

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
AND  
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 3901/Del/2009, 2708/Del/2008  
(Assessment Year: 2004-05, 2005-06)

Income Tax Officer, Ward-16(2), New Delhi	Vs.	M/s. Team Plus Securities Ltd, 1 <sup>st</sup> Floor, Thakur House, Central Wingham, Janpath, New Delhi
(Appellant)		(Respondent)

ITA No. 3506/Del/2008,  
(Assessment Year: 2004-05)

M/s. Team Plus Securities Ltd, 1 <sup>st</sup> Floor, Thakur House, Central Wingham, Janpath, New Delhi	Vs.	Income Tax Officer, Ward-16(2), New Delhi
(Appellant)		(Respondent)

Revenue by :	Smt Naina Soin Kapil, Sr. DR
Assessee by:	None
Date of Hearing	28/08/2019
Date of pronouncement	25/11/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. For assessment year 2004 – 05, the assessee has preferred an appeal in ITA number 3506/Del/2009 against the order of the learned Commissioner of Income Tax (Appeals) New Delhi dated 10/7/2009 and revenue has filed appeal in ITA number 3901/Del/2009. For AY 2005-06 revenue has filed appeal. All these three appeals are on the issue of taxability of loan taxed as cash credit u/s 68 of the act of loans and taxability u/s 68 of the act of Zero Coupon Bonds to various companies.
2. The revenue has raised the following grounds in ITA No. 3901/Del/2009 for Assessment Year 2004-05:-

- “1. On the facts and in the circumstances of the case, Id CIT(A) has erred in deleting addition of Rs 8,00,00,000/- by holding that the assessee company has discharged its onus, ignoring the fact that mere filling of paper confirmations cannot be held to be discharge of onus cast upon the assessee company u/s 68 of Income Tax Act,1961.
  2. On the facts and in the circumstances of the case. Id CIT(A) has further erred in holding that if there was any discrepancy in the books of the investing companies, there is a case for reopening the case of the respective companies ignoring the fact the assessee company being the recipient/ beneficiary of the accommodation entries, was liable to tax in respect of the said unexplained cash credits.”
3. The assessee has raised the following grounds of appeal in ITA NO. 3506/Del/2009 for the Assessment Year 2004-05:-
- “1. On the facts and in the circumstances of the case, the CIT (A) has erred both on facts and in law, in upholding the illegal action without jurisdiction of the ITO to issue notice and reopen assessment of the appellant under section 147 and the perverse order passed by the. ITO ought to have been vacated and failure to do so has vitiated the impugned order as the entire action, order and notice for reassessment are illegal, without jurisdiction, unsustainable and hence liable to be vacated as being non est in law.
  2. The CIT (A) has erred in not being guided by correct factual and legal position, records, and binding precedents placed before him and has passed the impugned order erroneously which is therefore liable to set aside and quashed.
  3. The CIT (A) has also erred in upholding the illegal addition of Rs. 2 crores perversely made by the ITO and impugned order are therefore liable to be quashed and the additions so illegally made and confirmed ought to be deleted.
  4. CIT(A) has also erred in treating the sale proceeds of Rs. 37.50 lacs of the assessee’s own shares as unexplained moneys and had wrongly upheld the addition thereof by the ITO moneys and had wrongly upheld the addition thereof by the ITO as unexplained cash credit which is wholly unsustainable in all respects.
  5. The CIT (A) has also erred in upholding the illegal demands of tax as well as interest erroneously raised by the ITO to the extent of additions upheld by him and the entire illegal demands of tax as well as interest must be set aside and quashed as unsustainable both on facts and in law.
  6. The CIT (A) ought to have dealt with all the submissions and objections of the appellant and ought to have followed the binding decisions of the Courts and Tribunals placed before him but has unfortunately not done so and has thus passed the impugned order erroneously which is liable to be vacated in this appeal.”

4. For assessment year 2004 – 05 revenue is in appeal against the addition deleted by the learned Commissioner of income tax appeals of INR 80,000,000 made on account of unexplained cash credit u/s 68 of the income tax act on account of failure of the assessee to prove the identity, creditworthiness and genuineness of the issue of unsecured 0% fully convertible bonds. Assessee is in appeal for that year against the reopening of the assessment as well as confirmation of INR 1 3750000/- of certain amount received during the year and confirmation of the addition of Rs. one crore on account of unsecured 0 coupon fully convertible bonds out of INR 90,000,000 received during the year.
5. For assessment year 2005 – 06, revenue is in appeal against the addition deleted by the learned CIT – A of INR 75,000,000 made on account of unexplained cash credit u/s 68 of the income tax act 1961 made by the learned assessing officer on account of failure of the assessee to prove the identity, creditworthiness and genuineness of the issue of unsecured 0% fully convertible bonds.
6. We state the assessment facts for AY 2004-05. Brief facts of the case shows that assessee is a company who filed its return of income declaring nil income on 4/2/2005. The return was not assessed u/s 143 (3) but was processed u/s 143 (1) of The Income Tax Act. Subsequently the information was received from the DIT (Investigation) that the assessee has taken accommodation entries and introduced amount by way of paying cash from MKM securities private limited and CV metal powders (Haryana) Ltd. The learned AO recorded the amount of cheque received, date on which they received, respective instrument number and branch of the bank from which it is received. The details of the entries were provided and based on the same; case of the assessee was reopened. At the time of issuance of notice u/s 148 the reasons also includes that the amounts of INR 100,000,000/- is received from different concerns because of unsecured Zero Coupon Bonds which prime facie proved that above mentioned entries were not genuine.
7. During the course of assessment proceedings, the assessee submitted the confirmation of the parties from whom amount as mentioned in Zero coupon bonds was received during the year. However, the learned assessing

officer issued notices u/s 133 (6) to the various parties on 10/12/2008. In response to that, none of the parties responded. Assessee was asked to produce those parties but assessee failed to produce even one of them. Therefore, the learned assessing officer noted that it is quite strange that when assessee was in touch with them for obtaining confirmation but when called for u/s 133 (6) none of them responded except one party. Assessee is also not producing the for examination by ld AO. Thereafter the learned assessing officer carried out detailed investigation and found the ultimate source of such money routed from the bank account of other parties where cash is deposited. With respect to each of the amount borrowed by the assessee the learned assessing officer on examination of the bank account traced the source of those funds. In most of the accounts, he found that there is an identical cash deposit in bank account number 52199 and 52764 as well as from other accounts. Thereafter learned AO also looked at the bank accounts of those depositors, which are placed at page number 4 to 7 of the assessment order. Director of one of the depositor company was examined on oath and he admitted that these companies are involved in giving accommodation entry for purchase and sale of shares and no real business has taken place except accommodation entry business in that company and associate concerns. Statement of other parties were also recorded wherein they also confirmed that these are the accommodation entries and none of the companies were paying even a single penny as tax. Therefore the assessee was asked to show cause why addition u/s 68 should not be made. Assessee was also asked to produce the director and concerned persons from whom the above sum has been received. In response to the above query assessee replied relying upon the several judicial precedents that the amount cannot be added in the hands of the assessee as assessee has produced enough evidence and further nothing else can be done by the assessee. However, there was no whisper about producing the directors of those companies who invested money in the assessee company. Therefore learned AO noted that assessee is a private Ltd company and the persons who have invested should be in the close and proximate relationship between the companies and the directors of the appellant assessee. Therefore the assessee should be able to produce them

however the assessee has failed to produce them which itself proves that these parties are not genuine , they are not creditworthy and the amount credited in the books of account of the assessee is unaccounted income of the assessee. As the assessee could not produce the directors of the companies who invested in the assessee company, the learned assessing officer made an addition of INR 13750000/- u/s 68 of the income tax act. Further, with respect to ZERO Coupon Bonds of INR 100,000,000 received through from 12 parties it was found that those parties are not creditworthy of the sum deposited. None of them complied with the notices issued u/s 133 (6) of the act, none of the directors of those companies was produced. Summons u/s 131 of the income tax act in assessment year 2005 – 06 were issued to these parties where none of the parties came forward to verify the amount of deposits made with the assessee company. Therefore, the learned assessing officer was of the view that above amount is required to be added in the hands of the assessee as assessee has failed to prove the identity, creditworthiness and genuineness of the transaction u/s 68 of the income tax act. As sum of INR 90,000,000 received on account of unsecured 0 coupon bonds from the above parties during the year, it was added to the total income of the assessee. Consequently, the total taxable income of the assessee was determined at INR 103750000/- against the nil return of income.

8. The assessee challenged the order of the learned assessing officer before the learned CIT – A. The learned CIT – A passed an order on 10/7/2009. The issue of notice u/s 148 of the income tax act was also challenged before him the learned CIT – A relying upon the decision of the honourable Supreme Court in case of ACIT vs Rajesh Jhaveri stockbrokers private limited 291 ITR 500, Raymond woollen Mills Ltd vs ITO 236 ITR 34 confirmed the action of the learned assessing officer.
9. With respect to the amount of INR 37,50,000 received from M/s MKM Finance Pvt Ltd he noted that the assessee company has sold shares of various companies through the above company during the financial year 2003 – 04. The assessee also furnished before him the details of shares sold. One Shri Mahesh Batra who was the director of MKM Finsec private limited recorded his statement on oath by the additional director of income

tax on 23/1/2000 for wherein he admitted that his associate concern was involved in giving accommodation entries for purchase and sale of shares and no real business has taken place. As the director of that company has categorically stated that the above company and associate concerns were involved in providing bogus accommodation entries, which facts are not, controverted by the learned assessing officer therefore the he confirmed the above addition.

10. He further confirmed sum of rupees one crore received through for different instruments from CV metal powders (Haryana) Ltd as statement of Sri Surender pal Singh was recorded on oath on 24/12/2003 and 30/12/2003 by the additional director of income tax in which he admitted that the concerns in which he is director or other concern is controlled by him were not engaged in doing any actual business except providing accommodation entries. He submitted that he is director in CV metal powders (Haryana Ltd and he controlled and operated other concerns. In these, all companies named by him that, Trail of cash deposit was found which ultimately found its way to the books of the assessee company. Therefore, the learned CIT – A confirmed the transaction of rupees one crore on sale of shares through CV metal powders Haryana Ltd.
11. Out of sum of INR 90,000,000 received during the year on account of unsecured 0 coupon fully converted bonds he held that similar issue arose in assessment year 2005 – 06 wherein the learned assessing officer made an addition of INR 75,000,000 in respect of amount received on account of these bonds from 7 different companies. The learned CIT – A deleted the above addition for assessment year 2005 – 06 therefore as there was no evidence available that these companies are involved in providing accommodation entries he deleted the addition of INR 80,000,000 pertaining to 10 different parties subscribing to the above bonds.
12. Out of sum of INR 90,000,000 received on account of unsecured 0% coupon fully convertible bonds, the learned CIT – A confirmed the addition u/s 68 of the income tax act with respect to B - Fin lease private limited of Rs. one crore statement of Sri Surender pal Singh was recorded on oath on 24/12/2003 and 30/12/2003 by the additional director of income tax in which he admitted that the concerns in which he is director or other

concern is controlled by him were not engaged in doing any actual business except providing accommodation entries. He submitted that he is director in B Finlease private limited and he controlled and operated other concerns. In these, all companies named by him that, Trail of cash deposit was found which ultimately found its way to the books of the assessee company. Therefore, the learned CIT – A confirmed the transaction of rupees one crore.

13. Thus he confirmed the addition of INR 1,37,50,000/on sale of shares and Rs 1,00,00,000/- on account of amount received on issue of 0% convertible bonds but deleted the addition of INR 80,000,000/-. Thus, both the parties are in appeal before us.
14. Despite notice to the assessee, none appeared on its behalf. Further, these appeals are filed in 2008 – 2009 and at one pretext or another assessee is seeking adjournment. Despite hearing fixed on many occasions, the assessee has not filed any paper book or evidences to support its case. For the last many hearings, assessee remains underrepresented except on one occasion. As these are very old outstanding appeals the issues are decided on the merits of the case as per information available on record.
15. The learned departmental representative vehemently supported the order of the learned assessing officer and stated that the learned CIT – capital has deleted the addition with respect to the zero coupon bond investors merely because of the reason that they were not involved in accommodation entry. She submitted that it is not a criterion for deleting or making an addition. She submitted that the test has to be made in accordance with the provisions of section 68 of the income tax act. She further submitted that the assessee has failed to produce the directors of those companies. She further stated that enquiry letters sent u/s 133 (6) of the act issued to those parties remained unserved. Summons issued u/s 131 of the income tax act also remains unkempt. She referred to the order of the learned assessing officer and stated that assessee has miserably failed to discharge its initial onus.
16. With respect to the reopening of the case it was submitted that the learned CIT – A has correctly dealt with the issue as information was received from the investigation wing and case of the assessee was never scrutinized under

section 143 (3) of the income tax act for this year. It was further submitted that the assessment u/s 13 (3) of the income tax act for assessment year 2005 – 06 was passed by the learned assessing officer on 31/12/2007 wherein it was found that issue of 0% unsecured coupon fully convertible bonds issued by the assessee to various companies are not identified, their creditworthiness doubtful and there is no genuineness in the issue of those shares/Bonds. Part of such bond also related to assessment year 2004 – 05 and therefore the learned assessing officer has reason to believe that sum received in assessment year 2004 – 05 is also not genuine. For justifying the reopening of the assessment for assessment year 2004 – 05, she extensively referred to the assessment order for assessment year 2005 – 06 where the complete status of the issue of zero coupon unsecured fully convertible bonds issued by the company to these non-descript companies is available. It is further stated that out of these, there are allotments to some of the companies who are proved accommodation entry providers. She therefore stated that issue is squarely covered against the assessee by the decision of the honourable Supreme Court applied by the learned CIT – A. She further stated that there is a tangible material coming into the possession of the assessing officer and therefore he has a reason to believe that income of the assessee has escaped assessment. Therefore, she submitted that no fault could be found with the assessing officer in reopening of the assessment. She further stated that issue is squarely covered in favour of the revenue by the decision of the honourable Supreme Court in case of NRA Iron & steel Co Ltd and of Honourable Delhi High Court in case of NDR promoters Ltd.

17. We have carefully considered the contentions of the learned departmental representative as well as the orders of the lower authorities.
18. First we come to the appeal of the assessee wherein there is a challenge to the action of the reopening of the assessment confirmed by the learned CIT – A as per ground number 1 of the appeal. Admittedly in the present case the assessee has filed the return of income but it was not selected for scrutiny but was accepted u/s 143 (1) of the income tax act. The first challenge is with respect to that there is no material based on the belief could be formed and there is an escapement of income. In the present case

the learned assessing officer reopened the case of the assessee has a specific information from the investigation wing was received that assessee has taken a common accommodation entries and introduce the amount by way of paying cash. With respect to the issue of unsecured 0% fully convertible bonds issued by the assessee, it was thoroughly examined by the learned assessing officer for assessment year 2005 – 06 while passing an order u/s 143 (3) on 31/12/2007 wherein it was found that identity of the depositor and their creditworthiness is full of doubt and the transaction is not genuine. Therefore in the form of information received by the assessing officer while making an assessment of the assessee for assessment year 2005 – 06, he received a tangible information with respect to escapement of income for assessment year 2004 – 05, therefore, reopening for assessment year 2004 – 05 cannot be said to be without any material. The learned assessing officer therefore has reason to believe about the escapement of assessment. Therefore, there is a tangible material in possession of the assessee. It has also live link with the information and the formation of the belief. The reasons recorded by the learned assessing officer also a specific, definite, and relevant to the matter under dispute. The learned CIT – A has dealt with this issue in paragraph number 7-16 of his order. Further, the reasons recorded by the assessing officer were given to the assessee. The assessee also raised an objection, which was also dealt with by the AO. The learned CIT – A relying on decision of the honourable Supreme Court in case of assistant Commissioner of income tax vs Rajesh Javari Stock Brokers private limited 291 ITR 500, Raymond Wollen Mills Limited V ITO 236 ITR 34 held that issue of notice u/s 148 in the present case is justified. We do not find any infirmity in the order of the learned CIT – A with respect to the reopening of the assessment as tangible material was received from the investigation wing. In view of this ground number one of the appeal of the assessee is dismissed.

19. Ground number 2, 5 and 6 are general in nature and therefore same are dismissed.
20. Ground number 3 is with respect to the confirmation of addition of INR 20,000,000, ground number 4 is with respect to the addition of INR 3,750,000 on account of sale of shares.

21. With respect to the addition of INR 3 750000/- on account of sale of shares through MKM Finsec private limited, the director of the said company Mahesh Bertha has categorically stated before the additional director of income tax in his statement that the above company is engaged in providing accommodation entries only and has not carried on any business of purchase and sale of shares. The assessee could not prove above statement incorrect. The assessee neither produced any of the directors of the above company as well as justified the transactions of sale of shares through above company. It merely produced the paper documents, which were not at all relevant as the inquiries conclusively showed that complete transaction is an accommodation entry. In view of this we do not find any infirmity in the order of the learned CIT – A in confirming the above addition u/s 68 of the income tax act. Accordingly, ground number 4 of the appeal of assessee is dismissed.
22. With respect to an addition of rupees one crore on account of sale of shares through CV metal (Haryana) Ltd and issue of rupees one crore of 0% fully convertible bonds to B Finlease Private Limited , the learned CIT – A confirmed the above addition as Mr. Surinder pal Singh, director of above companies stated on oath before the additional director of income tax on 24/12/2003 and 30/12/2003 that he is director of these company and these companies are not engaged in doing any actual business except providing the accommodation entries. He named both the above companies as companies owned by him. These are all those companies from where the trail of cash deposit is found which after rooting through one or two into major concerns found its way back to the books of the assessee company. To repudiate the statement made by Mr. Surinder pal Singh, assessee never produced this gentleman before the assessing officer. Summons issued u/s 131 of the income tax act were never complied with. The paperwork produced was merely eyewash. The AO also conclusively proved the financial trail of deposit of cash resulting into credit in the books of accounts. With respect to the genuineness of the transaction of 0% fully convertible bonds in the assessee, company was not at all proved by the assessee. If the financial of the assessee for assessment year 2004 – 05 are noted it will show that it has filed return of income at rupees nil. It has a

gross total income of INR 1 03212 in this year and INR 1 1124 in earlier years. It does not own a single rupee in fixed assets. It has share capital of only INR 3,832,000/- its reserves and surplus is a meager sum of INR 1 13488/- during the financial year ended on 31<sup>st</sup> of March 2004, it has raised unsecured loan of INR 29.10 crores. Out of the above sum, assessee has made share application money, which is pending for allotment of INR 19.10 crores in other companies, the list of such companies was not at all submitted by the assessee. INR 100,000,000 was given to loan to JCT Electronics Ltd. The above company in the earlier year made investment in private limited companies of a sum of INR 5 0.50 lakhs, on which neither there is any dividend income. Surprisingly although shares have been sold during the year but there is no capital gain or loss arising to the assessee. Looking at the substance of the assessee company it has only incurred expenditure of INR 6000 as filing fees, INR 1220/- as bank charges and INR 11 020 as audit fees. It does not have any employee, as there is no salary expenditure incurred by the assessee. It does not have any telephone facility; it does not have any investment consultancy expenditure that how this company has generated 29,10,00,000 towards 0% fully convertible unsecured bonds. It is rather unusual that somebody will invest in such a company where there is no security of investment, no interest in return of investment and convertible bonds (not explained what are the terms and conditions of conversion of such bonds and into equity shares after 15 years from the date of allotment at the price determined by the company). No documents with respect to issue of 0% fully convertible unsecured debenture bonds were produced before any of the authorities. No intimation/approval/registration of the reserve bank of India for issue of such a kind of security was also shown. There is also a change in the board of directors of the company where three directors retire and three directors were inducted. Thus, it clearly shows that by the change of the directors the control and management of the whole fund goes where under whose control. The note number IV of schedule 8, reads as under :-

The company has been assigned the right of INR 19.10 crores (given as share application money to JCT Electronics Ltd) by APJ financial services private limited and in

consideration thereof 0 coupon bond aggregating to INR 19.10 crores have been issued to APJ financial services private limited. Shares are yet to be allotted by JCT Electronics Ltd against this advance.”

It is further to be noted that in assessment year 2005 – 06, the total unsecured 0 coupon fully convertible bonds issued by the company reached at the height of rupees 44.10 crores. Thus, it is apparent that financials of these assessee companies, the business model of the assessee company, the change in the directors of the assessee company, allegation of accommodation entry providers with respect to some of the subscribers of these bonds clearly makes the above transaction as nongenuine. This fact itself makes the whole transaction shrouded by ingenuity. Substantially, the assessee has failed to show the creditworthiness of the depositors and genuineness of the transaction. In view of this ground number 3 of the appeal challenging the confirmation of the addition of INR 20,000,000 by the learned CIT – A on account of sale of shares of Rs 1 crore through CV metals (Haryana) Ltd and funds received from B Finlease private limited of allotment of 0% unsecured fully convertible bonds is dismissed.

23. Connected to this is the solitary ground of appeal of the learned assessing officer against the deletion of the addition of INR 80,000,000. The fact shows that the learned assessing officer has made an addition of INR 90,000,000 on account of unsecured 0 % coupon Convertible bonds u/s 68 of the income tax act. Main reason for making such addition is that there was no response received of notices issued u/s 133 (6) except in 1 of the cases, directors of the said companies were not produced for verification, huge cash deposits were there in the bank accounts of the companies which contributed money to the assessee through the layers , transfer of funds and arranged the fair, abnormal features noticed in the bank accounts of the investing companies, the companies are involved in providing accommodation entries and therefore the transactions are not genuine. Over and above the burden cast on the assessee was not discharged as provided u/s 68 of the income tax act. According to the assessing officer furnishing of the permanent account number as well as the assessment particulars were not sufficient. The learned CIT – A has deleted the addition

of INR 80,000,000 for simple reason that the companies who invested in the zero coupon bonds were not involved in providing accommodation entries. Further, the assessee has produced the income tax return acknowledgement, board resolution, balance sheet and profit and loss account, bank statement, affidavit and confirmation letter of those companies. Admittedly notice issued under section 133 (6) to these parties were not responded except one party. For assessment year 2004 – 05, the learned CIT – A simply relied upon the decision for assessment year 2005 – 06 in case of the assessee. Further, that year it is apparent that in para number 6 the learned AO has noted that income plans of summons u/s 131 only one party APJ financial services private limited respondent. No parties responded at all. It was also noted that parties were not available at the address given in therefore the summons remains uncertain. In para, number 7 of the order for assessment year 2005 – 06 the assessing officer has given the detailed status of the summons issued to all those parties. Except party at serial number 1 all the 7 parties' report of the inspector shows that, no such party was existing at the given address. The assessee was asked for when the new addresses were furnished the AO on 7/12/2007 at issued summons to all these parties. The AO noted that five parties were not at all available at the given address and all the notices u/s 131 was served upon at the address of Rabik exports Ltd (this is the same party, which has been named by Mr. surrender pal Singh Arora stating that he is engaged in the business of providing only accommodation entries). The summonses were also sold only on one-person surrender pal Singh Arora. In one of the party, the notices were served by a fixture. The personal deposition of these parties asked, all the parties filed a reply without any personal disposition. The Rabik exports Ltd invested rupees one crore. This party has shown a loss of rupees to 8815/- for assessment year 2005 – 06 and having a total turnover of only INR 3 25647/-. The assessing officer further asked for the bank statement, source of investment and details of investment along with the complete books of accounts as well as the production of principal officer of that company. No compliance was made. The bank statement was called for by issuing summons u/s 131 to the bank are. On the bank statement verification, he noted that there is a

huge influence of province on daily bases, which does not coincide with the income as well as turnover of the company. Similar is the fate with the other company. In 1 of the company Polo Leasing finance Ltd same state of affairs were found no details were furnished including the directors were also not produced. Even then summons issued to the bank are also showed the unusual transactions of cheque that were issued prior to the opening of the bank account. Even the company was not found First H Finance Ltd at the given address. The bank account showed over and above the other detail only the transfer entries from the other parties. In Surya Udyog, limited same facts prevail. In case of Arun investment Ltd, dignity finvest Ltd, UP electrical Ltd, no person was found at the given address. Therefore, the learned assessing officer clearly held that identities, creditworthiness of these companies were not established. Naturally, when these two ingredients are not satisfying the issue of genuineness does not arise at all. While dealing with the whole issue the learned CIT – A in page number 19 of his order for assessment year 2005 – 06 has held that in case of Arun Finvest Ltd who has invested INR 5,000,000/- has held that that company has paid up capital of INR 6,000,000 and reserves and surplus of INR 4,000,000 therefore the company is aggregate strong position of funds of rupees one crore. The learned CIT – A also noted that there is no deposit of cash in the bank account of that company. Therefore, it was held that capacity and creditworthiness of the party was established. With respect to the other parties, the similar observations are given by CIT appeal. It is interesting to note that in of the case the genuineness of the above investment made by this company in the assessee company was talked about by the CIT appeal. There is no whisper that the companies were having the small means have invested in a financial asset of a company which does not justify such a huge investment. Further, by an unknown person who invests in the company like Assessee Company at a 0% rate of return, there is no security of the investment as these are the unsecured financial asset. There is no certainty at what rate they would be converted into the equity shares. There is no reference that why a person would invest for 15 years to get a share of a non-descript company like assessee. He did not take into consideration that there is a change of director. He also did

not look at that how the assessee got hold of all these companies and garnered such a huge fund when assessee itself is a non-descript company. The learned CIT – A also conveniently ignored that Rabik export Ltd was named as accommodation entry provider by Mr. Surrender pal Singh Arora. Despite this, he did not confirm the addition of investment made by this company. The learned CIT appeal did not whisper about the receipt of summons issued to all these company received by Mr. surrender Pal singh Arora. Further, the learned CIT – A did not beat with the finding of the learned CIT – A none of the parties was produced before the assessing officer for examination. Even the CIT appeal did not examine any of the parties before deleting the addition. No explanation is forthcoming from the side of the assessee even before the CIT appeal that how the parties did not respond to the summons issued by the learned assessing officer when they have invested such units with the assessee without having any return. The learned CIT – A closed her eyes to the startling facts narrated by the assessing officer and superfluously relied upon the several decisions without looking into the facts and in those cases and the facts of the assessee's case. The claim of the assessee that it had produced evidence before the Assessing Officer during the scrutiny assessment proceeding that the said amount had been received as share application money from those companies and they had confirmed having invested in the assessee company for allotment of shares/ Bonds, is neither here, nor there. This is for the reason that one part of any such transaction would invariably be conducted through banking channels and would be duly recorded , real test is whether the same is genuine or not. That is how money would be laundered. Thus, the fact that the monetary transaction has been conducted through a banking channel, and is acknowledged, does not render any evidence with respect to creditworthiness and genuineness of the transaction in cases where the transaction itself is shrouded with ingenuity of a financial instrument for which the money is deposited in the books of accounts of the assessee company. The transactions shows that the money deposited by these parties would never be returned in any form with any reward to all these companies. The money has gone directly into the pocket of this assessee company and the control has rested with the

new directors who have been appointed. The honourable Delhi High Court had an occasion to consider the issue of taxability u/s 68 of the income tax act in 102 taxmann.com 182 in principal Commissioner of income tax vs NDR promoters private limited in the present case the summons were received by 1 of the accommodation entry provider Mr. surrender pal Singh Arora who confirmed that the parties are operated by him. Incidentally, he also has received the summons on behalf of all these companies. Thus, the facts of the case before us is similarly placed then the issue decided by the honourable Delhi High Court. Honourable Supreme Court had also decided the identical issue in principal Commissioner of income tax vs NRA Iron and steel private limited in 103 taxmann.com 48 where the assessee failed to establish the creditworthiness of the investors, the addition u/s 68 with respect to the share capital at a premium was confirmed. The facts in this case before us also show that some of the companies were non-existent, the genuineness of the transaction was completely found doubtful. The investors companies have filed the negligible taxable income return and they do not have financial strength to invest for such a long time, in an unsecured financial asset, without having any sight of return at all. In view of this, we allow ground number 1 and 2 of the appeal of the learned assessing officer where the learned CIT – A has deleted the addition of INR 80,000,000. Accordingly, I to #901/del/2009 filed by the learned assessing officer is allowed.

24. In the result for AY 2004-05, ITA number 03/05/2006/del/2009 filed by the assessee is dismissed and ITA number 03/09/2001/del/2009 filed by the learned assessing officer is allowed.

25. The revenue has raised the following grounds of appeal in ITA No. 2708/Del/2008 for Assessment Year 2005-06:-

*“On the facts and in the circumstances of the case, the ld CIT(Appeals) has erred in deleting the addition of Rs. 7,50,00,000/- made on account of unexplained cash credit u/s 68 of the IT Act, 1961 made by the AO.”*

26. As we have extensively dealt with the order of the learned CIT – A for assessment year 2005 – 06 while deciding the appeal of the learned assessing officer and assessee on the issue of taxability of the sums received u/s 68 of the income tax act on account of 0% unsecured convertible bonds,

for similar reasons, we allow the solitary ground of appeal of the assessing officer for assessment year 2005 – 06 in ITA number 2708/del/2008.

27. In the result ITA number 2708/Del/2008 of the learned assessing officer is allowed.

Order pronounced in the open court on 25/11/2019.

Sd/-  
(K.N.CHARY)  
JUDICIAL MEMBER

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 25/11/2019

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
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	02.12.2019
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	