

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 1224/JP/2018
निर्धारण वर्ष/Assessment Year : 2012-13

The ITO Ward- 1 Beawar	बनाम Vs.	M/s. Shephali Hotels & Resorts Pvt. Ltd 14-A, Ashirwad Bhawan Champa Nagar, Beawar
स्थायी लेखा सं./जीआईआर सं./	PAN/GIR No.: AAMCS 9146 A	
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri A.K. Mehla, JCIT-DR
निर्धारिती की ओर से / Assessee by : Shri Prakul Khurana, CA

सुनवाई की तारीख / Date of Hearing : 21/02/2020
घोषणा की तारीख / Date of Pronouncement : 05 /03/2020

आदेश / ORDER

PER VIJAY PAL RAO, JM

This appeal by the Revenue is directed against the order of ld. CIT(A), Ajmer dated 01-08-2018 for the Assessment Year 2010-11. The Revenue has raised the following grounds.

“In view of the facts and circumstances of the case, the ld. CIT(A), Ajmer has erred in:-

1. Deleting addition of Rs. 21,5,00,000/- made on account of bogus share application money received

from various paper companies for which specific information as received from the Investigation Wing.

1(a) not appreciating the fact that the information received from the investigation wing that these are paper companies leads to the conclusion / destination, as the information called for u/s 133(6) of the I.T. Act, 1961 at the known addresses of these companies returned back unserved with remarks ' Not Known'.

1(b) not appreciating the fact that the identity & creditworthiness of these paper companies and genuineness of the transaction is not proved in absence of any reply received from these companies on the information called u/s 133(6) by the AO.

2. Not appreciating the finding of the AO that assessee company issued shares at Par to Shruti Agarwal, Kanika Agarwal and Kapil Agarwal whereas shares to the paper companies were issued at premium of Rs. 490/- per share without any justification.

3. Deleting addition of Rs. 2,15,00,000/- on account of bogus share application money received from various paper companies disregarding the decision rendered by the Hon'ble Jurisdictiona High Court of Rajasthan in the case of Rameshwar Lal Mali vs CIT [2012] 256 ITR 536 (Raj) while placing reliance on unconnected case Andman Timber Industries vs Commissioner of Central Excise.'''

2.1 The assessee is a company and engaged in the business of Hotels & Resorts. The assessee filed its return of income on 30-03-2013 declaring total income of Rs. 88,350/-. During the course of scrutiny assessment,

the AO issued notice u/s 142(1) of the Act alongwith questionnaire calling for information / details / documents from the assessee regarding the share applications received by the assessee. In response, the assessee filed requisite details as well as confirmations of the investors to whom shares were allotted by the assessee. The AO noted that the assessee has issued 1.00 lac shares of face value of Rs. 10/- at par to each of the promoters of the assessee company namely Ms.Shruti Agarwal, Ms.Kanika Agarwal and Shri Kapil Agarwal whereas other shares were issued to outside entities of persons at a premium of Rs. 490/- per share. After initial details filed by the assessee, the AO then referred to the information received from the Investigation Wing, Mumbai regarding the search and seizure action and statement of Shri Praveen Kumar Jain recorded on 1-10-2013 and again issued a show cause notice to the assessee. In response, the assessee filed all the details which includes bank statements of share applicants, Resolution passed by the assessee company, allotment of shares etc. The AO did not accept the explanation of the assessee as well as the documents filed by the assessee in support of the genuineness of the share capital received from the companies other than the promoters. The AO finally disallowed the claim of share capital

received from three companies namely M/s. Duke Business Private Ltd. , Nakshatra Pvt. Ltd. and Olive Overseas Pvt. Ltd and treated the same as bogus entries received by the assessee. Consequently, the AO made an addition of Rs. 2.15 crores u/s 68 of the I.T. Act, 1961. The assessee challenged the action of the AO before the Id. CIT(A) and submitted the detailed submissions giving the reference to various documentary evidences as well as judgements on the issue. The Id. CIT(A) has deleted the addition made by the AO on the ground that the AO has made the addition relying on the statement of Shri Praveen Kumar Jain recorded during the course of search and seizure action which was subsequently retracted by Shri Praveen Kumar Jain. Therefore, the addition is made solely on the basis of statement of third party recorded behind the back of the assessee which cannot be considered as a valid evidence without giving the opportunity of cross examination to the assessee. The Id. CIT(A) has also given the reference of various documents filed by the assessee in support of the claim which includes confirmations of investment made by these companies, copy of share application forms, bank statements of the share applicants showing remittances of the amount, copy of Board Resolution of the share applicant authorizing their

directors to make the investment, copy of income tax returns of share applicant companies and copy of allotment letter issued by the assessee to each share applicants. Aggrieved by the impugned order of the Id. CIT(A), the Revenue has filed the present appeal.

2.2 Before us, the Id. DR submitted that the AO has given a finding that these companies are controlled and managed by Shri Praveen Kumar Jain, Group and Shri Praveen Kumar Jain in his statement recorded by the Investigation Wing, Mumbai has admitted his indulgence in providing the bogus accommodation entries including the share application money. The Id. DR further contended that financial position of the assessee company as on the date of issue of shares did not carry such a huge premium of Rs. 490/- per share. The Id. DR thus contended that on one hand the assessee issued the shares at par to the promoters whereas at the same time the share were issued to these three companies at a premium of Rs. 490/- per share. The Id. DR further contended that neither the assessee's financial conditions support the premium of such a huge amount nor the applicant companies are having any real business to support their creditworthiness. The AO issued notice u/s 133(6) which was received back unserved with the remarks 'Not Known'. This clearly shows that these companies

were not in existence but only paper companies. The ld. DR relied on the order of the AO and submitted that retraction of Shri Praveen Kumar Jain cannot be accepted as it was made without giving supporting material that retraction is correct statement and earlier statement was not a correct statement. The ld. DR further contended that ld. CIT(A) has held that the statement cannot be relied on without giving opportunity of cross examination to the assessee disregarding the decision of Hon'ble Jurisdictional High Court in the case of Rameshwar Lal Mali vs CIT , 256 ITR 536 (Raj).

2.3 On the other hand, the ld.AR of the assessee submitted that the assessee has discharged its onus casted u/s 68 of the Act by producing all the documentary evidences which proves the identity of the share applicant companies, creditworthiness of the companies as well as the genuineness of the transactions. The ld.AR further contended that assessee furnished the confirmations from these companies alongwith Resolution authorizing the directors to invest in the shares of the assessee company. Further the income tax returns of all these companies were produced which proves the identity and existence of these companies. As regards the genuineness of the transactions, the assessee produced all the

documentary evidences of allotment of shares which includes share applications, Resolution copy, allotment of shares, receipt of share application money through banking channel, financial statements of these companies showing the creditworthiness. Thus the onus stands discharged when the assessee produced all the relevant documentary evidences including the confirmation from these share applicants. The ld.AR of the assessee further submitted that the assessee has issued the shares at a premium of Rs. 490/- per share to six companies out of which the AO had doubted the share application money received from three companies only and share application money received from other three companies were accepted by the AO as genuine. Once the share application money received from other three companies is accepted by the AO then the same cannot be disputed in respect of other three companies when there is no difference in the price at which the shares were issued to these six companies. The ld.AR of the assessee thus submitted that identical issue has been considered by ITAT Jodhpur Bench in the case of ITO vs Divya Finlease Pvt.Ltd vide order dated 24-01-2019 in ITA No.424/Jodh/2016 for the Assessment Year 2012-13 and pointed out that these three share applicant companies which invested in the shares of the assessee

company were also the share applicants in the case of Divya Finlease Pvt.Ltd. The Tribunal has given the findings regarding the genuineness of the transactions of share application money and allotment of shares to these three companies. Therefore, this issue is covered by the decision of ITAT Jodhpur Bench in the case of Divya Finlease Pvt.Ltd. (supra). The Id.AR of the assessee relied on the decision of Hon'ble Madhya Pradesh High Court in the case of Pr. CIT (1), Indore vs Chain House International Pvt. Ltd (2018(98 taxmann.com 47 (M.P.) and submitted that Hon'ble High Court has discussed this issued exhaustively and held that issuing the shares at a premium was a commercial decision and prerogative of the Directors of a company to decide the premium amount. It is the wisdom of the shareholders whether they want to subscribe the shares at such a premium or not. The Revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of Board of Directors to assume role of ascertaining how much is a reasonable premium having regard to the circumstances of case. The Id.AR of the assessee relied on the judgment of Hon'ble Delhi High Court in the case of CIT vs Anshika Consultants (P) Ltd. (2015) 62 taxmann.com 192 (Del). The Id.AR of the assessee then referred to the

decision of this Tribunal dated 24-04-2018 in the case of Shivalik Kinema Pvt. Ltd vs DCIT (ITA No.400/JP/2016 for the Assessment Year 20101-11) and submitted that the addition made by the AO on the ground of accommodation entries allegedly made from Shri Praveen Kumar Jain Group was deleted by this Tribunal. Similarly in the case of Choice Buildestate vs ITO, this Tribunal vide order dated 28-03-2018 in ITA No. 431/JP/2016 has again considered and decided this issue. Thus the Id.AR of the assessee submitted that when the assessee has discharged its onus by producing all the documentary evidences then in the absence of any contrary material, the addition made by the AO is not justified and the same may be deleted. The Id.AR of the assessee supported the order of the Id. CIT(A).

2.4 We have considered the rival submissions as well as the relevant materials available on record. The assessee has issued the shares to promoters as well as other persons. The details of the persons are as under:-

1. Shruti Agarwal
2. Kankia Agarwal
3. Kapil Agarwal
4. Ankit Agarwal
5. M/s. Duke Business Pvt. Ltd.
6. M/s. Stock Broking Pvt.Ltd.

7. M/s. Gupteshwar Finlease Pvt.Ltd.
8. M/s. Nakshatra Business Pvt. Ltd.
9. M/s. Asshavara Shares & Securities Pvt. Ltd.
- 10.M/s. Olive Overseas Pvt. Ltd.

This factual position has not been disputed by the AO rather it is produced by the AO in the assessment order that the assessee has issued the shares to 10 persons including 04 promoters who are individual and remaining 06 are companies. Out of these 06 companies to whom shares were issued at premium of Rs. 490/- per share, the AO questioned the genuineness of the transactions in respect of 03 companies namely (1) M/s. Duke Business Pvt. Ltd (2) M/s. Nakshatra Business Pvt. Ltd and (3) M/s. Olive Overseas Pvt. Ltd. The reason for doubting these transactions of share capital received from these 03 companies was that these entities are controlled by Shri Praveen Kumar Jain who was found to be a bogus entry provider. The AO has made the reference to the information received from Investigation Wing, Mumbai wherein the statement of Shri Praveen Kumar Jain was recorded. Except the said statement of Shri Praveen Kumar Jain, no other material or record was found with the AO to show that the transaction of share applications and allotment of shares to these 03 companies are bogus, though the AO has stated in his assessment order that these 03 companies were asked to

furnish the information by issuing notice u/s 133(6) of the Act. However, the AO has not given details as to when such notice was issued. Only a passing reference has been made in respect of the notice issued u/s 133(6) of the Act. Without going into the controversy of issuance of notice u/s 133(6) of the Act, we note that the AO has allegedly called for the information in the said letter/notice issued u/s 133(6) as under:-

- “1. Copy of ledger a/c of M/s. Shefali Hotels & Resorts Pvt. Ltd for the F.Y. 2011-12 relevant to A.Y. 2012-13 as appearing in your books of accounts.
2. Copy of Income Tax Return filed by you for the A.Y. 2012-13 alongwith copy of balance sheet.
3. Copy of your Bank Statement for the F.Y. 2011-12.”

Thus it is clear that the AO called for the information from these companies which include the copy of ledger account, copy of income tax returns filed for the Assessment Year 2012-13 alongwith copy of balance sheet and copy of bank statement for the F.Y. 2011-12. It is pertinent to note that all these documents were otherwise filed by the assessee before the AO alongwith confirmations of these investor companies. Thus the requisite information was already produced before the AO, however, the alleged letter/ notice u/s 133(6) was received back unserved. The

information filed by the assessee as required by the AO is in compliance of the said letter/notice. Moreover, the AO has not given the finding about the genuineness of these documents filed by the assessee which means that the AO has not found any defect in the documents filed by the assessee. The assessee has clearly filed all the documents which include share application money, Resolution of share applicant companies whereby the directors were authorized to make investment in the shares of the assessee company, bank statements showing payment through banking channel and return of income filed by those companies. Once these documents were filed then the identity of the share applicant companies stand proved. The assessee also produced the bank statements and the AO has not even pointed out that the funds transferred from the bank account of these companies are actual money of the assessee routed through these companies. Therefore, the creditworthiness and genuineness of the transactions is also proved by producing all these documentary evidences. Further out of 06 companies to whom the shares were issued at a premium of Rs. 490/- per share, the AO has accepted the transaction of receipt of share premium from remaining 03 companies which itself demolishes the case of the AO that the assessee company

does not carry the worth of such a premium of Rs. 490/- per share. Once the assessee has discharged its primary onus by filing the documentary evidences, proving the identity and creditworthiness of these companies as well as transactions then the burden is shifted on the AO to bring the material on record to controvert the documentary evidences filed by the assessee. In the absence of any such material brought on record by the AO to disprove or controvert the documentary evidences filed by the assessee, the mere statement of Shri Praveen Kumar Jain, recorded by Investigation Wing, Mumbai and that too was subsequently retracted cannot be a basis for making the addition by treating the transaction as bogus accommodation entry. The Revenue has not disputed the documentary evidences filed by the assessee which have been mentioned by the Id. CIT(A) in para 4.5 as under:-

“4.5 The appellant has furnished, in respect of each share applicant following documentary evidences to prove the identity and creditworthiness of the persons from whom the appellant has received share application money and genuineness of the transactions:-

a. Confirmation of the directors of the Applicant companies confirming the investment made by their companies into the equity shares of the appellant in the A.Y. 2012-13 alongwith relevant details.

- b. Copy of share Application Form duly signed by the Applicant companies received by the appellant in the A.Y. 2012-13 alongwith their covering letter.
- c. Copy of the relevant period of the Bank statement of the appellant companies showing the amount of cheque/RTGS remitted to the appellant towards share application money.
- d. Copy of the Board Resolution of the applicant companies authorizing specific director of each of such applicant company to make an investment into the equity shares of the appellant of the specific amount in the A.Y. 2012-13.
- e. Copy of Income Tax Return acknowledgement of each of the appellant companies.
- f. Copy of share allotment letter issued by the appellant to each of such applicant companies.’’

Thus all these documentary evidences filed by the assessee clearly discharges the onus casted on the assessee company and therefore, in the absence of any contrary material or findings to point out any defect in these documentary evidences, the addition made by the AO is not justified. The ITAT Jodhpur Bench in the case of ITO vs Divya Finlease Pvt. Ltd (supra) has considered the issue at a premium of Rs. 490/- per share to all these 06 non-promoter companies which includes 03 companies for which the AO has made the addition in the case of the assessee before us. The ITAT Jodhpur Bench in the case of ITO vs Divya

Finlease Pvt. Ltd (supra) after considering the facts and documentary evidences as well as various precedents has held in para 9 as under:-

“9. We have considered rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as well as cited by Id.AR and Id. DR during the course of hearing before us in the context of factual matrix of the case. From the record, we found that addition made by AO on account of share application was deleted by CIT(A) after recording a finding to the effect that the assessee has furnished confirmations of shareholders confirming giving of share premium, furnished bank statements of the share applicants from which the share application money has been paid, furnished the income tax returns of the share applicants. The CIT (A) further observed that without controverting these documentary evidences furnished by the assessee, AO has merely on suspicion treated the share application money as unexplained. The CIT (A) has also found that the statement on the basis of which AO made addition have already been retracted and this fact has already been recorded by AO in his assessment order. Thereafter, considering various documentary evidences filed before AO, the CIT (A) applied proposition laid down in the various judicial pronouncements as referred in his order to the facts of the case and reached to the conclusion that AO was not justified in treating the share application money as unexplained. The detailed finding so recorded by CIT (A) are as per material on record which do not require any interference on our part. Accordingly, we do not find any reason to interfere in the order of CIT (A) for deleting the addition made on account of share application money.”

Similarly in the case of Shivalik Kinema Pvt Ltd vs DCIT (supra), ITAT

Jaipur Bench has considered this issue at paras 18 to 24 as under:-

“18. It was further submitted that in respect of the above three companies, the assessee has furnished the following documents to establish the identity, genuineness of the transaction and the creditworthiness of these entities:

Name, address and PAN no.	Shares applied/allotted	Share Capital	Evidences produced before the AO
M/s Zenith Automotive P. Ltd. 106, Palco House, T-10, Main Patel Road, Patel Nagar, New Delhi-110008 PAN No. AAACZ0283B	20,000	Rs. 10,00,000/-	Copy of share application money, confirmation, bank statement, balance sheet, ROC return.
M/s Aasheesh Cap. Services P. Ltd. Royal palace, G-55, Laxmi Marg, Vikas Nagar, New Delhi- 110092 PAN No. AAACA6633N	20,000	Rs. 10,00,000/-	Copy of share application money, confirmation, bank statement balance sheet, ROC return.
M/s Ultimate IT Solution U-23, Arvind Nagar, Ghonda, Delhi-53, PAN no. AAACU9005G	20,000	Rs. 10,00,000/-	Copy of share application money, confirmation, bank statement, balance sheet, ROC return.

From the above table it can be noted that the above companies are assessed to tax, their PAN No. is provided, the transaction is through banking channel and the shares has been allotted to them as is evident from Form 2 – Return of Allotment filed with ROC. From the Balance Sheet of these companies, their creditworthiness and genuineness of the transaction can be perceived in as

much as they have substantial shareholders funds and the name of the assessee company is appearing in the detail of investment made by them. Thus, the assessee has discharged the onus which lay upon it u/s 68. Therefore, solely on the basis of the information received from Investigation Wing, Delhi, the share capital received by the assessee from these companies cannot be presumed to be accommodation entries.

19. The AO observed that director of the assessee company, Sh. Ghanshyam Agarwal was not produced. In this connection, it was submitted that the director had undergone a surgery on 6/01/2014 at Escorts Hospital and the Doctor advised him to take rest and not to take any stress. Therefore, there was a reasonable cause for not producing him. Further finding of the AO that Sh. Ghanshyam Agarwal was attending all his routine work or other directors could have attended the office or that Sh. G.L. Gupta is relative of the director of the assessee company is without basis more particularly when it was specifically mentioned to the AO that the directors are not aware of G.L. Gupta. Further, when assessee has filed all the evidences to prove the genuineness of the share capital, no adverse inference is called for simply because the other director of the assessee company is not produced when their presence was not required by the AO.

20. In support, reliance was placed on following cases:-

- CIT Vs. Vacmet Packaging (India) Pvt. Ltd. 367 ITR 0217 (All.) (HC)
- ACIT Vs. VIP Growth Fund Pvt. Ltd. 46 CCH 0231 (Del.) (Trib.)
- CIT Vs. Supertech Diamond Tools Pvt. Ltd. 229 Taxman 62 (Raj.)
- ITO Vs. Rakam Money Matters P. Ltd. (2014) 41 CCH 0155 (Del.) (Trib.)
- Jadau Jewellers & Manufacturing (P) Ltd. Vs. ACIT 45 CCH 0442 (Jpr.) (Trib.) decision dt. 14.12.2015
- Ganga Projects (P) Ltd. and B.S. Traders (P.) Ltd. in ITA No. 175 & 176/JP/15 and 179/JP/15 and CO No. 15 & 16/JP/15 and 19/JP/15 order dated 22.06.2016
- Anchal Fintrade Pvt. Ltd. Vs. ITO in ITA No. 131/JP/16 for A.Y. 05-06.
- M/s Choice Buildstate Private limited vs ITO in ITA No. 431/JP/2016 dated 28.03.2018

21. In case of M/s Choice Buildstate Private limited vs ITO (supra), we have recently examined an identical matter and we find that our findings

therein applies equally in the instant case. The relevant findings are reproduced as under:

“10. Now, coming to the merits of addition of Rs 35 lacs made by the AO under section 68 of the Act. On careful examination of material available on record, we find that it is a case where the AO has relied blindly on information supplied by the Investigation Wing Mumbai without carrying out any further examination of documents submitted during the course of assessment proceedings and independent investigation of these investor companies. As we have noted above, the information so received from the Investigation Wing, Mumbai and after due examination thereof, the AO has formed a prima facie view and a reason to believe that the income has escaped assessment and has thus assumed jurisdiction u/s 147 of the Act. At the same time, such a prima facie view has to be finalized and a firm view has to be taken on basis of examination of documents so brought on record and further investigation to be carried out before any tax liability is fastened on the assessee. In the instant case, we find that the assessee company has submitted detail documentation in regard to these companies from whom a total amount of Rs.35 lakhs was received namely (i) share application form (ii) copy of Board Resolution (iii) Copy of Bank Statements reflecting payment through cheque (iv) Audited Statement of Accounts and Acknowledgement of ITR (v) Copy of certificate of Incorporation and Certificate of Commencement of Business (vi) Copy of PAN Card. Where the assessee furnishes the documentation and necessary explanation, the AO should examine whether the documents so submitted and explanation so offered establishes the three ingredients i.e. identity of the investor company, creditworthiness of investor company and genuineness of the transaction. Whether explanation of the assessee is reliable or acceptable? If yes, no further action is required and the sum so credited may not be charged to income tax. If the explanation so offered by the assessee is not acceptable or reliable, the AO should give a detailed reasoning in the assessment order for not accepting the same. The order passed by the AO should be speaking one bringing on record all the facts, explanation furnished by the assessee in respect of nature and source of the credit in its books of accounts and reasons for not accepting the explanation of the assessee. In the instant case, we find that the AO has not taken any efforts to examine these documents so submitted by the assessee company during the course of assessment proceedings and has simply gone by his prima facie view formed at the time of assumption of jurisdiction u/s 147 and such a prima facie view without further examination/investigation cannot be a basis for forming a final view of making the addition in the hands of the assessee company. It is a case where the AO was in receipt of material

information from the Investigation Wing, Mumbai that the assessee company has received accommodation entries in form of share application/investment from seven companies who are not doing genuine business activities as divulged during the course of search and seizure operations in case of Praveen Jain group. In these situations, the Courts have held that the Assessing Officer cannot sit back with folded hands and then come forward to merely reject the explanation so made, without carrying out any verification or enquiry into the material placed before him by the assessee. If the Assessing Officer harbours any doubts of the legitimacy of any subscription he is empowered, nay duty-bound, to carry out thorough investigations. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the Company. We therefore agree with the contentions of the Id AR that in absence of any falsity which have been found in the documents so submitted by the assessee company to prove the identity, creditworthiness and genuineness of the share transaction, these documents cannot be summarily rejected as has been done by the AO in the instant case. Further, we find that there is no action taken by the AO in terms of calling information from these companies under section 133(6) and/or issuing summons to directors of these companies under section 131 of the Act. Further, where the AO relies upon the statement of third parties (Praveen Jain and others) recorded u/s 132(4), without getting into controversy whether the said statement was retracted subsequently, the fact remains that the assessee deserves an opportunity to cross examine such persons as held by the Hon'ble Supreme Court in case of Andaman Timber Industries (supra). During the course of assessment proceedings, the assessee company has made specific request to the AO to allow cross examination of these persons which has however not being provided to the assessee company. In light of above discussions, we don't find any basis for making addition under section 68 of the Act. In the result, ground no.2 taken by the assessee company is allowed."

22. In the instant case, we find that the assessee has requested the AO vide letter dt. 10.12.2013 to provide the copy of statement of all the persons of Sh. S.K. Jain Group and the investigation report and other documents suggesting that this group was engaged in providing accommodation entries, however, there is nothing on record that the same have been provided to the assessee. Being reassessment proceedings, where the AO is ceased of certain information and documents, it is incumbent upon him to confront the same to the assessee and allow the latter to file its objections and rebuttal. The additions made, merely relying on these information and documentation, without confronting the assessee cannot be accepted. Further, where the AO relies upon the statement of third parties, the fact remains that the assessee

deserves an opportunity to cross examine such persons as held by the Hon'ble Supreme Court in case of Andaman Timber Industries (supra).

23. Further, we find that in the instant case, the assessee company has filed copies of the share application form, return of allotment filed with ROC, copies of the bank statements, copies of the financial statements and confirmations of these parties. We also find that the AO has issued letters u/s 133(6) to these parties and has also called for personal appearance of Sh G.L Gupta and one of the directors of the assessee company. It is also a fact that there notices have not returned back undelivered and at the same time, there has been no compliance. It is therefore a case which is shade different than the one we decided supra. At the same time, the fact remains that inspite of non-compliance of these notices and non-appearance which cannot be a sole basis for disallowance, the AO has to give a specific finding and record his satisfaction regarding non-acceptance of documents so submitted by the assessee. We are therefore of the view that that in absence of any falsity which have been found in the documents so submitted by the assessee company to prove the identity, creditworthiness and genuineness of the share transaction and any satisfaction to that effect recorded by the AO, these documents cannot be summarily rejected as has been done by the AO in the instant case.

24. In light of above discussions and in the entirety of facts and circumstances of the case, we don't find any basis for making the addition under section 68 of the Act. In the result, ground no.2 taken by the assessee company is allowed.''

Thus the addition made by the AO based on the statement of alleged entry provider which was recorded by the Investigation Wing, Mumbai was not found sustainable when the assessee produced all the documentary evidences to discharge its onus to prove the transaction. The Hon'ble Madhya Pradesh High Court in the case of Pr.CIT vs Chain House International (P) Ltd (supra) has also discussed this issue in detail and observed in para 52 to 54 as under:-

“52. Issuing the share at a premium was a commercial decision. It is the prerogative of the Board of Directors of a Company to decide the premium amount and it is the wisdom of shareholder whether they want to subscribe the share at such a premium or not. This was a mutual decision between both the companies. In day to day market, unless and until, the rates is fixed by any Govt. Authority or unless there is any restriction on the amount of share premium under any law, the price of the shares is decided on the mutual understanding of the parties concerned.

53. Once the genuineness, creditworthiness and identity are established, the Revenue should not justifiably claim to put itself in the armchair of a businessman or in the position of the Board of Directors and assume the role of ascertaining how much is a reasonable premium having regard to the circumstances of the case.

54. There is no dispute about the receipt of funds through banking channel nor there is any dispute about the identity, creditworthiness and genuineness of the investors and therefore, the same has been established by any doubt and there should not have been any question or dispute about premium paid by the investors, therefore, unless there is a limitation put by the law on the amount of premium, the transaction should not be questioned merely because the assessing authority thinks that the investor could have managed by paying a lesser amount as Share Premium as a prudent businessman. The test of prudence by substituting its own view in place of the businessman's has not been approved by the Supreme Court in the decisions of CIT vs Walchand & Co. (P) Ltd. [1967] 65 ITR 381 and J.K. Woollen Mfg. vs CIT [1969] 72 ITR 612 (SC).”

In view of the facts, circumstances of the case as discussed above as well as the decisions cited (supra), we do not find any error or illegality in the impugned order of the Id. CIT(A). Thus the appeal of the Revenue is dismissed.

3.0 In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 05 /03/2020.

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 05/03/ 2020

*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1अपीलार्थी / The Appellant- The ITO, Ward- 1, Beawar

2प्रत्यर्थी / The Respondent- M/s. Shephali Hotels Resorts Pvt., Ltd. Beawar

3. आयकर आयुक्त(अपील) / CIT(A),

4. आयकर आयुक्त / CIT,

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur

6. गार्ड फाईल / Guard File (ITA No. 1224/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar