

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 2184/Del/2008
(Assessment Year: 2002-03)**

Dy. Commissioner of Income Tax, Circle-1, Muzaffarnagar.	Vs.	M/s Rana Papers Ltd., Jansath Road, Muzaffarnagar.
PAN No: AAACR7902B		
APPELLANT		RESPONDENT

Revenue by : Shri Sanjog Kapoor, Sr. DR
Assessee by : None

ORDER

PER ANADEE NATH MISSHRA, AM

[A]. This appeal has been filed by Revenue against the impugned appellate order dated 27.03.2008 passed by Learned Commissioner of Income Tax (Appeals), Muzaffarnagar, [in short, "Ld.CIT(A)"] pertaining to Assessment Year 2002-03, on the following grounds:

"1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law & on facts by deleting the addition of Accommodation entries of Rs. 18,54,625/-, even when 11 months time was given by Assessing Officer for furnishing the evidences. The Hon'ble S.C. has held in 57 ITR 532, 53 ITR 623 that burden to prove nature and source of receipt was on the assessee, which has not been discharged by the assessee in this case.

2. That the Ld. Commissioner of Income Tax (Appeals) has erred in law by deleting the share capital of Rs. 4,28,50,000/- , and addition made u/s 68. Notices u/s 144 dated 16-10-2007 and 6-11-2007 were served properly on the assessee but no share capital subscriber was produced before Assessing Officer and Ld. CIT(Appeals) ignored this fact, merely filing documents cannot be treated as sufficient evidences to prove genuiness of credit as reported in 140 ITR 151 (All.) and 50 ITR (SC).

3. That the Ld. CIT(A) has erred in law and on facts by deleting the addition of unsecured loans of Rs. 1,18,63,549/-. The Ld. CIT(Appeals) has accepted fresh / additional evidences produced before him and ignored the request of Assessing Officer to examine the same.

4. That order of the Ld. CIT(A) be set aside and that of the A.O. be restored."

[B]. Vide Assessment Order dated 05.12.2007 passed u/s 148/143(3) of the Income Tax Act, 1961 (in short "the Act"). In this Assessment Order, assessed U/s 143(3) of I.T. Act, on income of Rs. 5,75,52,110 (rounded off). The relevant portion of the Assessment Order is reproduced as under:-

" Return of income in original was filed by the assessee company on 31-10-2007 declaring loss at Rs. 2,59,78,987/- which was processed on 15-1-2003 on the returned loss later on notice u/s 148 was issued on 12-12-2006 on the bais of incormation received from Director of Income Tax (Inv.-I), New Delhi through Commissioner of Income Tax Muzaffarnagar that the assessee company had received following accmmmodation entries

<u>Beneficiary Bank</u>	<u>Value of entry</u>	<u>Instrument No.</u>	<u>Date of receipt</u>	<u>Name of the entry given</u>
DD of P&S. B.MZR	Rs. 2,00,500/-	146903	21 May, 2001	Shyam Lal
DD of SBI. MZN	Rs. 2,00,500/-	489663	24 May, 2001	Bansal Trading Co.
DD of SBI. MZN	Rs. 2,00,500/-	134049	24 May, 2001	Savitri Devi
DD of P & SB. MZN	Rs. 3,00,750/-	504104	26 May, 2001	Navneet Trading
DD of P & SB. MZN	Rs. 2,00,500/-	132636	26 May, 2001	Sita Devi
DD of SBI. MZN	Rs. 2,00,500/-	123564	02 June, 2001	Raj Rani Bansal
DD of SBI. MZN	Rs. 2,00,500/-	116579	02 June, 2001	Ram Prakash
DD of SBI. MZN	Rs. 1,50,375/-	144537	02 June, 2001	Shree Ram garg
DD of P & SB. MZN	Rs. 2,00,500/-	505261	03 July, 2001	Bansal Trading Co.
Total Value	Rs. 18,54,625/-			

<u>Entry Operator's Bank Name, Branch</u>	<u>A/c No. From Entry given</u>
Jai Laxmi Co-operative Bank, Fatehpuri	12382
-Do-	3171
-Do-	11176
-Do-	1811
-Do-	1177
-Do-	12735
-Do-	10157
-Do-	14470
-Do-	3170

In response of notice u/s 148 Counsel of the assessee company filed reply on 05.01.2007 stating as under:

- 1. That the notice issued is time barred, bad in law and has been issued for no reason. In this ease, the return of income has already been filed on 3 1.10.2002 vide receipt no. 160(photo copy enclosed),*
- 2. In the facts and circumstances the assessee is unable to understand the initiations of proceedings u s 148 147. Therefore, you are requested to please supply the certified copy of reasons as recorded by you on record. However, without prejudice to above, the return of income already filed on 31.10.2002 may please be treated as return of income in compliance of notice issued.*

Accordingly, assessee company was supplied copy of reasons vide this office Letter AAACR7902B/DCIT, Circle-1/MZN/06-07 dated 25.01.2007 and assessee was required to justify as how the proceedings of insurance of notice is time barred and bad in law as mentioned in the reply filed by the Counsel. Thereafter, notice u/s 143(2) and 142(1) issued alongwith the detailed questionnaire on 30.04.2007 and duly served upon the assessee company on 03.05.2007. The date was fixed for compliance on 07.05.2007 but no compliance was made on the date fixed nor any adjournment was sought. However, a letter dated 23.04.2007 was received on 07.05.2007 from the counsel wherein request was made for supply of reasons and ; adjourned the case sine die. Accordingly, assessee company was intimated that reasons have already been supplied vide letter dated 25.01.2007 and company was again asked to make compliance as per questionnaire dated 30.04.2007 and date was fixed for compliance on 11.06.2007 through notice u/s 142(1) dated 30.05.2007 attached with the reply. Again the compliance was made on the dated fixed nor any adjournment was sought. Hence notice u/s 148/ 143(2) /142(1) was issued on 06.11.2007 as under:

To,
The Principal Officer,
M/s Rana Papers Ltd.,
Jansath Raod, Muzaffarnagar,

Sub: Assessment Proceedings u/s 148/143(3) of I.T. Act, 1961 A.Y. 2002-03 notice u/s 144 of the I.T. Act, 1961- Final opportunity-Regarding.

*Please refer to the above,
Your attention is invited to wards following notices issued from time to time and have already been served upon you.*

- 1. Notice u/s 148 dt. 12.12.2006 served on 21.12.2006*
- 2. Notice u/s 143(2) issued alongwith notice under section 142(1) and questionnaires and Annexure 'A' dt. 30.04.2007 duly served on 03.05.2007 fixing hearing on 07.05.2007.*
- 3. Notice u/s 142(1) dt. 30.05.2007 fixing hearing on 11.06.2007 served on 05.06.2007 and notice u/s 144/142(1) dt. 16.10.2007 fixing 23.10.2007.*

No compliance to the above notices except filing reply to the notice u/s 148 stating therein that return of income filed on 31.10.2002 be treated as filed in compliance of notice u/s 148 and asking for supply of reasons which were supplied vide this office letter F.No. AAACR7902B/DCIT/Circle-1/MZN/06-07 dated 25.01.2007.

Non compliance of notices u/s 142(1) may entail penal action and expert assessment. Since it is an time barring matter and adequate opportunities have already been availed provided to you. You are therefore required to make compliance as per questionnaire dt. 30.04.1007 and to produce complete books of account. You also required to explained the entires worth Rs. 18,54,625/- received from various persons through Jai Laxmi Co-operative Bank, Fatehpuri, Delhi details of which are given in the reasons supplied to you.

The date is fixed for compliance on 14.11.2007. Please note if no compliance is made on the date fixed, assessment shall be framed expert as per provision of section 144 of the I.T. Act, 1961 on the basis of material available on record without further intimation. Notice u/s 142(1) also enclosed.

Sd/-

(Dilip Singh)

Deputy Commissioner of Income-tax,

Circle-1, Muzaffarnagar,

This notice was served through Regd. Post and in response to this notice a reply was received though messenger of the counsel on 15.11.2007 as under-

With reference to your notice u/s 142(1) dt. 30.04.2007 and your quarries letter same date and reasons for u/s 148 dated 25.01.2007, it is most respectfully submitted as under:

That, the assessee is a private ltd. company enjoying income of manufacturing and kraft paper. In the year under consideration, the assessee

has got same Share Application Money for against which the Shares have been issued to the applicants. In this connection it is further submitted as below:

- 1. That from the reason recorded u/s 148 it is not clear from the instrument no., whether, the entry belong to the assessee are not hence. some more elaborate and specific documentary evidence, if any, in your passions for u/s 148 available, the same may please be communicated so that proper compliance' reply can be made.*
- 2. The assessee has receipt the money for purchase of shares through account payee demand draft only and the application are identifiable, assessed to tax and created worthy, in support of which the copies of the applications receipt for shares purchases are being filed for your ready reference.*
- 3. It is further requested, that the assessee is filing the complete postal addresses of the applicants for your ready reference and it required the applicants may either be contacted u/s 133(6) or may be summons u/s 131. at the cost of the assessee, so that the real picture of these applicants will come out before the department The copies of Share Application are being enclosed as available with the assessee in support of amount received.*

In any circumstances these entries cannot be assessed and considered accommodation entries as purposed because the assessee has already allotted shares to these parties.

The assessee also relied on various judgments and staled that in the lasts and circumstances, to kindly dropped the re-assessment proceedings or in the alternative be completed on income returned.

No other details information as required by the questionnaire dated 30.04,2007 were o books of accounts were produced. However, reply filed by the assessee company has duly been considered, but assessee's request that the applicants should be summoned or contacted u/s 133(6). At this stage neither possible nor acceptable as it is an time taking process and assessee company deliberately passed time so that department may not enquire much more. Assessee has adopted delaying tactics and after 11 months this reply has been filed If it was the reply, company should have make this request earlier when notice u/s 148 was served or when assessee was served with a notice u/s 142(1) along with detailed questionnaire on 30- 4-2007 but at that lime assessee company slept over the matter Now company suddenly awaken and tiled these reply on 15-11-2007 when there is no time to make an enquiry. So far as more elaborate or specific documents are concerned, each and every thing has been mentioned in reasons copy of which has already been supplied. It is not understandable what type of clearety company requires. The company has tried to prove genuineness o! transaction on the basis of share applications form and demand draft etc. but merely filing of these documents could not be treated as sufficient evidence to prove genuineness of a credit ,[140 ITR 151 (AI)] 50 ITR (SC)]. Assessee's contention that since transaction was through banking channel, the same proved the genuineness of the transaction cannot not he accepted for the reason that there is no such law. There are large number of Courts decisions wherein this view has been upheld 255 ITR 573, 254 ITR 617, 214 ITR 801 (Sc.) 264 ITR 435 etc. The Calcutta High Court in the case of Bhola Sankar Cold Storage (P) Ltd. vs. JCIT 270 ITR 487 after referring

to various decisions held that where payment by cheque is not sacrosanct as it would not make a non genuine transaction as genuine. The burden to prove nature and sources of the receipt is on the assessee as held by the Hon'ble S.C. in 57 ITR 532 (SC) 53 ITR 623 (SC). In the case of Sumati Dayal vs. CIT 214 ITR 801 the Hon'ble SC has held that the burden or proof is on the assessee to prove that the amount's credited in accounts do not represent income and the issue of genuineness of such credit I to be considered in the light to human probability and surroundings circumstances. In the instant case surrounding circumstances clearly speaks that assessee company has introduced its unaccounted money through accommodation entries. Therefore, assessee's contention is not acceptable and accommodation entries of Rs. 18,54,625/- are treated as income from undisclosed sources and added to the income of the assessee company.

(Addition Rs. 18,54,625/-)

Share Capital

In the year under consideration company's authorized Share Capital has increased from Rs. 4,50,000/- to Rs. 9,05,00,000/-. The Issued, Subscribed and paid up capital in previous year was Rs. 4,08,98,000/- which in the year under consideration has increased to Rs. 8,37,48,000/-. Thus, there is increase of Rs. 4,28,50,000/- in the issued subscribed and paid up capital for which not details, evidences etc. have filed. The company was specifically required to file details of increase in Share Capital that is names, addresses, amount, mode of payment, sources and assesment particulars of the subscribers, confirmation with copies of Share Capital vide query no. 33 of the questionnaire attached with notice u/s 142(1) dated 30.04.2007. Assessee field reply on 3-12-2007 alongwith copy of Form No. 2 filed with ROC in respect of increase in mentioned. Assessee company has also filed copies of Share application and copies of Income Tax Return acknowledgment of I.T. Return could not be treated as sufficient evidence to prove genuineness of a credit. Reliance is also placed on Hon'ble SC decision is placed on 57 ITR 532, 53 ITR 623, 50 ITR , 49 ITR 112 35 ITR 416, 34 ITR 807 (All. S.S. decision). Considering all these facts and legal position the share application money received is treated as unexplained and will be added to the income of the assessee.

(Addition Rs. 4,28,50,000)

Unsecured Loans

As per schedule for attached to balance sheet, company's unsecured loans in the previous year and in the current year are shown as under-

	<u>Current Year</u>	<u>Previous Year</u>
From Directors	786549	180000
Inter-corporate deposits	28393812	17036812
	<u>29180361</u>	<u>17216812</u>

Thus, there is increase in unsecured loans of Rs. 1,19,63,549/- for which no details, evidence etc have been filed. Even names and addresses and amount has not been given attached with the return. Besides, as per annexure 'I' attached with Audit Report, the amount of loans taken during the year are shown as under:-

1. Shri Noor Salim Rana	Rs. 6,38,675
2. M/s Doaba Rolling Mills (P) Ltd.	Rs. 1,69,16,000/-
	<u>Rs. 1,75,54,675/-</u>

The assessee company was specifically required to file details of inter corporate deposits with confirmed copies of account. Assessee company filed reply on 3-12-2007 enclosing therewith details of unsecured loans as under:-

S.No.	Name	Amount
1.	Sh. Noor Saleen Rana	Rs. 6,06,549/-
2.	M/s Doaba Rolling Mills Ltd. MZN	Rs. 51,90,000/-
3.	M/s Sanjay Sales Corporation	Rs. 10,00,000/-
4.	M/s A.P. Enterprises, Chandigarh	Rs. 3,00,000/-
5.	M/s Bharat Trading Co.	Rs. 12,00,000/-
6.	M/s Paras Paper Co.	Rs. 10,00,000/-
7.	M/s Shree Sales	Rs. 10,00,000/-
8.	M/s Shyam Sunder & Co.	Rs. 10,00,000/-
9.	M/s Kraft Marketing	Rs. 6,66,000/-
	Total	Rs. 1,19,63,549/-

In support or to prove genuineness of these loans assessee has filed copies of ledger account of the company duly signed by the company's authorized signatory wherein date wise debit and credit entries are appearing. Neither these were signed by the loaner/ depositors nor separate confirmation letter or reply explaining sources of deposits/ assessment particular etc. have been given. Merely filing of copies of ledger account cannot be treated as sufficient evidence to prove genuineness of a credit as held by Hon'ble High Court of Allahabad 140 ITR 151 and Hon'ble SC 50 ITR 1. Reliance is also placed on 57 ITR 532, 53 ITR 623, 49 ITR 112, 35 ITR 416, 34 ITR 80(AI. SC. Judgment). In view of these facts unsecured loans of Rs. 1,19,63,549/- treated as unexplained and added to the income of the assessee.

(Addition Rs. 1,19,63,549/-)

Income Tax Expenses:-

The assessee had debited income tax expenses at Rs. 58,415/- to the P & L account which is not allowable and same are added to the income of the assessee.

(Addition : Rs. 58,415/-)

Subscription & membership Expenses:-

Assessee had debited to P&L account at Rs. 30,261/- under the head of subscription & member ship expenses but during the course of assessment proceedings not detailed / evidences has been filed. Therefore, same is added to the income of the assessee.

(Addition Rs. 30,261/-)

It is noticed from computation of income that the assessee company has deducted an amount of Rs. 2,67,74,200/- from the income worked out at Rs. 7,95,262/- and have shown loss at Rs. 2,59,78,987/- which has been carried forwarded to next year. The amount which has been deducted claimed to have been paid on account Finance Charges expenses related to earlier year and paid during the year Rs. 2,31,50,050/- and charges paid during the year but added to the income in 2000-01 Rs. 289,97,100/-. Since no evidence in this regard has been enclosed with the return of income nor filed during the course of assessment proceedings, the same is not allowable. Besides, there is no mention in the Audit Report by the Auditor in this regard. Therefore, no deduction on this account is being allowed.

With these remarks the income of the assessee company is computed as under:

Net profit as per P&L account Rs. 45,66,713/-

Add: Depreciation for separate consideration Rs. 32,54,315/-

Rs. 78,21,028/-

Added back:

- | | |
|---|---------------------|
| 1. Penalty on PF debited to P & L a/c | Rs. 22,676/- |
| 2. Excise duty paid related to earlier year | Rs. 6,45,131/- |
| 3. P.F. paid delayed | <u>Rs. 32,655/-</u> |

Add:-

- | | |
|---------------------------------------|----------------------------|
| 1. Addition as discussed above | Rs. 18,54,625/- |
| 2. Addition as discussed above | Rs. 4,28,50,000/- |
| 3. Addition as discussed above | Rs. 1,19,63,549/- |
| 4. Addition as discussed above | Rs. 58,415/- |
| 5. Addition as discussed above | <u>Rs. 30,261/-</u> |
| | Rs. 6,52,78,340/- |
| Less:- Depreciation as per I.T. Rules | (-) <u>Rs. 67,40,444/-</u> |
| | Rs. 5,85,37,896/- |
| Less:- B Unabsorbed depreciation | (-) <u>Rs. 9,85,783/-</u> |
| | Rs. 5,75,52,113/- |
| | Rs. 5,75,52,110/- |

OR

Assessed U/s 143(3) of I.T. Act, 1961 on income of Rs. 5,75,52,110/- interest u/s 234B-14790045 have been charged. Issued notice of demand and challan Notice U/s 271

(1)(c) has been issued separately as the assessee company has concealed particulars of its income and furnished in accurate particulars of its income with the meaning of section 271(1)(c) read with explanation 1 of section 271(1)(c) of the I.T. Act. Penalty notice u/s 271(1)(b) are being issued separately for non compliance of notice u/s 142(1) on fixed dated

*Sd/-
(DILIP SINGH)
Dy. Commissioner of Income Tax,
Circle-1, Muzaffarnagar."*

[C] Assessee preferred appeal before the Ld. CIT(A) against the aforesaid Assessment Order dated 05.12.2007. Vide aforesaid impugned appellate order dated 27.03.2008 the Ld. CIT(A) deleted the additions of Rs. 18,54,625/- (on account of accommodation entries), Rs. 4,28,50,000/- (on account of addition made U/s 68 of I.T. Act towards share capital) and Rs. 1,18,63,549/- (on account of unsecured loans). The relevant portion of the order of the Ld. CIT(A) is reproduced as under:-

"The appeal has been filed against the order of DCIT, Circle- I, Muzaffarnagar passed u/s 143(3) of the Act for assessment years 2002-03

2. In response to notice, Shri Dinesh Mohan, Advocate attended, filed written submission and argued the appeal.

3. The assessee is a company engaged in the business of manufacturing of paper. ROI was filed on 31.10.2002 declaring, loss of Rs.2,59,78,987/-.

Later, notices U/s 148 was issued on 12.12.2006 on the basis of information received from Director of Income Tax (Inv.1), New Delhi through Commissioner of Income-tax, Muzaffarnagar that the assessee company had received following accommodation entries:

Beneficiary Bank name	Value of entry	Instrument No.	Date of receipt	Name of entry giver
DD of P& S B.MZR	Rs.2,00,500/-	146903	21 May,2001	Shyam Lal
DD of SBI,MZR	Rs.2,00,500/-	489663	24 May,2001	Bansal Trading, Co
-do-	-do-	134049	-do-	Savitri Devi
DD of P&SB MZR	Rs.3,00,750/-	504104	26 May 2001	Navneet Trading
-do-	Rs.2,00,500/-	132636	-do-	Sita Devi
DD of SBI,MZR	-do-	123564	2 June 2001	Raj Rani Bansal
-do-	-do-	116579	-do-	Ram Prakash
-do-	Rs.1,50,375/-	144537	2 June 2001	Shree Ram Garg
DD of P&SB MZR	Rs.2,00,500/-	505261	3 July 2001	Bansal Trading Co.

Entry operator bank name,Branch A/c No. from entry giver

Jai Laxmi Cooperative Bank, Fatehpuri	12382
-do-	3171
-do-	11176
-do-	1811
-do-	1177
-do-	12735
-do-	10157
-do-	14470
-do-	3171.....”

The assessee objected to the 148 proceedings, on the ground that the proceedings were time barred.

The assessee objected to the 148 proceedings, on the ground that the proceedings were time barred.

3.1 Further, the AO issued notice, a detailed questionnaire in respect of the aforementioned entries. The assessee submitted that these persons were as mentioned above, and the money received was part of share application money. According to the AO, although the assessee gave various details and informations but did not produce these persons. The AO held that the assessee's request that applicants should be summoned or contacted U/s 133(6) was neither possible nor acceptable, as the appellant had used delaying tactics and had filed this reply after 11 months. According to AO, such request should have been made in response to initial questionnaire dated 30.4,2007.

The AO held that the assessee's effort to prove the genuineness of transactions on the basis of share application forms/demand draft etc. could not be treated as sufficient evidence to prove the genuineness of a credit. The AO relied on 140 ITR 151 (All.) and 50 ITR (SC). The AO further stated that- the assessee's contention that transactions were through banking channel; could not be accepted for the reason that payment by cheque would not make non genuine transaction as genuine. The AO added Rs. 18,54,625/- treating the same as income from undisclosed sources.

3.2 During the year, the company's authorized share applicants had increased and correspondingly there was increase of Rs.4,28,56,000/- in the share capital for which the company was specifically required to file details and evidences, The assessee filed copy of form No.2 filing with ROC', which contain names, address and amount of shares allotted. Further, the assessee company also filed copies of share application forms and copies of Income- tax returns acknowledgement of these persons.

However, AO concluded that these were not sufficient evidences to prove the genuineness of credit and added entire share application money of Rs.4,28,50,000/- as unexplained income of the assessee.

3.3 The assessee was required to file details and evidences in respect of increase in unsecured loans to the extent of Rs.19,63,549/-. The assessee filed copies of ledger account of the company signed by the company's authorized signatory but neither these were signed by loaners or depositors nor the said confirmation letter or reply explaining the source of deposits etc. were filed. The AO, therefore, treated these amounts of Rs. 1,19,63,549/- as unexplained and added to the income of the assessee.

3.4 The AO disallowed Rs.58.415/- debited in profit and loss account as Income-tax expenses.

3.5 The AO further disallowed Rs.30,261/- debited under the head subscription membership expenses for which no details/evidences were filed.

4. Written submissions made by the appellant's counsel during the appellate proceedings are reproduced as under:

Sir,

With reference to the above, it is most respectfully submitted as under:-

That the assessee is a Private Limited Company carrying business of Manufacturing and Trading of Craft Paper which is a Raw-material for Packaging Industry mainly. The company is using Paper Scrap and Sugar Cane Baggasse and Taut a etc. as a Raw-material for pulping purpose and from that by adding certain chemicals, the Craft Paper is being manufactured. For the year under consideration, the Return of Income has been filed on a Book Profit of Rs. 45,66,713=89 on which tax has been paid at Rs.4,00,000-00 under MAT. Along with Return of Income, the assessee has filed tax Audited Report as required U/S 44AB, Audited Balance Sheet, Profit & Loss Account and Other details. The assessee Company has maintained the regular and proper books of accounts during the ordinary course of business along with Manufacturing Record such as RG-J and Form IV as required under excise rules. That the assessment for Assessment Year 2001-02, 2003-04 and 2004-05 has also been complete U/S 143(3) under scrutiny, the copies of the assessment order are on records. The Assessing Officer has made the following additions to the income of the assessee while completing the assessment U/S 143(3):-

1. On account of Share Application Money at
Rs. 4,23,50,000.00.
2. On account of Unsecured Loans at
Rs., 1,19,63,549,00.
3. On Account of Income Tax Expenses at
Rs. 58,415.00.
4. On account of Subscription & Member Ship Exp. at
Rs. 30,261.00.

That the aforesaid additions and observation are highly arbitrary, unjustified and against the fact of the case.

1. Regarding addition of Rs.4,28,50,000.00 on account of Share Application Money That, in the year under consideration, the assessee has received certain application money from different parties. The assessee appellant company has received the Share Application Money through account payee draft only.. The draft has duly been cleared by clearing house in the bank account of the assessee appellant company. The assessee company has already allotted shares to the Share applicant information of which has duly been remitted to the Registrar of Companies vide Form No. 2, copy of which is being enclosed for your ready

reference. Copy of All Share Holders alongwith Income Tax Return receipt are being enclosed. The assessee applicant company have amply proved identification of Share Holder. genuineness of transactions, his creditworthiness by filing the relevant evidences of the share holder. The assessing officer has not given the copy of evidence as obtained by him nor any opportunity to cross examine them has been allowed.

For invocation of section 68,proper enquiry is needed:- Section 6b empowers the Assessing Officer to make enquiry specifically to be satisfied regarding the cash credit. If he is satisfied that these entries are not genuine he has every right to add these amounts as income from other sources . The satisfaction of the Assessing Officer is the basis of invocation of the powers under section 68 and the satisfaction must be derived from relevant factors on the basis of proper enquiry envisaged under section 68 is an enquiry which is reasonable and just [Khundelwal Construction v. CIT,(1997)227 JTR 900,904(Gauh)]f In the facts of that case ,it has been held that the amount of cash credits could not be included in the total income of the assessee because the enquiry was not properly made.

Amount found credited in the books of a company as receipt of share application money:- Section 68 is very widely worded and the Assessing Officer is not precluded from making an enquiry as to the nature and source of a sum credited in the books of account of the assessee-company even if the same is credited as receipt of share application money . Where, therefore ,an assessee-company represents that it has issued shares on receipt of share application money they the amount so received would be entitled to enquire ,and it would indeed be his duty to do so, whether the alleged shareholder do in fact exist or not .If the shareholder exist then, possibly, no further enquiry need he made. But if the Assessing Officer finds that the alleged shareholder do not exist then , in effect it would mean that there is no valid issuance of share capital. Shares cannot be issued in the name of non-existing persons. The use of the words 'may be charged' in section 68 clearly indicates that the Assessing Officer would then have the jurisdiction, if the facts so warrant, to treat such a credit to the income of the assessee [CIT v. Sophia Finance Ltd.(1994)205 ITR 98, 104, 104-05(Del-FB)f. In view of this Full Bench decision ,the observations in **CIT v. Stellar Investment Ltd.f(1991) 192 ITR 287, 288 (Del)**] to the effect that 'even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee 'cannot be regarded as laying down the correct proposition of law. Also see, **CIT v. Active Traders (P)Ltd., (1993)115 CTR (cal)69,72; CIT v. Kwick Travels, SLP (Civil)No. 15056 of 1992: (1993)199 ITR (St.)85-86(Sc) ; CIT v. Prateek Finance & Investment Co. Ltd.,(1995)215 ITR 272 (del).**

As laid down by the **Supreme Court in CIT v. Durga Prasad More 1(1997) 82 ITR 540, 545,547(sc)**], apparent must be considered real until it is shown that there are reasons to disbelieve that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities .

When a question arises as to whether a cash credit appearing in the books of account of an assessee has to be accepted or to be rejected and addition to be made in accordance with section 68, the assessee is required to establish the identity of his creditor, the capacity of the creditor to advance the money and the genuineness of the transaction. If the assessee established the aforesaid three pre-conditions, then it would be for the Department to disprove the same **/CIT v. Buishnab Charan Mohanty,(1995)212 ITR 199,201 (Ori)**/. In the facts of that case, the Tribunal was held justified in holding that the transactions appearing in certain names were genuine transactions and the addition made under section 68 was untenable.

In order to establish the fact of the receipt of the cash credit as required under section 68, the assessee must prove three important conditions .namely.) 1) the identity of the person, (2) the genuineness of the transaction, and (3) the capability of the person giving the cash credit **IJ(dan Timbers v.CIT, (1997)223 ITR 11,17 (Gauh)**j

The Assessing Officer's rejection, not of the explanation of the assessee, but of the explanation regarding the source of income of the depositor, cannot by itself lead to any inference regarding the non- genuine or fictitious character of the entries in the assessee's books of account **/Sarogi Credit Corporation b, CIT,(1976) 103 ITR 344, 349-50(Pat)**].

There cannot be one general or universal proposition of law which could be the guiding yardstick in matter ,Each case has got to be decided on the facts and circumstances of that case, The surrounding circumstance to be considered must however be objective facts, evidence adduced before the taxing authorities , presumption of facts based on common human experience in life and reasonable conclusions In holding a particular receipt as income from undisclosed source, the fate of the assessee cannot be decided by the revenue on the basis of surmises, suspicions or probabilities [Northern Bengal Jute Trading Co,Ltd. v, CIT,(1968)70 ITR 407, 415 (Cal)].

Apparent is not real - burden of proof on the department :-In Bedi & Co. Pr. Ltd. v. CIT 1(1983)144 ITR 352 (Karn), Affirmed in, CIT v. Bedi & Co. Pvt.

Ltd.,(1998)230 ITR 580 (SC)/, an amount over Rs. 32 lakhs was shown by the assessee as a loan from a Canadian company. Such loan was evidenced by an agreement. The department treated the same as commission paid by the Canadian company to the assessee. It was held that the burden of showing that the apparent state of affairs was not the real one was very heavy on the department . In the facts of the instant case, apart from circumstances which by themselves could be said to be neutral, there was no other material to doubt the nature of the transaction and to hold that it was income. Every loan granted without security or in regard to which no repayment has been made cannot automatically be termed as a payment either towards commission or as a receipt from business. Without tangible material to suspect that the receipt was by way of commission and without recording such a finding , the conclusion of the Tribunal that the amount was assessable as income was wholly untenable.

An explanation offered by an assessee in relation to a cash credit entry in his books of account can be rejected by the Assessing Officer on cogent grounds. When such grounds are themselves based on no evidence , the question of raising a presumption against the assessee does not arise [**Sana Electric Co. v. CIT, (1985)152 ITR 507 (Del)**]. Thus, where the I to has accepted the return of the three creditors, it should go to mean that the amounts given by those creditors were also genuine. Therefore, the Tribunal cannot be justified in upholding the addition as the Tribunal did not make any endeavor to give any cogent reason why the income -tax returns file,' by the creditors and accepted by the /TO should be ignored [**Jalan Timbers v. CIT (1997)223 ITR 11,17,18 (Gauh)**].

But, when an explanation is offered by the assessee regarding the cash credits appearing in his books, if the evidence is shut out and the witnesses produced are not permitted to explain the credit, it will be open to the Tribunal to appraise the evidence as it is and reach its own conclusion which may result in the cash credit being accepted as genuine [CIT vs Ishwar Puss Shurnui ,(1986) 158 ITR 168,169 (Del)].

Explanation offered by the assessee:- An explanation prima facie reasonable cannot be rejected on capricious or arbitrary grounds [**R.B.N.J.Naidu v. CIT, (1956) 29 ITR 194 (Nag); Kanpur steel Co. Ltd. v. CIT,(1957)32 ITR 56(All)**] or on mere suspicion or on imaginary or irrelevant grounds [**Lajwanti Sial v. CIT, (1956)30 ITR 228 (Nag)**].

Where an assessee furnishes reasonable explanation , there is no justification for accepting his explanation in part and discarding / in relation to the rest [**Chunilul Ticamchand coal Co. Ltd. v. CIT, (1955) 27 ITR 602 (Pat); Mehta Parikh & co. v CIT, (1956) 30 ITR**

181 (SC); Lalchand Bhagat Ambica Ran v. CIT, (1959) 37 ITR 288 (SC); Sri Ram Tandon v. CIT,(1961) 42 ITR 689 (All)].

Assessee's explanation is to be judicially considered:- When a cash credit appears in the books of the assessee, the department can ask the assessee to adduce evidence pertinent to the explanation, if any furnished by the assessee, and then proceed to examine the explanation and the evidence. If the explanation shows that the receipt was not of an income nature, the department cannot act unreasonably and reject that explanation to hold that it was income. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof.

Explanation-evidence to be considered fully:- The assessee is entitled to have evidence produced to be considered and an inference to be drawn therefrom. The department cannot, in the felicitous language of Hidayatulla J., in *Sreelekha Banerjee v. CIT* [(1963) 49 ITR (SC) 112, 120], by merely rejecting unreasonably a good explanation "convert good proof into no proof" [*D. Yasodamma, Gudur v. CIT, 91968)70 ITR 515,517 (AP)*]. Rejection of an explanation of the assessee by ignoring to consider important pieces of evidence is an error in law [*Bhagwati Prasad Misra v. CIT, (1959) 35 ITR 97 (Orissa)*].

Rejection of assessee's explanation - result? :- It is not the law that, when once the explanation is rejected, it automatically follows that the receipts are income. Whether an explanation is acceptable, and if not, whether it should be inferred that the receipts constitute income, are different aspects of the same question. Both these aspects are inter-related, and the question whether such receipts constitute income or not has to be decided on a consideration of all the relevant facts and circumstances of the case. It is quite legitimate in the case of an assessee who is known to be carrying on several activities of an income-earning character or who can reasonably be found to be involved in such activities, to draw the inference that the amounts found with him constitute income from undisclosed sources, in the absence of satisfactory explanation regarding their source. Such an inference should not be readily made in the case of a person, who has no known business or other source of income, or who cannot even be reasonably suspected as engaged in any income-earning activities. In the latter case, there must be more substantial reasons to reject the assessee's explanation, and draw the inference that the amounts found with him constituted income. [*Mithoo Lal Tek Chand v. CIT, (1953)23 ITR 494 (All); L.R. Brothers v. CIT, (1957)31 ITR 815 (ALL); Chaturbhuj & Co. v. CIT, (1959) 36 ITR 386 (All); Ram Kishan Dus Munnu Lal v. CIT,(1961)41 ITR 452 (All).*]

The fact that an assessee was unable to satisfy the authorities as to the source from which the depositor derived the money cannot be used against the assessee [Tolarum Dagu v. CIT,(1966)59 ITR 632 (Assam).Also see, CIT v. Daulat Ram Rawatmull, (1973)87 ITR 349 (SC); Sarogi Credit Corporation v. Cit, (1976) 103 ITR 344 (Pat)].

There is no presumption that witnesses appearing for an assessee come forward to give false evidence to oblige the assessee [Sheo Narain Duli Chand v. CIT (1969)72 ITR 766,768 (All)].

There is no presumption in favor of illegality of a transaction [C.Ag.IT. v. M.J. Cherian, (1979) 117 ITR 371(Ker)].

Duty of A.O. to enforce attendance of witnesses:- It is the duty of the A.O. to enforce attendance of a witness if his evidence is material. Thus, if the A.O. does not exercise his powers to call the witness and examine him, he cannot treat the deposits in the name of the witness as assessee's suppressed income [Nathu Raam Prechand v. CIT, (1963) 49 ITR 561 (All); E.M.C.Works Pr. Ltd. v. ITO, (1963) 49 ITR 650 (All); Munnalal Murlidhar v. CIT , (1971) 79 ITR 540 (All)].

That the in the year under consideration, the assessee appellant company has obtained/ received Share application money from different parties through account payee cheques and drafts only. It is undisputed that the subscribers to the capital were genuine and identifiable. The Hon'ble High Court in the case CIT Vs. Sophia Finance Ltd., reported in 205 ITR (1994) at page 98 has held at page 99 as below :-

"If the shareholders are identified and it is established that they have invested money in the purchase of shares, then the amount received by the company would be regarded as a capital receipt and to that extent the observations in CIT Vs. Stellar Investment Ltd. [1991] 192 ITR 287 (Delhi), are correct ; but the observations in that case to the effect that even if the subscribers to the capital were not genuine " under no circumstance could the amount of share capital be regarded as undisclosed income of the [company]" are not (see p.105E. F)".

From the above it is clear that if the shareholder are identified and it has been established that they have invested money, than under no circumstances the share capital can be treated as undisclosed income of the company. In this case, it is established fact that the alleged shareholders do in fact exist. The company has already, issued and allotted shares to the subscribers on 30.03.2002. The details of shareholders have also been filed with Registrar of Companies, Kanpur. The assessing officer was having no reasons to treat the share application money as income of the company from undisclosed sources for following reasons :-

- 1. That all the subscriber has subscribed the share application money through account payee draft in favor of the appellant company.*
- 2. That the appellant company has already allotted and issued shares to the said share applicant.*

3. *That the share applicant is regularly assessed to tax have given there assessment details, P.A.N. No. and has filed application for allotment of Shares. In the circumstances, share applicant was and is identifiable and creditworthy.*
4. *That it is undisputed, that all the shareholders had confirmed in writing about their investment in the share capital of assessee appellant and all of them had given there P.A.N./ G.I.R. No. and other relevant particulars under which they were assessed to tax relied on CIT Vs. Makhni and Tyagi (P.) Ltd., reported in 267 ITR (2004) at page 433.*
5. *That the share application money could, in no case, be treated the income of assessee company relied on :-*

(a). Inida Rice Mills Vs. CIT, 218 ITR (1996) at page 508 (Allahabad High Court).

(b). Surendra Mahan Seth Vs. CIT, 221 ITR (1996) at page 239, (Allahabad High Court).

(c). Jaya Securities Ltd. Vs. CiT-II, Kanpur, 166 TAXMAN (2008) at page 7 (Allahabad High Court).

It is to further submit that, the addition of Rs.18,54,625.00 is also on account of Share Application Money and the addition of Rs.4,28,50,000.00 is already including this amount. This is also important to submit that, the proceedings U/S 147/148 have been initiated only on the basis of information received from A.I.R. for the applicants for Rs.18,54,625.00. in which Rs.18,50,000.00 is the Share Application Amount and Rs.4,625.00 are actually the Demand Draft Charges paid by the Share Applicants and debited in their bank accounts. In total all the Share Application money has been received through account payee demand drafts, the share holders are assessed to tax, their copies of share application for allotment of shares, copies of their Income tax Receipts have been filed as well as the copy of the form no.2 (the return filed with Registrar of Companies, Kanpur) in support of allotment of shares has also been filed. In the facts and circumstances, the addition of Rs.4,28,50,000.00/- may please be deleted.

2. *Regarding addition of Rs.1,19,63,549.00 on account of Unsecured Loans :-* *That, in the year under consideration, the assessee appellant has accepted certain unsecured loans from relative, friends and Company/Firm only. The amount of loans have been received through account payee cheques through bank accounts duly verifiable. The depositors are identifiable (Assessed to Tax), creditworthy (Given the amount from their bank accounts) and genuine (Amount received through cheques only). As per provision of Section 68 of Income Tax Act, 1961, while all the depositors are*

identifiable, assessed to tax, creditworthy and transactions are genuine no addition should have been made in this account. In some of the cases the parties are purchases of goods from appellant company and payments received from them have been transferred through book entries in Unsecured Loans account as security. The debit & credit balance is taken together the balance as on 31.03.2002 is verifiable. The assessing officer has over looked the entire evidence and details as produced before him. He has also overlooked the fact that in some of the accounts there were opening credit balances he has also overlooked / ignored the confirmed copy of accounts of unsecured loans filed before him.

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amount</u>	<u>Credit Security Deposit as Unsecured Loan transferred from Sundry Debtors Account</u>	<u>Closing Balance</u>
1	Sh. Noor Saleem Rana, Director of the company,	Old Balance 1,00,000.00 Credit amount 6,06,549.00	0.00	7,06,549.00
2	M/S Doaba Rolling Mills Ltd., Company is assesse same Assessing Officer	Final Credit amount 51,91,000.00	0.00	51,91,000.00
3	M/S Sanjay Sales Corp., Kolkatta,	Dr.27,87,182.00	10,00,000.00	Dr.17,87,182.00
4	M/S A.P. Enterprises, Chandigarh,	0.00	3,00,000.00	Cr.3,00,000.00
5	M/S Bharat Trading Company, Faridabad	Dr.12,11,245.00	12,00,000.00	Dr.11,245.00
6	M/S Shree Laxmi (Shree Sales), Faridabad,	Dr.35,12,888.00	10,00,000.00	Dr.25,12,888.00
7	M/S Paras paper Ltd.,Noida,	Dr.42,13,270.00	10,00,000.00	Dr.32,13,270.00
8	M/S Shyam Sudner &	Dr.10,20,850.00	10,00,000.00	Dr.20,850.00

	<i>Company, Delhi,</i>			
9.	<i>M/S Kraft Marketing, Calcutta,</i>	<i>Dr.16,09,851.00</i>	<i>6,66,000.00</i>	<i>Dr.9,43,851.00</i>

The addition of Rs.1,19,63,549.00 as made by the assessing officer is totally uncalled for in the facts and circumstances of the case, the addition may please be deleted.

3. Regarding addition of Rs.58,415.00 on account of Income Tax Expenses :- Ground not pressed.

4. Regarding addition of Rs.30,261.00 on account of Subscription & Member Ship Expenses :- That all the expenses as have been made and debited to Profit & Loss Account have been incurred exclusively for business purposes and expenses are verifiable as have been made on the strength of Bills and Vouchers. The expenses are allowable in nature. The addition has been made purely on estimated adhoc basis and in the alternative is highly excessive. The payments have been made to different organizations for continuation of membership status of the company.

That Honorable ITAT (Indore Bench) in the case of BETA NAHTHOL PRIVATE LIMITED VS. DCIT REPORTED IN (1994) 50-ttj AT page 375 and Honorable ITAT (Jaipur Bench) in the case of RAJ ENTERPRISES VS. ITO REPORTED IN 1995 51-TTJ AT PAGE 408 HAS HELD THAT "Adhoc (Lump sum) disallowances without any cogent reasons are unsustainable."

In the facts and circumstances the addition of Rs.30,261.00 may please be deleted or in the alternative a suitable relief may please be allowed accordingly.

Kindly allow the appeal and oblige....."

5. Appellant's counsel was requested to furnish entire set of documentary evidences in respect of share capital of Rs.4,28,50,000/- and also in respect of Rs.18,54,625/-, which were stated to be part of share application money; identifying each and every accommodation entry, as per information of ADIT(Inv.), with the particular entry as falling in the share application list.

These details and evidences were furnished vide submission dated 21.2.2008, which is reproduced as under:

Sir,

With reference to your queries and in addition to our earlier reply, it is most respectfully submitted as under :-

- 1) That, the entire Share Application Money have been received through account payee demand drafts and duly credited in the bank accounts of the assessee appellant company. As required, the copy of account of the Share Application Money alongwith copies of bank statements, in support and verification of amount received are being filed. The assessee appellant company has not received any other amount except disclosed. The Share Application Money at Rs.4,28,50,000.00 is fully verifiable and therefore the addition made on this issue may please be deleted.*
- 2) That, the copy of account of membership fees alongwith copies of vouchers in support of the payment made are also enclosed. The expenditure is off revenue in nature and has been incurred for business interest only and therefore should have been allowed.*

Kindly allow the appeal and oblige....."

6. The matter being of high demand category, and also as per request of both CIT, Muzaffarnagar as well as of the appellant ~~being~~ for deciding this appeal expeditiously; the AO was informed to attend hearing on 22.2.2008, for considering and examining the submission as well as evidences being furnished by the appellant.

7. During the hearing on 22.2.2008, the appellant's counsel alongwith accountant of the assessee attended. Also, DCIT, Circle-1, M.Nagar presented himself, examined and commented on all the evidences on record.

7.1 It would be desirable to reproduce my order-sheet noting dated 22.2.2008 which was made in respect of this appellate proceeding:

*" Order sheet noting dated 22.2.2008
Sh. Dinesh Mohan, Advocate attends.*

On the request of CIT, Muzaffarnagar, AO viz. DCIT, Circle. 1, Shri Dilip Singh had been informed of this hearing and he has come prepared to argue from his side.

(i) On the issue of Share application:

Sh. Dilip Singh argues that details like confirmation and copy of bank accounts were not filed. According to him, share application form is not a substitute of confirmation.

The counsel argues that not only names, full address, Income-tax Nos. of all share applicants have been furnished, but also share allotment form has been filed with the Registrar.

*A set of details filed before AO, is being filed before me also.
Legal decision received and discussed.*

(ii) On the issue of addition of Rs.18,54,615/-; the counsel points out that this is a part of increased share capital.

The details as per AIR and as per share application records, tally except:

- (a) Sita Devi- Amount and dates tally but the name of bank differs*
- (b) Shyam Lal- All tally*
- (c) Ghanshyam Dass- All tally*
- (d) Bansal Trading Co.- All tally*
- (e) Ram Prakash- Amount and date tally, but name of bank differs*
- (f) Savitri Devi- amount and date tally, but name of bank differs.*
- (g) In 3 cases viz. Bansal Trading Company, and Shri Ram Garg, details don't match.*

(iii) Unsecured Loan:

*Fresh copies of accounts and confirmations have been filed.
Some of them are assessed by the same AO.*

These confirmations are being treated as additional evidences.

*In these cases, the balance (after adjustment of security money
with credit balance) as per assessee's books tallies with confirmation of
balance given by the parties.*

*In the case of Bharat Trading Company, the actual balance is
only Rs.91245/- (Rs. 12,11,245 cr. balance – Rs. 12,00,000/- received and
transferred to security account_.*

(iv) *Details regarding payment of subscription fee of Rs.30,261/-
not filed.*

Case discussed.

Sd/-

CIT(Appeals),MZR

Sd/- Dilip Singh,DCIT

Sd/- Dinesh Mohan,Adv." "

8. Another submission has been made by the appellant dated
24.2.2008 which is reproduced as under:

“
Sir,

*With reference to your queries and in addition to our earlier
reply, it is most respectfully submitted as under :-*

That, an information, alleged to be received by the assessing officer, from DIT Investigation-1, New Delhi, regarding the receipt of amount of Rs.18,54,625.00 from different parties through account payee demand draft on different dates has been added to the income of the assessee separately for the reasons but known to the assessing officer. The assessing officer has merely informed certain details regarding those entries, which are being explain one to one as below :-

- 1) **Name of the person giving the amount is Sh. Shyam Lal beneficiary bank is Punjab & Sindh Bank, Muzaffarnagar amount of draft is Rs.2,00,500.00 instrument no.146903 dated 21.05.2001, the account no. of the concern party is 12382 with Jai Laxmi Co-operative Bank, Fatehpuri :-** From the records and books of the assessee it is admitted that the assessee appellant company has received a sum of Rs.2,00,000.00 vide demand draft no.758188 of dated 21.05.2001 from Sh. Shyam Lal S/O Sh. Jagdish Parsad, R/O 4260, Chuna Mandi, Paharganj, Delhi is assessed to tax at ACIT/DCIT, Circle-14(1), New Delhi in support of amount received the assessee appellant has filed copy of Share Application Money and copy of ITR before your goodself as well as before the assessing officer. The difference in instruments/ D.D. No. is not understandable may be, in the information received instrument no. is cheque no. by which the party has got prepared the demand draft in favor of assessee appellant. The assessee appellant company has not received any other amount in the name of Sh. Shyam Lal except disclosed.
- 2) **Name of the person giving the amount is Bansal Trading Company beneficiary bank is State Bank of Indore, Muzaffarnagar amount of draft is Rs.2,00,500.00 instrument no.489663 dated 24.05.2001, the account no. of the concern party is 3171 with Jai Laxmi Co-operative Bank, Fatehpuri :-** From the records and books of the assessee it is admitted that the assessee appellant company has received a sum of Rs.2,00,000.00 vide demand draft no.250948 of dated 24.05.2001 from Sh. Amit Bansal S/O Sh. Ram Babu Bansal, R/O D-477, Gali No.11, Bhajanpura, Delhi is assessed to tax at ACIT/DCIT, Circle-24(2), New Delhi in support of amount received the assessee appellant has filed copy of Share Application Money and copy of ITR before your goodself as well as before the assessing officer. The difference in instruments/ D.D. No. is not understandable may be, in the information received instrument no. is cheque no. by which the party has got prepared the demand draft in favor of assessee appellant. The assessee appellant company has not received any other amount in the name of Bansal Trading Comapny except disclosed and Sh. Amit Bansal may be owner of M/S Bansal Trading Company.

- 3) Name of the person giving the amount is Smt. Savitri Devi beneficiary bank is State Bank of Indore, Muzaffarnagar amount of draft is Rs.2,00,500.00 instrument no.134049 dated 24.05.2001, the account no. of the concern party is 11176 with Jai Laxmi Co-operative Bank, Fatehpuri :- The assessee appellant has not received any such amount from Smt. Savitri Devi for which entire books of accounts and records have been checked out the information is not correct and not at all related to the assessee appellant company hence, in any circumstances, merely on information and without any documentary evidence can not be added as income. Actually the assessee appellant company has received an amount of Rs.2,00,000.00 from Smt. Sita Devi F/D/O Sh. Shyam Sunder, 5603/1, Balbir Nagar, Shahdara, Delhi vide demand draft no.250949 of dated 24.05.2001 of State Bank of Indore, Chandni Chowk, Delhi.
- 4) Name of the person giving the amount is M/S Navneet Trading beneficiary bank is Punjab & Sindh Bank, Muzaffarnagar amount of draft is Rs.3,00,500.00 instrument no.504104 dated 26.05.2001, the account no. of the concern party is 1811 with Jai Laxmi Co-operative Bank, Fatehpuri :- From the records and books of the assessee it is admitted that the assessee appellant company has received a sum of Rs.3,00,000.00 vide demand draft no.758271 of dated 26.05.2001 from Sh. Ghanshyam Dass Prop. M/S Navneet Trading Company, 2764, Naya Bazar, Delhi is assessed to tax at Income Tax Officer, Ward - 4 (6), New Delhi in support of amount received the assessee appellant has filed copy of Share Application Money and copy of ITR before your goodself as well as before the assessing officer. The difference in instruments/ D.D. No. is not understandable may be, in the information received instrument no. is cheque no. by which the party has got prepared the demand draft in favor of assessee appellant. The assessee appellant company has not received any other amount in the name of Sh. Ghanshyam Dass Prop. M/S Navneet Trading Company except disclosed.
- 5) Name of the person giving the amount is Smt. Sita Devi beneficiary bank is Punjab & Sindh Bank, Muzaffarnagar amount of draft is Rs.2,00,500.00 instrument no.132636 dated 26.05.2001, the account no. of the concern party is 1177 with Jai Laxmi Co-operative Bank, Fatehpuri :- The assessee appellant has not received any such amount dated 26.05.2001 from Smt. Sita Devi for which entire books of accounts and records have been checked out the information is not correct and not at all related to the assessee appellant company hence, in any circumstances, merely on information and without any documentary evidence can not be added as income.
- 6) Name of the person giving the amount is Smt. Raj Rani Bansal beneficiary bank is State Bank of Indore, Muzaffarnagar amount of draft is Rs.2,00,500.00

instrument no.123564 dated 02.06.2001, the account no. of the concern party is 12735 with Jai Laxmi Co-operative Bank, Fatehpuri :- From the records and books of the assessee it is admitted that the assessee appellant company has received a sum of Rs.2,00,000.00 vide demand draft no.251029 of dated 02.06.2001 from Smt. Raj Rani W/D/O Sh. Nand Lal, R/O D-477, Gali No.11, Bhajanpura, Delhi is assessed at P.A.No. ABWPR2338H to tax at DCIT, Circle-21(2), New Delhi in support of amount received the assessee appellant has filed copy of Share Application Money and copy of ITR before your goodself as well as before the assessing officer. The difference in instruments/ D.D. No. is not understandable may be, in the information received instrument no. is cheque no. by which the party has got prepared the demand draft in favor of assessee appellant. The assessee appellant company has not received any other amount in the name of Smt. Raj Rani except disclosed.

7) **Name of the person giving the amount is Sh. Ram Prakash beneficiary bank is State Bank of Indore, Muzaffarnagar amount of draft is Rs.2,00,500.00 instrument no.116579 dated 02.06.2001, the account no. of the concern party is 10157 with Jai Laxmi Co-operative Bank, Fatehpuri :-** From the records and books of the assessee it is admitted that the assessee appellant company has received a sum of Rs.2,00,000.00 vide demand draft no.251031 of dated 02.06.2001 from Sh. Ram Prakash S/O Sh. Ram Kishan Dass, R/O D-205, Bhajanpura, Delhi is assessed at P.A.No. ADNPP4641A to tax at DCIT, Circle-24(7), New Delhi in support of amount received the assessee appellant has filed copy of Share Application Money and copy of ITR before your goodself as well as before the assessing officer. The difference in instruments/ D.D. No. is not understandable may be, in the information received instrument no. is cheque no. by which the party has got prepared the demand draft in favor of assessee appellant. The assessee appellant company has not received any other amount in the name of Sh. Ram Prakash except disclosed.

8) **Name of the person giving the amount is Sh. Shree Ram Garg beneficiary bank is State Bank of Indore, Muzaffarnagar amount of draft is Rs.1,50,375.00 instrument no.144537 dated 02.06.2001, the account no. of the concern party is 14470 with Jai Laxmi Co-operative Bank, Fatehpuri :-** The assessee appellant has not received any such amount dated 02.06.2001 from Sh. Shree Ram Garg for which entire books of accounts and records have been checked out the information is not correct and not at all related to the assessee appellant company hence, in any circumstances, merely on information and without any documentary evidence the amount can not be added as income. Actually the assessee appellant company has received an amount of Rs.1,50,000.00 from Sh. Mukesh

Kumar S/O Sh. Madan Lal, R/O 1510/11, S.P. Mukherji

Marg, Delhi-110 006 vide demand draft no.251030 of dated 02.06.2001 of State Bank of Indore, Chandni Chowk, Delhi-110 006.

- 9) *Name of the person giving the amount is M/S Bansal Trading Company beneficiary bank is Punjab & Sindh Bank, Muzaffarnagar amount of draft is Rs.2,00,500.00 instrument no.505261 dated 03.07.2001, the account no. of the concern party is 3171 with Jai Laxmi Co-operative Bank, Fatehpuri :-* *The assessee appellant has not received any such amount of M/S Bansal Trading Company for which entire books of accounts and records have been checked out the information is not correct and not at all related to the assessee appellant company hence, in any circumstances, merely on information and without any documentary evidence can not be added as income. Actually the assessee appellant company has received an amount of Rs.2,00,000.00 from Sh. Ram Prakash S/O Sh. Ram Kishan Dass, R/O D-205, Bhajanpura, Delhi vide demand draft no.758715 of dated 03.07.2001 of Punjab & Sind Bank, Naya Bazar, Delhi.*

That, in this case the assessee appellant actually received total share application money at Rs.4,28,50,000.00, which also includes the Share Application Money, if any, for which information was received by the assessing officer the amount of Rs.18,54,625.00 includes the draft commission the actual amount of the Share Application Money is at Rs.18,50,000.00 and Rs.4,625.00 is demand draft charges. The information received by the assessing officer and further supplied to the assessee appellant company is not complete, correct and in another terms is reliable. The assessing officer has also not supplied any documentary evidence or the basis of such informations. The assessee appellant company hereby specifically admit to have received the Share Application Money at Rs.4,28,50,000.00 and for which necessary documentary evidences and details have been filed before assessing officer. The alleged informations can not be relied on since no such drafts have been received by the assessee appellant company.

In the facts and circumstances of the case, it is most humbly prayed to kindly delete the additions made and allow the appeal & oblige....”

9. After careful consideration of all the facts and circumstances of the case and rival submissions, my findings are as under:

9.1 The re-opening proceedings were under taken, as is clear from the records, from the inquiry received from Directorate of (Inv.) regarding certain bank transactions. Thus, there was material in the possession of AO which led him to reasonable belief that the assessee had received certain

accommodation entries indicating that the income may have escaped assessment.

In any case, the appellant has not made any submission regarding this ground during the appellate proceedings.

Thus, ground regarding proceedings U/s 147/148 is rejected.

9.2 That brings to the main issue of Rs.18,54,625/- for which entire proceedings were taken up. On this aspect, the appellant vide last submission has given detailed reconciliation on each of nine such accommodation entries. From the submission as well as verification made by the AO and the undersigned during appellate hearing; it transpires that these accommodation entries are nothing but bank instrument from various persons for the purpose of share application.

Six of these entries prima facie tally with the details as contained in share applicants' list. The Directorate has sent details regarding Instrument Number which were apparently the cheque numbers issued by the person concerned, against which certain demand drafts were received for the purpose of share application money. So, exact identification is not possible..simply because information with the AO is not complete for the purpose of exact verification. The assessee can give only the details regarding DDs. received; it does not have any access to information as to vide which cheque, these DDs. were got issued. However, as the names as well as amount in rupees tally in 6 cases; so I tend to infer, as agreed by the AO also, that there is enough reconciliation available on record which make these accommodation entries explained from the books of the appellant.

But in respect of following three, discrepancies were noticed.

These discrepancies and appellant's reply on them are as under:

- (i) Smt.Savitra Devi Rs. 2,00,000/- Instrument No. 134049

The assessee appellant has emphatically submitted that no such amount has been received from Smt. Savitri Devi for which entire books of account and records have been checked. And therefore, the appellant has claimed that information is not correct.

(ii) Shri Ram Garg Rs. 1,50,000/- Instrument No.144537

The assessee appellant has emphatically submitted that no such amount has been received from Sh. Ram Garg for which entire books of account and records have been checked. And therefore, the appellant has claimed that information is not correct. The appellant informs that the however similar amount had been received from different person namely Shri Mukesh Kumar.

(iii) Bansal Trading Company Rs. 2,00,000/-
Instrument No.505261. The assessee appellant has emphatically submitted that no such amount has been received from Shri Ram Prakash for which entire books of account and records have been checked. And therefore, the appellant has claimed that information is not correct.

9.2.1 From the entire verification process and appellant's submission made; I infer that 'information' has not been processed by the AO, to the extent that it becomes basis for addition; in other words, information is still 'unripe'.

I would like to mention that such information received from the Directorate is part of widening of intelligence /information net work so as to plug escapement of income. The information collected in bulk from various agencies like banks are pooled together and then are disseminated to respective AOs. with the purpose that the AO may cross tally these information with the details submitted by the respective assessee. Thus, these informations are only starting point and not end in itself. In other words, although the AO has to enquire and undertaken verification

proceedings; but he is required to take this inquiry to a logical conclusion as to whether some of these entries may be indicating income out side the tax net.

But for that, the AO will have to verify the books of the assessee and then will have to prove that some of these bank instruments, although received by the assessee, have not found part of its accounted books.

In the present case, the appellant has been able to prima facie reconcile 6 of these nine such entries with its share application details. In respect of three entries, the appellant has been able to lay down its books and bank accounts and has emphatically argued that no such instrument has been received in its books.

In such circumstances, assessee/ appellant deserve benefit of doubt. The AO is directed to make further verification, first by calling from the Directorate more precise details about such entries and then to cross cheque from the books and bank accounts of the assessee. The AO can and should also obtain information from the respective banks as to whether and in whose accounts these DDs. were encashed. The AO can also obtain information directly from the 'entry giver', as to in whose favour and for what purpose, these instruments had been issued by them.

If only after such purposeful verification, some adverse material, against the assessee, comes to the knowledge of the AO; he can always take remedial measure in the hands of the assessee company.

But as of now, I am of the view, that AO has not been able to establish that the appellant has been beneficiary of any unaccounted income

rising from these instruments. Hence no addition is called for. Addition of Rs.18,54,625/- is deleted.

However, the AO is directed to make further enquiries as suggested above.

9.3 Share Capital:

I find that during assessment proceedings itself, the assessee had furnished adequate details to substantiate increase in share capital. It is not disputed that name, address, amount of share allotment as well as copies of share applicant forms signed by these persons, their Income-tax returns, etc. have been placed before the AO. Further, such share allottees could be cross tallied from the form No.2 with ROC as well.

I infer that the appellant was able to discharge its primary onus of tabling all the relevant details.

9.3.1 At this juncture, I feel compelled to make certain observations regarding provisions of section 68 specially when 'credit' is in respect of share capital. Legal dictum of this aspect is that if share holders/ share applicants are identifiable i.e. name and complete address is available on record; explanation regarding source of fund has been given by way of bank statement, etc. evidence of creditworthiness by way of PAN, IT Returns etc.; have also been furnished; then AO should not insist on production of these persons, unless there is some specific adverse material available with the AO which warrant action on his part to make personal examination. If it is a routine verification/assessment; it would not be prudent on AO's part to insist for physical production of all the share holders. I have no doubt that it is AO's prerogative to verify the issue more deeply; but for that, he would have to issue letters U/s 133(6) and if required summons U/s 131 of the Act; to enforce their attendance and then to make personal inquiry. If after all

this, any adverse finding comes forth; AO would be justified to take remedial action in the hands of the company.

In the present case, AO can still make such indepth inquiry, in case he finds it worthwhile. But he would have to take pains to issue notices U/s 131 of the Income-tax Act,1061, and take further action as mentioned earlier.

9.3.2 Although, many legal case laws are available; I rely on recent emulative judgement of Hon'ble High Court of Delhi in the case of Lovely Exports (P)Limited and Others vide ITA No.953/2006 dated 16.11.2006; the SLP against which has also been dismissed by the Supreme Court. The decision like this is recommended as compulsory reading. Some relevant extracts of this decision are as under:

“

.....

There can not be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessee it should not be harrassed by the Revenue's insistence that it should prove the negative. In the case of a public issue, the Company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The company must, however, maintain and make available to the AO for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while waling the tightrope of Section 68 and 69 of the I.T.Act. The burden of

proof can seldom be discharged to the hilt by the assessee; if the AO harbours doubts of the legitimacy of any subscription he is empowered, may duty-bound to carry out thorough investigations. But, if the AO fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicious and treat the subscribed capital as the undisclosed income of the Company.....”

“.....
The ITAT dismissed the Revenue Appeal and thus there are concurrent findings pertaining to the factual matrix. The following paragraph from the impugned decision adequately encapsulates the necessary details:

“Thus the question is whether in the present case, the AO had materials to conclude that the share applicants in question did not exist. It is seen that the assessee company has furnished the necessary details such as PAN No./Income tax Ward No./ration card of the share applicants and some of them are assessed to tax. The share application money has been received through banking channel. In some cases, the confirmations/ affidavits of share applicants containing the above detail were also filed. It is seen that the AO did not carry out any inquiry into the income tax record of the persons who have given the PAN No./Ward No. in order to ascertain the non-existence of the share applicants in question. The AO has neither controverted nor disapproved the material filed by the assessee. In the case of CIT Vs. Makhni & Tyagi (P)Ltd. Reported in 267 ITR 433 (Del), the jurisdictional High Court has held that when the documentary evidence was placed on record to prove the identity of all the share holders including their PAN/GIR numbers and filing of other documentary evidence in the form of ration card etc. Which had neither been controverted nor disapproved by the

no interference was called for. The Tribunal was justified in deleting the addition. The AO proceeded to make the impugned addition on the ground that in some case some summons issued were returned unserved and in some case summons though served but there was no compliance. In this connection, it may be mentioned that in the case of CIT Vs. Orissa Corpn. 159 ITR 78 the Hon'ble Court has held that when the assessee borrows the loan and if an assessee gives names and address of the creditors, who are assessed to tax and full particulars is furnished then the assessee has discharged the duty. If the Revenue merely issues summons U/s 131 and does not pursue the matter further, the assessee does not become responsible for the same even if the creditors do not appear. Addition cannot be made U/s 68.....

9.6 I abide by the above mentioned legal dictum and hold that unless the AO is able to controvert so many documentary evidences placed by the assessee on record; it would not be proper to sustain addition made U/s 68 of the Act in respect of share capital. In other words, sufficient evidence, e.g. confirmation, Income-tax returns, bank statements etc. have been furnished, which had shifted the 'onus' from assessee onto AO; but AO has not discharged his onus to show any discrepancy/falsity in such evidences. In my view, these evidences are quite satisfactory, and hence, addition of Rs.4,28,50,000/- is therefore, deleted.

10. UNSECURED LOANS:

As is clear from the verification purpose carried out during the appellate hearing on 22.2.2008; the appellant has been able to file fresh copies of account as well as confirmations from all the persons mentioned under unsecured loan. These confirmations were treated as additional

dence, considering that assessee was unable to obtain confirmation from all these persons during assessment proceedings because of paucity of time.

In all the cases, balances tally; as consented by the AO as well.

Therefore, addition of Rs.1,19,63,549/- is deleted.

[D] This present appeal has been filed by Revenue against the aforesaid impugned appellate order dated 27.03.2008 of the Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), Paper Books were filed from the assessee's side containing the following particulars:

1. *Copy of Notice U/s 148 dated 12.12.2006*
2. *Copy of the Reason Recorded by the assessing Officer*
3. *Copy of List of the Share applicant alongwith there addresses*
4. *Copy of the FORM No. 2 filed before Registrar of Company alongwith the acknowledgment*
5. *Copy of Documents filed in respect of M/s Sahil Agencies Pvt. Ltd.*
 - a) *Copy of the Applicants for Equity Shares*

- b) *Copy of the Confirmation alongwith the Board Resolution passed by the Board of the Directors of Sahil Agencies Pvt. Ltd.*
- c) *Copy of Acknowledgment of the Return of Income*
- 6. *Copy of Documents filed in respect of Shri Ram Garg.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of the Return of Income*
- 7. *Copy of Documents filed in respect of Smt. Naushaba Begum.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of the Return of Income*
- 8. *Copy of Documents filed in respect of Shri Zakir Rana.*
 - a) *Copy of Application of Equity Shares*
 - b) *Copy of the Return of Income*
- 9. *Copy of Documents filed in respect of Smt. Amna Begum*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
- 10. *Copy of Documents filed in respect of Shri Qamruzama Rana*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
- 11. *Copy of Documents filed in respect of Shir Intakab Rana*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
- 12. *Copy of Documents filed in respect of Shri Qadir Rana.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
- 13. *Copy of Documents filed in respect of Shir Shahnawaz Rana.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*

14. *Copy of Documents filed in respect of Smtk. Shamia Zeenat.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
15. *Copy of Documents filed in respect of Smt Shahin Khatoon.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
16. *Copy of Documents filed in respect of Shir Noor Saleem Rana.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
17. *Copy of Documents filed in respect of Smt Saida Begam.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Return of income*
18. *Copy of Documents filed in respect of Shri Ganeshi Lal Propk. Ganesh Trading Company.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Intimation U/s 143(1)*
 - c) *Copy of the Order passed U/s 154*
 - d) *Copy of the Intimation U/s 143(1)(a)*
19. *Copy of Documents filed in respect of M/s Labh Tronics Overseas Pvt. Ltd.*
 - a) *Copy of Confirmation*
 - b) *Copy of the Return of Income*
20. *Copy of Documents filed in respect of M/s FNS Consultancy Pvt. Ltd.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of the Return of Income*
21. *Copy of Documents filed in respect of Sahgal Fluidline Equipments Pvt. Ltd.*
 - a) *Copy of the Application of Equity Shares*

- b) *Copy of Confirmation*
 - c) *Copy of the Return of Income*
22. *Copy of Documents filed in respect of Rabik Exports Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of the Return of Income*
23. *Copy of Documents filed in respect of Maestro Marketing & Advertising Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of the Return of Income*
24. *Copy of Documents filed in respect of Webnet Suystmens (India) Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of the Return of Income*
25. *Copy of Documents filed in respect of KVF Securities Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Intimation U/s 143(1)*
26. *Copy of Documents filed in respect of Roopin Capital Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of the Return of Income*
27. *Copy of Document filed in respect of Shashi Sales & Marketing Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of Bank Account*
 - d) *Copy of the Return of Income*
28. *Copy of Documents filed in respepct of Baweja Exports Pvt. Ltd.*

- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of Bank Accounts*
29. *Copy of Documents filed in respect of ESS Square Travels Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of Bank Account*
30. *Copy of Documents filed in respect t of Saudamini Trading & Investment Co. Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of Bank Account*
31. *Copy of Documents filed in respect of Chemax (India) Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
32. *Copy of Documents filed in respect of Ashian Needless Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
33. *Copy of Documents filed in respect of KVF Securities Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of Bank Account*
34. *Copy of Documents filed in respect of Sparrow Resorts Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of Bank Account*
35. *Copy of Documents filed in respect of Kanodia Pharmaceuticals Pvt. Ltd.*

- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
36. *Copy of Documents filed in respect of Blossom Advertisement Pvt. Ltd.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Confirmation*
 - c) *Copy of Bank Account*
37. *Copy of Documents filed in respect of Shri Sanjay Gupta*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*
38. *Copy of Documents filed in respect of Shri Rajesh Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*
39. *Copy of Documents filed in respect of Shri Praveen Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*
40. *Copy of Documents filed in respect of Shri Ashok Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Intimation U/s 143(1)*
41. *Copy of Document filed in respect of Shir Hemant Kumar Jain.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*
42. *Copy of Document filed in respect of Shri Om Prakash.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*
43. *Copy of Document filed in respect of Shri Prem Prakash Agarwal.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*

44. *Copy of Document filed in respect of Shri Niraj Goel.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*
45. *Copy of Document filed in respect of D.K. Ispat & Timber Ltd.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Income*
46. *Copy of Document filed in respect of Smt. Sita Devi.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
47. *Copy of Document filed in respect of Smt. Raj Rani.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation U/s 143(1)*
48. *Copy of Document filed in respect of Shri Ghanshyam Dass Prop. Navneet Trading Co.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of the Intimation U/s 143(1)*
 - c) *Copy of Order U/s 154*
49. *Copy of Document filed in respect of Shri Ram Garg.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
50. *Copy of Document filed in respect of Shri Ram Prakash.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
51. *Copy of Document filed in respect of Shri Amit Bansal.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*

- c) *Copy of Intimation U/s 143(1)*
52. *Copy of Document filed in respect of Shri Shyam Lal.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Income*
53. *Copy of Document filed in respect of Shri Sunil Kumar Jain.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
54. *Copy of Document filed in respect of Shri Om Prakash.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
55. *Copy of Document filed in respect of Shri Rajinder Kumar.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
56. *Copy of Document filed in respect of Shri Murari Lal.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
57. *Copy of Document filed in respect of Shri Mohinder Gupta.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
- c) *Copy of Intimation U/s 143(1)*
58. *Copy of Document filed in respect of Shri Krishana Bansal.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
- c) *Copy of Intimation U/s 143(1)*
59. *Copy of Document filed in respect of Shri Babu Lal.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*

- c) *Copy of Intimation U/s 143(1)*
60. *Copy of Document filed in respect of Shri Ramesh Gupta.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
61. *Copy of Document filed in respect of Shri Ram Babu Bansal.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
62. *Copy of Document filed in respect of Shri Nand Lal Bansal.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
- c) *Copy of assessment Order U/s 143(3)*
- d) *Copy of Intimation U/s 143(1)*
63. *Copy of Document filed in respect of Shri Shri Onkar Mal.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
64. *Copy of Document filed in respect of Shri Krishna Kumar.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
- c) *Copy of Intimation U/s 143(1)*
65. *Copy of Document filed in respect of Shri Jagmohan Ram.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
- c) *Copy of Intimation U/s 143(1)*
66. *Copy of Document filed in respect of Smt. Santosh Kumari.*
- a) *Copy of the Application of Equity Shares*
- b) *Copy of Returns of Incomes*
67. *Copy of Document filed in respect of Smt. Rekha Bansal.*

- a) *Copy of the Application of Equity Shares*
 - b) *Copy of the Intimation*
68. *Copy of Document filed in respect of Shri Subhash Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
69. *Copy of Document filed in respect of Shri Rajesh Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*
70. *Copy of Document filed in respect of Shri Dinesh Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
71. *Copy of Document filed in respect of Shri Sureh Chand.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*
72. *Copy of Document filed in respect of Shri Vikash Goel.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
73. *Copy of Document filed in respect of Shri Ashok Gupta.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*
74. *Copy of Document filed in respect of Shri Narender Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
75. *Copy of Document filed in respect of Shri Madan Singh.*

- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*
76. *Copy of Document filed in respect of Shri Mukesh Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
77. *Copy of Document filed in respect of Smt. Sunita Gupta.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
78. *Copy of Document filed in respect of Shri Beer Singh.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*
79. *Copy of Document filed in respect of Shri Lal Chand.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
80. *Copy of Document filed in respect of Shri Raj Kumar Agarwal.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
81. *Copy of Document filed in respect of Shri Ram Gupta.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of the Intimations*
82. *Copy of Document filed in respect of Shri Raja Ram.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*

83. *Copy of Document filed in respect of Shri S K Mittal Propk. M/s S.K. Trading Co.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Intimation*
84. *Copy of Document filed in respect of Shri Ved Prakash.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*
85. *Copy of Document filed in respect of Shri Vishwas Kumar.*
- a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
 - c) *Copy of Intimation*
86. *Copy of Document filed in respect of Shiv Shakti Merchants Pvt. Ltd.*
- a) *Copy of the Confirmations*
 - b) *Copy of Returns of Incomes*
87. *Copy of Document filed in respect of Touch Woods Agencies Pvt. Ltd.*
- a) *Copy of the Confirmations*
 - b) *Copy of Returns of Incomes*
88. *Copy of Document filed in respect of Madhu Mati Securities Pvt. Ltd.*
- a) *Copy of the Confirmations*
 - b) *Copy of Returns of Incomes*
89. *Copy of Document filed in respect of Sahil Agencies Pvt. Ltd.*
- a) *Copy of the Confirmations*
 - b) *Copy of Returns of Incomes*
90. *Copy of Document filed in respect of Unnti Consultants Pvt. Ltd.*
- a) *Copy of the Confirmations*
 - b) *Copy of Returns of Incomes*

91. *Copy of Document filed in respect of Tidy Textile Pvt. Ltd.*
 - a) *Copy of the Confirmations*
 - b) *Copy of Returns of Incomes*
92. *Copy of Document filed in respect of VPS Valves & Tubes Pvt. Ltd.*
 - a) *Copy of the Application of Equity Shares*
 - b) *Copy of Returns of Incomes*
93. *Audited Report alongwith the Financial Statements as on 31.03.02.*
94. *Copy of the Return of Allotment Pursuant to Sec. 75(1) of the Companies Act Alongwith the list of Shareholders.*
95. *Copy of the Share Applicants on Instance basis along with the necessary available documents and evidence*
96. *Ledger Account of Share Application Money*
97. *Submission to AO vide Letter dt. 15.11.07*
98. *Submission to CIT(A) dt. 21.02.08*
99. *Letter to CIT(A) dt. 21.02.08*
100. *Allahabad High Court in the case of Jaya Securities*
101. *Notice U/s 143(2), 142(1) with questionnaire dt. 30.04.07.*
102. *Details of Increase Shareholding*
103. *Details of Loan / Deposits*
104. *Details of few alleged shareholders details of others are available which are voluminous hence not filed if directed would be filed."*

[D.1] Perusal of records shows that precedents of Hon'ble Supreme Court of India, in the cases of Commissioner of Income –Tax, Orissa v. Orissa Corporation P. Ltd. 159 ITR 78; Hon'ble Supreme Court of India in the case of Commissioner of Income Tax v. J.K. Hosiery Factory 159 ITR 85; Hon'ble High Court of Delhi in the case of Commissioner of Income Tax v. Diamond Product Ltd. [2009] 177 TAXMAN 133 (Delhi); Hon'ble High

Court of Punjab & Haryana in the case of Abheshek Industries Ltd. v. Commissioner of Income-tax, Central Circle [2009] 177 Taxman 335 (Punj. & Har.); Co-ordinate Bench of ITAT, Amritsar in the case of A.P. S. Associates (P.) Ltd. v. Assistant Commissioner of Income-tax, Range-III, [2006] 101 ITD 215 (ASR.); Co-ordinate Bench of ITAT, Jodhpur, in the case of Bhilwara Spinners Ltd. v. Commissioner of Income-tax, Udaipur [2006] 101 ITD 237 (JODH.); were also brought to the attention of ITAT. At the time of hearing on 07.11.2019, Revenue was represented by Shri Sanjog Kapoor, the learned Senior Departmental Representative ("Ld. Sr. DR", for short). However, none was present from the assessee's side. This is a very old appeal filed in 2008, and hearings first started in this case on 12.11.2008 since then the appeal came up for hearing many times in the past. After several adjournments, on 26.08.2019, the hearing was adjourned to 07.11.2019 as last opportunity to the Ld. Authorized Representative ("Ld. AR", for short) of the assessee. In the absence of any representation from assessee's side on 07.11.2019, at the time of hearing before us, we heard this appeal *ex-parte* qua the respondent assessee.

[E] We heard the Ld. Sr. DR; who relied upon the order dated 05.12.2007 of the Assessing Officer and the aforesaid impugned order dated 27.03.2008 of the Ld. CIT(A); and submitted written submissions which are reproduced below for ready reference:

"Sub: Written Submission in the above case- reg.

In the above case, it is humbly submitted that the following decisions may

kindly be considered in view of the facts of the above case with regard to addition made u/s 68 of I T.Act in addition to oral arguments:

1. PCIT Vs NRA Iron & Steel (P.) Ltd. T20191 103 taxmann.com 48 (SC)/f20191 262 Taxman 74 (SC)/r20191 412 ITR 161 (SC) (Copy Enclosed)

where Hon'ble Supreme Court reverse order of lower Authorities holding that where there was failure of assessee to establish credit worthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company. Merely because assessee company had filed all primary evidence, it could not be said that onus on assessee to establish credit worthiness of investor companies stood discharged.

2. PCIT Vs NDR PROMOTERS PVT LTD (f20191 102 taxmann.com 182 (Delhi)/f20191 261 Taxman 270 (Delhi)/r20191 410 ITR 379 (Delhi))

where Hon'ble Delhi High Court held that where Assessing Officer made additions to assessee's income under section 68 in respect of amount received as share capital from several companies, in view of fact that all of these companies were maintained by one person who was engaged in providing accommodation entries through paper companies and all such companies were located at same address, impugned addition was justified

3. CIT Vs Navodava Castle Pvt Ltd T20141 367 ITR 306 (Del)

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 P. Ltd., a decision which has been overturned by the Delhi High Court, vide its judgment in CIT v. 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 feel that the matter requires an order of remit to the Tribunal for fresh adjudication keeping in view the aforesaid case law."

Navodava Castle Pvt Ltd Vs CIT ^20151 56 taxmann.com 18 (SC)/[2015] 230 Taxman 268 (SC)

SLP of assessee dismissed by Hon'ble Supreme Court.

4. Konark Structural Engineering (P.) Ltd. Vs DCIT r20181 96 taxmann.com 255 (SC)

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 assesseees 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 T20181 90 taxmann.com 56 (Bombay)

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 addressees 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 sec. 68, was to be confirmed

5. Pratham Telecom India Pvt Ltd Vs DCIT (2018-TIQL-1983-HC-MUM-IT)

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

6. Royal Rich Developers (P.) Ltd. Vs PCIT f20191 108 taxmann.com 382 (Bombay)

where Hon'ble Bombay High Court held that where revenue authorities made addition to assessee's income under section 68 in respect of share application money received from various investors, since assessee failed to produce them despite various opportunity granted to it and, moreover there was no evidence on record establishing genuine investments on their part in shares of assessee-company, impugned addition was to be confirmed

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

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 assessee has established the identity of the parties. It has further been observed that the report of the investigation wing cannot conclusively prove that the assessee's own monies were brought back 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. "

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

where Hon'ble Delhi High Court held that amount received by assessee from accommodation entry providers 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 the 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 Hospitalities (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 questions of law in the negative and in favour of the department. The assessee shall pay costs which we assess at Rs. 30,000/-."

9. CIT Vs N R Portfolio Pvt Ltd [2014] 42 taxmann.com 339 (Delhi)/[2014] 222 Taxman 157 (Delhi)(MAG)/[2014] 264 CTR 258 (Delhi)

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 and 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 manage them. "

10. CIT Vs Empire Builtech (P.) Ltd (366 ITR 110)

where Hon'ble Delhi High Court held that u/s 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."

[E.1] After hearing the Learned Departmental Representative ("Ld. DR", for short) and after careful perusal of records, we find that in paragraph 9.2.1 of the aforesaid impugned appellate order dated 27.03.2008, the Ld. CIT(A) has observed that information received by the Assessing Officer ("AO", for short) from Directorate was not processed by the AO, to the extent that it becomes basis of addition; and that the information was "unripe". The Ld. CIT(A) also further observed that "*.....these informations are only starting point and not end in itself. In other words, although the AO has to enquire and undertaken verification proceedings; but he is required to take this inquiry to a logical conclusion as to whether some of these entries may be indicating income out side the tax net. But for that, the AO will have to verify the*

books of the assessee and then will have to prove that some of these bank instruments, although received by the assessee, have not found part of its accounted books" "... The AO is directed to make further verification, first by calling from the Directorate more precise details about such entries and then to cross cheque from the books and bank accounts of the assessee. The AO can and should also obtain information from the respective banks as to whether and in whose accounts these DDs. Were encashed. The AO can also obtain information directly from the 'entry giver', as to in whose favour and for what purpose, these instruments had been issued by them. If only after such purposeful verification, some adverse material, against the assessee, comes to the knowledge of the AO; he can always take remedial measure in the hands of the assessee company." With this line of reasoning, the Ld. CIT(A) went on to delete the aforesaid addition of Rs. 18,54,625/- on account of accommodation entries.

[E.2] In respect of the addition of Rs. 4,28,50,000/- made under Section 68 of I.T. Act in respect of share capital. The Ld. CIT(A) has observed in para 9.3.1 of the aforesaid impugned appellate order dated 27.03.2008; *"...I have no doubt that if is AO's prerogative to verify the issue more deeply; but for that, he would have to issue letters U/s 133(6) and if required summons U/s 131 of the Act; to enforce their attendance and then to make personal inquiry. If after all this, any adverse finding comes forth; AO would be justified to take remedial action in the hands of the company. In the present case, AO can still make such indepth inquiry, in case he finds it worthwhile. But he would have to take pains to issue notices U/s 131 of the Income- tax Act, 1961, and*

take further action as mentioned earlier." With this line of reasoning, the Ld. CIT(A) went on to delete the aforesaid addition of Rs. 4,28,50,000/-.

[E.3] In respect of the aforesaid addition of Rs. 1,19,63,549/- (on account of unsecured loans); perusal of paragraph 10 of the aforesaid impugned appellate order dated 27.03.2008, shows that the Ld. CIT(A) admitted additional evidences and went on to delete the aforesaid addition of Rs. 1,19,63,549/-, on the basis of additional evidences so admitted.

[F] From perusal of the foregoing, we find that as far as aforesaid additions amounting to Rs. 18,54,625/- (subject matter to ground 1 of appeal) and the aforesaid addition of Rs. 4,28,50,000/- (subject matter of ground 2 of this appeal) are concerned; the Ld. CIT(A) was of the view that further inquiry / investigation / verification in these aspects were desirable but, according to the Ld. CIT(A), the AO failed to do this. In fact, in paragraph 9.2.1. of his impugned appellate order dated 27.03.2008, the Ld. CIT(A) even directed the AO to make further verification. Similarly, in paragraph 9.3.1. of the aforesaid impugned appellate order dated 27.03.2008, he commented that the AO would have to issue letters U/s 133(6) and if required summons U/s 131 of I.T. Act. He went on to state, in paragraph 9.3.1. of his impugned appellate order dated 27.03.2008 that the AO can still make indepth inquiry, in case he finds it worthwhile and that the AO would have to take pains to issue notices Us 131 of the I.T. Act, and

take further action. Once Ld. CIT(A) taken the view that further inquiries / investigation / verification are necessary, it is incumbent upon the Ld. CIT(A) to have the necessary inquiries / investigation / verification carried out during the appellate proceedings before him either by himself or by remand to the AO. A perusal of Section 251(1)(a) of I.T. Act shows that in an appeal against an order of assessment, Ld. CIT(A) may confirm, reduce, enhance or annul, the assessment. However, w.e.f. 1.6.2001, as a result of amendment to Income Tax Act, the power of Ld. CIT(A) to set aside an order of assessment has been withdrawn. Therefore, any necessary inquiry / investigation or verification is required to be carried out during pendency of the appellate proceedings before Ld. CIT(A). Further, perusal of Section 250(4) of I.T. Act shows that Ld. CIT(A) has powers, before disposing off any appeal, to make such further inquiry as he thinks fit, or he may direct the Assessing Officer to make further inquiry and report the result of the same to the Ld. CIT(A). It is well settled that powers of Ld. CIT(A) are co-terminus with powers of the Assessing Officer. For this purpose, we may refer to the order of Apex Court decision in CIT vs. Kanpur Coal Syndicate 53 ITR 225 (SC) in which it was held that AAC has plenary powers in disposing off an appeal; that the scope of his power is co-terminus with that of the ITO, and that he can do what the ITO can do and can also direct him to do what he failed to do. In the facts and circumstances of the case, therefore, we are of the view, considering the statutory position as discussed, that it was gross error, on the part of the Ld. CIT(A), having himself been of the view that further inquiries / investigation / verification; to not ensure that such further inquiries / investigation / verification were done during the pendency of appellate proceedings before the Ld. CIT(A); and in accordance with Section 250(4) of I.T. Act.

For coming to this conclusion, we are guided by order of Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. M/s Jansampark Advertising And Marketing (2015) 375 ITR 373 (Del.) in which Hon'ble Delhi High Court held as under:

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

[F.1] Therefore, we set aside the order of the Ld. CIT(A) in respect of aforesaid additions amounting to Rs. 18,54,625/- (subject matter of ground 1 of appeal) and the aforesaid addition of Rs. 4,28,50,000/- (subject matter of ground 2 of this appeal); and direct the Ld. CIT(A) to pass fresh order on these issues, after further inquiries, in accordance with Section 250(4) of I.T. Act. Grounds 1 and 2 of appeals are disposed off accordingly, and are treated as partly allowed for statistical purposes.

[G] As far as ground no. 3 of appeal is concerned, we find that the Ld. CIT(A) has admitted additional evidences. Provisions regarding admission of additional evidences by the Ld. CIT(A) are contained in Rule 46A of Income Tax Rules, 1962 ("I.T. Rules",

for short). The Ld. CIT(A), in accordance with Rule 46A(2) of I.T. Rule, was duty bound to record in writing the reasons for admission of additional evidences. From perusal of records, we find that the Ld. CIT(A) has failed to record any reasons for admission of additional evidences. Further, in accordance with Rule 46A(3) of I.T. Rules, the Ld. CIT(A) was duty bound to allow a reasonable opportunity to the Assessing Officer to examine the evidence or documents or to cross-examine the witness produced by the appellant or to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant. However, from perusal of records, we find that no such opportunity was provided by the Ld. CIT(A) to the Assessing Officer. Thus, the order passed by the Ld. CIT(A), as far as the aforesaid addition of Rs. 1,18,63,549/- (subject matter to ground 3 of appeal) is in gross violation of the requirements prescribed under Rule 46A(2) and 46A(3) of I.T. Rules. Therefore, we set aside the order of the Ld. CIT(A) on the issue of aforesaid addition of Rs. 1,18,63,549/- and direct him to pass a fresh order on this issue while ensuring full adherence to Rule 46A of I.T. Rules. Ground no. 3 of appeal is disposed off accordingly, and is treated as partly allowed for statistical purposes.

[H] In the result, appeal filed by Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 15/11/19.

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 15/11/19
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	