



ITA No.5736/Mum/2018
Ashiana Home Marts Private Limited
Assessment Year-2009-10

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI C.N. PRASAD, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.5736/Mum/2018
(निर्धारण वर्ष / Assessment Year:2009-10)

ITO Ward-9(1)(4) R.No.260A, 2 nd Floor Aaykar Bhawan, M.K.Road Mumbai – 400 020	बनाम/ Vs.	Ashiana Home Marts Pvt. Ltd. Plot No. 209, Sher-e-Punjab Society Mahakali Road, Andheri (East) Mumbai – 400 93
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAHCA-1986-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Michael Jerald- Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Satish Mody–Ld. AR

सुनवाईकीतारीख/ Date of Hearing	:	14/11/2019
घोषणाकीतारीख / Date of Pronouncement	:	05/12/2019

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. As per the provisions of Section 68 of the Income Tax Act, 1961, where any sum is found credited in the assessee’s books and assessee offers no explanation about the nature and source thereof or the explanation furnished is found to be unsatisfactory, the sum so credited



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may be charged to Income-Tax as the income of the assessee of that previous year. A proviso has been inserted to the said section by Finance Act, 2012 w.e.f. 01/04/2013 to provide that where the assessee is a company and the sum so credited consists of share application money, share capital, share premium etc., the explanation furnished by the assessee shall be deemed to be not satisfactory unless the person in whose name such credit is recorded also offers an explanation about nature and source of sum so credited and such explanation is found to be satisfactory. However, this proviso is applicable only from AY 2013-14 and the same is not retrospective in nature as held by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]**.

2. It is settled position of law that to avoid the rigors of Section 68, the assessee must prove the identity, creditworthiness of the lenders / investors to advance such monies and genuineness of the transactions. Once these three ingredients are fulfilled by the assessee, the primary onus casted upon him, in this regard, could be said to have been discharged and accordingly, the onus would shift upon revenue to dislodge the assessee's claim by bringing on record material evidences and unless this onus is discharged by the revenue, no addition could be sustained u/s 68. The Hon'ble Supreme Court in the case of **Lovely Exports P. Ltd. [319 ITR 5]**, dismissing revenue's appeal, observed as under: -

2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged



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bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed.

The ratio of said decision has subsequently been followed by various judicial authorities in catena of judicial pronouncements. The said decision has been followed by Hon'ble Bombay High Court in the case of **CIT Vs. Gagandeep Infrastructure Private Limited [80 Taxmann.com 272]** & subsequently in **CIT Vs. Orchid Industries Private Limited [88 Taxmann.com 502]**. The Hon'ble Delhi High Court followed the said decision in **Pr. CIT V/s Adamine Construction Pvt. Ltd. [107 Taxmann.com 84]** against which revenue's Special Leave petition was dismissed by Hon'ble Supreme Court reported at 107 Taxmann.com 85. Similar is the position of decision of Hon'ble Delhi High Court rendered in **Pr. CIT V/s Himachal Fibers Ltd. [98 Taxmann.com 72]** against which revenue's Special Leave Petition was dismissed by Hon'ble Supreme Court reported at 98 Taxmann.com 173. Similar is the decision of Hon'ble High Court of Madhya Pradesh in **Pr. CIT V/s Chain House International Pvt. Ltd. [98 Taxmann.com 47]** against which revenue's Special Leave Petition has recently been dismissed by Hon'ble Supreme Court on 18/02/2019 reported at 103 Taxmann.com 435.

3. Keeping abovesaid legal position in mind, we find that the revenue is under appeal before us for Assessment Year [in short referred to as 'AY'] 2009-10 contesting the order of Ld. Commissioner of Income-Tax (Appeals)-16, Mumbai [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-*



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16/ITO-9(1)(4)/IT-365/2015-16 dated 30/07/2018 on following grounds of appeal: -

1. Whether on the facts and in the circumstances of the case in law, the Ld. CIT(A) erred in deleting the addition of Rs 3,50,00,000/- under section 68 of the I.T T Act without considering the facts and circumstances of the case and also considering the genuineness, identity and creditworthiness of various transactions made by the assessee.

2. Whether on the facts and in the circumstances of the case in law, the Id. CIT(A) erred in deleting the interest income amounting to Rs.20,35,599/ - made under the head income from other sources as against the business income claimed by the assessee.

The appellant prays that the order of the CIT(A) on the above ground above set aside and that of the A.O. be restored.

4.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in the business of construction was subjected to an assessment u/s 143(3) r.w.s. 147 on 30/03/2015 wherein the income of the assessee was determined at Rs.370.35 Lacs after certain additions as against returned income of Rs.17.79 Lacs e-filed by the assessee on 29/09/2009 which was processed u/s 143(1).

4.2 Subsequently, the case was reopened as per due process of law vide issuance of notice u/s 148 dated 28/03/2014 upon formation of belief that the year under consideration was the first year of business operations and the assessee was in receipt of share capital and share premium which was required to be examined. In response, the assessee offered the original return of income filed by it on 29/09/2009 and demanded copy of reasons leading to initiation of reassessment proceedings. The same were duly supplied in due course of time. The statutory notices u/s 143(2) & 142(1) were also issued wherein the assessee was required to file the requisite details / information / documentary evidences etc.



4.3 Upon perusal of financial statements, it transpired that the assessee had issued 437500 equity shares of face value of Rs.10/- each at a premium of Rs.70/- per share during the year to as many as 12 Corporate entities, the details of which has already been extracted in para-7 of the quantum assessment order. Accordingly, the assessee was required to prove the identity of the investors, their respective creditworthiness and genuineness of the transactions. In defense, the assessee furnished various documents pertaining to assessee as well as investor entities viz. Copy of Annual Return, Copy of Income Tax Return, Copies of bank statement, Return of Allotment, Copies of PAN card etc. to demonstrate the fulfillment of primary ingredients of Sec. 68. The attention was drawn to the fact that most of the investor entities were engaged in trading / manufacturing activities and had substantial reserves to make the stated investments in the assessee company. It was further submitted that the money was received through proper banking channels.

4.4 However, notices issued u/s 133(6) to investor entities to file the requisite details remained un-served in most of the cases. The said fact was confronted to the assessee and the assessee was directed to produce the above parties and file necessary details to substantiate the transactions. On the basis of documents furnished by the assessee, Ld. AO tabulated the income declared by the investor entities for the year along with balances held by them in securities premium account and quantum of investments made by them, which has already been extracted in para 7.9 of quantum assessment order. On the basis of said tabulation, Ld. AO observed that all



the entities reflected meagre income and all the share subscribers have shown to have receive high share premium in their accounts which was used to make further investment in other entities. Accordingly forming a belief that the said concerns were used to pump and channelize the unaccounted money of the assessee, the said amount of Rs.350 Lacs was added to the income of the assessee u/s 68 as unexplained cash credit.

4.5 The second addition of Rs.20.35 Lacs was on account of the fact that the assessee earned and credited certain interest income of Rs.20.35 Lacs on fixed deposits and claimed operating expenditure of Rs.2.55 Lacs against the same. In other words, interest income was offered as business income. However, noticing that the assessee was not in the business of finance and investments and therefore, the interest income could not be said to have been derived from the business activity, Ld. AO proceeded to assessee the same as *Income from Other Sources*. Consequently, the business expenditure of Rs.2.55 Lacs was disallowed since there was no business activity carried out by the assessee and interest income on fixed deposits was assessed as income from other sources.

5.1 Aggrieved, the assessee contested the stand of Ld. AO by way of elaborate written submissions before learned first appellate authority, the relevant portion of which has already been extracted in the impugned order in para-5. The assessee submitted that the promoter of the assessee company had rich experience in property market and based on this experience, goodwill and reputation, assessee's Board of directors decided to issue shares at a premium of Rs.70/- per share. The said proposition was



floated to many companies and few companies agreed to subscribe to share capital at a premium. The attention was drawn to the fact that in support of the stated transactions, the assessee had furnished copies of PAN Card of share applicants, Share Application forms, copies of respective bank statements of the shareholders, audited financial statements, copies of Income tax return, confirmation letters etc. which would demonstrate the fulfilment of primary ingredients of Sec.68. The attention was also drawn to the fact that Ld. AO did not find any incidence of cash deposits or cash withdrawals in the bank accounts of the share subscribers. As against the evidences produced by the assessee, Ld. AO did not bring on record any material to controvert the documents furnished by the assessee to demonstrate the identity of the investors, their creditworthiness and genuineness of the transactions and therefore, the additions u/s 68 were not justified. The case laws being relied upon by Ld. AO were factually distinguished. Reliance was placed on various favorable decisions rendered by Hon'ble High Courts / Tribunal under similar factual matrix.

5.2 The learned first appellate authority, in the light of assessee's submissions, deemed it fit to call a report from Ld. AO by making further inquiries. Pursuant to the said directions, Ld. AO submitted his report on 09/06/2017. During remand proceedings, Ld. AO issued summons u/s 131 to all the investor entities and conducted field inquiries to ascertain their existence. All the summons was duly served and all the 12 entities submitted confirmations along with various documents viz. ledger



confirmation, bank account extracts, copies of Income Tax returns, financial statements, auditors report etc.

5.3 To make further inquiries & verifications, Ld. CIT(A) issued letters to assessing officers of all the investor companies to revert with the status whether these entities were filing their tax returns and / or were classified as shell companies by the department. In response, communication was received in respect of 10 entities wherein it was confirmed that these companies /entities were regularly assessed to tax. No adverse comments were received from any of the assessing officer. None of the assessing officer stated that details filed by the assessee or the investor entities, in response to notice u/s 133(6), were factually not correct.

5.4 In the light of above factual matrix, Ld. CIT(A) examined the financials of all the investor companies and found that all the entities were assessed to tax and had sufficient net worth to make further investments in the assessee company. The findings of Ld. CIT(A), with respect to each of the entity has been given in para 6.1.6 of the impugned order.

5.5 Finally, Ld. CIT(A) examined the factual matrix at the threshold of primary ingredients of Section 68 and concurred with assessee's stand by observing as under: -

6.1.7 Genuineness:

During appellant proceedings, it was contented that all the amounts related to share capital with premium were received from 12 investee companies through banking channels. It was submitted that during the previous year relevant to the assessment year under appeal the appellant company received through banking channel sum aggregate to Rs.3,50,00,000/- from 12 investee companies on account of share application / allotment money in consideration for an allotment of 4,37,500/ - fully paid up equity shares at a premium of Rs.70/ - each. All the transactions have been routed through the banking channels and necessary bank statements were produced during appellant proceedings



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as well as assessment proceedings as acknowledged by the AO in the assessment order. The AO himself acknowledged that relevant bank statements along with audited accounts and confirmation and PAN numbers of the investee companies were received in response to notices u/ s.133(6) from the 12 investee companies. Since both the debit and credit entries were carried out through cheques, and furthermore under remand all the correspondences and confirmations of the investee companies have confirmed under oath and/ or in writing the investment in the assessee company, therefore, genuineness of transaction cannot be doubted and the onus regarding genuineness of transaction stands discharged. The AO has relied on the ruling of the Apex Court in N. Tareka Properties Investment Pvt Ltd [2014] 51 Taxmann.com 387 regarding genuineness of the investment however I find the same is distinguishable on facts of the case as in that case it was held that subscribers bank account statement were forged and fabricated as there were corresponding cash deposits before issue of share application cheques. False evidence has been adduced to give colour of genuineness to bogus entries through bank accounts and deposits which were mostly by cash, assessing officer was justified in making addition u/s. 68. However nothing of such forgery and cash deposit has been pointed out in present case.

6.1.8 Identity:

The total sum of Rs. 3,50,00,000/- was received from 12 companies. All the companies are registered income tax payers and their PAN along with copy of IT. Returns have been submitted during assessment proceedings and also in response to section 133(6) notices. All the 12 companies are regularly filling annual returns with the ROC. The AO has relied on rulings of the Hon'ble High court in CIT vs. Empire Buildtech Pvt Ltd [2014] 366 ITR 110 wherein it was 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 and entities. The facts of the sale. case are distinguishable in the present case as none of the subscriber are individuals and all of them are corporate entities assessed to tax as confirmed by their Assessing Officer and are filing their Annual returns and Financials with ROC and none of their AO's have indicated that such entities are dubious entities on specific enquiry by the undersigned from them. Further the reliance of the AO for an adverse Inference on identity based on non-appearance of parties in response to summons u/s. 131, it is observed that in the present case all the notices u/ s. 133(6) and u/s. 131 have been served on the investee's and have been responded in confirmation by them. In fact subsequent decision in Five Vision the Hon'ble Delhi High court has held that non- appearance of parties to notices u/s 133(6) cannot be compel AOs to draw adverse opinions.

6.1.9 Further in its recent judgement the Hon'ble Jurisdictional Bombay High Court 20.03.2017 in case of CIT vs. Gagandeep Infrastructure Pvt Ltd wherein the Hon'ble Court has held that-

"In view of the matter the three essential tests while confirming the section 68 laid down by the court namely the genuineness of the transaction, identity and the capacity of the investor have all been examined by the impugned order of the Tribunal and on fact it was found satisfied. Further it was a submission on



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behalf of the Revenue that such large amount of share premium gives rise to suspicion on the genuineness (identity) of the shareholders, i.e., they are bogus. The Apex Court in a case in this context to the pre-amended section 68 has held that where the revenue urges that the amount of share application money has been received from bogus shareholders then it is for the Income tax Officer to proceed by reopening the assessment of such shareholder and assessing them to tax in accordance with law. It does not entitle the revenue to add the same to the assessee's income as unexplained cash credit. [Para 31]"

Hence, following the judgement of Hon'ble Jurisdictional High Court and that of the full bench of the Hon'ble Delhi High Court in Devine leasing (SLP dismissed) and Sophia Finance Ltd identity of the investee shareholders stands proved.

6.1.10 Creditworthiness:

At page 15 of assessment order and the inquiry report the AO has also disputed the creditworthiness of the investee companies stating that the investee companies have no networth of their own. I find that the AO has grossly erred in these observations. In his remand report the AO himself has calculated a chart of securities premium in these companies and corresponding investments. On perusal of the balance sheets of these companies and the above-mentioned chart it is quite evident that these companies have sufficient net worth of their own. The Ld. AO grossly erred in coming to the conclusion that securities premium is not to be included in the net worth for calculating creditworthiness. The Hon'ble Delhi High Court in CIT vs Mayawati has categorically held that the share premium has to be included in net worth calculation. Further, transactions are duly reflected in the balance sheet and accounts of the investee companies. The Ld. AO had also note observed any defect in the balance sheet or the audited accounts of investee companies. Therefore, without finding any specific deficiency in the balance sheet and accounts of subscribers of shares, creditworthiness cannot be doubted.

6.1.11 The issue regarding additions u/ s.68 on share application money has been considered by various Hon'ble courts. Some of the relevant findings of Courts are considered as under: -

a. In CIT Vs. Gangeshwari Metal P. Ltd. 361 ITR 10 (Delhi) the Hon'ble High Court of Delhi has held that the genuineness of the transactions is established as the transactions are routed through banking channels. It was seen that the share application money was received through account payee cheques, detail of which had been filed by the assessee by filing the copy of the bank account of the share applicants. Thus where the return of income was filed by the creditors of the assessee and was accepted by the AO and payments were through account payee cheques the genuineness of the transaction cannot be doubted. The revenue could not prove that the money received by the appellant in the form of share application has come from its own sources. No evidences regarding this have been brought on record by the AO.

b . In CIT Vs. Divine Leasing & Finance Ltd. 299 ITR 268 the Hon'ble Delhi High Court held proof can seldom be discharged to the hilt by the assessee. If the AO harbors



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doubts of the legitimacy of any subscription he is empowered, rather 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 suspicions and treat the subscribed capital as the undisclosed income of the company. If relevant details of address and identity of the subscribers are furnished to the department along with copies of the shareholders register, share application forms, share transfer register etc. it would constitute acceptable proof or explanation by the assessee.

c. In *Hindustan Inks & Resins Ltd. vs. Dy. C.L.T. 60 DTR 0018 (2011)* the Hon'ble Gujarat High Court has held as under: "From the concurrent findings recorded by the authorities below, it is apparent that none of the parties have recorded any findings to the effect that the identity of the depositors had not been established by the assessee. The case of the respondent is that the assessee has failed to explain the source of such cash as well as creditworthiness of the, deposits. It is not the case of the revenue that the subscribers are bogus. The case of the revenue is that the source of such cash as well as creditworthiness of the depositors has not been explained. In the circumstances, the department is free to proceed to reopen the individual assessments of the deposits named by the assessee, however, under no circumstances, can the amount of share capital be regarded as the undisclosed income of the assessee."

d. In *CIT Vs. KC. Fibres Ltd. in IT Appeal No. 701 of 2009* the Hon'ble Delhi High Court held that in so far as assessing company is concerned, it is not disputed that money was paid to it, towards the aforesaid share application money, by no means of cheques. It is not for the assessing company to probe as to the source from where DP collected the aforesaid money. It was for the AO, in these circumstances to inquire into the affairs of DP which is independent company in as' much as no finding is arrived at by the AO that the two companies are umbrella companies or have any relationship with each other.

e. In *CIT Vs. STL Extrusion (P) Ltd. 333 ITR 269* the Hon'ble Madhya Pradesh High Court held that though it is the duty of the assessee to establish the genuineness of the credits but in the present case the assessee has duly established the identity and source of credits. The Tribunal has also held that once the identity and source of the subscribers of the shares is established no addition can be made u/ s.68. The assessee having duly furnished the name, age, address, date of filing the application of shares, number of shares of each subscriber there was no justification for the AO for making the impugned addition because once the existence of the investors/ share subscribers is proved, onus shifts on the revenue to establish that either the share applicants are bogus or the impugned money belongs to the assessee itself After filing of the affidavits the said subscriber the appellant at no stage of the proceedings sought any opportunity to rebut the said affidavits.

f. In *CIT Vs. Prayag Hospital & Research IT Appeal No.917 of 2010* the Hon'ble Delhi High Court held that shareholders of the assessee company having appeared before the AO and furnished affidavits along with supporting documents confirming their investment in the assessee, identity of the creditors is established and therefore, addition cannot be made in the hands of the assessee.



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g. In CIT Vs. TDI Marketing (P) Ltd. IT Appeal No.340 of 2009 the Hon'ble Delhi High Court held that assessee company having furnished complete details of shareholders name, addresses, PAN and bankers and they having confirmed the investment and the AO having not given his specific comments on his enquiries pertaining to them except for nine shareholders, addition u/ s.68 cannot be sustained.

h. In CIT vs. Gangour Investment Ltd. 335 ITR 359 (2011) the Hon'ble High Court of Delhi held that assessee company having filed the subscription forms of the investors, including IT Ltd., a group company, containing details and information with respect to their addresses as well as PAN; thereby establishing their identity and also supplied a copy of the statement of bank accounts of TT Ltd., it has discharged its onus in respect of veracity of the transaction and therefore, the addition u/ s.68 made by the AO in respect of the impugned investment made by TT Ltd. has been rightly deleted.

6.1.12 In the instant case, having regard to the documents furnished before me, I am convinced about the identity of the investor, genuineness of transaction along with credit-worthiness of the shareholders and the share subscription money paid by them duly reflected in the bank account of the Appellant assessee company. Hence, the facts do not warrant an addition under section 68 of the Act. Further, in the context of share capital received from alleged bogus shareholders, the Hon'ble Supreme Court has unequivocally laid down the legal position as to whether additions can be made under section 68 of the Act, as under in case of Lovely Exports (P) Ltd. 216 CTR 195:

"If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the Assessing Officer, then the department is free to proceed to reopen their individual assessments in accordance with law but this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company. "

6.1.13 From the details filed, the appellant had not only proved the genuineness of transaction and identity of the investors but it has also proved the creditworthiness of investors. In view of these facts and respectfully following various judgements of Hon'ble ITAT and Hon'ble Courts as discussed above, appeal of the assessee is allowed and addition of Rs.3,50,00,000/- made by the AO u/s.68 of the Act is deleted.

It is evident that learned first appellate authority, after careful consideration of factual matrix, arrived at a conclusion that the assessee was successful in establishing the identity of the investor companies, the investors had adequate net worth to make further investments and there was no adverse material on record to doubt the genuineness of the stated transactions and therefore, the impugned additions as made by Ld. AO u/s 68, were to be deleted.



Aggrieved the revenue is under further appeal before us by way of ground no.1.

5.6 Regarding interest income, it was held the assessee earned interest income only by parking of surplus funds in treasury operations and therefore, the said income was rightly offered as business income. Regarding claim of business expenses of Rs.2.55 Lacs, it was held that any expenditure to maintain and complying with statutory laws would form part of business activity and the same would be allowable irrespective of the fact that no business was carried out by the assessee during the year under consideration. Further, the expenditure was not found to be personal in nature and therefore, the same was allowable to the assessee.

It is evident from ground no.2, the revenue is aggrieved by the fact that stated income has been held to be business income as against *Income from other sources* as assessed by Ld. AO. The revenue has not challenged the allowance of expenditure by learned first appellate authority.

6. We have carefully heard the arguments advanced by respective representatives and perused relevant material on record and deliberated on various judicial pronouncements as cited before us.

7. Upon careful consideration of factual matrix as enumerated in the preceding paragraphs, it is quite evident that the assessee was successful in discharging the primary onus of demonstrating the fulfilment of primary ingredients of Section 68. The identity of the investor entities was established by the fact that all the entities were regular in filing their respective tax returns and assessed to Income Tax. Regarding



creditworthiness, it is undisputed fact that all these entities had adequate reserves in the financial statements to make further investments in the assessee company. In fact, the said findings have been recorded by learned Assessing officer himself. No adverse material is on record to doubt the genuineness of the transactions. Therefore, we find that the assessee had placed on record sufficient documentary evidences to discharge the primary onus casted upon him and it was obligatory on the part of the revenue to controvert the same. However, no such material has been placed by revenue which would lead to a conclusion that assessee's unaccounted money was routed in the accounts by way of *Share Application Money*. The summons issued by Ld. AO u/s 131 were duly responded to by the investor entities and ledger confirmations were also filed in support of the transactions. There are no allegations of immediate cash deposits in the bank accounts of investor entities and nothing on record would suggest any cash got exchanged between the assessee and the investor entities. Therefore, on the basis of stated factual matrix, it could safely be concluded that the assessee was successful in proving the identity of the investors, creditworthiness of the entities and genuineness of the transactions. Hence, keeping in view the ratio of judicial pronouncements as enumerated by us in the opening paragraphs, the conclusions drawn by learned first appellate authority could not be faulted with and we find no reason to interfere with the same.



8. The revenue has relied upon the recent judgement of Hon'ble Apex Court rendered in **PCIT Vs. NRA Iron & Steel Pvt. Ltd. [412 ITR 161]** which we have carefully studied. Upon perusal, we note certain distinguishing features vis-à-vis factual matrix of the present case. Upon perusal of para 3.7 & 3.8 of the said judgement, it is noted that Ld. AO had issued summons to as many as 19 investor entities but nobody appeared on behalf of the investor companies. The submissions were received through DAK only which created a doubt about the identity of the investor company. Further, Ld. AO independently got field inquiries conducted at the location of investor companies, the result of which has been tabulated in the said para. Notice was served on few entities but the same were not replied to. In few cases, the notices were returned back. Submissions were received in few cases though DAK wherein the company only provided the mode of investment but no reasons were supplied for paying a huge premium of Rs.190/- per share. Another striking feature was that most of the investors had reflected meagre income during assessment year under dispute. The two companies in Mumbai as well as Guwahati were found to be non-existent. With respect to Kolkata Companies, the response came through DAK only and nobody appeared. Further, the bank statements were not produced in most of the cases to establish the source of funds for making huge investments. However, the factual matrix, before us, in the present case is quite different. As noted in earlier paragraphs, the investor entities were assessed to tax and the assessee has discharged the initial onus of proving the identity of the investors, creditworthiness of the entities



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and genuineness of the transactions. Therefore, the ratio of aforesaid decision, in our respectful submission, do not apply to the facts of the case. Finally, on the facts and circumstances of the case, ground no.1 of the appeal stand dismissed.

9. So far as the head under which interest income would be assessable to tax is concerned, we would concur with the submissions of Ld. AO that the same was assessable as *Income from other Sources* since undisputedly, the said investments were out of surplus funds and the assessee was not engaged in the business of finance and investment. Therefore, we hold that the said income was rightly brought to tax by Ld. AO as *Income from other sources*. Ground No. 2 stand allowed.

10. The Ld. CIT(A) has allowed business expenditure of Rs.2.55 Lacs since they were stated to be incurred for maintaining the corporate status and for the purpose of statutory compliances. The revenue has not agitated the same before us and therefore, the said conclusion would require no adjudication from our side. The Ld. AO is directed to recompute the income of the assessee in terms of this order.

11. Resultantly, the appeal stands partly allowed in terms of our above order.

Order pronounced in the open court on 05th December, 2019.

Sd/-

Sd/-

(C.N. Prasad)

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/12/2019



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****PP,SPS/Sr.P.S. JaisyVarghese**

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**