

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.3258/Bang/2018
Assessment year : 2012-13

M/s. Khayati Steel Industries Private Limited, D-33, 4 th Main, V. V. Mohalla, Mysore – 570 002. PAN : AADCK 3583 C	Vs.	Asst. Commissioner of Income Tax, Circle 1(1), Mysore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Nitish Ranjan, CA
Revenue by	:	Shri. C. H. Sundar Rao, CIT (DR)(ITAT), Bengaluru

Date of hearing	:	15.11.2019
Date of Pronouncement	:	07.01.2020

ORDER

Per A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A), Mysuru, dated 31.03.2015, for the assessment year 2012-13. The grounds raised by the assessee are as under:

1. The Order of the Ld. Commissioner of Income Tax (Appeals) is opposed to law, facts and circumstances of the case.
2. The Order is passed in haste, without providing sufficient and reasonable opportunity of being heard.

3. The Order is passed against the principle of natural justice and thus liable to be quashed.
4. The Ld. CIT(Appeals) erred in upholding the addition of Rs. 8,64,30,300/- made by the Learned Assessing Officer under section 68 of the Act being the premium portion of the share application money received by the Appellant during the year under appeal.
5. The Ld. CIT(A) erred in further enhancing the aforesaid quantum of addition under section 68 of the Act to Rs. 8,99,51,300/-.
6. The Ld. CIT(A) and the Ld. AO failed to appreciate the fact that the Appellant had duly discharged its onus cast upon it under the provision of section 68 of the Act by not only explaining the nature and source of the impugned credits in the books of account but also furnishing name, address, PAN, financial statements, confirmation letters and bank details along with copy of all the share allotment letters.
7. The Ld. CIT(A) erred in holding that the Appellant failed to furnish credible and verifiable oral or documentary evidences to controvert the findings of the Ld. AO, when such obligation is not cast by the provisions of the Act as it stood for the relevant year.
8. The Ld. CIT(A) erred on facts to hold that the valuation of equity shares at premium was illogical/ dissatisfactory without disputing the valuation certificate furnished by the Appellant.
9. The Ld. CIT(A) in page 5 of his order has erred on facts to state that bank statements and final accounts of subscribing entities were not available whereas the same has been verified by the Ld. AO as mentioned in the Assessment Order. Thus the Order of the Ld. CIT(A) is passed without application of mind.
10. The Ld. CIT(A) erred on facts to state that the principal officers of the subscribing entities were not available whereas they were, in fact, summoned and administered on oath by the Ld. ADIT (Investigation), Kolkata, report of which were made available before the Ld. AO. Thus the Order of the Ld. CIT(A) is passed without application of mind.
11. The Ld. CIT(A) and the Ld. AO grossly erred in ignoring the landmark judgement of the **Hon'ble Delhi High Court** in the case **Lovely Exports** which was upheld by the **Hon'ble Supreme Court of India** in **216 CTR 195**.
12. The Ld. CIT(A) and the Ld. AO ought to have noted that the obligation on an assessee to prove source of source cast under section 68 of the Act is applicable with prospective effect from A.Y. 2013-14 and thus, the entire premise upon which the impugned addition is made in the instant case, is illegal and liable to be deleted.

13. The Ld. CIT(A) and the Ld. AO erred in ignoring the various judgment of the High Courts and Tribunals wherein it has been settled that the amendment to section 68 with regard to explanation of source of source cannot be applied retrospectively including the judgement of the **Hon'ble Bombay High Court** in the case of **CIT vs. Gagandeep Infrastructure Pvt. Ltd.** reported in **394 ITR 680**.
14. The Ld. CIT(A) while interpreting the amendment to section 68 of the Act has erred in disregarding the principles laid down by the **Hon'ble Supreme Court of India** in the case of **Vatika Township [TS-573-SC-2014]**.
15. The Order of the Ld. CIT(A) and the Ld. AO is based merely on surmise and conjectures which is contrary to the facts of the case.
16. The Ld. CIT(A) erred in relying on the judgement of **Pavankumar M Sanghvi vs. ITO [(2017) 165 ITD 260 (Ahd.)]** wherein the facts are distinguishable from the facts in the Appellant's case.
17. The Ld. CIT(A) erred in rejecting the petition of additional evidences filed by the Appellant in accordance with the provisions of Rules 46A of the Income-tax Rules, 1962.
18. Notwithstanding anything above, the Ld. AO erred in not providing to the Appellant with a copy of the reports obtained from the Ld. ADIT (Investigation) which was the sole basis for framing the impugned assessment, thereby, violating the basic principle of natural justice.
19. Notwithstanding anything above, the Ld. AO erred in adding a sum of Rs. 3,82,80,000/- with regard to investment by M/s Matajwala Investmesnts and Infrastructures Private Limited wherein the source of investment was already subjected to tax, despite the Appellant submitting the Income tax returns and the Assessment Orders of the said company. The Ld. CIT(A) erred in confirm the said addition.
20. The Ld. CIT(A) erred in upholding the order of Ld. AO levying interest u/s. 234B and 234C of the Act.

The Appellant seeks your leave to add, alter, amend or delete any of the grounds urged at the time of hearing.

2. It was submitted by learned AR of the assessee that in the present case, the assessee has established identity and credit worthiness of the investors and has also established genuineness of the transactions and hence, the addition made by the AO is not justified. In this regard, he drawn our attention to page 1 to 73 of Paper Book no. 3 and pointed out that in this Paper Book, the assessee has submitted a reply filed by various investors before ADIT

(Investigation), Unit 4(3), Kolkata. He submitted that in the present case, the AO upon failure of receiving any response from the investors had admittedly issued commission to the ADIT (Investigation), Kolkata where these companies are based and upon receipt of the commission, the ADIT (Investigation) has reverted with a detailed investigation report. He also submitted that in response to the notices issued by ADIT (Investigation) Kolkata, these companies have responded with all details and documents *inter alia* statements of bank accounts via which the impugned investment was made in the assessee company. He also submitted a copy of share valuation report of the assessee's shares in support of share premium amount received by the assessee from these investors. He pointed out that as per this share valuation report, the shares of the assessee company were valued by the valuer at Rs.283 per share whereas the assessee has issued these shares of these investors at Rs.250 per share including face value of Rs.10 per share and share premium of Rs.240 per share. He submitted that in view of this share valuation report of the assessee company, the share premium received by the assessee is not excessive or unreasonable. He also submitted that on pages 115 to 436 of Paper Book No.2 all the details of the investors are available such as share application, resolution passed by the investing company, audit report along with audited financial statements for the Financial Year 2011-12 and forms filed with ROC for change of address. He submitted that under these facts, the addition made by the AO and confirmed by the CIT(A) should be deleted.

3. As against this learned DR for the Revenue supported the orders of authorities below. He also placed reliance on the judgment of Hon'ble Apex Court rendered in the case PCIT vs. NRA Iron & Steel Pvt. Ltd., as reported in 412 ITR 161 (SC).

4. In the rejoinder, it was submitted by learned AR of the assessee that the judgment of Hon'ble Apex Court rendered in the case of NRA Iron & Steel Pvt. Ltd. (Supra) is not applicable in the present case because the facts are different. He submitted that this judgment of Hon'ble Apex Court as well as the earlier judgment of Hon'ble Delhi High Court are ex-parte orders and hence, the matter was not properly represented by that assessee before these Courts i.e., Hon'ble Delhi High Court and Hon'ble Apex Court and

applicability of these judgments should be examined after comparing the facts in both cases and the same cannot be applied blindly. He pointed out that in that case, it is observed by Hon'ble Apex Court in para No.3.9 of the judgment that some of the investor company were found to be non-existent and almost none of the companies produced bank statements to establish the source of funds for making such a huge investment in the shares even though they were declaring a very meagre income in their returns. He submitted that in the present case, bank statements of all the companies are available along with balance sheet of all these companies and in the reply submitted by them before ADIT, Investigation Unit 4(3), Kolkata, they specifically explained about source of purchase of shares of the assessee company and these replies are available on pages 1 to 73 of the Paper Book No.3. He also submitted that in the case of NRA Iron & Steel Pvt. Ltd. (supra), there was no explanation regarding the share premium whereas in the present case, the assessee has obtained share valuation report as per which the shares of the assessee company were valued by the Valuer at Rs.283 per share and the assessee company has issued these shares at Rs.250 per share only and hence, in the present case, receipt of share premium money is also supported by valuation report of the share of the assessee company.

5. We have considered the rival submissions. This is a settled position of law by now that for the purpose of satisfying the requirement of section 68 of the IT Act, 1961, the assessee has to establish three ingredients i.e., the identity and creditworthiness of the creditor / investor and genuineness of the transaction. Since learned DR of the Revenue has placed reliance on the recent judgment of Hon'ble Apex Court rendered in the case of NRA Iron & Steel Pvt. Ltd., (supra), we first examine the applicability of this judgment in the present case. For ready reference, we reproduce para No. 3.9 and para

Nos.12 to 16 of this judgment of Hon'ble Apex Court. These paras are as under:-

3.9. On the basis of the detailed enquiries conducted, the A.O. held that the Assessee had failed to prove the existence of the identity of the investor companies and genuineness of the transaction.

The A.O. found that :

- i. None of the investor-companies which had invested amounts ranging between Rs. 90,00,000 and Rs. 95,00,000 as share capital in the Respondent-Company – Assessee during the A.Y. 2009-10, could justify making investment at such a high premium of Rs. 190 for each share, when the face value of the shares was only Rs. 10;
- ii. Some of the investor companies were found to be non-existent;
- iii. Almost none of the companies produced the bank statements to establish the source of funds for making such a huge investment in the shares, even though

they were declaring a very meagre income in their returns;

iv. None of the investor-companies appeared before the A.O., but merely sent a written response through dak.

The AO held that the Assessee had failed to discharge the onus by cogent evidence either of the credit worthiness of the so-called investor-companies, or genuineness of the transaction.

As a consequence, the amount of Rs. 17,60,00,000/- was added back to the total income of the Assessee for the assessment year in question.

12. In the present case, the A.O. had conducted detailed enquiry which revealed that :

i. There was no material on record to prove, or even remotely suggest, that the share application money was received from independent legal entities. The survey revealed that some of the investor companies

were non-existent, and had no office at the address mentioned by the assessee.

For example:

- a. The companies Hema Trading Co. Pvt. Ltd. and Eternity Multi Trade Pvt. Ltd. at Mumbai, were found to be non-existent at the address given, and the premises was owned by some other person.
- b. The companies at Kolkatta did not appear before the A.O., nor did they produce their bank statements to substantiate the source of the funds from which the alleged investments were made.
- c. The two companies at Guwahati viz. Ispat Sheet Ltd. and Novelty Traders Ltd., were found to be non-existent at the address provided.

The genuineness of the transaction was found to be completely doubtful.

- ii. The enquiries revealed that the investor companies had filed returns for a negligible taxable income, which would show that the investors did not have the financial capacity to invest funds ranging between Rs. 90,00,000 to Rs. 95,00,000 in the Assessment Year 2009-10, for purchase of shares at such a high premium.

For example:

Neha Cassetes Pvt. Ltd. - Kolkatta had disclosed a taxable income of Rs. 9,744/- for A.Y. 2009-10, but had purchased Shares worth Rs, 90,00,000 in the Assessee Company.

Similarly Warner Multimedia Ltd. – Kolkatta filed a NIL return, but had purchased Shares worth Rs. 95,00,000 in the Assessee Company – Respondent.

Another example is of Ganga Builders Ltd. – Kolkatta which had filed a return for Rs. 5,850 but invested in shares to the tune of Rs. 90,00,000 in the Assessee Company – Respondent, etc.

- iii. There was no explanation whatsoever offered as to why the investor companies had applied for shares of the Assessee Company at a high premium of Rs. (190 per share, even though the face value of the share was Rs. 10/- per share.
- iv. Furthermore, none of the so-called investor companies established the source of funds from which the high share premium was invested.
- v. The mere mention of the income tax file number of an investor was not sufficient to discharge the onus under

Section 68 of the Act.

13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company – Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company - Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility.

The Court/Authorities below did not even advert to the field enquiry conducted by the AO which revealed that in several cases the investor companies were found to be non-existent, and the onus to establish the identity of the investor companies, was not discharged by the assessee.

14. The practice of conversion of un-accounted money through the cloak of Share Capital/Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be

placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.

15. On the facts of the present case, clearly the Assessee Company - Respondent failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income.

16. The Appeal filed by the Appellant - Revenue is allowed. In the aforesaid facts and circumstances, and the law laid down above, the judgment of the High Court, the ITAT, and the CIT are hereby set-aside. The Order passed by the AO is restored.

6. From the above paras reproduced from the judgment of the Hon'ble Apex Court, it comes out that in that case, some of the investor companies were non-existent and almost none of the companies produced the bank statements to establish the source of funds for making such huge investment in the shares even though they were declaring a meagre income in their returns. In the present case, we find that in reply to summons under section 131 issued by ADIT (Investigation), Unit IV (3), Kolkata, all the investors have submitted reply before ADIT (Investigation), Unit IV (3), Kolkata and the copy of such replies is available before us in Paper Book 3. The first company of which the reply is available on pages 1 to 4 of this paper book is M/s. Arion Suppliers Pvt. Ltd. and this company has submitted copy of bank statements, income tax returns along with audited balance sheet, auditors

report and director's report. This company has also explained about the source of investment with the assessee company and it has stated that the source of purchase of shares was sales proceeds of shares and it was received from M/s. Link Tradecom Pvt. Ltd. The address and PAN of M/s. Link Tradecom Pvt. Ltd. is also provided in the said letter. This company has also made a submission regarding justification for premium and it has been explained that information bulletin on working of company was received from one of close Director of the company at the time of subscription of shares and future working projection was very attractive and the Board of Directors was also in good reputation in Steel Industry. It was also explained that this information was available with the investor company that the assessee company was manufacturer of Billets and TMT Bars and this company was very fast growing company. Similarly, on pages 5 to 8 is the reply of the second company M/s. Dhanvanthi Projects Pvt. Ltd., and this company has also submitted copy of bank statements, copy of income tax returns along with audited balance sheet and auditors report. This company has also explained regarding justification for premium paid. Similarly, on pages 9 to 14 is the reply of 3rd company M/s. Ellenberie Commercial Company ltd. and this company has also submitted bank statements, income tax returns along with audited balance sheet and auditors report for the relevant period in which transactions with assessee company has taken place. This company has also explained regarding the source of investments and it has been stated that the investment was made out of receipt of refund of loan Rs.10 lakhs and Rs.75 lakhs from M/s. M L M Exports Pvt. Ltd., and M/s. Goel Fintrade Pvt. Ltd., and the address and PAN of both these companies were also provided. This company has also provided justification for premium payment.

7. Similarly, on pages 15 to 18 of this Paper Book is the reply of 4th Company M/s. Eklavya Tradecom Pvt. Ltd. and this company has also

provided bank statements, copy of income tax returns along with audited balance sheet and auditors report for the relevant period in which transactions with assessee company has taken place. Regarding the source of investment, it was explained by this company that the source of payment was receipts from sundry debtors and the name two such debtors along with their addresses and PAN was provided i.e., M/s. Rishikesh Tradecom Pvt. Ltd., and M/s. Sewak Vypaar Pvt. Ltd. This company has also given a writeup on justification for premium paid. Similarly, on pages 19 to 22 is the reply of 5th company M/s. Giriraj Housing Pvt. Ltd. This company has also provided bank statements, copy of income tax returns along with audited balance sheet and auditors report for the relevant period in which transactions with assessee company has taken place and has also provided the details of source of this investment as well as justification for premium payment. On pages 23-28 is the reply of 6th company M/s. Nawalson Holding Pvt. Ltd., later on known as Vishwamitra India Finvest Services Ltd., and this company has also submitted bank statements, copy of income tax returns along with audited balance sheet and auditors report for the relevant period in which transactions with assessee company has taken place and regarding source of investment, it was explained by this company that the source of this investment was receipt on account of sale of shares, received from 5 companies and date of receipt, name of company, its PAN and amount is submitted in the reply. This company has also provided justification for premium payment. Similarly, the reply of 7th company M/s. Aroma Parter Pvt. Ltd. is available on pages 29-32 of the Paper Book No.3 and this company has also submitted copy of bank statement, copy of income of income tax returns along with audited balance sheet, directors report and auditors report and P & L Account. Regarding source of investment, it was explained by this company that the source was sale proceeds of shares received from M/s. Link Tradecom Pvt. Ltd., whose

address and PAN is also provided. This company has also provided the justification of premium payment. Similarly, the reply of 8th company M/s. Nector Business Solutions Pvt. Ltd., is on pages 33 – 36 of Paper Book No.3 and this company has also provided copy of bank statement, copy of income tax returns along with audited balance sheet, directors report and auditors report, balance sheet, etc., and this company has submitted the details of source of investments along with justification for premium payment. The reply of 9th company M/s. Nexus Barter Pvt. Ltd. is available on pages 37-40 of the Paper Book and this company has also submitted copy of bank statement, copy of income tax returns along with audited balance sheet, directors report and auditors report, balance sheet and regarding source of investment, it was explained by this company that the source was out of sale proceeds of shares and the company has given the full details of receipts including date of receipt, name of company from whom the amount was received, amount and PAN of the concerned company. This company has also explained regarding justification of premium payment.

8. Similarly, the reply of 10th company M/s. Nirbhay Plastic Pvt. Ltd., is available on pages 41-44 of paper book and this company has also provided the same documents i.e. copy of bank statements, copy of income tax returns along with audited balance sheet, directors report and auditors report and regarding source of investment, it was explained by this company that investment was made out of refund of loan along with interest from a company M/s. Zenom Vinimay Pvt. Ltd., on 06.07.2011 and 04.07.2011 and has provided the address and PAN of that company M/s. Zenom Vinimay Pvt. Ltd. Justification for premium payment is also given by this company. The reply of 11th company M/s. Orchid Trexim Pvt. Ltd. is available in pages 45 to 48 of the Paper Book No.3 and all the relevant documents are also provided by this company such as copy of bank statement, copy of income tax returns

along with audited balance sheet, directors report and auditors report. This company has also provided details about source of investment as well as justification for premium payment. Reply of 12th company M/s. Overall Realtors Pvt. Ltd. is available in pages 49-53 of the Paper Book and it is seen that this company has also provided all the concerned documents such as copy of bank statements, copy of income tax returns along with audited balance sheet, directors report and auditors report, etc. and has also submitted details of source of investment as well as justification for premium payment. Similarly, the reply of 13th company M/s. Shree Aeran Marketing Pvt. Ltd., is available on 53-56 of Paper Book. As per the reply available on these pages, the documents such as copy of bank statements etc. are not available but on pages 343 to 352 of Paper Book 2, some of these documents as copy of income tax returns along with audited balance sheet, directors report and auditors report etc. are available. Similarly, on pages 57-60 of Paper Book is the reply of the 14th Company M/s. Complete Softech Pvt. Ltd. And this company has submitted copy of bank statements, copy of income tax returns along with audited balance sheet, directors report and auditors report etc. and this company also has explained regarding source of investment and justification for premium payment. On pages 61-64 of Paper Book No.3 is the reply of 15th Company M/s. Suncity Niketan Pvt. Ltd. This company has also submitted copy of bank statement, copy of income tax returns along with audited balance sheet, directors report and auditors report, etc. and the source of investment and justification for premium payment is also explained. On pages 65 – 68 on Paper Book 3 is the reply of 16th Company M/s. Swarnarekha Dealcom Pvt. Ltd. This company has also provided all the relevant documents such as copy of bank statements, copy of income of income tax returns along with audited balance sheet, directors report and auditors report, etc. and the source of investment and justification for premium payment is also explained

and it has been stated in this regard that there was receipts from sundry debtors and the details of such receipts is also given such as the name of the company from whom the amount was received along with its address and PAN and the amount and date of receipt. Similarly, on pages 69-72 is the reply of 17th Company M/s. Venkatesh Barter Pvt. Ltd. This company has also provided all the copy of bank statements, copy of income tax returns along with audited balance sheet, directors report and auditors report, etc. and regarding source of investment, it was explained by this company that an amount of Rs.27 lakhs was received from M/s. Link Tradecom Pvt. Ltd., on 04.07.2011 and the address and PAN of this company is provided and it was also submitted that Rs.25 lakhs was received from M/s. Rishikesh Tradecom Pvt. Ltd. on 05.07.2011 and the address and PAN of this company is also provided. Justification of share premium payment is also submitted by this company. On pages 73-74, is the reply of 18th company M/s. Zenom Vinimay Pvt. Ltd. This company has also provided all the documents such as the copy of bank statement, copy of income tax returns along with audited balance sheet, directors report and auditors report etc. and regarding source of investment, it was explained that on 30.06.2011, the company received refund of loan of Rs.10 lakhs from Goel Fintrade Pvt. Ltd. of whose address and PAN is also provided. This company has also provided justification for premium paid.

9. 19th investor company is M/s. Matajwala Investments and Infrastructure Pvt. Ltd. from whom an amount of Rs.382.80 lakhs was received. The documents of this company are not available in Paper Books 2 or 3. Regarding this company, it is seen that on pages 5 to 6 of Assessment Order, it is noted by the AO that this is a company wherein the directors of the assessee company are the Directors and this company has invested an amount of Rs.382.80 lakhs in the assessee company and this company was not making any income in Assessment Years 2011-12 and 2012-13. The AO has

noted that bank account statement of this company was analyzed and common trend was seen from these bank accounts that just before making an investment in the assessee company by this company M/s. Matajwala Investments and Infrastructure Pvt. Ltd., that company received money from different entities located in Kolkata. Hence, it is seen that the bank statement of this company was also available before AO even in course of assessment proceedings.

10. As per the above discussion, it is seen that in respect of 19 companies from whom the assessee received the share application money, identity was established by the assessee company because reply along with relevant documents was filed by the 18 companies before ADIT, Investigation Unit 4(3), Kolkata and for the 19th company M/s. Matajwala Investments and Infrastructure Pvt. Ltd., bank statement was available before the AO also and the main objection of the AO as per para No.3.7 of the Assessment Order is that this company was not having substantial income but when it is shown that those companies were having share capital and the money is routed through banking channel and the bank statement is made available along with explanation regarding source of investments, it cannot be said and concluded that the company's identity is not established or its creditworthiness is not established mainly because the concerned company was not having substantial income.

11. In para 12 of his order, it is noted by learned CIT(A) that this was the claim of the assessee before him that in respect of receipt of Rs.382.80 lakhs from M/s. Matajwala Investments and Infrastructure Pvt. Ltd., no addition is called for in the present case because this amount was assessed in the hands of M/s. Matajwala Investments and Infrastructure Pvt. Ltd. as the source of aforesaid amount was not explained satisfactorily by that company. This is not the case of the Revenue that this addition in the hands of M/s. Matajwala Investments and Infrastructure Pvt. Ltd. was deleted and once the addition is made in the hands of the investor company on this basis that the investor

company was not able to explain the source of investment, no addition can be made in the hands of the investee company by alleging that the investment amount is the money of the investee company because once the addition is made in the hands of the investor company, source of investment has to be accepted as explained for the purpose of deciding the source of investment in the investee company.

12. Second most important objection of department is regarding receipt of share premium of Rs.240 per share for having face value of Rs.10 per share. The judgment of Hon'ble Apex Court in the case of M/s. NRA Iron & Steel Pvt. Ltd., (supra) is also mainly on this basis that the assessee in that case could not explain the justification of share premium of Rs.190 per share for a share having a face value of Rs.10 per share. In the present case, the share premium is more at Rs.240 per share as against Rs.190 per share in that case but in the present case, the assessee has explained regarding the justification of share premium by producing Share valuation Report of an. Approved Valuer whereas it is noted by Hon'ble Apex Court in para No.12(iii) of that judgment that no explanation whatsoever was offered as to why the investor company had applied for shares of the assessee company at a high premium of Rs.190 per share when the face value of the shares was Rs.10 per share. Hence, it is seen that in that case, there was no explanation offered about share premium of Rs.190 per share but in the present case, the assessee has furnished share valuation report as per which the shares of assessee company were valued at Rs.283 per share whereas the assessee company has issued share at Rs.250 per share only. Hence, on this aspect also, this judgment of Hon'ble Apex Court rendered in the case of M/s. NRA Iron & Steel Pvt. Ltd., (supra) is not applicable because in the present case, justification of share premium has been explained by filing the share valuation report.

13. As per the above discussion, we have seen that the assessee has submitted all necessary documents to establish the identity and creditworthiness of the investors and have also explained the genuineness of the transaction by providing explanation for share premium because apart from questioning the receipt of share premium, no question is raised by the revenue about genuineness and hence, the genuineness of this transaction is also established. We also find that there is no cash deposit in the bank accounts of the investor companies and therefore, in the absence of any corroborative material, it cannot be said that the money deposited in these bank accounts of these investor companies may be of the assessee company i.e. the investee company. We have also seen that the judgment of Hon'ble Apex Court rendered in the case of M/s. NRA Iron & Steel Pvt. Ltd., (supra)

is not applicable in the present case because the facts are different. In the present case, out of 19 companies, 18 companies have made available their balance sheet, audit report, director's report and bank statements and for the remaining one company M/s. Matajwala Investments and Infrastructure Pvt. Ltd., it is noted by learned CIT(A) that the directors of the assessee company and that company are common and addition of the same amount was made in the hands of that company on this basis that source of investment could not be explained by that company. Once addition is made in the hands of the investor company for this reason that the source could not be explained by the investor company, it cannot be said that the amount of same investment is belonging to the investee company and addition cannot be made again in the hands of the investee company. We, therefore, delete the entire addition made in the present case.

14. In the result, appeal of the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(PAVAN KUMAR GADALE)

Judicial Member

Bangalore,

Dated: 07th February, 2020.

/NS/

Sd/-

(A.K. GARODIA)

Accountant Member

Copy to:

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.