

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.82/Mum/2017
(Assessment Year: 2012-13)**

Riddhi Petrochem Pvt.Ltd. 30, New Satguru Nanik Industrial Estate Western Express Highway, Goregaon(E) Mumbai-400 063	Vs.	DCIT, Circle-13(3)(1) Mumbai
PAN/GIR No.AADCR0143B		
Appellant)	..	Respondent)

Assessee by	Shri Sunil H.Talati, AR
Revenue by	Shri H.N.Singh (CIT-DR)
Date of Hearing	11/12/2019
Date of Pronouncement	20/05/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against, the order of the Ld. Commissioner of Income Tax (Appeals)-21, Mumbai, dated 28/10/2016 and it pertains to Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal:-

1. *The Ld. CIT(A) has erred in confirming additions made by A.O. of Rs. 15,01,00,000/- u/s. 68 of the Income Tax Act treating the genuine Share Application money received towards the Share Capital of the Company. It is submitted that on the facts and circumstances of the case the amount received as share capital is not at all unexplained and provisions of section 68 are just not applicable. It is submitted that addition made by A.O. with prejudice and bias mind without any finding and justification and the same has been incorrectly confirmed by CIT(A) on facts as well as law and thus the same deserves to be deleted.*

2. *Without prejudice to the above it is submitted that the Ld. CIT(A) has failed in appreciating the facts and evidences filed before him and incorrectly mentioning that the creditworthiness of investors and genuineness of the transactions have not been established by the Appellant. It is submitted all the ingredients being genuineness of payment along with identity such as resolution passed by the assessee company, Form 2 filed with Registrar of Companies, complete address with names of share applicants .their PAN , ledger accounts and confirmations as well as for proving the capacity of the said investors their Audited financial statements and IT. Returns etc. were filed before the lower authorities and are on records. Thus there is no failure on the part of the assessee in discharging onus under the provisions of the Act . It is submitted that the addition made of Rs. 15,01,00,000/- u/s. 68 of the Act being totally incorrect, illegal and unjustifiable and deserves to be deleted.*

3. *The order passed by the Learned CIT(Appeals) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing/job wok of Flexible Plastic Film & Polythene Film and Trading of Cloths, filed its return of income for AY 2012-13 on 25/01/2013, declaring total income at Rs.'Nil'. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO noticed that during the year under consideration, the assessee company has received share capital from '14' parties amounting to Rs.19.01 crores. He, further noted that the assessee has issued shares to '14' parties having face value of Rs. 10/- with a premium of Rs. 40 per share. Therefore, in order to verify genuineness of transactions, identity of shareholders and creditworthiness of the parties, called upon the assessee to file necessary evidences, including justification for issue of shares at high premium. The assessee has filed details of share application money received from '14' parties along with their name and address. In order to verify correctness of claim of the assessee, the Ld. AO has issued notices u/s 133(6) to '14' parties. In response to 133(6) notices, except Lalit Polyester Pvt.Ltd., all parties have

replied and furnished necessary details sought by the Ld. AO. Thereafter, the Ld. AO has issued summons u/s 131 to all 14 parties, but none attended in response to 131 notice issued by the Ld. AO. Thereafter, the Ld. AO has issued show cause notice, dated 10/03/2015 and called upon the assessee to explain as why additions should not be made towards share capital received from '14' parties u/s 68 of the I.T.Act, 1961. In response, the assessee vide letter dated 16/03/2015 has filed necessary evidences, including justification for issue of shares at premium of Rs.40 per share. The assessee has also filed complete details of shareholders, including their identity, genuineness of transactions and creditworthiness of the parties and argued that share capital received from 14 parties is genuine in nature, which is supported by necessary evidences. The assessee, further, claimed that the share capital has been received from parties, which are closely related or associated with the assessee. Further, all subscribers to the share capital are having sufficient source of income to explain investment made in shares of assessee company.

4. The Ld. AO after considering the relevant submissions of the assessee and also, taken note of various facts including certain judicial precedents, came to the conclusion that the assessee has failed to prove identity of creditors, capacity of creditor to lend money and genuineness of transactions, in order to prove share capital received from 14 parties. The Ld. AO further observed that although, the assessee has issued shares at huge premium, but failed to justify shares issued at such a high premium with necessary evidences. He, further, noted that all the investors are mysterious entities, who never replied or appeared before the Ld. AO to justify

their claim of having made investments in shares of Assessee Company. Therefore, he opined that the assessee has failed to prove three ingredients provided u/s 68 of the I.T.Act, 1961 to prove the identity, genuineness of transactions and creditworthiness of the parties and accordingly, by following the decision of Hon'ble Bombay High Court, in the case of Major Metals vs Union of India (2013) 359 ITR 450 (Bombay) has made additions of Rs. 15.01 crores u/s 68 of the I.T.Act, 1961.

5. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated its submissions made before the Ld. AO and argued that share capital received from '14' parties are genuine in nature, which are supported by necessary evidences. The assessee, further, submitted that all the parties are either, relatives of directors of Assessee Company or closely associated with Assessee Company. Therefore, there is no reason for the Ld. AO to doubt the identity of shareholders. Insofar as, genuineness of transactions, the share application money has been received through proper banking channels, for which bank statements of shareholders have been furnished. The assessee has also filed income tax returns of shareholder for relevant assessment years to prove capacity of the creditors with known source of income. The assessee has also explained the reasons for issue of fresh share capital along with necessary evidences. Further, justification for issue of shares at premium of Rs. 40 per share has been filed before the Id.AO. The Id. AO has disregarded all evidences filed by the assessee only for the reason that the parties did not appear before the Ld. AO, when summons were issued u/s 131 of the I.T.Act, 1961.

6. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of various facts, including by following certain judicial precedents, came to the conclusion that the assessee has failed to prove the identity, genuineness of transactions and creditworthiness of the parties, which is evident from the fact that the identical stereotype confirmation letters filed ostensible from some of the investors do not substitute the failure of the assessee to show the creditworthiness and genuineness of the transactions. The signatories to the confirmation did not attend before the Ld. AO, when summons were served u/s 131 of the I.T.Act, 1961. The director of the assessee company did not respond to summons, nor produced the investors for verification. From the above, it is abundantly clear that the burden cast upon on the assessee u/s 68 of the Act, has not been discharged to the satisfaction of the Ld. AO. Therefore, he opined that there is no error in the findings recorded by the Ld. AO to disallow share application money received from certain parties and accordingly, confirmed additions made by the Ld. AO towards share application money u/s 68 of the I.T.Act, 1961. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

7. The Ld. AR for the assessee submitted that the Ld.CIT(A) has erred in confirming the additions made by the Ld. AO towards share application money u/s 68 of the I.T.Act, 1961, without appreciating the fact that the assessee has discharged its onus by filing enormous documents to prove identity of the subscribers, genuineness of transactions and creditworthiness of the parties. The Ld. AR, further submitted that the Ld.CIT(A) has failed in

appreciating the facts and evidences filed before him and incorrectly mentioning that the creditworthiness of the investors and genuineness of the transactions have not been established by the assessee. The Ld. AR, further, submitted that the assessee has filed all possible details to prove the identity of the subscribers, genuineness of transactions and creditworthiness of the parties. The assessee has also, filed copy of board resolution passed for issue of share capital along with Form-2 filed with registrar of companies, which contains full name and address of share applicants, their PAN number, ledger accounts and conformation from the parties. The assessee has also, filed audited financial statements and IT returns of shareholders to prove genuineness of transactions. Further, all the creditors are having sufficient source of income to establish creditworthiness to prove source of income for investments made in share capital of Assessee Company. The assessee has also, filed a valuation report obtained from an independent auditor, as per which the intrinsic value of per share is much more than the amount of share price at which shares are issued to all the parties. The Ld. AO, as well as the Ld.CIT(A), without appreciating all these facts has simply made additions towards share capital received from '14' parties., only on the ground that parties have not appeared before the Ld. AO, when summons were issued u/s 131 of the I.T.Act, 1961. In this regard, he relied upon by the following judicial precedents.

* *PCIT vs Goodview Trading (P.) Ltd. (2017) 77 taxmann.com 204 (Delhi H.C.)*

* *CIT Vs. Jay Dee Securities & Finance Ltd. (2013) 32 taxmann.com 91 (Allahabad H.C.)*

* *CIT Vs. K.C. Pipes (P.) Ltd. (2017) 79 taxmann.com 373 (Punjab & Haryana H.C.)*

* *ACIT Vs. Namision Powertech (P.) Ltd. [2017] 87 taxmann.com 22*

(Ahmedabad -Trib.)

* ACIT Vs. Adamine Construction (P.) Ltd. [2017] 87 taxmann.com 216

(Delhi-Trib.)

8. The Ld. DR, on the other hand supporting order of the Ld.CIT(A) submitted that the assessee has failed to prove the ingredients provided u/s 68 of the I.T.Act, 1961, which is evident from the fact that when, summons u/s 131 of the I.T.Act, 1961 were issued to the parties, none of the parties were present before the Ld. AO to justify the claim of the investments made in shares of assessee company. The Ld. DR, further submitted that mere furnishing of certain evidences to prove identity is not sufficient enough to come out of the provision of section 68 of the I.T.Act, 1961, but what is relevant is to prove the identity of the investors to the satisfaction of the Ld. AO and also, discharge the burden of proving the genuineness of transactions and creditworthiness of the parties. In this case, the facts brought out by the Ld. AO clearly establishes the fact that none of the investors are having sufficient source of income to justify investments made in share capital of the assessee company. Therefore, the Ld.CIT(A) after considering the relevant facts has rightly affirmed the findings of the Ld. AO and there is no reason to interfere with the findings of the Ld.CIT(A).

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The assessee company has issued fresh shares capital at a premium of Rs. 40 per share to 14 shareholders and received share capital of Rs.19.01 crores. The assessee has explained the reasons for issue of shares at premium and also, necessity for issue of fresh shares for the year under consideration. According to the assessee it was

planned to go to public by IPO to raise capital from public at large by way of converting it into a Public Limited Company for expansion of its business. Further, in order to strengthen its share capital, it has issued shares at a premium to closely related family members of directors and associated concerns before going to public. According to the assessee, it has discharged onus cast upon u/s 68 of the I.T.Act, 1961, by filing enormous details, including details to prove identity of subscribers to share capital, documents to prove genuineness of transactions and creditworthiness of the parties. The Ld. AO has made additions towards share capital received from the 14 parties as unexplained cash credit u/s 68 of the I.T.Act, 1961, on the ground that the assessee has failed to establish identity of subscribers, genuineness of transactions and creditworthiness of the parties. The Ld. AO has brought out various reasons to come to the conclusion that three ingredients provided u/s 68 of the I.T.Act, 1961 has not been satisfied. According to the Ld. AO, although assessee has filed certain details to prove share capital received from the 14 parties, but none of the parties have appeared before the Ld. AO, when 131 summonses were issued to the parties. The Ld. AO, further, noted that most of the parties are not having sufficient source of income to establish capacity to prove investments made in share capital. The Ld. AO has also questioned issue of shares at premium of Rs. 40 per share. According to the Ld. AO, the assessee has not filed any details to justify issue of shares at a huge premium of Rs. 40 per share.

10. The provisions of section 68 of the I.T.Act, 1961 deals with a case, where any sum found credited in the books of accounts of the assessee in any financial year, for which the assessee offers no

explanation or explanation offered by the assessee, in the opinion of the Ld. AO is not satisfactory, then sum found credited may be treated as income of the assessee of that previous year. A plain reading of section 68 of the I.T.Act, 1961, makes it very clear that to fix any credit within the ambit of section 68 of the I.T.Act, 1961, the Ld. AO has to examine three ingredients provided therein i.e, identity, genuineness of transactions and creditworthiness of the parties. In this legal back ground, if you see the facts of present case, one has to understand, whether the assessee has discharged its onus of proving share capital received from '14' parties. Admittedly, all parties are either closely related to directors of Assessee Company or associated companies of assessee. This fact has not been disputed by the Ld. AO. The Ld. AO has also not disputed the fact that all parties have responded to 133(6) notices issued by the Ld. AO and filed necessary details called for to prove share capital. In fact, the assessee has filed details of identity of each and every subscriber to the share capital. The assessee has also filed audited financial statements of shareholders along with copy of income tax returns filed for the relevant assessment year. The assessee has also filed ledger accounts of shareholders along with confirmation letters and their PAN number etc., of each investor. The assessee has also filed copies of bank statements of shareholders. All these are part of assessment records. Neither the Ld. AO, nor Ld.CIT(A) had disputed the fact that the assessee has filed all these evidences, in respect of 14 parties.

11. In this factual back ground, if you examine the case of the assessee, in light of provisions of section 68 of the I.T.Act, 1961, it is abundantly clear that the assessee has discharged its onus cast upon

u/s 68 of the I.T.Act, 1961 to prove identity of the subscribers, their capacity and genuineness of transactions. Further, if you go through documents and evidences filed by the assessee, we find that in respect of each and every subscriber to the share capital, the assessee has filed the following documents and said documents has clerely proves the fact that the credits in the form of share capital from all parties has been stand explained. The relevant details and explanation filed by the assessee in respect of each share holder is as follows.

(i) Valukko Industries Pvt. Ltd.

Copy of audited accounts of Valukko Industries Pvt. Ltd. shows it has shareholder fund of Rs. 4.31 Cr. and long term borrowing of Rs. 15.78 Cr. It had current liabilities of Rs. 62 Cr. and current assets of Rs. 53 Cr. (page no. 24). The revenue from operations was Rs. 92 Cr. in this year and Rs. 50 Cr. in previous year (page no. 25). The copy of ledger account from its book shows that it had paid Rs. 3,89,30,000/- as share application money to the assessee Ridhi Petrochem Pvt. Ltd. by journal entries (page no. 30), which is also confirmed from the party's ledger account (page no. 31). The board resolution is on page no. 32 and reply to the summons of AO is on page no. 33 and 34. Thus the strength and the source is clearly proved inasmuch as the said company had running account with the assessee running into more than Rs. 7.5 Cr. from which it made investment of Rs. 33 crores per journal entries passed in the books of both the investors and the recipient i.e. appellant company.

(ii) Vishal Hasmukh Sheth

Vishal Sheth is the son of Hasmukh Sheth who is Chairman and Managing Director of the appellant company. The copy of the balance sheet of Vishal Hasmukh Sheth shows the investment with the assessee company and his personal balance sheet is of Rs. 12.77 Cr. (page no.38). He also had paid the share application money from his current account running of Rs. 7 Cr. and has invested into Rs. 8 Lakhs (Page no. 40 and 42).

(iii) Kashmiraben Ashwin Sheth

So far as Kashmiraben Ashwin Sheth *is* concerned, she is again daughter-in-law of Managing Director of the company. Her balance sheet shows the total of Rs. 6.72 Cr. inter alia reflecting the investment in Assessee Company (page no. 44). She also had a running account of Rs. 98 Lakhs (page no. 46) from which she had invested Rs. 8,65,000/- (page no. 48 and 49).

(iv) Jyotikaben Hasmukh Sheth

Jyotikaben Hasmukh Sheth is a wife of Managing Director of appellant company. The copy of her return shows that she has balance sheet of Rs. 8.50 Cr. and having investment in shares of Rs. 6.30 Cr. (page no. 51). She also had running account with the company and from that amount of Rs. 1.60 Cr. she invested Rs. 1.38 Cr. (page no. 52 and 54).

(v) Lalit Polyester Pvt. Ltd.

Lalit Polyester Pvt. Ltd. is an independent company regularly filing its return of income. The income for A.Y. 2010-11 was of Rs. 1.29 Cr. (page no. 56) Balance sheet shows that it had shareholder fund of

Rs. 12.50 Cr. and current liability of Rs. 147 Cr. The turnover of the said company was of Rs. 154 Cr. (page no. 58), and its asset blocks shows investment of Rs. 45 Cr. and also in its balance sheet investment with the assessee company is distinctly shown (page no. 61). The said company had its current account with the company from which shares of Rs. 1,30,00,000/- were subscribed (page no. 64 and 65) and the ledger account is on page no. 66. The resolution of the company is on page no. 67 and reply to summons is on page no. 68. It is extremely important that for the said from company Lalit Polyester Pvt. Ltd. Hon'ble CIT(A) deleted the addition made by AO of Rs. 6,02,36,836/- holding that unjustified addition of this amount in nature of unexplained creditor by the AO is incorrect. Thus CIT accepts the credibility of Lalit Polyester Pvt. Ltd. of Rs. 6.02 Cr. but did not accept the **share** application money given by journal entry of Rs. 1.30 Cr.

(vi) Cat Cosmatic and Healthcare Pvt. Ltd.

This company is also in the business of manufacturing polyester film etc. and the total balance sheet value is of Rs. 65 Cr. (page no. 70). The turnover was of Rs. 92 Cr. and the investment has been shown clearly on page no. 73. It had the running account with the company from which the investment was made (page no. 76). Copy of board resolution is on page no. 77 and reply to summons is on page no. 78. The ledger account is on page no. 76 and copy of return is on page no. 80.

(vii) Valukko Infrastructure Pvt. Ltd.

This is also a company wherein Directors are common and having substantial interest. The balance sheet of the company shows

assets and liabilities of Rs. 16 Cr. and income of Rs. 1 Cr. (page no. 82). It has clearly shown the investment in audited accounts (page no. 84). The said company had its running account with the appellant company from which share application of Rs. 4.22 Cr. were transferred (page no. 88). Copy of resolution on page no. 89 and reply to summons is on page no. 90.

(viii) Dhumil Vinod Sheth

Dhumil Vinod Sheth is a nephew of the appellant and from his purchase of share is raise to Rs. 50,000/-. His balance sheet shows total of Rs. 21 Cr. (pageno. 93) and copy of ledger account is on page no. 96 and reply to summons is on page no. 97.

(ix) Vision Agencies Pvt. Ltd.

This company is also closely related with the appellant company. Its audited accounts are from page no. 98 to 117. Balance sheet total is of Rs. 44 Cr. and turnover is of 99 Cr. (page no. 108). Ledger account is on page 114 to 117 from which share application money were transferred. The confirmation is on page no. 119 to 122 and reply to summons is on page no. 123.

(x) Sujataben R. Sheth

Lastly Sujataben R. Sheth is also relative of the appellant. Her income tax detail is on page no. 126. Total amount of balance sheet is shown as Rs. 4.46 Cr. (page no. 127) and copy of ledger account is on page no. 128 and 129 and reply to summons is on page no. 130.

12. From the above, it is abundantly clear that the assessee has explained with necessary evidences, the amount of share capital received from 14 parties, in order to prove the identity, genuineness of transactions and creditworthiness of the parties. We, further noted that the assessee has also, filed necessary details before the Ld. AO to prove the purpose of issue of fresh shares for the year under consideration. We, further noted that the assessee has also filed necessary evidences to prove price charged for issue of shares to the subscribers, and as per the details filed by the assessee, the intrinsic value of shares as on the date of issue of shares is at Rs.7,692/- per share, whereas, the shares has been issued at a premium of Rs.40 per share, which is much below the book value of shares of the company. We, further noted that the assessee has also filed copy of board resolution passed by the board of directors for issue of share capital along with Form-2 filed with registrar of companies, which contains the name and address of subscribers, their PAN number. The audited financial statements of shareholders categorically prove that each one of the shareholders are having sufficient source of income to prove capacity of the creditors. It is not a case of the Ld. AO that the share capital has been received from certain mysterious individuals or concerns. In fact, there is no dispute with regard to the fact that the share capital has been received from relatives of directors of Assesee Company and associated concerns of the assessee. It is also not in dispute that amount has been routed through proper banking channels. In fact, the assessee has filed necessary bank statements of subscribers to the share capital to prove that money has been paid through proper banking channels. Under these facts and circumstances, it is difficult to accept the findings of the Ld. AO that the assessee has failed to

prove share capital received from '14' parties by filing necessary evidences to prove identity, genuineness of transactions and creditworthiness of the parties.

13. Coming back to case laws relied upon by the assessee. The ld. AR assessee has relied upon various case laws in support of its arguments. We find that Hon'ble Delhi High Court, in the case of CIT vs Goodview Trading Pvt.Ltd.(supra) had considered an identical issue and held that once, it is noticed that the subscriber to share capital possessed substantial means to investment in assessee company, no addition could be made u/s 68 of the I.T.Act, 1961. The Hon'ble Allahabad High Court in the case of CIT vs Jaydee Securities Finance Ltd.(2013) 350 ITR 220 held that where, the assessee has produced return of income, PAN and confirmation of shareholders, share application money would be treated as genuine. In the case of CIT vs K.C.Pipes (P).Ltd. 386 ITR 532, the Hon'ble Punjab & Haryana High court held that if, shareholders had acquired money illegally, and assessee could not be held liable. The ITAT Ahmedabad, in the case of Namision Powertech (P.) Ltd. vs ACIT(supra) had considered an identical issue and held that where, Ld. AO made additions to assessee company u/s 68 of the I.T.Act, 1961, in respect of share application money received from daughter of one of directors of assessee company, since bank account of share applicant showed sufficient amount to make investments and moreover amount had been received from her bank account, impugned additions was to be set aside. The Hon'ble Supreme Court, in the case of CIT vs Lovely Exports Pvt.Ltd. (216) CTR 195 had held that if, the share application money received by the assessee company from alleged bogus shareholders, whose names

are given to the Ld. AO, then the department is free to proceed to reopen their individual assessments in accordance with law, but sums received by the assessee cannot be regarded as undisclosed income of the assessee company. The Hon'ble Bombay High court, in the case of CIT vs Goa Sponge and Power Ltd, has considered an identical issue and by following the decision of Hon'ble Supreme Court, in the case of CIT vs Lovely Exports Pvt.Ltd. (supra) had held that once, the authorities have got all the details, including the name and address of the shareholders, their PAN number, so also the name of the bank from which the alleged investors received money, as share application money, then it cannot be termed as bogus. Hon'ble Bombay High court, in the case of CIT vs Gagandeep Infrastructure Ltd. 394 ITR 680 held that proviso inserted to section 68 of the I.T.Act, 1961 w.e.f. 01/04/2013 is considered to be perspective in nature and applicable from Asst. Year 2013-14 onwards and consequently, no additions could be made towards share premium u/s 68 of the I.T.Act, 1961, for not proving the identity, genuineness of transactions and creditworthiness of the parties prior to Asst. Year 2013-14. The sum and substance of ratios laid down by various High courts and the Hon'ble Supreme Court is that once, the initial burden was discharged by the assessee by the filing necessary evidences to prove the identity of the creditors, then the department is free to go behind the creditors and reopen their assessment to deal with the issue in accordance with law, but sum so found credited cannot be treated as undisclosed income of the assessee u/s 68 of the I.T.Act, 1961.

14. Coming back to the case laws relied upon by the Ld. AO. The Ld.AO has relied upon decision of Hon'ble Bombay High Court, in

the case of Major Metals vs Union of India (supra). We find that the Hon'ble High court has given its findings on the basis of findings recorded by the settlement commission in its order that in order to scrutinize, the genuineness of transactions, it had directed the petitioner to produce relevant records such as minutes books, attendance registers of AGMs, dispatch registers, share certificates and authorization of proxy forms amongst other documentary material. The order of the Settlement commission indicates at least fourteen reasons on the basis of which, the commission formed its view in regard to the genuineness of the transactions. The assessee has also failed to justify issue of shares at a huge premium of Rs. 990 per share on a face value of Rs. 10/-, in light of its financial statements. Under those facts, the Hon'ble High court came to the conclusion that alleged share capital/share application money received from certain parties is non genuine transactions. Insofar as, the case laws relied upon by the Ld. DR, in the case of PCIT vs NRA Iron & Steel Pvt.Ltd, we find that the Hon'ble Supreme Court has recorded categorically findings, in light of facts brought out by the Ld. AO that none of the shareholders have sufficient source of income to establish capacity, as required to be proved u/s 68 of the I.T.Act, 1961. Further, in most of the cases, the assessee has not filed bank statement of the subscribers. Further, several investors companies were found to be non- existence, when the field enquiries conducted by the Ld. AO. Under those facts, the Hon'ble Supreme Court came to the conclusion that mere furnishing certain evidences, in response to 133(6) notices is not sufficient enough and what is to be seen is whether, the assessee has discharged its onus cast upon u/s 68 of the I.T.Act, 1961 or not. In this case, on perusal of facts , it is abundantly clear that the subscriber to the share capital are closely

related to the assessee company and the assessee has filed all possible evidences to prove identity, genuineness of transactions and creditworthiness of the parties. Therefore, we are of the considered view that the case laws relied upon by the Ld. DR is not applicable to the facts of present case.

15. In this view of the matter and considering facts and circumstances of this case and also, by following the ratios of case laws discussed hereinabove, we are of the considered view that the assessee has discharged its onus by filing enormous documents, in order to prove the identity, genuineness of transactions and creditworthiness of the parties. Therefore, the Ld. AO, as well as the Ld.CIT(A) were erred in confirmed additions made towards share capital u/s 68 of the I.T.Act, 1961. Hence, we direct the Ld. AO to delete additions made towards share capital u/s 68 of the I.T.Act, 1961.

16. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 20/05/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 20/05/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.

*ITA No.82/Mum/2017
Riddhi Petrochem Pvt.Ltd.*

4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai