

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'C', NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.5364/Del/2019  
Assessment Year: 2003-04

M/s. Hindustan Glass Works Ltd. (formerly known as M/s. South Impex Pvt. Ltd.), A 2/21, W.H.S. DDA Marble Market, Kirti Nagar, New Delhi	<b>Vs.</b>	ACIT, Circle-12(1), New Delhi
<b>PAN :AAGCS6249E</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Gautam Jain, Adv. & Shri Lalit Mohan, Adv.
Respondent by	Shri Raghunath, Sr.DR

Date of hearing	26.08.2019
Date of pronouncement	25.09.2019

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the assessee is directed against order dated 12/04/2019 passed by the Ld. Commissioner of Income-tax (Appeals)-16, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2003-04, raising following grounds:

<b>Ground No.</b>	<b>Grounds of Appeal</b>	<b>Tax Effect</b>
1.	<i>That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in sustaining an</i>	1,76,40,000

	<p>aggregate addition of Rs. 4,80,00,000/- representing sums received from the following shareholders as share application and erroneously held as unexplained cash credit under section 68 of the Act:</p> <table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Name of the Shareholder</th> <th>Amount (In Rs.)</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Vivek Cybertech (P) Ltd.</td> <td>45,00,000</td> </tr> <tr> <td>2.</td> <td>Saar Enterprises (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>3.</td> <td>Blossom Advertisers (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>4.</td> <td>Kylsans Finance (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>5.</td> <td>Tulip Engineering (P) Ltd.</td> <td>24,00,000</td> </tr> <tr> <td>6.</td> <td>Impulsive Financial Services (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>7.</td> <td>Savitri Electricals (P) Ltd.</td> <td>21,00,000</td> </tr> <tr> <td>8.</td> <td>Pushpak Exports (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>9.</td> <td>Bliss Credits (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>10.</td> <td>KVF Securities (P) Ltd.</td> <td>45,00,000</td> </tr> <tr> <td>11.</td> <td>Gupta Impex (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>12.</td> <td>Sunrise Developers (P) Ltd.</td> <td>37,50,000</td> </tr> <tr> <td>13.</td> <td>FMEX Tours &amp; Travels (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>14.</td> <td>Meerut Credits &amp; Travels (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td>15.</td> <td>Atlantic Vision (P) Ltd.</td> <td>30,00,000</td> </tr> <tr> <td></td> <td>Total</td> <td>4,80,00,000</td> </tr> </tbody> </table>	Sr. No.	Name of the Shareholder	Amount (In Rs.)	1.	Vivek Cybertech (P) Ltd.	45,00,000	2.	Saar Enterprises (P) Ltd.	30,00,000	3.	Blossom Advertisers (P) Ltd.	30,00,000	4.	Kylsans Finance (P) Ltd.	30,00,000	5.	Tulip Engineering (P) Ltd.	24,00,000	6.	Impulsive Financial Services (P) Ltd.	30,00,000	7.	Savitri Electricals (P) Ltd.	21,00,000	8.	Pushpak Exports (P) Ltd.	30,00,000	9.	Bliss Credits (P) Ltd.	30,00,000	10.	KVF Securities (P) Ltd.	45,00,000	11.	Gupta Impex (P) Ltd.	30,00,000	12.	Sunrise Developers (P) Ltd.	37,50,000	13.	FMEX Tours & Travels (P) Ltd.	30,00,000	14.	Meerut Credits & Travels (P) Ltd.	30,00,000	15.	Atlantic Vision (P) Ltd.	30,00,000		Total	4,80,00,000	
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1.1	That while sustaining the aforesaid addition the learned Commissioner of Income Tax (Appeals) has completely overlooked that there was no adverse material brought on record by the learned Assessing Officer to assume that credits by way of share capital represents unexplained cash credit and, burden which lay upon the assessee in terms of section 68 of the Act had not been discharged.	Linked to Ground No. 1																																																			
1.2	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that once the shareholders were duly confirmed the investment made, he could not have upheld the addition on arbitrary grounds and that too without bringing any evidence alleging that aforesaid credit by way of share capital emanated from the source of funds provided by the appellant company.																																																				
1.3	That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that shareholders were corporate entities, duly assessed to tax and. had made investment by account payee cheques and supported by necessary evidence and therefore, such shareholders were not only identifiable companies but also had requisite creditworthiness and, thus the said sum received could not in law or on fact be brought to tax u/s 68 of the Act, more particularly when such sum stood refunded by the appellant company.																																																				
1.4	That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that appellant had placed on																																																				

	<i>record voluminous evidences in the shape of audited financial statement, annual returns, etc. to discharge the burden with regard to both genuineness of the transactions and creditworthiness of the shareholders and therefore, in absence of any whisper to rebut the said evidence, the credit could not arbitrarily be regarded as unexplained cash credit under section 68 of the Act.</i>	
1.5	<i>That furthermore the learned Commissioner of Income Tax (Appeals) has proceeded to confirm the addition on mere speculation, generalized statements, theoretical assumptions and allegations and assertions, without there being any supporting evidence and is therefore not in accordance with law.</i>	
2.	<i>That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding an addition of Rs. 4,80,000/- on account of alleged commission paid to the entry provider in cash for obtaining accommodation entry and held as unexplained expenditure u/s 69C of the Act.</i>	1,76,400
3.	<i>That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the levy of interest of Rs. 1,19,76,685/- u/s 234B of the Act which is not leviable on the facts and circumstances of the case of the appellant company.</i>	Consequential in nature
Prayer	<i>It is therefore, prayed that, additions made and sustained by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeal of the appellant company be allowed.</i>	

**2.** Briefly stated facts of the case are that the assessee filed return of income declaring total income of Rs.3,53,959/-. The assessment under section 143(3) read with section 147 of the Income-tax Act, 1961 (in short 'the Act') was completed on 24/12/2007, after making addition of Rs.4,80,00,000/- under section 68 of the Act, along with 1% commission amounting to Rs.4,80,000/-. On further appeal, the Ld. first appellate authority deleted the addition vide order dated 24/03/2008. On further appeal by the Revenue, the Tribunal in its order dated 26/03/2010 in ITA No. 2089/Del/2008 and CO No. 41/Del/2009, restored the matter to the file of the Assessing Officer with following directions:

*“65. In view of the above discussion, the matter is restored back to the file of AO with a direction to provide the assessee a reasonable opportunity of hearing to substantiate its claim that the share application money was in fact the money belonged to those very share applicants and those share applicants were genuine existing entities.”*

**2.1** In second round of assessment proceeding, the Assessing Officer issued a detailed questionnaire containing more than 29 questions. The assessee responded those queries and sought cross-examination of 7 persons, whose statements had been recorded by the Investigation Wing of the Income-tax Department and which were relied upon by the Department for making addition under section 68 of the Act. According to the assessee, it submitted all documents in support of identity, creditworthiness and genuineness of the transaction and also justified reasons for charging share premium. In support of identity of 15 entities, who applied for shares, the assessee filed copy of certificate of incorporation issued by the Registrar of companies, copy of PAN issued by the Income Tax Department, bank account held in the name of the entities, etc. It was also submitted that those companies were active on the site of the Registrar of the companies. Regarding the creditworthiness of those entities, the assessee filed copy of bank statement and submitted that the sum has been deposited in the bank's statement of those entities for paying share application money and share allotment money. The assessee also filed copy of balance sheet of those entities showing assets and investments and shareholders' funds. In support of the contention of genuineness of the transaction, the assessee submitted that share application money and allotment money had been received

from those entities through normal banking channel and through account payee-cheques drawn in favour of the assessee. It was submitted that in view of the documents filed, the assessee discharged its onus to explain nature and source of the credit in terms of section 68 of the Act.

**2.2** The assessee also filed fresh confirmation of those entities along with current postal address. The Assessing Officer asked the assessee to produce directors of the share applicant companies. On the request of the assessee, the Ld. Assessing Officer issued summons under section 131 of the Act to those parties to appear before him along with necessary documents. In response, authorised representatives on behalf of those companies attended before the Assessing Officer, but according to the Assessing Officer for discharging onus under section 68 of the Act, the directors of those companies during relevant time were to be produced before the Assessing Officer and failure to do so by the assessee, it was liable for addition under section 68 of the Act. The relevant finding of the Assessing Officer is reproduced as under:

*“From the above, it emerges that all the information as furnished by the assessee, so far, is mere re-petition of what was furnished by the assessee either during the course of original assessment or during the appellate proceedings before the Ld. CIT(A). What was required is to produce the directors of the companies through whom the veracity of the documents furnished by the assessee during the course of assessment regarding the fact, that the share application or share capita 1 is genuine, as the persons contributing the same have capacity, the transactions have taken place, and that the identity of persons is fully established, could be verified by examining them. It may again be mentioned that the assessee was required and bias been given every possible opportunity to produce the directors so that, the*

*veracity of the submissions of the assessee could be examined and the documents allegedly furnished by the assessee as claimed to be genuine and true, could be examined. When the assessee could not produce the directors of applicant companies for shares, or who allegedly have contributed to share application money and thereby to share capital in question, this office issued summons to the applicants for deposition on request of the assessee, although, the onus to produce the persons (Directors) of applicant companies lay squarely with the assessee. Thus, the pursuit of examining the persons who know the truth and whose testimony is crucial to decide whether the share capital/share application money is genuine or otherwise, could not be achieved as the assessee, in spite of every possible opportunity given could not produce persons for the reasons best known to the assessee and hence, the obligation cast upon the department has been fully discharged. The assessee's contention regarding cross examination of the persons on the basis of whose statements the proceedings for re-opening the assessment were under taken, has got no force, as the department has not reached the conclusion that the persons are not genuine without making any enquiry. It is only through enquiries which establishes that the alleged persons do not fulfil the pre-condition necessary to dispel the cloture of section 68 of the I. T. Act. It is again reiterated that the AO in the original assessment has already verified all the facts and submissions made by the assessee and had reached the conclusion that the companies alleged to have invested in the share capital/share application were not in a position to invest any' money genuinely in the assessee company, nor they have invested any money as clearly brought out from the deliberations of the statements originally recorded and discussed in the original assessment order. The onus lies upon the assessee to prove the creditworthiness, identity of the persons, and genuineness of the transactions. The assessee has I abstained itself from producing the above persons for verification and cross examination before the undersigned also, which proves that the transactions are not clean and genuine, the assessee has introduced its own unaccounted money in the shape of share capital/share application money in tire names of various persons who are not*

*creditworthy and whose identity is not proved as neither the assessee reduced them nor they deposed even after issuing summons u/s 131.*

**2.3** Before the Ld. CIT(A), the assessee filed additional evidences in terms of rule 46A of the Income Tax Rules, 1962 and prayed for allowing the assessee to produce the directors of those entities. The Ld. CIT(A) forwarded documents to the Assessing Officer calling for a remand report from the Assessing Officer. During remand proceeding, the Ld. Assessing Officer issued summons to the share applicant companies and in response, directors of 14 share applicant companies attended before him and their statements were recorded. From the copy of bank's statements and financials submitted by the directors of those entities in response to summons under section 131 of the Act during remand proceeding, the Ld. Assessing Officer concluded as under:

- (a) *Money was credited in the bank accounts of most of the companies on the dates which are immediately prior to the date of transfer of share application money to the assessee company.*
- (b) *No business activity was carried out by the above mentioned share applicants during the year under consideration.*
- (c) *From perusal of the chart prepared above on the basis of financial submitted, shows that as on 31.03.2002 most of these companies have total assets worth much less than that of the investment made In FY 2002-03 as share application money in assessee company.*
- (d) *The investment made as share application money in assessee company doesn't get substantiated with the financial of the above mentioned companies.*
- (e) *As per the reply submitted during assessment proceedings, the assessee has filed copies of letters dated 17.02.2005 issued to these companies conveying that equity shares stand in your name has been*

*forfeited, whereas in the statement recorded during examination of directors of these companies they have replied that the shares have been allotted during the FY 2002-03. Both these facts are contradictory in each other.*

- (f) *Further during the survey proceedings u/s 133A of the Income Tax Act, 1961, the statement of Sh. Amit Gupta, Director of the company was recorded. In the statement, Sh. Amit Gupta admitted that the share application money and premium amounting to Rs.24.0 lakhs and Rs.456.0 lakh respectively received during F.Y. 2002-03 was routed through accommodation entries in the concern.*

**2.4** The assessee filed its objections on the above conclusions drawn by the Assessing Officer and submitted that above conclusions were based on incorrect appreciation of the facts on record. According to the assessee, all those share applicant companies were engaged in business activity and this fact was substantiated by the financial statement submitted by those share applicant companies. According to the assessee, the factual observation that in case of most companies investment was more than total assets worth is incorrect. It was submitted by the assessee that the action of the Assessing Officer in arriving at the conclusion that entity with low financial conditions would not have mobilized the fund was based on wild guess and doubting the capacity of the persons on surmises. Regarding the observation of the Ld. Assessing Officer of inconsistency in statement of the directors that they have been allotted shares vis-à-vis the claim of the company that shares have been forfeited, the assessee explained that shares were allotted during financial year 2002-03 but later forfeited and thus there was no contradiction in the statement of the directors. Regarding admission by Sh. Amit Gupta

during survey proceeding under section 133A of the Act, of share application money and share premium routed through accommodation entries, the assessee submitted that Sh. Amit Gupta was not director of the company during relevant time and, therefore, his statement cannot be relied upon. Further, it was submitted that, Mr. Amit Gupta retracted from his statement subsequently. The assessee also submitted that reliance on the statement recorded during the survey is not permissible as it is no evidence under the law. In support of the contention, the assessee relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs. S Khader Khan reported in 352 ITR 480.

**2.5** After considering remand report and rejoinder of the assessee, the Ld. CIT(A) made observations, which are summarized as under:

- (i) The director of one share applicant company, namely, M/s KVF Securities (P) Ltd. was not produced before the Assessing Officer in remand proceeding.
- (ii) The asset value of the share applicant companies was out of synch with the amount of share application money invested.
- (iii) Exact amount has been credited in the bank accounts of the share applicant companies prior to the transfer of fund to the assessee company for the purpose of share application money.
- (iv) Sh Amit Gupta (claimed to be director of the assessee company) and directors of the share applicant companies in their statement before the investigation wing admitted of engaged in providing accommodation entries.

- (v) Notices issued to the share applicant companies returned back with postal remark that no such firm existed.
- (vi) The statement recorded on oath has evidentiary value and can be relied upon for computing assessment whereas the retracted statement by Sh. Amit Gupta is in the nature of self-serving document in absence of any proof that the earlier's statement was recorded under Coercion or pressure and such retracted statement cannot be relied upon.
- (vii) That a formal cross examination is not mandatory if a reasonable opportunity has been allowed to the assessee.

**2.6** In view of the observation, the Ld. CIT(A) concluded that the assessee failed to prove satisfactorily the source and nature of the amount of credit received and therefore, the Assessing Officer was justified in making addition under section 68 of the Act. In support of her claim, she relied on number of decision of the Hon'ble Courts.

**2.7** Aggrieved with the above finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds as reproduced above.

**3.** Before us, the Ld. counsel of the assessee filed paper books in two volumes containing pages 1-186 and 1-523 respectively. The Ld. counsel also filed an additional paper-book containing pages from 529 to 629. A compendium of judicial pronouncements relied upon was also filed by the Ld. counsel.

**3.1** The Ld. counsel of the assessee assailed the finding of the Ld. CIT(A) and submitted that she has ignored all the documentary evidences filed by the assessee and concluded only on surmises and conjectures and the statements already retracted. The Ld. counsel submitted that the Ld. CIT(A) failed to appreciate that the assessee had placed on record entire evidence and material to discharge the burden, which lay upon it under section 68 of the Act and the such addition made was untenable and unsustainable. The Ld. counsel referred to copy of various documents filed in respect of share applicant companies in the paper book of the assessee. He further submitted as under:

- (a) that all the shareholders are corporate entities
- (b) the entire share capital has been raised through banking channels
- (c) that all the share applicant companies were assessed with the same Assessing Officer and in their case the money raised by them as share capital has not been held as unexplained credit and thus any investment made out of their own money cannot be unexplained credit in the hands of the assessee company.
- (d) The investment is duly confirmed by each of the shareholders
- (e) The genuineness of transaction is proved through Form No. 2 i.e. allotment of shares and share certificates.
- (f) The creditworthiness of share applicants was duly explained by way of their bank statements, income tax returns and audited financial statements
- (g) No material much less incriminating was detected as a result of search or gathered during assessment to allege,

observe or assume that share capital represented unexplained credit u/s 68 of the Act.

- (h) All the share applicants have confirmed their investment in independent confirmation under section 133(6) of the Act and no material to the contrary has been led to establish that such credit is unexplained credit

**3.2** Further, regarding the observation of the Ld. CIT(A) of the deposits in bank account of the share applicant companies immediately prior to the date of transfer of share application money to the assessee, the Ld. counsel submitted that the proper course would have been to assess such credit in the hand of the creditor and the assessee cannot be expected to prove the source of the source. He submitted that net worth is the relevant criteria to determine the creditworthiness of the share applicant, irrespective of the low income or no income tax paid by those share applicants. Regarding the observation of the Ld. Assessing Officer in the remand report, the Ld. counsel reiterated the submission made before the Ld. CIT(A) on the remand report.

**3.3** The learned counsel referred to page 201 of the paper-book, which is copy of statement of the Director, Sh. Pankaj Khetan, and submitted that once the directors of the share applicant companies were produced before the Assessing Officer, the onus was on the Assessing Officer to find out from them source of money or to examine the creditworthiness or genuineness of the transaction. He submitted that Ld. Assessing Officer has not done any enquiry in respect of creditworthiness or genuineness of the transaction from directors of those share applicant companies. According to him, the assessee cannot be burdened to substantiate ingredients

of Section 68 in such circumstances. He submitted that the learned Assessing Officer and the Ld. CIT(A) has only wrongly interpreted the financial data and assumed that creditworthiness of the share applicant company was not established.

**3.4** The learned counsel submitted that as held in the case of CIT Vs. Gangeshwari Metals (P.) Ltd., 361 ITR 10, no addition could be made in respect of sum under Section 68, if the assessee, in support of transactions of receipt of share application money, brought on record various documents such as name and address of share applicant, etc.

**3.5** In support of the proposition that low-income of shareholder is an irrelevant consideration in terms of section 68 of the Act, the Ld. counsel relied on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Vrindavan Frams (P) Ltd. In ITA No. 71/2015 (Del). Further, in support of the proposition, that once shareholders/directors of share holding company have been produced, then no addition is tenable, the Ld. counsel relied on the following decisions:

- i) *ITA No. 3299/Del/2011, AY: 2003-04, dated 08.10.2015, Income Tax Officer Vs. Tubecon (India) (P) Ltd.;*
- 2) *ITA No. 695/KOI/2017, AY 2012-13, dated 07.12.2018, Income Tax Officer Vs. Shlok Fashions (P) Ltd.;*
- 3) *ITA No. 1494/Kol/2017, dated 05.04.2019, M/s. Baba Bhootnath Trade & Commerce Ltd. Vs. Income Tax Officer.*

**3.6** In support of the proposition that statement recorded under section 133A in the course of survey has no evidentiary value, the Ld. counsel relied on following judicial pronouncement:

- i) 328 ITR 384 (Del) CIT v. Dhingra Metal Works*
- ii) 300 ITR 157 (Mad) CIT v. S. Khader Khan Son , affirmed by the Apex Court in the case of CIT v. S Khader Khan Son reported in 352 ITR 480 (page 341 of JPB)*
- iii) 263 ITR 101 (Ker) Paul Mathews and Sons v. CIT*
- iv) 2 SOT 402 (Coch) Kurunnem Velil Financiers (P) Ltd. v. DCIT*
- v) 394 ITR 383 (Raj) CIT vs. ARL Infrateh Ltd.*
- vi) 256 ITR 730 (Raj) CIT v. Mool Chand Salecha*
- vii) 97 ITD 3 61 (Ahd) Ashok Manilal Thakkar v. ACIT*

**3.7** The learned counsel summarizes the aspects of the share capital raised by the assessee company during the year as under:

- a) That the shareholder from whom share capital was raised/received is duly identifiable corporate entity and assessed to tax;*
- b) That the entire share capital has been subscribed through banking channels and there was no material found during the search which proves that the monies came from the coffers of the appellant company;*
- c) That the financial statements of each shareholder/applicant duly reflect the capacity of the shareholders/applicants to make investment in appellant company;*
- d) That genuineness of the transaction can be seen from the share;*
- e) That there is no material to show that the share holder company has no independent activity or these are paper companies and thus the principle of substance over form must be applied and having regard to above, the burden of the assessee stands fully discharged;*
- g) That suspicion can be no basis to make an addition; and*

- h) That revenue in the case of shareholder company accepted independent identity, source of income and carrying on business of investments and disinvestments but in the case of assessee it alleges to contrary.*

**3.8** According to the learned counsel, the assessee has discharged its onus to substantiate the claim of share application money belonged to those very share applicants and share applicants as genuine existing party i.e. the issues on which, the Tribunal in first round remitted the matter to the Ld. CIT(A), by way of producing the directors of the share applicant companies and necessary documents.

**3.9** The Ld. counsel further referred to page 182 -186 of the paper book and submitted that in identical facts and circumstances in the case of sister concern, namely, M/s. Lakhmi Float Glass Ltd. the Tribunal has deleted the addition under section 68 of the Act in respect of the share application money and on further appeal, the Hon'ble Delhi High Court in ITA No. 467/2016 has affirmed the decision of the Tribunal. He submitted that in said case also the Revenue Authorities alleged share application money received from share applicant companies as accommodation entry and made addition under section 68 of the Act. The Hon'ble High Court observed that in said case also in survey proceeding, the assessee had acknowledged the unaccounted amount of Rs.3.85 crores. According to the learned counsel, the facts and circumstances of the case of the assessee being identical to the facts of the case, the addition in dispute made in the case of the assessee under section 68 of the Act needs to be deleted.

**3.10** The Ld. DR, on the other hand, relied on the order of the lower authorities and submitted that the assessee failed to discharge its

burden under section 68 of the Act and thus, the Ld. CIT(A) is justified in sustaining the addition. He submitted that facts of M/s. Lakshmi Float Glass Ltd. (supra) relied upon by the assessee are different.

**3.11** We have heard the rival submissions and perused the relevant material on record. As far as facts of the instant case mentioned above, there is no dispute between the parties. The only dispute is whether in the facts and circumstances and the evidences brought on record, can the share application money received by the assessee, be held as its own money introduced back by way of accommodation entries. The lower authorities to support their contentions have relied on two sets of evidences, i.e., the first set of evidences are statements recorded during the course of the search/survey proceedings and, the second set of the evidences are documents and information gathered in assessment/appellate proceedings.

**3.12** On analysis of first set of evidences, we find that the Ld. CIT(A) has relied on statements of few persons, claimed to be directors of the share applicant companies, recorded during the course of search proceedings by the Investigation Wing of the Income Tax Department on parties other than the assessee. Those persons had stated that the share application money invested by their companies into the assessee company was in the nature of the accommodation entry. They further stated that cash was received and deposited in the bank accounts and cheques were issued in lieu of the cash for investing share application money. Name of such persons whose statements have been referred by the Ld. CIT(A) include, Sh. Vinod Kumar Agrawal for Pushpak Exports; Sh. Raghuvir Singh for Tulip Engg. (P) Ltd.; Sh. Mukesh Kumar for

M/s. Vivek Cyber Tech. (P) Ltd., Blossom Advertising (P) Ltd. and Atlantic Vision (P) Ltd.; Sh. Sonu Sharma for Bliss Credits & Leasing (P) Ltd. & Meerut Credits & leasing (P) Ltd. However, we note that no other incriminating documentary evidence related to the assessee found during the course of the searches, has been referred either by the Assessing Officer or by the Ld. CIT(A). Thus, no corroborating material was found in the course of the searches to support statements of persons of the share applicant companies. It is also not in dispute that the assessee sought cross-examination of those persons and the lower authorities have failed to provide any such opportunity to the assessee. Further, we also find that directors of very same share applicant companies filed confirmations of having invested share application money and also appeared before the Assessing Officer in remand proceedings (part of first appellate proceedings) along with all documentary evidences which includes, confirmation of share application money invested; bank statement of their company; balance sheet of their company; copy of Board Resolution of their company etc. The directors of the share applicant companies have not confirmed providing of any accommodation entry to the assessee. Thus, the oral statement given by the persons before the Investigation Wing, which have been relied upon by the learned CIT(A), is of no relevance, when directors of the share applicant companies have confirmed the investment in assessee company. The lower authorities have also failed to corroborate the statement of those persons that cash was deposited in their bank accounts and, thereafter, cheques have been issued to the assessee. The Assessing Officer has failed to substantiate this claim of cash deposit in the bank account of those persons or share applicant companies. In such circumstances, the

Ld. CIT(A) is not justified in relying the statements of those persons given before the Investigation Wing, and that too without any cross-examination and corroborating material on record.

**3.13** Further, the Ld. CIT(A) has relied on statement of Sh. Amit Gupta, recorded during the course of survey proceedings under section 133A of the Act at the premises of the assessee. Sh. Amit Gupta stated that the company obtained share application money through accommodation entry but, later on, he retracted from his statement. No material corroborating the statement was found in survey proceeding from the premises of the assessee. Further, the assessee has submitted that Sh. Amit Gupta was not director in the assessee company at the time of receipt of share application money and, therefore, his statement is irrelevant. The Revenue before us could not establish, that Sh. Amit Gupta was director at the time of receipt of the share application money. In the case of S. Khader Khan Son (supra), the Hon'ble Supreme Court has held that statement under section 133A of the Act cannot be admitted as evidence unless corroborated by other documentary evidences. In the instant case also, the Revenue has failed to corroborate the statement of Sri Amit Gupta with any documentary evidences. Shri Amit Gupta has already retracted from statement also. In view of the above facts and circumstances, reliance placed by the Ld. CIT(A) on the statement of Sri Amit Gupta for concluding that assessee received share application money by way of accommodation entry, is not justified.

**3.14** The another set of evidences relied upon by the Assessing Officer and the Ld. CIT(A) is the documents and informations regarding the share applicant companies gathered during the course of assessment and first appellate proceedings.

Though the identity of the share applicant companies is not disputed, but the creditworthiness and genuineness of the transaction have been disputed by the lower authorities. It is contended that there is deposit in bank accounts of the share applicant companies of equal amount immediately prior to transfer of share application money to the assessee. The assessee has explained that said sum of money has been received through banking channel and those companies have explained source of the money received in their assessment proceedings and therefore the Assessing Officer in the instant case is not justified in holding lacking of genuineness of the transaction. On the issue of the creditworthiness, the lower authorities have analyzed the balance sheet of the share applicant companies and observed that investment in share application money was not in sync with the assets of those companies, whereas the assessee relied on various judicial pronouncement and contended that no addition can be made when the directors of the share applicant companies have been produced before the Assessing Officer. According to the assessee, the onus was on the Assessing Officer to ascertain the source of money in the hands of the share applicant companies and in failure to do so, the assessee cannot be accused of obtaining accommodation entries.

**3.15** We also note that confirmation have been filed by the share applicant companies admitting the investment made in the assessee company. The directors of the company except one company, attended before the Assessing Officer along with necessary financial statements and other documents of their companies. In case of that one company also, representative appeared before the Assessing Officer in second round of

assessment proceedings. During the remand proceedings, the directors of share applicant companies have confirmed the fact of the share application money paid to the assessee. The Tribunal in first round of proceeding, remitted the matter back to Ld. CIT(A) to verify whether the money invested in share application belonged to those companies and those companies are genuine existing company. The assessee produced Directors of those companies who not only admitted that investment was made out of their own money but also filed all documentary evidences in support thereof. Relevant part of statement of Sh. Pankaj Khetan (available on page 203 of the paper book-II) is reproduced as under:

**“Q. No. 7:** *What is the source of money which has been invested by you in South East Impex Pvt. Ltd.?*

**Ans:** *The companies have made investments in M/s. South East Impex P. Ltd. through cheques out of the funds available with the bank account of the companies. This is evident from the bank statements of these companies. I am producing herewith the bank statements of these companies have transaction with M/s. South East Impex Pvt. Ltd. during the F.Y. 2002-03.”*

**3.16** Thus, the assessee has succeeded in substantiating its claim as directed by the Tribunal in first round of proceedings. It is also evident that the Assessing Officer or the Ld. CIT(A) could not establish that the money deposited in the bank accounts of the share applicant money was in any manner rooted from the coffers of the assessee company.

**3.17** We find that in the case of Lakshmi Float Glass limited (supra), the Hon'ble Delhi High Court, under similar circumstances, has affirmed deletion of the addition by the Tribunal. The Hon'ble High Court has observed the facts of the case is under:

*“.....After completion of the enquiries, the AO passed the final order adding back 3.85 crores. The CIT (A) considered all the circumstances in the submissions before it. He took note of the fact that the substantial amount of share application money by other applicants was accepted. We also noted that five industries i.e. Harpal Associates, M/s Chitragandha Investments & Consultants (P) Ltd., M/s Parvantra Capital & Fin Services (P) Ltd., M/s Vimka Impex (P) Ltd. and SGC Publishing (P) Ltd. did not find any mention in the statements of the three persons who were questioned, during the course of seizure procedures. The AO was informed of the fact in the course of Section 147/143 proceedings, that a survey was conducted under Section 143. In the survey proceedings, the assessee had apparently acknowledged the unaccounted amount of 3.85 crores. The CIT (A) observed that however there was no nexus between the addition of 3.85 crores and the survey material or any other material to the contrary. The CIT (A) took note of all the materials made available to the AO in reassessment proceedings and concluded it to be unwarranted.....”*

**3.18** The Hon'ble High Court thereafter, noted the finding of the Tribunal. The Hon'ble High Court after considering the order of the Tribunal and argument of the parties, dismissed the appeal of the Revenue observing as under:

*“Learned counsel relied upon the decision of this court in CIT Vs. Jansampark Advertising & Marketing Private Ltd.*

*(2015) 56 Taxmann 286 (Del.) and submits that whereas the assessee might have established the identity of the investor, it failed to establish the genuineness of the investor or the creditworthiness of the share applicants and under the circumstances the impugned order is inconsiderable.*

*This court has considered the submissions. It is no doubt correct that Section 68 casts an initial burden upon the assessee to disclose the identity of the applicant/investor as well as the genuineness of the transaction. In this case, it is evident that the discussion of the facts by the CIT(A) and the ITAI, has resulted from the materials on record. The AO shall undoubtedly be justified as to the identity of the share applicants. This Court is however unpersuaded by the revenue submission that the genuineness of the transaction or the creditworthiness of the assessee had to be established in the given facts of this case. The factual narration by the CIT(A) which was affirmed by the ITAT unequivocally point to the assessee disclosing materials such as the bank accounts, the share particulars, income tax details and other materials which would have enabled further enquiry by the AO. The CIT (A) further also records that on a scrutiny of the bank accounts of the share applicants, the source of deposit of 3.5 crores, except a small amount of ' 84,858/-, are by way of account payee cheques, there was no cash inclusion. In case AO so wished, it was open for him to make further enquiries. That he did not do so, in our opinion, would not mean that the assessee failed to discharge the initial burden in establishing the genuineness of the transaction or the creditworthiness of the share applicants.*

*For the above reason, no question of law arises. The appeal is accordingly dismissed.”*

**3.19** The facts and circumstances of the instant case being identical to the case of Lakshmi Float Glass Private Limited (supra), respectfully following the finding of the Hon'ble Delhi High Court,

the addition in dispute in the instant case is deleted. The grounds of the appeal of the assessee are accordingly allowed.

**4.** In the result, the appeal of the assessee is allowed.

***Order is pronounced in the open court on 25<sup>th</sup> September, 2019.***

Sd/-  
**[SUDHANSHU SRIVASTAVA]**  
**JUDICIAL MEMBER**

Sd/-  
**[O.P. KANT]**  
**ACCOUNTANT MEMBER**

Dated: 25<sup>th</sup> September, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi