

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No.5958/DEL/2014  
Assessment Year: 2011-12

Rosewood Buildwell P. Ltd., A-12, Swasthya Vihar, New Delhi.	vs.	ITO, Ward-15(4), New Delhi.
TAN/PAN: AACCR 9241D		
(Appellant)		(Respondent)

I.T.A. No.5411/DEL/2014  
Assessment Year: 2011-12

ITO, Ward-15(4), New Delhi.	vs.	Rosewood Buildwell P. Ltd., A-12, Swasthya Vihar, New Delhi.
TAN/PAN: AACCR 9241D		
(Appellant)		(Respondent)

Appellant by:	Shri P. Roy Choudhary, Adv., Shri Raj Kumar Gupta, CA and Shri Sumit Goel, CA		
Respondent by:	Shri Surender Pal, Sr.D.R.		
Date of hearing:	25	09	2019
Date of pronouncement:	09	12	2019

**ORDER**

**PER AMIT SHUKLA, JM:**

The aforesaid cross appeals have been filed by the assessee as well as by the Revenue against the impugned order dated 25.07.2014, passed by Ld. CIT (Appeals)-XVIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2011-12.

2. In assessee's appeal, following grounds have been raised:

*"That on the facts of the case and under the law, the Id. CIT(A) has erred in confirming the addition / disallowance of Rs. 50,12,337/- (being the loss suffered by the assessee in the derivatives), as made by the Id. A.O.*

*That on the facts of the case and under the law, charging of interest u/s 234A was unjust & illegal.*

*That on the facts of the case and under the law, charging of interest u/s 234B was unjust & illegal."*

2.1 Whereas the Revenue has challenged the deletion of addition of Rs.3,50,00,000/- u/s.68 on the following grounds:

*"1. On the facts & in the circumstances of the case, the Lei. CIT(A) has erred in deleting the addition of Rs.3,50,00,000/- u/s. 68 of the Act holding that the Assessing Officer did not carry out the exercise required under the law'. "*

*2. On the facts & in the circumstances of the case, the Ld. CIT(A) has erred in deleting the above addition by not appreciating the findings of the Assessing Officer and material evidence on record after conducting proper enquiries by issuing notices u/s.133(6) of the Act."*

3. The facts in brief qua the issue raised by the assessee in its appeal are that the assessee company is engaged in the business of real estate and during the course of assessment proceedings, the Assessing Officer noted that assessee has carried out F&O / derivative transactions in shares in this year. The assessee has earned derivative profits of

Rs.2,20,000/- and loss of Rs.52,32,337/- and accordingly net derivative loss of Rs.50,12,337/- was claimed in the P&L account. In response to the show cause notice, assessee has filed copy of bills and contract notes issued by a broker, M/s. Tushar Commodities Pvt. Ltd. Ld. Assessing Officer has sent notice u/s. 133(6) dated 09.12.2012 to the said broker at the address mentioned in the bill. However, the said notice returned back unserved. Thereafter, he sent notice u/s.133(6) to NCDEX, in response to which following information was provided:

*This has reference to your letter ref. To/Ward-15(4)/2013-14/1004 dated December 2013 requesting the Exchange (NCDEX) to provide trading information sought by you pertaining to M/s Rose Wood Buildwell (P) Ltd. (PAN: AACCR9241D) for the financial year 2010-11 (01.04.2010 to 31.03.2011).*

*With reference to points 1 & 2 of your letter, we verified the Exchange records and on verification, it is observed that, M/s Tushar Commodities P. Ltd. (TMID 568) has registered with the Exchange as "Member" and has not traded during period 01.04.2010 to 31.03.2011. Further, M/s. Rose Wood, Buildwell (P) Ltd is neither registered with the Exchange as 'Member' nor 'Client' hence we are unable to provide the information requested by you vide aforementioned letter".*

Accordingly, the Assessing Officer disallowed the loss claimed on F&O and added back sum to the income of the assessee.

4. Ld. CIT (A) too has dismissed the assessee's ground on the ground that inquiry from NCDEX clearly provided that M/s. Tushar Commodities Pvt. Ltd. has not traded during the

period 01.04.2010 to 31.03.2011 and hence the genuineness of the transaction, could not be established.

5. Before us the ld. counsel for the assessee submitted that one limb of the same transaction i.e., derivative profit of Rs.2,20,000/- has been accepted and only the net derivative loss of Rs.50,12,337/- have been disallowed, and therefore, it cannot be held that the loss claimed is not genuine. Otherwise also, the assessee has filed the bills and the contract notes issued by the broker which have not been found to be false or non-genuine. The payments have been made through banking transactions. Further when the Assessing Officer had made the inquiry from the broker in the Financial Year 2013-14, by which time the address of the broker had changed and this fact was never confronted by the Assessing Officer to the assessee that the notice sent to the broker has come back unserved. The assessee is ready to provide to changed address of the broker and from them inquiries can be made otherwise all the documentary evidences proving the transactions have been produced, the same cannot be disregarded.

6. On the other hand, ld. DR strongly relied upon the order of the Assessing Officer and Ld. CIT (A) and submitted that once the NCDEX has clearly stated that the broker has not traded during the period 01.04.2010 to 31.03.2011 and the assessee company was not registered with the exchange, therefore, the entire documents submitted by the assessee is

mere paper, and therefore, the claim of loss in the wake of the inquiry conducted by the Assessing Officer is bogus and non-genuine.

7. After considering the rival submissions and on perusal of the relevant findings given in the impugned orders as well as material referred to before us, we find that assessee had carried out F&O/derivative transaction in shares during the year from which it has earned deliberative profit of Rs.2,20,000/- and also claimed to have incurred loss of Rs.52,32,337/-. Accordingly, net of derivative loss of Rs.50,12,337/- was claimed. Though, the notice sent by the Assessing Officer u/s. 133(6) had come back unserved, however as claimed by the assessee, the fact that the notice could not be served to the broker was not informed during the course of assessment proceedings nor any effort was made to send further notice to call upon the broker even at the appellate stage. The documentary evidences filed by the authorities below though shows that certain transactions have been undertaken from the broker, M/s. Tushar Commodities Pvt. Ltd. for which the bills and the contract notes were submitted along with details of banking transaction. The inquiry by the Assessing Officer though revealed that M/s. Tushar Commodities Pvt. Ltd. was registered with exchange, but the said broker has not traded during in the exchange for the period 01.04.2010 to 31.03.2011. Since the assessee has furnished all the documents along with bank transaction details, therefore, it

cannot be held that primary onus cast upon the assessee has not be discharged. However, at the same time the broker who has carried out such a transaction could not corroborate or confirm the transaction as the notice sent to the broker came back unserved. Thus, the explanation and the evidences submitted by the assessee could not be substantiated. Under these facts and circumstances, we are of the opinion that this issue should be remanded back to the Assessing Officer to re-examine the claim of loss afresh and assessee is directed to substantiate its case and provide not only the confirmation from the broker but also the correct address of the broker and the Assessing Officer would be at liberty to carry out any necessary inquiry as he deem fit to verify the genuineness of the transaction. The assessee shall cooperate with the inquiry as may be asked upon by the Assessing Officer. We order accordingly.

8. Thus, ground no.1 as raised by the assessee is allowed for statistical purposes.

9. Grounds no.2 and 3 challenging the levy of interest u/s.234A and 234B are consequential and accordingly the same are dismissed.

10. In so far as Revenue's appeal is concerned, the facts in brief are that during the assessment proceedings assessee had shown receipt of share application money from the following four parties:

S. No.	Name of shareholder	No of shares	Share capital (Rs.)	Share Premium (Rs.)	Total (Rs.)
1	<i>New International Stainless Pipe Company Ltd.</i>	50,000	5,00,000	45,00,000	50,00,000
2	<i>Automobile Components India</i>	1,00,000	10,00,000	90,00,000	1,00,00,000
3	<i>Zoom Developers SEZ (Indore) Pvt.</i>	1,00,000	10,00,000	90,00,000	1,00,00,000
4	<i>Rangoli Buildtech Pvt. Ltd.</i>	1,00,000	10,00,000	90,00,000	1,00,00,000
	Total	3,50,000	35,00,000/-	3,15,00,000	3,50,00,000

11. Thus, the face value of the share at Rs.10/- each was issued at a premium of Rs.90/- per share. Ld. Assessing Officer though noted that assessee had filed copy of confirmation, copy of ITR and bank statement in respect of New International Stainless Pipe Company Ltd., but no ITR and bank statement was filed in respect of Zoom Developers SEZ (Indore) Pvt. Ltd. In respect of one party, M/s. Rangoli Buildtech Pvt. Ltd. again no bank statement was filed. The Assessing Officer had sent notices u/s. 133(6) to these parties. However in the case of three parties, the notice returned back unserved except in the case of M/s. Rangoli Buildtech Pvt. Ltd. Even the fresh notices issued were sent to the other parties at the address given by the assessee but again these notices remain unserved. The Assessing Officer had also called for copy of bank statement directly from the bank u/s.133(6) and on perusal of the bank statement of all the parties, he find that there were credit entries of more or less of equal amount on the same day or one day before every debit entries. Another fact noted by him was that the shares

were allotted to these parties on 30.04.2010. However none of the above mentioned parties figured in the list of shareholders as on 31.03.2011. He also noted those shares allotted to the aforesaid four parties were purchased back by the sister concern of the assessee, M/s. GMA Construction Pvt. Ltd. in subsequent year where Shri Gulshan Shetty was common director. The Assessing Officer has also issued summons u/s.131 to the Principal Officer of M/s. GMA Construction Pvt. Ltd. However, as per him, no compliance was made. Thus, on these facts, he deduced that share allotted during the year to the four parties at Rs.10 per equity share with the premium of Rs.90/- were sold back by these parties at Rs.5/- per equity share without a premium for which no proper explanation or reasons have been given. Thus, he concluded that assessee has introduced its own undisclosed income through four dummy companies in the garb of share application money. He also observed that the identity and capacity of three entities other than M/s. Rangoli Buildtech Pvt. Ltd. remain unestablished and in case of M/s. Rangoli Buildtech reply was received but the creditworthiness and genuineness of the transaction could not be established by the assessee. Accordingly, the addition of Rs.3,50,00,000/- was made u/s.68.

12. Before the Ld. CIT (A) for each of the four parties detail submission was made alongwith documentary evidences and the status of the inquiries made by the Assessing Officer. These can be summarised as under:-

## **1. M/s. New International Stainless Pipe Co. Ltd.**

(i) The Ld. A. O. had carried out such inquiries (either from the said M/s New International Stainless Pipe Co. Ltd or from the bank of M/s New International Stainless Pipe Co. Ltd) at the back of the assessee.

(ii) During the course of assessment proceedings, the Ld. A.O. had not informed the assessee that the notice u/s 133(6) issued by the Ld. A.O. to the said M/s New International Stainless Pipe Co. Ltd had returned unserved.

(iii) On taking inspection of the assessment folder, the assessee had noted that the notice u/s 133(6) issued by the Id. A. O. to the said M/s New International Stainless Pipe Co. Ltd had not returned unserved.

(iv) During the course of assessment proceedings, the Id. A.O. had not asked the assessee to provide latest address of the said M/s New International Stainless Pipe Co. Ltd.

(v) Since the assessee had not been asked to provide latest address of the said M/s New International Stainless Pipe Co. Ltd., question of providing any other address did not arise.

(vi) After getting the bank statement of the said M/s. New International Stainless Pipe Co. Ltd. from the Nainital Bank Ltd., the Id. A.O. had not sought clarification regarding the source of the investment made by the said

M/s. New International Stainless Pipe Co. Ltd. in the shares of the assessee.

**2. M/s. Automobile Components (India) Ltd./AGM Properties Pvt. Ltd.**

(i) The ld. A. O. had carried out such inquiries [either from the said M/s Automobile Components (India) Ltd. / AGM Properties Pvt. Ltd. or from the bank of M/s Automobile Components (India) Ltd. / AGM Properties Pvt. Ltd.] at the back of the assessee.

(ii) During the course of assessment proceedings, the Ld. A.O. had not informed the assessee that the notice u/s 133(6) dt. 23.01.2014 issued by the Ld. A.O. to the said M/s Automobile Components (India) Ltd. / AGM Properties Pvt. Ltd. had returned unserved.

(iii) During the course of assessment proceedings, the ld. AO had not asked the assessee to provide the latest address of the said M/s Automobile Components (India) Ltd./AGM Properties Pvt. Ltd.

(iv) Since the assessee had not been asked to provide the latest address of the said M/s Automobile Components (India) Ltd./AGM Properties Pvt. Ltd., question of providing the latest address did not arise.

(v) The ld. A.O. had called for the bank statement of the said M/s Automobile Components (India) Ltd. / AGM Properties Pvt. Ltd. only from The Naintal Bank Ltd. [from

where it had made payment of Rs. 19,00,000/- to the assessee].

(vi) After getting the bank statement of the said M/s Automobile Components (India) Ltd./AGM Properties Pvt. Ltd. from the Nainital Bank Ltd., the Id. A.O. had not sought clarification regarding the sources of the investment made by the said M/s Automobile Components India Ltd./AGM Properties Pvt. Ltd. in the shares of the assessee.

(vii) The Id. A.O. had not called for the bank statement of the said M/s Automobile Components (India) Ltd. / AGM Properties Pvt. Ltd. from The Axis Bank Ltd. [from where it had made payment of Rs. 81,00,000/- (Rs. 23,00,000/- + Rs. 58,00,000/-) to the assessee.

### **3. M/s. Zoom Developers SEZ (Indore) Pvt. Ltd.**

- (i) The Id. Assessing Officer had carried out such inquiries [either from the said M/s. Zoom Developers SEZ (indore) Pvt. Ltd. or from the bank of M/s. Zoom Developers SEZ (Indore) Pvt. Ltd.] at the back of the assessee.
- (ii) During the course of assessment proceedings, the Id. Assessing Officer had not informed the assessee that the notice u/s. 133(6) dated 23.01.2014 issued by the Id. Assessing Officer to the said M/s. Zoom Developers SEZ (Indore) Pvt. Ltd. had returned unserved.
- (iii) During the course of assessment proceedings, the Id. A.O. had not asked the assessee to provide the latest

address of the said M/s Zoom Developers SEZ (Indore) Pvt. Ltd.

- (iv) Since the assessee had not been asked to provide the latest address of the said M/s Zoom Developers SEZ (Indore) Pvt. Ltd., question of providing the latest address did not arise.
- (v) The Ld. A.O. had called for the bank statement of the said M/s Zoom Developers SEZ (Indore) Pvt. Ltd. from The Naintal Bank Ltd.
- (vi) After getting the bank statement of the said M/s Zoom Developers SEZ (Indore) Pvt. Ltd. from the Nainital Bank Ltd., the ld. A.O. had not sought clarification regarding the source of the investment made by the said M/s Zoom Developers SEZ (Indore) Pvt. Ltd. in the shares of the assessee.

#### **4. M/s. Rangoli Buildtech Pvt. Ltd.**

- (i) That during the year under consideration, M/s Rangoli Buildtech Pvt. Ltd., holding PAN: AACCR8695P had applied for the allotment of 100000 shares of Rs. 10/- each on premium of Rs. 90/- each. It had paid an amount of Rs. 1,00,00,000/- to the assessee on 27.04.2010 through two different RTGS of Rs. 65,00,000/- and Rs. 35,00,000/- of The Bank of Rajasthan Limited, New Delhi.
- (ii) That during the course of assessment proceedings, the assessee had filed copies of the confirmation, ITR for

A.Y. 2011-12, Balance Sheet as at 31.03.2011 and bank statements etc. of M/s Rangoli Buildtech Pvt. Ltd.

(iii) That during the course of assessment proceedings, the Id. A.O. had issued notice u/s 133(6) dt. 21.11.2013 to M/s Rangoli Buildtech Pvt. Ltd.

(iv) That in response to the said notice, M/s Rangoli Buildtech Pvt. Ltd. had made compliance vide its letter dt. 03.12.2013 alongwith its enclosures.

(v) That on getting the assessment order, the assessee had noted that the Id. A.O. had mentioned that "in case of M/s Rangoli Buildtech Pvt. Ltd., although reply was received, the capacity of the party and genuineness of the transaction has not been established. In spite of specific query, it bluntly replied that the sources of their investment were not relevant to this assessee underassessment".

(vi) That the said M/s Rangoli Buildtech Pvt. Ltd. was a company, who was in control over the funds to the tune of Rs. 20 Crores (Approx.) and whose income by way of interest as me tune of Rs 1 Crore (approx.). Out of such funds, the said M/s Rangoli Buildtech Pvt. Ltd. had invested Rs.1,00,00,000/- in 100000 shares of the assessee. It may also be worth mentioning here that its assessment for A.Y. 2011-12 has been completed u/s.153C/143(3) by DCIT, CC-14, New Delhi, vide order dated 28.03.2014. This fact had been brought to the

knowledge of the ld. Assessing Officer during the course of assessment proceedings.

13. Ld. CIT (A) after verifying the entire records and also called upon the Assessing Officer to explain its case had made following observation:-

*Assessing Officer has failed to establish that there was case of invoking the provision of section 68 of the I.T. Act as under:-*

*(I) In case of addition of Rs. 50 lacs pertaining to New International Stainless Pipe Co. Ltd. it has been alleged by the appellant that notice u/s 133(6) of the I.T. Act has not returned unserved.*

*(II) In the case of the addition of Rs. 1 crore pertaining to M/s Automobile Component (India) Pvt. Ltd., enquiry was done by issuing notice u/s. 133(6) of the I.T. Act, but it is found that it has not reached the hands of Said M/s Automobile Component (India) Pvt. Ltd. In this regard of order sheet entries of assessment records has been perused and it is found that vide order sheet entry dated 13/1/2014 all the details with regard to share applicants has been called for which has been provided. The details have been produced before the undersigned in the form of paper book pertaining to the four share applicants as under :-*

I	New International Stainless Pipe Company Ltd( Rs. 50,00,000/-)
	<i>Application form</i>
	<i>Confirmation</i>
	<i>ITR for 2011-12</i>
	<i>Balance sheet</i>
	<i>Bank Statement – Nainital Bank Ltd.</i>
	Notice u/s 133(6) dated 20.2.2014 issued by Learned Assessing Officer to Nainital Bank Ltd.

	<i>Letter dated 24.2.2014 from Nainital Bank Ltd.</i>
	Photocopy of cheque of Rs. 20,50,000/- issued by Shri Krishna Fabric
	Photocopy of cheque of Rs. 15,50,000/- issued by Aman Enterprise
	Photocopy of cheque of Rs. 14,00,000/- issued by Fab Care
<i>II</i>	<b>Automobile Components (India) Ltd. (Rs.1,00,00,000/-)</b>
	Application form
	<i>Confirmation</i>
	<i>ITR for 2011-12</i>
	<i>Balance sheet</i>
	<i>Bank Statement – Nainital Bank Ltd.</i>
	Notice u/s 133(6) dated 20.2.2014 issued by Learned Assessing Officer to Nainital Bank Ltd.
	<i>Letter dated 24.2.2014 from Nainital Bank Ltd.</i>
	Photocopy of cheque of Rs.5,00,000/- issued by Dream Life Care Marketing Pvt. Ltd.
	Photocopy of cheque of Rs.25,00,000/- issued by ZDSEZIPL
	Photocopy of cheque of Rs.6,00,000/- issued by Fab Care
	Photocopy of cheque of Rs.6,00,000/- issued by Alic Technologist
	RITGS Advice for Rs.4,70,00,000/- from Bhagwati Trading Company
<i>III</i>	<b>Zoom Developers SEZ (Indore) Pvt. Ltd. (Rs.1,00,00,000/-)</b>
	<i>Confirmation</i>
	<i>ITR for 2011-12</i>
	<i>Balance sheet</i>
	<i>Bank Statement – Nainital Bank Ltd.</i>
	Bank Statement – Axis Bank Ltd.
	Photocopy of cheque of Rs.7,50,000/- issued by Litman.
	Photocopy of cheque of Rs.22,50,000/- issued by Genius Traders P. Ltd.
	Photocopy of cheque of Rs.28,00,000/- issued by Arrow Charter P. Ltd.
	RITGS Advice for Rs.4,70,00,000/- from Ajay Aggarwal (HUF)
<i>IV</i>	<b>Rangoli Buildtech Pvt. Ltd. (Rs.1,00,00,000/-)</b>

Application form
Confirmation
ITR for 2011-12
Annual Audited Accounts
Notice u/s.133(6) dated 21.11.2013 issued by learned AO
Letter dated 3.12.2013 from Rangoli Buildtech Pvt. Ltd.
Ledger a/c of assessee
Bank statement
Assessment order dated 28.03.2011 passed u/s.153C/143(3) for A.Y. 2011-12

*From the above submission of the appellant it is apparent that appellant has filed in all the four share applicant's cases as under:*

- (i) Confirmation*
- (ii) Copy of income tax return*
- (iii) Balance sheet*
- (iv) Bank Statement*

*Furthermore, notice issued to Nanital Bank Ltd u/s 133(6) of the I.T. Act which has been replied with. In the case of Rangoli Buildtech Pvt Ltd for amount of Rs. 1 crores notice u/s 133(6) of the I.T. Act dated 21/11/2013 has been issued which has been replied by Rangoli Buildtech Pvt Ltd. vide letter dated 3/12/2013 which is available at page no. 110 & 111 of the paper book. The copy of the same has been furnished before the undersigned which is self-explanatory showing that it has been replied along with acknowledgement of Income Tax Return and balance sheet with complete schedule. Further, Assessing Officer has arrived at the adverse conclusion by*

*observing that reply was received and the capacity of the party and genuineness of the transaction has been not been proved.*

*In this regard it has been observed as under:-*

- Assessing Officer has directed enquiry u/s 133(6) of the I.T. Act from Nainital Bank Ltd. in the three case of New International Stainless Pipe Company Ltd, Automobile Components (India) Ltd, Zoom Developers SEZ (Indore) Pvt Ltd. In response to notice u/s 133(6) of the I.T. Act bank has replied the query and submitted the bank statement the relevant credit entries. These details are available in the paper book submitted by the Learned Authorized Representative of the appellant. In this regard, all the bank details are showing that there is sufficient balance in the bank accounts.*
- The order sheet has also been perused by me and I do not find that Assessing Officer has directed the assessee to reduce the parties during the parties during the course of the assessment proceedings nor Assessing Officer has issued summon u/s 131 of the I.T. Act to produce the above said parties.*
- Where address is not clear, Assessing Officer should have asked the assessee to provide the new address.*
- Furthermore, in the case of Rangoli Buildtech Pvt Ltd, it is found that there is scrutiny assessment order for Assessment Year 2011-12, wherein there is no adverse inference has been pointed out by the DCIT Central Circle 14. The appellant has provided copies of scrutiny assessment order which available at page no. 114 - 116 of the order.”*

14. He further analyzed the each and every transaction and the bank details of the parties and after giving detailed finding held that the addition of Rs.3,50,00,000/- cannot be made because not only the transaction were genuine but also the identity and creditworthiness of the parties had also stood established in the light of the facts and material on record.

15. Before us, ld. Sr. D.R. after referring to the various observations made by the Assessing Officer submitted that one peculiar fact which has been brought on record by the Assessing Officer is that a share which has been subscribed by four parties at a face value of Rs.10/- and premium of Rs.90/- per share has been sold back in the subsequent year at Rs.9/- and it has been brought by the assessee through its sister concern wherein the Directors were common. This factum itself goes to prove that it is against the human probability. He strongly referred and relied upon the decision of Hon'ble Delhi High Court in the case of **PCIT vs. NDR Promoters P. Ltd., (2019) 410 ITR 379 (Del.)** and judgment of Hon'ble Supreme Court in the case of **PCIT vs. NRA Iron & Steel Pvt. Ltd.** as reported in **(2019) 103 taxmann.com 48 (SC)**. Thus, he submitted that merely because the assessee has filed all the primary evidences will not substantiate the case of the assessee but in the light of the inquiry made by the Assessing Officer all these evidences cannot be held to be reliable so as to hold that onus of the assessee stood discharged.

16. We have heard the rival submissions and also perused the relevant material placed on record. Section 68 which is a deeming provision cast a primary onus upon the assessee in whose books any sum has been found to be credited during the relevant financial year to prove the nature and source of the said credit. In order to prove the source of the credit assessee is required to establish identity and creditworthiness of the creditor and also the genuineness of the transaction. The assessee during the course of assessment proceedings as well as in the appellate proceedings had furnished various documents, which has been tabulated in the Ld. CIT (A) order and also incorporated above. These evidences are mostly share application form, confirmations, ITRs, balance-sheet, bank statement received in response from the bank in compliance to the notice u/s.133(6), photocopy of cheques etc. In case of one of the party, M/s. Rangoli Buildtech Pvt. Ltd., assessment order passed u/s. 143(3) for the Assessment Year 2011-12 was also furnished. In order to rebut the evidences filed by the assessee, the Assessing Officer had conducted inquiry by sending notice u/s.133(6) to the bank in the case of three parties, namely; (i) New International Stainless Pipe Company Ltd.; (ii) Automobile Components (India) Ltd.; and (iii) Zoom Developers SEZ (Indore) Pvt. Ltd. In response, the bank had provided the statement and the relevant credit entries along with letter. On perusal and scrutiny of these bank details, the Ld. CIT (A) had found that there were sufficient balances in the bank account of the

creditors. Thus, from the inquiries made by the Assessing Officer the bank transaction stood corroborated and what has been explained by the assessee was also confirmed and accepted by the parties also. A finding has been given by the Ld. CIT (A) that the Assessing Officer had neither directed the assessee to produce the parties nor he has issued any summons u/s.131 to the said companies to appear before him with regard to each and every subscribing companies. The Ld. CIT (A) has examined the relevant credit entries appearing in the bank account and also the balance-sheets of these companies and found that these companies have paid the money from their disclosed sources duly reflected in the books of account.

17. The finding of fact given by Ld. CIT (A) qua each company is summarized hereunder. In the case of New International Stainless Pipe Co. Ltd., Ld. CIT (A) has noted that amount of Rs.50 lac which was given to the assessee was appearing in the balance-sheet and also there were enough credit balance available with the said company at the time of issuance of cheque. Similar transaction was reflected in the balance sheet and the bank statement of the Automobile Company India Ltd. and Zoom Developers SEZ (Indore) Pvt. Ltd. also. In the case of M/s. Rangoli Buildtech Pvt. Ltd. notice issued u/s. 133(6) were duly complied with and it was confirmed that amount has been paid from their own sources alongwith the documentary evidences. Once the assessee had furnished all the primary documents to prove the nature and

source of the credit, then without any further adverse material on record such a finding of fact recorded by the Ld. CIT (A) cannot be reversed. Further, it is not a case where during the course of search any documentary evidences have been found that assessee had taken share application money from bogus company or through accommodation entries or these companies were managed by any entry provider. Here, in this case, Ld. CIT (A) has analyzed the debit and credit entries of the bank account of the parties and also given the finding that how the money has come in the bank account of these parties from which they had made investment in the shares of the assessee company.

18. Another important fact noted by the Ld. CIT (A) are as under:

*“During the course of the assessment proceedings, the Assessing Officer called for the details regarding the transactions in the bank accounts of New International Stainless Pipe Company Ltd, Automobile Components (India) Pvt. Ltd. and Zoom Developers SEZ (Indore) Pvt. Ltd. from their bankers. Copies of the documents are supplied by the bankers of these three companies are placed on page no. 51 to 56 , 65 to 74 and 86 to 92. The party wise details of credit appearing in the bank accounts of these three companies are given in regarding the transactions in the bank account of Automobile Components (India) Ltd from Axis Bank. The appellant explained vide para 57 of its submissions dated 10.10.2014 that two credits of Rs.50,00,000/- each in the Axis Bank account of Automobile Components (India) Ltd were the receipts from India Sales*

*Corporation and Sai Traders. The appellant further explained that out of such funds, Automobile Components (India) Ltd invested Rs.81,00,000/- (Rs.23,00,000/- and Rs.58,00,000/-) in shares of the appellant.*

*During the appellate proceedings, when the Assessing Officer appeared before me along with the assessment folder. It is gathered from the assessment record that no notices were issued to the four parties from whom money was received by the appellant during the year and to whom shares were allotted by the appellant. The Assessing Officer did not ask the appellant to produce all the four parties from whom money was received by the appellant during the year and to whom shares were allotted by the appellant as it is evident from the order sheet of the Assessing Officer (photocopy is placed on record). From these facts, it is amply clear that the Assessing Officer did not carry out the exercise required under the law. Hon'ble Delhi High Court in the case of Gangeshwari Metal Pvt. Ltd 361 ITR 10, after taking into consideration its earlier decision in the case of Nova Promoters and Finlease Pvt. Ltd. 342 ITR 169, held that where the Assessing Officer without carrying out the exercise required in law reject the claim, no addition can be made u/s 68 in the hands of the company allotting shares. I am of the considered view that on the facts of the appellant's case, addition u/s 68 is not at all justifiable.”*

19. The aforesaid finding of the Ld. CIT (A) in absence of any rebuttal or contrary material on record which could have been revealed through inquiry made by the Assessing Officer to dislodge the finding cannot be tinkered with.

20. Much stress has been given by the Id. DR and also adverse inference has been drawn by the Assessing Officer that in the subsequent year the sister concern of the assessee has bought back the shares at Rs.5/- in order to hold that the transaction during the year is bogus or non-genuine. First of all, under the deeming provision what is required to be seen whether the credit appearing in the books of account during the financial year, the assessee has been able to discharge the onus regarding the nature and source of credit or not. Here in this case, the nature of credit is share application money and the source has found to be satisfactorily explained by the assessee as held by Ld. CIT (A). Thus, the onus cast upon the assessee has been fully discharged. Secondly, if a share at a face value of Rs.10/- and premium of Rs.90/- has been bought back at Rs.5/- then Assessing Officer has all the powers under the Act to examine the issue in the year in which transaction has taken place and there he can draw any inference after proper scrutiny and inquiry. So far as this year is concerned, we have to see the genuineness of the transaction of the share application money received during the year. Accordingly, the grounds raised by the Revenue stands dismissed.

21. In the result, the appeal of the assessee is partly allowed for statistical purposes and the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 9<sup>th</sup> December, 2019.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**[ACCOUNTANT MEMBER]**  
DATED: 9<sup>th</sup> December, 2019

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**