

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R KUMAR, ACCOUNTANT MEMBER

ITA.No.5259/Del./2013
Assessment Year 2008-2009

The ACIT, Central Circle-13, Room No.332, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. Supreme Placement Services (P) Ltd., E-60, Near Anand Pradhan, Om Vihar, Phase-V, Uttam Nagar, New Delhi.
(Appellant)		(Respondent)

For Revenue :	Shri N.K. Bansal, Sr. D.R.
For Assessee :	Shri S.K. Tulsian, Advocate

Date of Hearing :	08.03.2021
Date of Pronouncement :	17.03.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-1, New Delhi, Dated 25.07.2013, for the A.Y. 2008-2009, on the following grounds :

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

2. *On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.4,96,00,000/- made by AO on account of unexplained share premium and Share Capital received by assessee from M/s Taranga Vyapar Pvt. Ltd., UDIT Vyapar Private Limited, Remo Engineering Works Pvt. Ltd., Mysol Engineering Pvt. Ltd., Twenty First Century (India) Ltd., as the assessee failed in proving the creditworthiness of the investors and the genuineness of the transactions. M/s Taranga Vyapar Pvt. Ltd does not have any significant funds of its own for investment in the unlisted company like the assessee company.*

3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law deleting the addition of Rs.4,84,00,000/- made by AO on a/c of unexplained share premium and Share capital received by assessee from Saumitra Investment and Finance Pvt. Ltd., Viva Trade-link Pvt. Ltd., Hingora Finvest Pvt. Ltd., Doldrum Investment and Finance Pvt. Ltd. &*

Oshin Investment and Finance Pvt. Ltd. As the assessee failed in proving the creditworthiness of the investors as all the investors are showing nominal income.”

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3 The facts of the case are that assessee has filed the return of income declaring total income of Rs.3,93,976/- on 24.09.2008. Notice under section 143(2) was issued and served upon the assessee. A search under section 132 was conducted in Bhushan Steel Group of cases on 03.03.2010. The case of assessee was centralized with this case. The assessee attended the proceedings and filed necessary details before A.O. for completion of the assessment. The A.O. noted the relevant facts/circumstances leading to the search in the Bhushan Steel Group of cases. During enquiries by the Income Tax Department, it was noticed that the flagship company of the Group Bhushan Steel

Limited had introduced a substantial amount of money into its books as share application money. This money was routed through number of group companies and by a series of transactions before reaching Bhushan Steel Limited. The last line of companies from which this amount originated are found to be companies with meager resources and small turnovers. The assessee company happens to be one such company.

3.1. On perusal of the return of income and other details submitted, A.O. noticed that assessee company had invested a substantial amount of money into M/s. Bhushan Steel Limited. The balance-sheet of the assessee company reveal that the assessee company has raised this money through share capital/share premium received during assessment year under appeal. During the course of assessment proceedings, the assessee was asked to furnish the details of share premium and share capital received during F.Y. 2007-2008. In response to the same, assessee submitted the details of increase in share capital/share premium during assessment year under appeal. On analysis

of the details submitted, A.O. noted that assessee has received share capital and share premium from various companies situated at Kolkata of Rs.4,96,00,000/-. The details as per the table are given below :

S. No.	Name of the Share Holder	Address	Amount (Share Capital + Share Premium)
1.	M/s. Taranga Vyapar Pvt. Ltd.,	10, Clive Row, 1 st Floor, Kolkata-700002	96,00,000/-
2.	UDIT Vyapar Private Limited	10, Clive Row, 1 st Floor, Kolkata-700002	98,00,000/-
3.	Remo Engineering Works P. Ltd.,	10-B, Sikdarpara, Kolkata - 700 007	94,00,000/-
4.	Mysol Engineering Pvt. Ltd.,	207, Maharshi Devendra Road, Kolkata - 700 007	98,00,000/-
5.	Twenty First Century (India) Limited	1, Crooked Lane, 1 st Floor, Room No.107, Kolkata-700069.	1,10,00,000/-
			Rs.4,96,00,000 /-

3.2. The assessee was asked to furnish the details of the amounts received and evidences in support of identity and creditworthiness of the lender and also genuineness of the transactions. The assessee submitted copies of the bank accounts, confirmations and income tax returns, acknowledgments and copies of the annual reports of the Investors. The A.O. noted that all the Investor Companies have shown meager income in their return of income.

However, the A.O. on perusal of the balance-sheet of the Investors found their main source of fund as under :

1.	M/s. Taranga Vyapar Private Limited	Rs. 7,36,76,300/-
2.	UDIT Vyapar Private Limited	Rs. 8,80,28,900/-
3.	Remo Engineering Works Pvt. Ltd.,	Rs. 5,53,23,000/-
4.	Mysol Engineering Private Limited	Rs. 4,21,99,000/-
5.	Twenty First Century (India) Ltd.,	Rs.23,25,00,000/- + Rs. 5,00,00,000/-

3.3. The A.O. on the basis of the above observed that all the Investors are based out in Kolkata and it is beyond the limit of human reasonableness that these Companies would invest such large amount in the assessee company. All the companies invested in assessee company do not have any significant income and their source of fund is share premium and share capital. The A.O, therefore, noted that creditworthiness of the creditors have not been established and genuineness of the transactions is also in doubt. The A.O. accordingly made addition of Rs.4.96 crores on account of unexplained share capital/premium.

3.4. The A.O. on perusal of the details submitted by assessee noted that assessee has received share capital/premium from Companies situated at Mumbai of Rs.4,84,00,000/-. The details of the same are as under :

S. No.	Name of the Share Holder	Address	Amount
1.	Saumitra Investment and Finance Pvt. Ltd.,	B-607, Pushpak Apartment, Ghartan Pada, Western Express Highway Dahisar (E), Mumbai - 400068	1,04,00,000/-
2.	Viva Trade-link Pvt. Ltd.,	601, St. Annes Apartment, 329, Annes Road, Bandra-West, Mumbai - 400 050	96,00,000/-
3.	Hingara finvest Pvt. Ltd.,	Shivaji Raje Scheme, B-10/14, Mhada, Room No.101, Ekta Nagar, Malad (W), Mumbai - 400 062.	94,00,000/-
4.	Doldrum Investment and Finance Pvt. Ltd.,	B-501, Pushpak Apartment, Ghartan Pada, Western Express Highway Dahisar (E), Mumbai - 400068.	98,00,000/-
5.	Oshin Investment and Finance Pvt. Ltd.,	B-501, Pushpak Apartment, Ghartan Pada, Western Express Highway Dahisar (E), Mumbai - 400068	92,00,000/-
			Rs.4,84,00,000 /-

3.5. The assessee was asked to submit the evidences of their identity and genuineness of the transactions. The assessee similarly filed copies of the bank accounts, confirmations, income tax returns, acknowledgments and copies of the annual reports of the Investors. The A.O. on going through the same noted that these Investors have shown meager income in their return of income. In order to verify the genuineness of the above parties, Commission

under section 131 was issued to DDIT (Inv.), Mumbai, in response to which, report was received on 20.12.2001. The DDIT (Inv.), Mumbai deputed an Inspector of Income Tax Department to serve the same. But, according to the report, no such company was found at the given address, therefore, summons could not be served upon them. The A.O, therefore, noted that their addresses are not verifiable, therefore, creditworthiness of the Investors is not established and genuineness of the transaction is also in doubt. The A.O. accordingly made addition of Rs.4,84,00,000/- on account of unexplained share capital/premium.

3.6. The assessee challenged the addition before the Ld. CIT(A) and detailed written submissions of the assessee is reproduced in the appellate order in which the assessee submitted that it has filed copies of the confirmations, income tax returns, bank accounts and audited accounts of the Investors on which no enquiry have been made by the A.O. The amounts have been received through banking channel and parties have confirmed the transactions with

the assessee. All are assessed to Income Tax and have sufficient funds to make investment in assessee company. The onus upon assessee have been discharged to prove identity of the Investors, their creditworthiness and genuineness of the transactions in the matter. The A.O. cannot ask the assessee to prove source of the source. The assessee relied upon several decisions of Hon'ble Delhi High Court and Hon'ble Supreme Court in support of the contention that addition is wholly unjustified. The Ld. CIT(A) called for the remand report on the submissions of the assessee and assessee also filed rejoinder to the same. It was submitted that field enquiry was not confronted to the assessee and all the Investors are existing parties. The Ld. CIT(A) considering the material on record including the remand report etc., deleted the entire addition. The findings of the Ld. CIT(A) in paras 3.4 and 4 of the impugned order are reproduced as under :

“3.4. I have considered the assessment order, submissions of the appellant, inquiries made by the revenue and reply of Ld. AR thereto. Absence of a

corporate entity at the last known / given address is not a reliable basis for taking the view that the corporate entity is not genuine. There are reasons why it is so. At the time of registration of a company, no physical verification of its existence at the address mentioned in the memorandum / article of association is carried out. In fact, physical verification of an applicant for PAN is also not carried out by the Income Tax Department. Secondly, Corporations are legal entities that organize business and channelize capital in any modern economy. These are controlled by few individuals and the natural flow of capital necessitates change of ownership of such entities, sometimes frequently. Therefore, unless it is established that the share capital raised has dubious antecedents or has been induced by the promoters / owners to launder untaxed money, adverse opinion / view cannot be taken. Instead of trying to physically locate private companies at

particular addresses, what needs to be verified is their existence in the records of Govt, agencies (ROC, Income-tax, Service Tax, Excise, VAT authorities, etc.), their business activities and financial transactions. In the present case, it is undisputed that all the companies that had subscribed to the share capital of the appellant company are existing entities in the records of IT department and ROC. If there was any reason to suspect that these transactions were not genuine, necessary investigation should have been carried out in a systematic manner to establish the real facts. Mere assertion that these companies do not have adequate income, or that their resources also mainly consist of share premium received, or simply the fact that these entities could not be located at the given address, are not sufficient to bring the entire share capital under the tax net. All the entities are live in govt. records, at least one company was traced at the given address, and

response was received to postal summons from all five companies in Kolkata. In these circumstances, and also the fact that no evidence was found in the search conducted on Bhushan group to indicate any laundering of money as share capital of the appellant, it cannot be held that the share capital raised is not genuine. As the appellant has discharged the primary onus of establishing the transactions and the source of the share capital raised, there has to be conclusive proof for the revenue to reach this conclusion. In the absence of any such evidence, the addition made cannot be legally sustained and is deleted.

4. *In the result, the appeal is allowed.”*

4. The Ld. D.R. relied upon the Order of the A.O. and submitted that A.O. had discussed the issue in detail, but, the Ld. CIT(A) deleted the addition in a casual manner. The Ld. D.R. relied upon Judgment of the Hon'ble Supreme Court in the case of PCIT vs., NRA Iron & Steel (P.) Ltd.,

[2019] 103 taxmann.com 48 [SC] and submitted that the issue is covered in favour of the Revenue by the aforesaid decision because the facts in this case are identical with the facts of the assessee's case. In both the cases share capital/premium have been taken from Kolkata and Mumbai based companies where share premium was very high. The creditors have filed their return of income showing negligible income and no explanation is offered by the Investor companies applying at high premium for allotment of shares. In both the cases enquiry have been made by the A.O. and the Ld. CIT(A) did not advert to the field enquiry conducted by the A.O. The Ld. D.R. also submitted that addresses of the Investors were found non-existing. The D.R. relied upon the following decisions :

1.	PCIT vs., NDR Promoters Pvt. Ltd., [2019] 410 ITR 379 [Del.] [HC].
2.	Order of ITAT, Delhi in the case of ITO vs., Synergy Finlease Pvt. Ltd., in ITA.No.4778/Del./2013.
3.	Prem Castings (P.) Ltd., vs., CIT [2017] 88 taxmann.com 189 [Alld.] [HC].
4.	CIT vs., MAF Academy (P.) Ltd., 361 ITR 258 [Del.] [HC].
5.	CIT vs., Navodaya Castle Pvt. Ltd., [2014] 367 ITR 306 [Del.] [HC].

6.	Konark Structural Engineering (P.) Ltd., vs., DCIT [2018] 96 taxmann.com 255 [SC].
7.	Pratham Telecom India Pvt. Ltd., vs., DCIT [2018-TIOL-1983-HC-MUM-IT].
8.	JJ Development Pvt. Ltd., vs., CIT [2018-TIOL-395-SC-IT].
9.	DRB Exports (P.) Ltd., vs., CIT [2018] 93 taxmann.com 390 [Calcutta] [HC].
10.	CIT vs., Nipun Builders & Developers (P.) Ltd., 350 ITR 407 [Del.] [HC].
11.	CIT vs., Nova Promoters & Finlease (P) Ltd., 342 ITR 169 [Del.] [HC].
12.	CIT vs., N R Portfolio Pvt. Ltd., [2014] 222 Taxman 157 [Del.] [HC].

5. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that A.O. did not conduct any enquiry in respect of Kolkata parties. No summons under section 131 or notice under section 133(6) have been issued for verification of the transaction. The A.O. made the addition solely on the premise that such companies were reporting nominal income. The A.O. did not doubt the bank statements of the parties and no cash was found to have been deposited in their accounts. No evidence of any unaccounted commission was found. No suspicious money trail linking the assessee were found. The A.O. has

not considered the sources available with the Investor companies to make investment in assessee company. The A.O. did not doubt the identity of any of the Investor companies and merely suspected the creditworthiness of the Investors without any reasons. The Ld. CIT(A) remanded the matter to the A.O. to get necessary verification done with respect to Kolkata parties. As per the report M/s. Twenty First Century (India) Ltd., was found to have shifted to a new address and the said party was traced at that address, therefore, its identity and existence is proved. In support of the remaining parties it is reported that these companies could not be traced at the given address, but, the postal summons issued under section 131 of the I.T. Act were served at the given address which have been responded by the parties also. Therefore, the report of Kolkata Income Tax Department has no value. The A.O. did not bring any evidence on record to controvert the documentary evidences furnished by the assessee. Whatever enquiry was conducted at the back of the assessee was not confronted to the assessee and no right of cross examination have been given,

therefore, such material cannot be used against the assessee. Similarly, enquiry conducted through Mumbai Investigation Officer/Inspector was not confronted to assessee, therefore, such report of Inspector cannot be read in evidence against the assessee. All the material on record clearly prove that all the parties are existing and are assessed to tax and registered with the Registrar of Companies.

5.1. Learned Counsel for the Assessee submitted that facts of the case of assessee and NRA Iron & Steel (P.) Ltd., are clearly distinguishable on facts. The parties in both the cases are totally different. The creditworthiness of the Investors in both the case are totally different. The details filed by assessee in the present case have not been doubted by the A.O. The source of the funds invested in assessee company have been explained through documentary evidences and that Judgment of Hon'ble Bombay High Court in the case of PCIT vs., M/s. Ami Industries (India) Pvt. Ltd., [2020] 116 taxmann.com 34 [Bom.] [HC] recently

distinguished the Judgment of Hon'ble Supreme Court in the case of NRA Iron & Steel (P.) Ltd., (supra) on facts by making the following observation and findings in paras 21 to 24 as under :

“21. From the above, it is seen that identity of the creditors were not in doubt. Assessee had furnished PAN, copies of the income tax returns of the creditors as well as copy of bank accounts of the three creditors in which the share application money was deposited in order to prove genuineness of the transactions. In so far creditworthiness of the creditors were concerned, Tribunal recorded that bank accounts of the creditors showed that the creditors had funds to make payments for share application money and in this regard, resolutions were also passed by the Board of Directors of the three creditors. Though, assessee was not required to prove source of the source, nonetheless, Tribunal took the view that Assessing Officer had made inquiries through the

investigation wing of the department at Kolkata and collected all the materials which proved source of the source.

22. *In NRA Iron & Steel (P) Ltd (supra), the Assessing Officer had made independent and detailed inquiry including survey of the investor companies. The field report revealed that the shareholders were either non-existent or lacked creditworthiness. It is in these circumstances, Supreme Court held that the onus to establish identity of the investor companies was not discharged by the assessee. The aforesaid decision is, therefore, clearly distinguishable on facts of the present case.*

23. *Therefore, on a thorough consideration of the matter, we are of the view that the first appellate authority had returned a clear finding of fact that assessee had discharged its onus of proving identity of the creditors, genuineness of the*

transactions and credit-worthiness of the creditors which finding of fact stood affirmed by the Tribunal. There is, thus, concurrent findings of fact by the two lower appellate authorities. Appellant has not been able to show any perversity in the aforesaid findings of fact by the authorities below.

24. *Under these circumstances, we find no error or infirmity in the view taken by the Tribunal. No question of law, much less any substantial question of law, arises from the order of the Tribunal. Consequently, the appeal is dismissed. However, there shall be no order as to cost.”*

5.2. Learned Counsel for the Assessee submitted that the assessee's case is fully covered by Judgment of the Hon'ble Supreme Court in the case of PCIT vs., Adamine Construction (P) Ltd., 259 Taxman 131 Dated 28.09.2018 whereby the Hon'ble Supreme Court had dismissed the SLP filed by the Department against the Order Dated 12.02.2018 of Hon'ble Delhi High Court in the case of PCIT vs., Adamine

Construction Pvt. Ltd., 99 taxmann.com 44. In this case the Hon'ble Delhi High Court has confirmed the Order of the Tribunal in the case of ACIT vs., Adamine Construction Pvt. Ltd., 87 taxmann.com 216 in which this assessee was also connected with Bhushan Group of cases and search conducted on 03.03.2010 and the case of assessee was also centralized. The Tribunal in this case held "where in order to prove genuineness of the share transaction and creditworthiness of the Investor companies, the assessee company furnished Investor companies, confirmations, tax returns etc., addition under section 68 was to be deleted. The Hon'ble Delhi High Court dismissed the appeal of the Revenue and the Order of the Hon'ble Delhi High Court has been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Department. He has, therefore, submitted that the facts of the case of assessee are identical with the case of Adamine Construction (P) Ltd., (supra) which were also connected with Bhushan Group of cases as is also attributed to the case of assessee. Therefore, the issue is covered in favour of the assessee on the identical

facts and circumstances. Learned Counsel for the Assessee, therefore, submitted that the initial onus upon assessee to prove identity of the Investors, genuineness of the transactions and creditworthiness of the Investor Companies have been discharged by producing the relevant documents which have not been doubted by the A.O. Therefore, the addition has been rightly deleted by the Ld. CIT(A). In support of the contention, he has relied upon Judgment of the Hon'ble Delhi High Court in the case of CIT vs., Dwarkadhis Investment P. Ltd., [2011] 330 ITR 298 [Del.] [HC], Judgment of Hon'ble Gauhati High Court in the case of Nemi Chand Kothari 264 ITR 254 (Gau.), CIT, Orissa vs., Orissa Corporation P. Ltd., 159 ITR 78 [SC], CIT vs., Kamdhenu Steel and Alloys Ltd., & Ors., 361 ITR 220 [Del.] [HC], Divine Leasing & Finance Ltd., 299 ITR 268 [Del.] [HC]. He has submitted that mere fact that Investor companies did not have their own profit making apparatus or have reported meager income does not *ipso facto* mean that Investors have no creditworthiness. In support of this contention, he has relied upon Judgment of Hon'ble

Bombay High Court in the case of Ami Industries Ltd., (supra). He has submitted that assessee is not required to prove the source of the source and that when A.O. did not doubt the documentary evidences produced by the assessee, the addition was rightly deleted by the Ld. CIT(A).

6. We have considered the rival submissions and perused the material on record. It is not in dispute that assessee filed original return of income wherein all the particulars of investment made by Investor companies of Kolkata and Mumbai have been disclosed to the Revenue Department. The case of assessee was centralized with the case of Bhushan Group of cases because in their cases it was found that this company has received share capital from different companies. However, A.O. has not mentioned any fact as to what material was recovered during the course of search in the case of Bhushan Steel Group of cases to point-out that assessee has received any bogus share capital/premium. The A.O. only on the basis of documentary evidences filed by the assessee came to know that assessee has received share capital and premium from

the 10 Investor companies at Kolkata and Mumbai. The assessee produced copy of the confirmations, bank accounts, income tax returns, and annual reports of all the Investor companies before the A.O. The A.O. did not doubt any of the documentary evidences. All investments have been made by the Investor companies through banking channel and have sufficient amount in their bank accounts to make investment in assessee company. No cash was found to have been deposited in the bank accounts of the Investors. The A.O. did not dispute the identity of any of the Investor companies. All the Investor companies are registered companies and are assessed to tax also. Therefore, these companies being legal entities, their identity cannot be disputed by the authorities below which is also otherwise not disputed by the A.O. The A.O. with regard to 05 Investors of Kolkata has specifically mentioned from their audited accounts that they are having creditworthiness and have sufficient source of funds to make investment in assessee company. The A.O. did not doubt their source at all. As regards the Mumbai Investors,

assessee produced their annual accounts which have not been discussed by the A.O. in the assessment order. The A.O. merely reported that they have filed the return of income showing meager income. However, their balance-sheet clearly show that they have sufficient bank balances with them in their bank accounts and in the balance-sheet their capital and reserves are ranging from Rs.49.99 crores, Rs.4.01 crore and Rs.30.02 crores respectively. Thus, all the Investors have sufficient source with them to make investment in assessee company. No evidence was found during the course of search in the Bhushan group of cases to point-out that assessee received any bogus share capital/premium from any of the Investor companies. The report of the Inspector at Mumbai was not confronted to the assessee, therefore, it cannot be read in evidence against the assessee. The A.O. did not make any enquiry on the documentary evidences filed by assessee under section 142(2) of the I.T. Act which A.O. was required to do so at the assessment stage. The A.O. did not called any Investor under section 131 of the I.T. Act or under section 133(6) of

the I.T. Act calling information directly from the parties. The A.O. admitted the creditworthiness of the Kolkata parties in the assessment order itself and reply under section 131 were filed at the remand proceedings before the Ld. CIT(A) in which the Investors have confirmed of the transactions with the assessee. The A.O. did not make any enquiry from the income tax record of any of the Investor companies. It is well settled Law that A.O. cannot ask the assessee to prove the source of the source. We rely upon the Judgment of Hon'ble Delhi High Court in the case of CIT vs., Dwarakadhish Investment P. Ltd., [2011] 330 ITR 298 [Del.] [HC], Judgment of Hon'ble Gujarat High Court in the case of Rohini Builders 256 ITR 360 (Guj.), Judgment of Hon'ble Allahabad High Court in the case of Zafar Ahmad & Co. 30 taxmann.com 269 [All.] [HC]. Considering the above evidences and material on record, it is clear that A.O. did not make any enquiry on the documentary evidences filed by the assessee and did not doubt the documentary evidences, therefore, initial onus upon assessee to prove creditworthiness and genuineness of the transaction have

been discharged by the assessee. In support of the above findings, we rely upon the following decisions.

6.1. CIT vs. Fair Investment Ltd., 357 ITR 146 in which it was held that A.O. did not summon investors and did not make efforts. There is no finding that material disclosed was untrustworthy. The Appellate Authorities rightly deleted the addition.

6.2. Decision of Supreme Court in the case of CIT vs. Lovely Exports Pvt. Ltd., (2008) 216 CTR 195 in which it was held as under:

“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.”

6.3. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Kamdhenu Steel and Alloys Ltd., &Ors. 361 ITR 220 (Del.) in which it was held as under :

“Once adequate evidence/material is given, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has “created” evidence, the Revenue is supposed to make thorough probe before it could nail the assessee and fasten the assessee with such a liability under s.68; AO failed to carry his suspicion to logical conclusion by further investigation and therefore addition under s.68 was not sustainable.”

6.4. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Vrindavan Farms Pvt. Ltd., etc. ITA.No.71 of 2015 dated 12th August, 2015 (Del.), in which it was held as under :

“The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their return of income. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the documents submitted by the assessee, the departmental appeal was dismissed by the Hon’ble High Court.

6.5. Decision of jurisdictional High Court in the case of CIT vs. Laxman Industrial Resources Pvt. Ltd., ITA.No.169 of 2017 dated 14th March, 2017, in which it was held as under :

“The CIT(A) took note of the material filed by the assessee and provided opportunity to the AO in Remand proceedings. The AO merely objected to the material furnished but did not undertake any verification. The CIT(A) deleted the addition by relying upon the decision of the Hon’ble Apex Court in the case of Lovely Exports Pvt. Ltd. (supra) and Judgment of Delhi High Court in the case of CIT vs Divine Leasing & Finance Ltd. [2008]

299 ITR 268. The ITAT confirmed the opinion of the Ld.CIT(A). Hon'ble High Court in view of the above findings noted that the assessee had provided several documents that could have showed light into whether truly the transactions were genuine. The assessee provided details of share applicants i.e. copy of the PAN, Assessment particulars, mode of amount invested through banking channel, copy of resolution and copies of the balance sheet. The AO failed to conduct any scrutiny of the document, the departmental appeal was accordingly dismissed.

6.6. Decision of the Hon'ble Supreme Court in the case of Earth Metal Electric Pvt. Ltd., vs. CIT dated 30th July, 2010 in SLP.No.21073 of 1999, in which it was held as under :

“We have examined the position, we find that the shareholders are genuine parties. They are not bogus and fictitious therefore, the impugned order is set aside.”

6.7. Decision of Hon'ble jurisdictional High Court in the case of Divine Leasing & Finance Ltd., 299 ITR 268, in which it was held as under :

“No adverse inference should be drawn if shareholders failed to respond to the notice by A.O.

6.8. Decision of Hon'ble M.P. High Court in the case of CIT vs. Peoples General Hospital Ltd., (2013) 356 ITR 65, in which it was held as under :

“Dismissing the appeals, that if the assessee had received subscriptions to the public or rights issue through banking channels and furnished complete details of the shareholders, no addition could be made under section 68 of the Income-tax Act, 1961, in the absence of any positive material or evidence to indicate that the shareholders were benamidars or fictitious persons or that any part of the share capital represented the company's own income from undisclosed sources. It was nobody's case that the non-

resident Indian company was a bogus or non-existent company or that the amount subscribed by the company by way of share subscription was in fact the money of the assessee. The assessee had established the identity of the investor who had provided the share subscription and that the transaction was genuine. Though the assessee's contention was that the creditworthiness of the creditor was also established, in this case, the establishment of the identity of the investor alone was to be seen. Thus, the addition was rightly deleted. CIT v. Lovely Exports P. Ltd. [2009] 319ITR (St.) 5 (SC) applied.”

6.9. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. (i) Dwarakadhish Investment P. Ltd., (ITA.No. 911 of 2010) and (ii) Dwarkadhish Capital P. Ltd., (ITA.No.913 of 2010) (2011) 330 ITR 298 (Del.) (HC), in which it was held as under :

“In any matter, the onus of proof is not a static one. Though in section 68 of the Income Tax Act, 1961, the

initial burden of proof lies on the assesses yet once he proves the identity of the creditors/share applicants by either furnishing their PAN number or income-tax assessment number and shows the genuineness of transaction by showing money in his books either by account payee cheque or by draft or by any other mode, then the onus of proof would shift to the Revenue. Just because the creditors/share applicants could not be found at the address given, it would not give the Revenue the right to invoke section 68. One must not lose sight of the fact that it is the Revenue which has all the power and wherewithal to trace any person. Moreover, it is settled law that the assessee need not to prove the "source of source". The assessee-company was engaged in the business of financing and trading of shares. For the assessment year 2001-02 on scrutiny of accounts, the Assessing Officer found an addition of Rs.71,75,000 in the share capital of the assessee. The Assessing Officer sought an explanation of the assessee about this addition in the share capital. The assessee

offered a detailed explanation. However, according to the Assessing Officer, the assessee failed to explain the addition of share application money from five of its subscribers. Accordingly, the Assessing Officer made an addition of Rs.35,50,000/- with the aid of section 68 of the Act, 1961 on account of unexplained cash credits appearing in the books of the assessee. However, in appeal, the Commissioner of Income-tax (Appeals) deleted the addition on the ground that the assessee had proved the existence of the shareholders and the genuineness of the transaction. The Income-tax Appellate Tribunal confirmed the order of the Commissioner of Income-tax (Appeals) as it was also of the opinion that the assessee had been able to prove the identity of the share applicants and the share application money had been received by way of account payee cheques. On appeal to the High Court: Held, dismissing the appeals, that the deletion of addition was justified.”

6.10 Decision of Hon'ble jurisdictional High Court in the case of CIT vs. WinstralPetrochemicals P. Ltd., 330 ITR 603, in which it was held as under :

“Dismissing the appeal, that it had not been disputed that the share application money was received by the assessee-company by way of account payee cheques, through normal banking channels. Admittedly, copies of application for allotment of shares were also provided to the Assessing Officer. Since the applicant companies were duly incorporated, were issued PAN cards and had bank accounts from which money was transferred to the assessee by way of account payee cheques, they could not be said to be non-existent, even if they, after submitting the share applications had changed their addresses or had stopped functioning. Therefore, the Commissioner (Appeals) and the Tribunal were justified in holding that the genuineness of the transactions had been duly established by the assessee.”

6.11. Decision of Hon'ble jurisdictional High Court in the case of CIT vs. Value Capital Services Pvt. Ltd., (2008) 307 ITR 334 (Del.) (HC), in which it was held as under :

“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.”

6.12. Judgment of Hon'ble Delhi High Court in the case of Pr. CIT vs., Kurele Paper Mills P. Ltd., 380 ITR 571 (Del.) in which Hon'ble Delhi High Court held as under :

“Held, dismissing the appeal, that the order of the Commissioner (Appeals) revealed that there was a factual finding that no incriminating evidence related to share capital issued was found during the course of search as was manifest from the Order of the Assessing Officer. Consequently, it

was held that the Assessing Officer was not justified in invoking section 68 of the Income-tax Act, 1961, for the purposes of making additions on account of share capital. There was nothing to show that the factual determination was perverse.”

6.13. Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax, Orissa vs., Orissa Corporation P. Ltd., [1986] 159 ITR 78 (SC) in which it was held as follows :

“Held, that in this case the respondent had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index numbers were in the file of the Revenue. The Revenue, apart from issuing notices under section 131 at the instance of the respondent, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were

creditworthy. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the respondent could not do anything further. In the premises, if the Tribunal came to the conclusion that the respondent had discharged the burden that lay on it, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which a conclusion could be arrived at, no question of law as such arose. The High Court was right in refusing to state a case.”

6.14. The Hon’ble Madhya Pradesh High Court in the case of PCIT vs., Chain House International Pvt. Ltd., 98 taxmann.com 47 [HC] [MP] [408 ITR 561 [HC] [MP]] while deciding several appeals including the appeal of the Revenue in the case of Bharat Securities Pvt. Ltd., held that “*once genuineness, creditworthiness and identity of the Investors are established, no addition could be made as cash credit on the ground that shares were issued at excess premium.*” The Departmental SLP have been dismissed by

the Hon'ble Supreme Court reported in 113 taxmann.com 32 (SC) in the case of PCIT vs., Bharat Securities Pvt. Ltd.,

6.15. The Ld. D.R. heavily relied upon Judgment of the Hon'ble Supreme Court in the case of PCIT vs., NRA Iron & Steel (P.) Ltd., (supra). In this case the Investors were being non-existing and have not having capacity to invest funds and that detailed enquiry conducted by the A.O. support his findings that Investors were non-existing and share capital was bogus. However, in the case of assessee A.O. did not doubt the identity of the Investors. The A.O. did not doubt the source of the Investor companies of Kolkata and mentioned their source in the assessment order itself and in respect of Mumbai Investors, A.O. did not refer to sufficiency of funds with them as per their annual reports which we have mentioned in this Order now. In the case of assessee A.O. did not make any enquiry, therefore, the facts of the case of assessee are clearly distinguishable from the Judgment in the case of PCIT vs., NRA Iron & Steel (P.) Ltd., (supra) relied upon by the Ld. D.R.

6.16. The A.O. merely doubted the financial capacity of the Investors because they have reported low income in their return of income. This cannot be the sole basis to doubt the explanation of assessee. It may be suspicion of the A.O. only without bringing any evidence on record. Rather the documentary evidences produced on record clearly support the explanation of assessee. The Hon'ble Bombay High Court in the case of *Ami Industries (India) Pvt. Ltd.*, (supra) has distinguished the Judgment of *NRA Iron & Steel (P.) Ltd.*, (supra) as reproduced above. It may also be noted here that the case of *M/s. Adamine Construction Pvt., Ltd.*, (supra) is connected with the case of *Bhushan Steel Group of cases* as is also attributed in the case of assessee and on identical facts the Tribunal has dismissed the appeal of Revenue and the Order of the Tribunal has been confirmed by the Hon'ble Delhi High Court by dismissing the appeal of the Revenue and the Judgment of the Hon'ble Delhi High Court have been confirmed by the Hon'ble Supreme Court by dismissing the SLP of the Revenue. Therefore, the issue is covered in favour of the assessee by

the Judgment of Hon'ble Delhi High Court in the case of M/s. Adamine Construction Pvt., Ltd., (supra). Considering the totality of the facts and circumstances of the case in the light of documentary evidences on record and the decisions referred to above, we do not find any infirmity in the Order of the Ld. CIT(A) in deleting the addition. Accordingly, the appeal of the Department is dismissed.

7. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER
Delhi, Dated 17th March, 2021
VBP/-
Copy to

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.