

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. Amit Shukla, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 3797/Del/2010 : Asstt. Year : 2006-07**

DCIT, Central Circle-12, New Delhi	Vs	M/s GTM Builders & Promoters Pvt. Ltd., G-5, Pushkar Enclave, Outer Ring Road, Pachim Vihar, New Delhi-110063
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2716R</b>		

**ITA No. 3577/Del/2010 : Asstt. Year : 2006-07**

**&**

**SA No. 186/Del/2020 : Asstt. Year : 2006-07**

M/s GTM Builders & Promoters Pvt. Ltd., G-5, Pushkar Enclave, Outer Ring Road, Pachim Vihar, New Delhi-110063	Vs	ACIT, Central Circle-12, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2716R</b>		

**Assessee by : Sh. S. Krishnan, Adv.**

**Revenue by : Ms. Sunita Singh, CIT DR**

**Date of Hearing: 11.01.2021**

**Date of Pronouncement: 04.02.2021**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeals have been filed by the assessee and the revenue against the order of Id. CIT(A)-I, New Delhi dated 28.05.2010.

2. In ITA No. 3797/Del/2010, following grounds have been raised by the revenue:

*"1. The order of the Ld. CIT(Appeals) is not correct in law and facts.*

*2. In the facts and circumstances of the case, Id. CIT (A) has erred in law and on facts deleting addition of Rs. 2 Crores towards unexplained share application money under section 68 of Income Tax Act 1961 whereas the assessee failed to substantiate genuineness and creditworthiness of the share capital subscription.*

*3. In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts deleting addition of 2 Crores towards unexplained share application money eventhough unexplained investment of Rs.7.43 Crores was admitted under Section 132(4) of the Income Tax Act, 1961 during search on this account.*

*4. In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts deleting addition of Rs. 2 Crores towards unexplained share application money under section 68 of Income Tax Act 1961 whereas the investment was made by entry operators and bogus parties as investigated during search and Assessment proceedings.*

*5. In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,92,00,000/- towards unexplained income from sale of flats in residential societies as evidenced from seized documents while holding that there was no proof of passing of money to the assessee while ignoring the fact that process of passing of unexplained money is corroborated by seized documents and as such handing over of undisclosed transactions is not reduced to documentation.*

6. *In the facts and circumstances of the case, Learned CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,92,00,000/- towards unexplained income from sale of flats in residential societies as evidenced from seized documents while ignoring the provisions of section 132(4A) and 292C of Income Tax Act 1961."*

3. In ITA No. 3577/Del/2010, following grounds have been raised by the assessee:

*"1. The Ld. Commissioner of Income Tax (Appeals) confirming the action of the Assessing Officer in the total addition made at Rs. 5,45,70,000/- (correct figure Rs.5,34,50,000/-) on account of share application money, alleging that the appellant has not filed the confirmations of the share applicants and genuineness of the transactions have not been proved, ignoring the claim of the appellant that the appellant has arranged the advances of Rs. 3.30 crores through one of the company M/s Arha Buildcon Pvt. Ltd. as per the seized documents Annexure-I alongwith the indemnity bond with the department. The action of the Ld. Commissioner of Income Tax (Appeals) is arbitrary, unjustified and against the provisions of law.*

*2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in not appreciated the facts that the appellant company has engaged the company M/s Asha Builders (P) Ltd assessed under PAN AAACK0604K who arranged the funds from the different parties at Rs.3.30 Crores and out of it an amount of Rs.2,20,50,000/- was refunded/adjusted to same of the parties which was duly reflected in the books of accounts as per the copy of confirmation in the form of Indemnity Bond dated 10.11.2006 executed between the said company by the appellant which is part of the seized documents Annexure A 17 Page 46-52 with the department. Therefore, the action the Commissioner of Income Tax (Appeals) is arbitrary, unjustified and against the provisions of law.*

*3. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in not appreciating the various judgments of the ITAT, High Court and that of Hon'ble Supreme Court in the case of Lovely Exports relied upon by the appellant which squarely applies to the facts of the case and therefore, the action of the Commissioner of Income Tax (Appeals) is arbitrary, unjustified and against the provisions of law.*

*4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in confirming the transaction for investment towards the share application money of Rs.400,000/- by Shri Rakesh Kumar in the appellant company ignoring the submissions of the appellant, which is arbitrary, unjustified and against the provisions of law.*

*5. Without prejudice to the above that the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts in not appreciating that all the transaction of receipt of advances were through account payee cheques and most of the parties were company incorporated with the Registrar of the Companies and are existing. The action of the Ld. Commissioner of Income Tax (Appeals) is arbitrary, unjustified and against the provisions of law."*

**ITA No. 3797/Del/2010 AY 2006-07 (Revenue)**  
**ITA No. 3577/Del/2010 AY 2006-07 (Assessee)**

**Unexplained Share Application Money- u/s 68:**

4. A search and seizure operation was carried out on the GTM group of companies controlled by Shri Gautam Kumar and his son Shri Tushar Kumar.

5. During the course of assessment proceedings, the Assessing Officer referred to the copy of share application money account of the company for the period 1.4.2005 to 31.3.2006 found during the course of search which showed

share application money of Rs. 5,34,50,000/- in the names of various persons from whom share application money was received marked as Annexure A-127, page 4. He also referred to pages 75 and 76 of Annexure A-14 which showed details of the cheque payments of the parties. The parties from whom the share application money has been received were as per Annexure A-12, page 4. The AO observed that the money has been received from the above parties during the period 30.12.2005 and 15.1.2006, post dates cheques signed by Shri Tushar Kumar dated 20.1.2007 were issued to these parties returning their respective amounts which were as per Annexure A-12, A-13, A-14 and A-17.

6. The appellant was asked to explain the above entries with evidence and also whether any share application register has been maintained. The appellant explained that the money was arranged from M/s Arha Buildcon Pvt. Ltd. as they were financiers and money arrangers. During the assessment proceedings, it was submitted that the share capital, unsecured loans/advances received from different parties for different projects are fully accounted for in the books as per the supporting documents in the form of agreement (Indemnity Bond), list of parties, amount advanced by each party, mode of payment, post dated cheques etc. found during the course of search. The appellant further submitted that the money was arranged from M/s Arha Buildcon Pvt. Ltd., who is a regular assessee with the Department.

7. The AO referred to the statement of one Shri Mahesh Garg who had invested share application money with the appellant

and who confirmed that these companies were not carrying out any genuine business. He further noticed that another company i.e. Hillridge Investment who is stated to have invested money with the appellant, was controlled by entry operators Virender Jain and S.K. Jain. The Assessing Officer, therefore, concluded that this company is also engaged in taking accommodation entries.

8. The AO also referred to the Indemnity Bond entered into between M/s Arha Buildcon and GTM Builders & Promoters Ltd on 10.11.2006 marked as Annexure A-17 pages 46 to 52 which showed advance of Rs. 3.75 crores to appellant for 60 flats in the GTM Forest and Hills at Dehradun. The Bond further states that GTM, looking to the increased value of properties, has agreed to repurchase the flats from Arha at an additional cost of Rs. 2.97 crores as well as Rs. 1 crore as interest on the principle. As per the bond, the money is to be paid back at the latest by February 2007. He further found that there were no share application forms or share application register which were found at the time of search.

9. For these reasons and various other reasons discussed in the assessment order and also for the reason that no confirmation could be filed by the appellant in respect of the share application money, the AO concluded that the share application money invested in GTM Builders and Promoters by the various companies are only entries and represent the undisclosed income of the group which has been sought to be entered into the books.

10. The details of amounts received from various parties is as below:

Name	Amount
Arha Buildcon Limited	10200000
Arha Buildcon (p) Limited	1600000
Bic Consultants (P) Ltd	700000
Chinpurni Credit & Leasing (p) Ltd	1500000
CVH Sea Life Ltd A/c	1700000
E-Dynamics Solution Pvt. Ltd.	500000
Enpol Pvt. Ltd.	1500000
Funtime Advertising (p) Ltd.	500000
Funtime Travel Pvt. Ltd.	500000
Ganga Infin (P) Ltd.	800000
Garg Finvest (p) Ltd.	900000
Hiliridge Investment Ltd. A/c	500000
K.R Fincap (P) Ltd.	800000
Nishant Finvest (p) Ltd.	900000
Particular Manage Finance (p) Ltd.	900000
Pathik Merchandise (p) Ltd.	10000000
Rakesh Kumar	400000
Rightway Network Pvt. Ltd. A/c	2400000
Sehdev Kandol	650000
Shailja Finance Ltd	10000000
Sparrow Marketing (p) Ltd	500000
Sri Dinanath Luhari Wala Spinning Mills (p) Ltd	700000
Sri Nawas Leasing & Finanace (p) Ltd	900000
Unique Diagnostic Ltd A/c	500000
Zafar Iqbal Ansari	2400000
Zigma Telecom (p) Ltd A/c	1500000
<b>Grand Total</b>	<b>53450000</b>

11. Out of the above amount, the Id. CIT (A) has deleted the amounts received from Shailja Finance Ltd. of Rs.1,00,00,000/- Pathik Merchandise (p) Ltd. of Rs.1,00,00,000/- as the assessee and the parties could provide documents relating to identity,

genuineness and creditworthiness of the amounts received along with confirmations, address, cheque number and PAN.

12. Aggrieved with the order of the Id. CIT (A), the revenue filed appeal against deletion of Rs.2 Cr. and the assessee filed appeal against the confirmations of the remaining amounts of Rs.3,45,50,000/-.

13. Before us during the arguments, the Id. AR submitted that the Assessing Officer mainly relied upon the statement recorded during the search operation and any addition has to be based on the seized material. In that aspect, no seized material relevant to the addition has been found and seized by the revenue. It was argued that the amounts received from M/s Arha Buildcon Pvt. Ltd. have been received to finance the project and agreement has been executed to buy back of 60 flats and the amounts have been already received by M/s Arha Buildcon Pvt. Ltd. The said amounts have been received by M/s Arha Buildcon Pvt. Ltd. from various parties to whom M/s Arha Buildcon Pvt. Ltd. in turn pays the interest. Regarding the statement of Shri Mahesh Garg, it was argued that the statement of Shri Mahesh Garg has no relevance as it was recorded behind the back of the assessee and no opportunity of cross examination of Shri Mahesh Garg or his statement. It was argued that the statement of Shri Mahesh Garg was not recorded with reference to the search and seizure in the case of the assessee. It was further argued that when the loans have been repaid and houses have been allotted, the allegation of the Assessing Officer that the amounts cannot be treated as undisclosed income. He referred to page nos. 82 to 150 of the paper book. He has referred to

the page nos. 152 & 153 of the paper book to prove that in total the assessee has received Rs.4,00,50,000/- from total of 40 entities including the company alleged by the revenue department. He has argued taking into the issues regarding the genuineness of the amounts received and argued that the Assessing Officer has not rightly verified the facts in right perspective.

14. Against the arguments of the Id. AR, the departmental representative vehemently argued that the bonafides of M/s Arha Buildcon Pvt. Ltd. have not been proved, the entry operator has given a undisputable statement regarding the entries given to the assessee company hence there is no reason to disbelieve his statement. Coupled with the facts that no share application register has been found at the premises. The Id. DR argued that the discrete enquiries conducted by the Investigation Wing did not prove the existence of M/s Arha Buildcon Pvt. Ltd.

15. The Id. DR submitted the arguments succinctly in writing which has been reproduced in *toto*:

**Ld. DR's submission-**

Section 68 of the Income-Tax Act, 1961 provides that, where any sum is found credited in the books of 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 for that previous year. The burden of proof is heavily cast on the assessee. First of all, he must

furnish an explanation as otherwise the cash credit will be treated as his income. Secondly, the explanation offered must be to the satisfaction of the Assessing Officer. It is by now well-settled that what all is required from the assessee by way of explanation is, (i) that he must establish the identity of the payer; (ii) that he must prove the creditworthiness of the payer, and (iii) that he must prove the genuineness of the transaction. In the case of ***Lovely Exports (P) Ltd [216 CTR 195 SC]*** it was held 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, but it cannot be regarded as undisclosed income of assessee company. The Hon'ble Jurisdictional High Court in ***I.T.A. No. 665/2009 in the case of CIT Vs Gourdin Herbals India Ltd. order dated 17th Sep. 2009*** followed the judgment of the Supreme Court in the case of *Commissioner of Income Tax Vs. Lovely Exports Pvt. Ltd., 216 CTR 195*, and held, "*the ITAT has rightly held that the assessee had discharged its burden. In case those three companies had received certain cash, which were deposited in the bank accounts, it was for the Income Tax Department to take action against the said companies. We are, therefore, of the opinion that no substantial question of law arises for our consideration in this appeal, which is accordingly dismissed.*"

**[II]** Distinguishing the decision in **Lovely Exports (supra)**, the following Judicial Views in favour of revenue are discussed below:

- (i) Recently, in the case of ***Navodaya Castle [56 taxmann.com 18 (SC)]*** it was held that, Hon'ble High Court by impugned order held that certificate of incorporation, PAN etc., were not sufficient for purpose of identification of subscriber company when there was material to show that subscriber was a paper company and not a genuine investor - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes.

- (ii) In the case of ***CIT v. Sophia Finance Ltd. 205 ITR 98 (Del.) (F.B.)*** it was held that, Provisions of s. 68 are applicable even to share application money and if on enquiry it is found that shareholders do not exist, sum credited may be treated as assessee's income.
- (iii) In the case of ***Titan Securities Ltd. [357 ITR 184 (del)]*** it was held that, Where Assessing Officer found that share applicants in case of assessee-company were established entry operators giving accommodation entries and, thus, he added amount paid by them to assessee's taxable income, Tribunal was not justified in deleting said addition without properly examining evidence brought on record by Assessing Officer
- (iv) In the case of ***N.R. PORTFOLIO PVT. LTD [87 DTR 0162 (Del)]*** it was held that Merely furnishing names, addresses and PAN particulars, or relying on entries in a Registrar of Companies website, if upon verification, or during proceedings, AO cannot contact share applicants, or that information becomes unverifiable, or there are further doubts in pursuit of such details, onus shifts back to assessee to explain same---Yes.
- (v) Also in the case of ***N.R. Portfolio Pvt Ltd [96 DTR 0281 (Del)]*** it was held that, the onus to prove the identity, creditworthiness and genuineness of the transaction is on the assessee as the facts are within the assessee's knowledge. Mere production of incorporation details, PAN Nos. or the fact that third persons filed return in case of a private limited company may not be sufficient when surrounding and attending facts predicate a cover up.
- (vi) In the case of ***MAF ACADEMY P. LTD. [361 ITR 02858 (Delhi)]*** it was held that, mere production of incorporation details, PAN Nos. or returns may not be sufficient when surrounding and attending facts predicate cover up. In present case, it was strange that Assessee in year 2001 felt need of obtaining affidavits from persons investing in shares to certify genuineness when there was no inquiry. Such fact raised suspicion on genuineness of transaction. Further shares were purchased at large premium and then sold at substantial loss in short span of time. Also assessee failed to produce persons who had invested in shares and show that these people were completely unrelated to Assessee and as such, all entries were merely accommodation entries Thus, Assessee had not discharged onus satisfactorily and additions made by AO were

sustained Orders of CIT (Appeals) and ITAT in deleting addition unsustainable-Substantial question of law answered in favour of Appellant and against the Respondent Assessee-Appeal allowed.

- (vii) In the case of ***Tarika Properties Investment Pvt Ltd [221 TAXMAN 0014 (Del)]*** it was held that, Held, following decision of coordinate Bench in ***CIT vs. NR Portfolio Pvt. Ltd and CIT Vs Nova Promoters and Finlease Private Limited Case (2012) 342 ITR 169 (DELHI)***, mere production of PAN Number or assessment particulars submitted by assessee does not establish identity of a person/investor. Identification of a person includes place of work, staff and fact that it was actually carrying on business and further recognition of said company/individual in eyes of public Bank statements of investors furnished by assessee omitted to show that there was deposit of cash immediately prior to issuance of cheques. Extracts of bank statements furnished by assessee were found to be fabricated. Assessee failed to establish creditworthiness of investors and also genuineness of transaction. Orders of CIT(A) and ITAT were perverse in as much as they had failed to appreciate fabrication in bank statements of share applicants that had been filed by Assessee.
- (viii) In the case of ***Globus Securities & Finance Pvt Ltd [224 TAXMAN 237 (Delhi)]*** it was held that, Assessee's Directors, who had purportedly made investment in shares were not related or known to them. Assessee had no proven good past track record justifying hefty premium, four times face value. Only certain papers showing that assessee had taken care to ensure legal compliances were placed on record. Tribunal had not given due credence to surrounding circumstances which included huge premium, credit entries in bank accounts before transfer of money to assessee, failure of companies to file details of inventories and fact that assessee company had not charged any premium earlier. Three factum in all cases was not established by only showing that transaction was through banking channels or account payee instrument. Surrounding and corroborative factual details were equally important and justify further proof or details before it is held that onus is discharged. Thus, matter remitted to tribunal for entire issue to be dealt afresh.
- (ix) In the case of ***Empire Builtech Pvt Ltd [366 ITR 110 (Delhi)]*** it was held that, merely because assessee had disclosed the identity of the investors, it cannot be said that burden imposed

upon it u/s 68 had been discharged, particularly when investors not only did not submit any confirmation, but had concededly reported far less income than the amounts invested.

- (x) In the case of **ONASSIS AXLES PRIVATE LIMITED [364 ITR 53 (Delhi)]** it was held that, Held, bank statement of three companies filed in remand report before CIT(A) shows that accounts did not disclose large volume of transactions. Cash deposits were made into accounts of companies on same day or on proximate days. Pay orders given to apply to shares were issued from a far off bank branch in NOIDA. These facts, together with share applicants lack of resources and inadequate share capital, as well as authorized and subscribed share capital of assessee i.e. Rs.50 lakh being the authorized capital, and paid up capital being Rs.70 lakh, as against it reserves being over Rs.2 crores, for reason of the premium received, showed that share money transaction was dubious. Amount received by assessee falls within mischief of Section 68 as unexplained amounts. Tribunal was justified in holding that amount received by assessee was bogus share capital. Assessee's appeal dismissed.
- (xi) In the case of **FOCUS EXPORTS PVT. LTD. [111 DTR 0012 (Del)]** it was held that, if the assessee offers no explanation about the nature and source of credit of amounts in the books maintained by it or the explanation offered is not satisfactory, then the sums so credited can be treated as income of the assessee for that previous year.
- (xii) In the case of **Rathi Finlease Ltd (215 CTR 429 MP)** it was held that, though confirmation letters were produced, genuineness of share application money received by assessee company cannot be said to have been established since the alleged companies which had paid the money were found to be non-existent and the amounts were paid by cheques on the same date on which such amounts were credited to the bank accounts of those companies failed to discharge the burden, addition u/s 68 upheld.
- (xiii) In the case of **Kundan Investment Ltd (263 ITR 626 (Cal))** it was held that, since the assessee did not take any steps to obtain confirmatory letters from the subscribers of public issue quota who did not respond to the enquiry nor attempted to produce said subscribers or to disclose their income-tax file numbers subscriptions said to have been made by such subscribers to the

shares of the assessee-company cannot be accepted as genuine; in the absence of any material except the income-tax file numbers, the identity of the subscribers to the promoters quota and their creditworthiness could not be established and the subscription made by them could not be accepted as genuine; however, matter is remanded to the Tribunal for deciding the same afresh.

- (xiv) In the case of ***Korlay Trading Co. Ltd (232 ITR 820 (Cal))*** it was held that, merely filing of income-tax file number of creditor is not enough to prove the genuineness of cash credit unless the creditor is identified and his creditworthiness is established. Addition justified.
- (xv) In the case of ***Sumati Dayal (214 ITR 801 (SC))*** it was held that, applying the test of human probabilities was right that the assessee's claim about the amount being her winnings from races is not genuine.
- (xvi) In the case of ***Power Drugs Ltd. (245 CTR 623 P & H)*** it was held that, Assessee-company having failed to establish the identity and creditworthiness of the alleged share applicants and the genuineness of the share application money shown by it, addition under s.68 was rightly upheld by the Tribunal.
- (xvii) In the case of ***Nova Promoters & Finlease (P) Ltd (342 ITR 169 Del)*** it was held that Assessing Officer after issuance of summons not being satisfied by the explanations provided held that that assessee was unable to prove the genuineness of the transactions with the companies and that it also proved that the assessee company had introduced its own monies through non-existing companies using the banking channel in the shape of share application monies There is no explanation as to why the deponents could not be produced and did not appear in response to the summons - the modus operandi involves receipt by the entry providers of equivalent amount of cash from the assessee Section 68 places no duty upon Assessing Officer to point to the source from which the money was received by the assessee. Order of Tribunal set aside - Question of law answered in favour of department--Yes.
- (xviii) In the case of ***AZEEM INVESTMENT PVT LTD (252 CTR 0217 Del)*** it was held that Reassessment proceedings were initiated in the case of the assessee after information was received from

Director of Investigation regarding bogus/accommodation entries allegedly provided by different companies which were managed and operated by Mukesh Gupta and Rajan Jassal. AO noticed that these companies had been issued shares by the appellant assessee. A question arose whether the share application money received was a genuine transaction Tribunal after noticing the facts on record remitted the matter back to the AO and felt that the matter cannot be decided in a superficial manner, by only making reference to the bank account entries and whether or not the alleged shareholders were incorporated companies. Held, the Tribunal elucidated the relevant facts and given cogent and good reasons why an order of remit was necessary and required in the facts of the present case. Whether or not an order of remand is justified and required depends on facts of each case. An order of the remit has been passed, with a direction to conduct in depth inquiry, reach and record correct and true finding, which depending upon the material may eventually even go in favour of the assessee. Assessee's appeal dismissed.

- (xix) In the case of **MAJOR METALS LTD (359 ITR 0450 (Bom))** it was held that Settlement commission addition under section 68 interference in exercise of writ jurisdiction Assessee an unlisted company was given huge loan of Rs. 6 crores by two companies. Later on these companies were allotted 30,000 shares each of face value 10 at huge premium of Rs. 990. Settlement Commission has considered all material on record including material which had a bearing on the creditworthiness and financial standing of the alleged subscribing companies to the share capital of the assessee. None of the companies was held to have a financial standing or creditworthiness which would justify making of such a large investment of Rs. 6 crores at a premium of Rs. 990 per share. Allotment of shares has taken place in pursuance of a private placement. View which has been taken by the Settlement Commission is consequently borne out on the basis of the material on record. Commission has not proceeded contrary to law or on the basis of no evidence. There is no perversity in the findings of the Settlement Commission. Reappreciation of finding of facts not warranted in exercise of judicial review. Order of the Settlement Commission upheld.
- (xx) In the case of **INDEPENDENT MEDIA PVT. LTD. (25 taxmann.com 276 (Delhi))** it was held that, For addition u/s 68, AO need not establish money coming from assessee's coffers

- For making addition under section 68, it is not incumbent upon AO to establish that money had come from assessee's coffers.

- (xxi) In the case of **NEELKANTH ISPAT UDHYOG PVT LTD (81 DTR 0214)** it was held that, In cases where the explanation offered by the assessee about the nature and source of the sums found credited in the books is not satisfactory there is, prima facie, evidence against the assessee, viz., the receipt of money. The burden is on the assessee to rebut the same, and, if he fails to rebut it, it can be held against the assessee that it was a receipt of an income nature---Yes.
- (xxii) In the case of **Frostair P. Ltd [92 DTR 393 (Del)]** it was held that, Share application money, Genuineness of the transaction, Revenue received information alleging that assessee had accepted share capital from companies engaged in providing bogus entries in the form of loan and share application money to interested parties. Accordingly, the AO called for information u/s 142 (1) Assessee filed a list of 18 shareholders and felt that the nature of the assess company and its business was not such as to attract a huge premium. After taking into account various factors, incorrect GIR/PAN number and designation of the concerned AOs, who were seized of the share applicant companies' returns; none of the shareholders existed at the addresses given by the assessee; the books of accounts of the share applicants not being produced before him, the AO held that an inference could be drawn that the transactions were not genuine----Yes.
- (xxiii) In the case of **Rajani Hotels Ltd [79 DTR 185 (Mad)]** it was held that, some Shareholders refused having applied. Director of the assessee company stated that they were benami investors. Payment to and from shareholders were in cash and therefore the claim of director is rejected---- To that extent treated as unexplained. x) In the case of Youth Construction Pvt Ltd [357 ITR 197 (Delhi)] it was held that, mere proof of identity without genuineness and creditworthiness is enough----No.
- (xxiv) In the case of **ULTRA MODERN EXPORTS PVT. LTD [220 Taxman 165 (Delhi)]** it was held that Information that assessee furnishes would have to be credible and at same time verifiable. Five share applicants could not be served as notices were returned unserved. Assessee's ability to secure documents such as income tax returns of share applicants as well as bank account particulars would itself give rise to a circumstance which

AO in this case proceeded to draw inferences from Assessee commenced its business and immediately sought to infuse share capital at a premium ranging between Rs.90-190 per share and was able to garner a colossal amount of Rs.4.34 Crores. CIT (A) and ITAT erred in holding that AO could not have added back said amount u/s 68----Yes.

**[III]** In conclusion, as can be seen from the above said judgements, it is clear that the initial onus is upon the assessee to prove the identity, genuineness and creditworthiness of the persons in whose name the credit entry is appearing by way of share capital/premium, loan or creditor etc. After that the Assessing Officer is duty bound to check the veracity of those details filed and thereafter arrive at a conclusion in connection with the genuineness of share capital/premium. However, the recent judgements of different high courts in this regard are quite different particularly considering the facts of each case. Moreover, recent judgement in the case of **Navodaya Castle (supra)** has distinguished the position of law settled in the case of **Lovely Exports (supra)**. **In CIT V/s. Navodaya Castles (P) Ltd. 109 DTR (Delhi HC) 109 (184)** Certificate of Incorporation, PAN etc are relevant for the purpose of identification, but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor., Matter is remanded for reconsideration. In the case of **Navodaya Castle [56 taxmann.com 18 (SC)]**, this it was held- Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes.

**[IV]** Ground Nos. 2, 3 and 4 of Department Appeal ITA No. 3797/Del/2010 -

The facts brought out in the assessment order for AY 2006-07 and in view of the discussion of all the case laws cited above, it is very clear that the AO has correctly made the addition u/s 68 of the Income Tax

Act and the addition should be upheld. In the present case, the AO has conducted necessary investigations to arrive at the conclusion that the genuineness of the transactions have not been proved and neither have the same been explained.

The Revenue relies upon all the facts as discussed by the AO in the assessment order for AY 2006-07. Hence, on the merits of the case for AY 2006-07, the Ld. CIT(A) erred in giving relief to the appellant to the extent of Rs 2 crores. The reliance is placed on the assessment order for AY 2006-07 and discussion in paras [I], [II] and [III] above. It is prayed that the addition of Rs 2 crores made by the AO should be upheld.”

16. Heard the arguments of both the parties and perused the material available on record.

17. We find that the major reasons considered by the Assessing Officer while making the addition are as under:

1. Disclosure made by the Director of company
2. Seizure of details of cheque payments to parties and receipt of the amounts.
3. Statement of Shri Mahesh Garg recorded u/s 131
4. Non-compliance to the departmental notices issued to M/s Arha Buildcon Pvt. Ltd.
5. Seizure of Indemnity Bond entered between M/s Arha Buildcon and the assessee.
6. Seized material showing Arha – entry 7.5L
7. Seizure of post dated cheque signed by the Director of company against the loans

**M/s Arha Buildcon Pvt. Ltd.**

18. The assessee has received amounts varying from Rs.5 lacs to Rs.67 lac from various periods from 07.12.2005 to 25.02.2006 and an amounts have been refunded from 27.04.2006 to 19.05.2006 of amounts varying from Rs.5 lacs to 30 lacs. There has been an agreement between Arha Buildcon and the assessee regarding booking of 60 flats in the project GTM Forest at Dehradun. This shows that there have been direct finance arrangements between the M/s Arha Buildcon Pvt. Ltd. and the assessee. In the search & seizure operation, an Indemnity Bond has been seized wherein the Arha Buildcon has arranged Rs.3.75 Crores for the assessee after calculation of cost of 60 flats each of 1650 sq. ft. @ Rs.1100 per sq. ft. As per the agreement, Rs.2 Crores is to be paid before 10.12.2006 and from the records it can be found that the assessee has already paid Rs.67 lacs till 19.05.2006 which gives a credence to the reliability of the agreement. The Indemnity Bond, the amounts received and paid against the bookings cannot be suspected in the absence of any other contrary finding by the revenue. From the record, we also find that M/s Arha Buildcon Pvt. Ltd. has not complied to the summons issued by the Investigation Wing. Regarding the discrete enquiries conducted by the Assessing Officer at the premises, we observe that the assessee has not been given any opportunity to the assessee regarding the discrete enquiries conducted and its outcome. The said lender has been existence for 10 years and assessed to tax. While making the addition, the Assessing Officer mentions that "the assessee was not above to provide any details of cheques that was issued by the assessee and how many of these cheques

have actually not been presented for payment or whether any real payments were ever made". The statement is factually wrong as the bank statement of the assessee maintained at HDFC Bank A/c No. 1322000007148, Palam, New Delhi clearly shows the amounts received and paid with regard to M/s Arha Buildcon Pvt. Ltd. Hence, in view of the facts are unable to agree with the contentions of the Id. CIT (A). The addition on this account is directed to be deleted.

**Addition on account of other parties:**

19. The addition has been mainly made mainly based on the statement of Shri Mahesh Garg.

20. We have gone through the statement and also the ledger account and the bank accounts of the various parties from whom the amounts have been received. In the case of the Bic Consultants Pvt. Ltd. while the amount of Rs.7 lacs has been received on 31.12.2005, the same has been refunded on 17.11.2007. In the case of Chinpurni Credit & Leasing Pvt. Ltd., the amount received was Rs.15 lacs on 02.01.2006, the amount repaid on 15.09.2006 was to the tune of Rs.12.5 lacs and Rs.2.5 lacs on 19.09.2006. In the case of CVH Sea Life Ltd., the amount received has been refunded by 24.09.2007. Similarly, in the case of E-Dynamics Solution Pvt. Ltd., the amount of Rs.5 lacs which was received on 03.01.2006 has been refunded on 19.09.2006. In the case of Enpol Pvt. Ltd., out of the amount received of Rs.15 lacs an amount of Rs.7 lacs has been paid by 25.09.2006 and an amount of Rs.7 lacs has been paid on 23.10.2007. In the case of Funtime Travel Pvt. Ltd., the

amount of Rs.5 lacs received on 03.01.2006 is outstanding. Similarly, the amount received on 31.12.2005 from Ganga Infin Pvt. Ltd. and the Garg Finvest Pvt. Ltd. has been refunded on 28.09.2006 and by 10.10.2006. Similar is the case with other entities namely, Hillridge Investment Ltd., the payment received in January has been refunded in September 2006. Similarly, in the case of Rakesh Kumar, the amount received of Rs.4 lacs in January 2006 has been refunded on 28.04.2006. The same is in case of Sehdev Kandol, Rightway Network Pvt. Ltd. Thus, we find that except Sparrow Marketing Pvt. Ltd. of Rs.5 lacs, SDLW Spinning Mills Pvt. Ltd. and Sri Nawas Leasing & Finance Pvt. Ltd. totaling to an amount of Rs.21 lacs, the remaining amounts have been either refunded within the year, within two years or adjusted against the bookings. Under these circumstances, it cannot be said that the amounts have been accommodation entries solely based on the statement of Shri Mahesh Garg.

21. We find that the assessee has not been given opportunity to rebut even the statement of Shri Mahesh Garg by the Assessing Officer. The Assessing Officer has not issued any summons or made any enquiries with regard to any of the parties to prove that the amounts have been infact rooted through these entities. We have gone through the case laws submitted in judgments relied upon by the revenue.

22. In the case NR Portfilio, the Assessing Officer has issued summons verified the parties and made the addition whereas in this case we find that the Assessing Officer has merely relied on the statement of Shri Mahesh Garg only. In the case of MAF

Academy Pvt. Ltd., the shares were purchased at a large premium and then sold at substantial loss in short span of time. The assessee failed to produce the parties and the parties were completely unrelated to the assessee whereas in the instant case the amounts have been received and repaid to various parties even before the date of search and in some case after the search and in other cases against the allotment of flats. There was no premium involved in this case except that it is a finance arrangement to complete the process of construction of flats. In the case, no shares have allotted, the amounts have been taken are refunded and the agreements have been made to buy back the flats. In the case of Global Securities Finance Pvt. Ltd., the assessee had no proven track record justifying hefty premium of four times the face value whereas here in the instant case the flats have been sold @ Rs.1100 per sq. ft. The judgment in the case of Onassis Exiles Pvt. Ltd. there were cash deposit whereas in the instant case no such cash deposit could be brought out by the revenue. We have perused all the other cases relied upon by the revenue and find that the cases are not applicable to the facts of the instant case. In the case of Major Metals Ltd., there has been a premium of Rs.990/- whereas in the instant case there was no premium and no shares have been allotted. Thus, we find that while a valiant attempt have been made by the Id. CIT DR, there has not been any tangible facts to treat these amounts u/s 68 especially when there is no premium involved, the parties have not been inquired into revenue, addition has been made solely on the basis of Shri Mahesh Garg, amounts have refunded at various intervals or adjusted against the bookings, we hold that the action of the

Assessing Officer cannot be held to be valid. Appeal of the assessee on this ground is allowed.

23. Regarding the appeal of the revenue, we find that the Id. CIT (A) has duly satisfied himself as the assessee and the parties could provide documents relating to identity, genuineness and creditworthiness of the amounts received along with confirmations, address, cheque number and PAN. Hence, we decline to interfere with the order of the Id. CIT (A) on this issue.

**Unaccounted income from sale of flats in Cooperative Societies: ITA No. 3797/Del/2010 AY 2006-07 (Revenue)**

24. The relevant part of the assessment order is as under:

*"53. In the course of the search operation, various incriminating documents were found and seized from the various premises relating to cooperative societies in Gurgaon and Dwarka. These included copies of application forms on the letterhead of the society requesting for membership, correspondence between the societies and the members regarding payment of installments, copies of share certificate of members, correspondence by members with the office bearers of the society, copies of cheques paid by members to the society, copies of letters regarding disputes with the office bearers of the society, etc. In particular these documents were found and seized from the residence of Shri Mohit Vohra who is an employee of GTM group and recently has been made one of the directors of the flagship company. In his statement recorded during the search as well as during post search proceedings, Shri Mohit Vohra stated that these papers were handed over to him by Mr. Tushar Kumar for further handing over to same to one Mr. Kansal at Sector 56, Gurgaon. He expressed his ignorance about the nature of these papers and did not give any further explanation. In addition to the above, some documents relating to*

cooperative societies were also found from the residence of Shri Tushar Kumar

**Bhagwanti Cooperative Group Housing Society,  
Plot No. 83, Sector 56, Gurgaon (GTM Ananda)**

60. This society was formed in 1998 and has been fully completed. The initial membership of the society was 40 members but was subsequently increased to 48 members. During the course of search at the residence of Shri Mohit Vohra various documents were found which related with the Bhagwanti cooperative group housing society.

61. Shri Mohit Vohra was asked about these papers during the course of search at his residence. He was asked

Q.1 I am showing you annexure A 1 1 to 10, which is seized from your residence during the course of search. Please go through each page of this annexure thoroughly and carefully, please tell what they are about?

Ans. I have gone through each and every page of this annexure, but I find myself unable to explain them and they are not related to my duty, but I was asked to hand over these papers to Mr. Kansal, who resides at sector 56, Gurgaon by Shri Tushar Kumar Director at M/S GTM Builders and Promoters, G-5 Pushkar Enclave New Delhi 63.

Q.2. I am showing you annexure A 4 containing pages 1 to 101, annexure A 5 containing pages 1 to 62, annexure A 6 containing pages 1 to 95, annexure A 7 containing pages 1 to 109, annexure A 8 containing pages 1 to 103 annexure A 9 containing pages 1 to 159, annexure A 10 containing pages 1 to 108 and annexure A 1 containing pages 1 to 170. Please go through these annexures carefully thorough and state what they are all about?

Ans. I have gone through annexures A 4 to A 11 thoroughly and carefully and state that the pages

*contained in these annexures were handed over me yesterday by Shri Tushar Kumar director of M/S GTM builders and promoters private limited at Pushkar enclave outer ring road, Paschim Vihar New Delhi for further handing to one Shri Kansal at sector 56 Gurgaon. Therefore I am unable to throw light on papers of these annexures.*

*Q.3. During the course of search various documents pertaining to*

- 1. M/S Haryana Citizens cooperative Group Housing Society Ltd*
- 2. M/S Bhagwanti cooperative group housing society*
- 3. Shri Ganesh cooperative group housing society*
- 4. Sukhmany sahib realtors and builders & developers limited were found.*

*Please state how you and your concern employ are related to them?*

*Ans. I do not know anything about these concerns and about the owners of our employer M/S GTM Builders & Promoters Pvt. Ltd and Sargam estate private limited only directors of them can tell.*

*In the questionnaire when Shri Mohit Vohra was asked about them:*

*A-5/ pages 36 to 46 and page 62 these are handwritten loose papers and relate to (geysers and other electrical fixtures to be fixed in flats of various projects. The names of the flat owners and the flat numbers are given alongside. On the top of the page the name of the society is given as "GTM Ananda, Bhagwanti Society, Plot 83, Sector 56 Gurgaon" or "GTM Garima, GH-1 Huda Society, Sector 56, Gurgaon. Please explain the same. Whether you have shown these transactions in your books of accounts.*

*He replied*

*I earlier used to provide geysers, electrical fixtures and other items in various societies/housing schemes on contract basis. I also used to assist in getting loans*

*as I was having experience of arranging finance having worked with a finance company. This is only prospective list of the names of the flat owners along with the flat nos. for contacts etc. There is no transaction pertaining to me.*

*62. The reply provided is clearly an afterthought as there is a clear contradiction in the reply provided by Shri Mohit Vohra. Further when he was asked*

*A-3/1-48 Copies of letters relating to payment of installments by members who have booked flats in Haryana CGHS Ltd, original receipts issued by Bhagwanti CGHS for payments made by members. Please explain the same. Whether you have shown these transactions in your books of accounts.*

*He replied*

*I was an authorized loan coordinator of Loan Pandit and Trendsetters Finance Company vide their letter dated 10.01.2006 I was a mediator between the mentioned companies and various clients for different housing projects. The clients in various housing projects would approach me for arranging financial assistance or I used to contact them so that I could arrange housing loans for them and they could pay the outstanding amount for their flats. The papers of various parties/members of housing societies etc. were lying with me for this purpose or for arranging supplies as stated in Item 1 above. There is no transaction pertaining to me.*

*When the same question was put to M/S GTM Builders and promoters ltd:*

*A-5/ pages 36 to 46 and page 62 these are handwritten loose papers and relate to geysers and other electrical fixtures to be fixed in flats of various projects. The names of the flat owners and the flat numbers are given alongside. On the top of the page the name of the society is given as "GTM Ananda, Bhagwanti Society, Plot 83, Sector 56 Gurgaon" or "GTM Garima, GH-1 Huda Society, Sector 56, Gurgaon. Please explain*

*the same. Whether you have shown these transactions in your books of accounts.*

*They replied*

*The documents mentioned in this item and all subsequent items have not been recovered from our premises but from the premises of Shri Mohit Vohra and he is the proper person to answer the queries. We may, however, state that Shri Mohit Vohra is our employee and, besides working for us, he has been doing separate and independent side business/moonlighting with which we are not concerned. We are told by Shri Mohit Vohra that some of queries in the questionnaire under reply have already been replied by him in his case and we request that the reply already given by him should meet your requirement from us. We reiterate that we have nothing to do with the societies mentioned in the query and no transaction appears as such in our books of accounts. This reply may be taken into consideration for subsequent replies pertaining to Shri Mohit Vohra only for the sake of brevity.*

*64. In order to substantiate the involvement of the GTM group and its associates in the control over cooperative societies, a survey u/s 133A of the Act was conducted on M/S Bhagwanti Cooperative Group Housing Society on 21-03-2007.*

*65. During the course of survey a statement of Shri Vidyasaqar Vishnoi who was working in the society as an honorary Manager was recorded. He was asked*

*Q.7 Please state how many members out of whole 48 members were initially the members of the society?*

*Ans. Only one member is at present the member of the society who was initially member of the society. All 47 members are the new members.*

*Q.8 Please state the names of the members introduced by M/s GTM or Shri Tushar Kumar?*

*Ans. Following members have been introduced by M/s  
GTM or Shri Tushar Kumar:-*

<b><u>Name</u></b>	<b><u>Flat No.</u></b>
1. Sh. Rajesh Chabbra	502 Bhagwanti CGH Ltd.
2. Mrs. Alka Gupta	505 Bhagwanti CGH Ltd.
3. Mrs. Ruchi Aggarwal	606 Bhagwanti CGH Ltd.
4 Mr. S. Rajan.	701 Bhagwanti CGH Ltd.
5. Group Cpt. Modi Lai Bhandari	801 Bhagwanti CGH Ltd.
6. Wg. Cdr. Sunil Chaudhery	203 Bhagwanti CGH Ltd.
7. Sh. Jatiin Bakshi	804 Bhagwanti CGH Ltd.
8. Sh. Raman Deep Sharma	803 Bhagwanti CGH Ltd.
9. Sh. Manoj Dhar	305 Bhagwanti CGH Ltd.
10. Dr. Meena Gupta	706 Bhagwanti CGH Ltd.
11. Sh. Amit Gupta	301 Bhagwanti CGH Ltd.
12. Sh. P.S.Manikantan	204 Bhagwanti CGH Ltd.
13. Mrs. Deepali Jain	402 Bhagwanti CGH Ltd.
14. Sh. A.K. Goswami	304 Bhagwanti CGH Ltd.
15. Sh. Swaprnil Dubey	705 Bhagwanti CGH Ltd.
16. Smt. Surbhi Bhasira	504 Bhagwanti CGH Ltd.
17. Sh. Hitesh Vadhwani	604 Bhagwanti CGH Ltd.
18. Wg.Cdr. Ardhendu Dass	702 Bhagwanti CGH Ltd.
19. Smt. Sadhna Verma	501 Bhagwanti CGH Ltd.
20. Sh. Neeraj Grover	806 Bhagwanti CGH Ltd.
21. Mrs. Bhawna Gupta	302 Bhagwanti CGH Ltd.
22. Mr. Sailesh Aggarwal	205 Bhagwanti CGH Ltd.
23. Sh. Vikas Kumar	202 Bhagwanti CGH Ltd.
24. Sh. Anurag Srivastava	503 Bhagwanti CGH Ltd.
25. Mr. R.S. Sahu	406 Bhagwanti CGH Ltd.
26. Dr. Prem Lata Abiyarai	103 Bhagwanti CGH Ltd.
27. Mrs. Roopali Sharma	404 Bhagwanti CGH Ltd.
28. Mr. Sudhanshu Badani	605 Bhagwanti CGH Ltd.
29. Mr. Deeraj Juneja	101 Bhagwanti CGH Ltd.
30. Sh. Jitender Singh Chabbra	
31. Wg. Cdr. Sanjay Seth	

*It needs to be mentioned here that all the names match with the 31 names that are given in the register which was found and seized from the residence of Shri Tushar Kumar and annexured as annexure A 1 on which GTM Ananda is written.*

*Further Shri Vishnoi was asked*

*Q 11 Please state when were the members provided by M/s GTM/Sh. Tushar Kumar?*

*Ans: The members were provided by M/s GTM/ Sh. Tushar Kumar .....w.e.f 11/03/2004.*

*Q13: I am showing you the page no. 26, 27, & 28 of Annexure A impound a site office of the society i.e. Plot No. 83 Sec. 56 Gurgaon. These papers pertain to Sh. Rajesh Chhabra. Sh. Rajesh Chhabra has stated that (1) Ration Cards at page no. 26, does not pertain to him. (2) Signature at page no. 27 has not been done by him. (3) Address written at page no. 28 in blue ink on page 28 has not been written by him and does not pertain to him. Please clarify the above facts?*

*Ans: In this connection I clarify that all the papers relating to formation of members of the society i.e. application for membership, affidavits, ration cards and other documents were received by us from M/s GTM builders and the promoters, Dwarka which were sent by hand by Sh. Tushar Kumar to the society. I do not know anything about ration card, affidavit and address written on the application form for membership. The authenticity of these documents is known to Sh. Tushar Kumar of GTM Builders and Promoters Dwarka.*

*Q 15. Please state about the agreement between the society and M/s GTM builders and Promoters?*

*Ans. The society was desirous to make the members of the society but the society was not getting the sufficient members. We contacted with the contractor of the society to provide the members to the society. Without membership the society was under the risk of failure. The contractor suggested us the name of GTM builders and promoters on the conditions that the value of the Flats will be decided at higher rate i.e. 21 Lacs instead of 17 Lacs which was the actual cost of the flat i.e. 17 lacs.*

66. *Statement of Sh. Rajesh Chabra owner of flat no. 502 recorded on date of survey at the premises of the society.*

*Q 2. Please state how you came to know about Bhagwanti CGH Ltd.?*

*Ans. I saw the advertisement in the newspaper of the society for sale of flats in the society. The advertisement was given by GTM Group.*

*Q.3. Please state after seeing the advertisement in the newspaper to whom you have contacted?*

*Ans. After seeing the advertisement of the sale of the flats at Bhagwanti CGHS Ltd. I contacted Sh. Tushar Kumar who was present at the office of the GTM at Gurgaon.*

*Q 5. What were the formalities that you were asked to fulfill and who asked you to complete the formalities to purchase the Flat at the society Bhagwanti CGHS Ltd. Please state in detail?*

*Ans. When I contacted at the office of the GTM at Gurgaon, Sh. Tushar Kumar was present there. He took the Cheque of approximately Rs. 50,000/- for booking amount. He asked me to fill some forms of the society and the same were fulfilled by me in 2004. Purchase price of the Flat is Approx. Rs. 21 Lacs.*

67. *Statement of Sh. Ramesh Kumar Wadhwan owner of flat No. 604 recorded on date of survey at the premises of the society.*

*Q 1. Please state from whom you have purchased the Flat No. 604, in the society and when purchased?*

*Ans. My son has purchased the above flat during May/June 2004 the name of my son is Sh. Hitesh Wadhawan. The flat was purchased through Sh. Tushar Kumar.*

68. *Statement of Shri Ashok Kumar s/o Shri Amar Nath President of Bhagwanti Cooperative Group Housing Society*

*Q 1. During the course of survey dated 21.03.2007 statement of Shri Vidya Sagar Vishnoi Honorary Manager of the society was recorded, vide question no. 8 he has stated that 31 members to the society were introduced by GTM/Tushar Kumar further vide answer to question no. 13 regarding certain papers pertaining to Sh. Rajesh Chhabra he said that these papers were received from GTM/Tushar Kumar. Kindly acknowledge the same?*

*Ans. Yes it is correct.*

*Q. 2. On the basis of the above can it be concluded that the control of the society was with GTM/Tushar Kumar?*

*Ans. The technical legal control is with the society only however GTM/Tushar Kumar was controlling the society by the way of introducing most of the members, keeping their records and giving advertisement in the name of society.*

69. *During the course of assessment proceedings Shri Tushar Kumar was asked*

*During the course of survey on Bhagwanti Cooperative Group Housing Society, the statement of Shri Vidyasagar Vishnoi was recorded who is the Honorary Manager in the society. In the course of his statement Shri Vishnoi has stated that 31 of the 48 members in the society were introduced by Shri Tushar Kumar/GTM whose names are also given by him. This was done on the condition that the value of each flat would be decided at a higher rate i.e. Rs 21 lakhs instead of Rs 17 lakhs which was the cost of the flat. The difference amount of Rs 4 lakhs was to be shared by Shri Tushar Kumar/GTM and contractors. He further stated that all the documents relating to the members introduced by GTM were received directly from the company and were sent directly by Shri Tushar Kumar. The cheques for the payments for purchase of the flats were also sent*

*by GTM. The statements of two of the members/occupants of the society were also recorded during the course of survey. Shri Ramesh Wadhawan, owner of Flat 604 stated that on making enquiries at the construction site of the society in 2004 they were told to contact Shri Tushar Kumar. After making contact with him they booked the flat and gave cheques to him. Subsequently all further cheques were sent to him and the last installment was paid in 2005. The other member/owner Shri Rajesh Chabra in his statement stated that he had seen the advertisement for sale of flats in the society which had been given by the GTM group and accordingly he contacted Shri Tushar Kumar and made the cheque payments to him. All further cheque payments in the name of the society were sent to Sri Balaji & Co (GTM Ananda) by post. Please explain the above statements and provide documentary proof for the same and why addition on this head should not be made to your total income.*

*The reply to the above query was furnished as under:*

*I am not aware of the statements of Shri Vidyasagar Vishnoi, Shri Ramesh Wadhawan and Shri Rajesh Chabra and the context in which these were recorded and when. I request for supply of copies of these statements and allowing me an opportunity to cross-examine the parties whose statements are recorded at my back. I may, however, state here that we had also learnt about some advertisement by some unscrupulous/fraudulent persons/impostors in our names for enrolment in housing schemes, booking of flats etc. including cooperative societies. We took legal advice and gave an general notice/advertisement in leading newspapers 'Nav Bharat Times' and the 'Pioneer' dated 3.9.2005 and 2.9.2005 respectively to make the general public/ innocent persons aware of misuse of our names and to be vigilant as we had nothing to do with such housing schemes, booking of flats etc. A copy of the advertisements is enclosed for your kind perusal. We deny the allegations and having received any such amount as alleged.*

*70. No copy of the advertisement was provided to the department as has been given in the answer. Copies of all the statements were provided to the assessee. He filed the reply on 19.12.2008 saying that*

*All the statements are recorded and enquiries made in my absence/back. The material being cited has not been seized from us and we have nothing to do with the same. Still, if the department has any doubts relating to our bonafides, we have requested the Department to call the persons in person and confront them to us and allow us opportunity of cross-examine them. We again reiterate and confirm to your good self that no payment in cash or through cheque has ever been received by the assessee from society or any client/customers of the Society.*

*We were earlier working as a Property Dealer/agent/broker in various places like Dwarka, Gurgaon etc. and the income earned is shown in the respective case of each assessee. You are therefore requested to consider and accept my submissions in the interest of justice.*

*71. The same question was also asked in case of GTM Builders and the assessee has replied that the reply may be treated as same as in case of Sh. Tushar Kumar.*

*72. Papers were also seized from the residence of Shri Tushar Kumar relating to Bhagwanti Cooperative Group Housing Society. Annexure A-4 of Party A-3 has page no. 14. It is on the letterhead of Bhagwanti Cooperative Group Housing Society and in the middle it is written GTM ANANDA (STYLISH COMFORT HOMES). The letter is about escalation of cost and is signed by Sri Ashok Kumar (President) and Sri R.K. Huda (Vice President).*

*73. When Sri Tushar Kumar was questioned about these papers he replied*

*The position is same as in the case in Item 46. Shri Ashok Kumar was an acquaintance who had perhaps*

*come to seek advice on the proposed transaction and left a copy of his letter at our premises. It has no concern with me.*

*74. Page 13 is paper seized from the residence of Shri Tushar Kumar and is about escalation of cost at Bhagwanti cooperative group housing society signed by Ruchi Aggarwal.*

*When Shri Tushar Kumar was asked about it he replied that:*

*The seized paper is self speaking and has no concern with me. It pertains to Mrs. Ruchi Aggarwal who has accepted escalation of cost of Society Flat. She was an acquaintance and may have left a copy of letter inadvertently with me.*

*75. Two more letters were found and seized from the residence of Shri Tushar Kumar which were hand written and were about the escalation of cost in the Bhagwanti cooperative group housing society. During the assessment proceedings when Shri Tushar Kumar was asked about these papers then he replied that:*

*It does not relate to me and there is no commercial transaction as such.*

*76. When the same questions were put up to the cooperative society as:*

*Papers have been seized from the premises of Sh. Tushar Kumar during the course of search at his premises annexurised as Party A-2, Annexure A-3 page no. 52 and 53 are letter related to escalation of cost. Kindly explain the same.*

*They replied that*

*Initially the cost of each flat was estimated in the year 2003 at Rs. 17 Lakhs and Rs. 21 Lakhs for Category A and A I Types of flats respectively (on the basis of detailed architectural/structural drawings, specifications etc. and vide agreement entered into by*

*the society with the contractor in the year 2003) and the same was informed to the members. Since there was rise in the prices of steel, cement, Bricks and also other material over the period, the cost of escalation was worked out to be Rs. 44,300, which was duly approved by the members in the AGM of the society.*

*The copy of the letters found during the survey belongs to the escalation cost duly accepted by the members and kept for the records of the society.*

*77. The reply is wrong as the papers were not found during the course of survey but were found at the residence of Shri Tushar Kumar and no explanation whatsoever has been given what these papers were doing at his residence. When question was put about the letter as*

*Papers have been seized from the premises of Sh. Tushar Kumar during the course of search at his premises annexurised as Party A-2, Annexure A-4 page no. 13 and 14. Page 13 is about escalation of cost and 14 is on the letter head of Bhagwanti Cooperative Group Housing Society also written GTM Ananda signed by its President, Sh. Ashok Kumar and Vice President, Sh. R.K. Huda. Please explain the same.*

*The assessee replied that*

*It is clarified that letter was issued by the society to its members informing the cost of flat. However insertion of the words "GTM Ananda (Stylish Comfort Homes) on the top of it, was not in the knowledge of the society.*

*Further in his replies dated 24.11.2008 A.R. of the Bhagwanti Cooperative Group Housing Society acknowledged that members were introduced by Shri Tushar Kumar.*

*Interestingly a newspaper article had appeared in the Indian Express on 11.08.2006 titled "How green is the valley". The article states that "For those who travel on the Gurgaon-Faridabad road, Valley View Estate*

*must be a familiar sight. The project spread over 22 acres consists of 14 towers housing separate societies. One of the towers, GTM's Tower 11, is being promoted by Sri Balaji & Company which has an ISO 9001:2000 certification. They also have to their credit smaller projects in Gurgaon Ananda and Garima of around 40-50 flats each.*

*79. When Shri Tushar Kumar was confronted with this article during his statement on 13.03.2006 he was asked*

*Q. 7. I am showing you a printout of a newspaper article of Indian Express dated 1-1.08.2006 which says that GTM projects also include Ananda and Garima in Gurgaon. What do you have to say?*

*Ans. The facts are incorrect. GTM has nothing to do with the projects.*

*When the A.R. of Bhagwanti cooperative group housing society further asked why the society should not be considered as the Benami concern of G.T.M. builders then he filed the reply saying*

*The society cannot be said a benami concern of Shri Tushar Kumar/GTM since it is a separate legal entity and is a registered society under the Haryana cooperative societies Act. The scope of its activities, objectives is governed by its Memorandum and Articles of the association and nothing else. The society takes its decisions through its governing body, which are given such powers through General Body.*

*It is also to be noted that all the legal, financial documents relating to the society, the minutes of its meetings, its members, its accounts etc. are kept with the society and no one else. The mere fact that some of the documents, information pertaining to its members were found at the premises of Mr. Tushar Kumar/GTM did not make it a concern of Mr. Tushar Kumar/GTM.*

*From the above it is clear that the society is an independent legal entity and is not a benami concern of Mr. Tushar Kumar/GTM.*

*80. The reply of the A.R. of Bhagwanti Cooperative Society cannot be accepted. It is more than clear that GTM builders were controlling all the affairs of the society as they brought in members, they escalated the cost, and they gave the advertisement on behalf of the society and accepted the escalated cost as the profit.*

*81. From the above facts it is clear that the society was managed and controlled by the GTM Group and the main contact person was Shri Tushar Kumar. It is also evident that for each of the 48 flats, GTM/Tushar Kumar received a sum of Rs 4 lakhs which amounts to a total payment of Rs. 1,92,00,000/- which was raised by the active connivance of GTM Builders and the members of the society. This clearly represents the undisclosed income of the group. An addition of Rs. 1,92,00,000/- on this account is being made protectively in the hands of Bhagwanti Cooperative Group Housing Society and Shri Tushar Kumar and substantively in the hands of M/s GTM Builders in the year 2006-07 as final installment for payment was made in the year 2005 which is clear from the statement of Shri Ashok Kumar President of M/s Bhagwanti Cooperative Group Housing Society. Members were introduced in various years but it is presumed that only while paying the final installment the cash amount would have been paid to Shri Tushar Kumar. Hence the addition of Rs. 1,92,00,000/- is being made in the year 2006-07."*

25. The Id. CIT (A) deleted the addition on the grounds that there is no evidence to show that any money has passed from the society to the assessee towards the sale of flats.

26. Before us, the revenue relied on the exhaustive order of the Assessing Officer and the Id. AR supported the order of the Id. CIT (A).

27. Heard the arguments of both the parties and perused the material available on record.

28. We find that the Assessing Officer has made addition on the following premises:

1. Documents pertaining to the society have been found with Shri Mohit Vohra and Shri Tushar Kumar, Directors of the company.
2. Held that the assessee has a role in management of the group houses societies.
3. Held that the assessee group and its associates have controlled over the Cooperative Societies.
4. The application for membership and other documents are being sent to the society Manager by the Directors of the assessee company.
5. The assessee received Rs.4 lacs against each flat
6. Some of the members have been introduced by Shri Tushar Kumar, the Director of the assessee company

29. We find from the record that Shri Rajesh Chhabra owner of Flat No. 502 has submitted that a cheque of Rs.50,000/- was taken by Shri Tushar Kumar and the purchase price of the flat is Rs.21 lacs. Two other members conveyed that they gave cheques to Shri Tushar Kumar. The revenue did not take it to a logical conclusion to prove whether this cheque of Rs.50,000/- and the other cheque has been deposited in any of the any of

the bank accounts belonging to Shri Tushar Kumar. The Assessing Officer held that (repeated),

30. It is also evident that for each of the 48 flats, GTM/Tushar Kumar received a sum of Rs 4 lakhs which amounts to a total payment of Rs. 1,92,00,000/- which was raised by the active connivance of GTM Builders and the members of the society. This clearly represents the undisclosed income of the group. An addition of Rs. 1,92,00,000/- on this account is being made protectively in the hands of Bhagwanti Cooperative Group Housing Society and Shri Tushar Kumar and substantively in the hands of M/s GTM Builders in the year 2006-07 as final installment for payment was made in the year 2005 which is clear from the statement of Shri Ashok Kumar President of M/s Bhagwanti Cooperative Group Housing Society. Members were introduced in various years but it is presumed that only while paying the final installment the cash amount would have been paid to Shri Tushar Kumar. Hence the addition of Rs. 1,92,00,000/- is being made in the year 2006-07.

31. From the record, we find that Shri Tushar Kumar might have played some role but the society confirmed that initially each flat was estimated in the year 2003 at Rs.17 lacs and Rs.21 lacs for category A and category A1 type of flats. It was also confirmed by the society that since there was a rise in the price of steels, cement and bricks, the cost escalation was worked out to be Rs.44,800/- which was duly approved by the members of the society in the AGM. The society cannot be said a benami concern of Shri Tushar Kumar/GTM since it is a separate legal entity and is a registered society under the

Haryana cooperative society Act. The scope of its activities, objectives is governed by its Memorandum and Articles of the association and nothing else. The society takes its decisions through its governing body which are given such powers through General Body. It is also to be noted that all the legal, financial documents relating to the society, the minutes of its meetings, its members, its accounts etc. are kept with the society and no one else. The mere fact that some of the documents information pertaining to its members were found at the premises of Mr. Tushar Kumar/GTM did not make it a concern of Mr. Tushar Kumar/GTM. From the above it is clear that the society is an independent legal entity and is not a benami concern of Mr. Tushar Kumar/GTM.

32. Adverting to the evidences as to whether the assessee has received Rs.4 lacs from each of 48 flats. We do not find any such reference or evidence gathered, collected or investigated by the revenue. The addition made was on theoretical premise on the basis of presumptions. Even the statement recorded from the members of the society did not point to any amount paid to the assessee or the Director in his personal capacity. The society has also clarified that an amount of Rs.17 lacs each for category A and Rs.21 lacs for category A1 type. The cost escalation of Rs.44,800/- has been approved in the AGM. There was absolutely no evidence of payment of Rs.4 lacs by each flat owner to the assessee. Hence, the addition made by the AO cannot be sustained. The appeal of the revenue on this ground is dismissed.

33. In the result, the appeal of the revenue is dismissed and that of the assessee is allowed.

34. Owing to the disposal of the appeal of the revenue as well as the assessee, the Stay Application No. 186/Del/2020 is treated as redundant.

Order Pronounced in the Open Court on 04/02/2021.

Sd/-

**(Amit Shukla)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 04/02/2021**

\*Subodh\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR**