not prove genuineness of the investments made in the investee company and underneath sources for making these investments. The assessee no doubt has produced bank statement/confirmation of the entities from which the money found its place in the bank account of the assessee to be further disbursed to the investee company but the genuineness of these transactions could not be proved as the assessee did not bring on record cogent evidences to substantiate that its decisions in receiving moneys from various entities and granting loans and advances/making share investments was governed by doctrine of commercial expediency and were genuine transactions. Merely bringing confirmations and showing that the payments were made through banking channel is not sufficient. The relevant facts as to the receipt of money to the tune of Rs. 3,13,90,000/- in bank account of

the assessee as well investments made in the two entities namely Emerald Electronics Private Limited and Mualiwala Realtors Private Limited is discussed by us in preceding para's of this order which are not repeated again. The AO in its remand report has stated that sources of share application money as well sources of sources stood explained which has been followed by learned CIT(A) in giving relief to the assessee , but the important ingredient of Section 68 of the 1961 Act as to genuineness of these transactions unfortunately has not been looked into by learned CIT(A). There are three ingredients of Section 68 of the 1961 Act which are to be cumulatively fulfilled namely establishing identity of the creditor, creditworthiness of the creditor and genuineness of the entire transaction . The order passed by learned CIT(A) is cryptic and cannot be sustained in the eyes of law as it could not explain as to how these transactions undertaken by the assessee are genuine transactions and are under the realm of commercial expediency. We have already held that the assessee's affairs as reflected in its audited financial statements clearly points to assessee being an accommodation entry provider, as detailed by us in this order. We have also observed that one of the Directors of the assessee company namely Mr Jagdish Purohit has admitted before ADIT(Inv) that he is engaged in providing bogus accommodation entries in lieu of commission income. The aforesaid statement was later retracted by Mr Jagdish Purohit after a gap of 39 months which does not inspire confidence more-so the affairs of the assessee company are so organised which points towards one and only one conclusion that the assessee company is an accommodation entry provider engaged in laundering of money. The decision of co-ordinate Bench of ITAT, Mumbai in the case of Royal Rich Developers Private Limited in ITA no. 1835 & 1836/Mum/2014 vide order dated 24.08.2016 is relevant, in which one of us being Accountant Member was part of Division Bench who pronounced the said order. The said order is now confirmed by Hon'ble Bombay High Court in the case of Royal Rich Developers Private Limited v. PCIT in ITA No. 438 & 439 of

2017, vide judgment dated 22.07.2019. Thus, keeping in view cumulative effect of surrounding circumstances and facts of the case, we are of the considered view that the assessee is not able to discharge its burden as was cast u/s 68 of the 1961 Act . Thus, we have no hesitation in setting aside the appellate order passed by learned CIT(A) and confirm the additions to the tune of Rs. 3,13,90,000/- as were made by the AO, which addition now stood stand affirmed by us. Revenue succeeds on this issue. We order accordingly.

So far as protective additions to the tune of Rs. 15,69,500/- are concerned, these additions were made on protective basis based on statement of Director Mr. Jagdish Purohit that these accommodation entries were provided in lieu of commission income which was brought to tax by the AO as income computed @5% of amount of these accommodation entries. As discussed above in detail in preceding para's of this order that Mr Jagdish Purohit , Director retracted his statement after a gap of 39 months which does not inspire confidence. The assessee company is already held by us to be an entity engaged in providing bogus accommodation entries. Now coming to this addition towards commission income in lieu of providing accommodation entries. Firstly, these are estimates which certainly require some guess work but the said guess work should be an honest and fair guess work. Reference is drawn to decision of Hon'ble Supreme Court in the case of Kachwala Gems v. JCIT reported in (2007) 288ITR 10(SC).We are not inclined to interfere in the estimation done by the AO while computing commission @5% of accommodation entry amount which was brought to tax by the AO , as in our considered view it is a reasonable and honest estimation made by the AO and cannot be said to be perverse estimation defying all cannons of commercial logics and reasoning. Secondly, the additions to the tune of Rs. 15,69,500/- were made on protective basis in the hands of the assessee and although we are confirming this addition also but at the same time we are remitting this issue back to the AO for limited

verification as to the fate of this addition made on substantive basis and accordingly the AO shall decide about the sustainability of this addition of Rs. 15,69,500/-. Revenue also succeed on this ground as indicated above. We order accordingly.

7. The appeal of the revenue in ITA no. 5242/Mum/2016 for AY 2010-11 stand allowed.

Order pronounced in the open court on 31.07.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 31.07.2019 को की गई

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 31.07.2019

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI