

आयकर अपीलीय अधीकरण, न्यायपीठ –“B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Hon’ble Shri P.M. Jagtap, V.P (KZ) and Hon’ble Shri A. T. Varkey, JM

ITA No. 343/Kol/2018
Assessment Year: 2012-13

M/s. Matarani Vintrade Pvt. Ltd. (PAN: AAHCM0024E)	Vs.	Income-tax Officer, Wd-15(1), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	08-10-2020
Date of Pronouncement	04-11-2020
For the Appellant	Shri S. K. Tulsian, Advocate & Smt. Puja Somani, CA
For the Respondent	Shri Vijay Shankar, CIT, DR

ORDER

Per Shri A.T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A),5, Kolkata dated 31-03-2017 for the assessment year 2012-13.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in enhancing the addition by violating the law inter alia in violation of section 251(2) of the Income-tax Act, 1961 (hereinafter, referred to as the ‘Act’). According to assessee, the Ld. CIT(A) is supposed to decide the appeal as per provisions of sub-section (6) of section 250 of the Act, wherein he [CIT-(A)] has to specify the points for determination and thereafter decide by passing a reasoned order. For convenience, sub-section (6) of Section 250 of the Act reads as under:-

“(6) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision”.

3. Shri S. K. Tulsian, the Learned Authorised Representative (in short, the ‘Ld. AR’) of the assessee assailing the impugned order of the Ld. CIT(A) contended that the Ld. CIT(A) has enhanced the addition from Rs.84 lakhs to Rs.21.38 cr. (enhanced Rs.20.54 cr.) in a haste, without even enquiring the veracity of the voluminous documents and the statement recorded by AO which were available in the assessment folder. So, according to Ld. A.R the impugned action of Ld. CIT(A) is arbitrary, whimsical and against Rule of Law. According to Ld. AR, though the Ld. CIT(A) enjoys coterminous powers of AO, he while discharging his first appellate jurisdiction has to record his factual finding by disproving the finding/conclusion of Assessing Officer, if he has to differ from the view taken by the Assessing Officer. According to Ld. AR, the Ld. CIT(A) while adjudicating the appeal of the assessee against the addition of Rs. 84 lakhs as ordered by AO, had in fact sent the first three notices to the old address *[even though change of address was intimated to AO & Ld. CIT(A) by assessee vide letter dated 14/01/2015 which fact has been acknowledged by Ld CIT(A) at page 4, para 3.3]* and the other three notices were sent in a span of twenty days, which was not served upon the assessee company for reasons beyond its control for which the assessee company has filed an affidavit of the director duly sworn in before the Notary explaining the cause for non-receipt of notice. According to Ld. AR, the AO while passing the scrutiny assessment u/s. 143(3) of the Act had made thorough enquiry into the share capital amount received by the assessee for the assessment year 2012-13 by issuing notices u/s. 142(1) and 142(2) of the Act to the assessee and also has issued notices to all the share applicants/shareholders and after having received their replies and supporting document, had summoned u/s. 131 of the Act Shri Manish Kumar Dubey, director of the assessee company and after recording his statement on oath had accepted the share capital amount received from thirty six (36) share applicants/shareholders out of total thirty eight (38) share holders and made addition of Rs. 84 lakhs in respect of share capital raised from two companies, namely M/s. Omeshwar Tracom Pvt. Ltd. and M/s. Harmony Vanijya Pvt. Ltd. According to the Ld. AR when assessee challenged the action of the AO in making the addition of Rs. 84 lakhs, the Ld. CIT(A) without serving of notice enhanced the addition to Rs. 21.38 crores by enhancing an amount of Rs.20.54 crores. According to

the Ld. AR, this action of Id. CIT(A) is arbitrary exercise of power, which he could not have done without conducting enquiry / investigation and is able to show from the out-come of the enquiry he conducted that it gives a different result than from what results the Assessing Officer got from his enquiry . Without doing such an exercise of enquiry or investigation, the Id. CIT(A) has erroneously made enhancement of addition which is per se arbitrary , whimsical and is untenable in law. According to the Ld. AR when all the results of enquiry by AO and documents collected are available in the assessment folder of the AO, the action of Ld. CIT(A) to have resorted to enhancement of addition without conducting any enquiry from his part is on the basis of surmises and conjecture. According to the Ld. AR even though the power of the Ld. CIT(A) is co-terminus with that of the AO and if he nurses any doubt about the investigation carried out by the AO or about the veracity of the documents collected by the AO, then he was duty bound to issue notices u/s. 131 of the Act and summon the shareholders as well as the director of the assessee company, which he has not done and therefore, the enhancement of addition made by the Ld. CIT(A) in the hands of the assessee is arbitrary and therefore, the same should be deleted.

4. Per contra, Shri Vijay Shankar, Learned CIT, DR vehemently opposing the plea of the Ld. AR contended that the Ld. CIT(A) had fixed the appeal of the assessee on six (6) occasions and the assessee did not bother to attend/appear before the Ld. CIT(A). According to the Ld. DR the reason that assessee did not receive any notice cannot be a ground to challenge the impugned order of the Ld. CIT(A), when the notices were issued at the address given by assessee. According to the Ld. DR, the Ld. CIT(A) has co-terminus power as that of the AO. And even though the documents have been collected by the AO for taking a favorable view of assessee in respect of share capital collected to the tune of Rs. 20.54 cr, however, the Ld. CIT(A) who enjoys a coterminous power as that of AO, can still differ from the view taken by the AO from the very same documents, which is found in the assessment folder. According to him, when an assessee has in its books, a sum of money credited, then the assessee is bound to satisfy the AO about the identity, genuineness and creditworthiness of the source of credit/money. According to Ld. DR, the documents

on the strength of which the AO has recorded the satisfaction for not making an addition u/s. 68 of the Act, the Ld. CIT(A) can draw adverse view against the assessee, since satisfaction is subjective in nature and therefore, even if the AO is satisfied on perusal of the documents furnished by the assessee/share applicants, the Ld. CIT(A) is not bound to agree with him. Thus, according to the Ld. DR, subjective satisfaction can differ and in this case, while exercising his first appellate jurisdiction, the Ld. CIT(A) has exercised his power and was not satisfied with the documents found/available in the assessment folder had issued enhancement notice and since there was no representation from the side of assessee had drawn adverse inference and made the enhancement of Rs.20.54 cr. He further submitted that the Ld. CIT(A) in his order has noted that the assessment order passed by the AO was pre-judicial to the interest of the revenue, so he has rightly enhanced the addition. It was pointed out by the Ld. CIT DR that the AO after recording the statement of Shri Manish Dubey, one of the directors of the assessee company (during that period) and after examining him on oath u/s. 131 of the Act, had simply believed his statement and did not draw any adverse view against thirty six share applicants. According to Ld CIT DR, the AO simply gulped what Shri Dubey said that he would be able to produce all the shareholders/share applicants other than said two companies namely M/s. Omeshwar Tracom Pvt. Ltd. and M/s. Harmony Vanijya Pvt. Ltd.. According to Ld DR, the AO erred in believing the words of Shri Dubey by adding only the share capital amount raised from these two companies to the tune of Rs. 84 lakhs. According to the Ld. DR, this action of the AO is erroneous and cannot be termed as an outcome of proper enquiry and since the AO has not carried out proper enquiry/investigation, the action of the AO was rightly interfered by the Ld. CIT(A) and, therefore, he enhanced the addition as per law. Therefore, he does not want us to interfere with the impugned order of the Ld. CIT(A).

5. In his rejoinder, the Ld. AR of the assessee drew our attention to the notice(s) issued by the AO dated 18/12/2014 u/s. 142(1) and section 142(2) of the Act, which is found mentioned at page 17 PB-1 and pursuant to the same, the assessee by letter had filed the relevant documents to substantiate the queries raised by the AO, which is

placed at pages 17 to 55 of the P.B-I. The Ld. AR of the assessee drew our attention to section 131 notice dated 10/2/2015 to the director of assessee (supra), which is mentioned at pages 56-57 of the P.B-II and took us through the section 133(6) notice issued to all the thirty eight (38) shareholders/share applicants, which companies have subscribed to the shares of the assessee company which are found placed in PB-II. The Ld. AR of the assessee drew our attention to the copies of the respective responses/replies of the shareholders/share applicants which were directly given to the AO pursuant to his notice u/s. 133(6) of the Act which are found placed in PB-II. The Ld. AR drew our attention to the notice issued by the Assessing Officer u/s 142(1) of the Act wherein the AO during assessment proceedings asked for the nature and source of share capital raised by the assessee as well as of all the thirty eight (38) shareholders/share applicants. And the ld. A.R took our attention to the fact that they all responded directly to AO to the notices u/s 142(1) of the Act and filed all the documents to substantiate/prove the identity, creditworthiness and genuineness of the share capital transaction with the assessee company. According to the Ld. AR, the share capital of Rs. 21.38 crore was issued to 38 allottee companies each share was sold at face value of Rs 10/- at an average premium of Rs. 1990 per share and thus the assessee company issued 10,69,000 shares at a premium of Rs. 21,27,31,207/- According to the Ld. AR, one of the major fault as alleged by the Ld. CIT(A) to overturn the decision of Assessing Officer was that Shri Manish Dubey was no longer director of assessee company and that he has exited from this company after this relevant A.Y 2012-13. However, it was pointed out by the Ld. AR that the assessment in question is of AY 2012-13, so Shri Manish Kr. Dubey was the director of the assessee company during AY 2012-13 and so he was aware of the share capital collected during this AY 2012-13. Therefore, according to ld. A.R, the Ld. CIT(A) erred on this score. It was also pointed out by the Ld. AR, that the Ld. CIT(A) misdirected in law and forgot that he was adjudicating the statutory first appeal filed by the assessee against the order of Assessing Officer by treating it as if it was a proposal for revision u/s 263 of the Act, which is erroneous. This erroneous assumption of Ld CIT(A) can be discerned from the action of him holding the assessment order as prejudicial to the interest of the Revenue. And the ld. A.R pointed

out that a perusal of the impugned order of Id. CIT(A) will reveal that the Id. CIT(A) forgot his appellate jurisdiction vested with him as the First Appellate Authority and without adjudicating the grounds of appeal as per the Statute, was trying to find fault with the investigative methods adopted by the Assessing Officer as if he was exercising the powers of Commissioner u/s 263 of the Act, which is erroneous and so the entire approach of the Id. CIT(A) which was done in haste and without making any enquiry to upset the decision of the Assessing Officer was arbitrary, whimsical and therefore have to be set aside and the Assessing Officer's order need to be restored as well as deleting Rs 84 lakhs added by AO. So, according to Ld. AR, the action of Ld. CIT(A) to enhance without disproving the finding of fact which the AO has drawn to be satisfied about the nature and source of share capital collected by the assessee company from thirty six (36) companies to the tune of Rs. 20.54 cr., without any enquiry is arbitrary exercise of power for which there is no sanction of law and so is untenable. According to him, the assessment is that of AY 2012-13 and the amendment of section 68 of the Act took place, wherein provision of bringing in the share premium was made by insertion of amendment in section 68 of the Act with effect from 01-04-2013 and is not applicable in this relevant AY.

6. Further on the point of *taxation in respect of share premium* it was pointed out by the Ld. AR that as per definition of income as provided under section 2(24) of the Act at the relevant point of time of (i.e. AY 2012-13) did not define as income, *any consideration received for issue of shares in excess of its fair market value*. According to him, this came into effect from 1-4-2013 and it would have no application to the share premium received by the assessee in the previous year relevant to AY 2012-13. Thereafter, he drew our attention to sub-clause (vii)(b) of sub-section (2) of section 56 of the Act, which was inserted by the Finance Act, 2012 w.e.f 1-4-2013, which is also applicable only for the AY 2013-14 and not for the relevant AY 2012-13 which is in respect of computing/taxing the premium of shares in the hands of the assessee if consideration of value of shares is in excess of its fair market value and in support of it, he drew our attention to section 56(vii)(b) and contended that for the AY under consideration i.e. AY 2012-13 the law in force was

that if an amount is credited/shown in the books of account and when the AO asked the assessee for explanation of the credit as to its nature and source of it, then the assessee is duty bound to explain the source and nature to the satisfaction of AO as envisaged u/s. 68 of the Act and if the assessee failed to explain or if the AO is not satisfied he may charge to income-tax the sum so credited. So according to the Ld. AR in this case, the assessee was asked to explain the share capital of Rs. 1,06,90,000/- and premium collected by it to the tune of Rs. 21,27,31,207/- and bound to explain the nature of source of share capital, i.e. the identity, creditworthiness and genuineness of the share capital it received in this AY. The assessee has to prove to the satisfaction of AO as to whether they (shareholders/share applicants) have the financial capacity i.e. creditworthiness and whether they are genuine investors in assessee's company. It was pointed out by the Ld. AR that in this assessment year (AY 2012-13) the assessee is not duty bound by law to ask the share applicants the source of source since the amendment and requirement of law came next year i.e. AY 2013-14 and not in this (AY 2012-13). For this proposition, he referred to the decision of this Tribunal in ITA No 838/KOL/2019 in the case of Amritrashi Infra Pvt Ltd vs PCIT dated 12/08/2020 and ITA No. 2411/KOL/2017 in the case of Kanchan Plywood Products Pvt. Ltd. -vs.- ITO order dated 01.05.2019. Bombay Tribunal in the case of DCIT Vs. ITA No. 1916/Mum/2016 order dt. 28-08-2019. Hon'ble M.P High Court decision in the case of CIT Vs. order dt. 7-8-2018 98 taxmann.com 47 Mumbai Tribunal in DCIT Vs. Infrastructure P. Ltd & Green Infra Ltd reported in 38 taxmann. Therefore, according to the Ld. AR though the face value of each share was to the tune of Rs. 10, which was allotted at a premium of Rs. 1900/- per share, amount of Rs. 21,38,00,000/- was collected from said thirty eight (38) companies, which have been thoroughly enquired by the AO during the assessment proceedings. The Ld. AR drew our attention to the voluminous paper book (843 pages), and stated that all those documents were submitted before the AO by the assessee as well as by said thirty eight (38) share applicants. Therefore, according to the Ld. AR, the AO during the scrutiny assessment proceedings u/s. 143(3) after calling for information/explanation and after perusal of the documents placed before him has duly summoned Mr. Manish Kr. Dubey, the erstwhile director of the assessee company for the AY 2012-13

and after questioning him and thereafter recorded his statement in detail has taken a conscious view / decision has accepted Rs. 20.54 cr. out of total Rs. 21,38 crores assessee received as share capital. Thus, the share capital collected from thirty six (36) share companies was accepted by Assessing Officer and two companies was not accepted and so Assessing Officer added Rs. 84 lakhs. Again ld. A.R reminded us that even though the Ld. CIT(A) have co-terminus power while discharging his duties as first appellate authority, however he has neither bothered to discharge that co-terminus power to make any enquiry from any of the said thirty eight (38) investors/shareholder companies nor issued notice against the assessee company and without either finding fault or any infirmity in respect of any documents in the assessment folder has over turned the decision of AO by enhancing the addition by Rs. 20.54 crs, which action of the Ld. CIT(A) is high handed, arbitrary, whimsical and against the Rule of law. Therefore, he pleaded before us that the enhancement of addition so made by Ld CIT(A) as well as that of AO made to the tune of Rs 84 Lakhs may be deleted.

7. We have heard both the parties and perused the records. We note that the assessee had filed before us three (3) paper book. [P.B-1 contains 93 pages. P.B-2 contains 843 pages and P.B-3 contains case law]. We note that the Ld. CIT(A) has fixed the matter on six (6) occasions. However, it was brought to our notice that though the Ld. CIT(A) sent notice of hearing, those notices were returned back by the postal authority with the comments "*Refuse/ No such company was found*". Therefore, he passed an ex parte order qua the assessee on merits after going through the documents kept in the assessment folder. According to the Ld. CIT(A), the assessment order was passed by the AO accepting the share capital collected by assessee of Rs.20.54 crs, which action of AO, according to the Ld. CIT(A), was *prejudicial to the interest of the revenue* and consequently he issued notice for enhancement of addition made u/s. 68 by a letter dt. 8-3-2017 fixing the matter on 17/3/2017. According to the Ld. CIT(A), the notice of enhancement returned back un-served with the postal remark "*Unclaimed*". According to the Ld. CIT(A), second notice of hearing dated 24-03-2017 for enhancement of addition was issued fixing the case on 31-03-2017.

However, the Ld. CIT(A) notes that this notice was also returned back with the remark 'no such company exists'. Therefore, he passed the impugned order on that day itself i.e. 31-3-2017 enhancing the income as assessed by the AO at Rs. 84 lakhs to Rs. 21.38 crs, thereby enhanced total amount of Rs. 21.54 crs. It was brought to our notice by the Ld. AR that even though the Ld. CIT(A) fixed the appeal on six (6) occasions, first three (3) notices were posted to the earlier address which got changed, but this fact of change of address was brought to the notice of AO as well as Ld. CIT(A) and, therefore, assessee company cannot be faulted for non-service of notice. According to the Ld. AR when the assessment order was passed on 30-03-2015 itself, the assessee has changed its address from *6/3 Ola Bibi Tala Lane, Howrah-711104*, which was informed to the AO vide a letter dated 14-01-2015. However, the AO while passing the assessment order has wrongly reflected the old address on the body of the assessment order, whereas the assessee has changed its address to *21 Hemanta Basu Sarani, Fifth Floor, Room No. 506, Kolkata-700 001* (New address from 14/1/2015 refer to page-7 of the P.B-1). However, according to the Ld. AR, at the new premises i.e. 21, Hemanta Basu Sarani, there arose a dispute between the landlord and the assessee. So, the landlord played mischief on the assessee and thereby kept the assessee in dark and did not co-operate with the assessee. Thus, the landlord ensured that no notice could be served upon the assessee from the office of Ld. CIT(A) i.e. last two letters (i.e. 24.03.2017 and 24.03.2017) which were the enhancement notice. Because of this mischievous action of the landlord three (3) notices to the address at 21, Hemanta Basu Sarani, Fifth Floor, Room No. 506, Kolkata-700 001 could not be served upon the assessee; and therefore, the assessee was forced to shift to a new premises by changing its address to the latest address at *9, Crooked Lane, 1st floor, Room No. 7A, Kolkata-700 069* (refer Form 36 filed before this Tribunal). According to the Ld. AR in between 14/1/2015 and 14/6/2017 due to landlord's illegal action, the assessee could not get the last two notices of enhancement as issued/sent by the Ld. CIT(A) in the premises at 21, Hemanta Basu Sarani, Fifth Floor, Room No. 506, Kolkata-700 001. However, according to the Ld. AR before any enhancement of addition could have been made, the Ld. CIT(A) ought to have given reasonable

opportunity as contemplated in sub-section (2) of section 251 of the Act. Section 251(2) of the Act reads as under:-

(2) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.(emphasis given by us)

8. We note that as per provisions of section 251(2) of the Act, unless the assessee has been offered a reasonable opportunity of showing cause of such enhancement, the Ld. CIT(A) could not have enhanced the assessment made by the AO. In this context, we note from a perusal of the impugned order that first enhancement notice was issued by Ld. CIT(A) on 8/3/2017 fixing the appeal for hearing on 17/03/2017 and thereafter a second notice was issued on 24/3/2017 fixing the appeal for hearing on 31/03/2017 and the Ld. CIT(A) has passed the impugned order on that date itself 31-3-2017. In this regard, we note that within a short span of 23 days after issuing the first show cause notice for enhancement, the Ld. CIT(A) had enhanced the assessment to Rs.21.38 crores from Rs. 84 lakhs as made by the AO. This action of the Ld. CIT(A) to pass the enhancement order in haste (*when there is no time barring as per statute*) goes against the spirit of the statutory mandate of section 251(2) of the Act to provide reasonable opportunity to the assessee. Therefore we note that the impugned order was passed enhancing the income without giving proper / reasonable opportunity to the assessee.

9. Be that as it may be, we note that the Ld. CIT(A) has passed the impugned order after going through the assessment folder which contained the order-sheet maintained by Assessing Officer in assessee's case and the statutory notices issued by Assessing Officer and replies filed by the assessee and the thirty eight (38) share-applicants / shareholders as well as the recorded statement of assessee company's director on oath u/s 131 of the Act. We note that reply of assessee is found placed at 17-55 (PB-I) and the notices issued by AO & replies of thirty eight share applicants, copies of which are found placed at PB-II (Page-1 -843) and from a perusal of these documents, we note that all of them have filed *inter alia*, their respective PAN Card, ITR acknowledgment, Certificate of Incorporation issued by ROC evidencing their

identity, Bank Statements evidencing the genuineness of the money transactions and Audited Accounts for the year evidencing their high net-worth/creditworthiness to invest in the share capital of the assessee. Moreover, it is noted that PAN Card, Voter's Id Card of the Directors of the respective share applicant companies are also found enclosed with their replies. (*We will discuss later in detail about each share applicant company infra*). And it is noted that assessee pursuant to Assessing Officer's notice u/s 142(1) of the Act has filed the following documents which are found placed at 17-55 (PB-I):

1. Copy of Income Tax Return for AY 2011-12 and 2012-13
2. Copy of Audited Accounts for AY 2011-12 and 2012-13
3. Copy of Annual Return filed with ROC
4. Details of Fresh Share Capital introduced during the year along with the names, full postal addresses and PAN of all the 38 the share applicant companies.
5. Detailed Fund Flow Statement for the year.
6. Copy of Bank Statement.
7. Details of Business Activities
8. Details of Fixed Assets and depreciation
9. Computation of total income.

10. Thus, the aforesaid documents were received by the Assessing Officer during assessment proceedings and thereafter he issued notices u/s 133(6) of the Act to all the thirty eight (38) share applicant companies and after perusal of the documents furnished by them (PB-II pages 1-843) and thereafter, summoned the director of assessee company questioned & examined him and has recorded his statement on oath u/s 131 of the Act. From the aforesaid exercise and verification made, it can be discerned that all the thirty eight (38) share applicants are income tax assessee's and their financials shows financial credibility and the bank statement reflected the entire inflow and outflow of funds and that there is no cash deposits in their respective bank account, thus the AO took a view to accept share capital raised by assessee from thirty six (36) out of thirty eight (38) share applicants, and made an addition of Rs. 84 lakhs u/s 68 of the Act. However, the Id. CIT(A) despite the aforesaid documents which were found in the assessment folder, has decided to overturn the decisions of the

Assessing Officer, cannot be countenanced since the view of the AO on facts or law is a plausible view and cannot be termed as perverse. And according to us, if he has to be upset a possible view of Assessing Officer, then he has to demonstrate that Assessing Officer was wrong in arriving at the finding of fact about identity, creditworthiness and genuineness of the thirty six (36) share applicants. In other words, when the Ld. CIT(A) perused the documents kept in the assessment folder and still if he felt that he was not satisfied with the replies filed by the share applicant companies, then he could have insisted on the personal attendance of the Directors of the share applicant companies by exercising his plenary powers and issue summons u/s 131 of the Act to the Directors of the share applicant companies and examine them on oath. However, we note that no summons/notices were issued by the ld. CIT(A) to the share subscribers in the present case. It is settled that the first appellate authority has plenary powers in disposing of an appeal and the scope of his power is co-terminus and co-extensive with that of the Assessing Officer. A perusal of section 131 of the Act reveals that it empowers the Commissioner (Appeals) to issue summons u/s 131 of the Act. Section 131 of the Act reads as follows:

131. (1) The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :—

- (a) discovery and inspection;*
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;*
- (c) compelling the production of books of account and other documents; and*
- (d) issuing commissions.(emphasis given by us)*

However, in the present case, it is evident from the impugned order that ld. CIT(A) neither summoned the present/erstwhile directors of the assessee company nor the Directors of the share applicant companies. And it is not the case of ld. CIT(A) that ITR, balance sheet, bank statement, ROC documents, PAN etc. of assessee as well as of all or any of the share applicants or any documents filed / found in assessment

folder are bogus or not genuine. So the action of Ld. CIT(A) to overturn the decision of Assessing Officer without any enquiry or investigation cannot be countenanced.

11. Before we adjudicate as to whether the Ld. CIT(A)'s action is right or erroneous, let us look at section 68 of the Act and the judicial precedents on the issue at hand. Section 68 of the Act reads as under:

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.
"

The phraseology of section 68 is clear. The Legislature has laid down that in the absence of a satisfactory explanation, the unexplained cash credit may be charged to income-tax as the income of the assessee of that previous year. In this case the legislative mandate is not in terms of the words 'shall' be charged to income-tax as the income of the assessee of that previous year. The Supreme Court while interpreting similar phraseology used in section 69 has held that in creating the legal fiction the phraseology employs the word "may" and not "shall". Thus the unsatisfactoriness of the explanation does not and need not automatically result in deeming the amount credited in the books as the income of the assessee as held by the Supreme Court in the case of CIT v. Smt. P. K. Noorjahan [1999] 237 ITR 570. We note that against the said decision of Hon'ble Gujarat High Court the special leave petition filed by the Revenue has also been dismissed by the Hon'ble Apex Court.

12. Coming to another case wherein the main plank on which the AO made the addition u/s 68 of the Act was because the lenders/creditors [like directors of share subscribing companies] did not turn up before him, in such a case that is Dy. CIT v. Rohini Builders [2002] 256 ITR 360 / [2003] 127 Taxman 523 the Hon'ble Gujarat High Court relying on the Hon'ble Apex Court ratio in the case of Orissa Corpn. (P) Ltd. 159 ITR 78, has held that onus of the assessee (in whose books of account credit appears) stands fully discharged if the identity of the creditor is established and actual receipt of money from such creditor is proved. In case, the Assessing Officer is

dissatisfied about the source of cash deposited in the bank accounts of the creditors, the proper course would be to assess such credit in the hands of the creditor (after making due enquiries from such creditor). In arriving at this conclusion, the Hon'ble Court has further stressed the presence of word "may" in section 68. Relevant observations at pages 369 and 370 of this report are reproduced hereunder:-

"Merely because summons issued to some of the creditors could not be served or they failed to attend before the Assessing Officer, cannot be a ground to treat the loans taken by the assessee from those creditors as non-genuine in view of the principles laid down by the Supreme Court in the case of Orissa Corporation [1986] 159 ITR 78. In the said decision the Supreme Court has observed that when the assessee furnishes names and addresses of the alleged creditors and the GIR numbers, the burden shifts to the Department to establish the Revenue's case and in order to sustain the addition the Revenue has to pursue the enquiry and to establish the lack of creditworthiness and mere non-compliance of summons issued by the Assessing Officer under section 131, by the alleged creditors will not be sufficient to draw and adverse inference against the assessee. in the case of six creditors who appeared before the Assessing Officer and whose statements were recorded by the Assessing Officer, they have admitted having advanced loans to the assessee by account payee cheques and in case the Assessing Officer was not satisfied with the cash amount deposited by those creditors in their bank accounts, the proper course would have been to make assessments in the cases of those creditors by treating the cash deposits in their bank accounts as unexplained investments of those creditors under section 69.

13. In the case of Nemi Chand Kothari 136 Taxman 213, (supra), the Hon'ble Guahati High Court has thrown light on another aspect touching the issue of *onus* on assessee under section 68, by holding that the same should be decided by taking into consideration the provision of section 106 of the Evidence Act which says that a person can be required to prove only such facts which are in his knowledge. The Hon'ble Court in the said case held that, once it is found that an assessee has actually taken money from depositor/lender who has been fully identified, the assessee/borrower cannot be called upon to explain, much less prove the affairs of such third party, which he is not even supposed to know or about which he cannot be held to be accredited with any knowledge. In this view, the Hon'ble Court has laid down that section 68 of Income-tax Act, should be read along with section 106 of Evidence Act. The relevant observations at page 260 to 262, 264 and 265 of the report are reproduced herein below:-

"While interpreting the meaning and scope of section 68, one has to bear in mind that normally, interpretation of a statute shall be general, in nature, subject only to such exceptions as may be logically permitted by the statute

itself or by some other law connected therewith or relevant thereto. Keeping in view these fundamentals of interpretation of statutes, when we read carefully the provisions of section 68, we notice nothing in section 68 to show that the scope of the inquiry under section 68 by the Revenue Department shall remain confined to the transactions, which have taken place between the assessee and the creditor nor does the wording of section 68 indicate that section 68 does not authorize the Revenue Department to make inquiry into the source(s) of the credit and/or sub-creditor. The language employed by section 68 cannot be read to impose such limitations on the powers of the Assessing Officer. The logical conclusion, therefore, has to be, and we hold that an inquiry under section 68 need not necessarily be kept confined by the Assessing Officer within the transactions, which took place between the assessee and his creditor, but that the same may be extended to the transactions, which have taken place between the creditor and his sub-creditor. Thus, while the Assessing Officer is under section 68, free to look into the source(s) of the creditor and/or of the sub-creditor, the burden on the assessee under section 68 is definitely limited. This limit has been imposed by section 106 of the Evidence Act which reads as follows:

"Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. "

What, thus, transpires from the above discussion is that while section 106 of the Evidence Act limits the onus of the assessee to the extent of his proving the source from which he has received the cash credit, section 68 gives ample freedom to the Assessing Officer to make inquiry not only into the source(s) of the creditor but also of his (creditor's) sub-creditors and prove, as a result, of such inquiry, that the money received by the assessee, in the form of loan from the creditor, though routed through the sub-creditors, actually belongs to, or was of, the assessee himself. In other words, while section 68 gives the liberty to the Assessing Officer to enquire into the source/source from where the creditor has received the money, section 106 makes the assessee liable to disclose only the source(s) from where he has himself received the credit and it is not the burden of the assessee to prove the creditworthiness of the source(s) of the sub-creditors. If section 106 and section 68 are to stand together, which they must, then, the interpretation of section 68 are to stand together, which they must, then the interpretation of section 68 has to be in such a way that it does not make section 106 redundant. Hence, the harmonious construction of section 106 of the Evidence Act and section 68 of the Income- tax Act will be that though apart from establishing the identity of the creditor, the assessee must establish the genuineness of the transaction as well as the creditworthiness of his creditor, the burden of the assessee to prove the genuineness of the transactions as well as the creditworthiness of the creditor must remain confined to the transactions, which have taken place between the assessee and the creditor. What follows, as a corollary, is that it is not the burden of the assessee to prove the genuineness of the transactions between his creditor and sub-creditors nor is it the burden of the assessee to prove that the sub-creditor had the creditworthiness to advance the cash credit to the creditor from whom the cash credit has been. eventually, received by the assessee. It, therefore, further logically follows that the creditor's creditworthiness has to be Judged vis-a-vis the transactions, which have taken

place between the assessee and the creditor, and it is not the business of the assessee to find out the source of money of his creditor or of the genuineness of the transactions, which took between the creditor and sub-creditor and/or creditworthiness of the sub-creditors, for, these aspects may not be within the special knowledge of the assessee. "

" ... If a creditor has, by any undisclosed source, a particular amount of money in the bank, there is no limitation under the law on the part of the assessee to obtain such amount of money or part thereof from the creditor, by way of cheque in the form of loan and in such a case, if the creditor fails to satisfy as to how he had actually received the said amount and happened to keep the same in the bank, the said amount cannot be treated as income of the assessee from undisclosed source. In other words, the genuineness as well as the creditworthiness of a creditor have to be adjudged vis-a-vis the transactions, which he has with the assessee. The reason why we have formed the opinion that it is not the business of the assessee to find out the actual source or sources from where the creditor has accumulated the amount, which he advances, as loan, to the assessee is that so far as an assessee is concerned, he has to prove the genuineness of the transaction and the creditworthiness of the creditor vis-a-vis the transactions which had taken place between the assessee and the creditor and not between the creditor and the sub-creditors, for, it is not even required under the law for the assessee to try to find out as to what sources from where the creditor had received the amount, his special knowledge under section 106 of the Evidence Act may very well remain confined only to the transactions, which he had' with the creditor and he may not know what transaction(s) had taken place between his creditor and the sub-creditor... "

"In other words, though under section 68 an Assessing Officer is free to show, with the help of the inquiry conducted by him into the transactions, which have taken place between the creditor and the sub-creditor, that the transaction between the two were not genuine and that the sub-creditor had no creditworthiness, it will not necessarily mean that the loan advanced by the sub-creditor to the creditor was income of the assessee from undisclosed source unless there is evidence, direct or circumstantial, to show that the amount which has been advanced by the sub-creditor to the creditor, had actually been received by the sub-creditor from the assessee"

"Keeping in view the above position of law, when we turn to the factual matrix of the present case, we find that so far as the appellant is concerned, he has established the identity of the creditors, namely, Nemichand Nahata and Sons (HUF) and Pawan Kumar Agarwalla. The appellant had also shown, in accordance with the burden, which rested on him under section 106 of the Evidence Act, that the said amounts had been received by him by way of cheques from the creditors aforementioned. In fact the fact that the assessee had received the said amounts by way of cheques was not in dispute. Once the assessee had established that he had received the said amounts from the

creditors aforementioned by way of cheques, the assessee must be taken to have proved that the creditor had the creditworthiness to advance the loans. Thereafter the burden had shifted to the Assessing Officer to prove the contrary. On mere failure on the part of the creditors to show that their sub-creditors had creditworthiness to advance the said loan amounts to the assessee, such failure, as a corollary, could not have been and ought not to have been, under the law, treated as the income from the undisclosed sources of the assessee himself, when there was neither direct nor circumstantial evidence on record that the said loan amounts actually belonged to, or were owned by, the assessee. Viewed from this angle, we have no hesitation in holding that in the case at hand, the Assessing Officer had failed to show that the amounts, which had come to the hands of the creditors from the hands of the sub-creditors, had actually been received by the sub-creditors from the assessee. In the absence of any such evidence on record, the Assessing Officer could not have treated the said amounts as income derived by the appellant from undisclosed sources. The learned Tribunal seriously fell into error in treating the said amounts as income derived by the appellant from undisclosed sources merely on the failure of the sub-creditors to prove their creditworthiness.”

14. Further, in the case of CIT v. S. Kamaljeet Singh [2005] 147 Taxman 18(All.) their lordships, on the issue of discharge of assessee's onus in relation to a cash credit appearing in his books of account, has observed and held as under:-

"4. The Tribunal has recorded a finding that the assessee has discharged the onus which was on him to explain the nature and source of cash credit in question. The assessee discharged the onus by placing (i) confirmation letters of the cash creditors; (ii) their affidavits; (iii) their full addresses and GIR numbers and permanent account numbers. It has found that the assessee's burden stood discharged and so, no addition to his total income on account of cash credit was called for. In view of this finding, we find that the Tribunal was right in reversing the order of the AA C, setting aside the assessment order.”

15. We also take note of the decision of the Hon'ble High Court, Calcutta in the case of S.K. Bothra & Sons, HUF v. Income-tax Officer, Ward- 46(3), Kolkata 347 ITR 347 wherein the Court held as follows:

"15. It is now a settled law that while considering the question whether the alleged loan taken by the assessee was a genuine transaction, the initial onus is always upon the assessee and if no explanation is given or the explanation given by the appellant is not satisfactory, the Assessing Officer can disbelieve the alleged transaction of loan. But the law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to assessee.

16. In the case before us, the appellant by producing the loan-confirmation-certificates signed by the creditors, disclosing their permanent account numbers and address and further indicating that the loan was taken by account payee cheques, no doubt, prima

facie, discharged the initial burden and those materials disclosed by the assessee prompted the Assessing Officer to enquire through the Inspector to verify the statements.”

16. In a case where the issue was whether the assessee availed cash credit as against future sale of product, the AO issued summons to the creditors who did not turn up before him, so AO disbelieved the existence of creditors and saddled the addition, which was overturned by Ld. CIT(A). However, the Tribunal reversed the decision of the Ld. CIT(A) and upheld the AO's decision, which action of Tribunal was challenged by the Hon'ble High Court, Calcutta in the case of Crystal Networks (P.) Ltd. v. Commissioner of Income-tax 353 ITR 171 wherein the Tribunal's decision was overturned and decision of Ld. CIT(A) upheld and the Hon'ble High Court has held that when the basic evidences are on record the mere failure of the creditor to appear cannot be basis to make addition. The court held as follows:

8. Assailing the said judgment of the learned Tribunal learned counsel for the appellant submits that Income-tax Officer did not consider the material evidence showing the creditworthiness and also other documents, viz., confirmatory statements of the persons, of having advanced cash amount as against the supply of bidis. These evidence were duly considered by the Commissioner of Income-tax (Appeals). Therefore, the failure of the person to turn up pursuant to the summons issued to any witness is immaterial when the material documents made available, should have been accepted and indeed in subsequent year the same explanation was accepted by the Income-tax Officer. He further contended that when the Tribunal has relied on the entire judgment of the Commissioner of Income-tax (Appeals), therefore, it was not proper to take up some portion of the judgment of the Commissioner of Income-tax (Appeals) and to ignore the other portion of the same. The judicial propriety and fairness demands that the entire judgment both favourable and unfavourable should have been considered. By not doing so the Tribunal committed grave error in law in upsetting the judgment in the order of the Commissioner of Income-tax (Appeals).

9. In this connection he has drawn our attention to a decision of the Supreme Court in the case of Udhavdas Kewalram v. CIT [1967] 66 ITR 462. In this judgment it is noticed that the Supreme Court as proposition of law held that the Tribunal must In deciding an appeal, consider with due care, all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner in the light of the evidence and the relevant law.

10. We find considerable force of the submissions of the learned counsel for the appellant that the Tribunal has merely noticed that since the summons issued before assessment returned unserved and no one came forward to prove. Therefore, it shall be assumed that the assessee failed to prove the existence of the creditors or for that matter the creditworthiness. As rightly pointed out by the learned counsel that the Commissioner of Income-tax (Appeals) has taken the trouble of examining of all other materials and documents, viz., confirmatory statements, invoices, challans and vouchers showing supply of bidis as against the advance. Therefore, the attendance of the witnesses pursuant to the summons issued, in our view, is not important. The

important is to prove as to whether the said cash credit was received as against the future sale of the product of the assessee or not. When it was found by the Commissioner of Income-tax (Appeals) on facts having examined the documents that the advance given by the creditors have been established the Tribunal should not have ignored this -fact finding. Indeed the Tribunal did not really touch the aforesaid fact finding of the Commissioner of Income-tax (Appeals) as rightly pointed out by the learned counsel. The Supreme Court has already stated as to what should be the duty of the learned Tribunal to decide in this situation. In the said judgment noted by us at page 464, the Supreme Court has observed as follows:

"The Income-tax Appellate Tribunal performs a judicial function under the Indian Income-tax Act; it is invested with authority to determine finally all questions of fact. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all the contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. "

11. The Tribunal must, in deciding an appeal, consider with due care all the material facts and record its finding on all contentions raised by the assessee and the Commissioner, in the light of the evidence and the relevant law. It is also ruled in the said judgment at page 465 that if the Tribunal does not discharge the duty in the manner as above then it shall be assumed the judgment of the Tribunal suffers from manifest infirmity.

12. Taking inspiration from the Supreme Court observations we are constrained to hold in this matter that the Tribunal has not adjudicated upon the case of the assessee in the light of the evidence as found by the Commissioner of Income-tax (Appeals). We also found no single word has been spared to up set the fact finding of the Commissioner of Income-tax (Appeals) that there are materials to show the cash credit was received from various persons and supply as against cash credit also made.

13. Hence, the judgment and order of the Tribunal is not sustainable. Accordingly, the same is set aside. We restore the judgment and order of the Commissioner of Income-tax (Appeals). The appeal is allowed.

17. When a question as to the creditworthiness of a creditor is to be adjudicated and if the creditor is an Income Tax assessee, it is now well settled by the decision of the Calcutta High Court that the creditworthiness of the creditor cannot be disputed by the AO of the assessee but the AO of the creditor. In this regards our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the COMMISSIONER OF INCOME TAX, KOLKA TA-III Versus DATAWARE PRIVATE LIMITED ITAT No. 263 of 2011 Date: 21st September, 2011 wherein the Court held as follows:

"In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness" of the transaction and whether such transaction has been accepted by the Assessing officer of

the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as genuine when the identity of the creditor and the genuineness" of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax (Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities."

18. Our attention was also drawn to the decision of the Hon'ble Supreme Court while dismissing SLP in the case of Lovely Exports as has been reported as judgment delivered by the CTR at 216 CTR 295:

"Can the amount of share money be regarded as undisclosed income under section 68 of the Income tax Act, 1961? We find no merit in this special leave petition for the simple reason that if the share application money is received by the assessee- company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

19. Our attention was also drawn to the decision of the Hon'ble Calcutta High Court while relying on the case of Lovely Exports, in the appeal of COMMISSIONER OF INCOME TAX, KOLKATA-IV Vs ROSEBERRY MERCANTILE (P) LTD., ITAT No. 241 of 2010 dated 10- 01-2011 has held:

"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT (A) ought to have held that the assessee had not established the genuineness of the transaction. "

It appears from the record that in the assessment proceedings it was noticed that the assessee company during the year under consideration had brought Rs. 4, 00, 000/- and Rs.20,00,000/- towards share capital and share premium respectively amounting to Rs.24,00, 000/- from four shareholders being private limited companies. The Assessing Officer on his part called for the details from the assessee and also from the share applicants and analyzed the facts and ultimately observed certain abnormal features, which were mentioned in the assessment order. The Assessing Officer, therefore, concluded that nature and source of such money was questionable and evidence produced was unsatisfactory. Consequently, the Assessing Officer invoked the provisions under Section 68/69 of the Income Tax Act and made addition of Rs.24,00,000/-.

On appeal the Learned CIT (A) by following the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd., reported in (2008) 216 CTR 195 allowed the appeal by holding -that share capital/premium of Rs. 24,00,000/- received from the

investors was not liable to be treated under Section 68 as unexplained credits and it should not be taxed in the hands of the appellant company.

As indicated earlier, the Tribunal below dismissed the appeal filed by the Revenue.

After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the case of Cl. T. vs. M/s. Lovely Exports Pvt. Ltd. [supra], we are at one with the Tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

20. Our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the case of Commissioner Of Income Tax vs M/s. Nishan Indo Commerce Ltd dated 2 December, 2013 in INCOME TAX APPEAL NO.52 OF 2001 wherein the Court held as follows:

“The Assessing Officer was of the view that the increase in share capital by RS.52,03,500/- was nothing but the introduction of the assessee's own undisclosed funds/income into the books of accounts of the assessee company. The Assessing Officer accordingly treated the investment as unexplained credit under Section 68 of the Income Tax Act and added the same to the income of the assessee.

Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) being the First Appellate Authority and contended that the Assessing Officer had no material to show that the share capital was the income of the assessee company and as such the addition made by the Assessing Officer under Section 68 of the Act was wrong.

The learned Commissioner of Income Tax (Appeals) after hearing the department and the Assessee Company deleted the addition of Rs. 52, 03,500/- to the income of the assessee company during the Assessment Year in question. The learned Commissioner of Income Tax Appeals found that there were as many as 2155 allottees, whose names, addresses and respective shares allocation had been disclosed.

The Commissioner of Income Tax Appeals, further found that the Assessee Company received the applications through bankers to the issue, who had been appointed under the guidelines of the Stock Exchange and the Assessee Company had been allotted shares on the basis of allotment approved by the Stock Exchange. The Assessee Company had duly filed the return of allotment with the Registrar of Companies, giving complete particulars of the allottees.

The Commissioner of Income Tax (Appeals) found that inquires had confirmed the existence of most of the shareholders at the addresses intimated to the Assessing Officer, but the Assessing Officer took the view that their investment in the Assessee Company was not genuine, on the basis of some extraneous reasons. The Commissioner of Income Tax (Appeals) took note of the observation of the Assessing Officer that enquiry conducted by the Income Tax Inspector had revealed that nine persons making applications for 900 shares were not available at the given address and rightly concluded that the total share capital issued by the Assessee Company could not be added as unexplained cash credit under 'Section 68 of the Income Tax Act. Moreover, if the nature and source of investment by any shareholder, in shares of the

Assessee Company remained unexplained, liability could not be foisted on the company. The concerned shareholders would have to explain the source of their fund.

The learned Commissioner on considering the submissions of the, respective parties and considering the materials, found that the Assessing Officer had applied the provisions of Section 68 of the Income Tax Act arbitrarily and illegally and in any case without giving the assessee adequate opportunity of representation and/or hearing.

Learned Tribunal agreed with the factual findings of the learned Commissioner and accordingly the learned Tribunal dismissed the appeal of the Revenue and affirmed the decision of the learned Commissioner.

Mr. Dutta appearing on behalf of the petitioners cited judgment of the Division Bench of this Court in Commissioner of Income Tax Vs. Ruby Traders and Exporters Limited reported in 236 (2003) ITR 3000 where a Division Bench of this Court held that when Section 68 is resorted to, it is incumbent on the assessee company to prove and establish the identity of the subscribers, their credit worthiness and the genuineness of the transaction.

The aforesaid judgment was rendered in the context of the factual background of the aforesaid case where, despite several opportunities being given to the assessee, nothing was disclosed about the identity of the shareholders. In the instant case, the assessee disclosed the identity and address and particulars of share allocation of the shareholders. It was also found on the facts that all the shareholders were in existence. Only nine shareholders subscribing to about 900 shares out of 6, 12,000 shares were not found available at their addresses, and that too, in course of assessment proceedings in the year 1994, i.e., almost 3 years after the allotment.

By an order dated 2nd May, 2001, this Court admitted the appeal on three questions which essentially centre around the question of whether the Appellate Commissioner erred in law in deleting the addition of Rs. 52, 03, 500/- to the income of the assessee as made by the Assessing Officer. We are of the view that there is no question of law involved in this appeal far less any substantial question of law.

The learned Tribunal has concurred with the learned Commissioner on facts and found that there were materials to show that the assessee had disclosed the particulars of the shareholders. The factual findings cannot be interfered with, in appeal. We are of the view that once the identity and other relevant particulars of shareholders are disclosed, it is for those shareholders to explain the source of their funds and not for the assessee company to show wherefrom these shareholders obtained funds.”

21. Further, our attention was drawn to the decision of the Hon'ble High Court, Calcutta in the case of Commissioner of Income Tax vs M/s. Leonard Commercial (P) Ltd on 13 June, 2011 in ITAT NO 114 of 2011 wherein the Court held as follows:

“The only question raised in this appeal is whether the Commissioner of Income-tax (Appeals) and the Tribunal below erred in law in deleting the addition of Rs.8,52,000/-, Rs. 91,50,000/- and Rs. 13,00,000/- made by the Assessing Officer on account of share capital, share application money and investment in HTCCL respectively.

After hearing Md. Nizamuddin, learned Advocate appearing on behalf of the appellant and after going through the materials on record, we find that all such application

money were received by the assessee by way of account payee cheques and the assessee also disclosed the complete list of shareholders with their complete addresses and GIR Numbers for the relevant assessment years in which share application was contributed. It further appears that all the payments were made by the applicants by account payee cheques.

It appears from the Assessing Officers order that his grievance was that the assessee was not willing to produce the parties who had allegedly advanced the fund.

In our opinion, both the Commissioner of Income-tax (Appeals) and the Tribunal below were justified in holding that after disclosure of the full particulars indicated above, the initial onus of the assessee was shifted and it was the duty of the Assessing Officer to enquire whether those particulars were correct or not and if the Assessing Officer was of the view that the particulars supplied were insufficient to detect the real share applicants, to ask for further particulars.

The Assessing Officer has not adopted either of the aforesaid courses but has simply blamed the assessee for not producing those share applicants.

In our view, in the case before us so long the Assessing Officer was unable to arrive at a finding that the particulars given by the assessee were false, there was no scope of adding those money under section 68 of the Income- tax Act and the Tribunal below rightly held that the onus was validly discharged.

We, thus, find that both the authorities below, on consideration of the materials on record, rightly applied the correct law which are required to be applied in the facts of the present case and, thus, we do not find any reason to interfere with the concurrent findings of fact based on materials on record.

The appeal is, thus, devoid of any substance and is dismissed summarily as it does not involve any substantial question of law.

22. Coming to the merit of the action of Assessing Officer to accept thirty six (36) share applicants' identity, creditworthiness and genuineness, we note that pursuant to the notices/queries of AO during the assessment proceedings, the assessee / appellant company had filed written explanation with evidence and documents to substantiate the credit entry of amount raised by it as share capital as per the requirement of section 68 of the Act on facts or law on facts or law by giving all the details of each investment company / share applicants. We note that these documents have been placed before us in paper book I pages 17-55. Thereafter, the AO issued notices u/s 131/133(6) of the Act to all the thirty eight (38) share subscribers, pursuant to which all the thirty eight (38) share subscribers replied directly to AO and filed all evidence and documents to substantiate their respective investment of amount in the assessee company which included confirmation of investment, copy of bank statement, copy

of balance sheet reflecting investment made in assessee company, copy of ITR's, copy of allotment letters, postal address of investor companies, copy of share certificates, copy of form no. 2 filed with ROC, the memorandum of articles of association of the investor companies etc. We note that these documents have been placed before us in voluminous paper book II containing 843 pages. We also note that the Assessing Officer had summoned by issuing 131 notice Shri Manish Kumar Dubey who was the Director of assessee company during AY 2012-13 and had recorded his statement on oath u/s 131 of the Act and the AO after verification of the documents submitted before him has accepted the claim of the assessee company in respect of the share capital raised to the tune of Rs. 20.54 crores. Since Assessing Officer was not satisfied in respect of share capital raised from M/s. Omeshwar Tracom Pvt. Ltd. and M/s. Harmony Vanijya Pvt. Ltd. which had invested Rs. 54 lakhs and Rs. 30 lakhs respectively, the Assessing Officer made addition of Rs.84 lakhs u/s 68 of the Act against the assessee.

23. On appeal, the Id. CIT(A) after fixing the case (6) six times on the 6th occasion (31.03.2017) finding that the assessee did not respond / appear before him, enhanced the addition by Rs. 20.54 crores. The main grievance raised by the Id. A.R is that the Id. CIT(A) who enjoys co-terminus powers as that of the Assessing Officer had any doubts about the investigative skills of AO, then he ought to have exercised his powers available u/s 250(4) of the Act and should have summoned all the directors of the 38 investor companies by issuing summons u/s 131 and could have independently called for details by issuing notice u/s 133(6) of the Act which unfortunately the Id. CIT(A) has not bothered to do and after having gone through the documents collected by the AO in the assessment folder which contained all the documents referred in paper book II (pages 843) has doubted the genuineness of the share capital raised by the assessee company and has enhanced the addition which according to the Id. A.R is arbitrary and whimsical. We find force in the arguments of the Id. A.R that even if the assessee did not appear for whatever reason it had given in the Affidavit for not receiving the notice, the Id. CIT(A) had enough power to independently examine the impugned assessment order placed before him. According to us, if he [Ld. CIT(A)]

had any doubt / suspicion in respect of any share applicant or the fund received by the assessee in its books, the Id. CIT(A) ought to have exercised his co-terminus powers by issuing summons / notices and should have discovered the truth. We note that other than expressing his dissatisfaction about the way the enquiry has been conducted by the AO, the Id. CIT(A) has not neither brought out any action/omission on the part of AO in his enquiry nor any discrepancies in the books of accounts of the assessee company, or commented adversely against the veracity of any documents produced / filed by the investor companies or in respect of the investment made by them and the source which they have disclosed, so the dissatisfaction expressed by the Id CIT(A) is based on suspicion, which cannot be accepted. We note that the Assessing Officer had issued u/s 133(6) which were duly served upon all the thirty eight (38) share applicants and pursuant to the notices issued to the share applicants, they all had replied to AO along with the documents to substantiate their identity, creditworthiness and genuineness of the share transaction with the assessee company. All the investor companies (38 companies) have confirmed the investment made in assessee company. We note that the investment made by the share applicants were duly recorded in their respective books of account of the investor / share applicants as well as that of the assessee company. The investor companies have explained the source of investment with reference to the books of accounts. Bank account details show that the investor companies have transferred the amount through banking channel and on close scrutiny of it we find no cash deposit in the accounts of the investor companies. We also note that the director of the assessee company when summoned by the Assessing Officer u/s 131 of the Act presented himself before him and his statement was taken under oath wherein he expressed his confidence of producing the directors of 36 investor / share applicants companies. The Assessing Officer after verifying the documents and other documents like PAN details, ITR details, ROC details, balance sheet and bank account details etc. was satisfied with the explanation given by the assessee company in respect of money credited in its books of account of the assessee company and did not draw any adverse inference against the assessee company and being satisfied accepted the share capital raised by the assessee to the tune of Rs. 20.54 crores. This view of Assessing Officer is in consonance with the ratio decidendi of judicial

precedents laid by Hon'ble Supreme Court and Hon'ble High Courts. However, we note that the Assessing Officer however was not satisfied with the share capital raised by the assessee from M/s. Omeshwar Tracom Pvt. Ltd. Rs.54 lakhs and M/s. Harmony Vanijya Pvt. Ltd. Rs.30 lakhs and thus made the addition of Rs. 84 lakhs against the assessee u/s 68 of the Act.

24. We note that it is not the case of the Ld. CIT(A) that on scrutiny of bank statement of share applicants he came to know that there was cash deposit in the investor companies just before they transferred the share capital and premium to assessee company. And it is not the case of the Ld. CIT(A) that the identity, creditworthiness and genuineness of the transaction found to have been accepted by the AO during the assessment proceedings is based on wrong appreciation of evidence or based on bogus/forged documents. We have examined all the evidences furnished to the AO during the assessment proceedings and which were kept in the assessment folder of AO, which the Ld. CIT(A) has acknowledged to have gone through while adjudicating the appeal before him in respect of thirty eight(38) companies. All the investor companies admitted to AO that they have made investment in the share capital of the investor companies by filing confirmation letters. From the documents produced / books of account the transaction of investment in the appellant company were found recorded. The investor companies have explained the source of investment. The entire amount of share capital has been received through banking channel. All the 38 companies have their postal addresses which are in the public domain. The notices issued by AO u/s 133(6) of the Act have been duly served upon them and complied with. No involvement of cash have been found any way. All the thirty eight (38) share applicant companies are income tax assessee's and have their respective Permanent Account Number (PAN) and CIN number. All the 38 companies have produced audited balance sheet and in such balance sheet they have declared the investment made by them in the appellant company. We note that the following details from PB-II, page 1-843 of the thirty eight (38) share holders to establish the identity of each share subscribers are as under;

Sl. No.	Name of Allottee	PAN	ITR filed for AY 2012-13
1.	Aditi Vintrade Pvt Ltd	AAJCA1785C	Yes
2.	Advance Shoppers Pvt Ltd	AAKCA0310Q	Yes
3.	Akshara Commosales Pvt Ltd	AAJCA1782F	Yes
4.	Alexa Finvest Consultant Pvt Ltd	AAJCA7011R	Yes
5.	Alexa Vintrade Pvt Ltd	AAJCA1863F	Yes
6.	Anjali Suppliers Pvt Ltd	AAJCA1784D	Yes
7.	Bluesky Merchants Pvt Ltd	AAECB6089K	Yes
8.	Circular Vintrade Pvt Ltd	AAECC6385P	Yes
9.	Clarity Commotrade Pvt Ltd	AAECC4897Q	Yes
10.	Eagle Dealtrade Pvt Ltd	AACCE6122G	Yes
11.	Fairy Dealcom Pvt Ltd	AABCF5305K	Yes
12.	Festino Dealtrade Pvt Ltd	AABCF5278R	Yes
13.	Fraternity Vanijya Pvt Ltd	AABCF8814F	Yes
14.	Gyanika Merchants Pvt Ltd	AACCG5504G	Yes
15.	Harmony Vanijya Pvt Ltd	AACCH6951G	Yes
16.	Hippolyte Tradecom Pvt Ltd	AACCH7122H	Yes
17.	Jaganmata Sales Pvt Ltd	AAC CJ5212E	Yes
18.	Jagriti Commodities Pvt Ltd	AABCJ7810P	Yes
19.	Jai Matadi Commosales Pvt Ltd	AAC CJ5211H	Yes
20.	Joyful Tie up Pvt Ltd	AAC CJ7267K	Yes
21.	Jubilee Vincom Pvt Ltd	AAC CJ6266E	Yes
22.	Lighthouse Merchants Pvt Ltd	AAC CL1461F	Yes
23.	Magnetic Barter Pvt Ltd	AAHCM5948D	Yes
24.	Matarani Consultancy Pvt Ltd	AAHCM3465D	Yes
25.	Mindpower Exports Pvt Ltd	AAHCM5756D	Yes
26.	Nishakar Tracom Pvt Ltd	AADCN5112G	Yes
27.	Omeshwar Tracom Pvt Ltd	AABC04186D	Yes
28.	Paramatma Vinimay Pvt Ltd	AAFCP1334G	Yes
29.	Pramodanah Vinimay Pvt Ltd	AAGCP3907L	Yes
30.	Ragini Creations Pvt Ltd	AAF CR5328C	Yes
31.	Samvritah Vanijya Pvt Ltd	AAQCS8669G	Yes
32.	Sarawar Projects Advisory Pvt Ltd	AAQCS1529M	Yes
33.	Savile distributors Pvt Ltd	AAICS7476H	Yes
34.	Shambhunath Barter Pvt Ltd	AAQCS8672M	Yes
35.	Sincere Vintrade Pvt Ltd	AAQCS0605L	Yes
36.	Sneha Vinimay Pvt Ltd	AAQCS7675G	Yes
37.	Tassel Vincom Pvt Ltd	AAECT0667P	Yes
38.	Violet Advisory Pvt Ltd	AADCV7386C	Yes

25. A perusal of the details given in the chart above there can be no doubt about the thirty eight share subscribers' identity. Coming to the creditworthiness of these parties, our attention was drawn to the balance sheet of all the thirty eight (38) shareholders (Paper Book - 2) which was filed before the AO and it is noted that their source of investment and net-worth as per balance sheet as on 31-03-2012 as well as the sum invested by them in the assessee company is discerned as under;

Sl. No.	Name of the share applicant Private Ltd company	Bank Statement (Paper Book-2)	Source of Investment (paper book-2)	Capital. and Reserve (Rs.) as on 31.03.2013	Relevant page No. showing capital (PB-2)	Sum invested in assessee company (Rs.)
1	Aditi Vintrade P.Ltd	8	10	21,90,00,232	17	67,00,000
2.	Advance Shoppers Pvt Ltd.	33	34	20,56,00,233	40	50,00,000
3.	Akshara Commosales Pvt. Ltd.	52	48	22,70,00,383	60	50,00,000
4.	Alexa Finvest Consultant Pvt. Ltd.	75	74	18,66,00.351	82	48,00,000
5.	Alexa VintradePvt Ltd			21,78,02,424	101	1,45,00,000
6.	Anjali Suppliers Pvt Ltd	114-115	118	27,63,00,585	126	90,00,000
7.	Bluesky Merchants Pvt Ltd.	147-148	150	23,09,01,793	157	1,05,00,000
8.	Circular VintradePvt Ltd	172	173	19,10,00,200	180	40,00,000
9.	Clarity CommotradePvt Ltd.	194	193	19,77,00,277	201	37,00,000
10.	Eagle DealtradePvt Ltd	214	213	24,61,02,003	219	40,00,000
11.	Fairy DealcomPvt Ltd	234	235	13,67,05,281	241	19,00,000
12.	FestinoDealtradePvt Ltd	262	261	9,76,07,952	273	6,00,000
13.	Fraternity VanijyaPvt Ltd	283	284	19,10,00,173	295	46,00,000
14.	Gyanika Merchants Pvt Ltd.	334	332	19,40,50,184	340	62,00,000
15.	Harmony VanijyaPvt Ltd	306	307	23,43,01,174	316	30,00,000
16.	HippolyteTradecomPvt Ltd.	352	351	15,40,50,397	362	35,00,000
17.	Jaganmata Sales Pvt Ltd	373	372	25,40,00,570	382	50,00,000
18.	Jagriti Commodities Pvt Ltd.	396	394	20,12,94,706	402	15,00,000
19.	Jai Matadi Commosales Ltd.	415	417	19,10,00,256	425	40,00,000
20.	Joyful Tie up Pvt Ltd	440	439	17,31,50,231	448	60,00,000
21.	Jubilee VincomPvt Ltd	461-462	455	26,37,55,943	470	1,15,00,000

22.	Lighthouse Merchants Pvt. Ltd.	483	486	20,72,00,225	493	1,18,00,000
23.	Magnetic Barter Pvt Ltd	507	509	15,30,00,250	516	45,00,000
24.	Matarani Consultancy Pvt Ltd.	530	529	17,88,00,265	537	20,00,000
25.	Mindpower Exports Pvt. Ltd.	546	549	17,94,00,266	559	40,00,000
26.	NishakarTracomPvt Ltd.	569-570	571	10,80,04,799	580	83,00,000
27.	OmeshwarTracom Ltd. ltd.	590	589	15,19,00,311	597	54,00,000
28.	ParamatmaVinimay Pvt. Ltd.	615-616	614	25,68,00,375	623	39,00,000
29.	PramodanahVinimay Pvt. Ltd.	634	647	8,23,00,470	642	4,00,000
30.	Ragini Creations Pvt. Ltd.	656	657	12,13,00,521	663	40,00,000
31.	SamvritahVanijya Pvt. Ltd.	675	677	26,31,81,792	683	95,00,000
32.	Saraswar Projects Advisory Pvt. Ltd.	696-697	695	17,33,00,366	705	85,00,000
33.	Savile distributors Pvt. Ltd.	719	720	14,86,47,378	727	45,00,000
34.	Sambhunath Barter Pvt. Ltd.	742	741	19,28,50,188	749	45,00,000
35.	Sincere Vintrade Pvt. Ltd.	763-764	762	23,93,01,631	772	1,50,00,000
36.	SnehaVinimay Pvt. Ltd.	787	786	12,79,88,731	793	45,00,000
37.	Tassel Vincom Pvt. Ltd.	808	807	16,73,50,260	816	40,00,000
38.	Violet Advisory Pvt. Ltd.	830	829	16,24,00,233	837	40,00,000
						21,38,00,000

So, from a perusal of the above chart, it is noted that all the share subscriber companies have sufficient Capital / networth to invest in the share capital of the assessee company. Moreover, the share subscribers have also filed before the Assessing Officer the source from which they subscribed to shares of assessee except M/s Alexa Vintrade Pvt. Ltd. (though not required as per law in force for AY 2012-13). All of the share subscribers have filed their responses, bank statement, audited balance sheet, certificate of ITR etc. Thus, the assessee had discharged the onus on it about the creditworthiness of the shareholders. It is also noted that the source of the investments has been clearly brought to the notice of the Assessing Officer during assessment proceedings. Further, the bank statements of all the shareholders as well as that of the assessee were filed before the Assessing Officer, which revealed that the

share capital and premium have been subscribed by them through normal banking channel (NEFT or cheque) which goes on to show that the assessee has discharged the onus in respect of genuineness of the transaction. Based on the documents and materials called for by the Assessing Officer who accepted the same after verification is an act of enquiry and the view taken by the Assessing Officer in the light of the material / documents is a probable view and is in line with plethora of case laws discussed (supra). We also note that though these materials were available in the assessment folder, the Id. CIT(A) has neither found any infirmity about the documents furnished by assessee or the share applicants nor had any information or material in his possession to challenge the veracity of the documents referred to above. So, the Ld. CIT(A)'s omission to carry out any enquiry to show that the AO's enquiry was wrong, his opinion casting aspersions on the AO's action based on suspicious and conjectures cannot be accepted and so we reverse his actions of enhancement made and restore the assessment order. For completeness, we would like to examine / discuss about each share subscribers totaling thirty eight based on the documents filed by the share applicant companies before Assessing Officer infra:-

I. M/s Aditi Vintrade Pvt. Ltd.: On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 1-23 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAJCA1785C** and its Net-worth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.21,90,00,232/- (PB-2 page 17) and the investment made in the assessee-company including the share premium comes to only Rs.67,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.27,00,000/- on 16.12.2011 through cheque and deposited an amount of Rs.40,00,000/- on 17.12.2011 through cheque (PB-2, Page-8). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 1-23) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing

its PAN and Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from the source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there was no cash deposit in its Bank A/c before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

II. **M/s Advance Shoppers Pvt. Ltd. :** On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 24-47 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAKCA 0310 Q** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.20,56,60,233/- (PB-2 page 40) and the investment made in the assessee-company including the share premium comes to Rs.50,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs. 50,00,000/- on 25.01.2012 through cheque (PB-2, Page-33). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 24-47) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share

applicants by adducing its PAN and Income-Tax Return. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there was no cash deposit in its Bank A/c before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

III. M/s AksharaCommosales Pvt. Ltd. :On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 48-67 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAJCA 1782 F** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.22,70,00,383/- (PB-2 page 60) and the investment made in the assessee-company including the share premium comes to Rs.50,00,000/-. The payment has been made by this entity to assessee through banking channels and deposited an amount of Rs.50,00,000/- on 14.01.2012 through cheque (PB-2 Page-52). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 48-67) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing

its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

IV. M/s Alexa Finvest Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 68-88 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAFCA 7011 R** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.18,66,00,351/- (PB-2 page 82) and the investment made in the assessee-company including the share premium comes to Rs.48,00,000/-. The payment has been made by this entity to assessee through banking channels and deposited an amount of Rs.48,00,000/- on 19.01.2012 through cheque (PB-2 Page-75). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 68-88) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing

its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

V. M/s Alexa Vintrade Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents are placed at page 89-110 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAJCA 1863 F** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.21,78,02,424/- (PB-2 page 101) and the investment made in the assessee-company including the share premium comes to Rs.1,45,00,000/-. The payment has been made through banking channels and deposit amount of Rs.55,00,000/- took place on 22.12.2011 by NEFT, deposit amount of Rs. 35,00,000/- took place on 26.12.2011 through NEFT and deposit amount of Rs. 55,00,000/- took place on 17.01.2012 through NEFT (PB-2, Page 49-50). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 89-110) and thus it is

noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN and Income-Tax Return. This share applicant has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel. The share applicant had furnished the source of investment made in the assessee-company after getting summon issued under section 131 of the Act. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

VI. M/s Anjali Suppliers Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 111-133 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAJCA 1784 D** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.22,70,00,383/- (PB-2 page 60) and the investment made in the assessee-company including the share premium comes to Rs.50,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.50,00,000/- on 14.01.2012 through cheque (PB-2, Page 114-115). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 48-67) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting

summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

VII. M/s Bluesky Merchants Pvt. Ltd. : On a perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 134-163 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAECB 6089 K** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.23,09,01,793/- (PB-2 page 157) and the investment made in the assessee-company including the share premium comes to Rs.1,05,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.38,00,000/- on 30.11.2011 through cheque and deposited an amount of Rs.30,00,000/- on 05.12.2011 through cheque and deposited an amount of Rs. 37,00,000/- on 07.1.22011 through cheque (PB-2, Page 147-148). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 134-163) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its

onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

VII. M/s Circular Vintrade Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 164-186 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAECC 6385 P** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.19,10,00,200/- (PB-2 page 180) and the investment made in the assessee-company including the share premium comes to Rs.40,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.40,00,000/- on 01.02.2012 (PB-2, Page 172). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 164-186) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to

prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

IX. M/s Clarity Commotrade Pvt. Ltd.: On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 187-206 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAECC 4897 Q** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.19,77,00,277/- (PB-2 page 201) and the investment made in the assessee-company including the share premium comes to Rs..37,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited a n amount of Rs.37,00,000/- on 22.12.2011 through cheque (PB-2, Page 194) . This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 187-206) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged

its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

X. M/s Eagle Dealtrade Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 207-226 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCE 6122 G** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.24,61,02,003/- (PB-2 page 219) and the investment made in the assessee-company including the share premium comes to Rs.40,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.40,00,000/- on 27.12.2011 through cheque (PB-2, Page 214). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 207-226) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to

prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XI. M/s Fairy Dealcom Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 227-257 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AABCF 5305 K** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.13,67,05,281/- (PB-2 page 241) and the investment made in the assessee-company including the share premium comes to Rs.19,00,000/-. The assessee gave an unsecured loan of Rs. 21,00,000/- to M/s Fairy Dealcom Pvt. Ltd. on 29.11.2011 through cheque which was adjusted on 20.12.2011. The payment for share application money was made by this party through banking channels and deposit amount of Rs. 40,00,000/- (21,00,000+ 19,00,000/-) took place on 20.12.2011 through cheque (PB-2, Page 234). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 227-257) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the

share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XII. M/s Festino Dealtrade Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 258-279 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AABCF 5278 R** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.9,76,07,952/- (PB-2 page 273) and the investment made in the assessee-company including the share premium comes to Rs.6,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs..6,00,000/- on 25.01.2012 through cheque (PB-2, Page 262). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 258-279) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the

share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XIII. M/s Fraternity Vanijya Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 280-310 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AABCF 8814 F** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.19,10,00,173/- (PB-2 page 295) and the investment made in the assessee-company including the share premium comes to Rs.46,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.46,00,000/- on 07.03.2012 through cheque (PB-2, Page 283). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 280-301) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement

shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XIV. M/s Gyanika Merchants Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 324-346 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCG 5504 G** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.19,40,50,184/- (PB-2 page 340) and the investment made in the assessee-company including the share premium comes to Rs.62,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.62,00,000/- on 16.02.2012 through cheque (PB-2, Page 334). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 324-346) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement

shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XV. M/s Harmony Vanijya Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 302-323 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCH 6951 G** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.23,43,01,174/- (PB-2 page 316) and the investment made in the assessee-company including the share premium comes to Rs.30,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs..30,00,000/- on 09.12.2012 through cheque (PB-2, Page 306). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 302-323) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement

shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO not to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant was erroneous/perverse and we find that this share subscriber has discharged its burden to prove its identity, creditworthiness and genuineness of the share transaction which we draw on the strength of the documents referred to supra and so we accept the claim of assessee in-respect of Rs 30,00,000/-.

XVI. M/s Hippolyte Tradecom Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 347-367 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCH 7122 H** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.15,40,50,397/- (PB-2 page 362) and the investment made in the assessee-company including the share premium comes to Rs..35,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.35,00,000/- on 23.12.2011 through cheque (PB-2, Page 352). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 368-388) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share

applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XVII. M/s Jaganmata Sales Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 368-388 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCJ 5212 E** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.25,40,00,570/- (PB-2 page 382) and the investment made in the assessee-company including the share premium comes to Rs..50,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.25,00,000/- on 15.12.2011 through cheque (PB-2, Page 373). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 368-388) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share

applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XVIII. M/s Jagriti Commodities Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 389-408 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AABCJ 7810 P** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.20,12,94,706/- (PB-2 page 402) and the investment made in the assessee-company including the share premium comes to Rs.15,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.15,00,000/- on 07.02.2012 through cheque (PB-2, Page 396). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 389-408) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share

applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XIX. M/s Jai Matadi Commosales Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page .409-431 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCJ 5211 H** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.19,10,00,256/- (PB-2 page 425) and the investment made in the assessee-company including the share premium comes to Rs.40,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.40,00,000/- on 09.02.2012 through cheque (PB-2, Page 415). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 409-431) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share

applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XX. M/s Joyful Tie Up Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 432-453 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCJ 7267 K** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.17,31,50,231/- (PB-2 page 448) and the investment made in the assessee-company including the share premium comes to Rs.60,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.60,00,000/- on 27.01.2012 through cheque (PB-2, Page 440). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page .432-453) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by

adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXI. M/s Jubilee Vincom Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 454-477 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCJ 6266 E** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.26,37,55,943/- (PB-2 page 470) and the investment made in the assessee-company including the share premium comes to Rs.1,15,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.40,00,000/- on 27.12.2011 through cheque and had deposited amount of Rs.75,00,000/- on 02.03.2012 through cheque (PB-2, Page 461-462). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 454-477) and thus it is noted that the assessee

had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXII. M/s Lighthouse Merchants Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 478-499 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACCL 1461 F** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.20,72,00,225/- (PB-2 page 493) and the investment made in the assessee-company including the share premium comes to Rs.1,18,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.58,00,000/- on 20.01.2012 through cheque and deposited an amount of Rs.60,00,000/- on 21.01.2012 through cheque (PB-2, Page 483). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of

the funds as well as financial statements (PB-2, page 478-499) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXIII. M/s Magnetic Barter Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 500-522 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAHCM 5948 D** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.15,30,00,250/- (PB-2 page 516) and the investment made in the assessee-company including the share premium comes to Rs.45,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.45,00,000/- on 11.01.2012 through cheque (PB-2, Page 507). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of

source of the funds as well as financial statements (PB-2, page 500-522) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXIV. M/s Matarani Consultancy Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 523-543 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAHCM 3465 D** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.17,88,00,265/- (PB-2 page 537) and the investment made in the assessee-company including the share premium comes to Rs.20,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.20,00,000/- on 10.12.2011 through cheque (PB-2, Page 530). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of

source of the funds as well as financial statements (PB-2, page 523-543) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXV. M/s Mindpower Exports Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 544-564 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAHCM 5756 D** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.17,94,00,266/- (PB-2 page 559) and the investment made in the assessee-company including the share premium comes to Rs.40,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.40,00,000/- on 05.01.2012. through cheque (PB-2, Page 546). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of

source of the funds as well as financial statements (PB-2, page 544-564) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXVI. NishakarTracom Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 565-582 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AADCN 5112 G** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.10,80,04,799/- (PB-2 page 580) and the investment made in the assessee-company including the share premium comes to Rs.83,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.45,00,000/- on 29.11.2011 through cheque and deposited an amount of Rs.38,00,000/- on 07.12.2011 through cheque (PB-2, Page 569-570). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account

of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page .565-582) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXVII. M/s Omeshwar Tracom Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 583-605 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AABC0 4186 D** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.15,19,00,311/- (PB-2 page 596) and the investment made in the assessee-company including the share premium comes to Rs.54,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.54,00,000/- on 27.02.2012 through cheque (PB-2, Page 590). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee

company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 583-605) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO not to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant was erroneous/perverse and we find that this share subscriber has discharged its burden to prove its identity, creditworthiness and genuineness of the share transaction which we draw on the strength of the documents referred to supra and so we accept the claim of assessee in-respect of Rs 54,00,000/-

XXVIII. M/s Paramatma Vinimay Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 606-629 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAFCP 1334 G** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.25,68,00,375/- (PB-2 page 623) and the investment made in the assessee-company including the share premium comes to Rs.39,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.29,00,000/- on 29.11.2011

through cheque and deposited an amount of Rs.10,00,000/- on 27.12.2011 through cheque (PB-2, Page 615-616). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 606-629) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXIX. M/s Pramodanah Vinimay Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 630-647 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAGCP 3907 L** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.8,23,00,470/- (PB-2 page 642) and the investment made in the assessee-company including the share premium comes to Rs.4,00,000/-. The payment has been made by this entity to assessee through banking

channels and had deposited an amount of Rs.4,00,000/- on 23.02.2012 through cheque (PB-2, Page 634). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 630-647) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXX. M/s Ragini Creations Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 648-669 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAF CR 5328 C** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.12,13,00,521/- (PB-2 page 663) and the investment made in the assessee-company including the share premium comes to Rs.40,00,000/-. The payment has been made by this entity to assessee through

banking channels and had deposited an amount of Rs.40,00,000/- on 30.01.2012 through cheque (PB-2, Page 656). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 648-669) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXI. M/s Samvritah Vanijya Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 670-688 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAQCS 8669 G** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.26,31,81,792/- (PB-2 page 683) and the investment made in the assessee-company including the share premium comes to Rs.95,00,000/-. The payment has been made by this entity to assessee through

banking channels and had deposited an amount of Rs.48,00,000/- on 26.03.2012 through cheque and had deposited an amount of Rs.47,00,000/- on 26.03.2012 through cheque (PB-2, Page 675). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 670-688) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXII. M/s Saraswar Projects Advisory Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 689-711 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAQCS 1529 M** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.17,33,00,366/- (PB-2 page 705) and the investment made in the assessee-company including the share premium comes

to Rs.85,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.30,00,000/- on 09.12.2011 through cheque and had deposited an amount of Rs.55,00,000/- on 24.01.2012 through cheque (PB-2, Page 696-697). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 689-711) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXIII. M/s Savile Distributors Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 712-733 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAICS 7476 H** and its Netorth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.14,86,47,378/- (PB-2 page 727) and the

investment made in the assessee-company including the share premium comes to Rs.45,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.45,00,000/- on 31.12.2011 through cheque (PB-2, Page 719). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 712-733) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXIV. M/s Shambhunath Barter Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 734-755 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AACQS 8672 M** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.19,28,50,188/- (PB-2 page 749)

and the investment made in the assessee-company including the share premium comes to Rs.45,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.45,00,000/- on 11.02.2012 through cheque (PB-2, Page 742). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 734-755) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXV. M/s Sincere Vintrade Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 756-778 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAQCS 0605 L** and its Networth as on 31.03.2012 (in total)- Share Capital & Reserves is to the tune of Rs.23,93,01,631/- (PB-2 page 772) and the

investment made in the assessee-company including the share premium comes to Rs.1,50,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.25,00,000/- on 20.12.2011 through cheque and had deposited an amount of Rs.40,00,000/- on 14.01.2012 through cheque (PB-2, Page 763-764). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 756-778) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXVI. M/s Sneha Vinimay Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 779-800 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAQCS 7675 G** and its Networth as on 31.03.2012 (in total)- Share

Capital & Reserves is to the tune of Rs.12,79,88,731/- (PB-2 page 793) and the investment made in the assessee-company including the share premium comes to Rs.45,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.45,00,000/- on 31.12.2011 through cheque (PB-2, Page 787). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 779-800) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXVII. M/s Tassel Vincom Pvt. Ltd. : On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 801-822 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AAECT 0667 P** and its Networth as on 31.03.2012 (in total)- Share

Capital & Reserves is to the tune of Rs.16,73,50,260/- (PB-2 page 816) and the investment made in the assessee-company including the share premium comes to Rs.40,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.40,00,000/- on 22.02.2012 through cheque (PB-2, Page 808). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 801-822) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital and premium raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

XXXVIII. M/s Violet Advisory Pvt. Ltd.: On perusal of the paper book-2, it reveals that the documents in respect of this share applicant are placed at page 823-843 of share applicant which is a Private Limited Company, and which has Permanent Account No. **AADCG 7386 C** and its Networth as on 31.03.2012 (in total)- Share

Capital & Reserves is to the tune of Rs.16,24,00,233/- (PB-2 page 837) and the investment made in the assessee-company including the share premium comes to Rs.40,00,000/-. The payment has been made by this entity to assessee through banking channels and had deposited an amount of Rs.40,00,000/- on 09.12.2011 through cheque (PB-2, Page 830). This share applicant company has filed ID Proof of its Directors, ITR acknowledgment, Allotment Advice issued by the assessee company, ledger account of the assessee in its books, Bank Statements, explanation of source of the funds as well as financial statements (PB-2, page 823-843) and thus it is noted that the assessee had duly discharged its onus to prove the identity of the share applicants by adducing its PAN, Income-Tax Return and ROC details. This share applicant, we note has regularly filed its Income Tax Return. The financial statement shows that the share applicant had enough funds to invest in the assessee-company and the transaction has happened through banking channel, so assessee has discharged its onus/burden to prove their creditworthiness and genuineness. Moreover, the share applicant had furnished the source of investment made in the assessee-company after getting summons from AO under section 131 of the Act. It is noted from source of funds, that the funds for investment in the assessee company was received by the share applicant through cheque/banking channel. And we have carefully gone through the Bank Statement of the share applicant company and find that there is no cash deposit in its Bank A/c. before they subscribed/transferred the amount to assessee company and that both the inflow and outflow of funds for investment in the assessee was effected through normal banking channels. Thus, the action of AO to be satisfied about the identity, creditworthiness and genuineness of the share capital raised from this share applicant cannot be found to be perverse and we find that this is an inference which can be drawn on the strength of the documents referred to supra and so we uphold the action of AO in respect of this share applicant.

26. From the details as aforesaid which emerges from the paper book filed before us as well as before the lower authorities, it is vivid that all the share applicants are (i) income tax assessee's, (ii) they are filing their return of income, (iii) the share application form and allotment letter is available on record, (iv) the share application

money was made by account payee cheques, (v) the details of the bank accounts belonging to the share applicants and their bank statements, (vi) in none of the transactions there is deposit of cash before issuing cheques to the assessee company, (vii) the applicants are having substantial creditworthiness which is represented by a capital and reserve as noted above.

27. As noted from the judicial precedents cited above, where any sum is found credited in the books of an assessee then there is a duty casted upon the assessee to explain the nature and source of credit found in his books. In the instant case, the credit is in the form of receipt of share capital with premium from share applicants. The nature of receipt towards share capital is seen from the entries passed in the respective balance sheets of the companies as share capital and investments. In respect of source of credit, the assessee has to prove the three necessary ingredients i.e. identity of share applicants, genuineness of transactions and creditworthiness of share applicants. For proving the identity of share applicants, the assessee furnished the name, address, PAN of share applicants together with the copies of balance sheets and Income Tax Returns. With regard to the creditworthiness of share applicants, as we noted supra, these Companies are having capital in several crores of rupees and the investment made in the appellant company is only a small part of their capital. These transactions are also duly reflected in the balance sheets of the share applicants, so creditworthiness is proved. Even if there was any doubt if any regarding the creditworthiness of the share applicants was still subsisting, then AO should have made enquiries from the AO of the share subscribers as held by Hon'ble jurisdictional High Court in CIT vs DATAWARE (supra) which has not been done, so no adverse view could have been drawn. Third ingredient is genuineness of the transactions, for which we note that the monies have been directly paid to the assessee company by account payee cheques out of sufficient bank balances available in their bank accounts on behalf of the share applicants. It will be evident from the paper book that the appellant has even demonstrated the source of money deposited into their bank accounts which in turn has been used by them to subscribe to the assessee company as share application. Hence the source of source of source is proved by the assessee in

the instant case though the same is not required to be done by the assessee as per law as it stood/ applicable in this assessment year. The share applicants have confirmed the share application in response to the notice u/s 133(6) of the Act and have also confirmed the payments which are duly corroborated with their respective bank statements and all the payments are by account payee cheques.

28. We also note that recently the ITAT Kolkata in several cases has deleted the addition on account of share application in similar circumstances. The relevant portion of the decisions are as follows:

(a) The Ld ITAT Kolkata. in DC IT Vs Global Mercantiles Pvt.Ltd in ITA No. 1669/Kol/2009 dated 13-01-2016. In this the decision the Ld. Tribunal held as follows:

“3.4. We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. The facts stated hereinabove remain undisputed are not reiterated herein for the sake of brevity. We find that the assessee had given the complete details about the share applicants clearly establishing their identity, creditworthiness and genuineness of transaction proved beyond doubt and had duly discharged its onus in full. Nothing prevented the Learned AO to make enquiries from the assessing officers of the concerned share applicants for which every details were very much made available to him by the assessee. We find that the reliance placed by the Learned Ld. CIT(1) on the decision of the Hon'ble Apex Court in the case of CIT vs Lovely Exports (P) Ud reported in (2008) 216 CTR 195 (SC) is very well founded, wherein, it has been very clearly held that the only obligation of the company receiving the share application money is to prove the existence of the shareholders and for which the assessee had discharged the onus of proving their existence and also the source of share application money received.

3.4. 1. We also find that the impugned issue is also covered by the decision of Hon'ble Calcutta High Court in the case of CIT vs Roseberry Mercantile (P) Ltd in GA No. 3296 of 2010 ITAT No. 241 of 2010 dated 10.1.2011, wherein the- questions raised before their lordships and decision rendered thereon is as under:-

"On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted money and the Ld. CIT(A) ought to have held that the assessee had not established the genuineness of the transaction. "

IT A No. 1669/Kol/2009-C-AM M/s. Global Mercantiles Pvt. Ltd 11 Held After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of CIT vs M/s Lovelv Exports Pvt Ltd, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and

thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed.

3.4.2. In view of the aforesaid findings and respectfully following the decision of the apex court (supra) and Jurisdictional High Court (supra) , we find no infirmity in the order of the Learned CIT(A) and accordingly, the ground no.2 raised by the Revenue is dismissed.

4. The last ground to be decided in this appeal of the Revenue is as to whether the Learned CIT(A) is justified in deleting the addition u/s 68 of the Act made in respect of allotment of shares to 20 individuals for an amount of Rs.57,00,000/- in the facts and circumstances of the case.

4. 1. The brief fact of this issue is that the assessee had received share application monies from 20 individuals in the earlier year which were kept in share application money account. During the asst year under appeal, the assessee allotted shares to these 20 individuals out of transferring the monies from share application money account to share capital account. The details of 20 individuals are reflected in page 6 & 7 of the Learned CIT(A) order. The Learned AO asked the assessee to produce the shareholders before him. He found that the assessee did not do so but furnished copies of pay orders used for payments to the assessee company and also furnished income tax particulars and balance sheets of all the shareholders. The Learned AO on analyzing all the balance sheets observed that the shareholders have paltry income and small savings and none of them have any bank account and huge cash balances were shown in their hands out of which Pay orders were obtained. Based on this, the Learned AO concluded that these shareholders do not have creditworthiness to invest in the assessee company and brought the entire sum of Rs. 57,00,000/- to tax as unexplained cash credit u/s 68 of the Act.

4.2. On first appeal, the Learned CIT(A) observed that entire share application monies of Rs. 57,00,000/- were received during the previous year 2004-05 relevant to Asst Year 2005-06 from 20 persons and the shares were allotted to them during the asst year under appeal. He observed that the assessee had furnished details of the share applicants giving the date wise receipts, mode of payment, amount, name, address, income tax returns, PA No. of share applicants along with their balance sheet. The Learned CITA also observed that the assessee in its reply to show cause notice before the Learned AO had requested him to use his power and authority for the physical appearance of the shareholders which was not exercised by the Learned AO. Instead the Learned AO continued to insist on the assessee to produce the shareholders before him. He ultimately concluded that the assessee had duly discharged its onus of providing complete details of the shareholders and in any case, no addition could be made u/s 68 of the Act in the asst year under appeal as no share application monies were received during the asst year under appeal. Aggrieved, the Revenue is in appeal before us by filing the following ground:-

"That in the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made u/s 68 in respect of the allotment of shares to 20 numbers of individual investors for an amount of Rs. 57 lakhs, where genuineness of the transactions and creditworthiness of the investors were not established."

4.3. *The Learned DR prayed for admission of the additional ground raised before us and vehemently supported the order of the Learned AO. In response to this, the Learned AR fairly conceded to admission of this additional ground and vehemently supported the order of the Learned CIT(A).*

4.4. *We have heard the rival submissions and perused the materials available on record including the detailed paper book filed by the assessee. We find that the additional ground raised by the assessee separately before us vide its covering letter dated 9. 12.2011 is admitted as it appears to be a genuine and bonafide error of omission on the part of the Revenue from not raising this ground in the original grounds of appeal filed along with the memorandum of appeal. Moreover, it does not require any fresh examination of facts. Hence the same is admitted herein for the sake of adjudication.*

4.4. 1. *We find from the details available on record that the share application monies from 20 individuals in the sum of Rs.57,00,000/- has been received by the assessee during the financial year 2004-05 relevant to Asst Year 2005-06 and only the shares were allotted to them during the asst year under appeal. Admittedly no monies were received during the asst year under appeal and hence there is no scope for invoking the provisions of section 68 of the Act. Hence we hold that the order passed by the Learned CITA in this regard does not require any interference. Accordingly the ground no. 3 raised by the Revenue is dismissed.*

(b) The ITAT Kolkata in R.B Horticulture & Animal Projects Co. Ltd, ITA No. 632/Koll2011 dated 13-01-2016. In this the decision the Ld. Tribunal held as follows:

“6. We have heard the Learned DR and when the case was called on for hearing , none was present on behalf of the assessee. However, we find from the file that the assessee had filed a detailed paper book and written submissions. Hence the case is disposed off based on the arguments of the Learned DR and written submissions and paper book already available on record. The facts stated in the Learned CIT(A) were not controverted by the Learned DR before us. We find that the assessee had given the complete details about the share applicants clearly establishing their identity, creditworthiness and genuineness of transaction proved beyond doubt and had duly discharged its onus in full. Nothing prevented the Learned AO to make enquiries from the assessing officers of the concerned share applicants for which every details were very much made available to him by the assessee. We find that the reliance placed by the Learned CITA on the decision of the Hon'ble Apex Court in the case of CIT vs Lovelv Exports (p) Ltd reported in (2008) 216 CTR 195 (SC) is very well founded, wherein, it has been very clearly held that the only obligation of the company receiving the share application money is to prove the existence of the shareholders and for which the assessee had discharged the onus of proving their existence and also the source of share application money received.

6. 1. *We also find that the impugned issue is also covered by the decision of Hon'ble Calcutta High Court in the case of CIT vs Roseberrv Mercantile (P) Ltd in GA No. 3296 of 2010 ITAT No. 241 of 2010 dated 10.1.2011, wherein the questions raised before their lordships and decision rendered thereon is as under:- -*

“On the facts and in the circumstances of the case, Ld. CIT(A) ought to have upheld the assessment order as the transaction entered into by the assessee was a scheme for laundering black money into white money or accounted

money and the Ld. CIT(A) ought to have held that the assessee had not established the genuineness of the transaction." Held After hearing the learned counsel for the appellant and after going through the decision of the Supreme Court in the cases of CIT vs M/s Lovely Exports Pvt Ltd, we are at one with the tribunal below that the point involved in this appeal is covered by the said Supreme Court decision in favour of the assessee and thus, no substantial question of law is involved in this appeal. The appeal is devoid of any substance and is dismissed."

6.2. *We find that the issue is also covered by the decision of Hon'ble Delhi High Court in the case of CIT vs Value Capital Services P Ltd reported in (2008) 307 ITR 334 (Del) , wherein it was held that:*

"In respect of amounts shown as received by the assessee towards share application money from 33 persons, the Assessing Officer required the assessee to produce all these persons. While accepting the explanation and ITA No. 632/Ko112011--C-AM M/s. R.B Horticulture 6 & Animal Proj. Co. Ltd the statements given by three persons the Assessing Officer found that the response from the others was either not available or was inadequate and added an amount of Rs. 46 lakhs pertaining to 30 persons to the income of the assessee.

The Commissioner (Appeals) upheld the decision of the Assessing Officer. On appeal, the Tribunal set aside the order of the Commissioner (Appeals) and deleted the additions. On further appeal:

Held, dismissing the appeal, that the additional burden was on the department to show that even if the share applicants did not have the means to make the investment, the investment made by them actually emanated from the coffers of the assessee so as to enable it to be treated as the undisclosed income of the assessee. No substantial question of law arose. "

6.3. *We find that the argument of the Learned DR to set aside this issue to the file of the Learned AO for verification of share subscribers would not serve any purpose as the ratio decided in the above cases is that in any case, no addition could be made in the hands of the recipient assessee. In view of the aforesaid findings and respectfully following the decision of the apex court (supra), Jurisdictional High Court (supra) and Delhi High Court (supra) , we find no infirmity in the order of the Learned CIT(A) and accordingly, the grounds raised by the Revenue are dismissed."*

(c) The ITAT Kolkata in ITA No.1061/Ko1/2012 in the case of ITO Wd.3(2) Kol, vs. M/s. Steel Emporium Ltd dated 05-02-2016. In this the decision the Ld. Tribunal held as follows:

"10. We have heard both the rival parties and perused the materials available on record. The Ld. DR vehemently supported the order of the AO. Before us the Ld. AR submitted that the assessee raised share application money during the year from 25 applicants. The AO was furnished with the copy of Form 2 of Allotment of Shares to the Applicants as filed with the Registrar of Companies, West Bengal. On the date of receipt of Share applications from the Applicants, they furnished their addresses, which were recorded in the Register of Members. The AO observed that as per ROC records the addresses of the nine companies were different from the address as per Form filed with him. The AO issued notices u/s.133(6) to all the companies at the addresses

furnished in Form 2 as filed with him, which were duly served at the given addresses. The AO argued that the letters should not have been served at the given address by the assessee. He served a show a cause notice dated 09.12.2011 asking for the explanation from the assessee as to how the notices u/s. 133(6) could be served to these nine companies who had different address as per ROC records. The AO was explained vide letter dated 20.12.2011 of the assessee that those companies had changed their addresses since filing of Form 2 with the Registrar. Further, it was none of the business of the assessee to question the addresses of the applicants as long as they affirm the address. The applicants were duly incorporated bodies under the Companies Act. 1956 since long. They have been regularly filing their returns of income under the Income Tax Act and are being assessed by the Revenue since long. Some of them are even registered as Non-Banking Financial Companies with Reserve bank of India. They have been filing returns regularly with Registrar of Companies and RBI since long. The letters might have been received at their old addresses because in case of change in the address, people instruct the incumbents at old addresses not to refuse the receipt of letters and receive the same. Just because, a letter was received at the old address instead of present address, it cannot be said that the identity of the applicant has not been verified. All of these companies had duly replied to notice u/s. 133(6) and confirmed the transaction with all the evidences. The AO has not raised any objection on any of the information furnished before him. The AO has not asked the respective Company applicants also to explain the alleged discrepancy in the address. The AO has not brought any material on account of record to disbelief the evidences furnished with him and treat the transaction as not genuine. The assessee submitted the following material at the time of assessment.

- a) Copy of share applications from the share applicants (copies enclosed)*
- b) Copy of Form 2 filed with Registrar of Companies, West Bengal (copy enclosed)*
- c) Copy of Form 18 about the Registered Office of the applicants for change of address subsequent to the date of allotment, i.e. 31.03.2009 (copies enclosed)*
- d) Members register*
- e) Share application & Allotment Register*
- f) Copy of board resolution.*
- g) Replies from Share applicants to the notice u/s. 133(6) issued to them by the AO seeking information and documents about the sources and to examine their identity, genuineness of the transaction and their creditworthiness. (copy enclosed).*
- h) Copy of audited accounts.*
- i) Copy of bank statements.*
- j) Copy of Income tax acknowledgment of return filed for AY 2009-*
- k) Copy of PAN Card.*
- l) Details of sources of funds.*
- m) Copy of covering letter for delivery of shares.*
- n) Copy of master data as per ministry of Company Affairs records.*

o) Copy of Annual return.

p) Copy of Memorandum and articles of Association.

Finally the Ld. AR relied on the order of the Ld. CIT(A 10. 1 From the aforesaid discussion we find that the AO has made the addition of the share application money because all the nine companies were having the common address and the notice sent under section 133(6) was received by the single person. Accordingly the AO opined that the assessee has used its unaccounted money in the share application transactions. However we find that all the money received in the form of share capital is duly supported with the requisite document as discussed above. To our mind the basis on which the addition was made by the AO is not tenable. The Ld. DR also could not brought anything on record to controvert the findings of the Ld. CIT(A). In view of above we find no reason to interfere in the order of the Id. CIT(A). Accordingly the ground raised by Revenue is dismissed.”

(d) The ITAT Kolkata in ITO vs Cygnus Developers (I) P Ltd in ITA No. 282/Kol/2012 dated 2.3.2016. In this the decision the Ld. Tribunal held as follows:

“6. On appeal by the assessee the CIT(A) deleted the addition made by the AO observing as follows

“6) I have considered the submission of the appellant and perused the assessment order. I have also gone through the details and documents filed by the appellant company in the course of assessment: proceedings vide letter dt. 3-10-2007. On careful consideration of the facts and in law I am of the opinion that the AO was not justified in making, the addition aggregating to Rs.54,00,000/- u/s.68 of the Act being the amount of share application money by holding that the appellant company has failed to prove the identity, and creditworthiness of The creditors as well as the genuineness of transactions. It is observed that all the three share applicant companies i.e. M/s. Shree Shyam Trexim Pvt. Ltd., M/s Navalco Commodities Pvt. Ltd. and M/s. Jewellock Trexim Pvt. Ltd. had filed their confirmations wherein each of them confirmed that they had applied for shares of the appellant -company. All the three companies provided- the cheque number, copy of bank statements and their PAN. It is observed that these companies also filed, copies of their return of income and financial statements for as well as copy of their assessment order u/s. 143(3) of the I. T Act for AY 2005-06. In the case of M/s. Jewellock Trexim Pvt. Ltd. the assessment for AY 2005-06 was completed by the ITO Ward 9(3), Kolkata and the assessments in the case of M/s. Navalco Commodities Pvt. Ltd. and M/s. Shree Shyam Trexim Pvt. Ltd. for A. Y.2005-06 and AY.2004-05 respectively were completed by the I TO, Ward 9(4), Kolkata. Under the circumstances, I am of the opinion that the AO was not justified in holding that the share applicant companies were not in existence. The assessment orders were completed on the address as provided by the appellant company in the course of assessment proceedings. It is not known as to how the AO's inspector had reported that the aforesaid companies were not in existence at the given address. Since the appellant company had provided sufficient documentary evidences in support of its claim of receipt of share application money, I am of the opinion that the no addition u/s.68 could be made in the hands of appellant company. On going through the various judicial pronouncements relied upon by the appellant, it is observed that the view taken as above is also supported by them. In view of above the AO is directed to delete the addition of Rs.54,00,000/- . The ground Nos. 2 and 3 are allowed, ”

7. Aggrieved by the order of CIT(A) the Revenue is in appeal before the Tribunal.

8. *We have heard the submissions of the learned DR, who relied on the order of AO. The learned counsel for the assessee relied on the order of CIT(A) and further drew our attention to the decision of Hon'ble Allahabad High Court in the case of CIT vs Raj Kumar Agarwal vide ITA No. 179/2008, dated 17. 11.2009 wherein the Hon 'ble Allahabad High Court took a view that non production of the director of a Public Limited company which is regularly assessed to Income tax having PAN, on the ground that the identity of the investor is not proved cannot be sustained. Attention was also to the similar ruling of the ITAT Kolkata bench in the case of ITO vs Devinder Singh Shant in IT A No.20BIKo112009 vide order dated 17.04.2009.*

9. *We have considered the rival submissions., We are of the view that order of CIT(A) does not call for any interference. It may be seen from the grounds of appeal raised by the Revenue that the Revenue disputed only the proof of identity of the shareholder. In this regard it is seen that for A Y.2004-05 Shree Shyam Trexim Pvt. Ltd., was assessed by ITO, Ward- 9(4), Kolkata and the order of assessment u/s/143(3) dated 25.01.2006 is placed in the paper book. Similarly Navalco Commodities Pvt. Ltd., was assessed to tax u/s 143(3) for A Y.2005-06 by I TO, Ward- 9(4), Kolkata by order dated 20.03.2007. Similarly Jewellock Trexim Pvt. Ltd was assessed to tax for A Y.2005-06 by the very same ITO- Ward- 9(3), Kolkata assessing the Assessee. In the light of the above factual position which is not disputed by the Revenue, it cannot be said that the identity of the share applicants remained not proved by the assessee. The decision of the Hon'ble Allahabad High Court as well as ITA T Kolkata Bench on which reliance was placed by the learned counsel for the assessee also supports the view that for non production of directors of the investor company for examination by the AO it cannot be held that the identity of a limited company has not been established. For the reasons given above we uphold the order of CIT(A) and dismiss the appeal of the Revenue. "*

29. Reliance in this regard is also placed on the decision of the Delhi High Court in the case of CIT Vs Gangeshwari Metal (P) Ltd (ITA No. 597 of 2012) dated 21.01.2012. In this case the assessee had received share application money of Rs.55.50 lacs during the year in question. The assessee filed the complete names, addresses of the share applicants, confirmatory letters from them, copies of bank statements of both the company as well as the share applicants and copies of share application forms. In spite of the aforesaid documentary evidences the AO held the explanation to be unacceptable and treated the share application as unexplained cash credit thereby making addition under Section 68 of the Income-tax Act, 1961. On appeal the CIT(Appeals) deleted the aforesaid addition holding that the identity of the share applicants stood established beyond doubt, all the payments were through account payee cheques and the share applicants were regular income-tax assessee's. The CIT(Appeals) further held that the Revenue did not bring any evidence on record to suggest that the share application had been received by the assessee from its own undisclosed sources nor any material was brought on record to show that .the

applicants were bogus. The Revenue was neither able to controvert the documentary evidences filed by the appellant nor prove that the share application were ingenuine or the applicants were non-creditworthy. The findings of the CIT(Appeals) were upheld by the Income-tax Appellate Tribunal. On appeal to the High Court, the Revenue placed strong reliance on the decision of another coordinate Bench of the same Court in the case of CIT Vs Novo Promoters & Finlease (P) Ltd (342 ITR 169). The High Court however held that the aforesaid judgment was distinguishable from the facts of the present case. The Court observed that in that judgment the Assessing Officer had brought on record enough corroborative evidence to show that the assessee had routed unaccounted monies into its books through medium of share subscription. The share applicants had confessed that they were "accommodation entry providers". The Assessing Officer in the latter case was able to prove with enough material that the share subscription was a pre-meditated plan to route unaccounted monies. In the present case however the Department was unable to bring any material whatsoever shows that share application was in the nature of accommodation entries. The Court observed that the appellant had filed sufficient documentary evidences to establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. The AO however chose to sit back with folded hands till the assessee exhausted all the evidence in his possession and then merely reject the same without conducting any inquiry or verification whatsoever. The Court thus held that the decision of CIT Vs Novo Promoters & Finlease (P) Ltd (342 ITR 169) was not applicable to the facts of the case. Instead it was held that the issue in hands was on the lines of the decision of the Supreme Court in the case of CIT Vs Lovely Exports Pvt Ltd (319 ITR 5). Accordingly the addition made under Section 68 on account of share application was deleted. The Hon'ble High Court reproduced the High Court order in CIT vs. Gangeshwari Metal P.Ltd. in ITA no. 597/2012 judgement dated 21.1.2013, wherein the Hon'ble High Court after considering the decisions in the case of Nova Promoters and Finlease Pvt. Ltd. 342 ITR 169 and judgement in the case of CIT vs. Lovely Exports 319 ITR 5 (SC) held as follows:-

“As can be seen from the above extract, two types of cases have been indicated. One in which the Assessing Officer carries out the exercise which is required in law and the other in which the Assessing Officer 'sits back with folded hands' till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the Assessing Officer after noting the facts, merely rejected the same. This would be apparent from the observations of the Assessing Officer in the assessment order to the following effect:-

"Investigation made by the Investigation Wing of the department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs.1,11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs.55,50,000/- and not Rs.1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found correct. As such the unexplained amount is to be taken at Rs.55,50,000/-. The assessee has further tries to explain the source of this amount of Rs.55,50,000/- by furnishing copies of share application money, balance sheet etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the department. As such entries of Rs.55,50,000/- received by the assessee are treated as an unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income/ penalty proceedings under Section 271(1)(c) are being initiated separately.

The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the Assessing Officer once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made under Section 68 of the Income Tax Act 1961. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law”

30. In the case of Finlease Pvt Ltd. 342 ITR 169 (supra) in ITA 232/2012 judgement dt. 22.11.2012 at para 6 to 8/ it was held as follows.

"6. This Court has considered the submissions of the parties. In this case the discussion by the Commissioner of Income Tax (Appeals) would reveal that the assessee has filed documents including certified copies issued by the ROC in relation to the share application affidavits of the directors, form 2 filed with the ROC by such applicants confirmations by the applicant for company's shares, certificates by auditors etc. Unfortunately, the Assessing Officer chose to base himself merely on the general inference to be drawn from the reading of the investigation report and the statement of Mr. Mahes Garg. To elevate the inference which can be drawn on the basis of reading of such material into

judicial conclusions would be improper, more so when the assessee produced material. The least that the Assessing Officer ought to have done was to enquire into the matter by, if necessary, invoking his powers under Section 131 summoning the share applicants or directors. No effort was made in that regard. In the absence of any such finding that the material disclosed was untrustworthy or lacked credibility the Assessing Officer merely concluded on the basis of enquiry report, which collected certain facts and the statements of Mr. Mahesh Garg that the income sought to be added fell within the description of S.68 of the Income Tax Act 1961. Having regard to the entirety of facts and circumstances, the Court is satisfied that the finding of the Tribunal in this case accords with the ratio of the decision of the Supreme Court in Lovely Exports (supra).

The decision in this case is based on the peculiar facts which attract the ratio of Lovely Exports (supra). Where the assessee adduces evidence in support of the share application monies, it is open to the Assessing Officer to examine it and reject it on tenable grounds. In case he wishes to rely on the report of the investigation authorities, some meaningful enquiry ought to be conducted by him to establish a link between the assessee and the alleged hawala operators, such a link was shown to be present in the case of Nova Promoters & Finance (P) Ltd. (supra) relied upon by the revenue. We are therefore not to be understood to convey that in all cases of share capital added under Section the ratio of Lovely Exports (supra) is attracted, irrespective of the facts, evidence and material. "

31. In this case on hand, the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, and the AO was satisfied with the identity, creditworthiness and genuineness of the share applicants to the tune of Rs 20.54 crores which action of AO was a plausible view and in line with the judicial precedents discussed supra. And coming to the action of Ld CIT(A) in enhancing the addition by Rs 20.54 crores cannot be accepted in the absence of any investigation, much less gathering of evidence by the Ld CIT(A) to disprove the documents found placed in the assessment folder, therefore section 68 addition could not have been made by Ld CIT(A). Coming to the addition made by AO of Rs 84 Lakhs subscribed by two share applicants **M/s Harmony Vanijya Pvt Ltd and M/s Omeshwar Tracom Pvt Ltd** to the tune of Rs 84 lakhs, we are of the view that if the AO was not satisfied with the documents furnished by them, then the onus shifted to AO to disprove the documents furnished by assessee in respect of two share applicants [**these documents of M/s Harmony Vanijya Pvt Ltd discussed at page 44, para XV and that of M/s Omeshwar Tracom Pvt Ltd discussed at page 57 para XXVII supra**] and without finding any infirmity in these documents furnished by the two share subscribers, the AO could not have brushed aside the same and drew adverse

view against them. Therefore, we hold that addition confirmed as well as the enhancement made by Ld CIT(A) cannot be sustained because it was merely based on surmises and conjectures. Applying the propositions of law laid down in the aforesaid case laws to the facts of this case, we are inclined to reverse the order of the Ld. Commissioner of Income Tax (Appeals) and we confirm the action of AO to accept the assesses capital raised to the tune of Rs 20.54crores . And in addition, we direct the AO to delete the addition of Rs 84 Lakhs made by him.

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

Order is pronounced in the open court on 04.11.2020.

Sd/-
(P. M. Jagtap)
Vice President

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 04.11.2020

SB, Sr.P.S.

Copy of the order forwarded to:

1. Appellant- M/s. Matarani Vintrade Pvt. Ltd., 9, Crooked Lane, 7A, 1st floor, Kolkata-700069.
2. Respondent- ITO, Ward-15(1), Kolkata
3. CIT(A)-5, Kolkata(sent through e-mail)
4. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata

