

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : D : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.6834/Del/2014 & 4713/Del/2015
Assessment Years: 2011-12 & 2012-13

DCIT,
Circle-10(1),
New Delhi.

Vs Garg Acrylics Ltd.,
209, M.G. House,
Wazirpur Industrial Area,
New Delhi.

PAN: AAACG3332N

(Appellant)

(Respondent)

| | | |
|-----------------------|---|--|
| Assessee by | : | Shri Gautam Jain, Advocate & Shri Ashwini Kumar, CA |
| Revenue by | : | Shri A.K. Mishra, Sr. DR |
| Date of Hearing | : | 23.09.2020 |
| Date of Pronouncement | : | 27.10.2020 |

ORDER

PER R.K. PANDA, AM:

ITA No.6834/Del/2014 filed by the Revenue is directed against the order dated 30th September, 2014 of the CIT(A)-15, New Delhi relating to assessment years 2011-12. ITA No.4713/Del/2015 filed by the Revenue is directed against the order dated 15th May, 2015 of the CIT(A)-4, New Delhi relating to assessment years 2012-13.

2. Since common issues are involved in both these appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

ITA No.6834/Del/2014 (A.Y. 2011-12)

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing and trading of yarn and manufacturing and trading of garments. It filed its return of income on 29th September, 2011 declaring the total income of Rs.31,41,11,880/-. During the course of assessment proceedings, the AO noted that the assessee company has introduced share capital and received the share application money of Rs.20,17,00,000/- from the following companies:-

| Sl. No. | Assessment Particulars | | Amount of share application money received |
|---------|---|-------|--|
| 1. | Himachal Yarns Formerly Himachal Steel Ltd., PAN : AABCH0451J | Udyog | 7,07,10,000/- |
| 2. | Brijeshwari Textiles Pvt. Ltd Pan.: AACCB7479K | | 3,00,00,000/- |
| 3. | Balmukhi Textiles Pvt. Ltd. Pan AACCB7477K | | 300,00,000/- |
| 4. | Shiva Spin Fab Pvt. Ltd. Pan. AAKCS6521K | | 400,00,000/- |
| 5. | GAL Cottex Pvt. Ltd., PAN AABCS8023C | | 2,03,70,000/- |
| 6. | Shubam Yarns Pvt. Ltd., Pan, AAGCS8023C* | | 1,06,20,000/- |
| | | | 20,17,00,000/- |
| | 80000 equity shares allotted during the year @ 2000/- | | 16,00,00,000/- |
| | Outstanding share application money as at 31.03.2011 | | 4,17,00,000/- |

4. He observed that the assessee company has issued shares to the above noted six companies for a huge premium of Rs.1,990/- per share. From the balance sheet filed by the assessee, the AO noted that the earning per share of the company as on 31.03.2010 was Rs.226.73 which is as under:-

| | Year Ended 31.03.2011 | Year ended 31.03.2010 |
|---------------------------------------|-----------------------|-----------------------|
| Profit after tax for the year | Rs.26,81,17,058/- | Rs. 11,02,83,438/- |
| Weighted average no. of equity shares | Rs. 5,17,5,534/- | Rs,4,86,411/- |
| Basic & Diluted Earning per share | Rs.518.02 | Rs. 226.73 |

5. Since the shares were issued at a huge premium, it created doubts in the mind of the AO. Therefore, to verify the identity and credit worthiness of the share applicants and genuineness of the transaction, the AO asked the assessee to prove the three ingredients within the meaning of Section 68 of the IT Act. The assessee, in its submissions filed various details such as copy of the income-tax return, bank statements of the share applicants, their confirmations, etc. From the various details furnished by the assessee, the AO noted that these companies are not having capacity to deposit such huge amounts as share application money and that too at a premium of Rs.1,990/- per share. He further noted that all the above six companies are directly or indirectly operated by the promoters of the assessee company. He examined the details and noted that the following are the directors and shareholders in the assessee company:-

| | Name | Address |
|----|---|--|
| 1. | Sanjiv Garg S/o Sh. Dharam Pal Garg | 61-A, Sant Nagar. Civil lines. Ludhiana |
| 2. | Sh . Rajiv Garg S/o Sh Dharam Pal Garg | 61-A, Sant Nagar. Civil lines. Ludhiana |
| 3. | Sh. Ujjwal Garg , S/o Sanjiv Garg | 61-A, Sant Nagar. Civil lines. Ludhiana |
| 4. | Sh. Pradeep Makkar, S/o Sh Tilak Raj Makkar | 31, Avtar Nagar (Threeke), Opp. Santaj Palace, Near Octroi Post, Frozpur Road, Ludhiana. |
| 5. | Sh. Vijay Sinhania, S/o Sh Sewak Lal Sinhania | B-XIX, 810, Sinhania College, Near Prince Hostel, Civil Lines, Ludhiana. |
| 6. | Sh. Dharam Pal Gupta S/ o Sh. Sohan Lal Gupta | 43-K, Sarabha Nagar, Ludhiana |

6. He examined the shareholding pattern of the applicant companies and found that these companies are being promoted and operated by the family members of the promoters of the assessee company. He, therefore, was of the opinion that the assessee company has introduced share application money in the name of six companies and these companies are not having any capacity to deposit such huge amounts as share application money. Relying on various decisions and observing that the assessee failed to prove the three ingredients as per provisions of section 68 of the IT Act, the AO made addition of Rs.20,17,00,000/- to the total income of the assessee u/s 68 of the IT Act. While doing so, the AO summarized his findings which are as under:-

2. The findings as discussed in para 3 to 5 of this order are summed up as under:-

- i) None of the subscriber was known to any of the employees or even to the Managing Director.
- ii) In view of the documents as pointed out above it was necessary to verify whether the person signing the share application form or confirmation is genuine or not, hence the assessee was insisted for production of the subscriber.
- iii) Not even a single subscriber is produced even after allowing a time of around two months at the convenience of the assessee.
- iv) Hence the assessee has failed to prove the identity of the subscriber.
- v) The assessee has also failed to prove the creditworthiness of the subscriber because cheques are deposited in the account immediately before the cheques issued to the assessee. Further the creditworthiness of the subscriber is not proved because there had not been any balance in the account and the profit as per P & L account was Nil or a very small amount.
- vi) All the subscribers have forgotten the money invested after giving cheques to the assessee. None of them has got any income from the investment. They have incurred heavy loss which is not humanly probable.

vii) In all the companies from whom share application money has been received a pattern has been observed regarding the gross receipt and the securities premium received during the year. The gross receipt is extremely low while the securities premium is huge. The companies are not doing any business as such (The table has been produced below). This pattern is again against any human probability.

viii) The subscribers are witness of the assessee and to produce them to prove their identity and credit-worthiness was on the assessee which it has failed to discharge.

ix) The case of the assessee fails on human probabilities as nobody would invest and forget his money. Moreover, in the instant case, they have incurred loss in crores.

x) In the case of the assessee apparent is not real as detailed discussion made in the order.

xi) The inquiry regarding the genuineness of the addresses of the subscribers had been done through the inspectors. From the Inspector's report, it has been gathered that on these addresses, there is absolutely no existence of any company or even any office. Further, it has also been noticed that for many companies, the address is same such as M/s Basic portfolio Management Pvt, Ltd., M/s ASR Infraproject Pvt. Ltd., running from A-19, 202, Akshay housing, 2nd Floor, Gurunanakpura, Laxmi Nagar, N. Delhi-92. These facts point towards the ingenuineness of these transactions.

xii) Further, a very important point to be noted is that the assessee has told in its submission that all the shares allotted to these subscribers has all been transferred by 31.3.12. It means that the share application money received from the subscribers is only a garb or accommodation entry provided, as all the shares have been eventually transferred.

7. The AO further noted that a search u/s 132 was conducted at the business premises of SEL Manufacturing Company Ltd., on 11th September, 2013 during which it was found that M/s Garg Acrylic Ltd., i.e., the assessee company is involved in suspicious/bogus purchase/sales mainly that of knitted cloth/fabric with

M/s SEL Manufacturing Company Ltd. From the details communicated by the DDIT (Inv.), Shimla, he noted that M/s Garg Acrylics Ltd. has made sale of Rs.44.65 crores during the financial year 2011-12 to SEL Group. Similarly, bogus sale of SEL Group to Garg Acrylics for the assessment year under reference was reported at Rs.29.16 crores. It was further intimated by the DDIT (Inv.) that substantial part of goods sold/purchased by the company to/from SEL group were not supported by delivery challan and transportation of goods could not be reconciled with inward/outward gate registers. Subsequently, a survey u/s 133A was also conducted in the premises of the assessee company on 20th September, 2013. Accordingly, the assessee company was required to furnish proof of purchase of goods from SEL Manufacturing Co. Ltd., and also to prove as to where the goods were sold and the details of loading and unloading expenses. During the assessment proceedings, the AO confronted the assessee to substantiate its transaction with SEL Manufacturing Co. Ltd. Rejecting various explanations given by the assessee and observing that the assessee failed to substantiate the sale and purchase with the above mentioned company, the AO made addition of Rs.20,24,39,341/- to the total income of the assessee by observing as under:-

From, the facts noted above it is clear that the assessee company is involved in bogus transactions of purchase and sales, this is corroborated from the facts that neither records were found with others parties i.e. SEL manufacturing company nor with the assessee company. The total payments for such bogus purchase is at Rs.1108961370/- and total payments received for such bogus sales is at Rs.1311400711/-. Thus the assessee company by virtue of these transactions has introduced additional funds in the business at Rs.20,24,39,341/- as income from undisclosed sources from the bogus transactions. In result of these bogus transaction, the assessee shown payments of Rs.1108961370/- for these bogus sales made. Since all these sales and

purchases are proved bogus during the course of search and survey, therefore, no real expenses are incurred by the assessee on these bogus sales and purchase, accordingly, the whole difference of Rs.20,24,39,341/- is being treated as undisclosed income of the assessee and the same is hereby added back in the income of the assessee. Since I am satisfied that the assessee has concealed its income by furnishing inaccurate particulars of its income, therefore, penalty proceedings u/s 271(1)(c) is initiated separately.

7.1 Thus, the AO determined the total income at Rs.71,82,51,229/-.

8. So far as assessment year 2012-13 is concerned, the AO, during the course of assessment proceedings noted that the assessee has introduced share application money of Rs.28,98,25,000/- during the year from the following companies:-

| SL. No. | Particulars of the Subscribers | Amount of share application money received in F.Y. 2010-11 | Amount of share application money received in F.Y. 2011-12 |
|---------|--|--|--|
| 1. | Himachal Yarn Formerly Himachal Steel Udyog Ltd. PAN: AABCH0451J | 7,07,10,000 | 1,50,40,000/- |
| 2. | Brijeshwari Textiles Pvt. Ltd Pan.: AACCB7479K | 3,00,00,000 | 1,50,00,000/- |
| 3. | Balmukhi Textiles Pvt ltd. | 3,00,00,000 | - |
| 4. | GargFincap Ltd. | - | 8,00,000/- |
| 5. | Shiva Spin Fab Pvt. Ltd. Pan. AAKCS6521K | 4,00,00,000 | 1,70,00,000/- |
| 6. | GAL Cottex Pvt. Ltd. PAN AABCS8023C | 2,03,70,000 | 5,30,00,000/- |
| 7. | Apporva Leasing Finance and Investment Company Ltd. | - | 7,50,00,000/- |
| 8. | Pushpa Yarns Pvt Ltd. | - | 1,00,00,000/- |
| 9 | Shubam Yarns Pvt. Ltd. Pan. AAGCS8023C | 1,06,20,000 | 9,98,25,000/- |
| | | 20,17,00,000/- | 28,98,25,00/- |

9. He observed that the assessee company issued shares to above 8 companies at a huge premium of Rs.2,490/- per share. From the audited balance sheet of the

assessee company, he noted that earning per share of the assessee company as on 31.03.2012 was only Rs.49.27 per share which is as under:-

| | Year Ended 31.03.2012 | Year ended 31.03.2011 |
|---------------------------------------|-----------------------|-----------------------|
| Profit after tax for the year | Rs.2,95,61,231/- | Rs.26,81,17,058 |
| Weighted average no. of equity shares | Rs. 5,99,945/- | Rs. 5,17,534/- |
| Basic & Diluted Earning Per Share | Rs. 49.27 | Rs. 518.07 |

10. The AO asked the assessee to substantiate the identity and credit worthiness of the share applicants and the genuineness of the transaction. From the details so furnished by the assessee, he observed that these companies are having meager income or no income. Their financials do not show that they are having adequate source of investment in the shares of the applicant company and these are just entry providers and do not have any capacity to deposit any such huge amount as share application money and that too at a premium of Rs.2,490/- per share. He further noted that the above companies are directly or indirectly operated by the promoters of the assessee company. He observed that the following are the directors and shareholders of the assessee company:-

| SI. No. | Name | Address |
|---------|--|--|
| 1. | Sanjiv Garg S/o Sh Dharam Pal Garg | 61-A, Sant Nagar, Civil Lines. Ludhiana |
| 2. | Sh . Rajiv Garg S/o Sh Dharam Pal Garg | 61 A, Sant Nagar, Civil Lines. Ludhiana |
| 3. | Sh. UjjwalGarg S/o Sanjiv Garg | 61 A, Sant Nagar, Civil Lines. Ludhiana |
| 4. | Sh. PradeepMakkar S/o ShTilak Raj Makkar | 31, Avtar Nagar (Threeke) , opp. Santaj Palace, Near Octroi post, Ferozpur, Road, Ludhiana |

| | | |
|----|--|--|
| 5. | Sh. Vijay Singhania S.o Sh Sewak Lal Singhania | B-X1X-810, Singhania College, Near Prince Hostel Civil Lines, Ludhiana |
| 6. | Sh. Dharam Pal Gupta S/ o Sh. Sohan Lal Gupta | 43-K. Sarabha Nagar, Ludhiana |
| 7. | Renu Garg | 61-A, Sant Nagar, Civil Lines. Ludhiana |
| 8. | Neelu Garg | 61-A, Sant Nagar, Civil Lines. Ludhiana |

11. He analysed the shareholding pattern of the applicant companies and found that these companies are being promoted and operated by the family members of the promoters of the assessee company. He, therefore, came to the conclusion that the assessee company has introduced share application money in the name of the eight companies and these companies are not having any capacity to deposit such a huge amount as share application money. He asked the assessee to produce the principal officers of the above companies for his examination. According to the AO, on the specified date, the assessee company failed to produce the principal officers of the applicant companies. He deputed the Ward Inspector to verify the premises of all eight companies and serve summons u/s 131 of the Act. However, the Inspector reported that no such business activity was being carried on from the addresses as given by the assessee and either these are residential premises or no business activity is being carried on from those premises. The AO, therefore, confronted the same to the assessee and asked him to produce the principal officers of the eight companies for his examination. However, the assessee failed to produce the principal officers of the above companies. In view of the above, the AO, relying on various decisions and invoking the provisions of section 68 of the

IT Act, made an addition of Rs.28,98,25,000/- to the total income of the assessee.

While doing so, he summarized his findings the details of which are as under:-

- õi) All of the subscribers were not known to any of the employees or even to the Managing Director or promoters of the companies.
- ii) Many specific opportunities were given to the assessee to produce the Principal Officer of the share applicant companies.
- iii) Even Inspector was deputed to serve the summons u/s 131 to all the companies by hand for personal attendance/deposition of the Principal Officer of the applicant companies.
- iv) Two of the companies were found bogus as there was no companies existing at the registered office address provided by the assessee company even the employees having managing nature of the duties in the companies, present at the said address stated that there are no such companies existing at this address.
- v) Even after service of summons u/s 131 of the Act for personal deposition of the Principal Officer of others companies except two companies mentioned at point iv) above, not even a single subscriber is produced even after allowing a time and further adjournment as per the convenience of the assessee.
- vi) Further, the Authorized Representative of 5 out of 6 companies mentioned at point v) above at the time of hearing expressed inability to produce the Principal Officer of the applicants companies for examination.
- vii) Hence the assessee has failed to prove the identity of subscriber.
- viii) The assessee has also failed to prove the creditworthiness of the subscriber because there had not been any balance in the account and the profit as per P & L account was Nil or a very small amount.
- ix) All the subscribers have forgotten the money invested after giving cheques to the assessee even when none of them, has fetched any income from the investment, which is against the human probability.
- x) In all the companies from whom share application money has been received a common pattern has been observed regarding the gross receipt and the securities premium received during the year. While the gross receipt is extremely low, the securities premium is quite huge. The companies are not doing any business as such. This pattern is again against any human probability.

xi) The subscribers are witness of the assessee and the onus to produce them to prove their identity and creditworthiness was on the assessee which it has failed to discharge.

xii) The case of the assessee fails on human probabilities as nobody would invest and forget his money which is not fetching any income to him over a time. Moreover these companies are having very low income and thus its sources from where they invested such a huge amount in the share application money could not be ascertained when such a huge share premium of Rs. 2490 was given compared to actual earning per share of Rs. 49 as reported in the audited balance sheet of the assessee company.

xiii) In the case of the assessee apparent is not real as detailed discussion made in the order.

xiv) Further, a very important point to be noted is that the share holding pattern of the applicant companies was also examined and found that these companies are being promoted and operated by the family members of the promoters of the assessee company and all these companies are directly or indirectly interconnected with each other and controlled by same people known to each other. Thus, in such a situation the onus on the assessee is heavier than under the normal circumstances and in the instant case, the assessee company failed to discharged its onus even in the normal circumstances to produce the subscribers who have invested such a huge amount of share application at such a huge share premium and known to the assessee company. The surrounding circumstances of the instant case clearly show that apparent was not the real and the assessing authority is not supposed to put on blinkers so as to not find out the real state of affairs.

12. Before the Id. CIT(A) it was submitted that the AO had conducted enquiries u/s 133(6) of the Act by issuing notice to companies from whom share capital was received by the assessee company. All these companies and their banks had duly responded to the said notices and filed necessary confirmations before the AO. It was submitted that the assessee filed confirmations, bank statements, copies of their income-tax returns, copy of PAN cards, balance sheets and the shareholding pattern of all the six cash creditors for A.Y. 2011-12. The assessee has also filed the balance sheet of the investor companies to substantiate

their capacity to make investment in the assessee company. It was submitted that all these companies had sufficient capital and free reserves and, therefore, merely because the current year's returned income was meager it cannot be a basis to make such huge addition. So far as the various findings given by the AO at para 2 of the order is concerned, it was submitted that the facts so mentioned do not pertain to the assessee company.

12.1 It was pointed out that so far as assessment year 2011-12 is concerned, the assessee was never asked to produce the directors of the six companies as mentioned in para 2 of the assessment order. It was argued that once the assessee has submitted all the requisite details as called for by the AO, the onus shifts to the AO to prove to the contrary. He never carried out independent enquiry and should have confronted the assessee with the result of such enquiry which he failed to do. It was further submitted that once the AO holds that all these companies are related to the promoters of the assessee company, he could not have held that none of the employees or the MD of the company don't know the subscriber companies. It was strongly argued that the AO has passed the order without application of mind and, therefore, the addition made u/s 68 was without any reasoning or basis.

12.2 So far as the observation of the AO that the assessee company had earning capacity of Rs.226.73 per share, whereas it has charged huge premium of Rs.1990/- per share is concerned, it was submitted that it was the prerogative of the Board of Directors of the company to decide the amount of the premium. The

details of working of the earning from share was given before the CIT(A) according to which it came to Rs.3,812/-. It was accordingly argued that the charging of the premium of Rs.1,990/- per share was fully justified. It was argued that since the assessee has duly substantiated the identity and credit worthiness of the investor companies and the genuineness of the transaction, therefore, the addition of Rs.20.17 crore made by the AO is uncalled for.

12.3 So far as assessment year 2012-13 is concerned, it was submitted that the assessee had filed all details such as confirmations, bank statements, balance sheets, PAN details, income-tax return copy etc., to substantiate the identity, creditworthiness and genuineness of the share applicants. It was submitted that the assessee had justified the basis of charging of such share premium. It was argued that the assessee being an unlisted company, the networth has to be determined as per the Companies Act, 1956 and Rule 11UF of the Income-tax Rules, 1962 according to which the average of book value and EPS based share value comes to Rs.3,812/-. As regards the allegation of the AO that the assessee company had earning capacity of Rs.49.27 per share only whereas it has charged premium of Rs.2490 per share is concerned, it was argued that it is the prerogative of the Board of Directors to decide the amount of premium. As regards the capacity of the share applicants, it was argued that all applicants are corporate entities and their net worth is based on balance sheet alone is relevant criteria for judging the

creditworthiness. It was argued that income of current year cannot be the basis for considering the creditworthiness of the investor companies.

12.4 It was argued that where the AO himself has held that all these companies are related to the promoters of the assessee company, however, he held that two of such group companies are bogus and made addition u/s 68 in respect of all eight companies.

12.5 So far as M/s Apoorva Leasing Finance and Investment Company Ltd. is concerned, which is neither a group company nor an associate company, it was argued that the assessee was never confronted with the result of any enquiry showing that the said company does not exist.

12.6 As regards the allegation of the AO that these share applicant companies are only entry providers is concerned, he submitted that once it is established by the AO that these are group companies having common directors, the AO cannot say that these are bogus entry provider companies. It was argued that the assessee was asked to produce the principal officers of these companies which the assessee had complied but the AO chose not to record their statements. He has never asked to produce the shareholders of these companies. It was submitted that in the past and subsequent years, the AO himself has accepted such share capital and share premium in the order passed u/s 143(3) in respect of some of these companies, namely, M/s Himachal Yarns Ltd., M/s Gal Cottex (P) Ltd. and M/s Shubam Yarns

(P) Ltd. It was accordingly argued that the addition made by the AO u/s 68 has to be deleted.

12.7 So far as the addition of Rs.20,24,39,341/- made by the AO for A.Y. 2011-12 by holding the transaction of purchase and sale made by the assessee with M/s SEL Manufacturing Company Ltd. as bogus is concerned, it was submitted that no adverse evidences were gathered either during the course of search in the premises of M/s SEL Manufacturing Company Ltd. or during the course of survey u/s 133A of the Act at the premises of the assessee company. It was submitted that only on the basis of statement of Mr. Sanjiv Garg, MD, recorded during the course of survey the AO held that the assessee was involved in issuing bogus sales and purchase bills which was never stated by Mr. Garg in his statement. It was submitted that during the current year the assessee company had a turnover of Rs.600/- crore which includes both manufacturing and trading activity. It was argued that the assessee had also traded in yarn worth Rs.110/- crore which includes the purchases made from M/s SEL Manufacturing Co. Ltd. of Rs.29.16 crore. Similarly, out of the total sales of Rs.131/- crores, the sales made to SEL Manufacturing Co. Ltd. amounted to Rs.44 crores only. It was argued that the adverse view taken by the AO with regard to the transaction with SEL Manufacturing Co. Ltd. is not correct and was not based on any adverse findings. It was argued that the transaction with M/s SEL Manufacturing Co. Ltd. was duly recorded in the books of account which was relied upon by the AO and found to be

authentic since the AO has neither rejected the books nor has passed the order u/s 144 of the Act. It was submitted that M/s SEL Manufacturing Co. Ltd. is a listed company which is registered with the Excise Department and accordingly all sales made by that company were duly recorded in the records of the Excise Department. The assessee filed the Excise Duty return and VAT-20 return in which the total turnover of Rs.600/- crore was shown. It was argued that the records of sales and purchase were duly maintained and no adverse finding was given with regard to the trading activity of the assessee company in the last five years. Further, all inward and outward goods were duly supported by the transportation receipts wherever the goods were transferred to the assessee company or to the buyer. Sample copy of the sale invoices of SEL Manufacturing Co. Ltd. in respect of sales made to the assessee company along with the balance sheet and audited accounts of the company were filed before the CIT(A) to support the plea that such purchase were genuine. Computerised stock register which was claimed to be regularly maintained by the assessee was also filed. It was accordingly argued that in absence of any adverse evidence in the possession of the AO, he could not have held that purchases/sales of the assessee with SEL Manufacturing Co. Ltd. were bogus.

12.8 Based on the arguments advanced by the assessee, the Id.CIT(A) deleted both the additions.

13. So far as the deletion of addition of Rs.20.17 crore as unexplained cash credit u/s 68 for A.Y. 2011-12 is concerned, the ld. CIT(A) deleted the same by observing as under:-

6.2 The Ground No.1 of the appeal is general in nature, requiring no specific adjudication. Regarding the Ground No.2 of the appeal relating to addition of Rs.20.17 Crores, as unexplained cash credit u/s 68, (I find that the Ld. AO initially got suspicious by observing that the appellant had received share premium of Rs.1990 per share in addition to the face value of Rs.10 per share. This, in itself, may be a good starting point for carrying out investigation to probe the cash credit, in the matter. However, in order to hold cash credit as unexplained u/s 68, three conditions, namely; identity, genuineness and creditworthiness need to be satisfied.

6.2.2 So far as identity of the above cash creditors is concerned, the appellant had filed before the Ld. AO, the name, address, PAN and copy of income tax return along with confirmation letters from the cash creditors. This was got verified by the Ld. AO by issue of notice u/s 133(6), which is evident by a copy of such confirmation filed by the appellant before me. The Ld. AO having started the investigation u/s 133(6), has not given any finding nor has discussed about the proceeding u/s 133(6) in the impugned order. The Ld. AO's observations were inconsistent, as in the concluding Para no.2, he had held that none of the subscribers were known to any of the employees or even to the M.D., while at page no.3-4 of the order, he has given detailed finding that all 6 companies that have invested in share capital of the assessee company are related to appellant's group and has given details of the Director and promoter of all 6 companies and their shareholding.

On careful consideration, I hold that the identity of all the 6 companies which have invested in the appellant company stood duly proved before the AO and disregarding the relevant evidences gathered by the Ld. AO himself during the course of inquiry u/s 133(6) was not judicious.

6.3 Regarding the 2nd condition, namely Creditworthiness of the investor companies, the Ld. AO has held that these companies did not have sufficient returned income during the year and that these companies having made investment have not followed on the investment. In this regard, he relied upon the returned income shown by these companies. The appellant had furnished before the Ld. AO, a copy of the balance sheet of the 6 companies which clearly show that these companies had sufficient own funds including share capital, premium, reserve and surplus for the purpose of making investment in the appellant company. As discussed in Table-1 above, M/s Himachal Yarn, which has made investment of Rs.7.07 Crores had share capital of Rs.8.19 Crore. M/s Brijeshwari Textiles Pvt. Ltd, which has made investment Rs.3

Crores had share capital of Rs.70.28 Crore. M/s Balmukhi Textiles Pvt. Ltd, which has made investment of Rs.3 Crore had share capital of Rs.80.97 Crore. M/s Shiv Spin Fab Pvt. Ltd., which has made investment of Rs.4 Crore, had own funds of Rs.34.78 Crores. M/s GAL Cottex Pvt. Ltd., which has invested Rs.2.03, had own funds of Rs.4.49 Crores. M/s Shubam Yarns Pvt. Ltd., which has made investment of Rs.1.06 Crores has own fund of Rs.5.87 Crores. If the Ld. AO was not satisfied with the creditworthiness of the investor, 3 of which are group companies, (the other 3 were promoted by associates), he should have carried out enquiry from the ROC or the relevant income tax authority. Evidently, the Ld, AO carried out no independent enquiry in the matter other than making interpretation in an arm-chair manner.

6.4 In my considered view, for the purpose of assessing capacity to make investment, current year's income is not a relevant criteria and what is relevant is to assess the available funds as per the balance sheet and the bank statement. In view of the details given in Table 1, I find that the aforesaid 6 investor companies had adequate funds of their own for the purpose of making investment in the appellant company. Under the circumstances, I hold that the creditworthiness of the 6 investor companies stood duly proved before the Ld. AO.

6.5 Regarding the Genuineness of the aforesaid transactions, the appellant had filed before the AO, a copy of the confirmation letters from the 6 investor companies, copy of their bank statements, copy of its own bank statement, which show that the appellant had received such share capital in cheque through the banking channel. No adverse observation had been made by the Ld. AO in this regard, while discussing the inquiry in this regard in the Para 1, however, in the conclusion summarized at Para 2 of the order, the AO has mentioned about some enquiry carried out by the Inspector. However, the specific details of the investor companies given in the Para 2 in respect of which the enquiry was conducted, shows that the Ld. AO has not applied mind and has perhaps mixed up the facts of the case with some other case. Evidently, no enquiry was carried out by the Ld. AO through any Inspector in the case of the appellant and thus, I hold that there is no adverse observation with the Ld. AO regarding genuineness of these transactions. Similarly, the observation that all shares allotted were transferred before 31.3.2012 is also based on incorrect facts.

6.5.2 On careful consideration, I find that these transactions were made through the banking channel and the Ld AO was provided with a copy of the bank statements of all the 6 investor companies as also of the appellant company and all such transactions were in the form of issue of cheque. The bank statements show that the investor companies did not receive any cash amounts prior to issue of cheques to the appellant company. Under the circumstances, I find that there existed no credible adverse observation regarding the genuineness of the share capital received by the appellant

company from the 6 investment companies. Under the circumstances, as the appellant had duly substantiated the identity, creditworthiness and the genuineness of the appellant company, there was no credible reason on the part of the Ld. AO of having made addition u/s 68.

6.6 I find that the Ld. AO was not satisfied as to how the appellant company charged premium of Rs.1990 per share. The Ld. Counsel filed before me detailed submissions and contended that the appellant company had sufficient net worth and if the net worth is calculated as per Rule 11 UF, the average of book value and EPS based shares comes at Rs.3812. In view of this, the appellant pleaded that the premium of Rs.1990 charged by the appellant company cannot be held as excessive and pleaded that the Board of Directors of the company was fully empowered to charge the same. On careful consideration, I find merit in the argument of the appellant company. I also find that the Ld. AO has not applied the provisions of Rule 11UF of the IT Rules 1962 for making the valuation of Net worth of the appellant company.

6.6.2 However, in my view, the issue whether the appellant charged excessive premium or not is not germane to explain the cash credits. The observation of the Ld. AO could only be igniting point for carry out investigation, however, unless the result of the investigation results in making any adverse observation with regard identity, genuineness & creditworthiness, addition u/s 68 cannot be made. In view of the above, in the absence of any adverse evidence, I find no merit in the addition made by the Ld. AO u/s 68. Accordingly, the appellant gets full relief on this ground.ö

14. So far as the deletion of Rs.20.24 crore on account of bogus sale and purchase with SEL Group is concerned, he also deleted the same by observing as under:-

ö6.7 The Ground No.3 of the appeal is against addition of Rs.20.24 Crores in respect of difference between the figures of receipts for sales and payments for purchase made in trading account (which includes trading with M/s SEL Manufacturing Co. Ltd.). On careful consideration, without prejudice to the specific facts of the case, I find there are a few major fallacies in the action of the Ld. AO.

First, on pure accounting grounds, it is evident that the appellant had made total payments for trading purchases of Rs.110,89,61,370/- and total receipts for trading sales of Rs.131,14,00,711/-, which have been booked in the accounts. Accordingly, it is evident that the resulting difference of Rs.20.24 Crores has already been offered to tax by the appellant. The same difference of Rs.20.24 Crores cannot be taxed again, as done by the Ld. AO, as it

tantamount to double addition, which is in violation of the principle of the equity and justice.

Second, it is also evident that the Ld. AO had taken adverse view regarding the transactions of the appellant with M/s SEL, including purchases of Rs.29.16 Crores and Sales of Rs.44 Crores, however, the AO has held entire trading transactions (even with other parties) as bogus, without any adverse finding/evidence in respect of such parties.

Third, I find that though the Ld. AO has hold the payments for purchases of Rs.110 Crores and receipts for sales of Rs.131.14 Crores as bogus, he has not rejected the books of accounts u/s 145 and accordingly, the impugned order of assessment has not been passed u/s 144. The Ld. AO neither rejected the books nor has gathered any additional evidence/ material and has paid no credence to the material available. Accordingly, the assessment itself is bad in law.

6.8 Without prejudice, on the merit of the case, I find that in reaching to his conclusions, the Ld. AO has taken adverse view of the reply of the M.D. of the appellant company on the three questions namely question no.16 to 18 recorded during the course of statement u/s 133A. The said M.D. of the company had taken the position that the 'company was trading on consignment basis' and 'no inward and outward registers were maintained at godown 3 relating to trading' and that 'no loading and unloading expenses have been separately maintained'.

These short statements can be interpreted in various ways. The appellant has submitted that there is internal consistency in these short statements, as in case of consignment sales, the appellant is an not required to receive goods at his Godown and therefore, no entry in the inward/outward registers maintained at the Godown 3 was to be made. Similarly for the reply to question no 18, it was clarified that the appellant company did not maintain separate records for unloading and loading charges and a copy of the common loading/unloading account was filed. The appellant submitted that the same can be verified from the audited accounts.

It is thus evident that in itself, these three short statements cannot be held as an admission by the director that the entire trading purchase and sales of the appellant company were bogus. Moreover, in order to hold so, the Ld. AO was required to verify the available evidences, which the appellant had filed, namely the copy of the freight expenses, loading and unloading account. He could have made direct enquiry with the buyers to whom such a huge receipt for sales of Rs.131 Crores was made. Further, information from VAT authority could have been obtained. The Ld. AO, however, made no efforts in this regard. In view of this, the interpretation made by the AO of the three short statements made by the MD of the company during the course of the statement recorded u/s 133A before the investigation wing, without having

been corroborated by any adverse evidence, is not sufficient to hold that the entire trading activity of the appellant company was bogus.

6.9 Besides this, the appellant's plea was that its trading activity included consignment sale for M/s SEL, which has its factory located at Shimla, while the appellant has its manufacturing unit/godown located in Ludhiana and both these companies are Star export houses. There is no provision in law nor is there any business prudence to first take delivery of the traded goods (sold on consignment basis) at Ludhiana and then to sell it to potential buyers elsewhere. Apparently, the appellant had effected delivery of the trading goods from M/s SEL to the buyers directly by using the trucks/vehicles of its own or sometimes by incurring freight expenses. Details of relevant expenses were furnished before the Ld. AO and also before me. Taking into account the above evidences, I find that relying only on the semantics with regard the reply of Mr. Sanjiv Garg, M.D. limited to 3 short questions, cannot be sufficient to hold that the huge payment for purchase and receipts for sales of the appellant amounting to Rs.110 Crores & Rs.131 Crores were bogus in the absence of any other supporting evidence. Moreover, in the reply to the question 16 to 18, he has maintained that no inward and outward register was maintained at the godown 3, which is explained by the fact that the appellant is doing trading on consignment basis (Answer 17). Further, the reply that the company did not maintain separate records for loading and unloading of trading goods at Godown no.3, is also proved by the fact that the company is not required to load and unload goods traded on consignment basis, at the Godown No.3. The appellant had incurred trading/unloading expenses, which have been shown as part of the audited Financial Accounts. If in doubt, the Ld. AO could have made investigation. In view of this, as the finding of the Ld. AO is not duly supported by any adverse evidence, there is no merit in holding the entire trading purchases/sales of the appellant as bogus.

6.10 Without prejudice, I find that the Ld. AO has held the entire trading purchase & sales as bogus, based on adverse view taken about transactions with SEL, however, the company had made purchases of Rs.29.16 Crores & sales of Rs.44 Crores only from M/s SEL. There is no discussion about the veracity of balance purchase/sales from other parties, yet the AO held the same as bogus.

6.11 Moreover, keeping in view the fact that the appellant had already offered for tax, the difference of receipts and payments in respect of sales and purchase made on the trading activity amounting to Rs.20.24 Crores, the same cannot be taxed twice. In view of this, the addition made by the Ld. AO, which was without rejecting the books of account, is held to be not sustainable, on law and facts both. Accordingly, the appellant gets full relief on this ground.ö

15. So far as assessment year 2012-13 is concerned, the Id.CIT(A) deleted the addition by observing as under:-

6.3 The Ground No.2 of the appeal is against the action of the AO of making addition in respect of share application money of Rs.28.98 Crores received by the appellant from 8 Investor companies (including 7 group/associate companies) as unexplained cash credit u/s 68. It is seen that out of such 8 investor companies, seven companies belong to Himachal Yarn Ltd. and its associate Group Shiva group, based in Ludhiana and only one company M/s Apoorva Leasing Finance and Investment Company Ltd., based at New Delhi is an outside company in which none of the promoters of Himachal Yarn Group and Shiva group are interested. This fact has been acknowledged by the Ld. AO at several places in the assessment order to buttress the argument that the onus on the appellant company was much heavier compared to any other case.

History of investigation

6.3.2 It is seen that the Ld. AO had first asked the appellant to substantiate bonafide of the share application money received by the appellant, by issue of a questionnaire dated 27.5.2014 (served upon the appellant on 26.8.2014) vide Item No. 4. In response to this, the appellant vide letter dated 31.12.2014, had filed Written confirmation letters, Copy of ITRs and the relevant bank statements from all the 8 investor companies, to support identity, genuineness and creditworthiness of the aforesaid cash credits. The Ld. AO again issued another questionnaire dated 20.1.2015, in which these details were again asked vide Item No. 2. To this, the appellant informed vide the letter dated 27.1.2015 that such details were already provided to the Ld. AO vide letter dated 31.12.2014 (wrongly mentioned as 9.12.2014).

6.3.3 The Ld. AO did not raise further queries on the evidences furnished by the appellant. However, on 28.1.2015, he asked the AR to produce the Principal Officers of such 8 investor companies. As the appellant could not produce them on the hearing held on 6.2.2015, the AO again asked the appellant to produce them. In response, the appellant furnished the names of the Principal Officers of these companies as under:

Table-3 : Principal Officers of the investor companies

| S.No. | Name | Principal officer |
|-------|---|-------------------|
| 1 | Himachal Yarns Formerly Himachal Steel-Udgoy Ltd. | Pradeep Makkar |
| 2 | Garg Fincap Ltd. | Pradeep Makkar |

| | | |
|---|---|-----------------|
| 3 | Shubam Yarns Pvt. Ltd. | Pradeep Makkar |
| 4 | GAL Cottex Pvt. Ltd. | Pradeep Makkar |
| 5 | Pushpa Yarns Pvt. Ltd | Sanjeev Garg |
| 6 | Brijeshwari Textiles Pvt. Ltd | Ramesh Malhotra |
| 7 | Shiva Spin Fab Pvt. Ltd PAN: | Ramesh Malhotra |
| 8 | Apporva Leasing Finance and Investment Company Ltd. | Bharat Bhushan |

This requirement was again made at the time of the hearing held on 2.3.2015. In response, the appellant produced Mr. Sanjeev Garg (from Ludhiana) before the AO on 11.3.2015. Mr Sanjeev Garg was the Principal Officer in the case of Pushpa Yarns Ltd. and along with his family members had controlling stakes in Garg Fincap Ltd., Shubam Yarns Pvt. Ltd., GAL Cottex Pvt. Ltd. and Pushpa Yarns Pvt. Ltd. However, on that hearing, Mr Sanjeev Garg was not examined by the Ld. AO with regard the aforesaid share application money received from Garg Fincap Ltd., Shubam Yarns Pvt. Ltd., GAL Cottex Pvt. Ltd. and Pushpa Yarns Pvt. Ltd. The AO asked the appellant to furnish pending details as per hearing dated 2.3.2015. In the hearing dated 2.3.2015, the Ld AO had asked the appellant to 'furnish remaining details and also to produce the principal officer of 8 companies and cash creditors for examination namely; M/s Gal Coltex and M.s Shubham Yarns (P) Ltd. and Deep Toold (p) Ltd. I find that no inquiries were carried out by the AO at the time of personal disposition of Mr Sanjeev Garg on 11.3.2015 regarding the share application money or the unsecured loans received from M/s Gal Coltex and M.s Shubham Yarns (P) Ltd. and Deep Tools (P) Ltd, as no statement was recorded nor there is mention of further enquiry on the note sheets.

6.3.4 On 13.3.2015, the appellant produced Mr Pradeep Makkar, the Principal officer in the first 4 companies mentioned in Table-3 above. The Ld. AO in the note sheet dated 13.3.2015 noted that Sh. Pradeep Makkar, CA attended and filed power of attorney from 5 companies namely; Shubam Yarns Pvt. Ltd, Pushpa Yarn Pvt. Ld, Himachal Yarns Pvt., Garg Fincap Ltd., Gal Cottex Pvt. Ltd. I find that no enquiries were carried out by the Ld. AO from Mr. Pradeep Makkar with regarding the share application money received from the 5 companies in which he was Principal Officer and unsecured loans received from M/s GAL Coltex and M/s Shubham Yarns Pvt. Ltd. The AO insisted that the Principal Officer of these companies may be produced. The case was discussed on 13.3.2015 without further inquiry.

6.3.5 On 11.3.2015, the AO noted that a copy of Inspector's report was given to the AR for comments. On the next hearing held after a day's break on 13.3.2015, no queries were raised on the Inspector's report and on appellant's response thereon.

6.3.6 The Ld. AO also mentioned in the impugned order that with regard M/s Apoorva Leasing Finance and Investment Co. Ltd. the Inspector had reported that on reaching its given address at 104A, Ramesh Nagar, Single Story, New Delhi-110015, it was found that it was a residential house, on the front side of which one Mr. Hajur Singh was found at A-104-A and he was not aware of the resident on the backside of that premise. The Inspector also noted that there was no signboard or address board on the same premise. Further, enquiries from residents from other floors shows that this was a residential complex in which no company in the name of Apoorva Leasing Finance and Investment Company Ltd. ever existed. On perusal of the assessment records, I do not find such a report in the case records nor is there any mention in the note sheet of the case record about the fact of providing a copy of any report in this matter to the appellant during the assessment proceeding. The Ld. AO has also not mentioned about having furnished any opportunity to the appellant in this regard.

FINDINGS

6.4 On careful consideration of the above facts, it is evident that with regard the share application money received from the following 5 companies, there were no adverse observations made by the Ld. AO at any stage. These companies are as under:

| S.No. | Name | Principal officer |
|-------|--|-------------------|
| 1 | Flimachal Yarns Formerly Himachal Steel Udgoy Ltd. | Pradeep Makkar |
| 2 | Garg Fincap Ltd. | Pradeep Makkar |
| 3 | Shubam Yarns Pvt. Ltd. | Pradeep Makkar |
| 4 | GAL Cottex Pvt. Ltd. | Pradeep Makkar |
| 5 | Pushpa Yarns Pvt. Ltd | Sanjeev Garg |

The appellant had furnished evidences comprising written confirmations, ITR, Bank statements in support of identity, genuineness and creditworthiness in respect of the above 5 companies in response to the 1st questionnaire itself, on 31.12.2014. The relevant balance sheets were filed subsequently, which show that all these companies had significant own funds, which were much higher than the amount of share application money paid to the appellant company. The bank statements show that the entire amount was paid to the appellant by cheque and in the bank statement, there were no cash deposits. Undisputedly, there was no doubt about the whereabouts of these companies even in the Inspector's report. The Ld. AO however, treated the share application money received from these companies as unexplained, on the grounds that the principal officers of these companies were not produced, however, the

appellant had given the list of Principal Officers to the AO on 23.2.2015. Further, on 11.3.2015 Mr. Sanjeev Garg, Principal Officer in Pushpa Yarns Pvt. Ltd. appeared before the Ld. AO, while Mr. Pradeep Makkar who is Principal Officer in the other 4 companies appeared before the AO on 13.3.2015. Both of them were not questioned on the basis of evidences filed by the appellant before the AO on 31.12.2014 in the form of Bank statement, ITR and written confirmations and the balance sheet. Moreover, the Ld. AO had also carried out enquiries in respect of unsecured loans received from M/s GAL Caltex and M/s Subam Yarns Pvt. Ltd. and on the same set of facts preferred not to make addition u/s 68 in respect thereof. Under the circumstances, the action of the AO of holding share application money received from these 5 companies as unexplained was without any prudent basis. Since the appellant had duly substantiated identity, genuineness and creditworthiness in respect of share application money received from the above 5 companies based on relevant evidences, addition u/s 68 in their case was without any basis and deserves to be deleted as such.

6.5 With regard M/s Brijeshwari Textile Ltd. and M/s Shiva Spin Fab Pvt. Ltd., I find that Ld. AO had deputed an Inspector, who had visited Ludhiana to gather information about the above 8 investing companies. The Inspector, in his report mentioned that first he visited 8L Model Town, Ludhiana which relates to Shiva Group of companies. The Inspector reported that there he met Sh. Navrantna Kumar, GM and Mr. Ramesh Malhotra GM Accounts who had informed him that the above companies did not exist at the given address. In support, the Inspector took a photograph of the signboard which shows that other than Shiva Texfebs Ltd., Shiva Spin-n-knit Ltd., Shiva Specialty Yarns Ltd, Yogender Worsted Limited, KK Fibers Ltd., Himachal Fibers Ltd. and Indian Yarns Ltd., no other companies operated for this location. I find that this report is claimed to have been handed over to the appellant by the Ld. AO on 11.3.2015 and without awaiting the reply of the appellant, the Ld. AO closed the proceeding on 13.3.2015. Since the said enquiry was carried out at Ludinana and there is mention of enquiry from Mr. Navratan Kumar, GM, and Mr. Ramesh Kumar Malhotra, GM, evidently, it would have required a reasonable time to confirm the facts reported by the Inspector for framing a rejoinder. The AO however, gave time for one day only, hence, evidently natural justice cannot be held to have been rendered to the appellant in this regard.

6.5.2 On my directions, the appellant was asked to explain as to why these companies, which belong to Shiva Group, as admitted by the Inspector also, were not found to be operating from 8L, Model Town, Ludhiana and further, why the two General Managers of Shiva Groups denied existence of these two companies at the premise from which the entire Shiva Groups operates. The appellant submitted that the concerned inspector (Sh. Jogender Singh) had visited the premise at 8L, Model Town, Ludhiana, and had asked about these two companies and since the Directors of the said companies and the

concerned person dealing with the accounts were away from the office for a short time, Mr. Ramesh Malhotra, GM, Accounts, informed this to the Inspector and request to wait for one hour. It was informed that the Inspector told Mr. Malhotra that he had to visit other offices in Ludhiana and hence, he would come back after some time, however, he did not return to the premise. In support, the appellant filed an affidavit from Sh. Ramesh Malhotra. It was informed that Mr. Ramesh Malhotra was the Principal Officer of these companies and this information was already given to the AO vide letter dated 23.2.2015, however, the Inspector did not carry out any enquiry from Mr. Ramesh Malhotra.

FINDINGS

6.5.3 On careful consideration of the above facts, it is evident that the appellant had furnished evidences before the AO on 31.12.2014 in the form of Bank statement, ITR and written confirmations and the balance sheet in support of identity, genuineness and creditworthiness in respect of the share application money received from the above 2 companies, however, no adverse observations were made by the Ld. AO on the above evidences, which are germane to explain cash credit u/s 68. It is seen that share application money has been received from these 2 companies by cheque and there is no cash deposit in the bank during this period. The Ld. AO has also not made adverse observation in this regard. Further, it is also noticeable that these companies have own funds (Table-1), which was much higher than the investment made in the appellant company. Under the circumstances, creditworthiness of these companies and genuineness of these transactions stand proved. I find that the Ld. AO has made the addition u/s 68 by holding that the identity of these companies could not be proved. The Ld. AO has disregarded the fact of registration of these companies with ROC and issue of PAN by the Income Tax Department, by holding that such evidences were not sufficient as, in his view, no physical verification is made for such purposes.

The AO had accordingly, based his decision only upon the report of the Income Tax Inspector dated 25.2.2015.

6.5.4 In my considered view, the view taken by the AO about the evidentiary value of PAN and registration with ROC vis-a-vis the interpretation of the report of Sh. Jogender Singh, Inspector is untenable. The emphasis of the Inspector on the absence of signboard of these 2 companies at the given premise is misplaced, as an investment company need not have public dealing, therefore, in the business prudence of the company, expenses on signboard may not have been considered necessary. However, in the ROC, Income Tax Department, Bank etc. postal address of these companies has been given at 8L, Model Town, Ludhiana, which is the premise from which where the entire Shiva Group of Companies operates. The findings of the Inspector in itself in itself are shoddy as in his own admission he had to visit several offices on the

same day and as per his report he had also visited 61A, Sant Nagar, Civil Lines; Singla Willa, Civil Lines; M/s SEL Manufacturing Company 274, GT Road, Dhandiary Khurd, Ludhiana; and Kanganwal Road, Village Jugina, Ludhiana and one more premise, all in one day. As informed by the appellant, the Inspector was requested to wait for some time as the concerned Director and the person dealing with books of account was away, however, the Inspector left by stating that he had to cover other offices and shall come back. I also find that the Inspector had met Mr. Ramesh Malhotra, who is the Principal Officer of the company, as informed by the appellant vide letter dated 23.2.2015. Therefore, the Inspector could have carried out enquiries from him for which purpose, the Ld. AO had repeatedly asked the appellant to produce the Principal Officer of the company. Moreover, since evidently, the Inspector reported that from the premises at 8L, Model Town, Ludhiana, the other companies of Shiva Group operate and as informed by the appellant that such premise was owned by 'Shiva' group, there is no credibility in the report of the Inspector, based on the enquiry from the Principal Officer himself of these 2 companies (Mr. Ramesh Malhotra) that these 2 companies of Shiva Group did not exist at 8L, Model Town, Ludhiana. Looking to the facts of the case, it is very probable that the Inspector did not prefer to wait for the accountant/Director and thought of re-visiting the premises, but as he had to cover other premises the same day, he did not return and preferred to file a baseless report. In view of this, the Inspector's report cannot be considered as a credible evidence to hold that despite having given details of address in PAN, ROC registration, these 2 companies were not existing at the given address. Without prejudice, the Ld. AO had not given any reasonable opportunity to the appellant to furnish explanation on the aforesaid report of the inspector. In view of this, I hold that the appellant had duly substantiated the genuineness and creditworthiness of share application money from these two companies and no adverse observation were made by the AO on such evidences and with regard identity, the evidences in the form of PAN, ITR, ROC registration sufficiently substantiate the identity of the above two companies. In view of this, I hold that there was no merit in the action of the AO of treating the share application money received from these 2 companies as unexplained.

6.6 With regard the share application money received from M/s Apoorva Leasing Finance and Investment Company Ltd., which is not the group/associate company, I find that in the impugned order the Ld. AO has mentioned that he had got an enquiry carried out by deputing an Inspector for serving notice u/s 131 on the said company. It was mentioned that the said Inspector went to the premise at 104-A, Ramesh Nagar, however, he did not find any signboard of that company. Further, on enquiry from the residents in the neighborhood, he did not find any clue of existence of that company in that area. In view of this, the Ld. AO treated, the identity of that company in doubt and accordingly, by holding that company as a bogus company, made addition u/s 68. I find that the appellant had already filed a copy of bank statement, ITR, PAN and written confirmation before the AO on 31.12.2014 and a copy

of balance sheet subsequently. It was informed to the AO that such company is a listed company. On the basis of the above available evidences, no adverse observation was made by the Ld. AO. Under the circumstances, it is evident that the genuineness and creditworthiness of the share application money received from that company stood proved before the Ld. AO. I find that the Ld. AO has disregarded the furnishing of Permanent Account Number, ITR and registration with ROC as reliable evidence to support identity of that company and has relied upon the decision in the case of Dashratlal Agrawal (Supra).

FINDINGS

6.7 On careful consideration of the above facts and the results of the enquiry, I find that first of all, it is evident that at no stage during the assessment proceeding, the Ld. AO had confronted the appellant about the above report of the Inspector about non-existence of the company at the given address. Under the circumstances, the AO has not discharged the onus on the appellant, therefore, the appellant was pretended from rebutting in the matter.

6.7.2 Without prejudice, the said M/s Apoorva Leasing Finance and Investment Company Ltd. is a listed company, having share capital plus reserve of over Rs.183 Crores. For the purpose of being a listed company, a company has to follow compliance requirements of several stock exchanges, SEBI and Registrar of Companies on a regular basis. Therefore, merely on the basis of an enquiry, the authenticity of which remains doubtful, it cannot be held that the said company was a bogus company. During the course of appellate proceedings, the appellant was asked to explain as to why at the time of Inspector's visit, no evidence of existence of that company was found at the address given in the return of income, which was filed by the appellant before the AO in support of identity of that company. It was informed that M/s Apoorva Leasing Finance and Investment Company Ltd. was in the process of shifting its premise to Naiwala, Karol Bagh, New Delhi and in which regard, a copy of an agreement for hiring the premise at Karol Bagh w.e.f 15.4.2015 was filed before me along with the copy of electricity bill. These evidences undisputedly show the existence of the company and it cannot be held that M/s Apoorva Leasing Finance and Investment Company Ltd. was a bogus company with no actual identity, being a listed company. Further, with regard the Inspector's report to the AO, which was not shared with the appellant, it is seen that the Inspector has emphasized on the absence of a signboard at the given address. However, an investment company is not akin to a public utility service providing company, which may require existence of signboard. Moreover, there is no provision in law requiring a company to have a signboard installed outside the premise. The report of the Inspector, which was not found in the assessment records by me, is silent about the specific persons (with name and address) who were enquired by the inspector before forming an opinion that this company did not exist in that area. Under the

circumstances, the report of the Inspector in itself, does not carry any weightage, being shoddily made and lacking the necessary ingredients of a credible evidence. On the other hand, the company is a listed one and the evidences filed by the appellant in the form of PAN, ITR, Registration with ROC and subsequent agreement for hiring of the premise with another company, which as informed belonged to the Videocon Group, prove the actual existence of that company. Further, the appellant had also filed evidences, filed before ROC for changing the address of the company, which show the bonafide of the existence of the company.

6.7.3 With regard, genuineness and creditworthiness of the share application money received from M/s Apoorva Leasing Finance and Investment Company Ltd., it is evident that the entire amount of Rs.7.50 Crores received by the appellant company was in the form of cheques issued by that company. The relevant bank statements of that company clearly shows that there was no cash deposit prior to issue of cheque to the appellant company. The Ld. AO has not examined the bank statement, however, during the appellate proceeding, the source of funds in the hands of M/s Apoorva Leasing Finance and Investment Company Ltd. were examined, which show that the funds were primarily provided by M/s Anuvijay Investment Ltd. The appellant was asked to furnish a copy of the ITR, Bank statement of that company as also the written confirmations from its Directors, which were filed before me on my directions. No infirmity was observed by me. Under the circumstances, no adverse observation can be made on the genuineness of the source of the funds to M/s Apoorva Leasing Finance and Investment Company Ltd. It is also seen that that company has total share capital plus reserve of over Rs.180 Crores, therefore, it had the adequate capacity to make advance towards share application money in the appellant company of Rs.7.5 Crores. Accordingly, the creditworthiness of that company also stands proved.

6.7.4 in view of the above, as identity, genuineness and creditworthiness in respect of M/s Apoorva Leasing Finance and Investment Company Ltd. also stand duly proved, I find no merit in the addition made by the Ld. AO u/s 68 of the Act, merely, based on some report of the Inspector doubting identity of the company, which was not on the record and, which evidently, was not shared with the appellant. Under the circumstances, no addition u/s 68 was called for in respect of share application money received from M/s Apoorva Leasing Finance and Investment Co. Ltd.

6.8 I find that the Ld. AO was not satisfied as to how the appellant company charged premium of Rs.2490 per share. The Ld. Counsel filed before me detailed submissions and contended that the appellant company had sufficient net worth and if the net worth is calculated as per Rule 11 UF, the average of book value and EPS based shares comes at Rs.3812. In view of this, the appellant pleaded that the premium of Rs.2490 charged by the appellant company cannot be held as excessive and pleaded that the Board of Directors

of the company was fully empowered to charge the same. On careful consideration, I find merit in the argument of the appellant company. I also find that the Ld. AO has not applied the provisions of Rule 11UF of the IT Rules 1962 for making the valuation of Net worth of the appellant company.

6.8.2 However, in my view, the issue whether the appellant charged excessive premium or not is not germane to explain the cash credits. The observation of the Ld. AO could only be igniting point for carry out investigation, however, unless the result of the investigation results in making any adverse observation with regard identity, genuineness & creditworthiness, addition u/s 68 cannot be made.

6.9 I find that the Ld. AO has relied upon various judicial decisions, namely; Sofia Finance Ltd. (Supra), Lovely Export Ltd. (Supra), Osis Hospital Ltd. (333 ITR 119), CIT vs. Novapromoters Finlease Pvt. Ltd. (342 ITR 169), Dashratlal Agrawal vs. ITO: ITA No.158/Indore/2009 (1), Shekhawati Finlease Pvt. Ltd. vs. ITO (ITA No.2009/Del/2011) and Precision Finance Pvt. Ltd. 208 ITR 465. The Ld. AO has also referred to the decision of Hon'ble Supreme Court in the case Durga Das Morey 82 ITR 540, Sumati Dayal vs. CIT 214 ITR 801 in this regard. On careful consideration of the above cases, in my considered view the decision of Hon'ble Delhi High Court in the case of Lovely Export Ltd. and in the case of Sofia Finance Ltd. are not squarely applicable to the case of the appellant. The AO holds that like those cases in the case of the appellant, identity of two subscribers could not be proved and that the Principal Officers of the other companies did not appear in responses to the summons. However, as discussed above, the Principal Officers in respect of the 6 companies had already appeared before the AO, while the Inspector deputed by the Ld. AO himself acknowledges meeting Mr. Ramesh Malhotra, who is the Principal Officer in M/s Brijeshwari Textiles Pvt. Ltd. and m/s Shiva Spin Fab Pvt. Ltd. at the office of those companies at Ludhiana. In view of detailed discussion in the regard, the finding of the AO that these companies did not exist at the given address, where all other companies of the Shiva Group existed, has been held by me to be baseless. With regard M/s Apporva Leasing Finance and Investment Co. Ltd. it has been observed by me that the fact of non-serving of summons was not brought in the knowledge of the appellant and hence it is evident that the Ld. AO has not discharged onus in this regard. In view of this, the appellant does not get any help from the decision of Hon'ble Delhi High Court in the case of CIT vs. Nova promoters Finlease Pvt. Ltd. (Supra) and M/s Lovely Export Ltd. (Supra).

6.9.2 With regard, the Ld. AO's reliance on the ITAT, Indore in the case of the Dashratlal Agrawal, Ratlam (Supra), I find that the facts in that case are distinguishable. On perusal of the said order, it is seen that the Hon'ble ITAT had held unexplained cash credit in respect of the amounts deposited from M/s Hindustan Continental Ltd., based on the decision of the same tribunal in the case of M/s Aggarwal Coal Corporation Ltd. and Others (ITA No.151136,

196, 137 and 190) and other cases in which the said M/s Hindustan Continental Ltd., was proved to be a bogus company. On the facts of the case, it was observed in other decisions, by the tribunal that there were cash deposits made in the bank account of that company out of which cheques were issued to the plaintiff. Further detailed enquiries were conducted by the tribunal through the department, which proved that such company was not existing and was a bogus company. In the case of the appellant, however, evidently, the bank statements clearly show that no cash deposits were made in its bank account. Secondly, the finding that such companies were bogus was based on shoddy enquiry by the Inspector without giving due opportunities to the appellant and hence cannot be held as conclusive. Further, in that case the subscriber company's employees or directors did not comply with the directions of the Tribunal to appear before the Tribunal, however in the case of the appellant, as mentioned above, the principal officers of 6 companies had appeared before the Ld. AO, while the Inspector had made enquiries at the office of two companies, and met the concerned principal officer. In any case, on the basis of the evidences filed, namely bank statement and ITR, no adverse inference was drawn by the Ld. AO. Therefore, the facts of the case in the case of appellant are distinguishable from the facts in the case are Dasrath Lai Aggrawal. Moreover, in that case the assessee could not establish identity, creditworthiness and genuineness of the transactions, and therefore, the amounts received from M/s Hindustan Continental Ltd. were held as unexplained cash credit in the case of the appellant. However, no doubts were raised by the AO based on the information furnished before him regarding genuineness and creditworthiness in respect of any of the share applicants. In view of this, in my considered view, the decision in the case of Dasrath Lai Aggrawal (supra), cannot be applied to the case of the appellant. In the case of Shekhawati Capital Finlease Pvt. Ltd. vs. ITO (supra), the addition was made u/s 68 on the ground that the appellant could not prove the creditworthiness of the subscribers, who evidently were not produced before the AO. However, in the case of the appellant, based on the evidence on record, the creditworthiness of the share applicants stands proved. In view of this, that decision also cannot be applied in the case of the appellant.

6.10 In view of the above facts, it is evident that the appellant had substantiated the identity, genuineness and creditworthiness in respect of all the 8 investor companies, in respect of which supporting evidences were filed before the AO, on which no adverse evidence could be drawn. The Ld. AO's reservation was only with respect to non production of principal officers, however he failed to appreciate that the appellant had already produce principal officers in respect of 6 companies. Further, the enquiries conducted by the Ld. AO by deputing Inspector are held to be not credible, the results of which were used against the appellant without giving due opportunity. In any case, based on the evidences filed by the appellant and on due examination of the same, I hold that it was not a fit case for application of provisions of section 68. Accordingly, this ground is allowed in favour of the appellant.ö

16. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following original grounds:-

ITA No.6834/Del/2014

1. Whether on the facts and circumstances of the case and law, the Ld. CIT(A) erred in deleting the addition of Rs. 20,17,00,000/- made on account of unexplained cash credits u/s 68 ignoring the fact that all the six companies are not having any income to subscribe such huge share premium and companies are directly or indirectly operated by the promoters of the assessee as evident from the address of entry providers.

2. Whether on the facts and circumstances of the case and law, the Ld. CIT(A) erred in deleting the addition of Rs. 20,24,39,341/- made on account of income from undisclosed sources ignoring the fact that all the purchases and sales proved bogus during the course of search and survey.

3. Whether on the facts and circumstances of the case and law, the Ld. CIT(A) erred on holding that provisions of section 145(3) were not applied despite the fact that all the purchases and sales was found bogus and the same has elaborately discussed in the assessment order and that is tantamount to rejection of books of accounts u/s 145(3).

4. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.ö

ITA No.4713/Del/2015

1. On the facts and circumstances of the case the Ld. CIT(A)-4 has erred in deleting the addition on account of undisclosed investment under section 68 of the Income Tax Act, amounting to Rs. 28,98,25,000/-.

2. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.ö

16.1 Subsequently, the Revenue has filed the revised grounds which are as under:-

ITA No.6834/Del/2014

i. Whether on the facts and circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 20,17,00,000/- made on account of unexplained cash credits u/s 68 of the Income Tax Act.

ii. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 20,24,39,341/- made on account of income from undisclosed sources ignoring the fact that all the purchases and sales proved bogus during the course of search and survey.

iii. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred on holding that provisions of section 145(3) were not applied despite the fact that all the purchases and sales was found bogus and the same has elaborately discussed in the assessment order and that is tantamount to rejection of books of accounts u/s 145(3).

iv. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.ö

ITA No.4713/Del/2015

öi. Whether on the facts and circumstances of the case, Ld. CIT(A) has erred in deleting the addition on account of unexplained cash credit under section 68 of the Income Tax Act, 1961 amounting to Rs. 28,98,25,000.

ii. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in admitting and considering the additional evidence in the form of an affidavit of Mr. Ramesh Malhotra, GM of Brijeshwari Textiles Ltd. and Shiva Spin Fav P Ltd., an agreement for hiring the premise and electricity bill without giving an opportunity to the AO which is in violation of Rule 46A of the Income Tax Rules, 1962.

iii. The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.ö

17. The ld. DR strongly challenged the order of the CIT(A) in deleting the addition made by the AO u/s 68 of the Act for both the years as well as the addition on account of bogus transaction of purchase and sales made by the assessee with M/s SEL Manufacturing Company Ltd. So far as the deletion of addition made by the AO u/s 68 of the Act is concerned, the ld. DR submitted that the assessee has not fulfilled the three ingredients of section 68 of the Act, namely,

the identity and credit worthiness of the share applicants and the genuineness of the transaction. He submitted that the AO has given a categorical finding that the subscriber companies/ creditors were not having capacity/credit worthiness for making such huge payment of share application money and that too for a huge premium of Rs.1,990/-. All those companies are having meager income or no income and despite the opportunity granted by the AO, the assessee never produced the principal officers of the said companies. Since the assessee has not fulfilled the three ingredients of section 68, the Id.CIT(A), without any valid reasons, has deleted the addition which is not justified. The Id. DR submitted that he has no objection if the matter is restored to the file of the AO for fresh adjudication. He also relied on the following decisions:-

- i) CIT vs. NR Portfolio (P) Ltd., 29 taxmann.com 291 (Del);
- ii) CIT vs. Navodaya Castle Pvt. Ltd., 367 ITR 306 (Del);
- iii) Riddhi Promoters (P) Ltd. vs. CIT, 377 ITR 641 (Del);
- iv) PCIT vs. NRA Iron & Steel (P) Ltd., 412 ITR 161 (SC);
- v) PCIT vs. NDR Promoters Pvt. Ltd., 2019-TIOL-172;
- vi) CIT vs. Durga Prasad More, 82 ITR 540 (SC);
- vii) CIT vs. Nipun Builders and Developers Pvt. Ltd., 30 taxman.com 292 (Delhi);
- viii) CIT vs. MAF Academy Pvt. Ltd., 42 taxmann.com 377 (Del);
- ix) CIT vs. Titan Securities Ltd., 32 taxmann.com 306 (Del);
- x) CIT vs. Youth Construction Pvt. Ltd., 44 taxmann.com 364 (Del);

- xi) CIT vs. Ultra Modern Exports (P) Ltd., 40 taxmann.com 458 (Del);
- xii) CIT vs. NR Portfolio Pvt. Ltd., 264 CTR 258 (Del);
- xiii) Beutex India Pvt. Ltd. vs. CIT, 18 taxmann.com 09 (Del);
- xiv) CIT vs. Precision Finance (P) Ltd., 208 ITR 465 (Cal); and
- xv) PCIT vs. Bikram Singh, 399 ITR 407 (Del).

18. He also relied on the recent decision of the Delhi Bench of the Tribunal in the case of ITO vs. KNS Realtors Pvt. Ltd., vide ITA No.1286/Del/2014, order dated 24th August, 2020 and drew the attention of the Bench to para 16 to 18 of the said order. He accordingly submitted that when the assessee has not produced the principal officers of the applicant companies in spite of several opportunities given, therefore, merely because the assessee has filed various papers, the CIT(A) was not justified in deleting the addition by ignoring the crucial fact that the onus shifted to the assessee once the AO asked him to produce the principal officers. Since the onus was not discharged by the assessee, the AO had rightly treated the credits as unexplained. He accordingly submitted that the order of the CIT(A) be reversed and that of the AO be restored on the issue of addition u/s 68 is concerned or at least be set aside to the file of the AO for fresh adjudication.

19. So far as the order of the CIT(A) in deleting the addition of Rs.20,24,39,341/- made by the AO on account of undisclosed income from bogus purchase and sales with M/s SEL Manufacturing Co. Ltd., is concerned, he relied on the order of the AO. He submitted that under the facts and circumstances of the case, the ld.CIT(A) was not justified in deleting the addition, therefore, the same also should be reversed and that of the AO be restored.

20. The Id. Counsel for the assessee, on the other hand, heavily relied on the order of the CIT(A). The Id. counsel at the outset drew the attention of the Bench to the original grounds and revised grounds filed by the assessee and submitted that a perusal of the original grounds would show that the words "companies are directly or indirectly operated by the promoters of the assessee as evident from the address of entry providers" is missing in the revised grounds for assessment year 2011-12. So far as the addition made by the AO under section 68 of the Income-Tax Act is concerned the Id. counsel submitted that the name of the subscribers are very much known to the AO which are the group companies as admitted by him and are having sufficient capital and free reserves to their credit and the AO only for the sake of making the addition has made the addition. The Id. counsel filed the following chart to substantiate the profit earned by the assessee company from assessment year 2004-05 to 2014-15 which is as under:-

(Amount in Rs.)

| Sr. No. | Assessment year | Sale (I) | Other Income (II) | Total (III=I+II) | Profit before Tax (IV) | Profit after tax (V) | Assessment u/s (page of Paper Book-I) |
|---------|-----------------|----------------|-------------------|------------------|------------------------|----------------------|---------------------------------------|
| i) | 2004-05 | 51,31,53,949 | 47,60,141 | 51,79,14,090 | 1,47,94,312 | 1,10,91,525 | 143(3) |
| ii) | 2005-06 | 69,61,83,148 | 6,35,223 | 69,68,18,317 | 2,11,46,581 | 1,42,22,440 | 143(1) |
| iii) | 2006-07 | 95,10,35,743 | 1,60,910 | 95,11,96,653 | 1,01,92,570 | 1,46,33,054 | 143(3) (60-68) |
| iv) | 2007-08 | 129,32,60,852 | 33,76,089 | 129,66,36,941 | 6,36,35,385 | 5,12,87,736 | 143(3) (77-85) |
| v) | 2008-09 | 172,21,36,128 | 1,42,26,528 | 173,63,62,656 | 10,07,40,933 | 8,53,05,886 | 143(3) (89-95) |
| vi) | 2009-10 | 250,22,62,818 | 3,37,673 | 250,26,00,491 | 8,81,68,811 | 9,56,84,956 | 143(3) (96-102) |
| vii) | 2010-11 | 337,57,66,502 | 8,33,935 | 337,66,00,437 | 17,79,01,350 | 11,04,04,900 | 143(3) (103-106) |
| viii) | 2011-12 | 605,79,80,560 | 6,55,241 | 605,86,35,801 | 40,14,94,780 | 10,44,00,000 | 143(3) Year under consideration |
| ix) | 2012-13 | 852,26,30,130 | 75,23,628 | 853,01,53,757 | 5,46,52,002 | 2,95,61,231 | 143(3) Year under consideration |
| x) | 2013-14 | 950,55,56,630 | 1,66,20,752 | 952,21,77,383 | 26,28,26,006 | 17,64,33,231 | 143(3) (472-478 of Paper Book-II) |
| xi) | 2014-15 | 1102,85,97,623 | 1,50,65,347 | 1104,36,62,970 | 34,42,48,380 | 29,68,26,288 | 143(3) |

21. Referring to para 9, page 13 of the synopsis, the ld. counsel submitted that the AO has accepted the share capital subscribed by some of the shareholders in the preceding and succeeding assessment years, which is as under:-

9 **Regular Investor** - The details of share capital subscribed by the shareholders in preceding and succeeding assessment years and accepted by the revenue is as under:

| Sr. No. | Name of company | Assessment Years | | | | | Investments made in earlier years in preference shares | | | | | | | | |
|---------|--|---------------------------|-------------|---|---------------------------------------|---------------------------------------|---|----|---------------------------------|-------|-------|-------|-------|-------|--------|
| | | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | | | | | | | | | |
| i) | M/s. Himachal Yarns Ltd. (Listed company) | 7,07,10,000 | 1,50,40,000 | 4,88,50,000 | -- | -- | A.Y. 2007-08 – 2,63,00,000 A.Y. 2008-09 – 1,00,00,000 | | | | | | | | |
| ii) | M/s. Brijeshwari Textiles (P) Ltd. | 3,00,00,000 | 1,50,00,000 | -- | -- | -- | -- | | | | | | | | |
| iii) | M/s. Balmukhi Textiles (P) Ltd. | 3,00,00,000 | -- | -- | -- | -- | -- | | | | | | | | |
| iv) | M/s. Shiva Spin Fab (P) Ltd. | 4,00,00,000 | 1,70,00,000 | -- | -- | -- | -- | | | | | | | | |
| v) | M/s. Gal Cottex (P) Ltd. (formerly known as Garg Sons Investment (P) Ltd.) | 2,03,70,000 | 5,71,30,000 | 4,13,50,000 | 1,68,75,000 | -- | A.Y. 2007-08 – 1,00,00,000 A.Y. 2008-09 – 1,00,00,000 A.Y. 2009-10 – 50,00,000 | | | | | | | | |
| vi) | M/s. Shubham Yarns (P) Ltd. | 1,06,20,000 | 9,98,55,000 | 11,53,25,000 | 58,00,000 | 2,75,00,000 | A.Y. 2007-08 – 1,00,00,000 A.Y. 2008-09 – 1,00,00,000 A.Y. 2009-10 – 50,00,000 | | | | | | | | |
| vii) | M/s. Garg Fincap Ltd. | -- | 8,00,000 | -- | -- | -- | A.Y. 2007-08 – 2,37,00,000 A.Y. 2009-10 – 1,00,00,000 | | | | | | | | |
| viii) | M/s. Apoorva Leasing Finance and Investment Company Ltd. | -- | 7,50,00,000 | -- | -- | -- | -- | | | | | | | | |
| ix) | M/s. Pushpa Yarns (P) Ltd. | -- | 1,00,00,000 | -- | -- | -- | -- | | | | | | | | |
| | Remarks | Years under appeal | | Accepted u/s 143(3) of the Act (Page 472-478 of paper book -II for AY 2011-2012) | Accepted u/s 143(3) of the Act | Accepted u/s 143(3) of the Act | Accepted u/s 143(3) of the Act | | | | | | | | |
| | | | | | | | <table border="1"> <thead> <tr> <th>AY</th> <th>Page no of paper book-II for AY</th> </tr> </thead> <tbody> <tr> <td>07-08</td> <td>77-82</td> </tr> <tr> <td>08-09</td> <td>89-95</td> </tr> <tr> <td>09-10</td> <td>96-102</td> </tr> </tbody> </table> | AY | Page no of paper book-II for AY | 07-08 | 77-82 | 08-09 | 89-95 | 09-10 | 96-102 |
| AY | Page no of paper book-II for AY | | | | | | | | | | | | | | |
| 07-08 | 77-82 | | | | | | | | | | | | | | |
| 08-09 | 89-95 | | | | | | | | | | | | | | |
| 09-10 | 96-102 | | | | | | | | | | | | | | |

22. He submitted that the Ld. CIT(A) while deleting the addition for assessment year 2011-12 has given a categorical finding that the identity of all six share subscribers who have invested in the assessee company stood duly proved before the AO, much less disregarding the evidences gathered during the enquiry under

section 133(6) He has also given a finding that the current year income is not relevant criteria and all the six investors had adequate funds of their own for the purpose of making investment in the assessee company. The assessee has duly proved the creditworthiness of all the six share subscribers who have invested in the assessee company. So far as the establishment of genuineness of transaction is concerned, he submitted that the Id. CIT(A) has accepted the copy of confirmation, bank statement of investors, assessee's own bank statements and has held that the transactions are genuine. So far as assessment year 2011-12 is concerned, the Id. CIT(A) has also given a finding that no enquiry was carried out by the AO through Inspector in the case of the subscribers and the AO has not applied his mind and perhaps mixed up with the facts of the case of some other case. Further, the AO has also not applied the provisions of Rule 11UF of IT Rules, 1962, for making the valuation of net worth of the assessee company.

23. So far as assessment year 2012-13 is concerned, the Id. counsel while relying on the order of the CIT(A) submitted that the various evidences filed before the AO have not been rebutted by him. He has not raised any query regarding various evidences furnished before him during the course of assessment proceedings. Referring to page 482 to 484 of the paper book, (PDF paper book-3, page Nos.54-57), the Id. Counsel for the assessee submitted that the assessee, vide letter dated 23.02.2015 addressed to the AO has given the names of Mr. Pradeep Makkar, Mr. SanjayGarg, Mr. Ramesh Malhotra and Mr. Bharat Bhushan, who are

the principal officers of the applicant companies. He submitted that the assessee has produced the principal officers of seven companies. However, neither any enquiry was made from them nor their statements recorded. He submitted that the assessee has produced Mr Sanjeev Garg from Ludhiana who is the principal officer of M/s Pushpa Yarns (P) Ltd. on 11th March, 2015. However, no statement was recorded nor there is mention of any further enquiry on the note sheets. Similarly, Mr Pradeep Makkar was produced on 13th March, 2015. He is the principal officer of M/s Gal Cottex (P) Ltd., M/s Shubam Yarns (P) Ltd., M/s Himachal Yarns (P) Ltd. and M/s Garg Fincap Ltd. However, as per the note sheet entry, no enquiry was made by the AO regarding share application money received from the four companies in which he was the principal officer nor any statement recorded. So far as the merit of the case is concerned, he submitted that the Ld. CIT(A) had given a finding that the assessee has furnished various evidences such as income-tax return, bank statement, etc., to substantiate the identity, genuineness and credit worthiness of the share applicants. The relevant balance sheets filed before the AO shows that all these companies had sufficient own funds which were much higher than the amount of share application money paid to the assessee company. He has also given a finding that there is no doubt about the whereabouts of these companies even in the Inspector's report. Further, the report of the Inspector was never confronted to the assessee during the course of assessment proceedings. Further, M/s Apoorva Leasing Finance and Investment Company Ltd., is a listed company having capital plus reserves of over Rs.120 crores.

24. The ld. counsel submitted that for assessment year 2011-12, out of the total six shareholders which the AO has doubted, he has accepted three shareholders in the assessment year 2013-14 in the order passed under section 143(3) of the Act in pursuance of the directions given under section 144A of the Act. Further, five shareholders are assessed under section 143(3) of the Act and all the six shareholders have complied to the notice issued under section 133(6) of the Act.

24.1 So far as assessment year 2012-13 is concerned, he submitted that out of the eight shareholders five are common to assessment year 2011-12 except M/s Balmukhi Textiles (P) Ltd. There are only three new shareholders, i.e., M/s Garg Fincap, M/s Pushpa Yarns (P) Ltd. and M/s Apoorva Leasing Finance and Investment Company Ltd. He submitted that in respect of M/s Garg Fincap Ltd. and M/s Pushpa Yarns (P) Ltd., Mr Sanjeev Garg was produced on 11th March 2015. Similarly, Mr. Pradeep Makkar was produced on 13th March 2015 who is the principal officer of four companies, namely, (1) Himachal Yarns (P) Ltd; (2) M/s Garg Fincap Ltd.; (3) Shubam Yarns (P) Ltd.; and (4) Gal Cottex (P) Ltd.. So far as M/s Apoorva Leasing Finance and Investment Company Ltd., is concerned, the same company was assessed under section 153C/153A of the Act for assessment year 2010-11 and is a listed company with reserves of Rs.120/- crores. Referring to various pages of the paper book, the ld. counsel submitted that the assessee has discharged the burden cast on it by producing all the relevant details such as their PAN numbers, bank details, Income-Tax particulars, copy of income-

tax returns, audited balance sheets, etc., and has substantiated the availability of huge capital and free reserves and surplus with them to invest in the shares of the assessee company.

25. The ld. Counsel for the assessee submitted that all the investors are regular investors of the assessee company and they are holding shares till date. In subsequent assessment year, i.e., A.Y. 2013-14, the assessee company has received share application for Rs.20,55,25,000/- from three common investors which has been accepted as genuine transaction. All the investors have duly responded to notice issued under section 133(6) of the Act. The assessee has filed various documentary evidences to discharge the burden of proof. Therefore, merely because there is low income of the shareholders for this particular year the same cannot be a ground to doubt the creditworthiness of the shareholder. Further, the AO cannot make the source of the source as the basis to make addition under section 68 of the Act. He submitted that the nature of income and source of income of the investor company can be examined only by the AO of the said shareholder and not by the AO of the assessee. So far as the allegation of the AO that there is common address of the share applicants are concerned, he submitted that the same cannot be a basis to disregard the evidence placed on record. He submitted that when the share application money has been received during the year from group companies, the AO could not have resorted to provisions of section 68 of the Act to make the addition when the group companies had satisfactorily explained the

creditworthiness by filing the relevant details. Further, there is no evidence with the AO that the money received has originated from the coffers of the assessee company. He submitted that once the investment has been accepted in the case of the shareholders in their assessment even in subsequent year under section 143(3) of the Act, no addition is tenable in the hands of the assessee for same investment. He submitted that the basis of addition is based on fundamental misconception since there was no direction by the AO to produce the shareholders during assessment proceedings and the observations in para 2 of the assessment order are factually incorrect and also contradictory. So far as the allegation of the AO that the assessee has issued the shares at a huge premium is concerned, he submitted that provisions of Section 56(2)(viib) of the Act is not applicable in the year under consideration and is applicable from financial year 2012-13 relevant to assessment year 2013-14. So far as the allegation of the AO that Inspector had given a report that the shareholders are not available at the given address is concerned, he submitted that the report of the Inspector is not a valid evidence. Further, non-production of shareholders/directors cannot be a ground for making an addition if the addition is on account of non-compliance of summons issued under section 131 of the Act. So far as the various decisions relied on by the AO as well as the Id. DR are concerned, he submitted that all those decisions are distinguishable and not applicable to the facts of the present case.

26. The ld. counsel submitted that even otherwise also non-production of subscribers/directors could not be a ground for making addition. For the above proposition, he relied on the decisions of the Honorable Delhi High Court in the case of CIT vs Value Capital Services Private Limited, 307 ITR 334; CIT vs Victor Electrodes Ltd. 329 ITR 271; CIT vs Fair Finvest Ltd., 357 ITR 146 and various other decisions. Referring to the CBDT instruction No.2/2015 dated 29th January 2015, he submitted that premium on share issued represents capital account transaction and does not give rise to income. The ld. counsel for the assessee, relying on various decisions placed in the case law compilation and synopsis submitted that the burden of the assessee stood discharged as entire evidence was furnished.

27. The ld. counsel for the assessee submitted that for accepting the share capital/share premium the three ingredients, namely, the identity & creditworthiness of the lenders/subscribers and the genuineness of the transaction have to be proved which the assessee in the instant case has duly discharged. He submitted that each case depends on its own sets of facts and in the instant case the assessee has satisfactorily proved the three ingredients of the provisions of section 68 of the Act. Therefore, the Ld. CIT(A) was fully justified in deleting the addition.

27.1 The Id. Counsel for the assessee relied on the various decisions for the following propositions:-

a) BURDEN OF APPELLANT STOOD DISCHARGED AS ENTIRE EVIDENCE STOOD FURNISHED.

SUPREME COURT

- i) 319 ITR 5 (St.) CIT v Lovely Exports (P) Ltd
- ii) 159 ITR 78 (SC) CIT vs. Orissa Corp. (P) Ltd.
- iii) 251 ITR 363 (SC) CIT vs. Stellar Investment Ltd.

DELHI HIGH COURT

- i) ITA No. 645/2012 dated 13.1.2015 Funnay Time Finvest Ltd.
- ii) ITA No. 443/2014 dated 25.2.2015 (Del) CIT vs. Well Worth Construction Udyog Ltd
- iii) ITA No. 778/2015{Del) dated 13.10.2015 CIT vs. Rakam Money Matters(P) Ltd,
- iv) ITA No. 467/2016 dated 24.8.2016 (Del) Pr. CIT v. Lakshmi Float Glass Ltd.
- v) 387 ITR 636 (Del) dated 31.8.2016 (Del) CIT v. Softline Creations (P) Ltd.
- vi) ITA No. 678/2016 dated 26.9.2016 (Del) Pr. CIT v. Muni Ram Verma
- vii) 391 ITR 11 (Del) dated 11.1.2017 Pr. CIT vs M/s N.C. Cables Ltd.
- viii) ITA No. 169/2017 (Del) dated 14.3.2017 Pr. CIT v. Laxman Industrial Resources Ltd.
- ix) ITA No. 130/2018 (Del) Dated 6.2.2018 Pr. CIT v. M/s Adamine Construction (P) Ltd.
- x) 101 CCH 004 (DEL) Pr. CIT v. Oriental International Co. (P) Ltd.

- xi) ITA No. 151/2018 (Del) dated 9.2.2018 Pr. CIT v. Rathi Ispat P) Ltd.
- xii) 237 Taxman 104 (Del) CIT vs. Shiv Dhooti Pearls & Investment Ltd.
- xiii) 299 ITR 286 (Del) CIT vs. Divine Leasing & Finance Ltd
- xiv) 330 ITR 298 (Del) CIT vs. Dwarkadhish Investment (P.) Ltd.
- xv) 333 ITR 119 (Del) CIT vs. Oasis Hospitalities (P) Ltd.
- xvi) 354 ITR 282 (Del) MOD Creations (P) Ltd. vs. ITO
- xvii) 361 ITR 147 (Del) CIT v. Expo Global India Ltd.
- xviii) 361 ITR 220 (Del) CIT v. Kamdhenu Steel and Alloys Ltd,
- xix) 366 ITR 110 (Del)CIT vs, Empire Buildtech (P) Ltd.
- xx) 380 ITR 289 (Dei) CTT v. Five Vision Promoters (P.) Ltd.
- xxi) ITA No. 71/2019 (Del) Pr. CIT vs. Priyatam Plaschem Pvt. Ltd.

BOMBAY HIGH, COURT

- i) ITA No. 66/2016 dated 10.4.2017 Pr. CIT v. Paradise Inland Shipping (P) Ltd.
- ii) 397 ITR 136 (Bom) CIT v. Orchid Industries (P) Ltd.
- iii) 394 ITR 680 CIT v. Gagandeep Infrastructure (P) Ltd,
- iv) 403 ITR 415 (Bom) dated 17.04.2018 Pr. CIT vs. Veedhata Tower Pvt. Ltd.

ALLAHABAD HIGH COURT

- i) 350 ITR 220 (All) CIT vs, Jav Dee Securities and Finance Ltd.
- ii) 350 ITR 222 (All) CIT vs. Misra Preservers (P) Ltd. -

MADHYA PRADESH HIGH COURT

- i) 356 ITR 65 (MP) CIT vs. Peoples General Hospital Ltd

CALCUTTA HIGH COURT

i) ITA No. 263/2011 GA No. 2856/2011 (Cal) dated 21.9.2011 CIT vs. Dataware (P) Ltd.

ii) 2016 TIOL 1227 CIT v.JJ Development (P) Ltd.

INCOME TAX APPELLATE TRIBUNAL

i) ITA No, 6492/M/2016 AY 2007-08 Arceli Realty Ltd. v. ITO

ii) ITA No. 453/13/2016 AY 2012-13 ACIT v. TRN Energy, (P) Ltd.

iii) ITA No.5955/D2014 AY 2010-11 dated 23.2.2018 Umbrella Projects (P) Ltd,

iv) 62 ITR (Trib) 512 (Del) ACIT v. Shyam Indus Power Solutions (P) Ltd.

v) ITA No. 2525/D/2015 for Assessment year 2011-12 M/s Prabhatam Investment (P) Ltd. v. ACIT

vi) C.O.No.163, 164 & 165/Del/2016 M/s. Garuda Imaging & Diagnostics Pvt. Ltd v. ACIT

vii) ITA No. 3611/D/2014 dated 16.10.2017 ACIT v. NRA Iron. & Steel Pvt, Ltd

viii) ITA No. 02 & 03/D/2016 AY 2012-13 & 2013-14 ACIT v, Dev Suman Sindhu

ix) ITA No. 5955/D/2014 for Assessment year 2010-11 Umbrella Projects (P) Ltd

b) That low income of share holder is an irrelevant consideration and net worth is the relevant test to determine the creditworthiness of the share holder.

i) 77 taxmann.com 204 (Del) Pr. CIT vs. Goodview Trading Pvt. Ltd.

ii) ITA No. 4122/D/2009 dated 22.10.2014 AY 2001-02 ITO v. N.C, Cables Ltd,

iii) ITA No. 71/2015 dated 12.8.2015 (Del) CIT vs. Vrindavan Farms (P) Ltd.

- iv) ITA No. 2372/D/2016 dated 12.2.2019 Samco Alloys (India) (P) Ltd.
- v) ITA No, 6507/D/2017 dated 13.4.2018 M/s Topline Buildtech Pvt. Ltd. vs. DCIT
- vi) ITA No. 5680/D/2016 dated 24.5.2019 ITO vs. Computer Home Information Plus Pvt. Ltd.
- vii) 53 CCH 0726 (Raipur - Trib.) Anjuni Associates vs. ITO
- viii) 52 CCH 137 (Del. Trib.) Zion Promoters & Developers (P) Ltd. Vs. ACIT
- ix) ITA No. 1886/Del/2010 dated 29.10.2010 ACIT vs. Smt. Meenu Chauhan
- x) ITA No. 3773/Del/2011 dated 23.05.2014 DCIT vs. Landmark Exim Pvt. Ltd.,
- c) Source of Source cannot be a basis to make an addition u/s 68 of the Act and, on facts once initial burden of the assessee stand discharged:
 - i) 87 ITR 349(SC) CIT vs. Daulat Ram Rawatmull
 - ii) 177 Taxman 33I (Del) CIT vs. Diamond Products Ltd.
 - iii) 237 Taxman 101 (Del)CIT VS. Shiv Dhooti Pearls and Investment Ltd.
 - iv) 256 ITR 360 (Guj) DCIT vs. Rohini Builders
 - v) 306 ITR 35 (Del) CIT vs. Real Time Marketing (P) Ltd.
 - vi) 400 ITR 120 (Jharkhand) Prayag Tendu Leaves Processing Co. vs, CIT
 - vii) ITA No. 1583/D/2011 A.Y. 1996-97 dated 11.5.2013 DCIT vs, Raineer Singh
 - viii) ITA No. 2799/D/2018 dated 21.6.2019 Champ Info Software vs. PCIT
 - ix) 163 ITD 491 (Chd-Trib,) Nirmal Rani vs. DCIT
 - x) 173 ITD 30 (Mumbai-trib.) ITO vs. Iraisaa Hotels (P) Ltd.

- d) That nature of income and source of income can be examined only by the Assessing Officer of the shareholder and not by the Assessing Officer of the assessee
- i) ITA No. 263/3011 GA No. 2856/2011 (Cal) dated 21.9.2011 CIT vs. Dataware (P) Ltd.
 - ii) 366 ITR 232 (P&H) CIT vs. Varinder Rawlley
 - iii) 237 Taxman 104 (Del) CIT vs. Shiv Dhooti Pearls & Investment Ltd.
 - iv) 103 ITR 344 (Pat) Saraogi Credit Corporation vs. CIT
 - v) 59 ITR 632 (Assam) Tola Ram Daga vs. CIT
 - vi) 49 ITR 273 (Mad) S. Hastimal vs. CIT
 - vii) 151 ITR 150 (Pat) Additional CIT. Bihar vs. Hanuman Aggarwal
 - viii) 154 ITR 244 (Pat) Addl. CIT vs. Bahri Brothers (P) Ltd.
 - ix) 87 ITR 349 (SC) CIT vs. Daulat Ram Rawatmull
 - x) ITA No. 3133/Del/2018 dated 25.6.2018 Moti Adhesives (P) Ltd. vs, ITO
 - xi) ITA NO. 1162/Kol/2015 dated 14.6.2018 ITO vs. Wiz-Tech Solutions (P) Ltd.
 - xii) ITA 1463/Kol/2010 dated 21.6.2013 Sri Nirmal Kumar Bose vs. ITO
 - xiii) ITA No. 2677/Kol/2013 dated 25.7.2014 Jyoti Saraf vs. ITO
- e) The common address of shareholders is otherwise not a valid basis to disregard the claim of the Assessee
- i) 329 ITR 271 (Del) CIT vs. Victor Electrodes Ltd.
 - ii) 330 ITR 603 (Del) CIT vs. Winstral Petrochemicals Pvt. Ltd.
 - iii) 238 Taxman 653 (Del) CIT vs. SVP Builders India Ltd.
 - iv) 357 ITR 146 (Del) CIT(IV) vs. Fair Finvest Ltd. dated 22.11.2012

- v) ITA No. 71/2015 dated 12.8.2015 (Del) CIT v. Vrindavan Farms (P) Ltd.
- f) That share application money received during the year from group company then addition u/s 68 is otherwise not permissible in law
- i) ITA No. 112/2018 dated 07.08.2018 Pr CIT vs M/s. Chain House International (P) Ltd., (Mad)
- ii) 257 Taxman 390(Del) dated 7.7.2018 Pr. CIT v. Hi-Tech Residency (P) Ltd.
- iii) 105 taxman.com 158 (Del) CIT vs. E-Smart Systems (P) Ltd.
- iv) 361 ITR 155 (Del) CIT vs. Nipun Auto (P) Ltd.
- v) 62 ITR (T) 512 (Del) ACIT vs. Shyam Indus Power Solutions (P) Ltd.
- g) Admitted position that money received did not originate from the coffers of the assessee:
- i) 307 ITR 334 (Del) CIT vs. Value Capital Services Ltd.
- ii) 306 ITR 55 (Del) CIT vs. Real Time Marketing (P) Ltd.
- iii) 361 ITR 220 (Del) CIT vs. Kamdhenu Steel and Alloys Ltd Iv) 380 ITR 289 (Del) CIT v. Five Vision Promoters (P) Ltd.
- h) That once investment has been accepted in the case of share holders in their assessment order even in subsequent years u/s 143(3) then no addition is tenable in the hands of appellant for same investment
- i) ITA No. 491/D/2016 dated 15.07.2016 Layak Fabrics (P) Ltd. vs. ITO
- ii) ITA No. 5694/D/2014 dated 26.12.2017 DCIT vs. Bhagwan Mahavir Properties (P) Ltd
- iii) ITA No, 2849/D/2015 dated 10.08.2016 DCIT vs. KLA Foods (India) Ltd.

- iv) ITA No. 6672/D/2014 dated 01.04.2016 ITO vs. Alewian Infratech (P) Ltd.
- v) ITA no. 3133/D/2018 Moti Adhesives (P) Ltd. vs. ITO dated 25.6.2018
- vi) ITA No. 2376/D/2018 dated 1.8.2018 Heat Flex Cables (P) Ltd. vs. ITO
- vii) ITA No. 574/D/2018 dated 19.6.2018 M/s Vidya Prakashan Mandir (P) Ltd. PCIT
- i) Lack of enquiry by the learned Assessing officer to rebut the evidence placed on record by the assessee in as much as no further enquiries were made from shareholder by issuing notice u/s 131 of the Act:
 - i) 361 ITR 10 (Del) CIT v. Gangeshwari Metal (P) Ltd.
 - ii) 357 ITR 146 (Del) CIT vs. Fair Finvest Ltd
 - iii) ITA No. 212/2012 dated 11.4.2012 (Del) CIT v. Goel Sons Golden Estate (P) Ltd.
 - iv) 342 ITR 169 (Del) Nova Promoters & Finlease (p) Ltd
 - v) ITA No. 645/2012 dated 13.1.2015 (Del) Funnay Time Finvest Ltd
 - vi) 361 ITR 220 (Del) CIT vs. M/s Kamdhenu Steel and Alloys Ltd.
 - vii) ITA No. 71/2015 dated 12.8.2015 (Del) CIT v. Vrindavan Farms (P) Ltd.
 - viii) ITA No. 3342/D/2013 ITO v. XO Infotech Ltd.

27.2 So far as the order of the CIT(A) in deleting the addition of Rs.20,24,29,341/- in assessment year 2011-12 representing difference of sale and purchase made by the assessee with M/s SEL Manufacturing Company Ltd. is concerned, he submitted that the ld. CIT(A) has given justifiable reasons while

deleting the addition. He submitted that the assessee had made total payments for trading purchases at Rs.110,89,61,370/- and had shown total receipts for trading sales at Rs.131,14,00,711/- which have been booked in the accounts. Accordingly, it is evident that the resultant difference of Rs.20.24 crores has already been offered to tax by the assessee. Therefore, the sum of Rs.20.24 crores could not have been taxed again by the AO which amounted to double addition. Further, it is also evident that the AO had taken adverse view regarding the transaction of the assessee with M/s SEL Manufacturing Company Ltd., including purchase of Rs.29.16 crores and sales of Rs.44 crores. However, the AO has held the entire trading transactions with other parties as bogus without any adverse findings/evidence in respect of such parties. He submitted that the AO has neither rejected the books of accounts under section 145 of the Act nor passed the assessment order under section 144 of the Act. He has also not gathered any additional evidence / material and, therefore, the CIT(A) was fully justified in deleting the addition. So far as the addition made by the AO on the basis of statement recorded under section 133A by Shri Sanjeev Garg is concerned, the Id. counsel submitted that the said statement has no evidentiary value in absence of any corroborative material and, therefore, the CIT(A) was justified in deleting the addition. The Id. counsel submitted that there is no set off of loss by indulging in fictitious purchase and sale and, in fact, if the total income of the assessee is considered it can be seen that the assessee has earned huge income from this transaction and therefore the Ld. AO was not justified in stating that the assessee

has indulged in bogus purchases and sales. Further, he cannot accept part of the transaction as genuine and the other part as fictitious. He accordingly submitted that the order of the CIT(A) is justified under the facts and circumstances of the case and the grounds raised by the Revenue should be dismissed. He also relied on the following decisions:-

- a) That addition represents double addition as the income on trading business has duly offered to tax which is not permissible in law.
 - i) 42 ITR 427 (SC) CIT v. DharamDas HarGovandDas
 - ii) 72 ITR 291 (SC) CIT v. LaxmiPat Singhania vs. CIT
 - iii) 118 ITR 50 State of Uttar Pradesh vs. Raja Buland Sugar Co. Ltd.
 - iv) 258 ITR 717 (Del) ITO vs. Vinod Kumar Soni
- b) That statement recorded u/s 132(4) of the Act itself alone cannot be a basis to compute the disallowance
 - i) 290 CTR 263 (Del) CIT vs. Harjeev Aggarwal
 - ii) 397 ITR 82 (Del) Pr. CIT v. Best Infrastructure (India) (P) Ltd,
 - iii) ITA No. 02 and 03/D/2016 ACTT vs. Dev Suman Sindhu
 - iv) 53 CCH 0120 (Del-Trib.) Moon Beverages Ltd. vs. ACIT

28. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The common issue for assessment year 2011-12 and 2012-13 is regarding the order of the CIT(A) in deleting the addition of Rs.20,17,00,000/- for A.Y. 2011-12 and

Rs.28,98,25,000/- for assessment year 2012-13 which was made by the AO under section 68 of the Act. A perusal of the assessment order shows that the AO made addition of Rs.20.17 crores in respect of following six parties for assessment year 2011-12 and Rs.28.29 crores in respect of 8 parties for 2012-13 the details of which are as under:-

| SL. No. | Particulars of the Subscribers | Amount of share application money received in F.Y. 2010-11 | Amount of share application money received in F.Y. 2011-12 |
|---------|--|--|--|
| 1. | Himachal Yarn Formerly Himachal Steel Udyog Ltd. PAN: AABCH0451J | 7,07,10,000 | 1,50,40,000/- |
| 2. | Brijeshwari Textiles Pvt. Ltd Pan.: AACCB7479K | 3,00,00,000 | 1,50,00,000/- |
| 3. | Balmukhi Textiles Pvt ltd. | 3,00,00,000 | - |
| 4. | GargFincap Ltd. | - | 8,00,000/- |
| 5. | Shiva Spin Fab Pvt. Ltd. Pan. AAKCS6521K | 4,00,00,000 | 1,70,00,000/- |
| 6. | GAL Cottex Pvt. Ltd. PAN AABCS8023C | 2,03,70,000 | 5,30,00,000/- |
| 7. | Apporva Leasing Finance and Investment Company Ltd. | - | 7,50,00,000/- |
| 8. | Pushpa Yarns Pvt Ltd. | - | 1,00,00,000/- |
| 9 | Shubam Yarns Pvt. Ltd. Pan. AAGCS8023C | 1,06,20,000 | 9,98,25,000/- |
| | | 20,17,00,000/- | 28,98,25,00/- |

29. The allegation of the AO for making the addition is that the assessee could not discharge the three ingredients in terms of provisions of section 68 of the IT Act, i.e., the identity, credit worthiness of the share applicants and genuineness of the transaction. Further the assessee has also issued such shares at a huge premium of Rs.1990/-. We find the Id. CIT(A) deleted the addition made by the AO, the reasons of which has already been reproduced in the preceding paragraphs. It is the

submission of the ld. DR that since the assessee failed to produce the principal officers of the investor companies and the companies have shown meager income during the relevant years, therefore, their identity and creditworthiness is in doubt and, therefore, the ld.CIT(A) was not justified in deleting the addition. It is also his allegation that the assessee has charged such huge premium for issue of shares when the financials of the company does not warrant to charge such huge premium. It is the submission of the ld. counsel that it has discharged all the three ingredients in terms of provisions of section 68, i.e., the identity and capacity of the share applicants and genuineness of the transaction. It is his submission that the Revenue in the revised grounds of appeal has deleted the words ~~group companies~~ which the AO has mentioned in both the assessment years that the subscriber companies are group companies. It is also his submission that all these companies are assessed to tax and in subsequent year also the share application money in respect of three of the companies has been accepted under section 143(3) as per the direction of the Joint Commissioner under section 144A. Further, the principal officers of some of the companies were produced before the AO but the AO chose not to record their statements. It is also his submission that the AO has mixed up the facts of some other case with that of the assessee and has proceeded to make the addition on misconception of facts and misunderstanding. According to him, since the assessee has discharged the burden cast on it, therefore, no adverse view should have been taken and, therefore, the ld. CIT(A) has rightly deleted the addition.

30. We find some force in the above argument of the ld. Counsel. A perusal of the assessment order shows that the AO at Page 3 of the assessment order for assessment year 2011-12 has mentioned as under:-

“The share holding pattern of the applicant companies was also examined and found that these companies are being promoted and operated by the family members of the promoters of the assessee company.”

31. Similarly in assessment year 2012-13, the AO at page 5 of the assessment order has mentioned as under:-

“The share holding pattern of the applicant companies was also examined and found that these companies are being promoted and operated by the family members of the promoters of the assessee company.”

32. A perusal of the details furnished by the assessee shows that in the order passed under section 143(3) for assessment year 2013-14, as per direction of the JCIT u/s 144A of the IT Act, 1961, the AO in assessee's own case has accepted the share capital subscribed by the following companies which are as under:-

| | | | |
|------|-----------------------------|---|-------------------|
| i) | M/s. Himachal Yarns Limited | - | Rs.4,88,50,000/- |
| ii) | M/s. Gal Cottex (P) Ltd. | - | Rs.4,13,50,000/- |
| iii) | M/s Shubham Yarns (P) Ltd. | - | Rs.11,53,25,000/- |

33. Similarly in assessment year 2014-15 also in the order passed under section 143(3) in assessee's own case, the AO has accepted the share capital subscribed by M/s Gal Cottex (P) Ltd. at Rs.1,68,75,000/- and M/s Shubham Yarns (P) Ltd. at Rs.58,00,000/-. Similarly, in the order passed under section 143(3) for assessment year 2015-16 the AO in assessee's own case has accepted the share capital

received by the assessee from M/s Shubham Yarns (P) Ltd. at Rs.2,75,00,000/-.

We further find that even in the preceding assessment years, i.e., assessment year 2007-08 and 2008-09 the AO in order passed u/s 143(3) in assessee's own case has accepted the share capital received from Himachal Yarns Ltd., of Rs.2,63,00,000/- and Rs.1,00,00,000/- respectively. Similarly, the AO in the order passed under section 143(3) in assessee's own case has accepted the share capital of Rs.1,00,00,000/-, Rs.1,00,00,000/- and Rs.50,00,000/- from M/s Gal Cottex (P) Ltd. in A.Y. 2007-08, 2008-09 and 2009-10 respectively. We further find the AO in order passed u/s 143(3) in assessee's own case has accepted investment in shares of Rs.1,00,00,000/-, Rs.1,00,00,000/- and Rs.50,00,000/- from M/s Shubam Yarns (P) Ltd. for A.Y. 2007-08, 2008-09 and 2009-10, respectively. Similarly, in the order passed u/s 143(3) in assessee's own case, the AO has accepted shares invested by M/s Garg Fincap Ltd. of Rs.2.37 crores and Rs.1 crore in A.Y. 2007-08 and 2009-10 respectively.

33.1 So far as assessment year 2011-12 is concerned, a perusal of the Order sheet notings which was forwarded by the AO shows that on 24th March 2014, the AO discussed the case with the assessee's representative and asked him to produce the principal officers of six companies for his examination fixing the hearing date on 28th March 2014 and passed the order on 31st March 2014, but, there is no entry on 28th March 2014 as to what has happened. On being pointed out to the CIT-DR

regarding the above, he submitted that whatever order sheet entry has been provided by the AO is before the Bench and the Bench can take a view on this.

33.2 So far as assessment year 2012-13 is concerned, on 13th March 2015, Shri Pradeep Makkar attended the proceedings and filed the power of attorney from Shubham Yarns (P) Ltd., Himachal Yarns Ltd., M/s Garg Fincap Ltd. and M/s Gal Cottex (P) Ltd.. However, the AO has not recorded the statement of Mr. Pradeep Makkar although he is fully aware that he is the director-cum-shareholder of the assessee company as well as the principal officer of above four companies. From the various details furnished by the assessee before the AO, before the CIT(A) as well as before us, it is clearly established that the company who have invested in the shares of the assessee company are group companies as admitted by the AO in the body of the assessment order. No doubt, the companies have declared meager income for the current year when they have subscribed to the shares of the assessee company. However, their credit worthiness stands proved from the balance sheet filed by them which shows huge own capital and free reserves available with them. There is no evidence on record that money from the coffers of the assessee company has directly or indirectly gone to those companies which have come back in the form of share capital / share premium. It is also seen that in the preceding and subsequent years the investment by some of the companies have been accepted in the orders passed under section 143(3) in their respective cases, details of which are placed in the paper book and synopsis which can be summarized as under:-

| Sr. No. | Name of Entities | A.Y. 2011-12 | A.Y. 2012-13 | Order of Assessment u/s 143(3) of the Act of the investor (Page of PB for AY 2011-12) | Compliance u/s 133(6) of the Act in AY 2011-12 (page of PB for AY 2011-12) |
|---------|---|--------------|--|---|--|
| i) | Himachal Yarns Ltd. (Listed company) | 7,07,10,000 | 1,50,40,000 | AY 2012-13 (483-485) | 257 |
| ii) | Brijeshwari Textiles (P). Ltd. | 3,00,00,000 | 1,50,00,000 | AY 2010-11 (486-488) | 232 – 233 |
| iii) | Balmukhi Textiles (P) Ltd. | 3,00,00,000 | -- | AY 2010-11 (489-491) | 219 – 220 |
| iv) | Shiva Spin Fab (P) Ltd. | 4,00,00,000 | 1,70,00,000 | -- | 244 – 245 |
| v) | Gal Cottex Pvt. Ltd. (formerly known as Gargsons Investment (P) Ltd.) | 2,03,70,000 | 5,71,30,000 | AY 2012-13 (492-494) AY 2013-14 (495-407) AY 2014-15 (498-500) | 279 – 280 By Bank (323) |
| vi) | Shubham Yarns (P). Ltd. | 1,06,20,000 | 9,98,55,000 | AY 2013-14 (501-503) AY 2014-15 (504-506) | 266 – 267 By Bank (319) |
| Vii – | M/s Apoorva Leasing Finance and Investment Company Ltd. | -- | 7,50,00,000 AY 2010-2011 (Assessment order page 496-497 of paper book – III for AY 2012-2013) | | |

33.3 It is the settled proposition of law that for accepting any share capital / share premium / cash credit as genuine, the onus is always on the assessee to prove to the satisfaction of the AO regarding the identity and credit worthiness of the loan creditor/share applicants and the genuineness of the transaction. In the instant case, the assessee in our opinion has duly discharged such onus and the AO has not disproved any of the vital documents furnished before him. When the AO himself mentions that the investor companies are group companies and in the past also their investment in the assessee company has been accepted in the order passed under section 143(3), he could not have mentioned that these companies are merely entry provider companies.

33.4 So far as the non-production of some of the principal officers of the share applicant companies are concerned, we find for assessment year 2011-12, there was no sufficient opportunity granted to the assessee. It is pertinent to mention here that all the applicants have responded to notice issued u/s 133(6) and no summon u/s 131 has been issued by the AO. No further enquiry was also conducted by the AO. Only towards the fag end of the assessment proceedings the AO asked the assessee to produce the principal officers on 28.03.2014 and passed the order on 31.03.2014 as mentioned earlier at para 33.1 of his order.

33.5 So far as assessment year 2012-13 is concerned, Shri Pradeep Makkar and Shri Sanjeev Garg were produced before the AO. However, no statement was recorded. A perusal of copy of letter dated 23.02.2015 addressed to the AO by the assessee shows that the assessee had categorically given the names of the principal officers of the companies/entities who have subscribed to the equity capital of the company. At clause 19 of the said letter reads as under:-

õGAL/2014-15/

Dated, 23.02.2015

The Deputy Commissioner of Income Tax,
Circle 10(1),
New Delhi.

Sub: Submission of information for Assessment proceedings for assessment year 2012-13.

Dear Sir,

í ..í í í í í
í ..

19. Following are the principal officer of the companies/entities who have subscribed to the equity capital of the company.

| Name of the subscriber | Principal officer of the Company |
|--|----------------------------------|
| i) GAL Cottex (P) Ltd. | Sh. Pardeep Makkar |
| ii) Shubham Yarns (P) Ltd. | Sh. Pardeep Makkar |
| iii) Himachal Yarns Ltd. | Sh. Pardeep Makkar |
| iv) Garg Finap Ltd. | Sh. Pardeep Makkar |
| v) Pushpa Yarns (P) Ltd. | Sh. Sanjiv Garg |
| vi) Brijishwari Textile (P) Ltd. | Shri Ramesh Malhotra |
| vii) Shiva Spinfab (P) Ltd. | Shri Ramesh Malhotra |
| viii) Apporva Leasing Finance & Investment Co. | Sh. Bharat Bhushanö |

33.6 However, it is not known as to why the AO did not examine either Shri Pradeep Makkar or Mr. Sanjiv Garg who had appeared before him.

33.7 Similarly, in the case of M/s Apoorva Leasing Finance & Investment Co., is concerned, we find from the details furnished by the assessee company in the paper book that the said company is a listed company with a capital and free reserve of more than Rs.120/- crores. Further, we find from the paper book pages 496 and 497 (PDF paper book pages 68 and 69) that assessment in this company was completed u/s 153C/153A on 28.03.2013 for the A.Y. 2010-11 accepting the returned income. Further, the Id.CIT(A) has also examined the source of source of M/s Apoorva Leasing Finance & Investment Co. Ltd. and has given a finding that the source of the same came to M/s Apoorva Leasing Finance & Investment Co. Ltd. from M/s Anu Vijay Investment and Revenue has not brought any material to controvert the same.

33.8 So far as the report of the Inspector that these companies are not existing at the given address is concerned, the same, in our opinion, cannot be a valid ground

for making the addition under section 68 of the Act especially when the AO is fully aware that all these companies are group companies except M/s Apoorva Leasing Finance & Investment Co. Ltd. which is a listed company. Further, in the past as well as in the subsequent assessment years the investment of some of these companies have been accepted in the order passed under section 143(3) and in the immediately succeeding assessment year, i.e., assessment year 2013-14, such investment has been accepted in the order passed u/s 143(3) as per direction of the joint Commissioner under section 144A of the Act.

33.9. So far as the allegation of the AO regarding charging of huge premium is concerned, we find the assessee before the Id.CIT(A) has given the average of book value and EPS based share valuation at Rs.3,812/- which is as under:-

øCALCULATION OF THE BOOK VALUE OF SHARE OF THE COMPANY

A) Calculation of Book value of Equity Shares

31-03-2011

| | |
|--|----------------------|
| Equity Capital 596000 Nos | Rs. 59,60,000.00 |
| Preference Capital 20,00,000 Nos | Rs. 20,00,00,000.00 |
| General Reserve | Rs. 23,45,12,144.00 |
| Capital Revaluation Reserve | Rs. 31,38,63,258.00 |
| Capital Reserve | Rs. 30,00,000.00 |
| Security Premium Account | Rs. 23,82,50,000.00 |
| Surplus/Profit & Loss Account | Rs. 46,94,42,087.00 |
| Total Shareholders Fund | Rs.1,46,50,27,489.00 |
| Less Preference Capital | Rs. 20,00,00,000.00 |
| Amount Attributable to Equity Shareholders | Rs.1,26,50,27,489.00 |

| | |
|---|-------------|
| Weighted average number of equity share | 517534 |
| Opening 516000 | |
| 25-03-2011 | |
| Allotted $\frac{80,000 \times 7}{365} = 1534$ | |
| Book value per share (A) | Rs. 2444.00 |

| | |
|---|--------------|
| B) EPS based Share Value | |
| Calculation of EPS 2010-11 | |
| Profit after tax (in lacs) | 2681.17 |
| No. of Eq. Shares(Weighted) | 517534 |
| EPS | Rs. 518.02 |
| Capitalized @10% (B) | Rs.5180.70 |
| Average of Book value & EPS based share | |
| Value (Rs. 2444+ 5181) / 2 | Rs. 3812.00" |

33.10. The ld. DR has not brought any material to show that such valuation is incorrect. Therefore, we do not find any force in the allegation of the AO or DR that the premium charged by the assessee company is exorbitantly high.

33.11. So far as the ground raised by the Revenue that the ld.CIT(A) has admitted additional evidence in the form of an affidavit of Mr. Ramesh Malhotra, GM of Brajeswari Textiles Ltd. and Shiva Spin Fab Pvt. Ltd. is concerned, we find from the order of the ld.CIT(A) at para 6.5.2 (which has been reproduced at page 25 of this order) that the affidavit was filed at the direction of the ld.CIT(A) and, therefore, we are of the opinion that there is no violation of the Rule 46A when some document is filed at the direction of the CIT(A). The ground raised by the Revenue on this issue is accordingly dismissed.

34. The various decisions relied on by the ld. DR are not applicable to the facts of the present case. As mentioned elsewhere every case depends on its own sets of facts and straight jacket formula cannot be applied to all cases. The assessee in the instant case has duly discharged the three ingredients cast on it by proving the identity and credit worthiness of the loan creditors and genuineness of the

transaction. So far as the recent decision of the Tribunal in the case of KNS Realtors (P) Ltd. (supra) relied on by the Id. DR is concerned, the same, in our opinion, is not applicable to the facts of the present case. In that case, the assessee company has received share application money of Rs.4,65,00,000/- from three entities with a premium of Rs.475/- per share of the face value of Rs.10/- each. The AO had given a finding that the assessee company had not carried out any business either during this year or in the preceding year. The AO had also found some cash transactions in the bank account of the share applicant companies before they invested in the assessee company. Under these circumstances, the AO took the view that the assessee company had routed some of its funds to bring the share capital into it. However, in the instant case, the company is showing huge profits year after year starting from A.Y. 2004-05 running into crores and assessments have been completed u/s 143(3) from a.Y. 2004-05 till A.Y. 2014-15 except for A.Y. 2005-06 which is under 143(1). Further, the AO had analysed the holding of shares of the applicant companies and had given a finding that all these companies are group companies and are directly or indirectly operated by the promoters of the assessee company. Therefore, in our view the above decision relied on by the Id. DR is not applicable to the facts of the present case. The various other decisions relied on by the Id. DR are also not applicable to the facts of the present case in view of our observation that the assessee has discharged the onus cast on it by proving the three ingredients of section 68 of the IT Act, 1961. In this view of the matter and in view of the detailed reasoning given by the CIT(A), we do not find

any infirmity in the same. Accordingly the grounds raised by the Revenue challenging the addition under section 68 of the Act for both years are dismissed.

35. So far as the second issue, i.e., the order of the CIT(A) in deleting the addition of Rs.20,24,39,341/- made on account of income from undisclosed source for assessment year 2011-12 is concerned, we find the same was made by the AO on the basis of the search that has taken place under section 132 of the Act in the case of SEL Manufacturing Company and the survey conducted in the premises of the assessee subsequent to the search. It is the allegation of the AO that the assessee was involved in bogus transaction of purchase and sales with SEL Manufacturing Company. According to him the total payment for such bogus purchase is Rs.110,89,61,370/- and total payment received for such bogus sale is Rs.131,14,00,711/- and thus the assessee has introduced additional funds in the business at Rs.20,24,39,341/- for which he made the addition. A perusal of the assessment order shows that the assessee filed its return of income declaring total income at Rs.31,41,11,880/-. The AO has not rejected the book results nor passed the order under section 144 of the Act. Since the assessee has shown income of Rs.31,41,11,880/- which is much more than the amount of Rs.20,24,39,341/-, therefore, such income, even if treated as bogus, has already been taxed and therefore, the addition of the same again will amount to double taxation which the Id. CIT(A) has rightly deleted. There is nothing on record to suggest that the assessee has booked any other part of expenditure in the Profit & Loss Account,

therefore, we find merit in the argument of the ld. counsel that the addition of Rs.20,24,39,341/- is a double addition which the ld. CIT(A) has rightly deleted. In this view of the matter and in view of the detailed reasoning given by the CIT(A) while deleting this addition we find no infirmity in the same. Accordingly, the ground raised by the Revenue on this issue is also dismissed.

36. In the result, both the appeals filed by the Revenue are dismissed.

The decision was pronounced in the open court on 27.10.2019.

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 27th October, 2020.

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Asstt. Registrar, ITAT, New Delhi