

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER

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SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.3399/Mum/2017

(Assessment Year :2012-13)

DCIT-1(2)(1) Room No.535, 5 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	M/s. Institutional Investor Advisory Services India Ltd. Maker Chambers-III Nariman Point, Mumbai-400 021
		PAN/GIR No.AACCI5147H
(Appellant)	..	(Respondent)

Assessee by	Sanjay R. Parikh
Revenue by	Abdul Hakeem
Date of Hearing	17/09/2019
Date of Pronouncement	30/09/2019

आदेश / O R D E R

PER S. RIFAUH RAHMAN (A.M):

This appeal filed by the revenue is directed against the order of the Commissioner of Income Tax (Appeals)-6, Mumbai, dated 28/02/2017 and it pertains to the Assessment Year (AY) 2012-13.

2. Brief facts of the case are that assessee is engaged in the business of Institutional investor advisory services, filed its return of income for the AY 2012-13 on 26/09/2012, declaring total income at Rs. 'Nil' and claiming loss at Rs. 1,55,41,260/-. The case was selected for scrutiny and notices u/s 143(2) and 142(1) of the I.T.Act, 1961 [in short 'Act'] were issued and served on the assessee. In response, the Ld. AR of the assessee filed the relevant information as

called for. During the assessment proceedings, the Ld. AO noticed that assessee has in receipt of share capital to the extent of Rs. 8,30,22,500/- and share application money pending for allotment of Rs. 1,33,30,000/-. The Ld. AO observed that assessee is unlisted company and assessee has issued share capital with share premium and has not substantiated the intrinsic value of the shares in comparison to the share premium. Further, he observed that assessee has not filed complete details showing the nature of this share premium that is assessee is not filed any justification for the excess premium received in comparison to the intrinsic value of the share. Accordingly, Ld. AO asked the assessee to file the details an explanation with regard to activities of the company, details of the shareholders along with PAN address, basis of valuation, copies of share allotment letters and bank statement of the applicant and sources of money for the investments, in response, assessee filed party wise details of increase in share capital, copies of bank statement of the assessee and copies of ROC records, in respect of share allotment.

3. After considering the above submissions, Ld. AO observed that assessee has issued share application money to the extent of Rs. 12 crores and received Rs. 8,30,22,500/- as fully paid equity share capitals. At the time of filing return of income, assessee has not filed complete details showing the nature of the share amount received that is justification for the excess premium received in comparison the intrinsic value of the share. Further, he observed that assessee has issued shares of Rs. 10/- each at the premium of Rs. 10.3. During the assessment proceedings, assessee has not justified receiving such huge share application money and assessee

has not explained, the source of funds of the share holders. Further, he observed that there cannot be any addition in respect of share premium, so long as, source of funds is explained in the hands of the share holders. The Ld. AO observed that section 68 requires the assessee to explain nature and source of the credit entry. According to him, assessee has to explain nature and source of the credit entry to the satisfaction of the AO. However, in this case assessee has not filed any justification for quantum of premium. Therefore, the above cases covered in section 68 of the Act, by relying on the certain case law, AO has made the addition of the total share capital received by the assessee, including premium u/s 68 of the Act. Aggrieved by the above order, assessee preferred an appeal before the Ld.CIT(A), before the Ld. CIT(A) assessee made the following submissions:-

3. Details sought vs. furnished during the hearing

Status of details sought and provided during the hearing Reference Point No 4.1 of the Assessment Order

	<i>Details sought during the hearing</i>	<i>Status of compliance</i>
<i>I</i>	<i>Brief Note on company activities</i>	<i>Complied- Note Furnished</i>
<i>II</i>	<i>Details of shareholders, Directors along with their PAN, address, allotment of shares</i>	<i>Complied- Details Furnished</i>
<i>III</i>	<i>Basis of valuation of shares and determination of share valuation report</i>	<i>Not asked for and not provided.</i>
<i>IV</i>	<i>Copies of share allotment letters to the shareholders</i>	<i>Complied- Copy of Allotment letters furnished.</i>

V	<i>Bank statement of the share applicants and the sources of money paid for purchase of shares, their balance sheet etc. (Refer Note-1 below)</i>	<i>Parity complied- - Balance sheets of corporate entities famished. Bank statement of one of the three individual shareholders furnished.</i>
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Note-1

In respect of the source of payment, the Learned AO asked for the copies of the bank statements of all the shareholders and their balance sheets. While the bank statement in respect of one the individual shareholders (Mr. Amit Tandon 739600 equity shares) was provided, it was explained to the Learned A.O. that the other two individual shareholders for whom the bank statements were not readily available were senior professionals and the source of their investment in the share capital of the assessee company was their retained earnings over the years. PAN and tax jurisdiction details of these individual shareholders were furnished. None of these individuals are required to file their Balance sheets with their return.

Further, copies of the bank statement of the assessee company highlighting the names of the individual shareholders against the credit entries vide which amounts were received from them were also furnished.

Moreover it was explained to the Learned A.O, that obtaining copies of the bank statements from the institutional shareholders i.e. BSE Limited, HDFC Investment Limited, Tata investment Corporation Limited, Fitch inc. USA and Axis Bank Limited, was difficult, instead the published annual accounts of BSE Limited, HDFC investment Limited, Tata Investment Corporation Limited evidencing the Investment In the assessee company were made available. Share capital of these financial institutions in the assessee company was Rs. 5,00,07,500/- out of total increase in share capital of Rs,8,29,22,500/- during the year.

4. Source of payment and the details of shareholders

The Learned A.O. mentions in the Order that the nature and source of money in respect of the Share Capital and the Share Application money was not satisfactorily explained treating to the addition of Rs.9,63,52,500/- under Sec.68 of the Act. A perusal of the list of the institutional shareholders of the company will confirm that these are all renowned names which have a net-worth in millions. Credit worthiness of these institutions and sources of their investments could have been easily established by review of their balance sheet & cash flow statements for the year respectively. It is unreasonable to expect these financial institutions to provide their bank statement as evidence of the source of their investment in the assessee company. The Investment made by them in the assessee company represents a very small portion of their total investment. Moreover these investments are reflected in their

audited statements, extracts of which were submitted during the course of the hearing.

5. Details not furnished in the Tax return

At various pieces in the Order, the Learned AO has stated that the details of the justification of the premium were not filed by the assessee along with the return of income. In this regard it may be mentioned that there is no requirement /opportunity for the assessee to furnish these details in the Income Tax return filed online in form 6. The share premium account forms part of the Balance Sheet of the company and in the details of Balance sheet to be furnished in the ITR, the same has been duly depicted.

The assertion of the Learned A.O. that the justification in respect of premium received vis-a-vis the intrinsic value of shares was not satisfactorily explained during the course of the hearing is factually incorrect as it was not asked for. Moreover it has been stated in the Assessment Order at Point No 4 (k) that the provisions of Sec 56 (2) (vii) (b) were not applicable during the A. Y. 2012-13..

6. Note on premium charged

While no justification of this premium is required in terms of the provisions of Sec 56 (2)(vii)(b) as applicable during AY 2012-13, the following may be pointed out in this regard in support of the assessee's position.

- a) The premium received was based on the business plan that was presented to the investors and the projections made by the company of its future profitability and cash flows.*
- b) In addition the premium factored in the unique nature of the business and the need to start such a service in India,*
- c) These businesses are not valued on the basis of more traditional benchmarks, but typically trade at revenue multiples. A comparable will be rating agencies. So it is advantageous to invest early. Once business gets off- the ground, they become very expensive on a PE or Revenue multiple basis.*

7. Favorable Case Law on justification of premium in a similar case

The decision of the Mumbai Tribunal in the case of Green Infra Limited Vs ITO (TS-420-ITAT-2013(Mum) squarely covers the case of the assessee. The facts of the case are similar to that of the assessee. The order deals with the justification of premium charged by newly incorporated companies and was held in favor of the assessee, The salient points of the order are enumerated below;-

- a) Issue of shares at a premium was a commercial decision and did not require justification under any law currently in force.*
- b) Share Premium is a capital receipt under Sec 78 of the Act.*
- c) It is the prerogative of the Board of Directors of the company to decide the premium and the wisdom of the shareholders to subscribe to shares at such value,*

d) *In the absence of any restrictions of any law in force, revenue cannot question the charging of the premium.*

e) *Since the transactions have been done entirely through banking channels, the provisions of Sec.68 cannot be applied.*

8. Proviso to Sec.68 of the Act

It may also be pointed out here that the Proviso to Sec. 68 which deals with the share capital and share application money credited to the account of a company (not being a company in which public is substantially interested) has been inserted by the Finance Act 2012 w.e.f. 01.04.2013. This however has little relevance in the case of the assessee as there is absolutely no uncertainty about the nature of source of the amounts received as share capital and share application money.

9. Issue of shares at premium a device to claim losses in future

The Learned A.O. further goes on to state in the order that issue of shares at premium is a device by the companies to claim losses in subsequent years by way of issue of Bonus shares. The order states that in case of issue of shares at premium, the tax returns of the shareholders for the subsequent two years should also be called for. This is nothing but a figment of imagination of the Learned A.O. No Bonus shares have been issued by the company in the subsequent years till date and none of the shareholders has transferred/sold any of the shares held by it in the subsequent years till date.

Based on the above, it can be concluded that there is no validity in claim made by the Learned A.O. that these entities purchased shares at premium to gain some tax advantage.

10. Compliance with other laws regulations

A) ROC

It may also be pointed out here, that due compliance has been made by the assessed with the other applicable laws and regulations with respect to the allotment of shares. The required ROC filings in respect of the allotment of shares have been duly made from time to time. These share allotments have been duly taken on record by the ROC and no objection/adverse remark has been received in this regard.

B) FEMA

Further In terms of provisions of FEMA, issue of shares by a resident Indian company to Non Resident entity cannot be done at a value less than the Fair Value of the share. The filings to be made to the RBI in respect of the allotment of shares to a Non-Resident entity include a Fair valuation report by a Chartered Accountant. This report was duly obtained in respect of allotment of 22,25,000 equity shares on 28.03.2012 to Fitch Inc USA at Rs.13.33 per equity share, inclusive of premium of Rs 3.33 per share. This report was part of the documents submitted to the RBI as evidence of compliance with FEMA provisions. Copy of the Letter received from RBI dated 11.09.2012 confirming the FEMA compliance in

respect of the shares allotted to the Non-resident corporate entity was also submitted during the hearing.

A copy of this report dated 20.03.2012 which certified the fair value of the share to be Rs.12.50 per share is being furnished separately as additional evidence.”

4. Further, assessee filed additional evidence, like confirmation letters from the individual shareholders and confirmation of remittances, shareholder agreements and valuation report, as far as domestic and foreign institutional investors, the same was forwarded to the Ld. AO for his response. Accordingly, Ld. AO filed the remand report, dated 09/12/2016 and a copy of the same was also given to the assessee. In response, assessee filed reply to the remand report, which is reproduced below:-

1. *“ The appellant before your honour is a limited company carrying on business of advising Institutional Investors, finance and trading. For the year under consideration, the appellant had filed their return of income on 28.09.2012 declaring loss of Rs, 1,55,41,260/-. The return of the appellant was selected for scrutiny by the Deputy Commissioner of Income Tax-1(2){1}, Mumbai(AO). In response to notices, the appellant appears before the AO from time to time and -fried various details and explanations. However, disregarding the details and explanations furnished by the appellant, the AO has assessed the income of the appellant at a positive income of Rs. 8,08,11,240/- by making an addition of Rs. 9,63,52,500/- on account of share capital money.*
2. *Aggrieved by the same, the appellant is in appeal before your honour.*
3. *At the outset, the appellant submits that the share capital money was received from parties as per statement attached with appeal memo-Your honour would appreciate that out of these parties, major amount was received from Tata Investment Corporation Limited, HDFC Investments Limited, BSE Limited and Fitch Group, Inc., USA. Your honour would appreciate that during the course of assessment proceedings, the appellant Had filed the party wise details of share capital which also included the Permanent Account Number of share applicants, copies of bank statements of companies highlighting the credit entries in respect of share capita! and copies of ROC records*

including return of allotment The appellant had thereafter vide letter dated 27.01.2015 filed copies of annual accounts of BSE Limited, Tata Investment Corporation Limited and HDFC Investments Limited. Your honour would appreciate that the investments made by them in the appellant company were duly reflected In their annual accounts. However, the AO insisting that the appellant furnish copies of bank statements of these parties. However, as these parties were big entities, it was not possible for the appellant to furnish the bank statements of these parties. The AO accordingly added the entire share capital as the income of the appellant.

4. *The appellant had filed an application under Rule 46A wherein it was pointed out that the AO was In a hurry to complete the assessment in as much & s he passed the assessment order on 28.01.2015 i.e. within seventeen days from the date fixed for }ho first effective hearing, The appellant has accordingly filed the confirmation from the individual and corporate shareholders. As regarding Fitch Group Inc., USA, the appellant had tiled the Foreign inward Remittance Certificate and Shareholders Agreement. As regards BSE Limited, Tata Investment Corporation Limited and Axis Banff Limited, the appellant filed confirmation Setters along with Shares Subscription and Shareholders Agreement*

5. *Your honour would appreciate that the AO has in the Remand Report stated that the appellant was given sufficient opportunity to produce all the documentary evidences during the assessment proceedings to support its stand. The AO has thereafter reproduced the provisions of Rule 46A and stated that none of the conditions get fulfilled in the present case. The AO has accordingly stated that the additional evidences should not be admitted.*

6. *In this regard, the appellant submits that the AO has himself the Remand Report stated that after the initial submission on 13.01.2015, the appellant was given time till the passing of the order i,e.29.01.2015, Your honour would appreciate that within these sixteen days, the appellant had filed whatever evidences were there in their possession and which according to them would help in establishing the genuineness of the share application money. Your honour would appreciate that in spite of being given only sixteen days, the appellant has filed the balance sheets of BSE Limited, Tats Investment Corporation Limited, HDFC investments Limited end Axis Bank Limited. Your honour would appreciate that from the balance sheets of these concerns that these companies have reflected the investment made by them in the appellant company. Further, the appellant had also filed the Permanent Account Number of all the shareholders. The AO having been informed that it was not possible for the appellant to obtain the bank statements of these Limited Companies, should have called for the same from the parties, if he considered ft necessary. Your honour would appreciate that the Hon'ble Supreme Court has in the case of CIT v Orissa Corporation (P)) Ltd. In this connection, the Hon'ble High Court has held as under.*

"13. In this case, the assesses had given the names and addresses of the alleged creditors, it was in the knowledge of the Revenue that the said creditors were income-tax assesses. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under s, 131 at the instance of the assesses, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were creditworthy or were such who could advance the alleged loans; There was no effort made to pursue the so-called alleged creditors, in those circumstances, the assessee could not do anything further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

7. *In the present case, the appellant had furnished the Permanent Account Numbers of the lenders along with the names and addresses. The AO has not even issued notices u/s.133(6) or summons u/s,131 to verify the veracity of the creditors. The appellant having furnished the names, addresses and Permanent Account numbers had discharged the initial onus cast on them. Hence, the onus thereafter shifted on the AO, which he failed to discharge.*

8. *Your honour would appreciate that the additional evidences were filed in support of their claim to prove the genuineness of the share application money.*

9. *Accordingly, the appellant prays that the additional evidences may be admitted and the issue may be decided as per law.*

10. *As regards merits of the case, the AO has on the last page of the Remand Report stated that sample verification of the documents has been done. On the basis of the said documents, the AO has stated that these documents match with those submitted by the assessee vide submission dated 20.01.2015. The AO has also drawn your honour's attention that the appellant was asked to produce the bank statements of the parties during the assessment proceedings which have not been provided till date.*

11. *As regards share valuation, the AO has stated that share value was reported to be Rs.12.50 per share as against which, shares have been issued to a few parties at Rs.13.33 per share. Your honour would appreciate that the appellant was in a position to recover some extra premium which it has done and accordingly, no adverse inference is called for on that account. The AO has finally stated that your honour may decide the issue on merits.*

12. *A perusal of the documents furnished during the course of assessment proceedings as also as additional evidences before your*

honour, your honour would appreciate that the appellant has filed confirmation of all the parties residing in India. Apart from the same, the appellant had filed share subscription and share capital agreement with the domestic corporate investors viz. BSE Limited, Tata investment Corporation Limited, HDFC investments Limited and Axis Bank Limited. Further, the appellant has also filed copies of annual accounts of BSE Limited, Tata Investment Corporation Limited and HDFC investments Limited which shows the investments made by them in the appellant company. Your honour would appreciate that if the AO had any doubt regarding genuineness of these parties, the AO should have summoned the said parties and should have verified their genuineness, The AO not having done so and the appellant having discharged the primary onus of proving the identity by way of confirmation letter, the capacity by way of their annual accounts and genuineness by way of share subscription and shareholder agreement, the onus thereafter lied with the AO to show the appellant state of affairs were & not true.

13. As regards investment by Fitch Group inc., the appellant has forwarded the certificate of Foreign inward Remittance along with share subscription and shareholders agreement. Your honour would appreciate that from the Foreign Inward Remittance Certificate, the certificate specifies the name and address of the remitter i.e. Fitch Group inc. and purpose of remittance as "towards equity subscription". The genuineness of the same is also proved by the share subscription and shareholders agreement.

14. Your honour would appreciate that the appellant has discharged the primary onus cast on it and if the AO needed any other details or wanted to verify anything further, it was for him to call for necessary evidences from the concerned parties either by sending simple letter or by issuing summons u/s. 131. The AO not having done so, no adverse inference can be called for on that account.

15. Your honour would appreciate that various decisions including that of the Hon'ble Supreme Court have held that where the assessee has discharged primary onus, the onus thereafter was on the AO to disprove the same.

Reliance in this regard is placed on the following decisions:

- a) CIT v. Orissa Corporation P. Ltd. (1986) 159 ITR 86 (SC) - where assessee has given the correct name and address of the alleged creditors, it could be said that he has discharged his onus to prove the genuineness of credits in his accounts and unless the Revenue Authority issues notice to test the genuineness of the transaction or the capacity of the creditor to pay, the amount cannot be added in the hands of the assessee.*
- b) CITv.Noorjehan(Smt P. K) (1999) 237 ITR 570 (SC)- the phraseology of section 69 in creating the legal fiction employs the word "may" and not "shall". The unsatisfactoriness of the explanation does not and need not, automatically, result in deeming the value of the*

investment to be the income of the assessee. Comment - Even section 68 uses the word "may".

c) CIT v. Vrindavan Farms (P) Ltd, [www.itatonline.org] - if the identity and other details of the share applicants are available, the share application money cannot be treated as undisclosed income in the hands of the company. The addition, if at all, should be in the hands of the applicants if their creditworthiness cannot be proved.

d) CIT v. Cacmet Packaging (India) P. Ltd. (2014) 367 ITR 217 (All) - genuineness of transaction and creditworthiness of application proved. Amount not assessable.

e) CIT v. Sachitel Communications P. Ltd. (2014) 227 Taxman 219 (Guj) - where identity and capacity proved, addition was deleted.

f) CIT v. Sam Tobacco India Ltd. (2014) 222 Taxman 58 (All) - where in support of receipt of share application money assessee produced names, addresses and PAN of depositors, it was sufficient to prove their identity and creditworthiness,

g) CIT v. Nishan Indo Commerce Ltd. (2014) 101 DTR 413 (Cat) - once identity disclosed deletion was justified,

h) CIT v. Nipuan Auto P. Ltd, (2014) 101 DTR 413 (Del.) - assessee diverging initial burden, deletion of addition justified,

i) ITO v, Neelkanth Finbuild Ltd, (2015) 40 ITR (Trib) 665 (Del) - even if the share capital is bogus, no addition can be made in assessee's hands if identity of shareholder is established. Assessee is not required to show source of shareholder's funds.

16. In view of the above, the appellant prays Mine addition made by the AO of Rs.9,63,52,500/- maybe dented,"

5. After considering, the remand report and submissions of the assessee, the Ld. CIT(A) observed that major investors in the assessee company are reputed national, international investors and financial institutions apart from the promoters and their family members, the subscribers to the shares are not only filed their income-tax returns, but also their balance sheet, as well as bank accounts. Further, he has listed the information submitted by the assessee relating to the investors in the company, which are given below:

- (i) *M/s.BSE Limited have invested Rs.4,00,00,000/-, out of which Rs.3,00,07,500/-has been added by the AO u/s.98. M/s.BSE Limited is a reputed company well-known throughout the country.*

It is having PAN: AACCB6672L and filing its regular income-tax return with DCIT.Cir,2(1)(1), Mumbai. The money was received from BSE Limited through RTGS, ICICI Bank (Escrow) on 31.12.2011 and it was credited to the bank account of the assessee - ICICI Bank, Nariman Point Branch, Current Account No,000405074138.

- (ii) *M/s. Tata Investment Corporation Ltd. have invested Rs. 1,33,30,000/-, out of which Rs,1,00,00,000/- has been added by the AO u/s.68. M/s Tata Investment Corporation Ltd. is a reputed company well-known throughout the country. It is having PAN: AAAC4120F and filing its regular income-tax return with DCIT.Cir 2(3), Mumbai. The money was received from Tata Investment Corporation Ltd. through Cheque No.293182 - Catholic Syrian Bank Ltd., Fort Branch on 16.09.2012 and it was credited to the bank account of the assessee -ICICI Bank. Nariman Point Branch, Current Account No.000405074138.*
- (iii) *M/s.HDFC Investment Ltd. have invested Rs,1,33,30,000/-, out of which Rs. 1,00,00,000/- has been added by the AO u/s,68. M/s.HDFC Investment Ltd. is a reputed company well-known throughout the country. It is having PAN: AAACH1462L and filing its regular income-tax return with Cir. 1(1)(10), Mumbai. The money was received from HDFC Investment Ltd. through Cheque No.979559 - HDFC Bank on 23.11.2011 and it was credited to the bank account of the assessee - ICICI Bank, Nariman Point Branch, Current Account No.000405074138.*
- (iv) *M/s.Fitch Group INC have invested Rs.2,96.59,250/-, out of which Rs.2,25,50,000/- has been added by the AO u/s.68. M/s.Fitch Group INC is a well reputed international investor situated at One State Street Plaza, New York, NY 10004. USA. The money was received from M/s.Fitch Group INC through RTGS,Chase Bank on 23,7.2012 and it was credited to the bank account of the - ICICI Bank, Bank, Nariman Point Branch, Current Account 105074138.*
- (v) *M/s.Axis Bank Limited have invested Rs.1,33.30,000/-, out of which Rs.1,33,30,000/- has been added by the AO u/s.68. M/s. Axis Bank Limited is a well reputed bank well-known throughout me country. It is having PAN: AAACU2424K and fifying its regular income-tax return with Cir,1(1)(1), Mumbai The money was received from Axis Bank Limited through RTGS, Axis Bank on 30.12.2011 and it was credited to the bank account of the assessee -Axis Bank, Nariman Bank, Current Account No.911020001938527.*

- (vi) *Mr. Amit Tandon has invested Rs,73,96,000/-, out of which Rs.73,96,000/- has been added by the AO u/s.6S. Mr. Amit Tandon is the Managing Director of the assessee company. He is having PAN: AADPT7741C and is regularly assessed with Cir 3(1)(1), Mumbai for a long period. The money was received through bank transfer from ICICI Bank in four Installments on 20.05.2011, 23.11.2011, 06.02.2012 and 23.03.2012 and the transaction is duly reflected in the accounts of Mr Amit Tandon and the assessee company. The same was credited to the bank account of the assessee - ICICI Bank, Nariman Point Branch, Current Account No.000405074138.*
- (vii) *Mrs. Anshu Tandon has Invested Rs.1,000/-, out of which Rs.1,000/- has been added by the AO u/s.8Mrs. Anshu Tandon is the wife of Shri Amit Tandon. She is having PAN: AAGPT9630F and is regularly assessed with Ward-21 (1)(4), Mumbai for a long period. The money was received through bank transfer from ICICI Bank on 19.07,2011 and the transaction is duly reflected in the accounts of Mrs. Anshu Tandon and the assessee company. The same was credited to the bank account of the assessee - ICICI Bank, Nariman Point Branch, Current Account NO.D00405074138.*
- (viii) *Ms. Anurati Tandon has invested Rs.1,000/-. out of which Rs.1,000/- has been added by the AO u/s.68, Ms. Anurati Tandon is the daughter of Shri Amit Tandon. She is having PAN: AHDPT8515H and is regularly assessed with Ward-5(1)(1), Mumbai for a long period. The money was received through Cheque No,7 – Yes Bank on 21.07,2011 and it was credited to the bank account of the assessee – ICICI Bank. Nariman Point Branch, Current Account No.000405074138.*
- (ix) *Anil Singhvi has invested Rs.25,50,000/-, out of which Rs.25,50,000/- has been added by the AO u/s.68. Mr. Anil Singhvi is a retired CEO of Ambuja Cement He is having PAN: AABPS5805J and is regularly assessed with Circle-.3(2)(1). Mumbai for a long period. The money was received through bank transfer from ICICI Bank in two installments on 31.03.2011 and 12.07.2011. The same was credited to the bank account of the assessee - ICICI Bank, Nariman Point Branch, Current Account No.000405074138.*
- (x) *Smt. Nishi Singhvi has invested Rs.50,000/-. out of which Rs.50,000/- has been added by the AO u/s.68. Smt, Nishi Singhvi is the wife of Shri Anil Singhvi. She is having PAN: AIQPS4G28A and is regularly assessed with Circle-18(1), Mumbai for a long period. The money was received through Cheque No.385248 -*

HDFC Bank on 21.07.2011 and it was credited to the bank account of the assessee -ICICI Bank, Nariman Point Branch, Current Account No.000405074138.

- (xi) *Mr, Rajan Jayakumar has invested Rs.10,20,745/- out of which Rs,7,65,000/- has been added by the AO u/s.68, Mr. Rajan Jayakumar is the Executive Director of the assessee company. He is having PAN; ACUPJ3514E and is regularly assessed with Income Tax Office, Non Corporate Circle, Nungambakkam High Road, Chennai-600 034. The money was received in two installments (i) Rs.1,000/- through Cheque No.154456 - HDFC Bank on 21.07.2011 and (ii) Rs,7,65,000/- through Cheque No.643523 - Punjab National Bank on 26.03.2012. The same was credited to the bank account of the assessee - ICICI Bank, Nariman Point Branch, Current Account No.000405074138.*

- (xii) *Mrs. Sudha Jayakumar has invested Rs.1,000/-, out of which Rs,1,000/- has been added by the AO u/s.68. Mrs. Sudha Jayakumar is the wife of Mr. Rajan Jayakumar, She is having PAN: ADHPJ7017L and is regularly assessed with Income Tax Office, Bandra Kurla Complex, Bandra (East), Mumbai. The money was received through Cheque No.218531 - HDFC Bank on 21.07.2011 and was credited to the bank account of the assessee - ICICI Bank, Nariman Point Branch. Current Account No.000405074138.*

6. Further, he observed with regard to details filed by the assessee are as below:-

"8.2. From perusal of the details filed by the appellant, it can be concluded that:-

(1) Complete details of shareholders, name, address, PAN, amount of share subscription were furnished by the appellant during assessment proceedings.

(2) All subscribers to share capital paid their share subscription by cheque or bank transfer. Share subscription was received in current bank accounts of the appellant (ICICI Bank, Nariman Point Branch, Current Account No:00405074138 and Axis Bank, Nariman Bank, Current Account No-.911020001938527). The credits towards subscription of shares were duly traced in the bank statements of the appellant company and were not cash deposits. Copies of bank statements of the appellant tracing share subscription received and names of respective shareholders were submitted during the assessment proceedings.

(3) Bank statement of one of the individual investors, Mr. Amit Tandon, who made the largest investment amongst the individuals to subscribe 7,39,600 equity shares, was submitted during assessment proceedings.

(4) The audited balance sheets of corporate shareholders (The BSE Limited, Tata Investment Corporation Ltd., HDFC Investments), which are large financial institutions, were also furnished during the assessment proceedings and such balance sheets reflect the investment made in share capital of the appellant. Creditworthiness of these institutions and sources of their investments could have been established by review of their balance sheet and cash flow statements for the year respectively.

(5) Details of share subscription received (giving details of shareholders name, address, pan, assessment jurisdiction, amount of share subscription, cheque details, details of appellant's bank account) were also furnished.

8.3 Apart from it, appellant also submitted the following details:

(1) Return of Allotment filed with Registrar of Companies in respect of share of allotment to above shareholders along with board resolutions were submitted during the assessment proceedings. Due compliance has been made by the appellant with the other applicable laws and regulations with respect to the allotment of shares. The required ROC filings in respect of the allotment of shares have been duly made from time to time. These share allotments have been duly taken on record by the ROC and no objection/adverse remark has been received in this regard.

(2) Copy of the Letter received from RBJ dated 11.09.2012 confirming the FEMA compliance in respect of the shares allotted to the Non-resident corporate entity (Fitch Group Inc, USA) was also submitted during the hearing.

(3) Additional evidences submitted during the course of appeal hearing. The confirmations were not In its possession at the time of assessment hearings and accordingly the same could not be filed with the AO. As regards the foreign inward remittance certificate and share subscription and shareholder agreements, the appellant did not realize at the relevant point of time that the same may be also helpful to support its stand.

8.4 During the course of assessment proceedings, additional evidences were furnished which were required for finding the true nature of the transactions. Since consideration of the additional evidences were necessary for finding the true nature of transactions, therefore additional evidences were admitted and forwarded to the AO for his comments. The remand report received from the AO has been discussed in para 6 of this order”.

7. After considering, the above observations Ld. CIT(A) has deleted the additions u/s 68 with the following observations:-

*8.6 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. The AO in his Remand Report has also confirmed that his examination of the details in the documents submitted as additional evidence match with those submitted by the assessee vide submission dated 20.01.2015 during the scrutiny proceedings. 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 CTR195***

"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 /aw but this amount of share money cannot be regarded as undisclosed income under section 68 of the assessee company"

*8.7 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 judgments of Hon'ble ITAT and Hon'ble Courts as discussed in para 8.5, appeal of the assessee is allowed and addition of Rs,9,63,52,500/- made by the AO u/s.68 of the Act is **deleted.**"*

8. Aggrieved with the above order, revenue is in appeal before us, raising the following grounds of appeal:-

1. "Whether on the facts and in the circumstances of the case and in law the Ld.CIT(A) erred in deleting the addition of Rs. 9,63,52,500/- made u/s.68 of the I.T.Act, even when the assessee failed to submit the bank details in respect of creditors and thereby the failure to establish the creditworthiness of the share applicants and genuinity of the transaction continued?"

9. Before us, the Ld. DR submitted that as per section 68 assessee has to explain, the nature and source of the investment to the satisfaction of the AO, in this case assessee has not satisfactorily explain the nature and source of the above transactions. Further, he submitted that assessee has not explained, the creditworthiness of the investors in the shares. Further, he submitted that assessee has not filed proper papers, in relation to creditworthiness or bank statements, as called for by the AO, even in remand proceedings, he brought to our notice para 8.7 of the Ld.CIT(A) and submitted that Ld. CIT(A) has come to the conclusion that genuineness identity and credit worthiness of the investors were explained by the assessee, but assessee has not explained the same before the AO. Therefore, he prayed that this issue may be remitted back to the AO, as the assessee has not filed any bank statements.

10. On the other hand, Ld. AR brought to our notice, the details of investment made by '11' investors and submitted that majority of the investments made by the financial institutions and international investors and other investments made by the promoters and their relatives. He submitted that during remand proceedings, assessee has filed confirmation from all investors and investment agreement and copy of their return of income and annual accounts, as far as institutional investors, he submitted that all the confirmation and other information, which was submitted before the Ld. AO and Ld.CIT(A) are submitted in paper book and further, he submitted that assessee has made share valuation before issue of shares, the same is placed in paper book pages 428 to 435 of the paper book

and submitted that the shares were valued by a reputed share valuer and the share was valued, as per the fair market value of the shares, as on the date of valuation stood at 13.92 per share, however valuer has valued the share at Rs.12.5/- after discounting at 10%, as the company being unlisted company. However assessee adopted for the issue of shares @13.33 per share . Further, he submitted that the issue under consideration is for AY 2012-13, whereas the amendment to section 68 and 56 of the Act were took place subsequently. Therefore, such amendment will not be applicable to AY 2012-13. Further, he brought to our notice remand report of the AO, which is placed on record at page 441 to 444 of the paper book, in the remand report the Ld. AO considered the submissions of the assessee and he has not made any adverse observations as far as the additional evidence submitted before him, however he observed that assessee has issued the shares with premium @ 13.33, whereas the share was valued @12.5 per share by the valuer. Further, he observed that during the scrutiny proceedings, assessee was asked to produce bank statement of the parties, who had made the investment, further assessee was also asked to provide source of the money for making the above investments by the shareholders, the above informations were not provided by the assessee. Therefore, the above additional evidence should be rejected, but he submitted that assessee has filed all the information before AO and with regard to additional evidence, which was submitted before the Ld. CIT(A), AO has not made any adverse observation, however Ld. AO observed that assessee has not filed bank statements of the investors and assessee has also not explained source of the source of the investments. He brought to our notice that assessee has already submitted the bank statement of

the promoters and their relatives before the AO with regard to institutional investors, assessee has already filed PAN and their financial statements, wherein they have recorded the above investments in their books of accounts, all these were considered by the Id. CIT(A), in considering the assessee's appeal in this order.

11. In the rejoinder, the Ld. DR submitted that the Ld. CIT(A) has gone with reputation of the parties, whereas he should have gone with proper documentations further, he submitted that initial onus is only on the assessee to prove the genuineness, but in this case assessee has not proved the genuineness and not discharge its duties, whereas the Ld. AR submitted that assessee has already fulfilled the initial onus by filing relevant PAN, return of income and address of the assessee and assessee has properly discharged the duty, for this proposition, the Ld. AR relied on the following decisions to support the findings of the Ld.CIT(A), CIT-8 vs Gagandeep Infrastructure (P) Ltd. 394 ITR 680 (Bom) and CIT-1 vs Orchid Industries Pvt.Ltd. 397 ITR 136 (Bom), Pr. CIT-13 vs Veedhata Tower Pvt.Ltd. 403 ITR 415 (Bom) and Jayneer Infrapower & Multiventures (P.) Ltd. vs DCIT 103 taxmann.com 118 (Mumbai-Trib.).

12. Considered the rival submissions and material available on record, we notice that assessee has received share application money from the promoters and relatives and domestic and international institutional investors as detailed below:-

No	Name of Party	No. of Shares	Amount Received
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1	<i>Mr. Amit Tandon</i>	739,600	7,396,000
2	<i>Ms. Anshu Tandon</i>	100	1,000
3	<i>Ms. Anurati Tandon</i>	100	1,000
4	<i>Mr, Anil Singhvi</i>	250,000	2,500,000
5	<i>Ms. Nishi Singhvi</i>	100	1,000
6	<i>R. Jayakumar</i>	76,500	1,019,745
7	<i>Ms. Sudha Jayakumar</i>	100	1,000
8	<i>Bombay Stock Exchange Limited</i>	3,000,750	40,000,000
9	<i>Fitch Inc. USA</i>	2,225,000	29,659,250
10	<i>Tata Investment Corporation Ltd.</i>	1,000,000	13,330,000
11	<i>HDFC Investments Ltd,</i>	1,000,000	13,330,000

8,292,250 107,238,995

13. The above investments includes face value of Rs. 10/- and share premium of Rs. 3.33 per share. It can be seen that majority of the investments are made by Bombay Stock Exchange Limited, Tata Investment Corporation Limited, HDFC Investments Limited and foreign institutional investor Fitch Inc. USA. The total investments received by the assessee are Rs. 10,72,38,995/- out of which Rs. 9,63,19,250/- are the investments from institutional investors, which is 90% of the total investment, balance 10% invested by the promoters and their relatives, we notice that the Ld. AO has asked for justification of issue of shares with premium and disallowed considering the fact that the assessee has not submitted bank

statements of all the investors, in the remand proceedings assessee has filed all the relevant information relating to issue of above shares i.e share valuation, confirmation from all the parties and with regard to promoters and their relatives assessee has filed PAN, address and their confirmation letters with their bank statements, with regard to institutional investors, assessee has filed PAN details, address details and ROC allotment and their financial statements. In our view, it is enough that investors file their financial statements confirming the investment made by them in their books of accounts and they need not submit separate bank statements, as long as they submit their financial statement, it is equal to submission of bank statement.

14. In the given case, Ld. AO disallowed the whole share capital, as well as share premium . Considering the fact that assessee has to prove the source of source and justification for issue of shares in premium, we notice that assessee has already filed share valuation before the AO and as per the valuation the valuer has valued the share 13.95 with a discount for the assessee being unlisted company, however assessee has proceeded to issue the shares with a premium of Rs. 3.33, but valuer has originally valued for Rs.3.95 as the premium, assessee has issued the shares with a middle value taking as Rs. 3.33 per share. As long as it is acceptable to the company and the investors and also reasonable, revenue has no role to play. Further, the premium collected are 1/3rd of the total share value.

15. With regard to submission of source of source, we are in agreement with the assessee's counsel that the amendment to the section 68 was introduced subsequent to this AY. Therefore, AO

cannot insist on the assessee to submit source of source. As far as section 68 addition is concerned, the Ld. CIT(A) has already considered the submissions and remand report from the Id. AO and found that all the ingredients mentioned in the provision of section 68 is already complied by assessee and therefore, we are inclined to accept the findings of the Ld. CIT(A) and accordingly, grounds raised by the revenue are dismissed.

16. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 30 /09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(S.RIFAUl RAHMAN)
ACCOUNTANT MEMBER

Mumbai; Dated 30/09/2019
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai